

Addressing On and Off Campus Student Behavior and Speech

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Free Speech Rights

Congress shall make no law ... abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

First Amendment, United States Constitution



Student Constitutional Rights

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

Tinker v. Des Moines

Independent Community School District

393 U.S. 503 (1969)



Limits of Student Free Speech

- A student's free speech rights are not unlimited
- Student free speech rights are not equivalent to the free speech rights of an adult in the community.
- This was recognized by the U.S. Supreme Court in *Bethel v. Fraser*:

Student free speech rights "are not automatically coextensive with the rights of adults in other settings."

Student Constitutional Rights

- In *Tinker v. Des Moines*, Supreme Court ruled that Mary Beth Tinker, and two other classmates properly exercised their free speech rights by wearing black armbands to school to protest the Vietnam War.





Student Constitutional Rights

- The Supreme Court ruled that school officials may not punish or prohibit student speech unless they can clearly demonstrate that it will result in a **material and substantial disruption** of normal school activities or **invade the rights of others**.



Limits of Student Free Speech

- There are several legitimate bases for restricting student speech:
 - Lewd, vulgar, and indecent speech;
 - Speech promoting unlawful drug use;
 - Threats or Harassment;
 - School Sponsored Speech.



Lewd or Indecent Speech

- In *Bethel v Fraser*, a student's speech at a school assembly included a sexual innuendo. As a result, the School District suspended the student for three days and did not allow him to speak at commencement.
- Relying on *Tinker*, the lower courts held that the School violated the student's free speech rights. However, the U.S. Supreme Court reversed that decision, holding that:
 - "[T]he pervasive sexual innuendo in Fraser's speech was plainly offensive to both teachers and students indeed to any mature person," and that his speech was "wholly inconsistent with the 'fundamental values' of public school education."

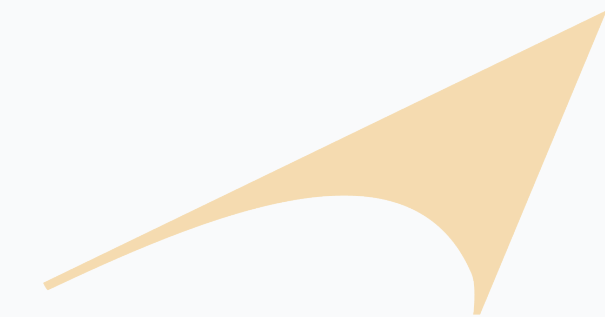


Lewd or Indecent Speech

- In *R.O. v. Ithaca City School District*, student editors of a school-sponsored paper sought to include a cartoon that depicted a teacher pointing to a blackboard containing eight drawings of stick figures in various sexual positions, with the phrase “Test on Monday” written on the blackboard.
- The Second Circuit Court of Appeals determined that the administrators did not violate the First Amendment rights of students by prohibiting the publication of a sexually explicit cartoon in a student publication distributed on school grounds.

School Sponsored Speech

- *Hazelwood v. Kuhlmeier*, 484 US 260 (1988)
 - A high school principal prevented student journalists from publishing a special teen issue section of their newspaper that included articles on teen pregnancy and the impact of divorce on students because he found the topics and articles “inappropriate.”
 - The Supreme Court held that the principal’s censorship did not violate the student journalists’ free speech rights.
 - The viewpoint was not “personal expression” but rather published in a school sponsored publication.



Threatening Speech

- Speech that a reasonable person would consider to be a “serious expression of *intent to harm or assault*” is not protected by the First Amendment.
- *Appeal of K.P.*, Decision No. 18,055 (2021)- During a class discussion about *MacBeth*, student said that he would go on a killing rampage. Commissioner reversed suspension, saying that comment was part of discussion about *MacBeth*, and was not disruptive or viewed as credible.



Political or Social Expression

- Schools do not have the right to restrict students from expressing controversial viewpoints.
- The desire to avoid discomfort or controversy is not enough to restrict a student's free speech rights.
- Rather, there must be a showing that the commentary is likely to cause material and substantial interference with the educational process.

