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Free Speech & The First Amendment, Student Edition: How the "Schoolhouse Gate" Can Limit Students' Free Speech Rights

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Research Guides

Free Speech & The First Amendment, Student Edition: How the "Schoolhouse Gate" Can Limit Students' Free Speech Rights

Guide Information

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Topic Overview

Constitutional law raises many fascinating, complex, and fundamental legal issues for individuals. The Free Speech Clause of the First Amendment is one of the freedoms that most individuals view as a basic liberty guaranteed by the Constitution. They are right, somewhat. The First Amendment, specifically the Free Speech Clause, grants individuals the right to freely express themselves without government intervention. However, there are limits to this freedom. In particular, there are limits to students free speech rights while under a school's authority. This guide will focus on the free speech rights of students in secondary public schools.

Because student speech is an area of constitutional law, basic constitutional law principles and terms apply to the school's, i.e., the government's, actions and to the courts interpretation of those actions. The following principles and terms are extremely relevant to student speech rights as well as to general constitutional law issues. In researching Free Speech issues, courts examine:

(1) In What Type of Speech is the Speaker Engaging? Protected vs. Unprotected Speech

Although the Constitution states that "Congress shall pass no law" that limits speech, not all speech is protected by the First Amendment. The United States Supreme Court has held that certain types of speech do not receive First Amendment protection. Therefore, if the speaker is engaging in unprotected speech he can generally be punished or prohibited from engaging in the speech at all. This applies to all individuals, including students.

- Unprotected Speech Categories -- Incitement of Illegal Activity; Fighting Words, True Threats, Obscenity, & Child Pornography

If the speaker is not engaging in these types of speech, then he is engaging in protected speech. However, the Supreme Court has afforded different protections for different types of speech. This guide will not discuss the various categories of protected speech, nor will it discuss their respective standards of review.

(2) What Type of Restriction is Placed on the Speech? Content-Based vs. Content-Neutral

The Supreme Court makes a distinction between the types of restrictions on speech.

- Content-Based Restriction = a restriction that is based on the content of the speech
- Content-Neutral Restriction = a restriction that is not based on the topic of the speech nor based on the ideology of the message
  - e.g., regulating the time, place, or manner of speech
  - Generally, for a content-neutral regulation to be constitutional, it must:
    - (1) be a reasonable time, place, or manner restriction
    - (2) serve a significant government interest
    - (3) be narrowly tailored to server that interest
    - (4) leave ample alternative means of communication

This distinction is relevant to this guide because the courts make this distinction in student speech cases and apply different standards of review based on this distinction. For example, if a school's regulation or punishment is content-based, the courts will apply the traditional *Tinker* framework analysis. However, if the

regulation is content-neutral, some courts will follow the general test for content-neutral regulations.

(3) Where is the Speech Located? Public Forum, Limited Public Forum, or Non-Public Forum

The Supreme Court generally treats speech differently depending on where the speech is located. There are generally three types of government property or "forums." In determining the forum, one must ask "to what purpose" is this property put? The purpose of the property will determine where the speaker is speaking which will then determine under which standard the speech will be evaluated.

Public forum

These forums are places that have been dedicated to speech from "time immemorial." The regulation generally must be content-neutral. As a content-neutral regulation, it must the content-neutral test as stated above. If the regulation is content-based, if must: (1) serve a compelling government interest; (2) be narrowly tailored to accomplish that interest; and (3) leave amply alternative means of communication.

Limited Public Forum

The inquiry here is "did the government open this forum up in some way" for free speech? If the court finds yes, then it will apply the pubic forum analysis.

Non-Public Forum

These places are generally not dedicated for speech. In order to regulate speech here, the government generally only needs to show that that the regulation is reasonable, i.e., reasonably related to a legitimate government interest and content-neutral.

Schools = Non-Public Forums

School property is considered a non-public forum during school hours of operation because the primary purpose of schools is education, not facilitating speech. In addition, they are considered restricted environments, so the school is allowed even greater control over the speech because of the unique nature and purpose of the property than a typical nonpublic forum. Schools are authoritarian environments where the school district may exercise control, restraint, discipline over students as is reasonably necessary to enable the educators to perform their duties and to accomplish the purposes of education.

Here, the Courts balance the student's fundamental constitutional or statutory right to freedom of expression against the school's legitimate interest in maintaining discipline in educating the student population. Courts will generally not interfere with these regulations unless there is clear abuse of discretion or unless the district interferes with a student's constitutional right.

(4) Other Constitutional Issues? Overbreadth and Vagueness

These are constitutional doctrines that students can use as tools to strike down school regulations they feel violate their free speech rights. Although students will generally bring a claim against a school or school official for action taken against the student, these doctrines may provide alternative arguments for claim of a First Amendment violation. These doctrines would likely apply to a school's speech or dress code.

Overbreadth

A law is unconstitutionally overbroad if it captures substantially more speech than the constitution allows to be regulated. This is a powerful tool because a person engaging in protected speech can bring a claim that the law would be unconstitutionally applied to him, and a person engaging in unprotected speech can claim that the law would be unconstitutionally applied to others. If the person is engaging in protected speech, the Court will give the statute a narrowing construction so that the law does not reach this person. If the person is engaging in unprotected speech, generally the Court will strike down the entire statute.

Vagueness

A law is unconstitutionally vague if a man of common intelligence cannot tell what speech is permitted and what speech is prohibited. The remedy for vagueness is to strike down the entire statute. The policy behind this doctrine is that vague law to do not give an individual notice of what is prohibited or permitted so that he can conform his behavior accordingly. Further, vague laws allow for selective prosecution and a possibly standardless sweeps of enforcement.

Scope of Topic

This research guide is an introduction to the Free Speech Clause of the First Amendment with a specific focus on student free speech rights. Specifically, this guide will focus on the free speech rights of students attending public secondary school. This guide will not discuss students' free speech rights in private schools or in higher education such as colleges and universities. The United States Supreme Court treats the free speech rights of students under the school's authority differently than the rights of these same individuals if they were speaking as private citizens. The Supreme Court has created a framework for analyzing student speech that first determines the student speech as fitting under one of four judicially-created categories, and then it applies that category's standard of review to the particular student's speech at issue.

As student speech rights is a subtopic of Constitutional Law, this area of law is governed by the Constitution. Therefore, the majority of this guide contains primary sources of case law and not administrative law resources. In addition, because the courts evaluate student speech on a case-by-case analysis, this guide surveys the current status of the law among the Circuits of the United States Court of Appeals to examine the current application of student speech doctrine. These cases serve as useful resources with which to analogize or distinguish a researcher's current facts or case. This guide also provides various secondary resources as well as several starting points for computerized research in this area of law ranging from general information, to legal research, to interest group websites.

Related Topics

Student Dress Codes

- Generally, dress codes must follow the *Hazelwood* standard. Therefore, the dress code will be upheld as constitutional as long as it is reasonably related to legitimate pedagogical concerns. ***See, e.g., Vines v. Bd. of Educ. of Zion Sch. Dist. No. 6***, No. 01C7455, 2002 WL 58815, at *1 (N.D. Ill. Jan. 14,

2002) (holding that school is nonpublic forum, and the dress code was created to improve the safety of schools, reduce peer pressure and socio-economic competition, improve students' self-concepts, classroom behavior and academic performance, and reduce vulgar, profane, or obscene disruptions to the educational process. These were legitimate pedagogical concerns, and the dress code restrictions on student's express were reasonably related to these pedagogical concerns. Therefore, the dress code constitutionally regulated the student's First Amendment free speech rights in the nonpublic forum of her school).

- Often a student punished for violating his or her school's dress code will bring a free speech challenge not only against the school for his punishment, but also against the school for the school's dress code being unconstitutional as violative of the Free Speech Clause of the First Amendment and possibly unconstitutionally overbroad.

Student Speech Codes

- Based upon the Supreme Court's reasoning in *Tinker*, *Fraser*, and *Hazelwood* many school districts developed official codes governing student speech. These codes are typically called "antiharassment policies", indicating their objective to prohibit abusive behavior among students and creating a safer learning environment. Often, the policies define "harassment" and give examples of harassment in a non-exhaustive list. Also, generally, another section of the policy prohibits harassment on the based of characteristics such as "clothing, physical appearance, social skills, peer group, intellect, educational program, hobbies or values." These codes must be constitutional. ***See, e.g., Heinkel ex rel. Heinkel v. Sch. Bd. of Lee County, Fla.***, 194 Fed. App'x. 604 (11th Cir. 2006).

- Students will often challenge their school's speech codes as unconstitutional in violation of their free speech rights under the First Amendment as well as bring a challenge that speech code is unconstitutionally overbroad.

Threats

- There is no First Amendment protection for "true" threats. ***See, e.g., Doe v. Pulaski Co. Special Sch. Dist.***, 306 F.3d 616 (8th Cir. 2002) (school's suspension of eighth-grade student did not violate the student's free speech rights because a letter he wrote to a classmate speaking of raping and murdering her constituted a true threat, speech that is not protected by the First Amendment). However, there the circuits split over what constitutes a threat, i.e., whether the determination is made from the perspective of a reasonable listener or a reasonable speaker.

- This related topic is relevant to student speech because student speech can often be classified both as an uprotected "true" threat and as protected speech under the *Tinker* standard.

Compelled speech

- Just as the Free Speech Clause of the First Amendment protects students' rights to speak, it also protects their right to be silent and not to speak. ***See, e.g., West Virginia State Bd. of Educ. v. Barnette***, 319 U.S. 624 (1943) (holding state law that required children to salute flag unconstitutional); ***Holloman ex rel. Holloman v. Harland***, 370 F.3d 1252 (11th Cir. 2004) (holding that a student has a right to be free from compelled speech, and that right protects public school students from being forced to participate in the flag salute).

- Students may also bring this as the basis for a First Amendment Free Speech challenge to a school's action.

About the Author

Shannon McNulty is a law student at Georgia State University's College of Law and will graduate in May 2010. After graduation, she will serve as the staff attorney for the Honorable Judge John J. Goger, in the Fulton County Superior Court, Atlanta, Georgia for two years. This bibliography was written in the Spring 2010 section of Dean Nancy Johnson's Advanced Legal Research class. For more information about this bibliography, send an email to njohnson@gsu.edu.

User Warning

This research guide serves as a starting point for a law student or an attorney in researching the issues of student speech rights under the Free Speech Clause of the First Amendment. This is a very active area of law in the nation, and it is imperative to Shepardize or KeyCite all cases and statutes before relying on them. This guide does not constitute legal advice or a legal opinion on any specific facts or circumstances. The materials below do not address all issues that will arise, and researchers should read the full text of the cited resources. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

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Primary Sources

United States Constitution

U.S. Const. amend. I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."

Cases - United States Supreme Court

The Supreme Court has treated student speech cases by applying different standards of review depending on how it categorizes the student speech. The Court has formulated a student-speech doctrine through its decisions in the *Tinker* Trilogy cases: *Fraser*, *Hazelwood*, & *Tinker*. In 2007, The Court added another category under which to analyze student speech through its decision in *Morse v. Frederick*. Under the current framework, the Court first determines the category of student speech, as defined by the respective case, and then applies that particular standard to the speech in the current case as held in the category's name case.

(1) ***Tinker v. Des Moines Indep. Cmty. Sch. Dist.***, 393 U.S. 503 (1969)

- This case is the first of the seminal cases that defined the constitutional free speech rights of students in U.S. public schools. This case provides the standard for the largest category of student speech: any student speech that is not lewd, vulgar, or obscene or speech that is not school-sponsored.
- The facts underlying this case took place in 1965 with the backdrop of the Vietnam War. Three high school students—ages 13, 15, and 16—in protest of the Vietnam War and in support of the Christmas Truce by Senator Kennedy, wore black armbands with peace symbols to school. The school board heard of this and passed a policy banning the wearing of armbands to school. The policy stated that the students violating the policy would be suspended and allowed to return to school if they complied with the policy. These students wore the armbands anyway, and the school suspended them.
- The Supreme Court held that First Amendment applied to students in public school, and that school administrators would have to demonstrate constitutionally valid reasons for any specific regulation of speech in the classroom. The Court recognized that it needed to balance the school's ability to maintain their purpose of education with students' right to freedom of expression. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." However, the Court stated it "has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to proscribe and control conduct in the schools. . . ."
- The Supreme Court then developed a test to determine whether students are afforded First Amendment protection for students. First, the Court held that wearing of the armbands was symbolic speech and it was constitutionally protected because it did not create a material and substantial disruption of the school's operation. The Court stated that the students were engaging in political speech in a passive, silent, expression of their opinion (silently wearing armbands) without any disorder or disturbance. Second, it held that a school may not regulate student speech unless there is a "reasonable forecast of material disruption." The disruption may be of either: (1) the school's work; or (2) the rights of other students to be free from interference. It cited to *Burnside* and *Blackwell* to show what constituted a material disruption as well as what constituted a reasonable forecast. Lastly it stated that the "mere desire to avoid the discomfort and unpleasantness that always accompanies an unpopular viewpoint" or "wish to avoid the controversy that may result from the expression" is never an adequate justification for suppressing speech.
- This case is important because it grants students broad speech rights while still trying to balance the ability of the school to maintain discipline and order. The subsequent cases will show that this is the most protective of speech standard of the cases, thus requires more for a school to support its regulation or punishment of student speech.

