



The
UNIVERSITY
of VERMONT

Vermont Legislative Research Shop

Freedom of Expression in Public Schools

The First Amendment prevents Congress from abridging U.S. citizens' right to freedom of speech; the 14th Amendment extends this limitation to state and local governments.¹ Many state constitutions also have clauses protecting the freedom of expression. This report examines the extent to which freedom of expression is extended to students in public schools.

Court Rulings

In 1969 the US Supreme Court issued a key opinion on freedom of expression in the case *Tinker v. Des Moines* (393 U.S. 503). Students who had worn black armbands to protest the Vietnam War were told to leave school and not return until they had removed them. Five students were suspended for this. The Court decided that the students were not disrupting classes or any nature of the school functioning. It was decided that the students who had worn them should not have been punished. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (Justice Fortas). You cannot suspend a student for using their First Amendment rights. Schools cannot deny a student their freedom of speech.²

In 1983 Matthew Frasier gave a speech with clear sexual references, which evoked cheers from some students as well as looks of disgust from others. The faculty was dismayed and Frasier was suspended. This case came to be known as *Bethel School District v. Frasier* (478 U.S. 675). The speech was to help get a fellow student elected into student office. The court cited *Tinker* and recognized that although the speech contained inappropriate language, it was being used to make a point and to get another student elected. Had he been being inappropriate for no purpose, he could have been suspended, but he was using his freedom of speech rights.³

In *Blau v. Fort Thomas Public School District et al.* (401 F.3d 381, 395 (6th Cir. 2005)) a student was found to be violating the school's dress code. The dress code called for students not to wear clothing that is too baggy, tight, revealing, condoning inappropriate messages, ripped or

¹ Taken from information regarding the First Amendment and the freedom of speech. Retrieved on April 21, 2009. http://topics.law.cornell.edu/wex/First_amendment

² Information taken from *Tinker v. Des Moines*. Retrieved on April 14 2009. http://www.bc.edu/bc_org/avp/cas/comm/free_speech/tinker.html

³ Information taken from *Bethel School District v. Frasier*. Retrieved on April 23, 2009. <http://www.law.umkc.edu/faculty/projects/ftrials/firstamendment/bethel.html>

representing any kind of logos. This dress code was established in 2001. It was also decided that parents as well as students are responsible for the appropriateness of the student's attire. The dress code was again modified before the 2002 school year while this case was still being decided. Robert Blau, the father of Amanda Blau, brought the suit against the school after her daughter was found to be violating the code. He argued that she was not trying to convey any sort of message; she was just trying to look nice. Blue jeans were prohibited, and Blau argued that the school was violating her right to say she could not wear them, as they were not offensive to anybody. Blaus sought to use the first amendment claim of free speech. Amanda wasn't trying to claim any particular message though. By just trying to look nice she isn't using her freedom of speech. The suspension stood and she was violating the school policy.⁴

In 2007 the Supreme Court took up the case of *Scott v. Napa Valley Unified School District*, No. 26-37082 (Calif. Super. Ct. Napa Co. prelim. injunction granted Jul. 2, 2007). California Redwood Middle School had created a new dress policy in 1998. The policy was known as the "appropriate attire policy." It had been changed and hadn't been an issue until 2007. The policy was trying to prevent children from promoting gangs, racism, immorality, drugs, alcohol or other ideas that children in schools should not be involved with. Attached to this policy the clothes may not have logos of any kind and should be solid colors. The students who were found violating the school policy were wearing Tigger socks, a D.A.R.E. t-shirt, a red heart sticker on Valentines Day, a Jansport brand backpack and a student also had a t-shirt with the slogan "Jesus Freak." This case recognized the *Tinker v. Des Moines* case and the argument that students don't lose their constitutional rights at the entrance to the school. None of these articles of clothing represented any kind of policy that wasn't allowed at the school. They were freely expressing themselves and since nothing was drug related or offensive the students were not found to be violating school policy.⁵

In June of 2007 the Supreme Court handed down the decision in *Morse v. Frederick* (551 U.S. 393). An Alaskan high school student presented a banner reading "Bong Hits 4 Jesus" on national television during the Olympic torch ceremony. The student was suspended for this banner. Frederick petitioned that Morse and the school were violating his First Amendment rights when they took the banner and suspended him. The Court, citing *Tinker*, agreed that students still do not lose their constitutional right at the door, but since the student was promoting drug use the suspension was justified. The student was violating the school drug use policy by promoting smoking marijuana.⁶

⁴ Information taken from *Blau v. Forth Thomas Public School District et al.* Information retrieved on April 19, 2009. <http://www.ca6.uscourts.gov/opinions.pdf/05a0058p-06.pdf>

⁵ Information taken from *Scott v. Napa School District*. Retrieved on April 21, 2009. <http://www.aclu.org/freespeech/youth/303631g120070702.html#attach>

⁶ Information taken from *Morse v. Frederick*. Retrieved on April 21, 2009. <http://www.law.cornell.edu/supct/html/06-278.ZS.html>

State Laws Protecting Students' Freedom of Expression

While courts have generally decided the degree to which First Amendment rights apply within schools, some states have taken it upon themselves to pass additional legislation to ensure the protection of students' freedom of expression. Currently six states have this type of legislation. In several cases, the laws were passed in response to the Federal Supreme Court decision in *Hazelwood School District v. Kuhlmeier* (484 U.S. 260) that school officials have the right to censor school-sponsored student publications if doing so for legitimate pedagogical concerns.⁷ Some of these laws specifically grant publication rights, whereas others more generally support students' rights to freedom of expression. Following is a brief summary of each law.

