



# Students' Free Speech Is Balanced Against the Authority to Maintain School Order

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For nearly a century, the U.S. Supreme Court has held that students do not lose their constitutional rights to free speech in the public school setting. However, those rights are not absolute; they're balanced against the authority and duty of public school officials to maintain order at their schools. While it's not always easy to determine what kinds of speech are permissible, there is some guidance that may assist.

Much of what is known about the regulation of students' speech arises from a couple of U.S. Supreme Court cases. In *Tinker v. Des Moines Independent Community School District*, a case that involved students who wore black

armbands to school to protest the war in Vietnam, the court ruled that a school may restrict speech only if it reasonably believes it "would substantially interfere with the work of the school or impinge upon the rights of other students." In *Morse v. Frederick*, a case in which a student, along with others, stood across the street from his school and unfurled

a banner that read "Bong Hits 4 Jesus" at a school-sanctioned and school-supervised event, the court found that school officials may prohibit student speech when it can be reasonably construed as promoting illegal activities.

The rule is that a school system may discipline a student for his speech only if it reasonably concludes that it would substantially

interfere with school operations or violate the rights of others. The key word in the previous sentence is "substantially." A desire to avoid controversy, inconvenience or annoyance is not enough to overcome a student's right to freedom of expression. A showing of the likelihood of dangerous or illegal action may be necessary.

If confronted with a student's speech issue, a public school official should not make any rash decisions. The first thing they should do is consult the superintendent or school board attorney. Counsel should be involved as early in the process as possible. If a determination is made that the student's speech is not protected by the First Amendment (ie: credible threats of violence against students or staff), the official may discipline the student in accordance with the district's student code of conduct. If the student's speech is covered by the First Amendment, or if it's unclear as to whether or not it's protected speech, there are other alternatives that may be available to reach a resolution. The official could ask the student to voluntarily refrain from the activity. He may consent to or deny this request. If that doesn't work, the school official could try to reason with the parent or legal guardian and ask them to tell the student to refrain from the activity. Similarly, they may consent to or deny this request. The district could also bargain with the student. If the student wants something, within reason, in exchange for voluntarily refraining from the speech, the district could explore resolving the matter that way. Individuals who are the targets of or adversely affected by the speech may also have civil or criminal remedies available to them.

For questions about this or any other legal issue, please contact the PAGE Legal Department. ■

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