(2) ***Bethel Sch. Dist. No. 403 v. Fraser***, 478 U.S. 675 (1986)

- This subsequent decision by the Supreme Court extended a school's ability to limit student free speech rights. In this case, students were required to attend an assembly at school or report to study hall. The assembly was part of a school-sponsored educational program. A high school senior gave a speech nominating a fellow student for a student body government position. His speech contained several sexual innuendos, albeit no obscenity, and he student referred to the candidate in terms of an elaborate and explicit sexual metaphor. In reaction to his speech, students yelled and simulated the gestures. The following day, a teacher reported that she had to forgo part of her scheduled class lesson in order to discuss the speech with the class. The school suspended the student for three days and prohibited him from speaking at graduation by removing him from list of candidates to speak at the upcoming graduation.
- The Court reiterated that the purpose of public school is to "inculcation of fundamental values necessary to the maintenance of a democratic political system." It also distinguished that even though offensive, but not obscene, language gets some First Amendment protection for adults who make what they consider a political point, a school is not required to permit a student the same latitude. The states can insist that certain modes of expression are inappropriate and subject to sanction, and the appropriateness determination rests with the school board. The Court held that a public school is permitted to punish a student for giving a lewd and indecent—but not obscene which is unprotected speech—speech at a school assembly. It stated that the First Amendment does not prevent school officials from determining that permitting vulgar and lewd speech would undermine the school's basic educational mission. A high school assembly or classroom was not the place for sexually explicit speech directed towards unsuspecting audience of teenage students. It was appropriate for school to make the point that vulgar speech and lewd conduct is "wholly inconsistent with the 'fundamental values' of public school education." The Court reasoned that maintaining security and order in schools requires a certain flexibility in school disciplinary procedures, so no deprivation of procedural due process.
- This case is significant in that it gives the schools much more flexibility and authority to regulate student speech. However, the Supreme Court has yet to definitely rule as to whether this standard applies to student speech that is "off campus."

(3) ***Hazelwood Sch. Dist. v. Kuhlmeier***, 484 U.S. 260 (1988)

- This was the first time the Supreme Court held that public school officials may impose some limits on the content of school-sponsored publications. A high

school newspaper was published as part of a journalism class. The principal, who usually reviewed the paper before publishing, deleted two pages of content because he believed it was inappropriate for school. One of the deleted articles covered the issue of student/teen pregnancy and included interviews of three students who had become pregnant while attending school. Even though the articles used pseudonyms to keep the anonymity of the students, the principal said that the students anonymity was not adequately protected and discussion or use or non-use of birth control was inappropriate for some of the younger students. The other deleted article covered students whose parents had been divorced, but their names were not disclosed in the article. Schools, during school hours, are not public forums because the purpose of the school—and its newspaper—was to be a supervised learning experience for journalism students." Thus, the reasonableness standard for non-public forum applied.

- The Court permitted a school to "exercise editorial control over the style and content of student speech in school-sponsored expressive activities". It distinguished the speech in *Tinker*, stating that in *Tinker* the questions is whether the First Amendment requires a school to tolerate a student's speech, while *Hazelwood* stands for whether the First Amendment requires a school to "affirmatively promote particular student speech." This was not toleration. This was affirmative sponsorship. It held that the First Amendment did not compel schools to affirmatively sponsor speech that conflicts with the school's "legitimate pedagogical concerns."

- The Court created a test that required a lesser showing by the school to restrict or prohibit the student's speech. Thus, the standard for school-sponsored speech is that a school may exercise editorial control over style and content of student speech—it may regulate student speech—in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.

- Further, to determine whether the speech was school-sponsored, the Court looked to whether a reasonable person would reasonably perceive the speech to bear the imprimatur of the school so that they saw the activities as part of the school curriculum. It reasoned that, like in *Fraser* and *Tinker* where a school can disassociate itself from lewd speech and speech that materially disrupts the school's work or interferes with other students' rights respectively, the school can disassociate itself from speech that is poorly written, advocating drug use, or conduct otherwise inconsistent with the shared values of civilized society.

- This case is significant for because school-sponsored publications such as student newspapers receive lower First Amendment protection than independent student expression or newspapers established as forums for student expression.

(4) ***Morse v. Frederick***, 551 U.S. 393 (2007)

- In this recent school speech case, also known as the "Bong Hits 4 Jesus" case, the Supreme Court held that the First Amendment does not prevent school officials from suppressing student speech, at a school-supervised event, that is reasonably viewed as promoting illegal drug use. This case in unique because the Court diverged from the traditional analysis framework and created this new category of regulating student speech. The Court now uses four categories under which student speech can be classified and analyzed.

- The Court also discussed how to define "student" speech. Specifically, the Court discussed when a school has the authority to regulate an individual as its student—thus giving it more power to regulate, and the student less right to freedom of expression—versus when the connection between this individual and the school is so attenuated that the individual is evaluated under a non-student standard, thus reducing the school's ability to regulating him and giving him greater constitutional protection. This nexus evaluation is important because many recent cases involve off-campus speech by students.

- In 2002, a principal suspended an eighteen-year-old student after he displayed a poster that read "BONG HiTS 4 JESUS" across the street from his school while the students attended the 2002 Olympic Torch Relay occurring in the street. The Supreme Court held that the school officials did not violate the student's right to free speech. Chief Justice Roberts wrote the majority opinion and made the following determinations: (1) the school speech framework did apply to this student because the speech occurred at a school event; (2) the speech was reasonably viewed as promoting illegal drug use; and (3) a school may legally restrict that speech based on the three existing First Amendment school speech precedents, other Constitutional jurisprudence relating to schools, and the school's important, even compelling, interest in deterring drug use by students. Roberts stressed the factors that made this school speech as opposed to an ordinary (non-restricted environment) free-speech case, and he cited to the fact that the student was standing among other students, during school hours, and at a school-sanctioned event.

- Roberts distinguished *Tinker* because here the concern over student drug abuse "extends well beyond an abstract desire to avoid controversy." He concluded that the First Amendment "does not require schools to tolerate at school events student expression that contributes to those dangers."

- Lower courts have differed over how to interpret the holding. Some argue that this case represents a narrow holding in that it only applies to student speech promoting illegal drug use. However, some lower courts have extended the holding to apply to student speech that creates a danger to the safety of students such as violent speech. There has been some criticism of this case in that it arguably permits viewpoint discrimination of purely political speech whenever that speech mentions illegal drugs—this would be at odds with the First Amendment as it can be seen as authorizing punishment of student speech that is deemed offensive.

(5) ***Nurre v. Whitehead***, No. 09-671, 2010 WL 1006063, at *1 (U.S. Mar. 22, 2010)

- Although the Supreme Court denied certiorari from this Ninth Circuit Court of Appeals case, it is noteworthy for Justice Alito's dissent from denying certiorari. Here, a high school senior was a member of the school's wind ensemble. The school's band director, as part of the band's tradition, allowed the seniors to select the piece that the music piece wanted to play at the graduation ceremony. The graduates chose a piece they felt showcased their talent and progression of their work. They chose a religious-themed song, "Ave Maria". The school officials vetoed the choice even though lyrics would not be included with the performance because they were afraid that the performance would cause a similar reaction to a religious song performed the previous year, where the school received complaints and one angry letter to editor of local newspaper. The officials felt as if the title and meaning of the piece had religious connotations and would be easily identified as such by the title alone. Student brought an action against the school, claiming that the school violated her right to freedom of speech. The District Court affirmed the school's motion for summary judgment, and the Ninth Circuit affirmed.

- The Ninth Circuit acknowledged that a purely instrumental song was "speech" for the purposes of the First Amendment, but it held that the veto of the selection did not violate the student's free speech rights because "it is reasonable for a school official to prohibit the performance of an obviously religious piece" when there was a captive audience at a graduation ceremony and the demand for "equal time is so great that comparable non-religious musical works might not be presented."

- Justice Alito stated that the Ninth Circuit's logic may have broader implications because this reasoning could extend to graduation speeches and censoring

student speech that expresses controversial ideas. Interestingly, he did not mention any of the current student speech standards that the Court traditionally uses to analyze student speech.

United States Court of Appeals - First Circuit

The United States Court of Appeals for the First Circuit has appellate jurisdiction over the district courts in the following jurisdictions:

- District of Maine
- District of Massachusetts
- District of New Hampshire
- District of Puerto Rico
- District of Rhode Island

The First Circuit has not reported any cases that are relevant to this research guide's topic within several years. Therefore, this guide will not discuss any student free speech cases from this circuit.

United States Court of Appeals - Second Circuit

Cuff ex rel. B.C. v. Valley Cent. Sch. Dist., 341 Fed. App'x. 692 (2d Cir. 2009)

- School suspended student for six days after he submitted an alleged threat of violence to his teacher during an in-class assignment. The district court granted the school's motion to dismiss on the grounds that the student's speech was not protected and that his punishment was not unconstitutionally severe. The Second Circuit applied the *Tinker* standard and held that this student's speech did not create a reasonable foreseeable risk of substantial disruption. It reasoned that this student, a ten-year-old fifth-grader, handed the teacher an alleged threat that was made in crayon in direct response to a school assignment. He did not show it to any other classmates, and the school had not other disciplinary history to suggest a violent tendency. The Second Circuit held that it could not say these facts allowed the school to make a reasonable forecast as a matter of law. Thus, it vacated the District Court's opinion and remanded for further proceedings.
- This case is important for determining what student speech constitutes a "material and substantial disruption" under the *Tinker* standard.

Wisniewski v. Bd. of Educ. of Weedsport Cent. Sch. Dist., 494 F.3d 34 (2d Cir. 2007)

- School suspended an eighth-grade student for sharing with friends a web-created icon that he sent via instant message, using AOL instant messenger software on his parents' home computer. The icon was a small drawing of a pistol firing a bullet at a person's head, above which were dots representing blood with words underneath, suggesting a teacher should be shot and killed. The icon was not sent to the teacher or to any school official. Some of the student's Instant Messenger ("IM") "buddies" were classmates. The student created the icon a couple of weeks after his class was instructed that threats would be not tolerated at school and would be treated as acts of violence. The student sent the messages displaying the icon to fifteen members of his messenger list. One classmate informed the subject teacher of the icon and gave him a copy of it. The teacher forwarded it to the principals who told the local police.
- The Second Circuit stated that, although the student's speech could be analyzed under the "true threat" standard for unprotected speech, the *Tinker* standard gave the school broader authority to sanction speech. It reasoned that the *Tinker* standard is appropriate because this case concerns a school officials' authority to discipline a student's expression reasonably understood as urging violent conduct. The Court reasoned that even if the icon was an expression of opinion under *Tinker*, it posed a reasonable forecast that it would materially and substantially disrupt the work and discipline of the school.
- Specifically, the Court dealt with the issue of off-campus versus on-campus speech with regard to when and where the school's authority reaches over a student. It stated that off-campus speech does not insulate him from school discipline and that off-campus speech can create a foreseeable risk of substantial disruption within a school, citing *Thomas*. If it assumed the facts as undisputed, it was reasonably foreseeable that the IM icon would come to the attention of the school authorities and the teacher of whom the icon depicted being shot. Also, the court discussed the fact that both the threatening content and extensive distribution of it (to fifteen students including some classmates during a three-week circulation period) made it foreseeable to a reasonable person. Once the icon was made known to the teacher and other school officials, would foreseeably create substantial risk within the school environment. Thus, it held that the First Amendment claims against the school board and superintendent were properly dismissed.
- This case is important not only for determining when a school has the authority to regulate a student's off-campus speech, but also for determining what student speech causes a "material and substantial disruption" under the *Tinker* standard.

