

Student's First Amendment rights on and off campus

Under the First Amendment, children in public schools have a variety of free-expression rights. Just like any citizen, students have the right to express their beliefs through speech, writings, and even clothing. Justice Abe Fortas wrote in *Tinker v De Moines Independent School District (1969)* that, “Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.”¹ Students in public schools should be free to exercise their First Amendment rights as long as they do not disrupt the educational process or infringe on the rights of other students.

In opposition of the Nation’s involvement in Vietnam, a group of students planned on wearing black armbands to school. Students were sent home and suspended until the armbands were removed. They sued the school for violating their First Amendment right.² This case, known as *Tinker*, made it to the Supreme Court where Justice Abe Fortas wrote, “In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”³ This decision strengthened the protection of students' First Amendment right from school officials who try to censor their expression just because it makes them uncomfortable. Only when

¹ “John F. Tinker and Mary Beth Tinker, Minors, Etc., Et Al., Petitioners, V. Des Moines Independent Community School District Et Al..,” Legal Information Institute (Legal Information Institute), accessed March 8, 2022, <https://www.law.cornell.edu/supremecourt/text/393/503>.

²Ibid <https://www.law.cornell.edu/supremecourt/text/393/503>.

³ Ibid <https://www.law.cornell.edu/supremecourt/text/393/503>.

students are interrupting learning or encroaching on the rights of other classmates should school administrators have the authority to limit their rights of the First Amendment.

When a student's First Amendment rights are in question off campus, a line must be drawn between the school's role and that of the parents. Brandi Levy was suspended from the cheer team when she posted a picture on social media saying explicit language about cheer and school when she did not make varsity. She sued the school for violating her First Amendment right to free speech.⁴ Taken to the Supreme Court, Justice Stephen Breyer wrote, "that a school's regulatory interests are lessened when a student engages in off-campus social media speech" and that "there was no evidence that her social media expression caused a substantial disruption under *Tinker*."⁵ If students exercise their right to free speech or expression outside of school, the school has less authority to intervene. They ruled in favor of Levy because there was no disruption of study and her social media speech was posted off campus.

Although students should be able to freely express themselves however they want under the First Amendment, there is a limit on those rights when the student is disrupting educational activities. Matthew Fraser made a speech nominating his friend to an elective office. Fraser "referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor."⁶ After school officials suspended him, he sued the school and it went all the way to the Supreme Court. In *Bethel School District No. 403 v. Fraser* (1986), the Court ruled in favor of the school where Justice Warren E. Burger wrote, "The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's

⁴ David L. Hudson Jr., "Mahanoy Area School District v. B.L." The First Amendment Encyclopedia., accessed March 8, 2022, <https://mtsu.edu/first-amendment/article/1947/mahanoy-area-school-district-v-b-l>.

⁵ Ibid <https://mtsu.edu/first-amendment/article/1947/mahanoy-area-school-district-v-b-l>.

⁶ David L. Hudson Jr., "Bethel School District No. 403 V. Fraser," The First Amendment Encyclopedia, accessed March 8, 2022, <https://www.mtsu.edu/first-amendment/article/675/bethel-school-district-no-403-v-fraser>.

countervailing interest in teaching students the boundaries of socially appropriate behavior.”⁷

The Court's decision demonstrates that the First Amendment rights of students has a limit.

Students have the right to free expression until it disrupts the learning environment or violates the rights of other students.

There are many different Supreme Court cases referring to student's First Amendment rights. The different aspects that each case has creates important stare decisis for future cases. In the case of *Canady v Bossier Parish School Board* (2001) parents sued the school board because they thought that implementing school uniforms violated their child's First Amendment rights. This case differs from *Tinker*, where the Court ruled in favor of the students because the armbands did not interfere with their learning, and *Bethel School District v Fraser*, where the Court ruled in favor of the school because the lewd and vulgar language interfered with the educational process of a school-sponsored activity. In *Canady*, since the main reason the school board implemented a uniform policy to increase test scores and student behavior, the Supreme Court ruled in favor of the school board because they felt that the “school board was not purposely trying to suppress students' free speech”⁸

In The Future of the First Amendment it analyzes that, “School officials must effectively strike a balance between encouraging civic education in the public schools on one hand and allowing students to think and speak freely on the other.”⁹ This balance is found when freedom of speech and expression is promoted in a safe and civil way. In this manner, students do not lose

⁷ “Bethel School District No. 403, Et Al., Petitioners v. Matthew N. Fraser, a Minor and E.L. Fraser, Guardian Ad Litem.,” Legal Information Institute (Legal Information Institute), accessed March 8, 2022, <https://www.law.cornell.edu/supremecourt/text/478/675>.

⁸ Dianne Gereluk, *Symbolic Clothing in Schools* (London: Continuum, 2008), p. 55.

⁹ Kenneth Dautrich, David Alistair Yalof, and López Mark Hugo, *The Future of the First Amendment: The Digital Media, Civic Education, and Free Expression Rights in America's High Schools* (Lanham, MD: Rowman & Littlefield Publishers, 2008), p. 29.

their fundamental rights to freedom of speech and expression on and off campus; but their rights are limited for the safety and protection of all students and their rights.

Work Cited

Bethel School District No. 403 v. Fraser 478 U.S. 675 (1986) Accessed March 8, 2022.

[https://www.law.cornell.edu/supremecourt/text/478/675.](https://www.law.cornell.edu/supremecourt/text/478/675)

Dautrich, Kenneth, David Alistair Yalof, and López Mark Hugo. *The Future of the First Amendment: The Digital Media, Civic Education, and Free Expression Rights in America's High Schools*. Lanham, MD: Rowman & Littlefield Publishers, 2008. p. 29.

Tinker v. Des Moines Independent School 393 U.S. 503 (1969) Accessed March 8, 2022.

[https://www.law.cornell.edu/supremecourt/text/393/503.](https://www.law.cornell.edu/supremecourt/text/393/503)

Gereluk, Dianne. *Symbolic Clothing in Schools*. London: Continuum, 2008. p. 54.

Hudson, David L. “Bethel School District No. 403 V. Fraser (1986).” The First Amendment Encyclopedia. Accessed March 8, 2022. <https://www.mtsu.edu/first-amendment/article/675/bethel-school-district-no-403-v-fraser>.

Hudson, David L. “Mahanoy Area School District v. B.L (2021).” The First Amendment Encyclopedia. Accessed March 8, 2022. <https://mtsu.edu/first-amendment/article/1947/mahanoy-area-school-district-v-b-l>.