

## **Senior Associate Michael Macomber, Esq. talks with WAMC about first amendment rights of public employees**

Teacher/Coach Fired Over Twitter Re-Tweet

By Dave Lucas

Fri May 2, 2014

The same week as an international firestorm over racist comments by Los Angeles Clippers owner Donald Sterling, the question of what people can and cannot say — and where potentially offensive conversations take place — is echoing closer to home. The Albany City School District dismissed an employee after she re-tweeted a viral tweet on her personal account.

The Albany City School District fired a softball coach and substitute teacher at the Stephen and Harriet Myers Middle School over an alleged racist re-tweet on Twitter. A re-tweet is a re-posting of existing content under a user's own name. Others defended the 24-year-old on social media, insisting the school district misinterpreted the post. The district says Zoe Naylor admitted she re-tweeted the tweet on her personal page. The tweet in question traces back to a popular feed maintained by an African-American that routinely uses a variation of "the N-word." That account added the questionable caption to a tweet copied and passed along from the Twitter page of a woman who posted a photo of her infant nephew. The re-labeled tweet went viral: re-tweeted thousands of times, it also became popular on Facebook. School district spokesman Ron Lesko says a parent spotted the picture on Naylor's feed Monday afternoon. "One of our parents brought to our attention a comment that was associated with the Twitter account of our modified softball coach and in investigating that, we determined that it was a comment that we found to be highly inappropriate and offensive and something that she did re-tweet from her Twitter account, and in light of that action and that error in judgment she is no longer our modified softball coach." Naylor has since deleted her Twitter account. She's out of a job and her career may be on the line. Michael Macomber is a senior associate at law firm Tulley Rinckey. "There are restrictions that apply to the First

Amendment. Freedom of Speech does not apply absolutely. And once you enter into public employment, there's limitations that can be made on that. I don't even know if I'd go so far as to say it's a real question. I don't really know if there's any public concern with the comments made here. The teacher in question, unfortunately does not appear to be a union employee, so she does not have a lot of due process. I don't have all the facts and circumstances, so there may be possible claims that she can bring."Lesko says the district does not have a written code of social media conduct for employees. "We do not have a specific policy governing the use of social media by our staff members, and that is, coincidentally, something that had been in discussion prior to this, and obviously something that is moving forward subsequent to the events of the week. We would have handled this same case given the same set of circumstances with any of our employees in the same way. The use of that word or its derivative is completely unacceptable in our school district. We will not tolerate that."Lesko and the district want details regarding the social media accounts of any teachers or coaches or other employees who may be disseminating materials that could be offensive, and urge parents to contact them if they know of any such accounts. "We can't investigate something we're not aware of."