

Freedom and the Constitution

A Curriculum for High School Classrooms in Connecticut



Unit 1: Teachers Guide

Freedom of Speech



This guide was researched, written and designed by Loretta Waldman and Jeanne Leblanc under the auspices of the American Civil Liberties Union Foundation of Connecticut and with the guidance of the Education Committee of the American Civil Liberties Union of Connecticut Board of Directors.



American Civil Liberties Foundation of Connecticut

330 Main Street, First Floor

Hartford, CT 06106

860-523-9146

acluct.org

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Introduction

Standing up for the constitutional rights of state residents is the mission of the American Civil Liberties Union Foundation of Connecticut. Educating people about those rights is central to that task, which is why we have created this learning unit on the First Amendment.

The purpose is to provide students with an understanding of the right to freedom of speech guaranteed by the First Amendment to the United States Constitution, the limits to that right and the particular application to public school students. Students also will:

- Analyze the concept of free speech and the controversies it has engendered.
- Differentiate among the major Supreme Court cases regarding student speech and the legal precedents set by those cases.
- Apply the legal principles they have learned to analyzing real and potential constitutional conflicts over free speech rights.

The unit includes four lessons. The first covers U.S. Supreme Court rulings that established the standards governing free speech in schools today:

1. Student Free Speech Rights

The other lessons concern recent free speech cases and controversies in Connecticut:

2. Groody T-shirt and the Wolcott Public Schools
3. *Doninger v. Neihoff*
4. Manchester Public Schools Social Media Policy

All lessons include suggested activities for the classroom or homework assignments, links to more information, discussion questions and answers and a lesson plan with worksheets and supporting material. The lessons were developed in accordance with the Connecticut Social Studies Curriculum PK-12 Framework and in consultation with public school civics and social studies teachers. There is a strong emphasis on the use of primary source documents.

The lessons were designed with high school students in mind, and can be adapted to suit the age and abilities of a broad range of students. The lessons are intended to be used consecutively. They have been made available in formats that can be circulated online or printed, depending on the preference of the teacher.

Teachers Guide: This guide contains an overview of the First Amendment guarantee of freedom of speech, background information and details of Connecticut free speech cases and controversies, resources, lesson plans, and discussion questions and answers, as well as suggested activities and links to original documents.

Student Guide: The separate and parallel Student Guide provides background information, lesson materials and a glossary to aid students in their study and completion of assignments. Teachers may wish to distribute it in whole or in part to students.

The Evolution of Free Speech Rights

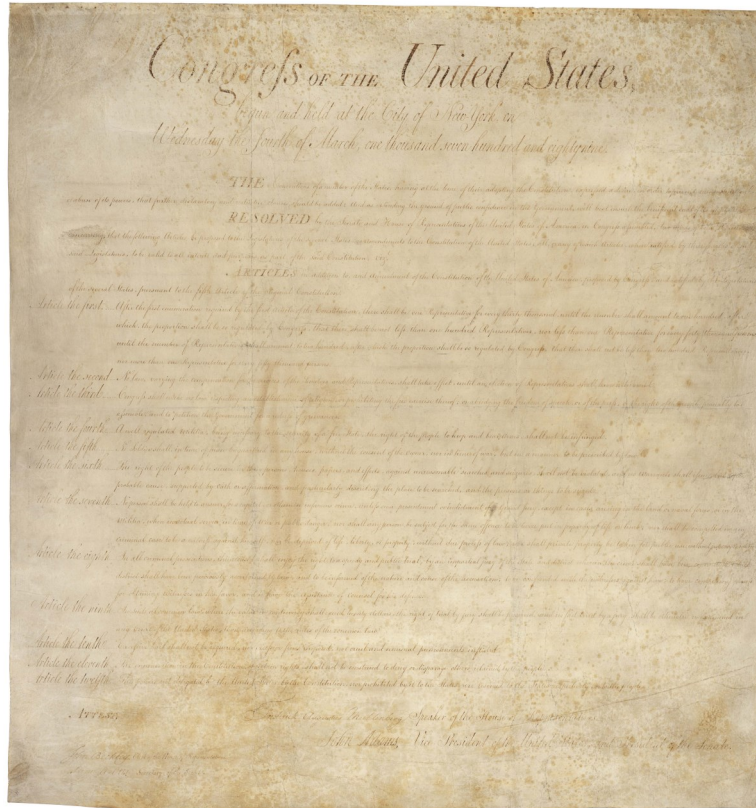
***Congress shall make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

The First Amendment to the U.S.

Constitution guarantees a right to free speech, a right that government — whether local, state or federal — can restrict only in very narrow circumstances. One such circumstance is described in the famous admonition that one may not shout “fire” in a crowded theater

because it would create a dangerous panic. Complicated bodies of law have grown around other exceptions, including the concepts of “fighting words,” “obscenity” and “incitement” and other doctrines describing when the government can limit free expression. The court cases brought to defend free speech rights often hinge on those narrow exceptions.

The courts have held the right of free speech to cover a wide range of expression in spoken and printed words, artistic works and the use of symbols. In 1989, for example, the Supreme Court ruled that flag burning is a form of expression protected by the Constitution. It remains a controversial opinion. But



the general principle that Americans may speak their minds without government interference is widely supported to a degree that is unique among nations.

The standards for free speech and the Supreme Court cases that established them

The Supreme Court's first substantial rulings on free speech came in the years

after World War I, and they were not favorable to individual rights. The Court upheld the government's suppression of anti-war speech in several cases, notably *Schenck v. United States* and *Debs v. United States*. In 1942, in *Chaplinsky v. New Hampshire*, the Supreme Court upheld the arrest of a man whose sidewalk preaching had occasioned a disturbance. In this case, the Court articulated for the first time the “fighting words doctrine” that created an exception to speech rights for words that “tend to incite an immediate breach of the peace.” But starting in the late 1960s, the Supreme Court made a series of rulings that broadened speech rights, many of them involving student speech.

Tinker v. Des Moines

The Supreme Court famously ruled in *Tinker v. Des Moines* that **students don't “shed their constitutional rights to freedom of speech and expression at the schoolhouse gate.”** At issue in that case was the right of students to wear black armbands to school as a protest against the Vietnam War, a right the school denied but the Court upheld.

While that 1969 ruling clearly established that public school students have free speech rights, it also acknowledged limits to those rights — restrictions beyond those that apply outside of school. So while the general public is subject to a few very narrow limits to free expression, students at public schools face additional restrictions.

The *Tinker* case produced standards that are still applied to student free speech cases more than 50 years later. The Supreme Court ruled that school officials could not censor student expression just



because they disagreed with it. In order to restrict student speech, school officials must be able to predict “substantial disruption of or material interference with school activities” or to show that the speech interfered with the rights of others. The Court added that the expectation of a substantial disruption must be “something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”

The *Tinker* precedent stood alone for nearly two decades, but subsequent Supreme Court rulings established additional bases for restricting speech in school. In *Bethel School District No. 403 v. Fraser* (1986) the Supreme Court allowed schools to restrict speech that is vulgar or lewd and in *Hazelwood School District v. Kuhlmeier* (1988) the Court allowed school officials to control some student speech in school-sponsored newspapers and at school activities. In 2007, in *Morse v. Frederick*, the Supreme Court allowed suppression of student speech promoting illegal drug use.

Bethel School District v. Fraser

In *Bethel School District No. 403 v. Fraser*, the Supreme Court held that **school officials could punish a student for speech that was vulgar or lewd at a school-sponsored event.** Matthew Fraser, a 17-year-old at Bethel High School in Washington, strung together a series of sexually suggestive *double entendres* in a speech before 600 students in a school assembly endorsing a candidate for student government. He said the candidate was “... a man who is firm — he’s firm in his pants ... in his character ...” The candidate won the election. Fraser was suspended from school for two days.

The Supreme Court ruled that school officials did not violate Fraser’s First Amendment by punishing him for his lewd campaign speech, although two lower courts had ruled for Fraser because there was no disruption at the school after the speech.

Chief Justice Warren E. Burger drew a distinction between the political speech protected in *Tinker* and vulgar or lewd speech. The *Fraser* decision set a precedent allowing school officials to restrict student speech with-

out showing substantial interference, as required by *Tinker*, but only when they can show they have acted in what they reasonably believe is in the best interest of their educational responsibilities.

Hazelwood v. Kuhlmeier

The Supreme Court held in *Hazelwood School District v. Kuhlmeier* that **school officials may control some student speech in school-sponsored newspapers and at school activities**. In 1983, Robert Reynolds, principal of Hazelwood East High School in Missouri, reviewed an advance copy of the Spectrum, a school-sponsored newspaper produced in a journalism course, and found two articles objectionable. One covered teenage pregnancy at Hazelwood East and quoted pregnant students. The other explored the effects of divorce on students. Reynolds decided to delete the two pages on which those articles appeared, thus deleting additional articles, as well.

Reynolds believed the teen pregnancy article was inappropriate for a school newspaper and its intended audience, and the anonymity of the quoted girls was not adequately protected. He also believed that the divorce article, in which a student sharply criticized her father for not spending more time with his family, violated journalistic fairness because the newspaper did not give the girl's father a chance to defend himself. As the journalism class was, in part, designed to teach these notions of fairness, Reynolds asserted that he was acting in the best interests of the school by censoring the material.

Students on the Spectrum staff, surprised at finding two pages missing, sued the school on the grounds that their First Amendment rights had been violated. Five years later, the final decision came down in *Hazelwood*, the first Supreme Court case to focus specifically on high school student press rights. The U.S. Supreme Court voted 5-3 to reverse the decision of the U.S. Court of Appeals for the 8th Circuit in St. Louis, which had upheld the rights of the students. The Court ruled that the principal had the right to censor articles in the student newspaper that conflicted with the school's educational mission.