Political or Social Expression

Can a student wear apparel with political commentary?



Political or Social Expression



- *Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006)
 - A school disciplined a student for wearing a t-shirt to school that criticized George W. Bush and depicted drugs and alcohol. The shirt ultimately conveyed an anti-drug and political message.
 - The Second Circuit sided with the student because:
 - The shirt was not sufficiently lewd, vulgar, indecent, or plainly offensive, particularly because of the anti-drug and political sentiments.
 - The shirt's message did not cause any disruption or confrontation in the school and officials did not contend that they had a reasonable belief that it would in the foreseeable future.



Political or Social Expression

- *K.D. v. Fillmore CSD* (W.D.N.Y. 2005)
 - A student was disciplined for wearing a pro-life t-shirt that read "Abortion is homicide."
 - The court held that the District's banning of the pro-life shirt was unconstitutional because it was based on the contents of the t-shirt.
 - Notably, the Court held that "students do not have the right not to be upset when confronted with a viewpoint with which they disagree."



Political or Social Expression

- In *Barr v. Lafon*, a Tennessee high school banned the display of confederate flags from the school environment, including on students' clothing due to racial tensions at the school.
 - The Court affirmed the school's ban of the Confederate flag, holding that school officials reasonably forecast that the symbol would disrupt the education environment.

Political or Social Commentary

- In *Hawk v. Easton Area Sch. Dist.* (E.D. Pa. 2010), two middle-school female students allegedly began wearing “I ♥ Boobies!” bracelets to honor the memory of family members who had died of breast cancer and to promote awareness of the disease.
 - The Third Circuit ruled that the bracelets were not obscene, did not cause disruption, and were designed to promote a social cause.



Promotion of Drug Use



- In *Morse v. Frederick*, when the 2002 Olympic Torch Relay passed through town, across the street from the high school, on a public sidewalk, a group of students held up a 14-foot banner that read “BONG HITS 4 JESUS,” resulting in their suspension from school.





Promotion of Drug Use

- To the degree that the message promoted drug use, the Supreme Court ruled that the School District did not interfere with the student's free speech rights.
- Districts may regulate the content of student speech if the speech is reasonably viewed as promoting a message not aligned with the values of public education at a school-approved social event, even if the event takes place off school grounds.

Off Campus Speech

- *Mahanoy v. B.L.*, 594 US 180 (2021)
 - After a student failed to make the varsity cheerleading team, she posted on her private Snapchat account a photo extending her middle finger along with saying "F*** school f*** softball f*** cheer f*** everything."
 - The post occurred off school grounds, and was available only to the student's friends for 24 hours.





Off Campus Speech

- One of the friends screenshot the post and distributed it more widely to student population.
- Five days later, the School District suspended the student for insubordination.
- The Supreme Court ruled that the suspension violated the student's free speech rights. The Court ruled that the student had a right to express her views, and such expression did not cause any substantial disruption to the school environment.
- Schools have a reduced interest in restricting speech off school grounds, but only in specific instances where there is significant disruption to the school.



Off Campus Speech

- The Court provided several examples of off-campus speech that may call for school regulation and discipline, including when the speech involves:
 - Serious or severe bullying or harassment targeting particular individuals;
 - Threats aimed at teachers or other students;
 - The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities;
 - Breaches of school security devices, including material maintained within school computers.



