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The Solution Starts Here.

DPI Upholds Expulsions Based on “Threats” Outside of School

Last week, the Department of Public Instruction (DPI), issued two groundbreaking decisions upholding expulsions based on threats of shootings. The DPI’s decisions find that, under certain circumstances, threats occurring outside of school, including during the summer break or even while a student is enrolled in a private school, may still serve as a basis for expulsion from school. This Legal Update focuses on DPI’s conclusions on threats and the major takeaways from the two decisions.

Decision (773) Jan. 2, 2019.

In *Dec. 773*, the student appealed the school board’s decision to expel based on the student’s posting of a video on social media using profanity and threatening to shoot someone, while holding a real gun. The video was posted over summer break and was removed from social media prior to the start of the academic year. Several weeks later, after school began, the district received an anonymous report from someone claiming to be a student who felt threatened by the video.

The DPI found that the school board could reasonably conclude the posted threat endangered the property, health or safety of others at school or under the supervision of a school authority. The DPI considered that the pupil posted the video on social media, fellow district students viewed and commented on the video, and the district received a report from an individual claiming to be a student who perceived the video as a threat to the safety of students. Despite the fact that the video was posted over the summer and was removed prior to the start of the school year, the DPI still upheld the expulsion.

Decision (775) Jan. 10, 2019.

In *Dec. 775*, the student appealed the school board’s decision to expel based on the student’s Snapchat post, in which he posed with an Airsoft gun with a text stating, “Florida 2.0 coming soon.” The post was made five days after the Stoneman Douglas High School shooting in Parkland, Florida. At the time the student posted the message, he was not enrolled in the district, but was enrolled in a private school. The student withdrew from the private school before any expulsion proceedings were commenced by the private school. At the start of the next school year several months later, the student enrolled in the district and the administration commenced expulsion proceedings. The school board expelled the student, finding the student’s conduct while outside of school endangered the health, safety or property of others at the district’s schools.

The main issues in this case were whether the expulsion statutes give a district the authority to expel a student for conduct that occurred while enrolled in a private school, and whether evidence in the record could sustain a finding that the student endangered the health or safety of others at a school for the district, since the student's post occurred while he was a student at the private school. The DPI found that the statutes did not limit the authority of a district to expel a student even though the student was enrolled in a private school at the time the threat was posted. However, the DPI cautioned that "[s]chool boards do not have blanket authority to expel a student based on that student's conduct at any school, public or private, that occurred at any time, regardless of whether that conduct had any relation to the expelling school district." Instead, the school board must still find that the student engaged in conduct which endangered the property, health, or safety of others at the school board's school, or under the supervision of the school board's authority.

The DPI also upheld the school board's determination that the social media threat of a school shooting endangered the property, health or safety of others at school or under the supervision of a school authority. The DPI reasoned that the posting could reasonably be perceived as a threat to students at the district since the message was not limited to a specific school. Additionally, as prior school shootings demonstrate, an individual does not need to attend a school to be a threat to that school (ex. a former student that carried out the Sandy Hook shooting).

Conclusions

These decisions clarify a school board's authority to expel a student under usual circumstances, particularly when a student is not a student of the district or under the authority of the school when the conduct occurs. These two decisions also seem to expand the scope of the conduct which subjects public school students to the district's disciplinary authority. School administration and school boards facing conduct by students while school is not in session or even before a student is enrolled in a district, should know that the school board may still have the disciplinary authority to expel students when the conduct is reasonably found to be a threat of harm which endangered students at the school and if the best interest of the school demands expulsion.

In these cases, important considerations in upholding the decisions appear to be the perception of statements as being threats, district staff and student reactions to the threats and current events. Thus, school officials should take great care to present specific evidence at the hearing to demonstrate that the conduct endangers students in the school district. This evidence may take the form of testimony or documentation. In any event, the more attenuated the conduct is, i.e. based upon timing, enrollment status, location, etc., the greater attention this should be given so that the school board's decision to expel is grounded in the hearing record.

If you have any questions about this Legal Update, please contact Attorney Claire Hartley at 262-364-0260 or chartley@buelowvetter.com, Attorney Gary Ruesch at 262-364-0263 or gruesch@buelowvetter.com or your Buelow Vetter attorney.

