

Constitutional Law

Case 2:  
"You Can't  
Wear That  
to School"

CASE: 2

# M.D., a minor, v. Morgan Hill Unified School District

## First Amendment and Freedom of Speech

### OBJECTIVE

To understand the First Amendment of the United States Constitution and how it applies to "Freedom of Speech" in a school setting.

### TOPICS COVERED

- First Amendment of the United States Constitution
- Freedom of Speech
- Balancing School Safety/Disciplinary Policies with Students' Constitutional Rights

# M.D., a minor v. Morgan Hill Unified School District

## First Amendment and Freedom of Speech

### BACKGROUND

- On May 5, "Cinco de Mayo," a holiday celebrated in Mexico, five teenage students, wearing American flag t-shirts and bandannas, were sitting at a table outside Live Oak High School in Morgan Hill, California. The Assistant Principal, Miguel Rodriguez, asked two of the students to remove their American flag bandannas.
- The five students were also told that although it would not be considered a suspension, they must turn their American flag t-shirts inside out or be sent home. Due to the large Mexican-American student population at Live Oak High School, school administration feared that fights would break out between Mexican-American students celebrating their heritage day and those students wearing clothing with American flags.
- The teenagers refused to turn their shirts inside out as they felt it was disrespectful to the United States of America, so the school administrators asked the students' parents to take them home.

### BEFORE YOU BEGIN

**What is the First Amendment of the United States Constitution?**

The First Amendment is the first of the original 13 amendments called the "Bill of Rights." The First Amendment gives American citizens the right to Freedom of Speech.

**What is Freedom of Speech?**

The First Amendment prohibits Congress from enacting any laws that prohibit a citizen's right to free speech. The United States Supreme Court qualified this freedom of speech in several cases. Examples of restricted speech include instances when a person: (a) uses "fighting words," (b) makes threatening speech toward another individual, (c) engages in "defamatory" speech (words meant to injure another person's reputation in the community), and (d) uses "obscene" speech (words or actions that are not appropriate for the average citizen).

**What is Balancing School Safety/ Disciplinary Policy with Students' Constitutional Rights?**

In cases involving students' Freedom of Speech, the law requires the court to balance the constitutional rights of the student against the need for the school officials to keep the school safe and orderly for all students.

## ISSUE BEFORE THE COURT

Whether a public school can limit a student's choice to wear American flag clothing or accessories to school without violating the First Amendment of the United States Constitution.

## THE FACTS

On May 5, 2010, "Cinco de Mayo," a Mexican holiday, five students of Live Oak High School in Morgan Hill, California, were approached by the school's Assistant Principal Miguel Rodriguez. The students were dressed in American flag t-shirts and American flag bandannas on their heads. Mr. Rodriguez asked two of the students to remove their American flag bandannas. Although the students complied, they were asked to accompany Mr. Rodriguez to the principal's office after one of the students questioned his request.

According to the complaint filed by the students, Rodriguez told the five students, including minors M.D., D.M., and D.G., that they must turn their American flag t-shirts inside out or they would be sent home for the day without suspension. He explained to the students that there is a large Mexican-American population at Live Oak High School, and he did not want to risk any fights breaking out between Mexican-American students celebrating their heritage and the students wearing American flags. There had not been any fighting issues in the past, and on this particular day, the students had been on school grounds for three hours without any incident.

While in the principal's office, the teenagers told Rodriguez and school Principal Nick Boden that turning their t-shirts inside out was disrespectful to the citizens of the United States of America. So, school officials contacted their parents, and the students were sent home.

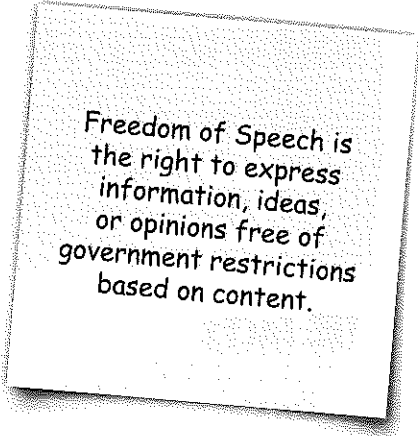
While the school's dress code policy banned the wearing of bandannas of any color, the policy did not contain references to American flag clothing. The school policy did prohibit students from wearing any clothing or decoration that detracted from the school's learning environment. As such, the school claimed it had

Constitutional Law is a body of law dealing with the distribution and exercise of government power.

the right to request that any student dressed inappropriately for school must either: (a) change into other clothes, (b) go home to change, and/or (c) be subject to disciplinary action.

The students brought a civil case against Morgan Hill Unified School District claiming that Live Oak High School violated the students' right to Freedom of Speech under the First Amendment to the Constitution, which provides its citizens with various protections, such as, in this case, the right to Freedom of Speech.

Morgan Hill Unified School District defended itself by stating that keeping the students of Live Oak High School safe was more important than the disciplined students' right to Freedom of Speech.



Freedom of Speech is the right to express information, ideas, or opinions free of government restrictions based on content.

#### Sources

The case briefing above contains excerpts and direct extractions from the sources noted below that have been combined with the author's own expert legal input. The case has been condensed and formatted from its original content for purposes of this workbook.

M.D., a minor v. Morgan Hill Unified School District, CV-10-02745.

Complaint prepared and filed by William J. Becker, The Becker Law Firm, and affiliated with the Thomas More Law Center, and Robert J. Muise, the Thomas More Law Center.

#### You Be the Judge!

## Review the Case

After reading M.D., a minor, v. Morgan Hill Unified School District, answer the following:

1. Identify one of the Plaintiff(s) in the case.

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2. Identify the Defendant(s) in the case.

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3. What is Cinco de Mayo?

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4. What was the school policy regarding bandannas?

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5. What was the school policy regarding wearing American flag clothing?

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6. Explain Vice Principal Rodriguez's reason for requesting that the students turn their t-shirts inside out.

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7. How long had the students been on school grounds when they were approached by Vice Principal Rodriguez?

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8. Why did the teenagers refuse to turn their American flag t-shirts inside out?

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NAME

DATE

### **Review the Case (continued)**

**9.** Was there any evidence that the American flag t-shirts were disrupting the classrooms?

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**10.** Were there any past incidents, like fighting, at the school that stemmed from students wearing the American flag t-shirts on Cinco De Mayo?

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**11. BONUS:** Do you agree with the school that wearing an American flag t-shirt on Cinco de Mayo is inappropriate?

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CASE: 2

NAME \_\_\_\_\_

DATE \_\_\_\_\_

## Make the Argument

In order for the judge or jury to render a decision, the following are some of the questions that must be considered:

1. Did the students wear American flag clothing on school grounds?

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2. Does wearing the American flag clothing fall within the protections afforded under the First Amendment of the United States Constitution as "free speech"?

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3. Was there any evidence that the flags actually caused violence at Live Oak High School or disrupted learning at the school?

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4. Does the school's interest to enforce school policies and adequately discipline its students override the importance of the students' freedom of speech?

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CASE: 2



