

# ISSUE:

Do you have complete freedom of expression at school?

Teens Take It to Court

## Case: *Tinker v. Des Moines Independent School District* (1969)

High school is often a time when students strive to blend in with the crowd while still being unique individuals. Do you feel comfortable doing something that sets you apart from the rest of your class or might lead to criticism? The teens in this case held strong views about war, particularly the involvement of the United States in Vietnam. They took a stand, and their case became the benchmark for future free speech issues at school.

## THE FACTS

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In December 1965, a group of students and parents in Des Moines, Iowa, decided to express their objection to the war in Vietnam by wearing black armbands during the holiday season. The school district, fearing the protest would create a disruption, passed a policy banning armbands at school. Students who wore one would be asked to remove it. Refusal meant suspension until they returned without it.

John Tinker was fifteen and in high school. His sister Mary Beth (age thirteen) was in junior high, while Paul (eight) and Hope (eleven) Tinker attended elementary school. All four kids, along with a friend, Chris Eckhardt (fifteen), wore the two-inch-wide black cloth armbands to school. When John, Mary Beth, and Chris refused to take the bands off, they were suspended and sent home. After the holidays, they returned to school without them.

The Tinkers sued the school district, asking the court to throw out the rule as an unconstitutional violation of their freedom of expression guaranteed in the First Amendment (see the **Bill of Rights** on pages 18–19).

## YOU BE THE JUDGE

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- The First Amendment provides for freedom of expression. Do schools have a right to limit a student's freedom? Why or why not?
- Do you think the type of expression affects this decision? If so, how?



## THE RULING

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In this case, the U.S. Supreme Court needed to balance the authority of school officials to maintain order on campus and the First Amendment rights of students, including freedom of speech and expression.



The principles of this case, which remain valid today, start with the premise that students are persons in and out of school, with fundamental rights. The Court stated, in a seven to two decision written by Justice Abe Fortas, that the classroom is a marketplace of ideas and depends on a robust exchange of ideas. Students and teachers don't "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Consequently, the school district lost this case.

The Court stated firmly that free speech on campus is the basis of our national strength and of the independence and vigor of Americans. In fact, a student's right to expression goes beyond the classroom to the cafeteria, playing field, or anyplace else on campus. "A subject should never be excluded from the classroom merely because it is controversial," the Court wrote.

Does this mean there are no limits—that you can say or do anything while at school? Where is the line drawn?

The test is one of disturbance or disorder. As long as the act of expression doesn't greatly disrupt classwork or school activities, or invade the rights of others, it's acceptable. (This is decided by a school administrator or district policy.) There's no hard-and-fast rule that applies to every situation. Each case presents its own set of circumstances and must be dealt with accordingly.

It was decided in *Tinker* that there was no evidence of disruption at school or interference with other students' rights. The armbands were a symbolic act—a "silent, passive expression of opinion" unaccompanied by any disorder. In fact, it generated discussion on the subject outside of the classroom.

Thirty years after the *Tinker* decision, the teens who took this case to court commented on how it affected their lives: John Tinker, a systems analyst, said: "Freedoms are not likely to remain, unless we exercise them. If we expect to have a democracy, schools should be a laboratory for ideas and expression."

Mary Beth Tinker, now a nurse practitioner in Missouri, supports the political activities of students who are trying to make a positive impact on the world. "You have more power than you may realize," she said.

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Chris Eckhardt, once named the kid with the cleanest locker, was asked by the vice principal if he wanted a “busted nose” after refusing to remove the armband. Now involved with politics in Florida, Eckhardt said the *Tinker* case reinforced his belief that one person can make a difference. He said: “Practice democracy daily, and exercise your rights. Stand up not only for your rights, but also for your fellow students’ rights.”

The Court further stated that school officials must have “more than a mere desire to avoid discomfort and unpleasantness that always accompany an unpopular viewpoint” in order to justify the limitation of student expression. It said: “Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.”

This case supports your right to express your opinion and to protest. That right, however, isn’t without limits. Responsibilities go hand in hand with rights. This means that when you act in support of an issue, you still have to respect the rights of others. At school, for example, acts that disrupt classes or the student body may be legally restricted. Off campus, there are also limits when your actions disrupt the public or infringe on the rights of others.

## RELATED CASES

The following cases demonstrate that courts differ in resolving these thorny First Amendment issues. How the “disturbance” standard is interpreted varies from case to case.



