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Summer July 4, 2021

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Balancing education and free speech is never easy. Here's why

Alan Garfield

Special to Delaware News Journal
USA TODAY NETWORK

Be kind to public school teachers and administrators. They are charged with the safety and education of our society's most precious resource: its children.

Their job is not easy. Consider, for example, an issue that might seem straightforward but is devilishly complicated: When can school officials punish student speech to ensure an effective educational program?

The Supreme Court long ago announced that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." But the Court simultaneously acknowledged that the "special characteristics of the school environment" can justify regulation of student speech when the speech substantially interferes with a school's work or impinges upon the rights of other students.

The test sounds easy — until you try to apply it.

Let us start with the more common scenario of on-campus student speech. Clearly, schools can punish speech that disrupts classes, such as talking when a student is supposed to be listening or speaking about subjects unrelated to the class. Even Justice William Brennan Jr., a champion of free speech rights, ac-

knowledgeed that a "young polemic" is not free to deliver an "eloquent political diatribe" in the middle of calculus class.

But what if the young polemic came to school wearing a shirt with the written message "Marriage is between a Man and a Woman" or "Stop Racist Republican Suppression of Black Voters"? May the school prevent the student from wearing these messages because they might upset LGBTQ or Republican students? How about a shirt that said "Legalize Marijuana" when the school is trying to discourage student drug use?

You might think the obvious answer is to forbid all political messages in schools. But, as Justice Stephen Breyer observed, public schools are the "nurseries of democracy." Students will be ill-prepared for our nation's robust marketplace of ideas if their schools are safe but ideologically sterile environments. Breyer believes students need to learn the wisdom of the age-old aphorism "I disapprove of what you say, but I will defend to the death your right to say it."

Can schools ever regulate off-campus student speech? That was the topic of a Supreme Court opinion issued June 23. A Pennsylvania high school student was miffed when she failed to make the varsity

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cheerleading team or get her preferred position on the softball team. She expressed her feeling in a Snapchat photo that showed her with her middle finger extended and bore the caption, “[Expletive] school [Expletive] softball [Expletive] cheer [Expletive] everything.”

The image was meant for the student’s 250 Snapchat followers and would disappear after 24 hours. But

someone took a screenshot of the image, and the image made its way to the other cheerleaders and their coaches. The coaches responded by suspending the student from the junior varsity team for a year.

The coaches might have been wiser to ignore this fleeting instance of adolescent pique.

The Supreme Court rightfully concluded that the school had violated the student’s First Amendment rights. There was no evidence that the student’s message caused a substantial disruption at the school. The Court

stressed that schools cannot suppress expression merely to “avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”

However, the Court declined to adopt a bright-line rule that schools could never punish off-campus speech. The Court recognized that off-campus speech can have serious on-campus impacts, such as online bullying, harassment, and threats. It also acknowledged that the increased reliance on distance learning has blurred the line between on and off campus speech.

The absence of a bright-line rule

means that public school officials will continue making the tough calls as to when student speech, either on campus or off, creates enough disruption to justify its regulation. These officials are somehow expected to thread the needle of making schools safe and welcoming environments while simultaneously preparing students for the rough and tumble of American political discourse.

It may be an impossible task. But we owe these public servants a debt of gratitude for trying.

Alan Garfield is a professor at Widener University Delaware Law School.