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Managing Student Protests:

What to do when your students move beyond the schoolhouse gates

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While the Parkland shootings and the protests engendered by that incident have brought student protests to the forefront of public media attention, they really are nothing new: schools have been dealing with students complaining about issues, whether internal to the school or external to the greater community, for decades. *Tinker v. Des Moines Indep. Comm. Dist.*, 393 U.S. 503, 89 S. Ct. 733 (1969), was, after all, a case about students protesting the Vietnam War and advocating for civil rights in general. As the Supreme Court noted:

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.¹

While there are many ways students can complain about issues, they can be largely grouped into three major categories:

- They wear things;
- They write about things;
- They walk out about things.

¹ *Id.* at 508-09, 89 S. Ct. at 737-38 (internal citations omitted).

Types of Student Speech (pre 2007)

| "School-tolerated speech" | "School-sponsored speech" | "Vulgar or obscene speech" |
|---|--|--|
| <ul style="list-style-type: none"> • Speech that merely happens to occur on school property • a school can regulate "school-tolerated" speech only where the speech would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." • <i>Tinker v. Des Moines Indep.Comm. Dist.</i>, 393 U.S. 503, 89 S. Ct. 733 (1969). | <ul style="list-style-type: none"> • Expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school • a school can place restrictions on "school-sponsored" speech so long as the restrictions are "reasonably related to legitimate pedagogical concerns" • <i>Hazelwood School District v.Kuhlmeier</i>, 484 U.S. 260, 108 S.Ct. 562, 569-70 (1988). | <ul style="list-style-type: none"> • Speech that is "vulgar, lewd, obscene, and plainly offensive," although not necessarily legally "obscene" • a school may prohibit "vulgar speech," regardless of whether the speech causes a substantial disruption • <i>Bethel School District No. 403v. Fraser</i>, 475 U.S. 675, |

"Bong Hits 4 Jesus": A Fourth Test?

***Morse v. Frederick*, 127 S. Ct. 2618 (2007).**

Facts: Joseph Frederick was a high school student in Juneau, Alaska. During the Olympic torch relay, Frederick's school was let out to watch the torch pass by in front of the school. Frederick and some friends bided their time, and then unfurled a banner that read "Bong Hits 4 Jesus" in what they admitted was an attempt to get on national television. Deborah Morse, the high school principal, crossed the street, grabbed the banner, crumpled it, and then suspended Frederick for ten days. Even though Frederick admitted that the banner was intended to be "meaningless and funny," he brought suit under the First Amendment, challenging his suspension. Morse testified that she was not necessarily motivated by fear that the banner would disrupt school, but instead because she felt that it violated the school's policy against displaying offensive material, including material that promoted the use of illegal drugs.

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