

**Court Cases affecting CW&A:  
Mahoney & Others**

**Louisiana Child Welfare & Attendance  
Professionals Conference  
June 21, 2022**

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***Mahanoy Area School District v. B.L.*,  
141 S. Ct. 2038 (2021)**

- Cheerleader expressed dissatisfaction on social media (Snapchat) with not making varsity squad
  - Vulgar language and gestures criticizing school and cheerleading team
  - Posted to group of up to 250 who could view for 24 hours
  - Spread to others and created stir among school community
- Student suspended from JV squad for sophomore year and lawsuit ensued

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**Supreme Court’s Holding: Speech Protected**

- Student’s First Amendment protections greater off-campus than on-campus
- 3 factors diminish special educational characteristics that would otherwise call for special First Amendment leeway:
  - (1) off-campus speech normally falls within zone of parent control
  - (2) Courts should be skeptical of school’s efforts to control off-campus speech
  - (3) schools have interest in protecting speech as “nurseries of democracy”

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Rationale for Holding

- Acknowledged vulgarity of the speech, BUT . . .
  - Concluded *not* crude or obscene
  - Not directed at any individual
  - Communicated via personal cell phone
  - Directed at small circle of social media contacts
  
- Court rejected school districts arguments that
  - Had interest in teaching good manners
  - Some members of team were “upset” by the speech and a class devoted some class time to discussion of it, and
  - Impact on team moral

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Implementation moving forward ...

- Engage in *fact-specific* inquiry
  
- Consider on *case-by-case* basis
  
- Use *caution* when considering whether to discipline a student for off-campus speech
  
- Obtain advice of counsel

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*B.D. v. Cornwall Lebanon School District,*  
(M.D. Pa. 2021)

- Health issues intersect with education and must be addressed appropriately. If necessary, as a component of the IEP or 504 Plan, the IHP/IHCP is critical. Further, in such circumstances nurses are an indispensable team member.
  
- In addition to addressing bullying via State law (La. R.S. § 17:416.13) and school board policy and procedures, such conduct toward a student with a disability may impact the student’s ability to receive FAPE. Accordingly, the IEP or 504 Team should address possible impacts and support needs.

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Letter to Anderson (SPPO\* 2020)

- Law enforcement does not have unfettered access to educational records under FERPA. Training and informational activities with law enforcement agencies regarding FERPA and other confidentiality issues are a good move.
- Prior to use of FERPA exceptions, district staff should consult with appropriate district staff, who in turn may consult with legal counsel.
- Note that unauthorized disclosure of student information can result in civil and criminal penalties. See La. R.S. § 17:3914.

\* SPPO is the federal "Student Privacy Policy Office"

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Rabel v. New Glarus School District, (D. Wisc. 2021)

- Recall that Louisiana law addresses parameters for the use, documentation, and review of restraint and seclusion for students with disabilities under IDEA. See La. R.S. § 17:416.21.
- More generally, IDEA requires the IEP Team to address behaviors that interfere with the student's education (or that of others). 34 C.F.R. § 300.324(a)(2)(ii).
- Excessive or inappropriate use of restraint or seclusion can result in exposure legally for the school district – exposure well beyond issues of FAPE.

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Schaeffer v. Fulton County School District, (N.D. Ga. 2021)

- While school districts need to comply with their obligations under compulsory attendance law, that is not the district's only obligation regarding the student. An "automatic" truancy referral may be problematic under the circumstances.
- Again, IDEA requires the IEP Team to address behaviors that interfere with the student's education. 34 C.F.R. § 300.324(a)(2)(ii).

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Letter to Anonymous (SPPO 2020)

- Information access is separate from decision-making ability. Follow court orders – not parental preferences.
- Consult your district’s counsel on these thorny tug-of-war issues. Do not get roped into being a *de facto* referee for domestic/family issues. The appropriate forum for parents’ disputes is family/district court – not the school office or the IEP Team meeting.

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Upcoming 2022 HSAGN&P Conferences

School Law Conference

September 11-13, 2022  
Crowne Plaza  
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Special Education Conference

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Crowne Plaza  
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11

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12

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