

Examining Student Speech Rights



Lesson Plan: Examining Student Speech Rights

Overview: The Supreme Court's 1969 decision in *Tinker v. Des Moines* established a precedent for student rights that continues to shape legal battles today. This short documentary video explores the impact of *Tinker v. Des Moines* and the ongoing challenges to student speech in a digital age.

Subjects: Civics/Government, U.S. History

- This lesson covers numerous Supreme Court rulings over several decades in U.S. History, specifically focusing on the First Amendment and student expression.

Grade Level: 9-12

Lesson Duration: One or two class periods

- Select "File>Make a Copy" to eliminate, edit or re-order any of the modular sections on the activity handout.

Essential Questions:

- How does the free speech clause of the First Amendment apply to students in schools?
- How have key Supreme Court rulings influenced the evolution of student free speech rights in the United States?
- What limitations exist on student expression within a school setting? Why?

Lesson Objectives:

Students will:

- Analyze Supreme Court rulings related to student expression.
- Determine how select Supreme Court decisions shape the boundaries of student expression in schools.

Materials:

- Retro Report video "[How Tinker v. Des Moines Established Students' Free Speech Rights](#)" ([Transcript](#))
- [Student Activity](#) handout
 - Interactive Primer: [Is Your Speech Protected by the First Amendment?](#) | Freedom Forum
 - [Tinker v. Des Moines Independent Community School District](#) (1969) | Oyez
 - [Bethel School District No. 403 v. Fraser](#) (1986) | Oyez
 - [Hazelwood School District v. Kuhlmeier](#) (1988) | National Constitution Center
 - [Morse v. Frederick](#) (2007) | Oyez

Procedure:

1. Distribute the Student Activity handout and have students indicate whether the statements in the first section are true, false, or they are uncertain.

2. Direct students to the next section of the Student Activity handout and have them utilize the Freedom Forum's Interactive Primer: [Is Your Speech Protected by the First Amendment?](#) to review speech that is protected by the First Amendment and speech that isn't. They should record three things they learned, two questions they have, and one thing they find interesting.
 - a. [3-2-1 Strategy](#) | Facing History & Ourselves
 - b. Parts of the primer "Is it speech? If it is speech, is the government censoring or punishing it? If the government is censoring your speech, does your speech fall into an unprotected category? If your speech does not fall into one of the unprotected categories, do you fall into a special category?"
2. To check for understanding, ask students what speech or expression they believe would be and would not be protected by the First Amendment in a school setting.
 - a. Note about public vs. private schools: "Because they are government agencies, public schools are limited by the First Amendment in their ability to censor. The First Amendment does not regulate the behavior of private schools. However, state law or school policy could provide legal protections." [High School Press Freedom](#) | Student Press Law Center
3. Have students watch the Retro Report video "[How Tinker v. Des Moines Established Students' Free Speech Rights](#)" ([Transcript](#)) and answer the following:
 - a. What did Mary Beth Tinker want to express by wearing a black armband?
 - b. Why did her public school make a rule against students wearing black armbands?
 - c. Tinker v. Des Moines (1969): What did the Supreme Court rule when it sided with the students?
 - d. What did Brandi Levy do? Why did her school punish her?
 - e. Mahanoy Area School District v. B.L. (2021): What did the Supreme Court rule when it sided with the student?
 - f. In Tinker v. Des Moines, the U.S. Supreme Court recognizes that the First Amendment protects _____ student speech.
 - i. on-campus
 - ii. off-campus
 - g. In Mahanoy Area School District v. B.L., the U.S. Supreme Court recognizes that the First Amendment protects _____ student speech.
 - i. on-campus
 - ii. off-campus
4. After the video, review the meaning of [precedent](#) and [stare decisis](#), as needed. "State-operated schools may not be enclaves of totalitarianism" - review, as needed: [Enclave](#); [Totalitarian](#).
5. Inform students that they will analyze landmark Supreme Court decisions relating to student expression and direct them to complete the corresponding section on the Activity handout.
6. Allow students time to consider the questions related to Tinker v. Des Moines, Bethel v. Fraser, Hazelwood v. Kuhlmeier, and Morse v. Frederick, then review answers as a class. Possible items to emphasize:
 - a. The U.S. Supreme Court recognized that the First Amendment protects on-campus student speech: Neither students nor teachers "shed their constitutional rights to freedom of expression or speech at the schoolhouse gate." — Supreme Court majority opinion Tinker v. Des Moines
 - b. The Tinker Standard: Student speech is protected from censorship except for:

