Doe v. Valencia College
United States Court of Appeals for the Eleventh Circuit

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On September 13, 2018, the Eleventh Circuit concluded that the district court did not err in holding that Valencia College did not violate Jeffery Koeppel's statutory or constitutional rights when it suspended him for his conduct towards another student.[1] During the summer of 2014 Koeppel and a female student, whom the court referred to as Jane Roe, were assigned to be biology lab partners at Valencia College, a public university in Florida.[2] As the semester went on, Koeppel began to contact Roe outside of class and eventually told her he was attracted to her.[3] Roe told Koeppel she was not interested and she was already in a relationship.[4] Roe and Koeppel finished the summer semester with no further issues.[5]

Problems arose right before the fall semester began.[6] Koeppel saw something on Roe's Facebook page that made him think she was single, prompting Koeppel to send Roe another message telling her he had feelings for her.[7] After several messages, Roe and her boyfriend called Koeppel, telling him that Roe and Koeppel were not friends and that Roe wanted Koeppel to stop texting her.[8] Koeppel then became angry.[9] He began to send a string of text messages to Roe that became more offensive, sexual, and inappropriate.[10] In response to Koeppel's text messages, Roe's boyfriend called the Seminole County Sheriff's Office.[11] The responding deputy looked at the messages and told Koeppel to stop talking to Roe.[12] Despite this, Koeppel continued to text her, even though Roe continually asked him to stop.[13]

On August 11, 2014, Roe complained about Koeppel to the Valencia Dean of Students, Joseph Sarrubbo.[14] Sarrubbo sent Koeppel an email

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[1] Doe v. Valencia College, 903 F.3d 1220 (11th Cir. 2018).
[2] *Id.* at 1225.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Valencia College*, 903 F.3d at 1225.
[8] *Id.* at 1226.
[9] *Id.*
[10] *Id.* This included messages such as "A hussie is as a hussie does" and "dress like a hooker and act like one too." *Valencia College*, 903 F.3d at 1226. In addition, Koeppel sent Roe a picture of himself shirtless and a picture of a woman pretending to perform oral sex on another person. *Id.*
[11] *Id.*
[12] *Id.* at 1225–26.
[13] *Valencia College*, 903 F.3d at 1226.
[14] *Id.*

informing Koeppel that he must appear for a disciplinary hearing.[15] The email explained that Koeppel was accused of violating four types of conduct prohibited by Valencia's Code of Conduct: (1) physical abuse, which includes conduct that threatens the health or safety of any person; (2) sexual harassment, as defined by the college's policy; (3) stalking behavior; and (4) disorderly or lewd conduct.[16] At the hearing, Koeppel did not deny sending any of the messages or deny that Roe had repeatedly asked him to stop.[17] The student committee recommended that Sarrubbo find Koeppel responsible for the charged conduct and suspend him from the college for one year.[18] Sarrubbo upheld the recommendation and suspended Koeppel.[19] Koeppel then appealed to the Vice President of Valencia College, Joyce Romano, but the appeal was denied.[20]

On October 23, 2015, Koeppel filed a §1983 lawsuit against Romano, Sarrubbo, and another Valencia official in their individual capacities, referred to collectively as "Valencia."[21] Under 42 U.S.C. § 1983,[22] Koeppel claimed that Valencia's policies, on their face and as applied to him, violated the First Amendment and his rights to procedural and substantive due process.[23] In addition, he claimed Valencia violated Title IX of 20 U.S.C. § 1681.[24] The district court granted summary judgment to Valencia on all claims.[25] Koeppel then appealed to the Eleventh Circuit.[26]

The Eleventh Circuit reviewed Koeppel's four contentions.[27] First, Koeppel argued that Valencia violated his First Amendment Right to free speech.[28] In reviewing this contention to see if the district court erred, the court relied on United States Supreme Court precedent to explain that,

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[15] *Id.* at 1227.
[16] *Id.* at 1227–28.
[17] *Id.* at 1228.
[18] *Id*. at 1227–28.
[19] *Valencia College*, 903 F.3d at 1228.
[20] *Id.*
[21] *Id.* at 1229.
[22] *Id.* 42 U.S.C. § 1983 reads: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ." 42 U.S.C. § 1983 (2012).
[23] *Valencia College*, 903 F.3d at 1229.
[24] *Id.* Title IX of 20 U.S.C. § 1681 states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ." 20 U.S.C. § 1681(a) (2012).
[25] *Valencia College*, 903 F.3d at 1229.
[26] *Id.*
[27] *Id.*
[28] "Congress shall make no law. . . abridging the freedom of speech . . . ." U.S. CONST. amend. I.

because Koeppel's conduct interfered with the rights of another student, Valencia could regulate his conduct without impinging on his First Amendment rights.[29] The court also noted it did not matter that Koeppel's messages were sent when he was not on campus because conduct that invades the rights of others is not immunized by the First Amendment even if it occurs outside of class.[30]

Next, the court considered Koeppel's claim that the provisions in Valencia's Code of Conduct under which he was charged were unconstitutionally vague and overbroad.[31] The court noted that the Code of Conduct listed twenty-seven categories of prohibited conduct and that a violation of any of them could support suspension.[32] Because the provisions operate independently of each other, the provisions are severable and any of the four could serve as sufficient, independent grounds to kick Koeppel out of school .[33] Therefore, Koeppel's facial challenge could not succeed unless all four of the provisions he challenged were overbroad or vague.[34] The court picked one provision—stalking—to review.[35] This provision defines stalking as "behavior in which an individual willfully, maliciously, and repeatedly engages in a knowing course of conduct directed at a specific person which reasonably and seriously alarms, torments, or terrorizes the person, and which serves no legitimate purpose."[36] Koeppel argued the words "alarms, torments, or terrorizes" are subjective and set the threshold of harm too low.[37] The court stated that for Koeppel to succeed in an overbreadth claim, he must show the statute punishes a "substantial amount" of protected free speech when judged in relation to the statute's plainly legitimate sweep.[38] The court held that Koeppel did not meet this showing because the stalking provision of the Code of Conduct did not prohibit *all* conduct that "alarms, torments,

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[29] *Valencia College*, 903 F.3d at 1229–30 (citing Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 509 (1969)). In *Tinker*, the United States Supreme Court held that public schools can regulate student expression without violating the First Amendment when the expression "substantially interefere[s] with the work of the school of impinge[s] upon the rights of other students." 393 U.S. 503, 509 (1969).