Doninger v. Niehoff, 527 F.3d 41 (2d Cir. 2008)

- School barred high school student from running for senior class secretary based on derogatory blog that the student posted on independent website regarding the school's supposed cancellation of upcoming student event. Four students met at school's computer lab and accessed one of their father's email account. They drafted a message to be sent to large number of recipients, which falsely stated that the event was going to be cancelled and to email the school officials with questions and comments. School official then received several voice mails. The school official confronted the student and asked her to draft a corrective email to which the student agreed. However, the student then posted derogatory comments on her publicly accessible blog on a website unaffiliated with the school. The student admitted that the purpose of the blog entry was to encourage her fellow students to read and respond to the blog. Students responded by commenting on the blog and using offensive language in reference to one of the school officials.
- The Second Circuit noted that the Supreme Court had yet to rule on the scope of a school's authority to regulate expression that does not occur on school grounds or that is not at a school-sponsored event. The Second Circuit then discussed the *Tinker* standard in that a student may be disciplined for expressive conduct, even that occurring off school grounds, that created a material and substantial disruption within the school environment of the school's work and discipline (citing *Wisniewski)*. It declined to use the *Fraser* standard because even though *Fraser* allows a school to regulate speech that is offensively lewd and

indecent, it stated that it was not clear that *Fraser* applied to off-campus speech. Therefore, it applied the *Tinker* standard, established as the appropriate standard for off-campus speech.

- The Second Circuit concluded that the district court was correct to find a foreseeable forecast of disruption because the student stated that her purpose was to encourage her fellow students to read and respond to the blog, several students did read and respond to it, and the posting reached the school administrators. The Second Circuit also noted at foreseeable forecast based on three factors: (1) plainly offensive and potentially disruptive language; (2) the misleading and false information that the event had been cancelled had already disrupted students; and (3) the students left class or other activities to post mass email. Therefore, it held that the student failed to show that her First Amendment free speech rights were violated when she was disqualified from running for senior class secretary. Notably, the Court expressly limited its holding to the punishment in this case, and it that it's ruling may have been different if the student received different punishment.

- This case is important for not only determining when a school has authority to regulate student off-campus speech, but also for determining what constitutes a "material and substantial disruption" under the *Tinker* standard.

Thomas v. Bd. of Educ., Granvile Cent. Sch. Dist., 607 F.2d 1043 (2d Cir. 1979)

- School suspended students for printing a sexually explicit magazine. Some of the publication occurred after school hours in a classroom and copies were stored in a classroom closet. The school discovered the magazine when a teacher confiscated a copy from another student on campus. The Second Circuit found that the magazine was designed to take place outside of school, and the on-campus contacts were "de minimus." The court focused on the fact that, outside of school, freedom of expression "is at its zenith" and "their actions must be evaluated by the principles that bind the government in the public arena." The court reasoned that it permitted schools to regulate students within the school.

- A notable quote is, "When school officials are authorized only to punish speech on school property, the student is free to speak his mind when the school day ends. In this manner, the community is not deprived of the salutary effects of expression, and education authorities are free to establish an academic environment in which the teaching and learning process can proceed free of disruption. Indeed, our willingness to grant school officials substantial autonomy within their academic domain rests in part on the confinement of that power within the metes and bounds of the school itself."

- This case is important to show that schools have limited authority to regulate off-campus student speech. Thus, this case can be useful to show a school's punishment of student off-campus speech is unconstitutional as it violates the student's free speech rights under the First Amendment.

United States Court of Appeals - Third Circuit

J.S. ex rel. v. Blue Mountain Sch. Dist., 593 F.3d 286 (3d Cir. 2010)

- School suspended student for ten days for creating fictitious profile of the school's principal on "MySpace.com". Student and a friend created profile from her house on a computer belonging to her parents. The girls communicated to each other through AOL instant messenger and took turns adding to the profile from their separate locations. The profile featured the principal's picture, copied and pasted from the school district's website, but it did not identify him by name, school, or location. Student admitted that she had created the profile because she was "mad" at him for how he had treated her during her dress code violation in 2007. The students initially set the profile so that anyone could access it by searching the website. Several students accessed it, and the student made the profile "private" so that only certain students could access the site. The school prohibited accessing this site from a school computer, so the profile could only be accessed from an off-campus location. The principal discovered the existence in the next few days.

- The school district argued that the profile disrupted the school because: (1) two teachers had to quiet their classes while students talked about the profile; (2) guidance counselor had to proctor an exam for a teacher who had to sit in on a meeting with school officials; and (3) students congregated in the hallway upon return of students after their suspension.

- The Third Circuit, although agreeing with the trial court's characterization of the speech as lewd and vulgar, declined to apply the *Fraser* standard because this speech was off-campus speech and this circuit had previously held that it would apply *Tinker* to any student speech case that was outside the narrow *Fraser* and *Hazelwood* exceptions, which off-campus speech was. Thus, under the *Tinker* standard the Court analyzed whether the speech created a substantial disruption to the school. It concluded that the incidents at school did not amount to a substantial disruption so that the school could discipline the students for their speech. It reasoned that the "minor inconveniences associated with the profile . . . may have resulted in some disruption, but certainly did not rise to a substantial one." The court also noted that the disruption may have been a result in part, to the principal's investigation of the profile. The court noted that there was a nexus between the student speech and the school disruption in that it was directed at other students, it did not meet the *Tinker* standard. However, the court held that because of the speech being vulgar, lewd, and offensive on its face, the school could have perceived a potential for future disruption. It concluded that the school did not violate the student's First Amendment free speech rights based on the profile's nature and the threat of substantial disruption to the school.

- NOTE: On April 9, 2010, the Third Circuit granted a rehearing *en banc* and vacated the opinion. Therefore, this case is no longer good law, and a researcher should note that if using the case as part of his or her research.

Layshock ex rel. v. Hermitage Sch. Dist., 593 F.3d 249 (3d Cir. 2010).

- High school officials punished student for creating a fake Internet profile on the social networking Internet website, "MySpace.com" by giving him a ten-day, out-of-school suspension, in-school suspension for the remainder of the school year, banning his participation in all extracurricular activities, and banning his participation in graduation.

- The Third Circuit held that the *Tinker* standard applied, and that the student's speech did not "materially disrupt" or "substantially interfere" with the school's operation or the other students' right to be free from interference. Importantly, the Court discussed that, in order for the school to have the authority to regulate the student, there must be a sufficient nexus between the student's speech and the disruption of the school's environment. The Court analogized to the Second Circuit case, *Thomas* (holding no school authority where, even though some student speech took place on campus this was a "de minimus"contact with the school because most of the speech took place off-campus. The Court stated that the nexus here was more attenuated than that in *Thomas*. It also stated that its previous ruling in *Saxe v. State College Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001) (holding no First Amendment protection for lewd, vulgar, indecent, and plainly offensive speech in school) only related to speech on-campus. It also cited *Doninger* to show that its holding only applied to that student's particular punishment, so analogizing to that case was not persuasive. The Court held that the student's use of his web site did not constitute entering school for the

purposes of the school being able to permissibly regulate his speech, and the school was not empowered to punish his out-of-school expressive conduct under those circumstances.

- NOTE: On April 9, 2010, the Third Circuit granted a rehearing *en banc* and vacated this opinion. Therefore, this case is no longer good law, and a researcher should note this if using the case as part of his or her research.

United States Court of Appeals - Fourth Circuit

Crosby by Crosby v. Holsinger, 852 F.2d 801 (4th Cir. 1988)

- "JohnnyReb" was a cartoon symbol for a high school. The principal of the school removed the symbol after he received complaints from black students and parents. Although he allowed the students to choose a new symbol that was unrelated to the Confederacy, other students protested. They held rallies at school, mounted a petition drive, attended a school board meeting, and displayed blue ribbons. The principal did nothing to interfere with these protests. However, in one instance, he initially stopped this student from posting notices on school bulletin boards of the school board meeting before he then allowing it the next day. The student raised a First Amendment claim for this incident of the principal's initial prohibiting of the student's posting notices.

- The Fourth Circuit reiterated the distinction between *Tinker* and *Hazelwood* as the difference between tolerating students' speech and affirmatively promoting it. Because the school mascot bears the symbol of the school itself, the Court applied the *Hazelwood* standard. Therefore, a school could disassociate itself from a symbol because of educational concerns. Here, the principal stated that the symbol offended black students who then limited their participation in school activities. The Court concluded that the principal had the authority to remove a symbol that black students found offensive.

- This cases illustrates that, if the court considers the student speech to be school-sponsored, it only has to meet the *Hazelwood* standard which only requires showing the school's action is reasonably related to legitimate pedagogical concerns. This standard is often easier to satisfy than showing a "material disruption" under the *Tinker* standard.

United States Court of Appeals - Fifth Circuit

A.M. ex rel. McAllum v. Cash, 585 F.3d 214 (5th Cir. 2009)

- Students came to school carrying purses with large Confederate flags on them. A teacher referred them to the administration for discipline pursuant to the school's policy against visible displays of Confederate flag. Officials gave the students the option of leaving purses in front office or having someone come to school to retrieve the purses. The students chose neither and went home. The school did not suspend nor take any further disciplinary actions against the students. The Fifth Circuit applied the *Tinker* standard and held that the school reasonably anticipated that visible displays of the Confederate flag would create a material and substantial disruption with school activities. The students themselves agreed that, in certain circumstances, the Confederate flag could be seen as a symbol of racism. There was also undisputed evidence of actual racial hostility and tension at that particular school, and some of these events included the use of the Confederate flag. The Court reasoned that even if those events themselves did not rise to the level of substantial disruption, the served as a factual basis for forecasting a disruption is students were allowed to display Confederate flag.

- The Fifth Circuit reasoned that the racial tension and hostility at the school justified the defendant's ban on visible displays of the Confederate flag and held that the district court did not err in granting summary judgment to defendants on plaintiffs' free speech and expression claim.

- This case is important in showing that an actual history of racial violence at a school is persuasive to a court when determining whether there was a "reasonable forecast" of a "material and disruption" as required by *Tinker*.

Morgan v. Plano Indep. Sch. Dist., 589 F.3d 740 (5th Cir. 2009)

- School, over a three-year period, prohibited students from distributing various religious materials with religious phrases written on them. The Fifth Circuit stated content-neutral time, place, and manner restrictions only must be narrowly tailored, serve a substantial government interest, and leave open ample channels of communication. The Fifth Circuit concluded that the school district's policy was constitutional because the regulations were content neutral, the district had a significant legitimate interest of providing focused learning environment which the regulations furthered because it is intended to facilitate the beginning of class without a wait for the distribution of materials—regulating the speech during and immediately before class; and to facilitate movement by regulating in the hallways. The policies also provided ample alternative channels of communication because the students could distribute materials before and after school, during recess, and during school hours at designated tables. This case is significant because it demonstrates that a court will examine the speech differently if the speech restriction or regulation is content-neutral or content-based. If content-neutral, it will evaluate the speech under the test stated above. Only if the regulation is content-based will it apply the *Tinker* framework.

- This case is important for showing the distinction some courts make between content-neutral and content-based regulations. Some courts will only apply the *Tinker* standard if the school regulation is content-based. If the regulation is content-neutral, they will apply a different standard.

Ponce v. Socorro Indep. Sch. Dist., 508 F.3d 765 (5th Cir. 2007)

- Sophomore kept a notebook diary, written in first-person, which he detailed the creation of a pseudo-Nazi ground on this school and other schools in the school district. The notebook also detailed the group's plan to commit a "Columbine shooting" attack on the high school or a coordinated shooting at all the district's schools at the same time. The student told another student about the notebook and allegedly told him some of contents. This student then told a teacher. The District Court applied the *Tinker* standard and stated that the evidence was insufficient to prove that the school acted upon a reasonable belief that disruption would occur.