In this ruling, the Supreme Court acknowledged *Tinker's* basic premise that students "do not shed their constitu-



Some Landmark Decisions from the U.S. Supreme Court on Free Speech

- *Schenck v. United States* (1919) Limiting free speech during wartime.
- *Debs v. United States* (1919) Reinforcing limits on free speech during wartime.
- *Chaplinsky v. New Hampshire* (1942) No protection for "fighting words."
- *Tinker v. Des Moines* (1969) Students have right to political protest.
- *Bethel School District v. Fraser* (1986) Schools can limit lewd speech.
- *Hazelwood v. Kuhlmeier* (1988) Schools can censor school-sponsored newspapers.
- *Texas v. Johnson* (1989) Flag burning is protected speech.
- *Morse v. Frederick* (2007) Schools can censor speech advocating illegal drug use.
- *Snyder v. Phelps* (2011) Allowing offensive pickets of funerals.

tional rights to freedom of speech or expression at the schoolhouse gate.” But the Court, citing *Fraser*, modified this position when applied specifically to school-sponsored expressive activities, such as a school newspaper. In that case, “A school need not tolerate student speech that is inconsistent with its basic educational mission.” Such speech might include material that is “ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences,” or any expression that advocates “conduct otherwise inconsistent with the shared values of the civilized social order.”

The Court found that, “Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.”

Morse v. Frederick

In *Morse v. Frederick*, the Supreme Court allowed **limits on student speech that promotes illegal drug use**. In 2002, Joseph Frederick, a senior at Juneau-Douglas High School, unfurled a banner saying “Bong Hits 4 Jesus” during the Olympic Torch Relay through Juneau, Alaska. The court held that Frederick was taking part in a school-supervised activity, although he was not on school property. The school’s principal, Deborah Morse, told Frederick to put away the banner because she was concerned it could be interpreted as advocating illegal drug activity. After Frederick refused, Morse took the banner away. Frederick originally was suspended from school for 10 days.

Court ruled that the wearing of armbands by students to protest the Vietnam War had the highest level of constitutional protection because it was political speech. In *Fraser*, the Court declared “the constitutional rights of students at public school are not automatically” the same as the rights of the general public. And in *Hazelwood*, the speech rights of students were viewed “in light of special characteristics of the school environment.”

In *Morse*, the majority of justices said that the Constitution affords fewer protections to certain types of student speech at school or at school-supervised



The Supreme Court ruled that Frederick’s free speech rights were not violated, adding another layer to the interpretation of student speech rights. In *Tinker*, the Court stated that students do not “shed their constitutional right to freedom of speech or expression at the schoolhouse gate.” The

events. They found that the message Frederick displayed was by his own admission not political in nature, as was the case in *Tinker*. The Court further reasoned that the phrase “Bong Hits 4 Jesus” could reasonably be viewed as promoting illegal drug use and, as such, the state had a compelling interest in prohibiting or punishing that expression.

Resources

United States Courts: What Does Free Speech Mean?

A list of important free speech cases and links to a First Amendment quiz.

<http://www.uscourts.gov/EducationalResources/ClassroomActivities/FirstAmendment/WhatDoesFreeSpeechMean.aspx>

American Civil Liberties Union: Free Speech

A collection of information and documents from the ACLU about freedom of speech.

<http://www.aclu.org/free-speech>

Cornell University Law School: Texas v. Johnson

Text of the U.S. Supreme Court decision about flag burning.

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0491_0397_ZS.html

U.S. Supreme Court: Snyder v. Phelps

Text of the decision allowing the controversial Westboro Baptist Church to protest at military funerals.

<http://www.supremecourt.gov/opinions/10pdf/09-751.pdf>

FindLaw: Tinker v Des Moines

Text of the Supreme Court decision allowing students to wear armbands in protest of the Vietnam War.

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=393&invol=503>

The Oyez Project: Tinker v. Des Moines Independent Community School District

Audio of the oral arguments in *Tinker*, with scrolling transcript.

http://www.oyez.org/cases/1960-1969/1968/1968_21#argument

Cornell University Law School, Bethel School District No. 403 v. Fraser

Text of the Supreme Court decision permitting limits on lewd or vulgar student speech.

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0478_0675_ZS.html

University of Missouri, Kansas City, School of Law: Fraser speech

Text of the speech given by Matthew Fraser

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/fraserspeech.html>

U.S. Supreme Court: Hazelwood School District v. Kuhlmeier

Information and links to audio of oral arguments and other material about the case.

<http://www.uscourts.gov/multimedia/podcasts/Landmarks/HazelwoodvKuhlmeier.aspx>

Freedom Forum: Case Summary: Hazelwood School District v. Kuhlmeier

A summary of the case, with details about the material removed from the school newspaper.

<http://www.freedomforum.org/packages/first/Curricula/EducationforFreedom/supportpages/L08-CaseSummaryHazelwood.htm>

U.S. Supreme Court, Morse v. Frederick

Text of the Supreme Court decision allowing censorship at school events of speech advocating drug use.

<http://www.supremecourt.gov/opinions/06pdf/06-278.pdf>

Discussion questions and answers

1. Is freedom of speech an absolute right in all circumstances? Can anyone say whatever they like whenever they like?

A. No. The government may restrict free speech under certain exceptions defined by the courts. But it must stick to those exceptions because all other speech is protected by the First Amendment. It's important to know that the U.S. Constitution prevents censorship only by the government – including public schools. The rules for non-government entities – including private schools – are another matter.

2. *Tinker* is seen as an important confirmation of students' rights to free speech. Have the subsequent decisions in *Fraser*, *Hazelwood* and *Morse* enhanced or detracted from student speech rights?

A. Many advocates believe *Fraser*, *Hazelwood* and *Morse* eroded student rights because those cases kept adding to the grounds for school officials to punish students for their speech: lewd or crude speech, advocating for illegal drug use, interfering with the school's mission at a school-sponsored activity. It's worth noting, however that the subsequent cases involved speech at school-sanctioned or sponsored activities – not the kind of purely political student-initiated speech at issue in *Tinker*. Despite the later cases, the courts have upheld the principles in *Tinker* for more than 40 years.

3. In these student cases and in free speech cases involving the general public, the Supreme Court has made it clear that political speech has the highest level of protection under the Constitution. Why is this?

A. Because the free expression of ideas is essential to a democracy, the suppression of political speech is considered more threatening to the well-being of the nation than suppression of, say, commercial speech — which is speech aimed at making a profit, which usually means advertising. That doesn't mean political speech can never be suppressed or that commercial speech can always be restricted, but it does mean the standards are different. It's usually easier for the government to limit non-political speech than political speech. The government must show a compelling government interest consistent with legal precedents to restrict political speech – even in school. (This is called *strict scrutiny*).

4. In *Morse*, the Court found that the student's speech in the "Bong Hits 4 Jesus" banner was not political. How do we define political speech?

A. Political speech concerns matters of public interest. According to the courts, it consists of words or conduct addressing issues, positions or candidates -- or in support of political change.

5. If any non-student did the same things the students did in *Morse*, *Hazelwood* or *Fraser*, could they have been censored or punished?

A. Probably not, at least not by the government. It's hard to imagine the police or any other government authority trying to stop a newspaper from publishing a controversial story, a speaker making an off-color speech or any adult from advocating illegal drug use (as long as he or she wasn't actually

using the drugs.) These people would be regarded as simply exercising their free speech rights, and most likely a teenager doing that away from school would have the same protection

Activities

- Some states (but not Connecticut) have laws that offer more protection for student speech than the U.S. Supreme Court has defined under the First Amendment. Massachusetts law (www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section82) allows an exception for speech that causes “disruption or disorder” but otherwise does not permit the suppression of student speech for other reasons, such as vulgarity. Ask the students to read the Massachusetts law and describe, in a class discussion or a short essay, whether they would support such a law in Connecticut. Why or why not?
- In 2009 the Connecticut General Assembly considered a bill similar to the Massachusetts law but less extensive in its protection of student free speech rights. The bill was amended during the legislative session to incorporate anti-bullying language that is problematic for free speech advocates, and it did not pass. Ask the students to compare the original (www.cga.ct.gov/2009/TOB/S/2009SB-01056-R00-SB.htm) and substitute (www.cga.ct.gov/2009/FC/2009SB-01056-R000716-FC.htm) versions of the bill and to describe, in a class discussion or a short essay, the differences between the two. Ask them how they would have voted on each version if they had been legislators at the time.
- American principles of free speech are considered extreme in some parts of the world. In Europe, many nations restrict what they consider hate speech, and the European Court of Human Rights is often called on to review cases where national governments have punished citizens for their speech. Ask students to consult the court’s Hate Speech Fact Sheet at www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf, read the general principles that guide the court’s rulings on free speech and choose one or more summaries of cases to consider. Ask the students to discuss in class or describe in a short essay how the U.S. Supreme Court might rule on a similar case in this country, considering the speech protections offered by the First Amendment.

Lesson Plan 1: Free Speech in Schools

Lesson Objective:

Students will be able to apply the standards of free speech established by the U.S. Supreme Court to determine what speech can be prohibited in schools.

Essential Question:

What is freedom of speech?

Performance Standards Focus:

Standard 1.8: Students will demonstrate an understanding of the interactions between citizens and their government in the making and implementation of laws.

Initiation:

Teacher will write (project) text of First Amendment on board (smartboard). The words “Congress shall make no law” and “abridging the freedom of speech” will be underlined.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

In the United States, we have a Constitution that protects the rights of citizens to speak freely, even if what they say is not popular with other citizens. Do you think we need guidelines for free speech?

If yes: teacher will ask students to name an example of free speech that would not be okay.

If no: teacher will say, “So, I should be allowed to just walk out in the hall and yell FIRE when there isn’t a fire? That speech should be protected, right?”

Procedure:

Over the years, disagreements about what people should be free to say under the First Amendment to the U.S. Constitution have become court cases that ended up being decided by the U.S. Supreme Court. The decisions made by the Court in these cases set the standards, or guidelines, as to speech not protected by the First Amendment.

