

The Silencing of Student Voices

preserving free speech in america's schools



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The Silencing of Student Voices
the challenge to free speech in america's schools

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Contents

5	Introduction
11	The rise and fall of student rights
19	Mother, daughter recount censorship
20	30 years later, Tinker principals look back at landmark case
25	Matthew Fraser reflects on free-speech decision
29	Book-banning
37	Censoring artistic expression
41	Zero tolerance in the age of Columbine
43	Students express themselves online
61	School uniforms and dress codes
71	Confederate flag: symbol of controversy
77	The First Amendment in elementary schools
81	Teachers' First Amendment rights
89	Conclusion

Introduction

“*boston public*,” Fox’s popular series, regularly features stories of drugs, sexual abuse, harassment and violence at an urban public high school. Unfortunately, these stories too often mirror front-page headlines. In the last few years, school shootings in Paducah, Ky., Littleton, Colo., Santee, Calif., and Williamsport, Pa., shocked the nation’s collective conscience.

These frightening tragedies have become a dominating image of public education in the minds of many Americans. The violence and sex that pervade popular culture have infected our schools, say many politicians. Parents and administrators fear the influence of violence, drugs and racial tensions on America’s youth. The Federal Bureau of Investigation reports that violence has become a serious health problem in public schools.

School administrators’ response to these legitimate fears often has been to clamp down on student expression deemed different or unusual. Many schools have enacted “zero tolerance” policies that impose harsh penalties for first-time student offenders. School districts have controlled language, censored students’ personal Web sites, established dress codes, banned controversial symbols, tossed out books and required uniforms.

Too often school officials have failed to consider the importance of constitutional freedoms.

Public schools are a cornerstone of society and fulfill the vital function of educating the nation’s youth. Young minds are shaped in the classrooms, libraries, gymnasiums, hallways and bus stops of public schools.

Surely no one questions the need to provide a safe learning environment for public school students. The primary role of schools is educating young minds. Federal appeals court Judge Gilbert S. Merritt noted in a recent student-speech case that “learning is more vital in the classroom than free speech.”¹ Yet too often school officials with safety concerns have failed to consider the importance of constitutional freedoms, especially the First Amendment. Today’s pressing concerns and violent headlines cause school officials to control the flow of information to young people. The First Amendment often lurks as an easy target. It creates controversy when many seek uniformity.

But if students are to learn the lessons of democracy, such as the importance of exercising the right to freedom of speech, they must live in an environment that fosters the free exchange of ideas.

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Many free-speech experts believe that students will not learn the lessons of democracy if they cannot experience firsthand the freedom to make their own choices. Therefore, school officials, politicians, teachers and parents should balance legitimate safety concerns with the constitutional right of freedom of speech.

Public school students did not always possess free-expression rights. The U.S. Supreme Court did not even apply the Bill of Rights to public school students until the 1940s.

But in a landmark decision more than 30 years ago, the U.S. Supreme Court ruled that public school students “do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” In the 1969 case *Tinker v. Des Moines Independent Community School District*, the high court held that school officials violated the First Amendment rights of three students by suspending them for wearing black armbands to protest U.S. involvement in the Vietnam conflict.² The Court’s statement that students do not lose their constitutional rights at “the schoolhouse gate” is often cited in examining student-expression cases.

Social activism flourished in the late 1960s and early 1970s. The nation’s schools were not left behind in pushing the limits of convention and orthodoxy. Several federal courts supported students’ quests for individuality by striking down school dress codes that regulated student hair length.

More than 30 years after *Tinker*, however, some legal experts say the picture has become bleaker for public school students. Many schools have adopted stricter dress codes and uniform policies. Respect for individuality and self-expression has taken a back seat to school administrators’ more pressing problems.

This report examines several hot-button issues and asks whether students have lost some of the protections set forth in *Tinker*. Many recent court decisions indicate that some school officials think the changing social and legal environment empowers them to ignore the lessons from *Tinker*.

In April 1999, school officials in Allen, Texas, suspended several students, including Jennifer Boccia, for wearing black armbands to their school to

mourn the victims of the Columbine school shooting and to protest what they viewed as overly authoritarian school rules passed after the incident.

Boccia sued in federal court, contending that the suspension violated her First Amendment rights. Jennifer Boccia and the school district settled, but only after the American Civil Liberties Union filed a lawsuit on her behalf.

The Texas case — *Boccia v. The Allen Independent School District* — closely resembles *Tinker*. Has the respect for student free-speech rights shown by the U.S. Supreme Court been forgotten by today's high court? Lawrence Fischman, the lawyer handling the case for Jennifer Boccia, goes so far as to say that "the *Tinker* case might be decided differently today."³

A Louisiana high school honor-roll student named Jennifer Roe sued her school district after officials refused to allow her to wear a black armband to protest the school's mandatory uniform policy. When her parents informed the school principal about the *Tinker* case, the principal reportedly said that the board did not care about that precedent.⁴

Ultimately, a federal district court judge ruled in December 1999 in *Fisher v. Bossier Parish School District* that *Tinker* was the "controlling" standard. The judge determined that any attempt to prohibit the student from wearing the black armband would violate her First Amendment rights.

These two cases represent the tip of the iceberg on student free-expression cases. Some notable incidents in the past few years show that public school students have been punished for various forms of expressive conduct:

- A school district in Derby, Kan., suspended a middle-school student for violating a racial-harassment policy by drawing a Confederate flag on a piece of paper during class.⁵
- School officials in Winter, Wis., punished a high school student for using the Internet in a computer lab during non-school hours to look up information about Wicca, a contemporary pagan religion based on witchcraft.⁶
- A Texas school district suspended two students for wearing rosary beads because they thought the beads might be construed as gang symbols.⁷
- A Michigan school suspended a student for wearing

T-shirts bearing the names of the bands Korn and Tool.⁸

- A Virginia high school suspended a student because he had blue hair. His lawyer characterized the punishment as an “unthinking, knee-jerk hostility to unusual or unique personal styles regardless of how innocuous they may be.”⁹
- The parent of an Arizona public high school student sued a school district claiming that the school created a racially hostile environment by allowing students to read *The Adventures of Huckleberry Finn*.¹⁰
- A Tennessee school district considered banning *Brave New World* and *Catch-22* for fear that the books might violate a harmful-to-minors law.¹¹

Restrictions on students’ constitutional rights are not confined to First Amendment issues. Widespread drug testing, locker searches and even strip searches suggest that other constitutional principles may be at risk. As David Ingebretsen, executive director of the Mississippi American Civil Liberties Union, said, “In the last five years, we have witnessed an assault on student rights, from locker searches to drug testing to restrictions on student clothing.”

However, as U.S. Supreme Court Justice William J. Brennan once said when describing his “favorite” part of the Constitution: “The First Amendment ... gives us this society. The other provisions of the Constitution really only embellish it.”¹²

This report examines the state of students’ First Amendment free-speech rights in contemporary America. It examines student dress, Internet access, speech codes, book censorship and other related issues confronting school administrators, teachers and students across the country.

This report does not address freedom of religion issues, which are treated in other First Amendment Center publications, and only touches on free-press principles, which are covered extensively by the Student Press Law Center.¹³ However, educators, students and student-advocates can attest to the fact that numerous issues concerning freedom of religion and the press arise daily in the public schools.

Informing students, educators, administrators and the public of the First Amendment issues in public schools should lead to a greater understanding and appreciation of the importance of our "first freedom."