

September 25, 2008

Dear Client:

As part of our commitment to provide you with a legal resource that can offer cogent day-to-day advice and clear strategies for a secure future, we offer our pledge to also be your partner in information. We recognize the need for you to be immediately responsive to the changing requirements of the law, government regulations, and community needs. As such, our office will prepare *Action Papers* in response to the ever-changing laws and regulations affecting public education. Receipt of an Action Paper is an indication that your School District may want to consider changing a practice or policy. It also may indicate that your District is required by law to initiate or discontinue a practice or policy.

**IN RE: JUDGE UPHOLDS STUDENT'S SUSPENSION FOR THREAT TO
"PULL A COLUMBINE" AS NOT PROTECTED SPEECH**

A former student of the New Brighton Area School District has lost his civil rights suit now that a federal judge has ruled that his speech was unprotected speech

“Johnson’s statement with its reference to Columbine falls well outside the bounds of “political speech” described in Tinker. Instead it is more akin to “fighting words,” or “true threats” which are not protected speech.” U.S. District Judge Donetta Ambrose in her opinion Johnson v. New Brighton Area School District.¹

Johnson a 12th grade student was suspended for ten days after he threatened to “pull a Columbine” on his school. As a result of his ten day suspension Johnson missed attending his Senior Prom. Johnson with the support of the ACLU filed suit against the New Brighton Area School District and various

¹ Andrews & Price handled the successful defense of the School District in this matter.

Action Paper

administrators arguing that the discipline was unconstitutional because it violated Johnson's right to free speech. Johnson claimed that his remark was a joke and relied upon the United States Supreme Court analysis in Tinker v. Des Moines which held that student speech may not be punished unless it caused a "substantial and material disruption" at the school.

The court rejected the actual occurrence of disruption argument. Chief Judge Donetta Ambrose noted "the term 'Columbine' in today's society connotes death as a result of one or more students shooting other students. Therefore, when a student uses that term, and, from the school's viewpoint utters the term with malice or anger the speech can be readily viewed as a 'true threat' or advocating conduct harmful to other students." Importantly, Judge Ambrose recognized that society today charges teachers, school officials and administrators with the responsibility to provide students not only with an environment conducive for learning but one that is safe. Judge Ambrose further recognized that often school officials are met with the decision to take instant action and invite a lawsuit by the ACLU or do nothing and possibly be met with the horrific consequences of a student left to carry out his threat.

The evidence presented in Johnson supported the fact that the teacher and school administrators, at a minimum perceived Johnson's speech to be in violation of the core educational mission of the school, and more importantly to be concerned for the safety of all the other school students.

It is our hope that the legal analysis employed in Johnson will provide schools more ammunition in their arsenal of combating the threats against student safety. Following the decision in Johnson, Tinker's "substantial and material disruption" test is arguably limited to political speech. However, that battle is left for another day. What schools can learn from Johnson is that school officials are permitted to act where they "reasonably believe" a substantial disruption or material interference may occur especially in light of a concern for school safety. Schools may still validly restrict student speech that is vulgar and lewd and also it may restrict student speech that promotes unlawful behavior.

As always should you have any questions or concerns involving student discipline and student speech, please call our office.

Best regards,

ANDREWS & PRICE