[30] Tinker v. Des Moines Indep. Cmty. Sch. Dis., 393 U.S. 503, 513.. "[C]onduct by the student, in class or out of it, [that results in] the invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech."

[31] *Valencia College*, 903 F.3d at 1229.

[32] *Id.* at 1231.

[33] *Id.* (quoting Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 502 (1985) ("[Based on] the elementary principle that the same statute may be in part constitutional and in part unconstitutional, and that if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected.")).

[34] *Valencia College*, 903 F.3d at 1231.

[35] *Id.* at 1232.

[36] *Id.*

[37] *Id.*

[38] *Id.* 1232–33. (citing Fla. Ass'n of Prof'l Lobbyists, Inc. v. Fla. Office of Legislative Servs., 525 F.3d 1073, 1079 (11th Cir. 2008)).

or terrorizes."[39] Rather, the conduct must also be "willful, malicious, and repeated" and "directed at a specific person."[40] Furthermore, the provision requires the victim's reaction to be reasonable and serious, which goes beyond a subjective or minimal threshold of harm.[41] Thus, because stalking must meet all of these requirements, the court decided conduct that meets all of these requirements does not punish a "substantial amount" of protected free speech and is not constitutionally overbroad.[42]

The court also held the stalking provision was not unconstitutionally vague on its face.[43] In reaching this conclusion, the court relied on Supreme Court precedent that provides that a "plaintiff whose speech is clearly proscribed cannot raise a successful vagueness claim."[44] Applying that rule to the case before it, the court concluded that Koeppel's conduct was "clearly proscribed" under the stalking provision.[45] Koeppel himself admitted to sending the messages, even after Roe asked him to stop.[46] The admission showed the conduct was willful, malicious, and repeated, which is conduct clearly proscribed by the policy.[47] Because the court determined the stalking provision was not facially vague or overbroad, it did not have to consider the constitutionality of any of the other provisions.[48]

The court then considered Koeppel's contention that Valencia's disciplinary process violated his procedural and substantive due process rights.[49] The court held that it did not.[50] In the school setting, procedural due process requires nothing more than notice and a hearing before suspending or expelling a student.[51] However, Koeppel claims his disciplinary hearing was inadequate.[52] Regardless of any possible inadequacies, the court held Koeppel could not show he was denied procedural due process because he did not take advantage of any available state remedies, which is a prerequisite of any procedural due process claim.[53]

In regard to his substantive due process claim, Koeppel contends he was deprived because he had a constitutionally protected right to continued

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[39] *Valencia College*, 903 F.3d at 1233.
[40] *Id.*
[41] *Id.* at 1232.
[42] *Id.*
[43] *Id.* at 1233.
[44] *Id.* (quoting Holder v. Humanitarian Law Project, 561 U.S. 1, 20 (2010)).
[45] *Valencia College*, 903 F.3d at 1233
[46] *Id.*
[47] *Id.*
[48] *Id*.
[49] *Id*. at 1234.
[50] *Id.*
[51] *Valencia College*, 903 F.3d at 1234 (citing Nash v. Auburn Univ., 812 F.2d 655, 660–61 (11th Cir. 1987)).
[52] *Valencia College*, 903 F.3d at 1234.
[53] ("[A] procedural due process violation is not complete unless and until the State fails to provide due process.")). *Id.* (quoting McKinney v. Pate, 20 F.3d 1550, 1557 (11th Cir. 1994)

enrollment at Valencia.[54] However, the court made short work of that argument, noting that students at public universities do not have a fundamental right to continued enrollment.[55] Therefore, Koeppel did not have any substantive due process claims.[56]

Finally, the court turned to Koeppel's contention that his suspension violated Title IX.[57] For this claim to succeed, Koeppel had to satisfy the "erroneous outcome test," which provides that a student must show he was both innocent and wrongly found to have committed an offense, and that there was a causal connection between the outcome and gender bias.[58] The court agreed with the district court that Koeppel did not satisfy this test.[59] Koeppel admitted to behavior that was prohibited by the college's Code of Conduct, which was punishable by suspension.[60] Therefore, because Koeppel could not show the outcome of the hearing was incorrect and thus could not satisfy the first prong of the test, the court did not have to consider whether there was a causal connection between the outcome of the proceeding and Koeppel's gender.[61]

Consequently, the court held that the district court did not err in granting summary judgment in favor of Valencia on all claims.[62]

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[54] *Id.*
[55] *Id.* at 1235 (quoting Plyer v. Doe, 457 U.S. 202, 221 (1982) ("Public education is not a 'right' granted to individuals by the Constitution.").
[56] *Valencia College*, 903 F.3d at 1235–36.
[57] *Id.* at 1236.
[58] *Id.* (quoting Yusuf v. Vassar Coll., 35 F.3d 709, 715 (2d Cir. 1994)).
[59] *Valencia College*, 903 F.3d at 1236.
[60] *Id.*
[61] *Id.*
[62] *Id*. at 1237.