

Ninth Circuit Affirms District's Use of Communication Plan to Address Aggressive Parent Communication

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According to the 9th Circuit, a school district can limit hostile parent communication with school personnel without violating the parent's First Amendment rights.

Background

The 9th Circuit Court of Appeals in *L.F. v. Lake Washington School District #414*, 947 F.3d 621 (9th Cir. 2020) agreed with a school district's argument that it did not violate the First Amendment rights of a parent when it restricted parent's interaction with staff after months of hostile communications. The parent filed suit in federal court after the school district set limits on his home/school communication through a written Communication Plan. The U.S. District Court ruled in favor of the school district. Parent appealed to the 9th Circuit Court of Appeals who affirmed the lower court decision in favor of the school district.

The parent, a divorced father of two school age children, had disagreements with the school district staff over his children's education, and what the parent considered discrimination against him as a divorced father. The school district cited a pattern of inappropriate communication that began in or around March 2015. In November 2015, the parent did not agree with the school district's decision to not qualify his child for a 504 plan. The school district alleged that the parent incessantly communicated over several months in a way that led school district staff to complain of the "extraordinary time-consuming communications" that made them feel "intimidated and bullied." The Communication Plan was put into place in November after months of communications that were described as "aggressive, hostile and intimidating."

The Communication Plan set up a structure of bi-weekly, in-person meetings with two specific administrators. While the parent was still able to email different school district staff, the Communication Plan stated that staff would not respond. The parent was still able to attend school activities, access school records and appeal the 504 plan decision. Also, the Communication Plan would not apply in the event of an emergency. After the parent violated the terms of the Communication Plan, it was then modified to where he would only meet with the school district administration once per month.



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The parent alleged that the Communication Plan violated his First Amendment rights. He further alleged retaliation against him for requesting a 504 plan, as well as discrimination under a state law statute.

The parent claimed that the Communication Plan “violated his First Amendment rights by prohibiting him from communicating with his children’s teachers and by precluding him from challenging school district decisions.” In noting that this was a factual overstatement, the Court of Appeals stated that the plan simply limited the parent’s communications to certain channels. In so doing, it limited the amount of communications where the school district would respond to the parent. He was still free to communicate **to** the school district, but the school district would only respond at bi-weekly, then monthly, meetings.

Decision

The Court of Appeals stated that in regards to First Amendment rights, members of the public “do not have a constitutional right to force the government to listen to their views.” Since the school district did not restrict the parent’s right to communicate to the school district and, in fact, allowed him specific staff members with whom he could communicate, the Court of Appeals found the Communication Plan did not violate the parent’s First Amendment rights.

In the alternative, the Court of Appeals analyzed the matter assuming that the school district had, in fact, restricted the parent’s communication. Courts use a higher scrutiny test regarding restrictions on free speech in a public forum. However, the Court of Appeals held that school facilities fall into the category of “non-public fora” which allows for reasonable restrictions as long as it is “not an effort to suppress the speaker’s activity due to disagreement with the speaker’s view.” Here, the Communication Plan structured how the parent would communicate with the school district, but did not curtail parent’s views or content of what he was communicating.

Impact

It has become increasingly common for school districts to enact board policies regarding civility, focused on the behavior of parents and community members who interact with school staff and/or on school property. The *Lake Washington* case provides guidance on how to structure any restrictions on communication and what pitfalls to avoid. For example, parents should still be permitted to communicate to school staff, and school districts should allow an opportunity for parents to obtain a response from a school district. While this 9th Circuit opinion does give LEAs permission to set guidelines for parent communications, school districts must still ensure that parents have the ability to participate in their child’s education. As in the *Lake Washington* case, LEAs do not want to completely suppress a parent’s voice. Having a plan to communicate that describes parameters for parents to contact staff appears allowable under



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Lake Washington. Blocking parents from being able to communicate at all would likely not pass muster. Parents do have the right to participate in their child's education, including, among other things, meeting with staff and being informed of their child's progress. (Education Code section 51101).

If you have any questions about board policies for civility, or communication plans, please do not hesitate to contact a DWK attorney in our Students and Special Education Practice Group.

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