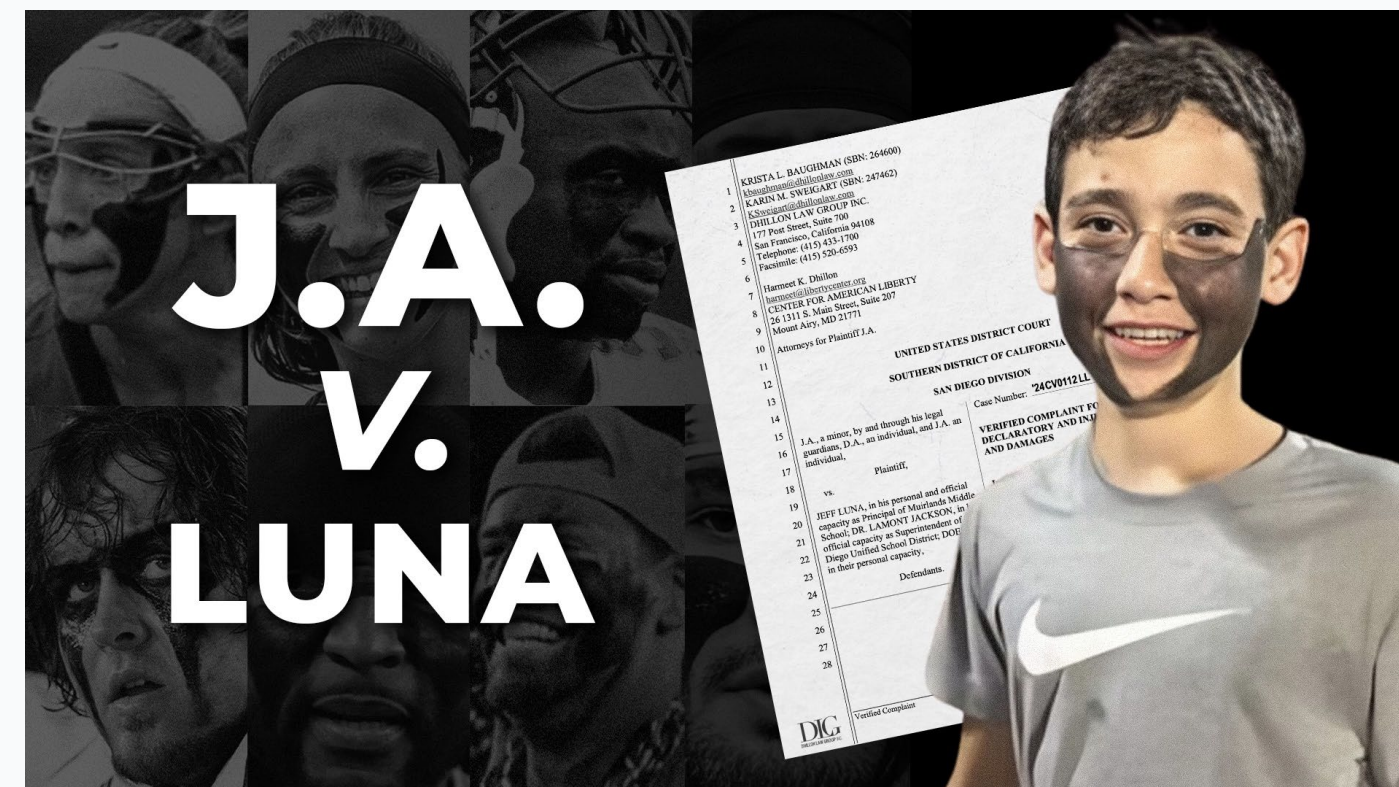
Off Campus Speech

- Federal Courts are still grappling with *Mahanoy*:
- *Chen v. Albany Unified Sch. Dist.*- 9th Circuit ruled that student's racist posts on Instagram to 13 friends was not protected free speech. Because it was foreseeable that the posts could reach the broader school community and cause disruption, the Court ruled that the School was justified in taking action.
- *C1G v. Siegfried*- 10th Circuit ruled that antisemitic posts on Snapchat to friends did not cause substantial disruption to the school— therefore, school had no basis to discipline.

Free Speech for School Spirit??



- *J.A. v. Luna*, (S.D. Cal. 2024)
 - Parents challenged the school's discipline of their child for conduct at a football game.
 - School claims that student wore "blackface" at game and engaged in racially provocative behavior.
 - Parents claim that student was wearing eye black, which athletes use to reduce sun glare. Student allegedly wore it to show school spirit.





Free Speech for School Spirit

- The Court disagreed with the student's argument that his use of eye black was only to convey school spirit.
- Student's behaviors at the game demonstrated racial insensitivity- he taunted the opposing team fans with friends, uttered the n-word, and commented that with his face painted, he "could use [the n-word] now."

Questions?



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