

## IS FREEDOM OF SPEECH ABSOLUTE?

### Analyzing *Tinker v. Des Moines* and What It Means for Students' Rights

The 1969 Supreme Court case *Tinker v. Des Moines* helped to pave the way for the extension of students' rights and freedoms. In the 7–2 decision, the court stated that as long as a student's expression of an opinion does not interfere with the educational setting, it is allowed.

Though the case had support from the majority of justices, not everyone on the court agreed with this decision. Delivering the dissenting opinion was Justice Hugo Black, who stated, "It is a myth to think that any person has the constitutional right to say what he pleases, where he pleases, and when he pleases" (*Tinker v. Des Moines*). In his opinion, Justice Black referenced the ongoing disputes in the United States regarding the Vietnam War, which caused disruptions and divided the country as other issues had before. The subject of the case—black armbands with peace signs that the students wore in protest of the war—could be considered a distraction to other students, as they called attention to an ongoing situation that had left many wounded or dead. Justice Black concluded that a public-school setting was not the correct place to express these sentiments.

While the Supreme Court ruled in favor of the students in *Tinker v. Des Moines*, the majority opinion still acknowledged there are limitations to "freedom of expression" in educational settings. If a school attempted to censor a student, it would have to provide evidence that the student's words or actions interfered with the school's ability to function and provide discipline to all students.

One example of a school's use of this defense occurred in *Boucher v. School Board of the School District of Greenfield*, a 1998 case concerning a Wisconsin high school student who created an underground newspaper. The newspaper was called "The Last" and was distributed on school grounds, but it had no school affiliation. It included anonymous articles that "...were intended to ruffle a few feathers." In an article titled "So You Want to Be a Hacker," the student author discussed how to hack into school computers and access private information. Once the school obtained this information, the student responsible for the article was expelled for endangering school property. The student filed a complaint against the school board for violating his right to write about hacking, which he claimed was protected by the free speech clause of the First Amendment. When the case reached the U.S. Court of Appeals, 7th Circuit, the court ultimately voted against the student, stating that the school had the right to expel Boucher on the grounds that the article could cause a significant disruption to the school and its students.

A court delivered a similar ruling in *Bradford v. Norwich City School District*, which concerned a student who was suspended for texting another student about causing harm to a third student. Although the incident occurred off school property, the student who sent the text message was

suspended after administration was contacted about the text messages and the threat to the third student. The suspended student took his case to court and sued the school district for violating his First Amendment rights. However, a New York federal court ruled in 2014 that although the incident occurred off school property, the school still had the right to prohibit speech that could cause harm within the school or disrupt the school's environment and its ability to discipline students.

As times change and more students stand up to fight for their rights, the idea of extending students' freedoms of speech and expression continues to be challenged every day. Currently, the focus is on the question of students' social media use off campus. One case recently decided by the Supreme Court involved a Pennsylvania high school student who was suspended in 2017 for expressing her dissatisfaction on social media after she did not make the varsity cheerleading squad. The student's use of inappropriate language and emojis on Snapchat resulted in her suspension, with the school claiming her actions hindered its ability to maintain a "team-like" environment. On June 23, 2021, the Supreme Court delivered an 8–1 ruling in favor of the student, stating that "B. L.'s punishment violated the First Amendment because her Snapchat posts had not caused substantial disruption at the school" (*Mahanoy Area School District v. B. L.*). The court acknowledged that in the *Tinker* case, it was ruled that schools could regulate on-campus speech or material that disrupts classwork, or even off-campus speech that involves harassment, bullying, or threats to others. Outside of these factors, however, schools' attempts to regulate students' speech require more scrutiny.

As Supreme Court Justice Abe Fortas stated, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines*). While students can refer to this landmark case in calling for an extension of their freedoms, they must remain aware that with those freedoms come responsibilities and limitations.

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