FOCUS: EDUCATION LAW

Public Schools and Off-Campus Student Speech: The Second Circuit's New Standards

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On October 30, 2025, the Second Circuit Court of Appeals issued a decision in *Leroy v. Livingston Manor Central School District* which overturned a public-school student's one-month out-of-school suspension for off-campus conduct.[1] At issue was a highly controversial photograph of the suspended student appearing to recreate the murder of George Floyd in 2021. The court's decision should cause school administrators to carefully consider whether a suspension should be imposed for a code of conduct violation that occurs off campus.

Background

In April 2021, twelfth-grade student Case Leroy was suspended by the high school principal for posting a photograph on the social media platform, Snapchat, that made it appear he was reenacting the murder of George Floyd. The photograph was taken with Leroy's smartphone and disseminated on Snapchat. According to the hearing record, Leroy was in an off-campus parking lot when his friends asked him to look under his car after reporting a scraping sound from the vehicle. As Leroy bent down to look under his car, another student put his knee on Leroy's neck and posed for the photograph.[2] As the photo was taken, the other student gave the "thumbs up" sign, and smiled. Leroy posted the photo to Snapchat with the caption "Cops got another."[3]

The same day that the photograph was posted, jury deliberations were conducted in the *State of Minnesota v. Derek M. Chauvin*.[4] Minneapolis Police Officer Derek Chauvin stood accused of murdering George Floyd while arresting him for attempted use a counterfeit $20 bill.[5] After Mr. Floyed was pinned to the ground, Chauvin was accused of placing his left knee onto Mr. Floyd's neck and his right knee on his back, and holding them there while using most of his body weight for a period of nine minutes and 29 seconds.[6] Chauvin did not remove his knee from Mr. Floyd's neck despite hearing that he could not breathe. Mr. Floyd's voice became "thicker and slower," until he ultimately ceased pleading and became non-responsive.[7]

At the student discipline hearing, Leroy testified that he did not stage the photograph and was not aware of its resemblance to the murder, despite posting it to Snapchat.[8] The hearing evidence showed that the photograph was posted to Leroy's social media account for seven minutes, which another student reposted on other social media platforms.[9] During that time, Leroy received threatening messages about his post, and was made aware of the photo's resemblance to the George Floyd case. He asked his friends to take down the posts, but by that time it had been reposted multiple times to the school community.

New York State Law

Under New York State Education Law §3214, students can be suspended by a building principal for up to five school days. Such conduct must violate the school district's code of conduct and/or is insubordinate, disorderly, violent, or disruptive, or endangers the safety, morals, health or welfare of others.[10] Parents of the suspended student are entitled to written notice of the suspension, and the opportunity for an informal conference with the principal prior to the suspension being imposed. At the informal conference, the parents have the right to question complaining witnesses and to present their side of the story, allowing the principal to reconsider the contemplated suspension. The informal conference constitutes the full extent of due process to which a student suspended five school days or fewer is entitled. A principal cannot suspend a student for more than five school days.

For suspensions longer than five school days, the due process rights of students and parents are increased.[11] Prior to imposing the suspension, the school district must provide the parents and student with a written notice of charges describing the misconduct. At a disciplinary hearing, the school district must prove through competent and substantial evidence that the student's misconduct violated the code of conduct and/or was insubordinate, disorderly, violent, or disruptive or endangered the safety, morals, health, or welfare of others. The school district may establish its case through witness testimony and documentary evidence. The hearing must be recorded, usually by a stenographer or audio-recording device, creating a reviewable record. Students and their parents have the right to counsel, to confront and cross-examine witnesses, and to present their own witnesses in the student's defense.[12]

Strict rules of evidence do not apply in these hearings, and hearsay is generally permitted. The superintendent or appointed hearing officer presides over the hearing. At its conclusion, the hearing officer makes findings of fact regarding the student's conduct and guilt, and if the student is found guilty, recommends an appropriate penalty.

Parents can appeal the superintendent's determination to the board of education, in accordance with the district's code of conduct and state law. Parents dissatisfied with the board's decision can submit an appeal to the Commissioner of Education within 30 calendar days of the decision.[13]

Procedural History

In *Leroy*, the principal suspended Leroy for five school days. A superintendent's hearing was subsequently held which found him guilty of violating the code of conduct for posting racially offensive material on social media.[14] The hearing officer recommended that Leroy be suspended through May 21 of his senior year, and the superintendent adopted that recommendation. The superintendent also barred Leroy from participating in all extracurricular activities for the balance of the school year, including sports teams, senior class trip, senior breakfast, senior program, and graduation.[15] Leroy appealed the superintendent's determination to the board, which affirmed the determination.

Leroy appealed the board's decision to New York State Supreme Court in Sullivan County, which granted injunctive relief on a limited basis to enable Leroy to attend his high school graduation ceremonies.[16] Leroy's parents amended their complaint in State Supreme Court seeking an order that the school district's actions were unconstitutional; for Leroy's suspension to be expunged from school records; and for the district to change its disciplinary policies. The district removed the case to federal court in the Southern District of New York, and moved for summary judgment, which the court granted.[17] In granting the district's motion, the court found that Leroy's conduct caused a substantial disruption to the school learning environment, and that the district had an interest in maintaining order, tolerance, and respect within its schools. As such, the court found that the school district's suspension did not violate Leroy's First Amendment free speech rights.[18] Leroy appealed the decision to the Second Circuit Court of Appeals.

