

FREEDOM OF SPEECH IN SCHOOLS

K-12 CASES

In this K-12 Cases Fact Sheet, Jewish Federation of Northern New Jersey has compiled key legal cases that define the boundaries of free speech in schools- cases that are critical for understanding how schools can protect Jewish students while upholding constitutional rights. **These cases provide valuable insights into the responsibilities and limitations of educational institutions when responding to hate speech and antisemitism.**

Jewish Federation of Northern New Jersey has provided these cases as a resource for your crucial understanding of how schools can, cannot, and should respond to antisemitic speech or behavior while respecting constitutional rights.

The U.S. courts have long grappled with balancing students' First Amendment rights with the need to maintain a safe, inclusive learning environment. Key cases like the landmark *Tinker v. Des Moines* (1969) case, affirm that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." However, this right is not absolute and **speech can be limited when it disrupts the learning environment or infringes upon the rights of others.**

Other cases, such as *J.S. v. Blue Mountain School District* (2011), have expanded on this principle, particularly in the context of off-campus speech, such as online postings.

In *J.S.*, the court ruled that **schools cannot punish students for speech that does not create a substantial disruption at school**, providing important guidelines for how to address online hate speech and harassment without overreaching.

By examining these rulings, we can better advocate for policies that protect Jewish students from discrimination and hate while upholding the broader principles of free expression and tailor our interactions with school boards and districts.

Jewish Federation of Northern New Jersey's Jewish Community Relations Committee (JCRC) hopes you find this document useful.

If you have questions of concerns, please contact our JCRC Director, Alana Burman AlanaB@jfnj.org.

CASE 1: *Tinker v. Des Moines* (1969)

Background: In December 1965, a group of adults and students in Des Moines, Iowa, held a meeting at the home of the Eckhardt family. The group was determined to publicize their objections to the hostilities in Vietnam and their support for a truce in the war by wearing black armbands during the holiday season. The principals of the Des Moines schools became aware of the plan to wear armbands, and they immediately adopted a policy that stated that any students wearing an armband to school would be asked to remove it. If a student refused, they would be suspended until he returned without the armband. Several students chose to wear black armbands to school despite this newly enforced policy by the School Principals and were all sent home and suspended from school until they would come back without their armbands. The case was eventually brought to the Supreme Court of the United States, which held 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.

Takeaway: This case reiterated students' rights to free speech. Public school students maintain their First Amendment rights within a school's jurisdiction, though school officials retain authority to maintain a safe and effective school environment.

CASE 2: *Bethel School District v. Fraser* (1986)

Background: In April 1983, defendant and student Matthew Fraser delivered a speech at Bethel High School in Washington in front of approximately 600 students, most of whom were 14-year-olds. In his speech nominating another student for a student government office, Fraser used speech that was deemed as explicit and graphic in reference to another student. The speech caused his fellow students to yell and make obscene gestures. Fraser was later suspended, and banned from speaking at graduation, as the school had a standing policy against disruptive conduct. Fraser sued the school for violating his right to free speech. The case was brought from the school district to the Supreme Court. The Supreme Court reversed the judgment of the District and Appeals Court, ruling that the school did not violate the student's rights, as the 1st Amendment does not prevent a school district from disciplining a student for using speech that is lewd or indecent.

Takeaway: The First Amendment does not prohibit school officials from sometimes restricting public high school students from using vulgar and sexually provocative speech, particularly when given to a captive student audience in a school-sponsored setting.

CASE 3: Hazelwood v. Kuhlmeier (1988)

Background: A public school principal removed two articles from the school newspaper due to content he considered inappropriate. One story was about teen pregnancy and the other was about divorce. The student journalists sued the school, claiming their 1st Amendment rights had been violated. The Supreme Court ruled, however, that the school district did not violate the rights of students, as they ruled that public schools can regulate, with some limitations, the content of student newspapers and other publications that are paid for by the school and bear its name.

Takeaway: Schools may limit student First Amendment rights if student speech is inconsistent with an educational mission.

