

LEGAL UPDATE

U.S. Supreme Court rules in favor of free speech

By Stephanie Klupinski, Vice President of Legal Affairs

The United States Supreme Court recently issued its ruling in *Mahanoy Area School District v. B.L.*, or what has become known as “the cheerleader case,” which was discussed during Buckeye Community Hope Foundation’s (BCHF) May 25 legal update seminar.

Brandi Levy, a Pennsylvania cheerleader, used her phone to Snapchat “F*ck school, f*ck softball, f*ck cheer, f*ck everything,” after learning she had not made the varsity cheerleading squad. She sent the message on a weekend from an off-campus location. Some students saw her messages and shared it with the cheerleading coaches. The school, upon learning of Brandi’s Snapchats, decided to suspend her from the junior varsity cheerleading squad for using profanity in connection with an extracurricular activity. Brandi and her parents sued the school, claiming the punishment violated her freedom of speech under the First Amendment.

The Supreme Court agreed with Brandy in an 8-1 opinion authored by Justice Breyer. In this case, although she used expletives, Brandy was expressing frustration at not making the team. She did not name the school or any individuals in her messages. And, of course, the messages were sent from an off-campus location on a weekend, during a time when she was not participating in any school activity.

The Court used the *Tinker* standard to find that the school overextended its authority by punishing Brandy. The standard refers to the 1967 landmark case, *Tinker v. Des Moines Independent Community School District*, when a student was punished for wearing a black armband to protest the Vietnam War. In that case, the Court found that the speech was protected because the armbands were unlikely to cause a substantial disruption. The *Tinker*

opinion explained that students “do not shed their constitutional rights at the schoolhouse gate.”

Brandi’s speech also did not cause a substantial disruption. Classmates and teachers admitted that while there was some discussion of the message during school hours, it amounted to no more than a few minutes. Breyer explained that “courts must be

more skeptical of a school’s efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all.”

While this was a huge victory for student speech — the first in fifty years — the court was clear to point out that schools are not wholly prohibited from disciplining students for some off-campus speech that causes “substantial disruption of learning-related activities or the protection of those who make up a learning

community.” Breyer’s opinion noted several examples of off-campus speech that might allow a school district to discipline students, including “serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices, including material maintained within school computers.”

Like many Supreme Court cases, the decision here is very context specific. BCHF staff will continue to monitor developments in this type of student off-campus speech cases. In the meantime, in light of this decision, schools should be very wary of disciplining students for off-campus speech and work closely with their counsel if the situation arises.