- The Fifth Circuit, in contrast, applied the *Morse* standard, reasoning that *Morse* applies when there is relative magnitude of the interest it considered to be at stake such as the prevention of drug abuse—a significant harm to students. It focused on Justice Alito's concurrence, which it considered the holding of the case, stating that *Morse*'s special relevant characteristic was the threat to the physical safety of the students—speech that leads to violence. The limits on a school's authority in *Tinker* may not reach far enough to allow school officials to respond to threats of violence appropriately. Further, it reasoned that speech

advocating harm that is demonstrably grave and derives that gravity from the “special danger” to the physical safety of students arising from the school environment is unprotected. It states that the constitutional concerns addressed in *Morse* were in line with this case’s facts. It stressed that the violent speech was not aimed at specific persons, but rather violence akin to the recent school shootings. It analogized to *Morse* in that mass shootings are unique in that there is often no forewarning. It reasoned that if *Morse* applies to threats directed at safety of particular students, it should apply violent threats of massive death, to the school population as a whole. Because school administrators should be allowed to react quickly to address threats of physical violence against their students without worrying that they will face years of litigation to determine whether the threat posed a real risk of substantial disturbance.

- The Fifth Circuit held that the students’ speech was not protected under the First Amendment. Therefore, the school’s disciplinary action violated no protected right.
- This case demonstrates that some student speech can be characterized as a threat, which receives no First Amendment protection, rather than as protected speech which the court would analyze under the *Tinker* standard.

Burnside v. Byars, 363 F.2d 744 (C.A. Miss. 1966)

- School disciplined students for wearing “freedom buttons” as a form of advocating lawful and peaceful abolition of racial segregation in Mississippi. Students’ free speech rights breached by school officials when they prohibited students from peacefully wearing “freedom buttons” that advocated the lawful and peaceful abolition of racial segregation. The principal told the students they were not allowed to wear the buttons and then suspended students who continued to wear the buttons.
- The Court reasoned that the passive wearing of the buttons did not cause a substantial disruption to the school because it was not accompanied by improper conduct. The record indicated no interference with the educational activity of the school, and the mere presence of the buttons was not a sufficient disruption to warrant there being suspended without misconduct. School’ s ban on wearing buttons violated the students’ First Amendment free speech rights.
- The Court in *Tinker* used this case as an example of what student speech did not constitute a "material disruption" so that the students' speech rights should have been protected. Courts today still cite this case as an example of protected student speech under the *Tinker* standard.

Blackwell v. Issaquena County Bd. of Educ., 363 F.2d 749 (C.A. Miss. 1966)

- This case was decided on the same day as *Burnside*. However, the Court here upheld school’s ban on “freedom buttons” because students handed out buttons in the hallway, skipped class, ignored teachers, pinned buttons on other students without their permission and caused younger student to cry, pulled other students out of class, and threw buttons through school windows was a material and substantial disruption that caused “complete breakdown in school discipline.” The principal had to assemble the students in the cafeteria and inform them that they were forbidden to wear the buttons at school and the students acted with hostility at the assembly.
- The Court distinguished *Burnside* because there the presence of the buttons did not cause a disturbance to classroom activities. Here, the students “conducted themselves in a disorderly manner, disrupted classroom procedure, interfered with the properly decorum and discipline of the school and interfered with other students’ right to be let alone. The Court concluded that it was necessary to prohibit the students from wearing the pins in order to maintain discipline.
- The Court in *Tinker* used this case as an example of what student speech does constitute a "material disruption" so that a school's punishment of student speech did not violate their First Amendment rights.

United States Court of Appeals - Sixth Circuit

Barr v. Lafon, 538 F.3d 554 (6th Cir. 2008)

- Court upheld school administrators’ ban of the Confederate flag based on increasing racial tensions at the school and based on conversations with students who stated they would find that symbol racially divisive. The Court stated that the actual violence allowed the principal to reasonably forecast that the flag would be a symbol that would cause unrest with the student body.
- This case demonstrates that actual previous racial violence at a school gives the school a "reasonable forecast" that certain student speech will cause a "material disruption", and thus the school may permissibly regulate that speech.

M.A.L. ex rel. M.L. v. Kinsland, 543 F.3d 841 (6th Cir. 2008)

- School regulated middle-school student by preventing him from handing out leaflets in school hallways between classes but instead allowed him to post his leaflets on hallway bulletin boards and distribute them during lunch hours from a cafeteria table. The District Court held this was an unconstitutional regulation on the student’s speech under the *Tinker* standard because there was no reasonable forecast of a material and substantial disruption with operation of the school
- The Sixth Circuit reversed stating that the school was regulating the time, place, and manner of speech, not the content of the speech. This type of regulation is not subject to the *Tinker* standard, thus the school merely has to show that this time, place, and manner restriction was: (1) content-neutral; (2) narrowly tailored; (3) to serve a substantial government interest; and (4) left open amply channels of communication. It stated that *Tinker* only applies to content-based regulations. The Court held that the school’s distribution policy did not violate the student’s First Amendment rights.
- This case shows that some courts distinguish between content-neutral and content-based regulations on speech. Some courts will only apply the *Tinker* standard if the regulation is content-based and apply a different standard of review if the regulation is content-neutral.

Melton v. Young, 465 F.2d 1336 (6th Cir. 1972)

- Chattanooga public school suspended student wearing a jacket with Confederate flag patch. The school had previously been an all-white school, and had only been integrated for four years when the student wore the patch. The school at issue had experienced actual racial tension which in part came from the school’s symbol of a Confederate flag and its nickname “The Rebels”. The student wore the jacket after the administration had banned the symbol. The Court reasoned that an actual history of unrest at the school in question would show a material disruption rather than just an “undifferentiated fear or apprehension of

disturbance." Therefore, the school suspension was valid exercise of the school board's constitutional authority under *Tinker*. The court also stated that the factual circumstances are highly relevant, and that the ban based on past racial tension at the school and the potential for reoccurrence.

- This case also shows that an actual history of violence at the particular school in question gives the school a "reasonable forecast" that certain student speech will create a "material disruption" so that the school can permissibly regulate that speech.

United States Court of Appeals - Seventh Circuit

Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. #204, 523 F.3d 668 (7th Cir. 2008)

- School prohibited high school student from making negative comments about homosexuality per its speech code. The speech stemmed from an incident surrounding a "Day of Silence" where homosexuals remain silent throughout the day unless under specified circumstances. The plaintiff was a student who disapproved of homosexuality, and he wanted to participate in a "Day of Truth" as well as wear a shirt that said "Be Happy, Not Gay" but did not for fear of being disciplined. Student stated that he should be allowed to make any negative comments about homosexuals as long as they are not inflammatory, or fighting words likely to provoke a violent reaction and hence a breach of the peace.

- The Seventh Circuit held that although students have free speech rights, these rights must be balanced against the state's legitimate interest in having an orderly school environment to promote learning. Thus, the Court held the plaintiff was not entitled to a preliminary injunction against the school's rule. But, the "Be Happy, Not Gay" slogan on the shirt was only "tepidly negative" and wearing the t-shirt would only speculatively create disruption. Thus, it reversed the District Court's entering a preliminary injunction limited to the application of the school's rule to the t-shirt that says "Be Happy, Not Gay". The concurring judge, Judge Rovner, stated that this speech did not give the school a reasonable forecast of disruption, therefore it should have been protected by the First Amendment.

- This case shows that unpleasant speech can receive First Amendment protection as long as it does not create a "material disruption" under the *Tinker* standard.

Brandt v. Bd. of Educ. of Chicago, 480 F.3d 460 (7th Cir. 2007)

- School disciplined middle school students for wearing t-shirts that they wore as a protest of the t-shirt contest winners. The students had been warned that wearing the shirts would be a violation of the school's dress code provision that prohibited students from wearing clothing with "inappropriate words or slogan", and the students would be punished. Students wore shirts, and school punished them by confining them to their homeroom which caused them to miss gym class, science lab, computer lab, and after-school activities. The Ninth Circuit stated that the school did not forbid the students from protesting, but rather forbid a particular means of protest. It stated that the students could have protested in a less potentially disruptive way than by wearing those particular t-shirts. The Court noted that the students additionally protested by petitioning the principal, and they were not disciplined for that, thus there was no injury to their First Amendment free speech rights. The Court concluded that the t-shirt itself was not protected speech, and even if it were, it could be regulated by the school officials.

- This case demonstrates that not all student conduct, e.g. wearing t-shirts, must be afforded First Amendment protection as speech, and that a school may regulate speech that will create a "material disruption" under the *Tinker* standard.

United States Court of Appeals - Eighth Circuit

BWA v. Farmington R-7 Sch. Dist., 554 F.3d 734 (8th Cir. 2009)

- School sent high school students home for refusing to remove items of clothing depicting the Confederate flag symbol. The Eighth Circuit held that the *Tinker* standard applied and affirmed the trial court's finding that the high school officials had reason to believe that the students displaying the Confederate flag would cause a substantial and material disruption. The Eighth Circuit reasoned that the previous "substantial race-related events occurring both at the school and in the community, some of which involved the Confederate flag" permitted the school officials to reasonably forecast a substantial disruption resulting from displaying the Confederate flag. It noted evidence of five disruptions at that school that were related to the Confederate flag or race and stated that these previous incidences provided substantial evidence of "actual and potential disruptions likely related to the flag symbol."

- The Court further held that there was sufficient evidence beyond ordinary discomfort and unpleasantness of unpopular viewpoints because there was evidence of likely racially-motivated violence, racial tension, and other altercations directly related to adverse race relations in the community and the school. Because of this evidence, the school could reasonably forecast a material and substantial disruption so that the administration did not violate the students' First Amendment rights by banning the flag. The school ban on the flag was reasonably related to a substantial disruption, did not amount to viewpoint discrimination, and did not violate the First Amendment.

- This case shows that an actual history of violence at the particular school gives officials a "reasonable forecast" that certain student speech will create a "material disruption" so that school officials may regulate that speech.

Lowry ex rel. Crow v. Watson Chapel Sch. Dist., 540 F.3d 752 (8th Cir. 2008)

- School disciplined students for wearing black armbands as a protest against the school's dress code. The bands did not cover any part of the students' school uniforms. The school disciplined the students for violating the school's dress code policy.

- The Eighth Circuit stated that the facts of this cased mirrored the facts in *Tinker* where the school's disciplining the students violated the students First Amendment free speech rights. It noted that the District Court recognized the wearing of armbands a symbolic act is protected under the Free Speech Clause of the First Amendment. It dismissed the defendant's argument to distinguish *Tinker* in that *Tinker* was about protesting American involvement in the Vietnam War and here the students were only protesting the dress code policy. The Court stated that this distinction is "immaterial" and "not constitutionally significant." The Court applied *Tinker* because neither *Fraser* nor *Morse* involved punishment of non-disruptive student protest that violated no school policy based upon student viewpoint.

- The Eighth Circuit held that the facts of *Tinker* are so similar that *Tinker's* holding is dispositive. Thus, the trial court was correct in finding that the school had violated the students' First Amendment rights.

United States Court of Appeals - Ninth Circuit

Pinard v. Clatskanie Sch. Dist. 6J, 467 F.3d 755 (9th Cir. 2006)

- School district suspended student athletes from its high school varsity basketball team. The members alleged that their basketball coach was verbally abusive and intimidating. The coach told the players that if they wanted him to quit they should say so, and he would resign. Several weeks later, the students drafted a petition requesting his resignation and delivered it to the coach. The school held a meeting and gave the players the options of: (1) mediating the issue; or (2) forfeit a game that they had that night. The meeting ended without the players expressing their decision. Later that day, the players who signed the petition did not board the bus and, the next day they were suspended permanently from the basketball team.

- The Ninth Circuit stated that the appropriate standard was *Tinker*, and that "the *Tinker* rule is a flexible one." In applying the standard, the Court found the players' refusal to board the bus was expressive conduct that substantially disrupted and materially interfered with the school activity. It substantially disrupted the operation of the varsity basketball team because this school-related event was part of the school's educational program and it cost the school to get substitute players. It materially disrupted the school's operation of a "bona fide school activity." Thus, the Ninth Circuit held that the school's actions of suspending the students did not violate the students' First Amendment free speech rights.

- This case demonstrates that a court will examine the totality of the circumstances of all the relevant facts: both of the plaintiffs' actions and of the circumstances confronting the school officials.

Harper v. Poway Unified Sch. Dist., 455 F.3d 1052 (9th Cir. 2006)

- School punished student for wearing a t-shirt to his high school with the words "Be Ashamed, Our School Embraced What God Has Condemned" on the front and "Homosexuality Is Shameful 'Romans 1:27'" on the back. The Ninth Circuit, in is denial for rehearing *en banc*, stated that the speech was a verbal attack, and the school had authority under *Tinker* to regulate speech that interfered with right of students to be secure and let alone. Although the dissent, agreed that the shirt's message was offensive to some students, the standard does not allow a school to regulate speech to "avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." It reasoned that a distasteful opinion does not qualify as a psychological or verbal assault because if it did, then school officials could regulate or restrict any speech that they found offensive or intolerant. The dissent argued that this was viewpoint discrimination.