Today, we’ll look at four cases that grew out of disagreements about what speech is protected in public schools. The standards established by these decisions are used today to determine what speech in schools is protected under the First Amendment.

Teacher explains the first case, Tinker v. Des Moines. (approx.. 3 minutes)

- In 1968, students wanted to wear black armbands to school in 1968 to protest the Vietnam War
- Students were suspended from school
- Students sued and won, in a 7-2 decision of the U.S. Supreme Court, the right to wear the armbands

Teacher shows video interview with Mary Beth Tinker, one of the plaintiffs in Tinker v. DesMoines at <http://www.youtube.com/watch?v=SqQvygBVSxA> (5 minutes)

Teacher allows time for questions and student reaction.

Now that we've looked at the standards established in one case, let's look at three others.

Teacher gives each student an index card, the Student Guide and Lesson 1 packet and has students break into groups of three to four students each. Teacher designates a reporter in each group. Teacher has student(s) read packet instructions aloud and complete the activity. Note: teacher can have all groups read one or both news articles or have half the groups read one article and the rest read the other. (10 -15 minutes).

While students are working, teacher will project the blank graphic organizer contained in packet onto the board using an overhead projector or smartboard.

Once students have completed the activity, reporters will share how their group ruled on the case(s) and explain their reasoning. Other groups will be given an opportunity to agree or disagree. (10 minutes)

While students are reporting, teacher will record information in the graphic organizer on the board, restating reasoning and relevant facts. If needed, teacher may add relevant facts and information to graphic organizer and discussion. At this time teacher will also restate the four standards.

Students will detach completed graphic organizer from packet, turn in to teacher, and return to individual seats.

Closure:

So if the right to free speech in schools is guaranteed by the Constitution, why has the Supreme Court established these exceptions? (5 minutes)

Assessment:

Exit tickets: On the index card passed out with worksheet, students will write down the name of one of the four cases and the type of speech it excludes from protection. Students will hand teacher their cards as they leave the room.

Resources:

Index cards, Student Guides and Lesson 1 packets. Packet contains summary of court standards for free speech in schools, two news articles, and graphic organizer.

Lesson 1 Packet: The Evolution of Free Speech Rights

Instructions:

Read the attached news stories.

- Imagine you are a Supreme Court justice asked to rule on a case based on the circumstances described in the story.
- Using the attached graphic organizer, record what happened in the case, the key facts and which standards from previous cases apply.
- Make a ruling based on the appropriate standards and briefly explain how you reached your conclusion.

Summaries of each case that set standards for student speech rights have been provided below. For more detailed explanations, see the Student Guide.

The Tinker standard

In *Tinker v. Des Moines*, the Supreme Court ruled in 1969 that students **“don’t shed their constitutional right to freedom of speech and expression at the schoolhouse gate.”**

According to the **Tinker Standard**, school officials may not censor student expression just because they disagree with it. In order to restrict student speech, school officials must be able to predict **“substantial disruption of or material interference with school activities”** or be able to show that the speech interfered with the rights of others. The Court added that the disruption must be **“something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular view point.”**

Subsequent Supreme Court rulings established additional restrictions on free speech in schools.

The Fraser standard

Bethel School District v. Fraser (1986) set guidelines for public speech at school-sponsored events and **allows schools to restrict speech that is vulgar or lewd.**

The Hazelwood standard

Hazelwood School District v. Kuhlmeier (1988) **allowed school officials to control some student speech in school-sponsored newspapers and at school activities.** The Court found that the principal of Hazelwood East High School did not violate the First Amendment rights of his students by deleting two pages of the school-sponsored newspaper that was produced in a school journalism course.

The Morse standard

Morse v. Frederick (2007) allows for the **suppression of speech that promotes illegal drug use**, if that speech takes place at a school-sponsored activity.

*Remember as you read about these cases that the Supreme Court given the greatest protection to core political speech – speech at the heart of the First Amendment that can be prohibited only if it “substantially disrupts” the educational process – and not as much protection to non-political speech, such as commercial speech and expressive speech such as art.

Calif. Principal seizes student newspaper

Associated Press

Friday, February 8, 2013

STOCKTON, Calif. — Student journalists at a Central Valley high school are getting a lesson in the First Amendment after administrators confiscated their newspaper over concerns about a campus safety article quoting school administrators as saying that recent lockdown drills and two reports of weapons on campus revealed poor communication.

The principal of Stockton's Bear Creek High School, Shirley McNichols, stopped distribution of 1,700 copies of the monthly Bruin Voice newspaper last week, saying a front-page article about allegedly outdated safety policies could panic students.

Editor-in-Chief Justine Chang and adviser Kathi Duffel told The Record of Stockton that the principal was embarrassed about what the article exposed.

"I think (administrators) were embarrassed by how they are portrayed in the article," said Chang.

McNichols denied that. She also said that the district has a policy that allows administrators to monitor the newspaper's content and withhold it if it causes a safety issue, and administrators quoted in the story were disgruntled employees.

McNichols said safety could be improved, including fixing the school's lockdown alarm and intercom so they function in all classrooms. Portions of the safety plan referred to in the article already had been improved, she said.

The U.S. Supreme Court has held that most cases of prior restraint are unconstitutional. The exception is national security. In California, reasons for preventing publication include libel, slander, obscenity or articles that might incite students.

Duffel has had a previous run-in with administrators over the newspaper. She was written up for insubordination for allowing students to publish a story about the former principal losing his master key without allowing him to review it first.

Utah school officials censor musical with sexy Elvis songs

Associated Press

Saturday, January 5, 2013

SALT LAKE CITY — A community member who was “All Shook Up” about Elvis Presley songs in a high school drama prompted educators to cancel the musical, deeming it too sexual. But the decision was reversed Jan. 3 by administrators at the high school south of Salt Lake City.

The administrators at Herriman High School received permission from the copyright owners of “All Shook Up” to cut one of Presley’s songs and make scene changes in the American jukebox musical that borrows from William Shakespeare.

“The show will go on,” said Sandy Riesgraf, a spokeswoman for the Jordan School District. “Our biggest concern early on, we wanted to make some changes to keep the play within community values. It’s a win-win for all of us.”

Some of Presley’s song lyrics together with a scene suggesting cross-dressing were deemed offensive by a person the school is refusing to identify.

School officials have not said which song will be cut from the production, but one official told *The Salt Lake Tribune* Jan. 3 that the offending song is not “All Shook Up.”

Some think school administrators folded too easily at the start.

“I’m at a loss,” Jill Fishback, whose daughter worked on the production, told *The Salt Lake Tribune*. “They’re singing Elvis songs. A girl dresses up as a boy and kisses a boy. ... It’s not promoting homosexuality. It was supposed to be a farce.”

“All Shook Up” brings a modern twist to Shakespeare’s “Twelfth Night,” which portrays a female castaway who dresses as a boy to evade detection in ancient southern Europe, said Martine Green-Rogers, a theater fellow at the University of Utah.

“There’s a misunderstanding about the plot of the play,” Green-Rogers said. “It happens a lot in theater. Artists push boundaries.”

The female castaway dresses as a boy as cover to wander about, but reveals herself as she falls in love with a young man. “By that time, the genders have been righted,” Green-Rogers said. “The audience knows it’s not a homosexual relationship.”

Nonetheless, Herriman High School, about 20 miles from Salt Lake City, will make some scene changes to the musical version of the Shakespeare play that Riesgraf couldn’t immediately specify on Jan. 3.

“We weren’t asking for a lot. It will not change the intent of the play. They gave us their blessing,” she said of the musical’s producers.

The reversal came a day after administrators said they were scrubbing “All Shook Up.” The production is back on for a run in February and March.

It wasn’t the first time some Utah parents balked at a school drama. In August, the family values group Utah

Eagle Forum got Jordan School District administrators to cancel “Dead Man Walking,” a play about a Catholic nun who counsels a death-row inmate in Louisiana.

“Dead Man Walking” was scratched even though much of its profanity had been removed from the script. The backlash prompted policy changes that allowed administrators to swiftly suspend “All Shook Up” before the reversal.

Jordan officials gave parents a greater role over student plays. They required actors to secure a parent’s permission and drama teachers to seek clearance for plays not on an approved list. But district officials said they failed to give “All Shook Up” careful scrutiny.

GRAPHIC ORGANIZER

Name: _____

Date: _____

What happened:



Key facts:



Applicable standard(s):



Outcome/Ruling:



Explain your reasoning:

Connecticut Cases and Controversies

The question of what students may say in school is not likely to be completely resolved. Throughout the nation and right here in Connecticut, cases continue to arise about slogans on T-shirts, remarks on Facebook, stories in student newspapers and other ways that students express themselves on campus and off.

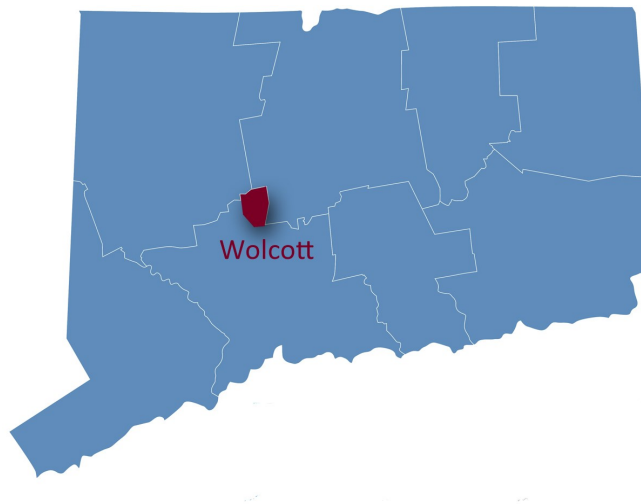
While there have no substantial student speech cases have reached the U.S. Supreme Court since *Morse* in 2007, the examination of the free speech rights of students continues in the lower courts and outside them, across the nation and right here in Connecticut.

