



Cell Phone Use Banned in School Zones

Due to a new law amending the Illinois *Vehicle Code*, effective as of January 1, drivers are prohibited from using their wireless phones “while operating a motor vehicle on a roadway in a school speed zone” (or a highway construction zone), except for emergency purposes or if the driver is using the phone “in voice-activated mode.”

Although the law is targeted at all drivers generally, it may have a unique impact on school personnel, particularly those who travel between schools and communicate regularly via cell phone, such as administrators

and maintenance staff. For example, it is unclear whether the exception for “voice-activated mode” would allow drivers to talk on their phone via an earpiece or other hands-free device.

Districts should consider the impact of the new law on their operations, and, if necessary, advise parents and staff on appropriate use of cell phones in school zones.

For questions about this law or its impact on your district, contact Terry Hodges or Jeff Goelitz.

Third Circuit Finds Itself on Opposite Sides of Two Nearly Identical Student Free Speech Cases--Illustrating the complexity of student “social media” free speech issues, two panels of the federal Third Circuit Court of Appeals (which does *not* govern Illinois) came to opposite conclusions in two strikingly similar First Amendment cases involving students who were suspended for creating MySpace pages on their personal computers ridiculing their principals.

In Justin Layshock v. Hermitage School District, 2010 WL 376184 (3d Cir. 2010), the court found a ten-day, out-of-school suspension of a high school senior, for setting up a fake profile of his school principal violated Justin’s free speech rights under the First Amendment.

The profile, which Justin created on his grandmother’s computer at his grandmother’s house, referred to the principal as a “big steroid freak,” a “big hard ass,” and a “big whore” who smoked a “big blunt.”

On the other hand, in *J.S. v. Blue Mountain School District*, 2010 WL 376186 (3d Cir. 2010), the court upheld the ten-day, out-of-school suspension of eighth-grader, J.S., who created a fake MySpace profile of her principal. J.S. created the profile with a friend from her home using her parents’ computer.

Continued on Page 2

Consumer Price Index

Percent change for the month of **January, 2010**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.4	0.7
12 Mth	2.2	2.7
St. Louis-6 Mth	1.1	1.6
12 Mth	0.2	0.3
U.S. Mthly	0.3	0.4
12 Mth	2.6	3.3

February CPI figures will be released March 18, 2010. For the most recent CPI, visit our website at: www.hlerk.com

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Reminders & Notes

- **It’s time to update your student handbooks! Send in the enclosed order form to purchase the HLERK model student handbook checklist or contact Lori Martin to request a comprehensive review of your student handbooks.**
- **Register now for the Illinois Principals’ Association program *Making Special Education Law Functional* featuring Jay Kraning. For information and registration for the final program on March 16 in Matteson, visit: www.ilprincipals.org. Jay recently spoke at the national conference of the National Association of School Psychologists.**

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Free Speech Cont.

J.S.'s profile did not state the principal's name, but included a picture of the principal from the school district's Web site. The profile also included profanity-laced statements insinuating that the principal was a pedophile. The profile owner's interests were quoted as "being a tight ass," "f...ing in my office," and "hitting on students and their parents." The "About Me" section stated that the profile owner loved children and sex of any kind.

Critical to both cases was whether school authorities could reasonably conclude the student's conduct would materially and substantially disrupt the work and discipline of the school. The court, in both cases, noted that school authorities may not suppress students' expression unless authorities reasonably conclude that the conduct would "materially and substantially disrupt the work and discipline of the school." Citing *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513 (1969), the court in both cases noted that school authorities may regulate students' off-campus expression if it met the *Tinker* standard.

The courts then outlined the three circumstances in which school authorities may regulate student expression outside of the *Tinker* context. The first is in-school expression that is lewd, vulgar, indecent, or plainly offensive speech. See *Bethel School District v. Fraser*, 478 U.S. 675 (1986).

The second is school-sponsored speech, where a reasonable observer would view the expression as the school's own speech. See *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). The third exception involves speech at a school-sponsored activity that pro-

notes illegal activity. See *Morse v. Fredrick*, 551 U.S. 393 (2007).

In *Layshock*, the court noted that it would be an "unseemly and dangerous precedent to allow the state in the guise of school authorities to reach into a child's home and control his/her actions there to the same extent that they can control that child when he/she participates in school sponsored activities." Punishing Justin for conduct while using his grandmother's computer at his grandmother's house, the court stated, would create such a precedent.

The court then noted that the district brought no evidence showing the conduct resulted in foreseeable and substantial disruption of the school. Instead, the district argued Justin's conduct should be subject to regulation under *Fraser* as in-school lewd, indecent and plainly offensive conduct because the speech eventually ended up in the school community. The court rejected this argument and found no foreseeable risk of substantial disruption.

In J.S., on the other hand, the court found that the school authorities had the power to regulate the conduct because the speech rose to the level of vulgarity and contained reckless and damaging information that could undermine the principal's authority and arouse suspicions about his character, thus resulting in a foreseeable risk of substantial disruption at the school.

Until and unless the Supreme Court resolves these issues, school districts seeking to discipline students for inappropriate use of social media outside of school face significant constitutional hurdles. Contact Nancy Krent with your First Amendment student inquiries.

COBRA Extended--On March 2, 2010, the [Temporary Extension Act of 2010](#) was signed into law. Among other things, the Act extends the COBRA subsidy until March 31, 2010. It also extends eligibility for the subsidy under certain conditions to individuals who suffer a reduction in hours before an involuntary termination of employment. Previously, these individuals would not have been eligible for the subsidy. The Act also sets forth a new election period and notice requirements. **Contact Heather Brickman or Barbara Erickson with questions.**

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