- This case demonstrates that judges can disagree as to what speech creates a "material disruption" so that it may be regulated under the *Tinker* standard.

United States Court of Appeals - Tenth Circuit

Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219 (10th Cir. 2009)

- School required student, as a condition of receiving her diploma, to publicly apologize for making a valedictory speech at graduation discussing her religious views without the principal's prior approval.

- The Tenth Circuit held that the student's graduation speech was school-sponsored speech, and the *Hazelwood* standard applied, where the school can regulate student speech if the regulation is reasonably related to legitimate pedagogical concerns. In order for *Hazelwood* to apply, the student activities must fairly be characterizes as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as faculty members supervise them and designed to impart particular knowledge or skills to student participants and audiences. The Court stated that determining whether student speech is school-sponsored, the court should examine the "level of involvement the school had in organizing or supervising the contested speech, and noted that certain expressive activities may be closely tied to a school, yet not school-sponsored speech bearing the school's imprimatur." Further, "pedagogical" means that the activity is related to learning. This could be satisfied by "simply the school district's desire to avoid controversy within a school environment." The Court used a two-prong analysis: the first prong, whether the speech was school sponsored was satisfied because the graduation ceremony was supervised by the school's faculty and was "clearly a school-sponsored event." The ceremony was so closely connected to the school that it appeared the school was sponsoring the speech. Thus, the school was allowed to exercise editorial control over the speech as long as it was reasonably related to pedagogical concerns. The Court found this second prong satisfied because giving a speech in a community graduation program is a learning opportunity and reviewing the valedictory speeches is related to learning because reviewing the content of speeches allows the school to preserve neutrality on matters of controversy within the school environment.

- Based on this reasoning, the Court held that the First Amendment did not require the school to affirmatively promote the student's speech and requiring review of the speech did not violate the student's free speech rights. The compelled speech was reviewed under different standards.

- This case shows under what circumstances a court will determine student speech to be school-sponsored.

West v. Derby Unified Sch. Dist. No. 260, 206 F.3d 1358 (10th Cir. 2000)

- School suspended junior high school student drew a picture of a Confederate flag during a class which violated the school's "Racial Harassment and Intimidation" policy. The Tenth Circuit upheld the suspension as a legitimate exercise of the school's authority. The Court based its holding on the fact that there had been previous actual fights involving racial symbols, specifically the Confederate flag, in the school district and there was no evidence that the school enforced the policy in an uneven handed manner, favoring one type of symbol over another.

- This case demonstrates that a school may ban racially divisive symbols when there has been actual racially-motivated violence, and when it enforces the policy without viewpoint discrimination.

United States Court of Appeals - Eleventh Circuit

Boim v. Fulton County Sch. Dist., 494 F.3d 978 (11th Cir. 2007)

- School suspended high school student for ten days because of violation of school rules in connection with a journal that she brought to school in which she wrote a store about a dream she had of shooting a teacher. A teacher caught the student writing in it during class, and the teacher made her give it to him after she continued to pull it back out after being instructed to put it away. The teacher looked through the journal and found the entry. After an investigation, school officials found the entry to be a violent threat and suspended the student.

- The Eleventh Circuit applied the *Tinker* standard, stating "student speech must at least be likely to cause a material and substantial disruption, . . . and more than a brief, easily overlooked, *de minimus* impact, before it may be curtailed." The Court stated that the fact that there had been a shooting of six high school students at another high school less than an hour away and the fact that it had been less than two months since a freshman had been arrested for possession of a concealed, loaded handgun at a school located less than twenty miles away from this student's school were factors that could lead to a reasonable forecast of this level of disruption. In addition, the fact that the student failed to exercise control over the notebook—bringing it to school, pulling it out during class, letting other students read it—created a risk of disruption that was not "matter of mere speculation or paranoia." The Court also seemed to rely on *Morse* stating the rationale to allow school's to restrict student expression that they reasonably regard as promoting illegal drug use, this is of promoting a safe learning environment, also applies to speech that could be reasonably construed as threat of violence. Therefore, the disciplinary action against the student did not violate student's First Amendment rights.

- This case shows what student speech constitutes a "material disruption" under the *Tinker* standard.

Heinkel ex rel. Heinkel v. Sch. Bd. of Lee County, Fla., 194 Fed. App'x. 604 (11th Cir. 2006)

- Seventh-grade student at middle school wanted to wear a t-shirt, take a vow of silence during non-instructional time, and distribute materials about abortion and abortion alternatives to her classmates during non-instructional time. However, the student made no request to the school to distribute the materials. The Eleventh Circuit, in discussing the student's as-applied challenge, concluded that *Tinker* was the appropriate standard, citing the tests but reiterating that the school "need not wait until the disruption actually occurs in order to prohibit student expression if they reasonably forecast that the expression will cause substantial disruption or material interference with school activities."

- The Court reviewed the district court's application of the *Tinker* standard where it concluded distribution of these materials would cause a material and substantial disruption. The district court relied upon, in part, the fact that the student's classmates ranged from ages of 11 to 14 and the expression was about abortion and abortion alternatives. Because speech regulation of speech to control behavior most "necessarily take into account the age and maturity of the student." Also, abortion and abortion alternatives were not part of the middle school curriculum.

- The Court of Appeals affirmed the District Court's finding that this expression would create a material and substantial disruption in granting the school's motion for summary judgment that the school's denial of the student's request to distribute literature did not violate the student's First Amendment right to free speech.

- This case shows what student speech constitutes a "material disruption" under the *Tinker* standard.

Scott v. Sch. Bd. of Alachua County, 324 F.3d 1246 (11th Cir. 2003)

- School suspended high school students for displaying a Confederate Flag on school property after the principal had previously told the students not to do so. The Eleventh Circuit held that the school officials could have censured the students' speech either under the *Tinker* or the *Fraser* standard. It determined that evidence of actual racial tension existing at that school along with racially-based fights gave the school officials a reasonable forecast the symbolic speech would cause a material and substantial disruption at the school. In addition, it reasoned the Confederate flag can be regarded as a highly-offensive symbol, thus this symbolic speech could be permissibly regulated under *Fraser*.

- Thus, the Eleventh Circuit held that the school administrators did not violate the students free speech rights under the First Amendment by banning the display of the Confederate flag on school property and for enforcing the ban by suspending them.

- This case demonstrates that certain student speech can be evaluated under more than one student-speech standard.

United States Federal District Courts

Coy ex rel. Coy v. Bd. of Educ. of N. Canton, 205 F. Supp. 2d 791 (N.D. Ohio 2002)

- School disciplined student for accessing his personal website from a school computer. The student's website—created on his own computer—contained information about student and his friends as well as a section entitled "losers" which contained pictures and insults concerning three other classmates. Students told the administration about the website, the school looked at the site's contents and suspended student. Court ruled that summary judgment was not appropriate because school offered two explanations for it actions: (1) student violated school's Internet policy and displayed vulgar speech at school; or (2) school disapproved of website's contents. If their basis was reason (2), then student would prevail.

- This case demonstrates that a school cannot regulate protected student speech unless the school can show the regulation is permissible under one of student speech categories as defined by the *Tinker* trilogy framework.

Vines v. Bd. of Educ. of Zion Sch. Dist. No. 6, No. 01C7455, 2002 WL 58815, at *1 (N.D. Ill. Jan. 14, 2002)

- Pedagogical concerns include the structured transmission of a body of knowledge in an orderly environment and the inculcation of civility and traditional moral, social, and political norms (attaining and maintaining a positive and productive school learning environment Uniforms do this by reducing peer pressure, reducing vulgar and profane disruptions in education process, discouraging gang affiliations, eliminating soci-economic competition, and increase students' self-confidence.

- This case illustrates various examples of school interests that constitute legitimate pedagogical concerns as required by the *Hazelwood* standard for regulating

student speech.

Killion v. Franklin Reg'l. Sch. Dist., 136 F. Supp. 2d 446 (W.D. Pa. 2001)

- High school student was angered by denial of student parking permit and certain rules and regulations for members of the track team. The student compiled a "Top Ten" list about the athletic director. The list contained derogatory statements regarding the director's appearance. The student composed and assembled the list at home and after school hours. He then emailed the list to his friends from his home computer, but he did not print or copy the list to bring it on school premises because, after copying and distributing similar lists in the past, he had been warned that he would be punished if he brought another list of school. Weeks later, individuals found copies of the list in the Faculty lounge as an undisclosed student had printed out the email, made copies, and distributed the copies at school.

- School officials suspended student because the list contained offensive remarks about a school official and the list was found on school grounds, and that the student admitted creating the list. Student was prohibited from participating in school activities during this ten-day suspension. Student received certified letter stating that cause of suspension was a verbal/written abuse of a school of a school official.

- The Federal District Court discussed the issue that the speech mostly took place off campus where the school has significantly less authority over students. However, the Court cited to other courts who have held that *Tinker* applies to student speech that begins off-campus but that later finds its way to campus, even if by another student as it did here. It reasoned that the *Tinker* standard applied, and that the ten-day suspension violated the student's First Amendment rights. In applying *Tinker*, the Court stated that there was no disruption because the speech had been on campus for several days before school officials became aware of it. The Court also stated that the speech did not constitute a threat, reasoning that although it upset the official, it did not cause him to take a leave of absence. The test for school authority is not geographical. School officials not just limited to school's physical property, but this is balanced against expression and that mere presence of student on school property does not trigger school's authority. Adopted a functional test looking at the connection between the school and the speech. School has the burden to show that it has the authority to punish the student. "A school must demonstrate the appropriate nexus" between school and speech. The Court also held that because the student had not been disciplined for creating previous lists, their existence did not create a reasonable forecast of substantial disruption. Further, this speech did not impair the school's ability to maintain order and discipline.

- As far as lewd, vulgar, or profane speech, here the court cited the Second Circuit *Thomas* who held that *Fraser* does not allow school officials to regulate lewd, offensive, or indecent speech off campus, absent exceptional circumstances.

- This case is important to show that some courts will not extend the *Fraser* standard to off-campus student speech. It is also an example student speech that does not constitute a "material disruption" under the *Tinker* standard.

Emmett v. Kent Sch. Dist. No. 415, 92 F. Supp. 2d 1088 (W.D. Wash. 2000)

- School suspended high school student for creating web page on the Internet from his home without using school resources or time. In regards to student's motion for temporary restraining order prohibiting the school to suspend him, the court held that the student had a substantial likelihood of success on the merits of his claim that the school violated his First Amendment Rights. The high school senior created a web page calling it the high school's unofficial website. He included disclaimers that this site was not sponsored by the school, and for entertainment purposes only. It contained commentary on school administration and faculty. The site contained mock obituaries and allowed for students to pick who would "die" next. After being featured on the news for creating a "hit list" of students, the student took down the website. Student was placed on emergency expulsion.

- The Court, following the Ninth Circuit precedent in *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988) (holding student distribution of non-school-sponsored material cannot be prohibited 'on the basis of undifferentiated fears of possible disturbances or embarrassment to school officials.'") stated that the student's speech was not at an assembly, as in *Fraser*, and was not school-sponsored, as in *Hazelwood*. Even though the speech was directed at other students, it was "entirely outside the school's supervision or control." The court also concluded that this site did not constitute a threat, reasoning that no evidence was presented to that effect.

- This case demonstrates an example of when a school does not have authority over certain student off-campus student speech.

Beussink ex rel. Beussink v.Woodland R-IV Sch. Dist., 30 F. Supp. 2d 1175 (E.D. Mo. 1998)

- Student created a homepage, which he posted on the Internet and could be accessed by other Internet users. Student did not create this at school and did not create this during school hours. The homepage was highly critical of his high school's administration. He used vulgar language in expressing his opinion about his teachers, the principal, and about the school's own homepage. The homepage also invited readers to contact the school principal and communicate their opinions regarding the high school. His homepage also contained a hyperlink to the school's official page. However, there was no evidence indicating that his homepage was accessed from the high school. A friend of the student accessed his homepage at school and showed it to a teacher. School decided to immediately punish the student after viewing the homepage. Principal made this decision before he knew whether any other students had seen or had knowledge of the homepage. Some other students accessed the homepage at school. Student received a disciplinary notice that he would be suspended for five days. Student received second notice that he would be suspended for ten days. Suspension affected his final grades for the semester.