CASE 4: Desilets v. Clearview Regional Board of Education (1994)

Background: In January 1989, Brien Desilets, a student at Clearview Junio High School, submitted movie reviews on two R-rated films (Mississippi Burning and Rain Man) for publication in the newspaper. The school prevented the reviews from being published because the movies were R-rated. The student's mother brought a lawsuit on his behalf claiming the school's decision to censor his movie reviews violated her son's First Amendment rights. The Chancery Division in Gloucester County held that the actions of school officials violated the state constitution but not the federal constitution. After school officials appealed, the Appellate Division held that the censorship violated the student's First Amendment rights under the federal constitution. The New Jersey Supreme Court held that the censorship was not warranted and rejected the school officials' justifications for censoring reviews of R-rated movies citing Hazelwood (1988).

Takeaway: School officials can censor curricular non-public forum student newspapers when they can justify their decision with a legitimate education justification.

CASE 5: West v. Derby Unified School District (10th Cir.) (2000)

Background: A middle school student was suspended for drawing a picture of the confederate flag in his math class. The father of the student filed charges against the school citing the violation of the student's First Amendment rights. The Appeals Court ruled that the drawing violated the school's racial harrassment and intimidation policy. A federal district court rejected the West's claims, and the decision was upheld by the 10th Circuit Court of Appeals. The Court utilized the "substantial disruptions" test from Tinker v. Des Moines (1969), justifying school officials' fears that the drawings could disrupt the educational environment.

Takeaway: School officials can suspend a student for drawings of support for a particular symbol or cause on school property if they feel such images will infringe on the policy of the school for maintaining a safe and inclusive school environment.

CASE 6: Morse v. Frederick (2007)

Background: During the 2002 Olympic Torch Relay through Juneau, AK on the way to the winter games in Salt Lake City, a student and his classmates who attended with their teachers from a nearby school displayed a banner that promoted drug use. The principal confiscated the banner and suspended the student. The student sued the school and principal, citing his 1st Amendment rights being violated. The case went all the way to the Supreme Court, which ruled his rights were not infringed, as it ruled that schools can regulate speech that conflicts with school anti-drug policies, or similar school policies, even if the speech doesn't directly disrupt the educational process, such as a school sponsored event.

Takeaway: The First Amendment permits administrators to "restrict speech that a reasonable observer would interpret as advocating illegal drug use" during a school-sponsored or school-sanctioned event.

CASE 7: J.S. v. Blue Mountain Sch. District (3rd Cir.) (2011)

Background: A middle school student used her home computer to create a phony MySpace profile of her principal on MySpace, portraying him as a sexual predator. In response, the principal suspended the student for 10 days, and the student and her family sued, arguing that the school could not discipline her for her off-campus speech. The district court ruled in favor of the school on First Amendment claims. The 3rd Circuit reversed in part, saying that the school violated the student's rights in suspending her for off-campus speech that caused no substantial disruption in school. There was no evidence that anyone took the profile seriously. The decision to suspend the student violated her First Amendment right to speech.

Takeaway: Schools cannot punish students for off-campus speech that causes no disruption in school and could not have led to substantial disruption at the school.

CASE 8: Bell v. Itawamba County School Board (5th Cir.) (2015)

Background: Student Taylor Bell posted a recording of him rapping on Facebook and YouTube that criticized two Caucasian high school football coaches for allegedly sexually inappropriate comments toward African American female students. The school superintendent suspended Bell for “alleged threatening intimidation and/or harassment of one or more school teachers.” Bell was served a seven-day suspension by the school board and placed in an alternative school for the rest of the grading period. Bell sued in federal court, contending that his First Amendment free speech rights were violated. The district court ruled in favor of the school officials. Bell appealed to the 5th U.S. Circuit Court of Appeals, and the Court reversed the federal district court in favor of Bell, ruling that the rap song was not a true threat or substantially disruptive under *Tinker v. Des Moines* (1969). However, the school board sought en banc review of the decision, and the decision was ultimately reversed as the majority emphasized increased concerns over school violence.

