

Legal Alert

Contact:

Suzanne E. Volpe

Keane & Beane, P.C.

svolpe@kblaw.com

P (914) 946-4777

F (914) 946-6868

Cuff v. Valley Central School District,

Docket No. 10-2282-cv

May 1, 2012

From time to time, Keane & Beane, P.C., issues Legal Alerts pertaining to new legislation or recent cases of interest. Recently, the Second Circuit Court of Appeals (the “Second Circuit”) issued a decision in *Cuff v. Valley Central School District*, which addressed a school district’s imposition of discipline based upon a fifth grade student’s in-class drawing which depicted an astronaut, and expressed the student’s wish to “blow up the school with the teachers in it.” The Second Circuit upheld the determination of the Southern District Court of New York which found in favor of the school district, holding that the student’s rights under the First Amendment of the United States Constitution were not violated when the school district suspended the student from school for six (6) days based upon the student’s drawing described above and his anecdotal disciplinary record.

In its consideration of the school district’s action, the Second Circuit applied the test developed by the Supreme Court in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 504 (1969). As you may know, *Tinker* is the seminal First Amendment case regarding the First Amendment freedom of speech in the school setting.

In *Tinker*, the Supreme Court developed the “substantial disruption” standard—student speech may be curtailed if the speech will “materially and substantially interfere with the



White Plains Office
445 Hamilton Avenue
White Plains, NY 10601
P (914) 946-4777
F (914) 946-6868



Fishkill Office
200 Westage Business Center
Suite 120
Fishkill, NY 12524
P: 845 896-0120

Keane & Beane, P.C.
Education Law Practice

Stephanie L. Burns
Ralph C. DeMarco
Ronald A. Longo
Lawrence Praga
Stephanie M. Roebuck
William Kang
Suzanne E. Volpe

requirements of appropriate discipline in the operation of the school.” 393 U.S. at 509. In applying *Tinker*, the Second Circuit has held that “the relevant inquiry is whether the record demonstrates facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities.” *DeFabio v. E. Hampton Union Free Sch. Dist.*, 623 F.3d 71, 78 (2d Cir. 2010)(internal quotations omitted).

In *Cuff*, the Second Circuit applied both *Tinker* and *DeFabio* and determined that based upon (1) the student’s history of disciplinary issues, including other drawings and writings that depicted and glorified violence; and (2) that school district personnel, including the assistant principal and school psychologist had previously discussed this student’s writings and drawings, and found them to be an area of concern, that the student’s behavior could have reasonably led to a substantial disruption of school activities. The Second Circuit focused on the fact that the astronaut drawing was seen by at least one other student in the class, who brought the drawing to the attention of the classroom teacher and was observed to be “very worried” about the drawing as a factor in determining it was reasonable to find a substantial disruption of school activities. Therefore, the school district’s decision to discipline the student for six (6) days would not be disturbed.

Importantly, in *Cuff*, the Second Circuit found that the questions of whether the student meant his “wish” as a joke, whether the student intended to carry out the threat, or whether the student was capable of carrying out the threat to all be irrelevant to the question of whether the student’s conduct could reasonably be found to cause a “substantial disruption” by the school district officials who imposed the disciplinary action. Further, here, the Second Circuit cited a line of cases that support the fact that “[c]ourts have allowed wide leeway to school administrators disciplining students for writings or other conduct threatening violence.” Finally, in defense of the imposition of discipline by school officials, the Second Circuit found that “school administrators also have to be concerned about the confidence of parents in a school system’s ability to shield their children from frightening behavior and to provide for the safety of their children while in school.”

Based upon all of the above, in *Cuff*, the Second Circuit found that the school district could reasonably have concluded that the student's astronaut drawing would substantially disrupt the school environment, and their resulting decision to suspend the student was constitutional.

Should you have any questions about how this case could impact future student disciplinary issues, please feel free to contact this office.

About Our Firm

Located in White Plains, NY, Keane & Beane has provided the highest quality legal counsel to its clients - in the Hudson Valley and beyond - for over 30 years. At Keane & Beane, you get the best of two worlds: The breadth and depth of professionals and practice areas usually found only at a large law firm, with the accessibility, personalized service and loyalty to clients of a smaller firm. Our Practice Areas are Business Transactions, Construction, Education, Elder Law, Environmental Law, Intellectual Property & Technology Law, Labor & Employment, Land Development & Zoning, Litigation, Municipal Law, Real Estate and Trusts & Estates.

Please visit www.kblaw.com and feel free to contact any of our attorneys. If you need immediate assistance, please contact our Office Manager Barbara Durkin at (914) 946-4777 or bdurkin@kblaw.com

© 2012 Keane & Beane, P.C.

This communication is for informational purposes only and is not intended to constitute legal advice in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient with respect to the issues discussed herein. The recipient is encouraged to consult counsel before making any decisions or taking any action concerning issues in this communication. This communication does not create an attorney-client relationship between Keane & Beane, P.C. and the recipient.