- The Court held that the *Tinker* standard applied. The Court stated that the principal's testimony indicated that he disciplined the student because he was upset by the homepage. There was not evidence of any material disruption or interference with the school discipline. The Court concluded that disliking or being upset by the content of a student's speech was not an acceptable justification for limiting student speech under *Tinker*.

- This case demonstrates an example off-campus student speech that does not create a "material disruption" under the *Tinker* standard.

Federal Statutes - United States Code

(1) 42 U.S.C. § 1983 (Westlaw 2010)

- "Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer

for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

- This statute, a provision of the Civil Rights Act of 1871, allows a person bring a suit for money damages against a government actor for violation of his or her Constitutional rights, e.g., the Free Speech Clause of the First Amendment.
- This is an extremely important statute because normally constitutional rights were remedied by injunctions which only remedy future harm, not past harm.
- This is an extremely powerful tool for individuals to redress violations of federally protected rights, both Constitutional and statutory.
- NOTE: There are some caveats:
  - Generally, this statute does not allow a State, or State Actor in his official capacity, to be held liable. However, it does allow a person to sue a local government, and most school districts are part of the local government's scheme. Thus, individuals can hold school districts liable under § 1983.
- This is the statute is highly relevant to student speech as most students who bring a lawsuit against a school for money damages for a First Amendment violation do so under this statute.

(2) 20 U.S.C. § 4071 (Westlaw 2010); relevant portions state:

- (a) "It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings."
- (b) "a public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time."
- (c) "schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that-
  - (1) the meeting is voluntary and student-initiated;
  - (2) there is no sponsorship of the meeting by the school, the government, or its agents or employees;
  - (3) employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
  - (4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
  - (5) nonschool persons may not direct, conduct, control, or regularly attend activities of student groups."
- (f) "Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary."
- This act, also known as the Equal Access Act, was passed to compel federally-funded secondary schools to provide equal access to extracurricular clubs. If a school receives federal aid and has a "limited open forum" that meets outside of class time, it must allow additional such clubs to be organized and must give them equal access to meeting spaces and school publications. However, the Act provides exceptions for groups that "materially and substantially interfere with the orderly conduct of education activities within the school," and a school can opt out of this act by prohibiting all non-curriculum clubs.
- The United States Supreme Court ruled the Act constitutional in 1990 in *Westside Cmty. Sch. v. Mergens* (school ordered to allow Christian group to meet). This Act gives schools strong incentive to comply and thus afford students free speech rights.
- Although this Act applies to access to groups, it is highly relevant to the topic of student speech rights because the statute's explicit language prohibits schools from denying access to or discriminating against students based on the content of their speech. Therefore, a researcher should be aware of its contents and requirements.

Federal Statutes - Legislative History

(1) 42 U.S.C. § 1983

- The act was originally passed shortly after the American Civil War in part to protect African Americans from the Ku Klux Klan by providing a civil remedy for abuses being committed in the South. The statute did not have much effect until the landmark United States Supreme Court decision, *Monroe v. Pape*, 361 U.S. 167 (1961).
- The statue has only been subject to minor changes, and this is the relevant legislative history:
  - (R. S. § 1979; Dec. 29, 1979, P.L. 96-170, § 1, 93 Stat. 1284; Oct. 19, 1996, P.L. 104-317, Title III, § 309(c), 110 Stat. 3853.)
  - This section formerly appeared as 8 USC § 43.
  - R.S. § 1979 was derived from Act April 20, 1871, ch 22, § 1, 17 Stat.

- 1979. Act Dec. 29, 1979 inserted "or the District of Columbia" and "For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.".
- 1996. Act Oct. 19, 1996 inserted ", except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.".
- Application of Dec. 29, 1979 amendments. Act Dec. 29, 1979, P.L. 96-170, § 3, 93 Stat. 1284, which appears as 28 USCS § 1343 note, provided that the amendments made to this section by such Act are applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after enactment on Dec. 29, 1979.

- Although only minor statutory changes have been made to this provision of the Civil Rights Act, it has been subject to numerous interpretations by courts since its revival in *Monroe v. Pape, supra*.
- Relevant to this research guide, most students bring their First Amendment Free Speech challenge against the school under 42 U.S.C. § 1983. Notably, the students in *Tinker* used this statute to hold her school liable for violating her First Amendment Free Speech Rights. Significantly, the Court in *Tinker* expanded § 1983 actions to hold school boards liable for constitutional violations.
- This statute is current through P.L. 111-156 (excluding P.L. 111-148 and 111-152) and through April 7, 2010.

(2) 20 U.S.C. § 4071

- The purpose of the Equal Access Act is to prohibit discrimination between religious and political groups on one hand and other noncurriculum-related groups on other hand.
- The relevant legislative history is:
  - (Aug. 11, 1984, P.L. 98-377, Title VIII, § 802, 98 Stat. 1302.)
- The act applies only to public secondary schools and makes no mention of elementary schools, and (2) no meaning can be derived from choice by Congress not to address elementary schools.
- "Discrimination" includes denial of permission for students to engage in voluntary extracurricular activities that include prayer or religious speech when school permits students to meet for non-religious extracurricular speech; discriminatory actions in form of harassment or unequal penalties, as well as clear-cut denial, constitute violation of law.
- Providing "fair opportunity" is not sufficient to provide "equal access" under Equal Access Act
- This statute is current through P.L. 111-156 (excluding P.L. 111-148 and 111-152) and through April 7, 2010.

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Secondary Sources

Books & Treatises

(1) Erwin Chemerinsky, Constitutional Law Principles and Policies (3d ed. 2006)

This is one of the best treatises on Constitutional Law, generally, and this is a great resource to start your research. It is geared toward those practicing or preparing to practice law as it gives in-depth treatment of the topics and assumes some base level of legal knowledge.

Chapter 11: First Amendment, Freedom of Expression

- The beginning of the chapter clearly outlines the topics and the subheadings covered under them. A great place to start is the Introduction, section 11.1.3 which discuss “issues in Free Expression Analysis.” Under the Free Speech and Methodology topic, Chemerinsky discuss the Vagueness and Overbreadth doctrines which are also potential tools for an individual challenging a particular regulation or punishment of speech, including student speech. The next section, types of unprotected and less protected speech, explains how the Court treats certain speech differently from other types of speech by classifying it as "unprotected." If the speech falls under the “unprotected” category, the First Amendment does not afford the speaker protection. This is important to remember in the student speech context because the standards of analysis only apply to “protected” speech. If the student engages in unprotected speech, he does not receive First Amendment protection. Each of this types of speech receives its own standard and respective analysis.
- Student Speech is discussed under the topic, “What Places are Available for Speech?”, section 11.4. Under this heading, Chemerinsky states that where the speaker speaks affects how the Court will determine whether he should receive First Amendment protection. He discusses the different classifications of property or places where speech could take place. He analyzes the different types of government property and their respective standards of analysis: (1) Public Forum; (2) Limited Public Forum; and (3) Non-Public Forum. Next, he discusses private property and states that there is not a right to free speech on private property.

Section 11.4.4: Speech in Authoritarian Environments: Military, Prisons, and Schools

In section 11.4.2.4, he states that Non-Public Forums are "government properties that governments can close to all speech activities. The government may prohibit or restrict speech in Non-Public Forums so long as the regulation is reasonable and viewpoint neutral." Under 11.4.4 he states that some government operated places are "environments where great deference is required to regulations of speech." He stresses that the Court treats speech in military and schools similarly because in both places "people are often involuntarily present. All are authoritarian environments that do not operate internally in a democratic fashion. In each, the Court has proclaimed a need for deference to authority and to the expertise of those managing the place."

- Under "schools", Chemerinsky does distinguish the difference between school and prisons and the military. He states that an important function of schools is to teach constitutional principles—one of which is freedom of speech. He states that restricting speech in schools is counter to that teaching, but recognizes the balance that must be struck between students' right to free speech and the need for discipline and order in schools. He does conclude that the Court tends to defer to expertise of school officials and their need to make decisions about education and preserve discipline and order within the schools. He gives an overview of the Court's treatment of student speech by addressing the seminal cases: *Tinker, Fraser*, and *Hazelwood*. He also addresses other relevant student speech cases.

Other First Amendment Issues in Schools

- In section 11.4.4, Chemerinsky cites *Board of Education, Island Trees Union Free School District v. Pico* and discusses the ability of a school to remove books from the school's library because the school deems the books "objectionable." He stated that the Supreme Court did recognize that the First Amendment protects the right to receive information and that the "special characteristics of the school *library* make that environment especially appropriate for recognition of the First Amendment right of students." Here, the Court indicated that it would be unconstitutional to for school board to remove all Republican-authored book or all books authored by African Americans. It stated that the Constitution does not permit the official suppression of ideas, and gave a standard to determine if these actions violated the First Amendment. The Court will look to the government's intent. If the government intends to remove books to deny access to ideas with which they disagree, and this intent was the decisive factor, the action would be unconstitutional. It stated it would not be unconstitutional if the government had decided to remove the books because it thought they were vulgar."

Student Speech: Conclusion

- Chemerinsky summarizes this area of law by stating that the Court, in student speech cases, ultimately seeks to strike a balance between deferring to school's have to make inevitable choices (about which book, what speech, etc) and preventing school censorship of ideas or expression just because the these ideas are unpopular with the school board members. He then focuses on the fact that this test is really a content-based distinction that the Court does not like to use when it deals with fundamental rights such as the First Amendment.

(2) Rodney A. Smolla, Smolla & Nimmer on Freedom of Speech (3d ed. 1996)

- This treatise on Freedom of Speech dedicates a specific chapter to student speech, Chapter 17: Government as Educator. In addition, each section within the chapter discusses a distinct subtopic within this area of law. Each section gives a brief overview of the specific area, and it lists the current law and important case holdings. Moreover, it provides the citations to the cases referenced in the text. This treatise explains the subtopics in clear language and gives further references for research. This is a good reference because it makes clear the distinctions of student speech in that university students are generally afforded more First Amendment speech protection than secondary and pre-secondary students. This treatise can be accessed on Westlaw by searching in the "TPS-ALL" databse, then enter the terms "smolla", "nimmer", "government as educator" in a "natural language" search.

Legal Encyclopedias

(1) American Jurisprudence

16A Am. Jur 2d ***Constitutional Law*** § 469 (2009)

- This particular section of American Jurisprudence pertains to the subtopic of "minors, students, and teachers". This is a very small section, with no real substantive or useful information. It merely states that, although minors have "significant" First Amendment protections, their rights are not coextensive with those of adults. Specifically, it provides that a state may determine that "in at least some precisely delineated areas, a child is not possessed of that full capacity for individual choice which is the presupposition of the First Amendment guarantees." It further provides that the age of the minor is a significant factor. It does not discuss any of the seminal cases for analyzing student speech. The only useful source is the list of cases in the 2009 Cumulative Supplement pocket part. However, the cases listed are not limited to primary and secondary schools and include cases in higher education settings. Thus, the researcher may only find a few cases relevant to secondary student free speech rights.

(2) Corpus Juris Secundum

16B C.J.S. 2d ***Constitutional Law*** §§ 916 – 923 (2009)

- This is a more comprehensive than American Jurisprudence, but still a rather limited resource. This resource should be used as a starting point. It gives a good overview of the student speech doctrine, but it does not cite to the actual framework in the text. It only cites to the seminal cases in footnotes. However, it does list out subtopics such as grand jury proceedings, drawings, and student fees. The subsequent sections after § 916 go into more depth and discuss the analysis framework for student speech, although not by name. For example, § 917 discusses the *Tinker* standard, § 918 discusses *Hazelwood*, and § 919 discusses *Fraser*. This resources discusses speech more topically such as "a right to participate in demonstrations", "a right to participate in groups and organizations, and "a right to religious prayer and religious comment". As with American Jurisprudence, cases listed in the cumulative supplement are helpful, but include higher education environments as well as secondary school environments.

(3) Encyclopedia of the First Amendment (John R. Vile, David L. Hudson, Jr. & David Schultz eds., 2009)

- This legal encyclopedia focuses solely on the First Amendment. If looking for a very basic and general overview of the topic, a researcher should start here to familiarize himself or herself with this area of Constitutional Law. Although the editors state that this encyclopedia is ideal for "high school and public libraries

seeking a single, comprehensive guide on the First Amendment protections and their history", it also proves useful to a legal researcher who is unfamiliar with this subject mater and is looking for a concise overview of this area of law.