Second Circuit's Decision

The Second Circuit reviewed the criteria for disciplining students for off-campus speech established by the U.S. Supreme Court in 2021 in *Mahanoy Area School District v. B.L.*[19] In *Mahanoy*, the Court noted that when considering discipline for off-campus student speech, schools rarely stand *in loco parentis*. As such, courts must be more skeptical of a school's efforts to regulate student speech occurring off campus. The school district also has an interest in protecting a student's unpopular expression, even when occurring off-campus.[20] The Court identified three key factors that should be analyzed when considering discipline connected to off-campus student speech: (1) the nature of the speech; (2) when, where, and how the student spoke; and (3) the school's interest in regulating speech.[21]

In *Leroy*, the Second Circuit noted that the social media post did not rise to the level of a "true threat" to the health and safety of other students (something *Mahanoy* indicated could clearly be regulated by schools) despite students expressing their view that the social media post made them feel unsafe. Further, Leroy's conduct took place outside of school hours, off school grounds, and did not identify the school or directly target any member of the school community.[22] The court noted that a social media post made off campus

is not equivalent to speech made on campus. Although the mass audience that views a social media post may strengthen the school's argument for imposing discipline for off-campus speech that disrupts the school environment, the court noted that it was "skeptical" of the school's efforts to regulate the off-campus speech found here.[23]

The district's "interest in teaching racial sensitivity was not sufficient to overcome Leroy's interest in free expression off campus."[24] The district had other non-restrictive means of teaching racial sensitivity, which the district implemented, such as classroom discussions, a school assembly, and facilitating a student demonstration. The degree of in-school disruption, which was a school-wide assembly, implicit bias training, and a nine-minute student demonstration, did not justify restricting the student's speech.

Finally, the court stated that a line must be drawn "between speech that is deeply offensive to other students—even reasonably so—and speech that threatens their sense of security."[25] Leroy did not intend to threaten, bully, or harass any other students. He quickly took the post down when he learned of the impact his post was creating within his school community. As such, the court concluded that the suspension for Leroy's off-campus conduct was not justified in light of his First Amendment protections, and the case was remanded to the District Court.[26]

Recommendations

The Second Circuit's decision in *Leroy* demonstrates the competing interests at play when school districts impose discipline for a student's off-campus conduct. When behavior or speech occurs off campus, outside of regular school hours, school districts have far less authority to regulate student conduct than when it occurs on school grounds, during regular school hours. Students who engage in off-campus speech that is merely offensive, even racially offensive, will be difficult to discipline based on the student's First Amendment rights to freedom of speech, if challenged on appeal.

Disruption to the school environment from a student's off-campus speech, overt or not, may be insufficient to overcome a student's First Amendment rights, even if other students feel uncomfortable and are outraged by such conduct. However, districts still have the clear legal right to impose discipline for off-campus speech that directly targets the safety of another student, staff member, or the district as an entity.

Administrators should clearly document each instance of disruption to the school environment prior to considering a disciplinary consequence for off-campus speech. Should a disciplinary hearing be held, efforts should be made to provide specific details in the hearing record as to the nature of the disruption, the impact it caused on any particular students or the district as a whole, and what efforts were required to respond to and stop the disruption.

Evidence at the hearing should include the number of staff members and time allocated to responding to the disruption. Testimony should be elicited as to any re-training or assemblies held to minimize the likelihood that such conduct would recur or to eliminate the hostile environment created by the conduct. In sum, school districts should approach off-campus incidents on a case-by-case basis and carefully consider whether the misconduct outweighs First Amendment rights.

1. *Leroy v. Livingston Manor Centr. Sch. Distr.*, 158 F.4th 414, 428 (2d Cir. 2025).
2. *Leroy v. Livingston Manor Cetr. Sch. Dist.*, 2024 WL 1484254, at *2 (S.D.N.Y. 2024).
3. *Leroy*, at *1.
4. *State of Minnesota v. Derek Michael Chauvin*, 27-CR-20-12646 (2023).
5. See *State of Minnesota v. Derick Michael Chauvin*, A21-1228 (2023).
6. *Id.*
7. BBC, *George Floyd death: Chauvin 'trained to stay away from neck'*. Apr. 6, 2021.
8. *Leroy*, 158 F.4th at 428.
9. *Id.* at 419.
10. N.Y. Educ. Law §3214.
11. *Id.*
12. *Id.*
13. N.Y. Educ. Law §310.
14. *Leroy*, at *3.
15. *Id.*
16. *Leroy*, 2024 WL 1484254, *4.
17. *Id.* at *11.
18. *Id.*
19. *Mahanoy*, 594 U.S. 180, 185 (2021).
20. *Id.* at 181.
21. *Leroy*, at *5.
22. *Id.* at *6.
23. *Id.* at *5.
24. *Id.* at *8.
25. *Id.* at *9.
26. *Id.* at *7.

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