- i. Speech that invades the rights of others (unprotected speech)
- ii. Speech that creates a material and substantial disruption of normal school activities
 - 1. “Material and Substantial Disruption”
 - a. Serious, physical disruption generally required
 - b. Reasonable forecast of disruption required
 - i. [High School Press Freedom](#) | Student Press Law Center
- iii. Review with students: A majority of the justices “concluded that the facts of Hazelwood were significantly different from those it had considered in Tinker. Mary Beth’s armband, the Court said, was private, or independent, speech. She made the armbands and wore them all on her own. The Hazelwood Spectrum newspaper, on the other hand, was funded by the school, produced as part of a journalism class and overseen by a journalism teacher paid by the school. It was, the Court said, school-sponsored student speech, which the Court concluded fell into a new and different legal category — and required the application of a new and different legal standard.”
 - 1. Source: [High School Press Freedom](#) | Student Press Law Center
- iv. The Hazelwood Standard: Censorship must be “reasonably related to legitimate pedagogical concerns.”
 - 1. Is there a reasonable educational justification? According to the U.S. Supreme Court, examples include material that is:
 - a. “Poorly written”
 - b. “Biased or Prejudiced”
 - c. “Unsuitable for immature audiences”
 - d. “Ungrammatical”
 - e. Material that would “associate the school with anything other than neutrality on matters of political controversy”
 - f. Material that is “inconsistent with the shared values of a civilized social order”
 - i. Source: [High School Press Freedom](#) | Student Press Law Center
 - 2. Morse: The majority opinion held that political speech is protected in school, but does not extend to pro-drug messages that may go against an important mission of the school to discourage drug use. The majority also affirmed that the speech rights of public school students are not as extensive as those of adults.
- c. For the Teacher (use or not, with discretion):
 - i. **Tinker v. Des Moines Independent Community School District (1969):** “This armband was worn by 13-year-old Mary Beth Tinker in 1965 to protest the Vietnam War, resulting in her suspension from school. It is pinned into a notebook she used for a school report.”
 - 1. Source: [Display case contents Tinker Exhibit](#) | The Judicial Learning Center in St. Louis
 - ii. **Bethel School District No. 403 v. Fraser (1986):** Text from student speech:
 - 1. “I know a man who is firm: He’s firm in his pants, he’s firm in his shirt, his character is firm-but most ... of all, his belief in you, the students of Bethel, is firm.

"Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts. He drives hard, pushing and pushing until finally he succeeds.

"Jeff is a man who will go to the very end, even the climax, for each and every one of you.

"So vote for Jeff for A. S. B. vice-president . He'll never come between you and the best our high school can be."

- a. Source: Bethel School District No. 403 v. Fraser (1986) 478 U.S. 675 | Library of Congress

- iii. **Hazelwood School District v. Kuhlmeier (1988):** [Page Proofs of the Spectrum, 1983](#) (Document C, page 3; [Transcript](#): Document C)

1. Source: The Bill of Rights Institute

- iv. **Morse v. Frederick (2007):** ["Bong Hits 4 Jesus" Banner](#)

1. Source: [Mlschafer at en.wikipedia, Public domain](#) | Wikimedia Commons

7. Have students do a quick self-assessment indicating which of the following best describes their knowledge at this time:
 - a. I still do not know what free speech/expression rights public school students have.
 - b. I know some of the free speech/expression rights of public school students.
 - c. I have a deep understanding of the free speech/expression rights of public school students.
 - d. I am able to explain to others the free speech/expression rights of public school students.
8. Close by having students consider Emily Gold Waldman's statement: "...part of the mission of schools should be to enable students to engage in... conversations in a productive way. We have a democracy, and so school is an important training ground for that." Reflection questions:
 - a. What are some obstacles students have to overcome to engage in productive conversations in school?
 - b. In your K-12 school experience, in what ways has the school provided or not provided a training ground for democracy?

Extension Activity:

1. Conduct a Moot Court using Street Law's [Mahanoy Area School District v. B.L.](#) and the [Simple Steps to Conduct a Moot Court Activity](#) from Teach Democracy (formerly known as Constitutional Rights Foundation).

Relevant Standards/ Frameworks:

[College, Career, and Civic Life \(C3\) Framework for Social Studies](#)

- **D1.4.9-12.** Explain how supporting questions contribute to an inquiry and how, through engaging source work, new compelling and supporting questions emerge.
- **D2.His.1.9-12.** Evaluate how historical events and developments were shaped by unique circumstances of time and place as well as broader historical contexts.
- **D2.His.5.9-12.** Analyze how historical contexts shaped and continue to shape people's perspectives.
- **D2.His.2.9-12.** Analyze change and continuity in historical eras.

- **D2.Civ.5.9-12.** Evaluate citizens' and institutions' effectiveness in addressing social and political problems at the local, state, tribal, national, and/or international level.
- **D2.Civ.10.9-12.** Analyze the impact and the appropriate roles of personal interests and perspectives on the application of civic virtues, democratic principles, constitutional rights, and human rights.
- **D2.Civ.12.9-12.** Analyze how people use and challenge local, state, national, and international laws to address a variety of public issues.
- **D2.Civ.14.9-12.** Analyze historical, contemporary, and emerging means of changing societies, promoting the common good, and protecting rights.

Common Core Literacy Standards

- **CCSS.ELA-LITERACY.RH.9-10.1** Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.
- **CCSS.ELA-LITERACY.RH.11-12.1** Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.
- **CCSS.ELA-LITERACY.RH.9-10.2** Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.
- **CCSS.ELA-LITERACY.RH.11-12.2** Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.
- **CCSS.ELA-LITERACY.RH.9-10.4** Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science.
- **CCSS.ELA-LITERACY.SL.9-10.1** Initiate and participate effectively in a range of collaborative discussions with diverse partners on grades 9-10 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

About the Author: Ron DeGregorio is a Social Studies educator from Toledo, Ohio. Ron currently teaches 9th grade American Government and 11th-12th grade Law.