- The encyclopedia provides two topical tables of contents: subjects and cases. This resource is user-friendly because there are in-depth introductory essays about the topics as well as cross-references to relevant entries in the encyclopedia, and these entries include at least one primary or secondary source for further research. In addition, the encyclopedia provides citations for important cases relevant to a particular topic of the First Amendment such as "Students' Rights Under Free Speech." Moreover, this resource provides a comprehensive list of seminal cases to use as a starting point for primary source research. Both the introductory essays and case citations can be found in the table indexes located at the beginning of the encyclopedia. The essays are written clearly and convey complex issues of law in easily-understandable language.

Law Reviews, Periodicals, & Articles

(1) Caitlin May, ***"Internet-Savvy Students" and Bewildered Educators: Student Internet Speech Is Creating New Legal Issues for the Educational Community***, 58 Cath. U. L. Rev. 1105 (2009)

- This Law Review Comment addresses the legal issues presented by off-campus student speech, generated through the Internet. It also examines the various ways courts have attempted to balance students' free speech rights with the school's interest in prohibiting certain types of student speech. This article expressly focuses on student speech in secondary schools, but acknowledges that similar issues may be present at universities. Moreover, the comment only addresses a school's punishment of student speech, and it does not address constitutionality of any criminal action that may be taken against a student. The article is divided into three parts: (1) overview of the cases governing free speech issues in schools; (2) various courts' approaches in addressing student Internet speech, including examination of analysis for potentially threatening student speech and how the Internet alters the traditional framework for addressing student speech; and (3) proposes expanding the reasoning in *Morse v. Frederick*, to adopt a categorical approach to student's threatening speech while still using the *Tinker* analysis for all other off-campus speech.

- This article is especially relevant and useful for several reasons. First, it focuses on the exact area of speech this guide does: student speech in public secondary schools. Second, it gives the researcher an overview of the current legal precedent governing student speech so that the researcher knows the current law and how various courts have addressed Internet speech. Third, the articles centers on an emerging, and popular, form of speech: the Internet. Fourth, it addresses how the unique characteristics of the Internet would alter courts' traditional analysis of student speech. Fifth, it discusses "true threat" speech which is traditionally a category of unprotected speech and often overlaps with student speech. Lastly, it provides a proposed approach for regulating student Internet speech which gives the reader a practice guide if pursuing litigation in this area.

(2) Paul J. Beard II & Robert Luther III, ***A Superintendent's Guide to Student Free Speech in California Public Schools***, 12 U.C. Davis J. Juv. L & Pol'y 381 (2008)

- This article is unique in that it addresses mainly the school's perspective regarding student speech. It gives an overview of California Law on student speech with attention to the state's specific treatment while relating it to the Supreme Court's treatment of student speech. The article then focuses on an important case *Smith v. Novato Unified School District*. Lastly, and most importantly for this research guide, it addresses a list of "Dos and Don'ts" for school officials in regulating student speech. This last section is useful because it provides a guide for school officials as to what actions will be constitutionally permissible in regulating student speech. This list also gives the researcher an overview of concrete examples of permissible and impermissible regulations so as to analogize and distinguish to a current set of facts. This is not only a good overview and approach for officials in California, but for any researcher and practicing attorney this area.

- The list states that a school official should start with the presumption that speech is protected as a "safer" way of approaching student speech because a presumption that speech is not protected can lead the official "afoul" of students' free speech rights. The list also discusses that First Amendment protection is extended to some speech that is highly offensive or insulting. However, it states that the school is still empowered to address disruptive responses to student speech. It then gives examples of how a school can do this, and what it should look for before it acts in disciplining its students. Because this articles focuses primarily on California, it is limited in its scope and serves merely as a guide for other jurisdictions.

(3) Melinda Cupps Dickler, ***The Morse Quartet: Student Speech and the First Amendment***, 53 Loy. L. Rev. 355 (2007)

- This is an excellent article to get an in-depth discussion of the seminal cases discussing students' free speech rights. This article addresses the *Tinker* trilogy, and then gives a separate in-depth discussion of the Supreme Court's most recent ruling on student speech: *Morse v. Frederick*. This section gives a thorough discussion of the majority, concurring, and dissenting opinions, discussing the commonalities among them as well as their interpretations and possible implications for future lower courts facing these issues. It then discusses how *Morse* will fit into the trilogy of existing cases and how courts will rule on student speech cases. It next discusses a conditional two-part test for student speech mentioning illegal drug use as well as a conditional two-part test for all other student speech. Moreover, it provides an in-depth examination of how to use this test in approaching student speech cases.

- This article would be very useful to a researcher in the student speech area because it summarizes the Supreme Court Rulings for this area of law. However, the researcher should be cautioned that this article was written in 2007, when the *Morse* opinion was published, and many lower courts had not yet interpreted its holding. Because a few years have passed since this article's publication, the researcher should also examine current cases to see how lower courts have actually interpreted *Morse's* holding. Although this may not be the most current source, it is an excellent starting point to which the researcher can supplement information.

(4) S. Elizabeth Wilborn, ***Teaching the New Three Rs-Repression, Rights, and Respect: A Primer of Student Speech Activities***, 37 B.C. L. Rev. 119 (1995)

- This is a good article not only for its overview of the seminal cases and tracing the history and development of the student speech doctrine, but also for giving a critique of the traditional analysis framework. In addition, the author proposes a new approach to regulating student speech so as to afford students more speech protection. Because this review is a critique of the current doctrine, the researcher should keep that in mind when reading the characterizations of the

case holdings. This article first traces the United States Supreme Court's treatment of student speech and the Court's establishment of students' free speech rights. It discusses the seminal cases chronologically, emphasizing the development of the Court's doctrine. Particularly, it shows the evolution of the doctrine as a cutting-back on students' speech rights. The author discusses the cases and gives an in-depth analysis of why students' speech is not protected under this paradigm. She then discusses how the subsequent cases have given schools more flexibility in restricting and regulating student speech. This author makes clear her disapproval of this trend, as one of the main topics is her proposed approach on how the Court should analyze student speech.

- The author not only provides a critique of the current paradigm, but also offers a new paradigm under which student speech should be evaluated so as to ensure more protection to students' right to free speech under the First Amendment. She proposes that a better approach would be to divide student speech into three categories: political, scholastic, and obscene/indecent speech. After the Court determined the appropriate speech category, it would then apply a corresponding scrutiny appropriate to the speech. The categories' scrutiny mirrors what the Court uses for other speech cases. For example, the political speech category would receive what is similar to strict scrutiny, scholastic speech would receive less protection and the reviewing court would use the same scrutiny that it does for commercial speech, and regulation of obscene or indecent speech would only need to meet a rational basis standard: the school must show that the regulation/restriction is reasonably related to a legit government interest. She also discusses the logistics and possible difficulties in the approach's application.

American Law Reports

American Law Reports ("ALR") are great resources to research specific topics within the student speech arena. Specifically, they annotate very particular areas of student speech and courts' treatment of this area of law. This may be a very helpful resource if there is a particular ALR on point to a particular type of student speech that has been suppressed that you are challenging.

(1) Stephen Lease, J.D., Theresa Leming, J.D., Anne M. Payne, J.D., & Jeanne Philbin, J.D., Annotation, ***First Amendment Protection Afforded to Blogs and Bloggers***, 35 A.L.R. 6th 407 (2009)

- This ALR gives a basic overview of the *Tinker* trilogy and the student-speech framework. The author discusses the emerging and current issue of student speech rights over the Internet. In the cumulative supplement the annotation lists and discusses important cases and deals with the issues that the Circuit Courts struggle with of when is off-campus speech "student speech" so that the school then has authority to regulate them as students. This affords the school more regulatory power than if the student's were just private citizens. It also lists related AmJur sections, ALR's, Law Review Articles, and other periodicals. This ALR is extremely useful and relevant because the internet—posting on the Internet off-campus—is an important topic because the Supreme Court has not definitely ruled on this issue. Also, as technology rapidly advances and allows for remote speech to affect other areas, the law has not yet caught up to ruling on it. The material is well-organized, and this would be an excellent starting point if researching this specific area of student speech.

(2) Mitchell J. Waldman, J.D., Annotation, ***What Oral Statement of Student is Sufficiently Disruptive so as to fall Beyond Protection of First Amendment***, 76 A.L.R. Fed. 599 (1986)

- This is an excellent resource because although the Supreme Court in *Tinker* has stated that speech is "materially and substantially disruptive" can be regulated by a school, it has not defined what "material and substantial" is. The only real guidance is precedent which we have *Blackwell* and *Burnside* but those cases represent extremes of the spectrum from the which the plaintiffs or defendants can analogize or distinguish. This ALR is great in that it lists the important cases by each Circuit Court of Appeals so as to give the researcher further examples to analogize or distinguish for his or her particular case. It lists the cases by the Circuits for the United States Court of Appeals. It then annotates certain cases and gives them in-depth analysis. In addition, it lists a case supplement, related materials such as ALR's, Legal Encyclopedias, Treatises, Trial Strategies, and Forms. It also has a comment section, which indicates that not only the content, but also the loudness may affect the "disruption" analysis. This ALR is particularly useful if researching under this category of student speech because it is explicitly limited to this topic.

(3) George L. Blum, J.D., Annotation, ***Validity of Adverse Personnel Action or Adverse Action Affecting Student's Academic Standing Based on Internet Posting or Expression, including Social Networking***, 49 A.L.R. 6th 115 (2009)

- This is a useful resource because it addresses the ever-popular social networking sites such as "MySpace.com" and "Facebook". However, the article addresses a larger issue of speech, so the focus on student speech is limited to only sections 2, 3, and 11-13. A unique benefit to this article is that it lists practice pointers in its supplement.

(4) Scott M. Smith, Annotation, ***Validity and Construction of Public School Regulation of Student Distribution of Religious Documents at School***, 16 A.L.R. Fed. 182 (1997).

- This annotation discusses the First Amendment challenges, including Free Speech challenges, to public schools who have established regulations restricting or prohibiting students from distributing documents at school with religious content. Although the annotation discusses the challenges under the Establishment Clause, the Free Exercise Clause, it also specifically addresses challenges under the Free Speech Clause of the First Amendment. It divides the challenges under the Free Speech Clause or First Amendment generally into two sections: (1) regulations that are found valid; and (2) regulations that are found invalid. These sections provide useful information regarding court decisions as well as giving an overview of the standard of review and application. In addition, this resource provides a cumulative supplement including cases and a comments.

Computerized Sources

Westlaw

- Westlaw is fee-based on-line legal research database. Westlaw includes resources from more than 40,000 databases of case law, state and federal statutes, administrative codes, newspaper and magazine articles, public records, law journals, law reviews, treatises, legal forms and other information resources. Unique features are: (1) Key Number System which indexes most legal documents on Westlaw; and (2) KeyCite, a citation checking service, which allows customers to determine whether cases or statutes are still good law; and a customizable tabbed interface that lets customers bring their most-used resources to the top. To

access relevant materials to student speech rights, start by clicking on the “directory” tab and then click on “U.S. Federal Materials”. Then click on the “Federal Cases & Judicial Materials” folder. For the most comprehensive search, include the databases SCT, ALLFEDS, and CTA. This search will yield all Supreme Court, U.S. Court of Appeals, and federal district court cases. If looking for the most recent cases, you can edit the search by identifying a date restriction. To search the topic, enter "First Amendment" and "student speech" in the natural language box.

- Another unique feature is Westlaw’s “Broadcast” Database (BRDCST). This database provides television and radio transcripts from around eighteen countries in the world including United States, Canada, Australia, and South Africa. This database allows an individual to research any time a topic has come up recently in broadcast media. Not only does it provide the source of the media, but it also it provides the date and time of the mention and gives the actual transcript of the surrounding context of the discussion. To access this database, begin at the general research page and then type in BRDCST in the "Search for a Database" box on the left-side of the screen. Then enter "First Amendment" and "student speech" in the natural language box. The website address is www.westlaw.com.