The Wolcott T-Shirt Controversy

One such debate arose in the Waterbury suburb of Wolcott. April 20, 2012 was designated a Day of Silence at Wolcott High School as part of a national movement to raise awareness of bullying and harassment of gay, lesbian, bisexual and transgendered people.

Seth Groody, a junior at the school, wore a T-shirt that day to express his opposition to same-sex marriage. One side of the shirt depicted a rainbow — the commonly recognized symbol of gay rights — with a slash through it. The other side showed a male stick figure and a female stick figure holding hands above the legend, "Excessive Speech Day."

According to Seth, he was called to the school office, where school officials ordered him to remove the T-shirt, which he did under protest. School officials said they merely suggested that Seth remove the shirt, and that he did so voluntarily.



Seth and his father contacted the American Civil Liberties Union of Connecticut, which sent a letter on their behalf to the Wolcott school superintendent. The letter asked Wolcott school officials to affirm Seth's rights to wear the T-shirt, citing *Tinker* and some recent cases involving students' political views that had reached the federal circuit court level elsewhere in the country. Having received no response for several months, the ACLU of Connecticut prepared to file a federal lawsuit against the school district.

In February 2012, a lawyer for the Wolcott schools wrote a letter affirming Seth Groody's right to wear the T-shirt. Because the agreement settled the dispute, the ACLU of Connecticut did not file the lawsuit. A copy of the complaint that was drafted for the lawsuit — but never filed — is available in this guide and at:

www.acluct.org/wp-content/uploads/2014/01/groody-draft-complaint.pdf

Resources

Letter from the ACLU of Connecticut to Joseph Monroe, principal of Wolcott High School

The letter asking Wolcott school officials to affirm Seth Groody's free speech rights.

<http://www.acluct.org/wp-content/uploads/2014/01/wolcott-letter-060512.pdf>

Wolcott Whisper: 'Teaching Moment' Sparks Debate Over Speech

A local news website's article on the controversy.

<http://wolcottwhisper.com/2012/06/11/teaching-moment-debate/>

WATR –AM (Waterbury): Talk of the Town interview with Sandra Staub

The legal director of the ACLU of Connecticut discusses the Groody T-shirt issue.

<http://www.acluct.org/watr>

MSNBC: Teen wins right to wear 'Jesus Is Not a Homophobe' T-shirt to school

A news story about a similar case involving opposite views.

<http://usnews.msnbc.msn.com/news/2012/05/29/11939795-teen-wins-right-to-wear-jesus-is-not-a-homophobe-t-shirt-to-school>

FindLaw: Zamecnik v Indian Prairie School District # 204

A federal court case cited by the ACLU of Connecticut as relevant to the Groody issue.

<http://caselaw.findlaw.com/us-7th-circuit/1557587.html>

Discussion questions and answers

1. Could school officials have settled the matter by adopting a rule forbidding T-shirts with political messages? What if they banned any words on T-shirts? What if they adopted school uniforms?

A. Because political speech has more protection under the Constitution than other forms of speech, a ban aimed at political speech could not survive a legal challenge. A ban on all words on T-shirts could potentially be more acceptable because it would be content-neutral – that is it would not discriminate against speech based on what is said but would simply not allow it on students' clothing as part of a dress code. The same rationale could justify school uniforms, which have generally been held to be constitutional. This kind of rule also applies outside of school, so that, for example, a town might ban all signs over a certain size but could not ban only signs that carry political messages.

2. Some people suggested that Seth's T-shirt was a form of hate speech. What is hate speech?

A. There is no legal definition of hate speech in the United States. And, despite what many people believe, hateful speech is not illegal in the United States as it is in many other countries. Certain crimes are known as "hate crimes" in the United States because the underlying motivation for a crime (such as an assault) is determined to be bigotry or hatred. Threatening to harm someone is also a crime. But hateful speech alone is not. Free speech advocates question whether hate speech can be defined in a way that satisfies everyone, and suggest that it would never be constitutional to ban it.

3. The American Civil Liberties Union of Connecticut fought for same-sex marriage in Connecticut but defended Seth Groody's right to wear a T-shirt opposing same-sex marriage. Why?

A. The ACLU has long supported the right of people to say things that are unpopular or controversial, including things the ACLU itself disagrees with. So the organization is prepared to defend the rights of people on both sides of an issue to express themselves without government interference. Over the years, that has meant defending the rights of Neo-Nazis and the Ku Klux Klan to hold rallies and the rights of protestors to wave offensive signs near the funerals of soldiers.

Activities

- Imagine that Wolcott school officials had continued to deny Seth Groody's right to wear the T-shirt and *Groody v. Wolcott School District* became a lawsuit that is being argued before the Supreme Court. Ask each student to write a brief, of 250 to 400 words, supporting or disputing Seth Groody's right to wear his shirt, referring to the *Tinker*, *Fraser* and *Morse* standards.
- Symbols evoke powerful emotional reactions, and there have been many disputes about students' rights to wear or display them at school. Confederate flags and swastikas are the most provocative, but some schools have also tried to ban rosaries, which are considered to be symbols of gang affiliation in some contexts. Ask students to break into groups of three and have each group identify a symbol they agree is objectionable. Have one student in each group describe why the symbol is objectionable, have another argue in favor of prohibiting its display in school on constitutional grounds and another argue in favor of allowing it.

Lesson Plan 2: The Wolcott T-Shirt Controversy

Lesson Objective:

Students will interpret the facts of the case and apply the appropriate standard of free speech to determine the outcome.

Essential Question:

What is the difference between dissent and hate speech?

Performance Standards Focus:

Framework 2:2 Students will interpret information from a variety of primary and secondary sources ...in order to address a question or problem.

Initiation:

Note: In preparation for this lesson, teacher will assign students the following homework: Read the details of the Wolcott High School T-Shirt Case and the draft complaint prepared for a potential lawsuit, both of which are in the lesson packet, included here and in the Student Guide.

Teacher will ask students to think of some slogans and/or symbols they have seen on T-shirts, buttons, signs and bumper stickers outside of school. Teacher will then ask students to share their response to those slogans and symbols and write a few on the board.

Procedure:

Teacher will explain that symbols and slogans can evoke powerful reactions and there have been many disputes about students' right to wear or display them at school. Confederate flags and swastikas are among the most provocative, but some schools have also tried to ban rosaries, which are considered to be symbols of gang affiliation in some places.

Teacher will have students move into groups of no more than four each. Teacher will pass out Lesson 2 Packet and have students appoint a reporter in each of their groups.

Teacher: For homework, you read the facts of a disagreement about free speech rights at Wolcott high school and a legal complaint prepared by the ACLU of Connecticut on behalf of Wolcott High School student Seth Groody. In April 2012, Groody was a junior at Wolcott High School when he was told he could not wear a T-shirt expressing his views on gay marriage. The lawsuit stemmed from a dispute over Groody's right to display symbols and slogans that school administrators and other students did not agree with.

Teacher will have students read introduction and instructions in Lesson Packet and have them complete activity within their groups. (10-15 minutes)

Teacher will collect graphic organizers and pass out Lesson 2 Handout (copy of ACLU press release on the resolution of the T-shirt controversy and an Associated Press story about the same). Teacher will have students read both documents, ask them to share their thoughts and moderate a short discussion comparing students conclusions to the actual outcome of the issue.

Closure:

The American Civil Liberties Union of Connecticut defended Seth Groody's right to wear a T-shirt opposing same-sex marriage, yet at the same time it has lobbied in support of same-sex marriage in Connecticut. Why is that?

Resources:

Lesson 2 Packet, (includes background on Groody v. Wolcott Public Schools case, letter from Attorney Christine L. Chinni to ACLU-CT, draft Groody complaint and graphic organizer); Lesson 2 Handout (ACLU press release on resolution of the issue and an Associated Press news article).

Assessment:

Student participation in discussions and completed graphic organizer.

Lesson 2 Packet: The Wolcott T-Shirt Controversy

Instructions:

Use the background information below, the facts described in the draft complaint against Wolcott schools that you read for homework, and the letter from attorney Christine Chinni, to answer the following questions:

1. What free speech standard applies in the T-shirt case?
2. Why do you think Christine Chinni, the lawyer representing the school district, sent the letter to the ACLU of Connecticut saying Seth Groody would be allowed to “wear a shirt describing his views regarding homosexuality.” What motivated this decision?

Please be prepared to explain your reasoning. Use the graphic organizer to record the information you will need to formulate your answers.

Background:

In 2012, the ACLU of Connecticut prepared a federal complaint on behalf of Seth Groody, a junior at Wolcott High School. The complaint claimed that school district officials had violated Groody’s constitutional rights by forbidding him to wear a T-shirt expressing his opposition to gay marriage.

Groody had come to school wearing the T-shirt on April 20, 2012. The day had been designated a Day of Silence at Wolcott High School as part of a national movement to raise awareness of bullying and harassment of gay, lesbian, bisexual and transgendered people.

One side of Groody’s T-shirt depicted a rainbow – the commonly recognized symbol of gay rights – with a slash through it. The other side showed a male stick figure and a female stick figure holding hands above the words, “Excessive Speech Day.”

Groody said he wore the homemade T-shirt to express his opposition to gay marriage and the observance of A Day of Silence at Wolcott High School. Groody said he was called to the school office, where school officials ordered him to remove the T-shirt, which he did under protest. School officials said they merely suggested that Seth remove the shirt, and that he did so voluntarily.

Letter sent to the ACLU of Connecticut by attorney Christne Chinni on behalf of Wolcott Public Schools

CHINNI & MEUSER LLC

One Darling Drive

Avon, CT 06001

Christine L. Chinni

Craig S. Meuser

Via Electronic Mail

February 14, 2013

Sandra Staub, Esq.