### • Are you free to express yourself in writing at school?

Fifteen-year-old George was in an English honors class at Santa Teresa High School in San Jose, California. He thought of poetry as art and a medium to describe emotions instead of acting them out. He shared a poem he wrote called “Dark Poetry” with several classmates. Part of it read: “I am Dark, Destructive, and Dangerous. I slap on my face of happiness but inside I am evil! For I can be the next kid to bring guns to kill students at school. So parents watch

your children cuz I'm BACK!" One of the girls felt threatened by the poem and reported the incident to her teacher. George was arrested and charged with making a criminal threat. He was found guilty and sentenced to 100 days in juvenile hall. George **appealed** and the California Supreme Court ruled that the poem and the circumstances surrounding its dissemination did not measure up to a specific and immediate criminal threat.

*In re George T.* (2004)

- **Can you be suspended for using foul language?**

About twenty years after *Tinker*, the Court considered the issue of indecent or vulgar expression on campus. During an assembly at Bethel High School in Washington State, Matthew Fraser gave a nominating speech for a friend who was running for student office. His speech was filled with "elaborate, graphic, and explicit sexual metaphors," which school officials said violated the school's disruptive conduct rule. Matthew was suspended for three days and forfeited a chance to be a speaker at that year's graduation ceremony. Matthew argued that he shouldn't be punished for expressing his views, even if he used offensive language. The Court upheld the school's decision, stating that public schools have the right to prohibit the use of vulgar and offensive terms in school.

*Bethel School District v. Fraser* (1986)

- **Can a teacher be fired for allowing students to swear?**

After twenty years of teaching, a Missouri high school teacher, Cecilia Lacks, was fired for allowing her students to use profanity in their creative writing assignments and in the performance of their plays. This violated the school's ban on profanity on campus. She appealed to the U.S. Supreme Court, which in 1999 let the lower court's decision stand.

*Cecilia Lacks v. Ferguson School District* (1999)

- **Are physical threats unacceptable or are they a form of free expression?**

Fifteen-year-old Sarah Lovell spent hours one day attempting to change her class schedule at her school in California. When she thought she was finally done, the school counselor told her she might

not get into certain classes because they were overloaded. Frustrated and irritated, Sarah put her head in her hands and said, “If you don’t give me this schedule change, I’m going to shoot you.”

The counselor reported the incident to the assistant principal, and Sarah was suspended for three days. She and her parents filed a lawsuit against the school district, the school principal, and the assistant principal, claiming a violation of free speech. The court held that threats of physical violence aren’t protected by the First Amendment, saying: “[W]idespread violence in schools throughout the Nation significantly interferes with the quality of education.” Sarah lost her case; her statements weren’t protected by the First Amendment.

*Lovell v. Poway Unified School District* (1996)

- **Can you circulate a petition at school?**

Amanda was nine years old and in the third grade at Lackawanna Trail Elementary School in Factoryville, Pennsylvania. Her class was scheduled to take a field trip to the circus. Amanda believed the circus was cruel to animals and handwrote a petition stating, “We 3rd grade kids don’t want to go to the circus because they hurt animals. We want a better field trip.” She brought the petition to school and persuaded over 130 students to sign it. The next day at recess she was told to put the petition away because the playground was icy and students could get hurt if they slipped and fell while holding a pen. She was allowed to pass out coloring books and stickers addressing cruelty to animals at the circus. On the day of the circus, Amanda and her mother stood outside the gates and protested. Amanda and her parents sued the school for making her put the petition away, which they said violated her right to freedom of speech. Her case was dismissed because her actions at school were only regulated not prohibited. The court used the principles of *Tinker v. Des Moines* in deciding this case.

*Walker-Serrano v. Leonard* (2003)

- **Can schools suspend you for wearing T-shirts with offensive language?**

When Kimberly Ann Broussard was twelve years old, she bought a T-shirt at a New Kids on the Block concert. It was black with

eight-inch white letters declaring “Drugs Suck!” When she wore the shirt to class at Blair Middle School in Norfolk, Virginia, it caught the attention of a teacher. She was asked to either change her shirt, turn it inside out, or borrow another shirt from a friend. Kimberly refused and was suspended for one day. Kimberly and her parents challenged this decision in court. The federal district court for Virginia ruled that, although the message against drugs was acceptable, the form wasn’t. School officials may limit offensive words.

*Broussard v. School Board of City of Norfolk* (1992)

### • **What about clothes that depict weapons? Can schools prohibit you from wearing these?**

At Alan Newsom’s elementary school in Virginia, the dress code prohibited any messages on clothing and jewelry that related to weapons. Alan was twelve and in the sixth grade. He wore a purple T-shirt to school that depicted three black silhouettes of men holding firearms over the letters NRA, which stand for the National Rifle Association. The graphics were described as large and bold.

