

NM Bar Student Essay Contest
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I. Background

June Carter, a senior at City High School of the Metro School District, was a straight-A student and the cheerleading captain for her school with a \$5,000 athletic college scholarship for cheerleading. In her school district, competition among schools was common. School rivalries were especially fierce this year due to a popular teen social networking site called FaceSpace. As a particularly important cheerleading competition approached, cheerleaders of the opposing Central High School began posting images of themselves on the site, claiming to be better looking than the cheerleaders at City High. In response, members of June's team began posting similar images. As arguments involving the pictures got out of hand, district officials blocked FaceSpace at both schools and issued a notice that students were not to continue posting similar images. After a number of personal attacks on her image, however, June posted an image of herself in her cheerleading uniform in a suggestive pose. In order to keep the image from becoming public, she set the privacy controls so that only those designated as friends could view it; however, someone copied the image and gave it to school officials. In response, district officials banned her from cheerleading and suspended her from school for the remainder of the year, likely affecting her grades and her scholarship. In addition, they then stated that she would be unable to graduate.

II. Questions

1. Does the image that June posted on FaceSpace constitute speech?

Speech refers to the expression of ideas, facts, opinions, values, etc. The International Covenant on Civil and Political Rights recognizes the right to the freedom of speech as “the right to hold opinions without interference. Everyone shall have the right to freedom of expression.” Indeed, “speech” and “expression” are often considered to be synonymous. In this way, the image posted by June on FaceSpace would be considered speech, despite the fact that she did not communicate any idea verbally. She expressed an idea or opinion, and, as such, the posting of her image can be considered to be speech.

2. Is her speech/expression a legally protected form of speech/expression?

Although freedom of speech functions differently for June than it would for an adult, since she is a minor and a public school student, her expression is still protected by law. According to *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, the Supreme Court ruled that students do indeed have limited First Amendment protection. The Court ruled that the school could not restrict symbolic speech that did not cause undue interruptions of school activities. June’s image caused no interruptions of school activities. It was posted on a website that was not affiliated with the school or the school district. In fact, the website was banned on all school computers, making the image impossible to view on school grounds. She posted it on a private computer over which the school had no legal control. In addition, it was posted with the privacy settings limiting those who could view it; it was not a

publicly-viewable image. If it were not for the unknown student who copied it, the image would not have been viewed by school officials. Her expression would be protected as are pictures kept by individuals in their homes and shown only to friends. If a friend copied the image and made it public without the person's consent, the person in the picture could not be held responsible for others viewing the image, as she had no control of the image becoming public.

3. Assuming June's image constitutes speech:

A. Is it proper for the Metro School District to block FaceSpace on school computers?

It is appropriate for the Metro School District to block FaceSpace on school computers because it could clearly cause an interruption of school activities. In *Hazelwood School District et al. v. Kuhlmeier et al.*, 484 U.S. 260, the Supreme Court ruled that a school may limit speech if it could show that it was "reasonably related to legitimate pedagogical concerns." FaceSpace is a legitimate website dedicated to recreational social networking. Social networking, however, has little or no educational value and may, in fact, distract students from their purpose of learning when within a school environment. According to the Metro School District Policy on Acceptable Computer Use, the purpose of school computers is to "advance educational goals of the district" (Metro School District Policy on Acceptable Computer Use). FaceSpace does not advance the educational goals of the district, and so, although it is an acceptable website for students to visit on their own time, it does not belong on any of the school computers.

B. Is it proper for the Metro School District to suspend June from graduating or participating in the final game because of the image that she posted?

June's posted image did not affect the school's activities, and, therefore, she should not be disciplined for it. According to *Hazelwood School District et al. v. Kuhlmeier et al.*, 484 U.S. 260, a school may only limit speech that was "reasonably related to legitimate pedagogical concerns." June posted the image on her own time and on her own computer. She did not distract either her own education or that of others because the posting was not done during school hours or in any place where the school holds jurisdiction. In addition, her image was posted on a private website that was not viewable at school. Therefore, the image could not detract from other students' education by distracting them during their computer time because it would be impossible for them to view it.

According to the New Mexico Administrative Code, the school has only limited power when it comes to disciplining students for behavior outside of schools. The code states that a school is entitled to "the discipline of students for out-of-school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school." It is important to note, however, that the code states that the out-of-school conduct must have a "direct and immediate" effect on the school's discipline, safety, or welfare. June's image had little or no effect on the discipline of the school, since it was not viewed at school and only viewed by a limited number of people outside of school. The safety of the school could not have been compromised by her image, unless it had somehow encouraged violent behavior, which it did not.

The general welfare, however, is not so clearly unaffected. It may be argued that since June was wearing a school-issued uniform in the photo in question, she may have actually tarnished the school's reputation, but in order to really tarnish the school's name, June would have had to do something much more heinous. The routines of the modern cheerleader are considered by some to be quite suggestive. Therefore, the image would have to have been more suggestive than those routines, even obscene, in order to really tarnish the school's name. The factual evidence did not indicate that the picture was obscene. If the school were to suspend all students that were suggestive in a public location, they would have to suspend the entire cheerleading team, the members of the dance class, and most of the student body. June's image affected the general welfare of the school no more than a student wearing a miniskirt or one watching a vulgar movie outside of school.

III. Conclusion

June Carter was protected by the First Amendment of the United States Constitution as well as the International Covenant on Civil and Political Rights when she posted the image of herself on her own computer. She did not interfere with City High School's activities, discipline, or welfare with her posting. Thus, she should not have been suspended from the school or from cheering for the final game, nor should she be prevented from graduating. According to former Supreme Court Justice William J. Brennan, Jr., "If there is a bedrock principle underlying the First Amendment, it is that government may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable." Simply because school officials did not approve of June posting a suggestive image on FaceSpace does not warrant the harsh disciplinary action she received for it.