Takeaway: Although the action was off-campus and a recording, speech intended toward the school community can violate school harassment and intimidation policy and pose a disruption to the school environment.

CASE 9: Dariano v. Morgan Hills Unified School District (9th Cir.) (2014)

Background: On May 5, 2010, several Caucasian students wore t-shirts with the American flag on Cinco de Mayo. After several students complained about the t-shirts, and tensions between Caucasians and Hispanics at the school, the assistant principal ordered the students to remove their t-shirts. The students later filed a lawsuit, alleging that their First Amendment free speech rights had been violated. The Federal district court dismissed their lawsuit, and on appeal the 9th Circuit affirmed the federal district court’s decision.

Takeaway: If something will cause a substantial disruption at school, in this case impending violence, school officials can take action to ban paraphernalia and clothing in the name of student safety (in line with *Tinker v. Des Moines*, 1969).

CASE 10: Mahonoy v. B.L. (2021)

Background: A high school student who found out that she failed to make the varsity cheerleading team chose to vent her frustration using her own phone and private Snapchat account using vulgar language and extending her middle finger. After viewing the video, the cheerleading coach kicked the student off the team. The student sued the coach and the school for citing her First Amendment rights being violated. This case went to the Supreme Court, which held that the school violated the student’s First Amendment rights.

Takeaway: The decision of the Court was rather timid when it comes to off-campus speech, but it reminds schools that they have no authority to regulate or punish students for their off-campus speech, including online speech that might find its way onto campus.

CASE 11: O’Connor-Ratcliff v. Garnier (2023)

Background: Christopher and Kimberly Garnier are parents of children in the Poway Unified School District in Poway, California. The Garnier family frequently posted comments critical of the District’s Board of Trustees on the social media pages of the District’s Board of Trustees. The two Trustees who were targeted with critical comments by the Garniers created personal Facebook and Twitter pages for their school-board campaigns, and began to hide or delete critical and often repetitive comments by the Garniers. In 2017, they blocked the Garniers from their social media campaigns. The Garniers then went on to sue the Trustees arguing their First Amendment rights were violated. The district court found that the Trustees had qualified immunity from the damages claims. The U.S. Court of Appeals affirmed.

Takeaway: Public officials are not required to provide unfettered access to their social media accounts, even if the accounts are used to discuss matters of interest to the public. A First Amendment violation occurs only when public officials restrict access to personal social media accounts and are exercising their power to speak on the state’s behalf.



SOURCE INFORMATION:

Center, Student Press Law. "Looking Back on Key Student Free Speech & Expression Cases." Student Press Law Center, 14 Sept. 2023, splc.org/2023/09/constitution-day-free-speech-expression-scotus-cases/.

"Court Cases – Free Speech." Louisville.edu, louisville.edu/freespeech/caselaw.

"Free Speech in High School | the Foundation for Individual Rights and Expression." www.thefire.org, www.thefire.org/research-learn/free-speech-high-school.

"J.S. V. Blue Mtn. Sch. Dist., No. 08-4138 (3d Cir. 2011)." Justia Law, law.justia.com/cases/federal/appellate-courts/ca3/08-4138/084138p1-2011-06-13.html.

"Mahanoy Area School District v. B.L. (2021)." The Free Speech Center, firstamendment.mtsu.edu/article/mahanoy-area-school-district-v-b-l/.

"Morse v. Frederick (2007)." Free Speech Center at Middle Tennessee State University, Middle Tennessee State University, 6 Aug. 2023, firstamendment.mtsu.edu/article/morse-v-frederick/. Accessed 30 Aug. 2024.

"O'Connor-Ratcliff v. Garnier." SCOTUSblog, www.scotusblog.com/case-files/cases/oconnor-ratcliff-v-garnier/.

"Students' Rights Archives." The Free Speech Center, firstamendment.mtsu.edu/encyclopedia/case/students-rights/.

"Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)." Justia Law, 2019, supreme.justia.com/cases/federal/us/393/503/.