Alan was asked by the assistant principal to turn his shirt inside out, which he did. From then on he wore T-shirts with the NRA letters but no graphics. He and his father sued the school board, alleging infringement of his First Amendment rights to expression. The court ruled that the dress code was overbroad and there was no evidence that messages related to weapons had caused any disruption at school or interfered with the rights of other students.

*Newsom v. Albemarle County School Board* (2003)

### • **What if school officials think the message on your T-shirt is vulgar? Can they discipline you?**

Jeffrey Pyle, a Massachusetts high school senior and band member, received three detentions for wearing offensive T-shirts to school. One of the shirts was a Christmas gift from his mother that read “Coed Naked Band—Do It to the Rhythm.” Another shirt pictured a marijuana leaf and said “Legalize It.”

The school dress code prohibited wearing apparel that “harassed, intimidated, or demeaned an individual because of sex, color, race, handicap, national origin, or sexual orientation.” Jeff’s challenge to

the school policy was successful. The Massachusetts Supreme Court found that even though some of the shirts could be considered vulgar, they weren't disruptive.

*Pyle v. School Commission* (1996)

- **Can you be suspended for your “symbolic speech”?**

During lunch one day, Wayne Denno, a student in Florida, showed his friends a four-by-four-inch Confederate flag. A teacher saw the flag, told Wayne to put it away, and took him to the principal's office. Although Wayne claimed he had the flag in school because of its historical significance, he was suspended for nine days for disruptive behavior. School officials argued that Wayne attempted to start a riot, disobeyed school authorities, and encouraged another student who was wearing a T-shirt with a Confederate flag on it to stick to his principles when he was ordered to turn it inside out.

The school's actions were upheld by the federal district court in Florida, due to a history of racial tension associated with the Confederate flag. Symbolic speech (such as T-shirts, buttons, and armbands), as well as pure speech, may be restricted under certain circumstances.

*Denno v. School Board of Volusia County* (1997)

The law distinguishes between what's called pure speech and symbolic speech. Both are protected by the First Amendment. Pure speech is the spoken word, which is restricted if it constitutes what are known as “fighting words,” or words meant to incite a riot. Symbolic speech, as seen in *Tinker*, is expressing yourself through objects, which may also be limited if determined to be disruptive.

- **Should it be illegal to wear gang colors or symbols?**

In an effort to control gang activity and crime, the City of Harvard, Illinois, made it illegal to wear gang colors or symbols, or to use hand signals. Thirteen-year-old Todd Gaut was out in public and wore a six-pointed star around his neck. When he saw the police, he tried to hide the star. They questioned him, and he admitted that he knew it was a gang symbol (for the “Action Packed Gangster

Disciples”). Todd was found guilty of breaking the law and was placed on **probation**. An Illinois appeals court found the law too broad and threw out Todd’s conviction. Wearing certain clothing, even if some find it offensive, is protected symbolic speech, the court said.

*City of Harvard v. Todd Gaut* (1996)

- **Is burning a U.S. flag a form of free expression and therefore legal?**

The U.S. Supreme Court had another opportunity to address the issue of symbolic speech in 1989. Gregory Lee Johnson, a young adult, burned an American flag as a political protest during the 1984 Republican National Convention in Dallas, Texas. He was charged and convicted of desecrating (treating disrespectfully) the flag, a violation of Texas law. He was sentenced to one year in jail. The U.S. Supreme Court, in a five to four decision, reversed Gregory’s conviction, stating: “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

*Texas v. Johnson* (1989)

- **Can you be suspended for wearing a button with a slogan that school officials find disruptive?**

During a teachers’ strike, the high school in McMinnville, Oregon, hired replacement teachers. David Chandler’s and Ethan Depweg’s fathers were both teachers who joined the strike. High school students David and Ethan wore pro-strike buttons to school, including one that said: “We want our real teachers back.” School officials found the buttons to be disruptive and asked the boys to remove them. When they refused, they were suspended for the rest of the day.

The buttons were determined not to be inherently disruptive. The Ninth Circuit Court of Appeals held that merely expressing a viewpoint by wearing a button wasn’t an activity that would distract students or upset classroom order. The court said: “The classroom

prepares children for citizenship, and the proper exercise of the First Amendment is a hallmark of citizenship in our country.”

*Chandler v. McMinnville School District* (1992)

## GET ON THE CASE

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- Are there places where or circumstances when your freedom of speech or right to express yourself is limited? What are they? Should there be limits at school? Why or why not?
- What do you think about participating in a peaceful demonstration? Is this something you’ve ever discussed with your friends or parents? What issue would you be willing to take a stand on? What type of demonstration do you think would be effective?
- Develop a campaign at school in support of an issue important to you—for example, against smoking or underage drinking. How might you act out your plan, gather support for your views, and bring them to the attention of the administration?

