

Student Rights

Freedom of Expression

What is it?

- Cornerstone of democratic rights and freedoms
- Free access to information and ideas
- Ability to express personal opinions freely
- Includes but is not limited to writing articles in a school newspaper, staging protests and rallies, wearing an armband or other clothing to promote a cause, and voicing opinions out loud.

Because there aren't specific laws that spell out students' freedom of expression rights, we must rely on the First Amendment and certain Supreme Court cases to define these rights.

- The First Amendment gives all public school students the unlimited right to freedom of speech.
- Tinker v. Des Moines defends the application of the First Amendment to students.
- Bethel v. Fraser permits administration to censor vulgar speech.
- Hazelwood v. Kuhlmeier allows schools to censor school-sponsored speech that they disagree with.

Why is it important?

- Encourages civic engagement and participation
- Important for individual dignity, participation, accountability, and democracy
- According to Article 19 of the Universal Declaration of Human Rights, "everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through the media and regardless of frontiers."

Media

- Freedom of expression is protected through a journalist's right to protect his or her sources, ensuring the free flow of information on matters of public interest
- The media is free to report on conflicts in order to control humanitarian abuses
- Should be impartial in some instances, especially during election season

Objections

- Freedom of expression should be restricted in the following instances:
 - In the name of public order and national security
 - Criminal sanctions
 - Criminal and civil defamation laws
 - Should be abolished, as these laws are frequently abused
 - Courtroom restrictions

Where is it protected?

- United Nations

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights, 1966
- UN Special Rapporteur on Freedom of Opinion and Expression
- Johannesburg Principles on National Security, Freedom of Expression and Access to Information
- Article 19
- Convention on the International Right of Correction
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of Discrimination Against Women
- Convention on the Rights of the Child
- African Union
 - African Charter on Human and Peoples' Rights
- Council of Europe
 - European Convention on the Protection of Human Rights and Fundamental Freedoms
 - European Court of Human Rights
- Organization of American States
 - American Convention on Human Rights
 - OAS Special Rapporteur on Freedom of Expression
- Organization for Security and Cooperation in Europe (OSCE)
 - OSCE Representative on Freedom of the Media

First Amendment:

- Students can speak, write articles, assemble to form groups and even petition school officials on issues.
- The First Amendment only protects public school students, because public schools are run by the government. Public school officials are government workers, and must follow the Bill of Rights. Private schools aren't controlled by the government, so private school students aren't protected by the First Amendment.
- Though public school students do possess First Amendment freedoms, the courts allow school officials to regulate certain types of student expression. For example, school officials may prohibit speech that substantially disrupts the school environment, invades the rights of others, or is lewd.

Tinker v. Des Moines Independent Community School District:

- In 1965, 3 students wore black armbands with peace symbols to protest the Vietnam War. The school district passed a policy to ban people from wearing armbands. The 3 students continued to wear their armbands, and were suspended.
- The Supreme Court decided that these students' protest was not disruptive to the school environment and their wearing armbands were constitutionally protected symbolic speech. School officials must reasonably forecast that student speech will cause a "substantial disruption" or "material interference" with school

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s of others" before they can censor student

- Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Bethel School District No. 403 v. Fraser

- In 1983, a student nominated a classmate for class office, delivering a nomination speech that filled with many sexual innuendos. The school suspended him.
- The Supreme Court agreed with the school. This case limited the ruling of Tinker, prohibiting vulgar speech.

Hazelwood School District v. Kuhlmeier

- In 1988, the principal censored 2 pages about student pregnancy in the school newspaper before it was printed, claiming that it was inappropriate.
- The Supreme Court agreed with the school. Public school officials may impose some limits on the contents of school-sponsored student publications. The First Amendment protection for student expression doesn't compel a public school to affirmatively sponsor speech that conflicts with its "legitimate pedagogical goals.”
- Public school newspapers that aren't established as forums for student expression are subject to a lower level of First Amendment protection than independent student newspapers established as forums for student expression.

Sources

- Freedom of Expression. Human Rights Education Association. 17 Mar. 2009 <http://www.hrea.org/index.php?base_id=147>.
- http://www.oyez.org/cases/1960-1969/1968/1968_21
- http://www.oyez.org/cases/1980-1989/1985/1985_84_1667
- http://www.oyez.org/cases/1980-1989/1987/1987_86_836

School Survey

A classmate was called in to the office one day because somebody had reported him of possessing drugs. He did not actually carry any sort of illegal substance, and the school administration had verified this, too. I feel that the school administration should not violate student privacy rights on the basis of another student's lowly input. More study should be done prior to calling the student in.