Legal Director

ACLU of Connecticut

330 Main Street

Hartford, CT 06106

Re: Groody and Wolcott Public Schools

Dear Attorney Staub:

As we have discussed, I am writing on behalf of the Wolcott Public Schools to provide written assurance to you and your clients that, should Mr. Groody wear a shirt describing his views regarding homosexuality, including but not limited to the shirt he wore to Wolcott High School last year, he will be permitted to wear it throughout the school day.

Sincerely,



Christine L. Chinni

GRAPHIC ORGANIZER

Name: _____

Date: _____

What happened:



Key facts:



Applicable standard(s):



Outcome/Ruling:



Explain your reasoning:

Groody v. Wolcott Public Schools draft complaint

Preliminary Statement

1. On April 20, 2012, Wolcott High School (“WHS”) sponsored a Day of Silence to raise awareness for tolerance and diversity at the school. S.G., then a high school junior, wore to school that day a self-designed tee-shirt to express his disapproval of gay marriage. School administrators threatened him with suspension or expulsion if he did not change into a different shirt for the rest of the day. WHS’s action constituted censorship in violation of S.G.’s clearly-established rights under the First and Fourteenth Amendments of the United States Constitution and under Article First, Sections 4 and 5, of the Constitution of Connecticut. WHS’s failure and refusal to assure S.G. that he may wear his tee-shirt to school on any day, including the April, 2013 Day of Silence, is causing on-going irreparable harm.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343 and 1367.
3. This Court has the authority to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
4. Venue is proper in the Court under 28 U.S.C. § 1391 as the parties reside or are situated in the district.

Parties

5. S.G. is a seventeen-year old senior student at WHS and a resident of the town of Wolcott, Connecticut. S.G. lives with his mother and his father in Wolcott, Connecticut.
6. Ed Groody is S.G.’s father and he brings this action individually and on behalf of S.G., his minor son.
7. Defendant Dr. Joseph Monroe (Monroe) is the principal of WHS. He is sued in both his individual and official capacities.
8. Defendant Walter Drewry (Drewry) is a Vice Principal of WHS. He is sued in both his individual and official capacities.
9. Defendant Joseph Piacentini (Piacentini) is a Vice Principal of WHS. He is sued in both his individual and official capacities.
10. Together, Piacentini, Drewry and Monroe are referred to as “WHS administrators.”
11. Craig Gulick (“Gulick”) is the WHS Resource Officer. He is sued in both his individual and official capacities.
12. Defendant Joseph P. Macary (hereinafter Macary) is Superintendent of Wolcott Public Schools, including WHS. He is sued in both his individual and official capacities.
13. Defendant Wolcott Public Schools is the municipal corporate entity that maintains control of all public schools within the limits of the Town of Wolcott. Conn. Gen. Stat. §§ 10-240, 10-241.
14. The Wolcott Public Schools have, among other powers, the power to sue and be sued. Conn. Gen. Stat. §10-241.

Facts

15. WHS is a public, secondary school covering grades nine through twelve.
16. In the spring of 2011, WHS sponsored a Day of Silence “designed to raise awareness for tolerance and diversity.”
17. On the 2011 Day of Silence, when he was a sophomore at WHS, S.G. wore to school a shirt with a badge that had a rainbow with a slash through it to protest the Day of Silence at WHS.
18. The WHS principal in 2011 told S.G. that he was not allowed to wear the badge and told S.G. to remove the badge.
19. In 2011, after being told to do so, S.G. removed his badge.
20. On April 20, 2012, WHS again sponsored a Day of Silence with the same purpose and design as in 2011 – to raise awareness for tolerance and diversity.
21. S.G. believed that WHS sponsored the Day of Silence in 2011 and again in 2012 to promote tolerance of alternative lifestyles, including homosexuality.
22. On WHS’s Day of Silence in 2012, S.G. wore to school a tee-shirt that depicted, on one side, a rainbow with a slash through it – the commonly-recognized symbol of gay rights – and, on the other, a male and female stick figure, holding hands, above the legend, “Excessive Speech Day.”
23. S.G.’s tee-shirt did not demean anyone personally.

24. S.G. has not been aware at any time of any WHS policy or rule that prohibits the wearing of expressive attire. On information and belief, there is no such policy at WHS.
25. S.G.'s purpose in designing and wearing the tee-shirt to school was to express his opposition to gay marriage and to the WHS Day of Silence.
26. S.G. wore the tee-shirt to the first three periods of school on April 20, 2012.
27. While wearing the tee-shirt, S.G. did not observe any disruption of school-related activities in response to his tee-shirt.
28. During his third period of classes, S.G. was instructed by a teacher to leave his class room and go to the principal's office ("office").
29. In the office, S.G. met a friend and classmate who had also worn a similar tee-shirt to school that day and had also been summoned to the office.
30. S.G. and his friend were met in the office by the WHS administrators.
31. Shortly after S.G. arrived at the office, Gulick walked in, shut the door behind him and joined the meeting in progress.
32. Gulick is also a town police officer.
33. Gulick wore a uniform, badge, and utility belt during the meeting.
34. During the meeting with the WHS administrators and Gulick, with doors closed, the School Administrators asked S.G. and his friend to explain their shirts.
35. S.G. explained that he wore his tee-shirt to express his opposition to gay marriage and to protest the "Day of Silence."
36. S.G. explained that he did not agree with the Day of Silence including the practice of students being asked to walk around with duct tape over their mouths, something S.G. opined to the WHS administrators was "dumb."
37. Drewry said that S.G. and his friend were causing a distraction and students were complaining.
38. Drewry said that he thought that S.G. and his friend were wearing the shirts "for laughs."
39. S.G. explained that wearing the tee-shirt was his way of protesting.
40. During the meeting, when S.G. and his friend were attempting to answer the WHS administrators' questions about their shirts, Gulick came closer to S.G.'s friend and told him to speak louder.
41. S.G. perceived Gulick's approach to his friend to be intimidating to the other student.
42. Based on the circumstances, including being summoned to the office and confronted by WHS administrators, S.G. perceived that the WHS administrators were demanding that he and his friend not wear the tee-shirts to school.
43. S.G.'s friend complied with the WHS administrators' demand, zipped up his hoodie to cover his shirt, and left the office.
44. Although S.G.'s friend was present at the beginning of the meeting in the office, after this friend left, S.G. was alone in the office with the School Administrators and Gulick.
45. S.G. stayed with the WHS administrators and continued to assert his right to wear the tee-shirt.
46. S.G. asked the WHS administrators what would happen if he didn't change his shirt.
47. In response to S.G.'s question, Drewry stated that S.G. would be suspended or expelled.
48. One of the WHS administrators told S.G. that the picture on the back of his shirt of a man and woman was okay, but the rainbow with a slash thru it was distracting.
49. S.G. told the WHS administrators that S.G. had not spoken to other students about his protest during the day but had simply worn the tee-shirt in silent protest.
50. S.G. explained during the meeting that he did not see any reason for complaint about the tee-shirt.
51. S.G. did not materially or substantially interfere with the operations of the school.
52. S.G. did not cause an invasion of the rights of others by wearing his tee-shirt to school.

53. None of the WHS administrators told S.G. during the meeting that he had interfered materially or substantially with school operations.
54. None of the WHS administrators told S.G. during the meeting that he had caused an invasion of the rights of others.
55. S.G. continued to express to the School Administrators his sincere reason for wearing the tee-shirt – to oppose gay marriage – and that he wanted to continue to wear the tee-shirt.
56. One of the WHS administrators gave S.G. a shirt depicting a WHS symbol to put on.
57. One of the WHS administrators told S.G. that he wouldn't be allowed back into the building or the school hallways wearing his tee-shirt.
58. The WHS administrators told S.G. to go into the administrative bathroom to change into the different shirt.
59. S.G. ultimately changed his shirt because he did not want to be suspended or expelled.
60. S.G. wanted to be a "Super Senior," a school honor that requires that he have no discipline on his record.
61. As of April, 2012, S.G. had no discipline in his school record.
62. Before S.G. left the office, Monroe asked S.G. who was going to pay for the WHS shirt.
63. S.G.'s meeting with the School Administrators and Gulick lasted approximately one hour.
64. S.G. asked for permission to leave the school building to put his tee-shirt in his truck outside before returning to his school classes and the WHS administrators gave him that permission.
65. As S.G. put the tee-shirt in his truck, he called his father.
66. After the meeting, S.G.'s father called the school and spoke to Monroe.
67. Monroe told S.G.'s father that S.G. did not ask permission to wear the tee-shirt ahead of time.
68. At the time the School administrators confronted S.G. and told him to remove the tee-shirt, they knew or should have known that forbidding S.G. to wear his tee-shirt violated S.G.'s clearly established constitutional rights.
69. Nevertheless, the School Administrators told S.G. that he could not be in the building wearing the tee-shirt.
70. The Day of Silence is a recurring event at WHS and S.G. expects that it will again be scheduled during April, 2013, his senior year at WHS.
71. S.G. through counsel has requested written assurance from Macary "that neither S.G., nor other WHS students, will be forbidden hereafter to wear the tee-shirt at issue, or similar tee-shirts that likewise do not demean individuals on the basis of sexual orientation or other core characteristics." A copy of the June 5, 2012 request on behalf of S.G. is attached hereto as Exhibit A ("Request").
72. To date, Macary has not provided the requested written assurance.
73. Monroe responded to the Request on June 7, 2012. A copy of Monroe's response to the Request is attached as Exhibit B.
74. S.G.'s counsel and counsel for Wolcott Public Schools communicated for several months following the Request.
75. In or about September, 2012, counsel for Wolcott Public Schools indicated to S.G.'s counsel that a written assurance that S.G. can wear the tee-shirt to school would be provided.
76. To date, no one on behalf of any of the defendants has provided S.G., directly or indirectly, with any assurance, written or verbal, that he will be permitted to wear his tee-shirt on the 2013 Day of Silence, or any other school day.
77. The defendants, acting jointly and severally, opposed the message that S.G. conveyed by wearing his tee-shirt to school on the Day of Silence.
78. The defendants, acting jointly and severally, censored S.G.'s speech.
79. The defendants, acting jointly and severally, have failed and refused to provide S.G. with assurance that, if he wears his tee-shirt to WHS to the 2013 Day of Silence or on any other day, he will not be subject to censorship and the threat of discipline.
80. In absence of the requested assurance, S.G. is reluctant to again wear his tee-shirt to WHS.
81. Defendants' actions are producing ongoing irreparable harm for which there is no adequate remedy at law.
82. S.G. has suffered injury as a result of the Defendants' action.

