

# Private Snapchat Messages Sent After School Hours Do Not Constitute Cyberbullying or Terroristic Threats

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*J.S. v. Manheim Twp. Sch. Dist.*, 2020 WL 2508031 (Pa. Commw. Ct., May 13, 2020): The Pennsylvania Commonwealth Court affirmed a lower court's conclusion that private Snapchat messages between two students, making fun of a third student, did not constitute cyberbullying or terroristic threats.

## SUMMARY AND FACTUAL BACKGROUND

Over the course of 10 days, J.S. and another student ("Student 1") at Manheim Township School District ("School District") engaged in an extended series of private messages, sent after school hours, over social media application Snapchat. The messages made fun of another student ("Student 2") by stating that Student 2 looked like a school shooter because of his long hair and affinity for death metal band Cannibal Corpse. These were private messages between J.S. and Student 1. Student 2 was not included in these messages.

The private messages included two memes (captioned photographs or videos) created by J.S. One meme (the "Photographic Meme") consisted of a still photograph of Student 2 singing into a microphone, with following caption: "I'm shooting up the school this week. I can't take it anymore I'm DONE!" The other meme (the "Video Meme") included a video of Student 2 playing a guitar and singing into a microphone, with the following caption: "IM READY [Student One] AND MANY MORE WILL PERISH IN THIS STORM. I WILL TRY TO TAKE [Student One] ALIVE AND TIE HIM UP AND EAT HIM."

Without asking for permission from J.S., Student 1 posted the Photographic Meme to Student 1's public Snapchat page. Twenty to forty other students saw the meme before Student 1 removed it at J.S.'s request.

After learning about the Snapchat messages, local police interviewed J.S. and his family. The police determined J.S. had not made a threat and reported this to the School District. The School District interviewed J.S., who explained that the memes were intended to be funny and remain private.

Despite J.S.'s explanation, the School District charged J.S. with violating the School District's policies against terroristic threats and cyberbullying, respectively.

## DISCUSSION

Under the School District policies, a terroristic threat is "a threat to commit violence communicated *with the intent* to terrorize another...." R.R. 3a (emphasis added). The policies defines "bullying" as an "intentional electronic, written, verbal or physical act or series of acts directed at another student" that "occurs in a school setting." A "school setting" is the school grounds, school vehicles, designated bus stops, and school sponsored activities "regardless of location" or "use of school-owned communication device, networks or equipment."

The School District held a hearing on the charges, but did not present Student 1 as a witness against J.S. However, the School District did admit testimony from administrators that Student 1 stated he felt "terrorized" by the memes. The School District upheld the charges against J.S.

J.S. appealed the School District's findings to the trial court, which reversed the School District. The trial court identified three errors made by the School District, which the Commonwealth Court later affirmed:

First, J.S. had the due process right to cross examine Student 1, who was the victim of J.S.'s bullying according to the School District. The School District did not produce Student 1 for cross examination.

Second, the courts determined J.S. did not make a terroristic threat because he had no intent to terrorize Student 1 and no intent to publically display the memes.

Third, J.S.'s conduct did not violate the anti-bullying policy because there was no evidence that the memes were created within a school setting.

### **PRACTICAL ADVICE**

When disciplining students for social media posts, school districts should make sure the conduct at issue constitutes a violation of district policies and that the conduct has a sufficient nexus with school activities. Consultation with your solicitor is encouraged.