

School sued for punishing teens over MySpace pix

November 1 2009, By CHARLES WILSON , Associated Press Writer

(AP) -- Two sophomore girls have sued their school district after they were punished for posting sexually suggestive photos on MySpace during their summer vacation.

The American Civil Liberties Union, in a federal lawsuit filed last week on behalf of the girls, argues that Churubusco [High School](#) violated the girls' free speech rights when it banned them from extracurricular activities for a joke that didn't involve the school. They say the district humiliated the girls by requiring them to apologize to an all-male coaches' board and undergo counseling.

Some child advocates argue that schools should play a role in monitoring students' behavior, especially when dealing with minors. And the U.S. Supreme Court has ruled that students can be disciplined for activities that happen outside of school, so long as the school can prove the activities were disruptive or posed a danger and that it was foreseeable the activities would find their way to campus.

But some legal experts say that in this digital era, schools must accept that students will engage in some questionable behavior in cyberspace and during off hours.

"From the standpoint of young people, there's no real distinction between online life and offline life," said John Palfrey, a Harvard University law professor and co-director of the Berkman Center for Internet and Society. "It's just life."

In the Indiana case, the ACLU argues that the district and Churubusco Principal Austin Couch went too far in banning the two sophomores from fall sports, requiring them to apologize to the all-male coaches' board and undergo counseling after the photographs were circulated at school.

The [lawsuit](#), filed in U.S. District Court in Fort Wayne, names Couch, the high school and the district as defendants and seeks unspecified damages. No hearing has been scheduled.

Erik Weber, an attorney for the Smith-Green school district, said Couch was enforcing the northeast Indiana school's athletic code, which allows the principal to bar from school activities any student-athlete whose behavior in or out of school "creates a disruptive influence on the discipline, good order, moral or educational environment at Churubusco High School."

Martha McCarthy, who teaches educational law and policy at Indiana University, said courts have upheld such policies, but that the issue could come to a head as advances in technology bring more out-of-school behavior issues to light.

"I think the Supreme Court's going to have to address this," she said.

ACLU legal director Ken Falk insists the Churubusco case doesn't warrant the punishment the district handed out.

"We all did things when we were sophomores in high school that can be construed as immature or problematic or whatever, but that is not the issue here," he said. "The issue is what possible impact this could have on the school environment, and the answer is none."

The girls, identified only by their initials in the suit, took the photos

during a sleepover with friends before school started this summer and posted them on their [MySpace](#) pages, setting the privacy controls so only those designated as friends could view them. In the photos, the girls wore lingerie and pretended to lick a penis-shaped lollipop. None of the photos made any reference to the school.

Weber declined to say how the photos reached Couch, but the suit contends that someone copied the pictures and shared them with school officials, and they eventually were given to the principal.

Couch initially suspended both girls from all extracurricular activities for the year but reduced the penalty to 25 percent of fall semester activities after the girls completed three counseling sessions and apologized to the coaches board.

Palfrey, the Harvard professor, said privacy on social networking sites is an illusion, even if strict privacy controls are set.

Teens who have done similar things in some states have faced prosecution, said Beverly Johnson, an Irvine, Calif., attorney who serves on the board of Web Wise Kids, a nonprofit, online safety group. A 14-year-old New Jersey girl was arrested on child pornography charges in March for posting nude pictures of herself on MySpace. The charges were later dropped after she agreed to counseling.

Other students have been expelled from school or lost scholarships, Johnson said.

The ACLU argues that the Indiana case is different. They say the photos were a joke intended to be shared only with friends. It wants the school district to expunge all references to the incident from school records and seeks to bar the school from taking similar action in the future.

"The problem is there's a line drawn. And the line is drawn as things that disrupt the school. And outside of that, the school has no say," Falk said.

"Imagine if everything teens texted back and forth to friends became fodder for [school](#) discipline."

Palfrey, of Harvard, said schools have a right to regulate students' online behavior but said the court will have to decide whether the students' First Amendment rights were violated.

"The fact that it took place in cyberspace instead of in a classroom doesn't mean you don't enforce the rule," he said.

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