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Priority Briefing

STUDENT SPEECH DECISION: ANTI-GAY T-SHIRT NOT DISRUPTIVE

Last week, in a further proceeding in *Zamecnik v. Indian Prairie School District No. 204*, the Seventh Circuit Court of Appeals in Chicago decided a free speech case in favor of students. The Court held that an Illinois high school violated students' First Amendment rights when it inked out the t-shirt caption "Be Happy Not Gay," and threatened to punish students if the slogan were used again.

The high school permitted a private group, the Gay, Lesbian and Straight Education Network, to conduct a "Day of Silence" intended to draw attention to harassment of homosexuals. However, the next day, the District banned students who had a religious objection to homosexuality from wearing the "Be Happy, Not Gay" shirt for a "Day of Truth." The District had a school rule against spoken or written derogatory comments referring to race, ethnicity, religion, gender, sexual orientation, or disability.

The United States Supreme Court has previously ruled that students do not leave their First Amendment rights at the schoolhouse door. However, the Court has indicated limited exceptions in which a school can regulate the content of student speech. One major exception is where the speech is reasonably foreseeable to cause a material and substantial disruption of the work and discipline of the school.

The Seventh Circuit in *Zamecnik* held that such a regulation must be based on more than mere speculation that the speech will cause a material disruption in school. The court held that while school officials have discretion in determining when student speech "crosses the line between hurt feelings and substantial disruption," the slogan "Be Happy Not Gay," is not the kind of speech that materially and substantially interferes with school activities. The Court noted that the word "gay" is commonly used in high schools. Additionally, the Court stated that since the high school permitted advocacy for homosexuality, it could not stifle criticism of homosexuality. The older the student, the less latitude school officials have to limit expression. The Court noted that high school students would soon be old enough to vote on the controversial issue of gay marriage.

Zamecnik reminds districts of the limited exceptions to regulation of student speech. Districts applying policies that discipline students for derogatory or harassing statements must consider whether a student's derogatory speech is protected by the First Amendment or whether a limited exception permits regulation.