



The First Amendment and Student Publications

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Agenda

- Censorship of student publications
- Underground student publications
- Offensive advertisements in student publications



Censorship of student publications

- *Tinker v. Des Moines Independent Community School District* (1969)
- *Hazelwood School District v. Kuhlmeier* (1988)
- State law governing censorship of student publications???



Tinker

- **Issue:** Can school officials censor nonviolent student speech without showing a material and substantial disruption of school activities or infringement on others' rights?
- **Facts:**
 - Students wore black armbands to protest U.S. involvement in Vietnam
 - Board adopted no-armband rule
 - Students sued, claiming 1st Am. violation



Tinker

- Students and teachers do not “shed their constitutional rights to freedom of expression or speech at the schoolhouse gate.”
- Except speech that:
 - is unprotected OR
 - creates a “material and substantial” disruption of normal school activities



Tinker

- Material and substantial disruption
 - More than controversial or offensive speech
 - Reasonable forecast of disruption
- Standard applied by lower courts, until...



Hazelwood

- **Issue:** Can school officials censor school-sponsored student publications when material is considered inappropriate, or for reasons other than a material and substantial disruption of the educational process?
- **Facts:**
 - School newspaper produced by students as part of journalism class
 - Articles about teen pregnancy and impact of divorce on children
 - Principal removed the articles from the school newspaper
 - Students sued claiming 1st Am. violation



Hazelwood

- Distinguished ability to censor:
 - student speech on school property
 - FROM
 - school-sponsored publications
- *Hazelwood* standard applies where an official policy of prior review, or clear establishment of a history of prior review exists



Public Forum

- Traditional or open public forum
 - Content-neutral time, place and manner restrictions
- Limited public forum
 - More prescriptive guidelines, but restrictions must serve a “compelling interest”
- Closed public forum
 - Restrictions allowable as long as they are reasonable and not based on a desire to suppress a particular viewpoint



Hazelwood

- Speech that bears “the imprimatur of the school”
 - Can apply to other school-sponsored speech
- Allows actions reasonably related to “legitimate pedagogical concerns”
 - Cannot censor due to disagreement with expressed viewpoints
 - *Dean v. Utica Community Schools* (2004)



Dean v. Utica Community Schools

- Student newspaper article about a couple suing the school district alleging husband's lung cancer was caused by fumes from school buses idling at the school district's garage
- Student researched and reached out to district and township officials for comment
- High school principal required removal of the story citing unreliable sources and inaccuracies, and claiming it was inappropriate for the student newspaper to write about a legal case involving the school district



Dean v. Utica Community Schools

- Court considered eight factors:
 - Produced as part of high school curriculum
 - Students received credit and grades
 - Faculty member oversaw production
 - Student-run publication
 - Faculty exercised little or no control over content
 - No applicable written policies or procedures
 - Actual practice evidenced intent to create a limited public forum
 - Compatible with expressive activity



Which standard applies?

- Is it school sponsored?
- Is it part of the curriculum or created by the school to impart particular skills and supervised by a faculty member?
- Is there a board policy or practice creating an open forum or allowing students the authority to make content decisions?
 - If so, can school officials show that censorship is based on a reasonable forecast of material and substantial disruption or an invasion of the rights of others? (*Tinker*)
 - If not, can school officials show a valid educational purpose for censorship? (*Hazelwood*)



What do you think?

- An article arguing that school officials enforce their alcohol policy inconsistently, featured a student, by name, admitting to underage drinking and getting in trouble with the school for it
- The school said the student never admitted to drinking and was not punished
- High school officials refuse to print the article in a student newspaper claiming it is potentially defamatory



What do you think?

- Editors of a school-sponsored newspaper discover that many sexually active students are not taking precautions to avoid pregnancy
- As a result, they prepare a story that provides information about forms of birth control and relative rates of effectiveness
- Most students on the newspaper staff are enrolled in a journalism class for which they receive credit
- The board's policy allows students to choose topics for the newspaper and which articles are published
- The school principal refuses to allow the story to be printed, citing violation of a policy prohibiting teaching sex education in the school



What do you think?

- School officials and yearbook staff prevent a student from using a picture of himself wearing trapshooting gear and holding a gun in the yearbook
- Administrators and the editorial board (composed of students) vote to move the photograph from the senior portrait section to the community sports section, and ask the student to submit an alternative photograph for the senior portrait section
- The school creates a new policy forbidding props or political speech in yearbook photographs, and other students with props in their photographs are also asked to submit new pictures



What do you think?