LexisNexis

- LexisNexis, like Westlaw, provides fee-based access to legal databases containing primary and secondary sources. To find materials relevant to student speech rights, a researcher should begin by clicking on the "Legal" Tab under "Look for a Source" Option. Then click on "Cases" and select "U.S. Supreme Court cases" and "US Courts of Appeals Cases, Combined." Another helpful tab, relevant to this area of law, is the "Federal Court Cases Within 2 Years, Combined" link. This is useful because the case law changes rapidly in this area, and this search will yield the most current federal cases, including the Supreme Court and Court of Appeals as well as federal district courts. In addition to this case law searching, LexisNexis provides distinct and unique features: (1) Case-in-Brief and (2) Emerging Issues. The website address is www.lexisnexis.com.
    - (1) Case-in-Brief
        - Case-in-Brief is an enhanced research tool provided by Lexis that provides the researcher with a more in-depth analysis of the case including hyperlinks to related topics. This is a great resource for key cases in the particular area of research. For example, it provides an “enhanced case summary” which includes: “notable case analysis”, “enhanced procedural posture”, "explanation of parties", "parties’ arguments", "quick holding bullets", "enhanced overview", and "dissenting opinion overview." In essence, the enhanced case summary provides what a law student would call a “super brief”, i.e., this gives a well-detailed analysis of exactly what is happening in the case and allows the researcher to: easily access the different portions of the case and the opinion, and allow the reader to selectively highlight pertinent issues. This summary is a great place to search the background of the case to give the researcher context to the circumstances surrounding the actual events that created the case, including the events at litigation.
        - In addition to this great and easily understandable case summary, Case in Brief provides expanded research from this one case. For example, the “Expanded Headnote Coverage” includes hyperlinks for both LexisNexis Headnotes which provides the existing headnotes of the case and Interpretive Headnotes which are additional headnotes requiring editorial refinement to provide concise statements of legal points. Next, Case in Brief provides a “Jurisprudential Analysis” which includes a “Status of the Case” and “Comparative Case Content”. “Status of the Case” provides discussion of prior and subsequent opinions involving this case, and “Comparative Case Content” provides topical research and information about cases that have major holdings in the relevant area of law. Further, Case in Brief includes a “Legal Analysis” hyperlink that includes: Related Treatise Content (includes summary of several prominent treatises related to this case or its subject matter), Related Law Review Articles (summary of several prominent law review articles related to the case or its subject matter), Related Bar Association & Journal Articles (summary of prominent bar association journal articles related to this case or its subject matter), and other Legal Articles (legal articles written by attorneys or law firms related to this case or its subject matter). This is a great one-stop-shop to access several secondary sources that addresses this particular case. This can prove extremely helpful because secondary sources often treat cases in easily-understandable content information. Moreover, Case in Brief provides “News” regarding the case. This includes: “recent news coverage of the case”, “recent news coverage of the issue”, “recent news coverage of the parties”. All of these categories provide excerpts from several articles discussing the stated topic.
        - This is a great resource for this topic because free speech issues are constantly being litigated and the researcher can discover how his jurisdiction is treating cases to see if his potential issue may have a new case on point to reference. This is also a great and expansive resource because the not only can the individual find out news that mentions the case, but also news that mentions the issue. Next, Case in Brief lists “Links to Related LexisNexis Content”. This section includes: “Briefs and Other Filings Related to the Case”, “CourtLink Court Records”, and “Corporate Party Links”. Lastly, Case in Brief lists the Case Text. In sum, this is a great general resource to examine and exhaust all information relating to this one case. It is easy to use because all the related information is accessible by hyperlink.
    - (2) Emerging Issues
        -
        - This is another unique feature provided by LexisNexis. Legal practitioners publish position papers regarding the case and related emerging issues that would spring from it in practice. For example, LexisNexis provides an “Emerging Issues” discussion by Nathan M. Roberts on the case *Morse v. Frederick*. The analysis begins by providing a brief summary of the case discussed. It then discusses related cases leading up to the current case. Lastly, it discusses the case itself, its holding, how it differed from the preceding case, and for what proposition the case now stands. This is a useful tool if you have one great or one seminal case that will be he springboard for your research because it will give you a good synopsis and give you links to other cases. The downside is that "Emerging issues" is not written for every case, and when it is done, it is a truncated version of legal research. This serves as a starting point only because it's akin to a mini law-review article, giving a quick and dirty synopsis and analysis of a case. One can access this feature by first pulling up a case either by search or citation. Once you have the case, the emerging issues link is located on the left-hand side of the actual cases.

Lexis One

- LexisOne provides free and fee-based resources and is less extensive than its LexisNexis counterpart. Although cases are accessible on LexisOne, they are limited to those that have been decided in the past ten years (for most jurisdictions). However, the complete history of the United States Supreme Court is

provided. In addition, a researcher can access forms, news, blogs, and podcasts on this site. Lawyers who want to access LexisNexis content from this site can pay by the day, week, or month. The website address is www.law.lexisnexis.com/webcenters/lexisone/.

Casemaker

- Casemaker is a legal research service for Sate Bar Associations and their members. The Georgia Bar Association is one of the twenty-eight state bar associations who currently subscribe to Casemaker. Casemaker's library includes links to state caselaw, statutes, state and federal court rules, administrative codes, and Attorney General opinions. Recently, Casemaker added libraries for every state in the country, which include state case law, current state statutes, and states' constitutions. Casemaker is also expanding its federal content to include all United States Supreme Court cases and United States Court of Appeals cases going back to 1950. The website address is www.ga.bar.org/casemaker.

Loislaw

- Loislaw is a fee-based legal research site that provides access to primary law, public records, treatises, and legal forms. Although it is less expensive than Westlaw and LexisNexis, offering an all-inclusive flat rate, it is not as comprehensive as Westlaw or LexisNexis. The website address is www.loislaw.com.

Findlaw

- Findlaw is a free legal database that caters to non-lawyers who are interested in learning about specific areas of the law. Findlaw for Legal Professionals provides access to case law, statutory law, and articles. For information on student speech rights, enter "student speech" in the search box on the home page. This will take you to the "Learn about the Law" tab, and it lists several links to further information such as brief summaries of major student speech cases. This resource is only somewhat helpful because it only discusses a limited number of cases, and it only briefly analyzes them. This would be a good resource to ensure that a researcher has not missed this case as part of his or her research. The website address is www.findlaw.com.

Google

- Google is company whose web search engine is its most popular service. It is the dominant search engine in the United This basic search engine has spread to specific services as well, including an image search engine, the Google News search site, Google Maps, and more. One of the more controversial search services Google hosts is Google Books. The company began scanning books and uploading limited previews, and full books where allowed, into their new book search engine. However, a number of copyright disputes arose, and Google reached a revised settlement in 2009 to limit its scans to books from the U.S., the U.K., Australia and Canada. Google's "advanced search" allows the researcher to type in various phrases such as "student free speech", and it will pull up most cited and often most recent student speech cases that are in the news.

Blogs

Volokh Conspiracy

- This is a group blog started by Eugene Volokh, a law professor at UCLA School of Law. Professor Volokh teaches free speech law—among other subjects—at UCLA School of Law. Before this, he clerked for the Ninth Circuit United States Court of Appeals and for Sandra Day O'Connor on the United States Supreme Court. He is the author of various textbooks including *The First Amendment and Related Statutes* (3d ed. 2008). The Volokh Conspiracy is a weblog that gets over 25, 000 visitors per weekday. It covers mostly United States legal and political issues and has more than a dozen contributors, most of whom are law professors. Volokh is among the five most cited under-45 faculty members listed in the Top 25 Law Faculties in Scholarly Impact, 2005-2009 study. This weblog is often praised among the academic legal community. The benefits to this website is that the limited bloggers, acclaimed legal scholars and professors, means that the researcher will generally get insightful and accurate statements of the law and well thought out theories and positions. Also, as it is a blog, there are generally posts of all the current topics that would address the First Amendment and other constitutional issues. This would be a useful site to find interesting points to address in a research paper, memorandum or brief because of the authors. However, as it is a blog, these are merely opinions of the authors with no way to check their information. The website address is www.volokh.com.

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Interest Groups

The American Civil Liberties Union

The American Civil Liberties Union ("ACLU") consists of two separate non-profit organizations: (1) the ACLU Foundation which focuses on litigation and communication; and (2) the American Civil Liberties Union, which focuses on lobbying. The ACLU's stated mission is "to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States." The ACLU was founded in 1920 and has over 500,000 members.

Most significantly for this research guide, the ACLU provides legal assistance in cases where it considers civil liberties to be at risk. Even when the ACLU does not provide direct legal representation, it often submits *amicus curiae* briefs. The ACLU can bring a lawsuit on behalf of an individual, and the lawsuits brought by the ACLU have been influential in shaping Constitutional law. Notably, the ACLU argued on behalf of Mary Beth Tinker, one of the named plaintiffs in *Tinker*.

On the ACLU's website, it lists the ACLU's "key issues", including Free Speech. On this link, one can access various free speech information sources such as cases, news, blogs, legal documents, and multimedia. Further, there is a student speech link one can access under the "related issues" section. Under "student speech", the site lists current student-speech-related news, blog posts, and pod casts. The site also lists these in reverse chronological order so that a researcher can easily find the most recent court decisions from various jurisdictions. This website, as a self-proclaimed protector of free speech, reflects emphasis on protecting student speech to the full extent of the Constitution. For more information, please visit their website, www.aclu.org.

The Center for Individual Rights, National Coalition Against Censorship

The Center for Individual Rights ("CIR") is a nonprofit public interest law firm "dedicated to the defense of individual liberties against the increasingly aggressive and unchecked authority of federal and state governments." CIR is not a legal services firm or a public policy institute. Rather, it litigates and publicizes a handful of selected cases regarding individual rights. CIR also provides free legal representation to "deserving" clients who cannot afford or obtain legal counsel, whose individual rights CIR believes are being threatened. One of CIR's central areas of litigation is Free Speech. The website states that CIR has "established dozens of legal precedents designed to counter the selective use of the First Amendment to disfavor speech based on the political views of the speaker."

To access relevant information to this guide, select the link "Cases" and then select the "Freedom of Speech" link. This takes the researcher to the cases in which CIR has participated and the status of the case. It not only includes cases where CIR participated in a party's representation, but also cases where CIR has file and *amicus curiae* brief. If using the "Search" link, type "student speech", and it will bring up relevant student speech cases in which CIR has participated. This page also mentions other student speech non-case sources. While this website can provide helpful information, it is designed to promote CIR. Therefore, the website contains limited database of current student free speech cases. For more information, please visit their website, www.cir-usa.org.

The National School Boards Association

The National School Boards Association ("NSBA") sponsors this website and provides useful information not only for school administrators, but also for legal researchers. The website includes topics such as "student rights and discipline." In order to access this topic from the home page, click on the left-side menu bar on "School Law".

Under this page, click on "school law issues" which provides resources, news , and court decisions on various legal issues for public schools. The website states that most news items and recent cases are from NSBA's free school law e-newsletter, *Legal Clips*. Next, click on "student rights and discipline" under the "Resources" listed on that page. This page provides information regarding the challenges school districts face in "balancing students' First, Fourth, and Fifth Amendment rights" with the school's mission to maintain a "safe, nondisruptive learning environment." Among the topics covered is "freedom of speech."

Under the "freedom of speech" topic, a researcher can click on the following resources: (1) Amicus Briefs; (2) Resources; (3) News; and (4) Recent Cases. "Amicus Briefs" allows the researcher to read *amicus curiae* briefs filed by NSBA on student rights. Here, the researcher can access, for free, the *amicus curiae* briefs filed in the respective cases. For example, NSBA filed an *amicus curiae* brief in *Morse v. Frederick*, and more recently in *Nurre v. Whitehead*. This is a good source of information to determine possible arguments that the school will make for why it had the authority to regulate the student speech. In addition, it is helpful because the brief itself includes various case cites. Under "Resources", a researcher can find information on other websites, books, and other sources on legal issues related to student rights. Here, one can find various documents to give guidance for the schools. For example, there is a chart of decisions for distribution or materials; a condensed table of cases. The "News" link gives current articles and news regarding various student issues. This gives a national perspective of the most current student rights issues because it's a nationwide perspective. Under "Recent Cases", the website provides a summary or recent court decisions on student rights. This page provides concise summaries of the facts and holdings for decisions as recent as early 2010.

While this website provides excellent and comprehensive information, the researcher should remember that, because case law is continuously changing, he or she should Shepardize or KeyCite the cases to determine if they are still good law. Also, this is a sponsored website, thus it may have limited resources. However, this is an excellent tool for educators as well as legal researchers to understand more about student free speech claims. For more information, please visit their website, www.nsba.org.

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