83. The defendants, jointly and severally, continue to chill S.G.'s constitutional right to free speech at WHS.

I. First Cause of Action (Title 42 U.S.C. § 1983)

Violation of Civil Rights

84. The allegations contained in paragraphs 1 through 83 are incorporated by reference.

85. Defendants have violated and continue to violate S.G.'s clearly established constitutional rights to free speech, expression, petition and protest.

86. The actions of the defendants violated Title 42, United States Code, §§ 1983 and 1988 and the United States Constitution.

II. Second Cause of Action (Article I, §§ 4, 5)

Violation of Connecticut Constitution

87. The allegations contained in paragraphs 1 through 83 are incorporated by reference.

88. The defendants, jointly and severally, violated S.G.'s rights under the Connecticut Constitution, Article I, §§ 4 and 5 by restricting his ability as a Connecticut citizen to speak, write and publish on a subject of public concern.

Claims for Relief

WHEREFORE, S.G. requests that the Court grant the following relief:

Declare that the defendants violated S.G.'s clearly established First Amendment rights and his rights under Article I of the Connecticut Constitution;

Enter preliminary and permanent injunctions against the defendants:

- a) to permit S.G. to wear the tee-shirt expressing his beliefs to school, including on the Day of Silence at WHS in 2013
- b) to prevent defendants from retaliating in any way against S.G.;
- c) to prevent the defendants from maintaining any disciplinary logs or other written documents in S.G.'s academic or guidance files pertaining to the claims arising from this complaint.

Award costs pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and Connecticut state law;

Award damages to S.G.;

Award attorney's fees pursuant to 42 United States Code § 1988; and

Grant such other and further relief as this court deems proper and just.

Lesson Handout: The Wolcott T-Shirt Controversy

Press release issued by the ACLU of Connecticut



Wolcott Public Schools Recognize Student's Free Speech Rights

FOR IMMEDIATE RELEASE

February 26, 2012

Seth Groody believed that wearing an anti-gay T-shirt to Wolcott High School last year was protected under the First Amendment of the United States Constitution. Now, Wolcott Public Schools have acknowledged that he was right. Attorney Christine L. Chinni, representing the Wolcott Public Schools, has affirmed Seth's free speech rights in a letter to the American Civil Liberties Union of Connecticut.

She wrote that "should Mr. Groody wear a shirt describing his views regarding homosexuality, including but not limited to the shirt he wore to Wolcott High School last year, he will be permitted to wear it throughout the school day." The acknowledgement came after the ACLU of Connecticut prepared a federal complaint on Seth's behalf and shared the draft with counsel for the Wolcott Public Schools.

"Public school students need to know that the First Amendment is not merely a theoretical discussion topic but a real and vital guarantee of freedom in America that entitles them to express their views," said Sandra Staub, legal director of the ACLU of Connecticut. "We commend the Wolcott school system for recognizing students' fundamental right to free expression under the First Amendment to the U.S. Constitution, as well as the Constitution of Connecticut."

Seth wore the T-shirt in question on April 20, 2012 to express his disagreement with the perceived message of a Day of Silence at Wolcott High School, meant to raise awareness of bullying and harassment of gay, lesbian, bisexual and transgendered people. The shirt in question depicted a rainbow – the commonly recognized symbol of gay rights – with a slash through it. The other side showed a male stick figure and a female stick figure holding hands above the legend, "Excessive Speech Day."

Seth said he was called to the school office, where he was confronted by several school officials and the police officer assigned to the school. The principal told him he would be suspended or expelled if he refused to remove the shirt, he said. The ACLU of Connecticut wrote to school officials in June 2012, seeking assurance that Seth's free speech rights would be respected.

"The ACLU of Connecticut disagrees very strongly with Seth's views on same-sex marriage and gay rights, but that has no bearing on his right to express those views," Staub said. "We're very glad that the Wolcott Public Schools recognizes this, as well."

ACLU presses Wolcott schools system into allowing anti-gay rights T-shirt

Tuesday, February 26, 2013

By The Associated Press

WOLCOTT — Officials in a Connecticut school district have backed down in a fight over free speech rights, allowing a student to wear a T-shirt bearing an anti-gay message.

The lawyer for the school district this month wrote to the American Civil Liberties Union of Connecticut, saying Wolcott High School student Seth Groody may wear the T-shirt, which bears a slash mark through a rainbow. The other side showed a male and female stick figure holding hands above the message "Excessive Speech Day," the ACLU of Connecticut said.

The ACLU said Groody wore the shirt April 20, which was designated as a day of awareness of harassment toward gay, lesbian, bisexual and transgender people.

Groody complied with an order from a school administrator that he remove his shirt and replace it with one depicting a Wolcott High School symbol, the ACLU said.

Sandra Staub, legal director of the ACLU of Connecticut, said the district's reversal teaches students that the First Amendment "is not merely a theoretical discussion topic but a real and vital guarantee" of free speech rights. The ACLU prepared a lawsuit to be filed in federal court demanding that the school district be stopped from enforcing its T-shirt ban and that no disciplinary measures be taken against Groody. Without elaborating, school lawyer Christine Chinni wrote to the ACLU on Feb. 14, saying Groody may wear the T-shirt.

She did not return a call seeking comment. Edward Groody, Seth's father, referred questions to the ACLU. The ACLU disagrees "very strongly" with Seth's views on gay rights, but its opinion has no bearing on his right to express those views, Staub said.

Doninger v. Neihoff

In 2007, Avery Doninger, a junior at Lewis S. Mills High School in Burlington, CT, criticized school administrators for canceling a student concert. From her home computer, she posted a blog entry referring to “douchebags in the central office” and from the school computer lab she sent email asking students and parents to complain to the school superintendent “to piss her off more.”

As a consequence, the school refused to let Avery run for re-election as class secretary in her senior year.

On the day of the election, Avery and supporters were required to remove T-shirts that said “Team Avery.” She won the election as a write-in candidate but was not allowed to take office.

Avery and her mother sued the school district, saying her constitutional rights to free speech, due process and equal protection had been violated. A federal court judge denied their request for an injunction to allow Avery to take office as class secretary. The Doningers filed an appeal of another part of that decision, which concerned school officials’ liability,

which was unsuccessful. The U.S. Supreme Court refused to hear a further appeal of the case.

The case was widely seen as a setback for student

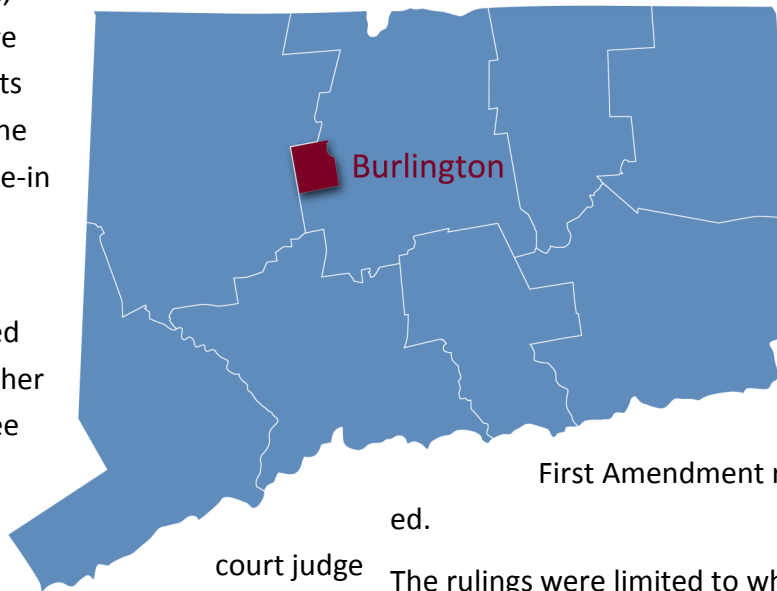
speech rights and many news reports described it as an indication that school officials could punish students for what they say on the Internet. But the out-

come was not quite so clear-cut because the case ended without settling most of the issues in question. The courts never ruled on the core question of whether Avery Doninger’s

First Amendment rights had been violated.

The rulings were limited to whether Avery could get an immediate injunction and to the level of liability that school officials would face if the court had ultimately found that they had violated her rights. While the courts’ rulings on those matters might indicate

that they would have ruled against Avery in a final decision, the case never got that far. And to complicate matters further, students who were punished for insulting their principals online won two very similar Pennsylvania lawsuits that that did address the core free



Resources

Second Circuit Court of Appeals Opinion, *Doninger v. Niehoff*

Decision upholding a lower court's refusal to grant Doninger an injunction allowing her to take office.

<http://www.acluct.org/wp-content/uploads/2013/08/Doningerappealopinion1.pdf>

Amicus Brief, ACLU of Connecticut, *Doninger v. Niehoff*

The ACLU of Connecticut did not represent Avery Doninger but filed a friend of the court brief on her behalf.

<http://www.acluct.org/wp-content/uploads/2009/09/DoningerAmicus09.pdf>

Third Circuit Court of Appeals Opinion, *Layshock v. Hermitage School District*

This case involved a similar controversy over an online insult to a school official but ended very differently.

<http://www.ca3.uscourts.gov/opinarch/074465p1.pdf>

Discussion questions and answers

1. Does it make a difference, as a free speech issue, whether Avery Doninger was at home or at school when she wrote her email and blog entry?