- Two high school students create websites with violent illustrations and posts criticizing the school
- School administrators order the students to remove the websites, claiming they are causing a disruption at the school



Board policy on student publications

- OSBA sample policy included in materials
- Clear policy statement
- Accurate implementation of policy requirements



Underground student publications

- Distributed off school property
 - *Thomas v Board of Education* (1979)
- Distributed on school property
 - *Tinker* standard
 - *Bystrom v. Fridley High School* (1987)
 - *Scoville v. Board of Education of Joliet Township High School District* (1970)
 - Time, place and manner restrictions
 - Public forum discussion



Thomas v. Board of Education

- **Issue:** Can school officials punish students for content of publications created and distributed off-campus?
- **Facts:**
 - Students published a newspaper titled *Hard Times*
 - The paper was created on their own time and distributed off-campus
 - The newspaper publicly criticized the school environment
 - Students were suspended for five days, and subsequently sued claiming 1st Am. violation



Bystrom v. Fridley High School

- **Issue:** Does a board have the ability to adopt policy regulating distribution of underground newspapers on campus where the newspapers are pervasively vulgar?
- **Facts:**
 - Students distributed underground school newspaper titled *Tour de Farce* on school property
 - Board adopted policy allowing district the right to review such publications prior to distribution on school property, and prevent distribution unless the publication complied with board policy
 - Students sued, arguing that the board policy in question is unconstitutional



Scoville v. Board of Education of Joliet Township High School District

- **Issue:** Can school officials suspend students without a reasonable forecast of substantial disruption?
- **Facts:**
 - High school students published an underground newspaper called *Grass High*, which was distributed on campus
 - The paper criticized school policies
 - The students were suspended because school officials found the paper's content to be "inappropriate and indecent"
 - The students sued claiming 1st Am. violation



Offensive Advertisements

- *Yeo v. Town of Lexington*
 - Private decision by student editors
- *Hazelwood*
 - Material that "associates the school with any position other than neutrality on matters of political controversy"
- Don't forget about public forum!



Yeo v. Town of Lexington

- **Issue:** Is there a 1st Amendment violation where rejection of an advertisement was a private decision by student editors and the school was not involved?
- **Facts:**
 - School passed a policy to make condoms available to students as a public health matter
 - A parent who lobbied against the policy submitted a pro-abstinence advertisement to two high school publications
 - Both declined to run the advertisement because they had policies of not publishing political or advocacy advertisements
 - Parent sued citing violations of free speech and equal protection
 - The students were not named as defendants



Resources

- Board counsel
- Policy services provider
- School Law Summary
- Student Press Law Center
 - www.splc.org



Contact information

OSBA's Legal Hotline

(855)OSBA-LAW

(855)672-2529

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STUDENT PUBLICATIONS

The Board encourages student publications as classroom-related learning experiences in such courses as English and journalism and as extracurricular activities. These allow for coverage of student activities and the writing and printing of original literary and artistic productions; however, certain necessary guidelines are established to regulate the publication and dissemination of student publications.

School-Sponsored Publications

School publications afford an educational experience for students interested in this activity and should provide an opportunity for the sincere expression of all facets of student opinion. These guidelines are as follows.

1. Faculty advisers advise on matters of style, grammar, format and suitability of materials.
2. The school publication reflects the policy and judgment of the student editors. Material of a controversial nature should not be prohibited unless it:
 - A. threatens to disrupt the educational process of the school, damage other individuals or advocate conduct that otherwise is inconsistent with the shared values of a civilized social order (e.g., advocating drug or alcohol use);
 - B. threatens any person or group within the school or advocates unlawful discrimination;
 - C. advocates violation of the law or official school regulations;
 - D. is considered false or libelous, based upon available facts and
 - E. is potentially harmful to juveniles or offensive according to community standards as to what is suitable for juveniles.
3. The final decision as to the suitability of material rests with the principal after consultation with the student editor and faculty adviser. Parties have the right of appeal to the Superintendent.

Non-School-Sponsored Publications

Students who edit, publish and/or wish to distribute non-school-sponsored handwritten, printed or duplicated matter among their fellow students in the schools must assume responsibility for the content of the publication. Students may be restricted as to the time, place and manner of distribution or may be prohibited from distributing such publications.

[Adoption date:]

LEGAL REF.: U.S. Const. Amend. I

CROSS REFS.: EDE, Computer/Online Services (Acceptable Use and Internet Safety)
IIBH, District Websites
JF, Student Rights and Responsibilities