On Halloween, a guy came to school dressed up in a dead KKK costume, presumably to make fun of the KKK. People were offended and the student was suspended for a day so that he could go home and change. His right to "freedom of expression" may have been violated. It's a good discussion of whether the school was protecting its students from offense or simply abusing its authority.

Our school's GSA (Gay-Straight Alliance) chapter had been posting "No on Prop 8" signs around the school during election season. Proposition 8 was a constitutional amendment that would prohibit the right of same-sex couples to marry. Despite the non-invasive nature of the posters, GSA was asked to take all of them down.

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are forced to wear uniforms based on a community
Low exam/assignment grades are reported directly to the parents of students even if overall grade does not fall below minimum grade required to continue with the course
wearing T-shirts with ANY text is not permitted (including solidarity merchandise, etc.)
nose-rings (cultural symbols for many girls) were formerly forbidden
the coaches of my JV cheer team went on to seniors' facebook/myspaces and looked for pictures of girls doing things that violated the cheer code of conduct. they found pictures of girls doing bad things and reported it to the school administration, the girls got in trouble and benched for the next game.
a young man was unable to wear his native countries flag to school. he had pinned it to his back pack, and then was asked to remove it and told that it could offend other students.
Our school have always have lockers. However, one day, a very intelligent kid decides to ruin it for the entire school by putting an explosive object inside one of the locker. The administration became angry and concern for students safety so all the lockers were removed. As a student, I understand the concern, however, when teachers told us we weren't allow to protest or bring up the subject, I felt like my freedom of speech was being violated.
At my high school, a student who wore the Joker face painting to school everyday, but was told to stop by the school. The reason was beucase one student at the school was afraid of him, and so the school would punish the "joker" student if he ever wore it again.

School Safety and the Legal Rights of Students

Schools need to balance constitutional rights with the need to protect other students from potential dangers. As a result, school rules do not always guarantee the rights for students that the state or national code may reserve for them.

Tinker v. Des Moines Independent School District (1969)
 New Jersey v. T.L.O. (1985)

When there is reasonable doubt or question, school officials are permitted to breach a student's rights (especially to privacy). An accusation from another student is enough to merit a search and further investigation, particularly regarding behavior conducted on school grounds.



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- School lockers
- Cars parked on school property
- Backpacks
- The student's person

However, the distinction opens up a gray area when these tests are conducted as preventative measures prior to performance in school activities, such as sports teams. This is a clear violation of rights to bar a student from participating in athletics simply due to refusal to partake in one of these tests beforehand.

Acton v. 9th Circuit Supreme Court (1995)

The law did not agree, and educators won the right to subject students to various types of drug testing or other screenings of illegal behavior, even when participation in school activities is conditional depending on these test results.

The trend is that courts of law follow and favor the position of the educator or school officials.

Wallace v. Batavia School District (1995) caused some controversy because in this, school officials were physically seizing the students' body parts (wrists and arms), violating the barriers of personal space. However, Batavia School District triumphed here as well and this behavior is permitted in cases where severe intervention is deemed necessary by the judgment of the teacher.

American Civil Liberties Union. Case studies

- Discrimination
 - School practices that require parents to provide private information about students seeking to enroll in public schools. This hurts immigrant students, who are at risk of exclusion in one of four schools. Most prevalent in New Jersey
 - A Virginia school rescinded an invitation to gay author Greg Herren, who was supposed to speak at the school to address members of the Gay-Straight Alliance. The Principal cited possible “inappropriate” content as the reason for cancellation.
- Dress Codes and Uniforms
 - Michael Coviello of New Jersey was prohibited from wearing a skirt to school.
 - In Michigan, a teenager was prohibited from wearing a t-shirt with a picture of President Bush that read “International Terrorist.”
- Drug Testing
 - Some drug testing policies require samples of hair, a possible health risk.
- Due Process/Zero Tolerance
 - Senior Patrick Agin from Portsmouth High School’s yearbook photo was rejected by the principal since Agin dressed up in a medieval chain mail coat with a prop sword, representing his interest in medieval history.
 - A 12-year old girl in Hawaii was arrested, handcuffed, and partially strip-searched over a missing \$20 bill, without parental notification.
- Freedom of Expression
 - Four students in New York were suspended for saying the word “vagina” during their performance of Ensler’s “The Vagina Monologues.”
- Off-Campus Conduct
 - Jessica Schoch of Ohio was suspended from school and extracurricular activities after school officials discovered a Myspace.com profile that parodied a school administrator.
- Privacy
 - CLU of NY brought a lawsuit against the Department of Defense in protest of the Department’s violation of students’ privacy rights by maintaining unauthorized database of personal student information for military recruitment.
 - *California-based company InCom had originally planned a pilot program that would require students to wear Radio Frequency Identification badges that tracked students’ movement.*
- Religion
 - Pledge of Allegiance
 - A school in Kansas had been distributing the Gideo International Bible to elementary-school children on school premises.
- Sexuality