A. That's unclear because the courts have not agreed on that question. In the *Doninger* case, the school district's lawyer argued that Avery Doninger's speech was disruptive and the school had a right to regulate it, regardless of where she wrote it. The federal District Court judge in that case seemed to agree, at least in part, writing that "Off-campus speech can become on-campus speech with the click of a mouse." But in a similar case in Pennsylvania, (*Layshock v. Hermitage School District*) a federal appeals court ruled that there is an important difference: "It would be an unseemly and dangerous precedent to allow the state, in the guise of school authorities, to reach into a child's home and control his/her actions there to the same extent that it can control that child when he/she participates in school sponsored activities."

2. School officials said that Avery's conduct met the Tinker standard for disruptive speech. Did the blog post create a reasonable expectation of "substantial disruption of/or material interference" with school activities? What about the email? What about the T-shirts?

A. The courts never got to the point of deciding those questions, but it seems likely that the most effective argument for "substantial disruption" would be in the case of the email. The blog post, while insulting, might or might not have caused a disruption. It would be difficult to argue successfully that the T-shirts advocating Avery Doninger's candidacy for a school office would be disruptive. Besides, the T-shirts could be seen as core political speech, which has the highest level of constitutional protection. It could, however, be argued that the email called directly for disruptive actions to upset the school superintendent

3. The appeals court ruling suggested a distinction between punishing students with expulsion or suspension from regular school activities and barring them from extracurricular activities, such as serving in student government. Would Avery Doninger have had a stronger case if she had been expelled for her actions?

a. The answer is probably yes. In the *Doninger* case, the District Court said that “the Supreme Court and other courts have been willing to accord great discretion to school officials in deciding whether students are eligible to participate in extracurricular activities” which are considered a “privilege, not a right.” The implication was that an expulsion or suspension, which would interfere with a student’s access to education, would be treated differently. Yet there’s no question that the ban on Doninger holding school office was a form of speech suppression.

Activities

- A circuit split occurs when two federal appeals courts – the level just below the Supreme Court – issue contradictory rulings, leaving the Supreme Court to settle the issue. It has been suggested that the Second Circuit ruling in *Doninger* and the Third Circuit ruling in *Layshock* constitute a circuit split, but the Supreme Court has not yet taken up a case that would clarify student rights of free speech off-campus. Assume that a third case has arisen where a student has called a school administrator “a moron who should be fired” on Facebook, posting from a home computer. Appoint nine students as Supreme Court justices and split the rest into two legal teams, one arguing that the student can be suspended over the insult, citing *Doninger*, and the other arguing that the school can’t punish the student, citing *Layshock*. Hold an informal mock trial with each side presenting its arguments and the justices rendering a decision.
- Ask each student to propose a federal law that sets out the rights of students to free speech on the Internet and describes the limits that school officials may impose on that speech. Remind the students that the law can expand the rights offered in the Constitution, but it will be challenged and struck down in court if it infringes on the rights guaranteed in the Constitution. Divide students into groups of five or six and have each group operate as a congressional committee to combine and edit their proposals to reach a single consensus bill. Present and discuss all the resulting bills in class and try to reach a further consensus on what elements will be included in a final piece of legislation.

Lesson Plan 3: *Doninger v. Neihoff*

Lesson Objective:

Students will analyze and apply the facts of *Doninger v. Neihoff* to develop an argument for or against student Avery Doninger's claim that her right to free speech was violated.

Essential Question:

What is a "substantial disruption" or "material interference" of the educational process?

Performance Standards Focus:

Framework 2.4: Students will demonstrate an ability to participate in social studies discourse through informed discussion, debate, and effective oral presentation.

Initiation:

Before class, teacher will write (project) the text of First Amendment on the board (smart board), underlining the words "freedom of speech".

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

At start of class, teacher will ask students how citizens exercised the right to free speech in 1791, when the Bill of Rights was ratified. What kinds of free speech do you think James Madison had in mind when he wrote the Bill of Rights? How did people exercise free speech in those days?

Students will quickly call out answers. Possible answers would include: newspapers, books, speeches in public places, pamphlets passed out in public, etc.

Teacher will then ask the class: What about now? Did they have the Internet back then? Can you think of ways that the Internet has changed the way we exercise our right to free speech. Possible answers would include websites, Facebook, Twitter, and other social media, blogging, texting, email, etc.

Procedure

Today, we're going to talk about a school free speech case in Connecticut that involved the use of the Internet at home and at school. In 2007, Avery Doninger, a junior at Lewis S. Mills High School in Burlington, was barred from running for school office after criticizing school officials for canceling a student concert. She did this by posting a blog entry from her home computer referring to "douchebags in the central office." She also sent an email from the school computer lab asking students and parents to complain to the school superintendent "to piss her off more."

Teacher will pass out Lesson 3 packet and have a student read the directions.

Teacher will give students 10-15 minutes to read the case background, standards and newspaper stories in the packet, answer the questions, and summarize their position on the outcome of the case in writing.

Teacher will divide class into a two large groups in preparation for Fishbowl activity. Teacher will provide instructions and ground rules for Fishbowl.

Half the students will place their chairs in a circle, while the other half stands around them in an outer circle. In the inner circle, the first student will have 2 minutes to share his or her position on the case and give reasoning. The remaining students in the inner circle will have one minute each to agree or disagree and say why. Students in the outer circle will listen and not participate in the discussion. Based on what they hear, students in the outer circle will then have a chance to ask a question or share an observation. (See detailed instructions on next page.)

At the conclusion of activity, teacher will collect written summaries.

Students will return to seats

Closure:

Even though the “speech” in *Doninger v. Neihoff* happened on the Internet, did that really matter in the end? Did that have any bearing on the outcome of the case? Students can call out answers.

Materials

Lesson 3 packet (contains case background, summary of standards, a newspaper article, questions and worksheet for written position summary)

Assessment

Completed written position summaries

Fishbowl activity instructions

Fishbowl: a circle in the middle of the classroom in which one group of students discusses topics as the rest of the class observes and takes notes or completes a comparable task on what they hear and learn.

Guidelines:

- ◆ Teacher will either assign students to read the material and answer questions in the Lesson 3 Packet for homework or give them 10-15 minutes to read the material and complete questions in class. All students will summarize their positions on the outcome of the case in writing in class.
- ◆ Teacher will divide class into two groups, assigning each student either the number one or two. Students assigned the number 2 will form a circle in the middle of the room and sit, crisscross style, on the floor
- ◆ Teacher will instruct students assigned the number 1 to place their chairs behind the seated students, forming an outer circle around the inner one. No. 1 students will bring a pen or pencil and notebook with them.
- ◆ Teacher will select a student in the inner circle to begin the fishbowl discussion. That student will have two minutes to share his or her position on the outcome of the case and his or her reasoning. The remaining students in the inner circle will have one minute each to agree or disagree and say why. When each student is speaking, all others must be listening.
- ◆ While students in the inner circle are speaking, students in the outer circle will listen and not participate in the discussion. Instead, they will jot down questions or observations they have about the inner circle discussion. These questions and observations must be related to the assigned topic.
- ◆ Once inner circle students have concluded their discussion, outer circle students will have a minute each to ask a question or share an observation.
- ◆ If discussion gets off track, teacher may redirect students by restating a question or posing one of his or her own related to the assigned topic.
- ◆ Teacher may loosen time limits for students in both circles if more time is available
- ◆ At the conclusion of the activity, teacher will have students return to their seats and turn in Lesson 3 Packets with written summaries
- ◆ Teacher will proceed to closure

Lesson 3 Packet: *Doninger v. Niehoff*

Instructions:

- Read the background on *Doninger v. Niehoff*.
- Decide which, if any, free speech standard applies in this case.
- Read the attached newspaper story on the court decisions in the case, highlighting important facts
- Answer the questions about your reading
- In a minimum of five sentences, summarize whether you agree or disagree with the outcome of the case. Be sure to use evidence from your reading and the answers to the questions to support your position.

Background

In 2007, Avery Doninger, a junior at Lewis S. Mills High School in Burlington, CT, criticized school administrators for canceling a student concert. From her home computer, she posted a blog entry referring to "douchebags in the central office" and from the school computer lab she sent email asking students and parents to complain to the school superintendent "to piss her off more."

As a consequence, the school refused to let Avery run for re-election as class secretary in her senior year. On the day of the election, Avery and supporters were required to remove T-shirts that said "Team Avery." She won the election as a write-in candidate but was not allowed to take office.

Avery and her mother sued the school district, saying her constitutional rights to free speech, due process and equal protection had been violated. Although the courts never reached a final decision on the core issue of whether Avery's First Amendment rights were violated, several preliminary decisions on motions in the case favored the school district. A federal District Court judge denied the Doningers' request for an injunction to restore Avery's name to the ballot. The Doningers filed an appeal on other points of the case, but the appeal was denied and the U.S. Supreme Court refused to hear an appeal of that ruling.

The case was widely seen as a setback for student speech rights and many news reports described it as an indication that school officials could punish students for what they say on the Internet. But the outcome was not quite so clear-cut because the case ended without settling most of the issues in question. The courts never quite ruled on the essential question of whether Avery Doninger's First Amendment rights had been violated. Their rulings were limited to whether she could get an immediate injunction and whether school officials acted reasonably (and therefore had only limited liability) even if they had, in fact, violated her rights. While the courts' rulings on those matters could indicate that they would have ruled against her in a final decision, the case never got that far.

School Free Speech Standards

Check any that apply. For more details, see Student Guide.

