

CONTROL OF STUDENT SPEECH: A SUMMARIZED REFERENCE GUIDE

The First Amendment rights of students regarding expression continue to be defined by actions of the courts. The table below identifies types of student expression that may be heavily controlled and descends downward with those types of expression where the courts have opined that school officials may have less control.

Type of Expression	Degree of Control Acceptable
Obscene, lewd, vulgar, or offensive expression	Such expression is not protected by the First Amendment and, therefore, can be suppressed. (1)
Inflammatory expression	Such expression is not protected by the First Amendment and, therefore, can be suppressed. (2)
Defamatory expression, distinguished from fair comment (in order for expression to be “defamatory”, it must be false, expose someone to ridicule or shame, and be expressed to someone other than the object of expression.)	Such expression is not protected by the First Amendment and, therefore, can be suppressed. (3)
Expression is school-sponsored publications and productions, such as plays, yearbooks, and social newspapers.	Such expression may be suppressed or regulated as long as the action taken is reasonably related to legitimate educational concerns. (4)
Grooming and dress (may be viewed as symbolic expression and constitutes an ingredient of personal freedom.)	Grooming and dress may be regulated when disruptive, obscene or libelous or for safety and health reasons. (5)
Underground student newspapers and leafletting	Such activities are suppressible under one of the above categories. The school may also control the time, place and manner of such activities provided that restrictions are uniformly applied. However, distribution can be suppressed if the contents materially and substantially interfere with requirements of appropriate student conduct; violate the rights of others; or, advocate an illegal activity. (6)
Political or ideological opinions and viewpoints	The school may control time, place, and manner of such expression provided restrictions are uniformly applied. Distribution can be suppressed if the contents materially and substantially interfere with requirements of appropriate student conduct; violate the rights of others; or, advocate an illegal activity. (7)

Footnotes:

1. In **Tinker v. Des Moines Ind. Sch. Dist.**, 393 U.S. 503 (1969), the United States Supreme Court held that students could not be punished for expressing their personal views on school premises unless such speech substantially interfered with the work of the school or impinged upon the rights of other students or unless the administration had reason to believe that such expression, if permitted, would result in such interference with school operations or the rights of others. **Bethel School Dist. No. 403 v. Fraser**, (1986) 106 S.Ct.3159,92 L.Ed.2d. 549, Trend was signaled by the Court's 1986 decision which confirmed educators' broad discretion to define and punish lewd and indecent speech in public schools.
2. **Melton v. Young**, (6th Cir. 1972) 465 F.2d 1332, cert. denied (1973) 411 U.S. 951, Wearing Confederate flag in a recently-integrated school could be suppressed.
3. **Gano v. Sch. Dist.** 411, 674 F.Supp. 796 (D. Idaho 1987), Student was prevented from wearing a shirt depicting three administrators holding alcoholic beverages and appearing to be drunk while on school property.
4. **Hazelwood School Dist. V. Kuhlmeier**, (1980) 108 S.Ct. upheld the authority of a school principal to exercise reasonable control over the contents of a school newspaper produced as part of the school's journalism curriculum. Educators have similar control over school-sponsored school plays.
5. **Katz v. McAulay**, (2nd Cir. 1971) 438 F.2d 1058, cert. denied (1972) 405 U.S. 933, The prevailing trend, however, is to uphold grooming codes if reasonably related to the maintenance of discipline and furtherance of a valid educational purpose, including the teaching of grooming, discipline, and etiquette. **See Harper v. Edgewater**, (S.D. Ohio 1987) 655 F.Supp. 1353, Students' rights were not violated by school's refusal to permit them to attend school prom dressed in clothing of the opposite sex. Also **Gano, supra**.
6. **Fujishima v. Bd. Of Education**, (7th Cir. 1972) 460 F.2d 1355, Time, place and manner restrictions upheld. Also, **Tinker, supra**. And more broadly **Hazelwood, supra**. does not give school officials control over the style and content of "underground" student periodicals that are published without school sponsorship or support and are not part of the curriculum. Instead, **Tinker** governs such publications which usually cannot be restricted unless administrators have evidence to forecast that the contents will cause substantial disruption or interfere with the rights of others. Schools, however, can regulate the time, place, and manner in which these and all other publications are distributed. The more the school assists a publication with funding or faculty support, the more likely it is to be considered school-sponsored and subject to the school's editorial control. However, if the publication receives little or no financial support or faculty supervision, or if school policy and past practice clearly indicate that the school operates as an open forum, it is likely to fall under the **Tinker** test. Also, **Jacobs v. Board of School Commissioners of Indianapolis**, (7th Cir. 1973) 490 F.2d 601, School was prohibited from banning student distribution of the Corncob Curtain, an unofficial newspaper. However, more specifically in **Burch v. Barker**, 651 F.Supp. 1149, 37 Ed. Law 576 (W.D.Wash.)1987), the court found that the potential for disruption of a high school does exist where students distribute written materials on school grounds without prior approval. Also in **Dodd v. Rambis**, (S.D.Ind. 1981) 535 F.Supp 23, Student suspension for leafletting was upheld where leaflet advocated walkout.
7. **Fujishima, supra; Tinker, supra**.