- submit gynecological records.
- In New York where the US Department of Education a group of female students and required them to
 - 85 percent of California schools violate one or more sex education laws, in part because many teachers find state sex education laws to be confusing and inconsistent.
 - School officials forced a group of girls to undergo a series of intrusive medical examinations after they attended a “hooky party.”
 - In Jacksonville Junior High School in Arkansas, a 14-year-old student was being repeatedly punished for being openly gay.

Constitutional Relevance

- All students living in the United States have the right to free public education and ought to be given “equal educational opportunity no matter what their race, ethnic background, religion, sex, economic status, or citizenship status.” Even those in the country illegally have the right to go to public school.
- *Brown v. Board of Education* struck down segregation in public schools
- Right to privacy isn’t directly mentioned in the Constitution, but the Supreme Court has allowed for several of these amendments
 - Fourth Amendment: stops police search without “probable cause”
 - California allows metal detectors to be used in schools, but can’t be used selectively on certain students.
 - Students can’t be forced to be tested for HIV.

School Jurisdiction

The Children’s Internet Protection Act (CIPA) is a federal law enacted by Congress to address concerns about access to offensive content over the Internet on school and library computers. CIPA imposes certain types of requirements on any school or library that receives funding for Internet access or internal connections from the E-rate program – a program that makes certain communications technology more affordable for eligible schools and libraries. In early 2001, the FCC issued rules implementing CIPA. More recently, Congress enacted additional protections for children using the Internet.

1. Were the participants enrolled students at your school? School sanctions would not by definition follow a nonstudent. It is not unusual for students and nonstudents to get together. The juvenile and criminal courts may treat them the same. Schools cannot.
2. What was the time? Five minutes after school or after a dance is a lot different from mid-July or a weekend.
3. What was the incident’s proximity to the school entity? Consider buses, staff property, ancillary service areas, or areas near “away game” sites as places of legitimate concern. Also consider whether the school is isolated or within a neighborhood.

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is of concern at school preceding or following the
conflicts easily move from school to neighborhood and
back again. If an action took place away from school but began within a school context,
there may be a place for school intervention. Similarly, an off-campus incident that has
an impact on the orderly operation of the school can and should be addressed.

5. Who were the participants? Consider adults as well as students, and students from
other schools as well as your own.

6. What was the number of participants? One student might be a fluke. A group of 10 is
less easily dismissed.

7. Who were the victims, if any? Again, consider the impact not only on one's own school
but on others. Age and school enrollment make some issues more critical. If the victim
of an incident is from a district school, even if the act was on a weekend, there could be a
clear school connection. This is often the case in e-mail harassment.

8. Was there a clear presence of school identification? Were students wearing school
insignia? Were they all on a team or well known as school students? Did the act use
district property, such as an e-mail system?

9. Was there prior knowledge by school personnel? Control implies liability. If an
administrator or teacher knew of an event but did little to stop it, then the school could
be liable. It pays to be aware of informal student-communications systems. Sometimes,
administrators have not only the right but the duty to report rumors of upcoming off-
campus shenanigans to authorities.

10. Are there explicit rules or expectations for all students or specific groups (for
example, athletes)? An explicit rule that is broadly disseminated about off-campus
behavior will do a lot to dispel uncertainty. We ought to consider also athletic rules and
honor codes that often ask schoolpeople to judge students on the basis of both school
and nonschool activity.

11. What does your attorney say? It always shows good faith to check with the school
attorney. In the Glenbrook case, it was the attorney who later determined that the girls
could be sanctioned by the school.

There may be other questions to ask. This test is not meant to be exhaustive, but rather
to identify those factors that might, separately or collectively, point to a school-
community nexus.

Discipline codes and rules governing off-campus behavior need to be understood and,
one would hope, consented to by many stakeholders: students, staff members, board
members, parents, and local authorities. Developing a policy on these matters that
includes a test such as the one I have described is an effective way to bring those parties
together. In Glenbrook, Ill., the conversation took place after the incident, but it has had
a salutary effect nonetheless.