California: 1977

The California Education Code Section #48907 protects students' rights to freedom of expression, especially with respect to the press. This law was passed well before the 1988 *Hazelwood* decision. The basic provisions of the code are as follows:

Pupils of the public schools shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not the publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.⁸

The legislation additionally requires proof of violation of the stipulations above from the school official before student expression may be censored.

Massachusetts: 1988

The first of the laws passed in response to the *Hazelwood* decision, Chapter 71, Section 82 of the Massachusetts General Laws broadly protects students' freedoms of expression, press, and assembly in public schools. The law also stipulates the school officials cannot be held responsible for any views expressed by the students.⁹

⁷ David L. Hudson, Jr. "Overview of Student Expression in Newspapers and Yearbooks." First Amendment Center, updated October 2007. Retrieved 23 April 2009 from http://www.firstamendmentcenter.org/speech/studentexpression/topic.aspx?topic=K-12_newspapers_yearbooks

⁸ California Education Code Section #48907. Retrieved 23 April 2009 from <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=48001-49000&file=48900-48927>

⁹ Massachusetts General Laws, Chapter 71, Section 82. Retrieved 23 April 2009 from <http://www.mass.gov/legis/laws/mgl/71-82.htm>

Iowa: 1989

On May 11, 1989 the state of Iowa passed Section 280.22 of the Iowa Code, which is based on freedom of expression for students. Students may publish work based on their freedom of expression, unless it contains obscenities, promotes unlawful acts, violates school policies, or disrupts school functions. The code that explicitly states these provisions will be provided to students and parents to make sure that they are knowledgeable and do not violate it. It is important that students uphold English and journalism standards. The student publications are not to be recognized as a view that the school or its staff supports and they shall not be held liable, unless they have altered the publication.¹⁰

Colorado: 1990

On June 7, 1990 the state of Colorado passed Colorado Revised Statute Section 22-1-120. This act recognizes the student's right to publish what they wish based on their freedom of speech, as long as it is not obscene, slanderous, is false promotes law breaking, or violates school policy. This code will be available to students and staff every year as to make sure the policy is clear. The student advisors are expected to promote English and journalism at its finest quality. The expression of students in their publications is not to be held as school views or policy and the school shall not be held liable. Nothing in this act is intended to prevent schools from policing gang activity in schools.¹¹

Kansas: 1992

On February 21, 1992 the state of Kansas passed the Kansas Student Publication Act which contains Sections 72-1504 & 72-1505. This act specifically protects student journalists from faculty censoring their work. With this act, any student when writing in a public school controls the material and the administration has no right to intervene and deem a piece unsuitable for the newspaper. The administration may control number, length and frequency of pieces, but not based on political or controversial matters. Material that is promoting any kind of law breaking, or disrupting of school policy is not protected under this act. Student advisors of student publications are expected to promote healthy journalism and freedom of speech. An advisor cannot be punished for refusing to change a student's publication, based on their freedom of speech. Neither the school nor the administrative personnel shall be held responsible for the publication views put out by students. If a student promotes civil or criminal action and is of legal age, s/he may be brought to court.¹²

¹⁰ Iowa Code, Statute 280.22. Retrieved on April 23, 2009. <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=82&input=280#280.22>

¹¹ Information taken from the document discussing Colorado Revised Statute Section 22-1-120. Retrieved on April 23, 2009. <http://www.cod.uscourts.gov/Documents/Judges/Opinions/07-CV-01798-WYD.pdf>

¹² Kansas State Publications Act. Retrieved on April 23, 2009. http://www.splc.org/law_library.asp?id=9

Arkansas: 1995

The Arkansas Student Publications Act protects students' right of expression in the press, including school-sponsored publications. The restrictions are very similar to those expressed in the other laws detailed here, and are as follows:

Student publications policies shall recognize that truth, fairness, accuracy, and responsibility are essential to the practice of journalism, and that the following types of publications by students are not authorized:

- (1) publications that are obscene as to minors, as defined by state law;
- (2) publications that are libelous or slanderous, as defined by state law;
- (3) publications that constitute an unwarranted invasion of privacy, as defined by state law; or
- (4) publications that so incite students as to create a clear and present danger of the commission of unlawful acts on school premises or the violations of lawful school regulations or the material and substantial disruption of the orderly operation of the school.

No protections or limitations of responsibility for the school officials are included in the law.¹³

Oregon: 2007

Section 351.649 of the Oregon Revised Statutes, the Oregon Student Free Expression Law, protects the rights of freedom of expression and freedom of the press for students in public high schools and institutions of higher education.¹⁴ This law is particularly notable because it is the first action of this type to be passed since 1995. At least five other states considered but did not pass similar measures.¹⁵

Compiled by Hannah Fjeld and Jameson Halnon under the supervision of Professor Anthony Gierzynski on May 8, 2009.

Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.

¹³ "Arkansas Student Publications Act," Ark. Stat. Ann. Secs. 6-18-1201 – 1204, Student Press Law Center. Retrieved 23 April 2009 from http://www.splc.org/law_library.asp?id=5

¹⁴ Oregon Revised Statutes section 351.649, Retrieved 23 April 2009 from <http://www.leg.state.or.us/ors/351.html> and http://www.splc.org/law_library.asp?id=43

¹⁵ Hudson Jr., 2007.