___ The Tinker standard

In *Tinker v. Des Moines*, the Supreme Court ruled in 1969 that students **“don’t shed their constitutional right to freedom of speech and expression at the schoolhouse gate.”** The standard established by the case, known as the **Tinker Standard**, says that school officials may not censor student expression just because they disagree with it. In order to restrict student speech, school officials must be able to predict **“substantial disruption of or material interference with school activities”** or to show that the speech interfered with the rights of others. The Court added that the expectation of a substantial disruption must be **“something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular view point.”**

___ The Fraser standard

Bethel School District No. 403 v. Fraser sets guidelines for public speech at school-sponsored events and activities, where schools are allowed to **restrict speech that is vulgar or lewd.**

___ The Hazelwood standard

Hazelwood School District v. Kuhlmeier **allows school officials to control some student speech in school-sponsored newspapers and at school activities.** The Supreme Court found that the principal of Hazelwood East High School did not violate the First Amendment rights of his students by deleting two pages of the *Spectrum*, the school-sponsored newspaper that was produced in a school journalism course.

___ The Morse standard

Morse v. Frederick allows schools to suppress speech that **promotes illegal drug use.** The student in question had a sign that read “Bong Hits 4 Jesus.”

High Court Declines To Hear Student Free Speech Case

By EDMUND H. MAHONY

The Hartford Courant

Tuesday, November 1, 2011

The U.S. Supreme Court on Monday ended former Connecticut high school student Avery Doninger's First Amendment fight when it let stand a prior ruling that school administrators acted reasonably when they disciplined her for using a vulgar term to criticize faculty.

The justices Monday morning declined to hear an appeal from Doninger, a junior at Lewis Mills High School in Burlington in 2007 when she used an off-campus computer to post an Internet comment that criticized school administrators in the mistaken belief that they were canceling a musical event called Jamfest.

By declining to hear Doninger's appeal, the Supreme Court affirmed a decision by the trial judge, U.S. District Judge Mark R. Kravitz. Rulings in the case by Kravitz have twice been affirmed by the U.S. 2nd Circuit Court of Appeals since Doninger and her mother sued.

Some groups, including educational lawyers, had hoped the Supreme Court would use Doninger to re-examine the limits of student speech, on and off campus, in the age of instant, mass communication on the Internet.

The question in the Doninger case was the balance between a student's right to free expression and the disruptive effect of such speech upon the educational process.

"I think it was the right decision for this issue," said attorney Thomas R. Gerarde, who represented the school administrators Doninger sued. "If speech disrupts the educational process it can be disciplined."

He said the distinction between off-campus and on-campus speech is no longer useful because of the reach and speed of Internet communications.

But Doninger's lawyer, Jon L. Schoenhorn, warned that the outcome of his client's case does not give school boards authority to regulate all student speech.

"No school board should look at this as some kind of arbitrary restriction on Internet communication by students," Schoenhorn said.

The concert Doninger thought was canceled actually was being rescheduled when she criticized school administrators. As discipline, they prohibited her from running to become secretary of her high school class.

The case now returns to state Superior Court, where the suit was filed initially. Schoenhorn said Doninger, a junior at Eastern Connecticut State University, will decide whether there are claims she can pursue under the state constitution. Doninger, spending her junior year abroad in Africa, was not immediately available.

Questions on reading

1. School officials said that Avery Doninger's conduct met the Tinker standard for disruptive speech. Did the blog post create a reasonable expectation of "substantial disruption of/or material interference" with school activities? What about the email? What about the T-shirts?
2. The judge who ruled on the Doninger case at the District Court level suggested that the Internet has changed the boundaries between on-campus and off-campus speech. "Off-campus speech can become on-campus speech with the click of a mouse," he wrote. Do you agree? Explain why or why not.
3. Does it make a difference whether Avery Doninger was at home or at school when she wrote her email and blog entry? Explain why or why not.
4. How is *Doninger v. Neihoff* similar to *Bethel School District No. 403 v. Fraser*? How is it different?

Name: _____**Date:** _____**Summary**

Assuming the courts would have continued to side with the school district and would have ruled against Doninger, would you agree with the outcome? In a minimum of five sentences, summarize why you would agree or disagree with the decision. Use your answers to the questions as the basis for your summary, supported by evidence from your reading and other information in this packet or the Student Guide. Please write in complete sentences using proper punctuation and spelling.

Manchester Public Schools Social Media Policy

In May 2012, the Manchester, CT, Board of Education was considering a policy that would have restricted social networking by teachers and other employees.

The policy would have imposed rules about employees' comments and posts on personal accounts on Facebook, Twitter and other social networking sites accessed off campus. Employees could be punished or fired for violating the rules. The policy was not intended to apply to students.

Alerted by a newspaper report, the American Civil Liberties Union of Connecticut objected to provisions in the proposed policy that would have forbidden speech that would harm "the goodwill and



reputation of the school district in the community" and speech that was not "appropriately respectful."

In a letter to the school board, the

ACLU-CT pointed out that the speech

the policy sought to restrict is protected by the First Amendment. It cited the case of *Pickering v. Board of Education*, in which it was held that a public school teacher could not be punished for criticizing a school board's handling of its budget.

After receiving the ACLU letter, the school administration withdrew the policy from consideration, and it was not adopted.

Resources

Manchester Board of Education, Proposed Social Networking Policy

<http://acluct.org/wp-content/uploads/2012/05/mansmpolicy.pdf>

Letter, ACLU of Connecticut to Manchester Board of Education

<http://www.acluct.org/wp-content/uploads/2012/05/manboe052512.pdf>

Hartford Courant: ACLU Says Proposed Manchester Social Media Policy Violates Free Speech

http://articles.courant.com/2012-05-25/community/hc-manchester-school-social-media-0525-20120525_1_social-media-school-board-school-rules-and-regulations

Orlando Sentinel: 2 views on Teachers and social media:

Schools must enforce teachers' boundaries, keep students safe

http://articles.orlandosentinel.com/2011-09-23/news/os-ed-against-jerry-buell-092311-20110922_1_gay-man-anti-gay-attitudes-superintendent-susan-moxley

Schools can't squelch free speech outside the classroom

http://articles.orlandosentinel.com/2011-09-23/news/os-ed-favor-of-jerry-buell-092311-20110922_1_free-speech-personal-facebook-page-teachers

Findlaw: *Pickering v. Board of Education*

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=391&page=563>

Discussion questions and answers

1. The policy would have prohibited the use of social networking to harass coworkers, create a hostile work environment or violate student confidentiality. Why didn't the ACLU object to those provisions?

A. The ACLU didn't object because the speech in those cases is not necessarily protected by the First Amendment. Harassment is a crime and so is violating student confidentiality. A hostile work environment is a little trickier. What constitutes a hostile work environment can be a matter of opinion, and it may not be a crime. But offensive, repeated speech that amounts to discrimination against a fellow employee can be reasonable grounds for firing someone.

2. Does new communication technology always bring new efforts to control speech? What happened in Europe after the invention of the printing press in 1439?

A. It wasn't long after Johannes Gutenberg invented the printing press, which made books much less expensive and more widely available, that government and church authorities began to censor and ban certain books. Some scholars see a parallel to the introduction of the Internet, which allows almost anyone to publish any idea online, no matter how offensive it is to others. While some people want to make new regulations to restrict online speech, free speech advocates believe online speech should have the same protection that other forms of speech have. In other words: if you can say it, you should be able to post it on Facebook.

3. Some employers have required employees and job applicants to share Facebook and other social media passwords with supervisors or recruiters. Is that legal?

A. There's no clear answer yet, except in some states (such as Illinois) where legislatures have passed laws against employers demanding passwords. The Connecticut legislature considered such a law in the 2013 and 2014 sessions but it did not pass. Privacy advocates argue that making employees or applicants provide passwords is an unconstitutional invasion of privacy, much like an employer demanding to read personal letters sent to your home through the mail. But it's such a new issue that the courts haven't ruled on it yet. As a free speech issue, it could be argued that the fear of having your boss read your Facebook page would have a "chilling effect" that would cause you to censor your own speech.

Activities

- Ask students to review their own Facebook, Twitter and other social media accounts to assess whether their comments would violate the social media policy proposed in Manchester, if it applied to them. As a written assignment or in preparation for classroom discussion, ask them to consider, without revealing the content of their comments, these questions: How freely do they speak online? Would they refrain from posting online some things they would say in private? Is it

important to be able to post what they think? Why? Does this review convince them of a need to restrict use of social media use by students? By teachers?

- In March 2006, the school district in Ansonia, Connecticut, fired a teacher after learning of a private MySpace page on which the teacher had regular interactions with his students. The teacher sued. The federal District Court found that the teacher was speaking on the page as a private citizen, not a public school employee, and that at least one of his posts was protected political speech for which he could not be punished. But the Court threw out his lawsuit, finding that his jokes and teasing with students were not protected and were “likely to disrupt school activities.” Ask students to review this case, *Spanierman v. Hughes*, and to write a policy that would set guidelines for online interaction between teachers and students without threatening the free speech rights of either. www.ctemploymentlawblog.com/uploads/file/hughes.pdf
- The growth of the Internet over the past few decades has highlighted the difference between U.S. views of freedom of speech and those prevalent in other countries. Ask the students to visit the Open Net Initiative (opennet.net). Have each one choose a country and read the profile of its Internet policies. Ask each student to describe, in an essay or classroom presentation, how that nation’s policy conforms to or diverges from the U.S. idea of freedom of speech. If the student lived in that country, would he or she have to behave differently online? How so?

Lesson Plan 4: Manchester Public Schools Social Media Policy

Lesson Objective:

Students will analyze and interpret the text of the proposed social media policy, ACLU letter, and news articles to participate in a discussion about the implications of social media on free speech in schools.

Essential Question:

What is the difference between on-campus and off-campus speech?

Performance Standards Focus:

Framework 2.4: Students will demonstrate an ability to participate in social studies discourse through informed discussion, debate, and effective oral presentation.

Initiation:

Note: To prepare students for this lesson, teacher will give students the Lesson 4 Packet the day before the class and assign them to read it for homework. Each student must prepare three questions based on the reading. The completed homework will be each student's "ticket" to participate in the Socratic Seminar. Students not completing the homework may not take part.

At the start of class, teacher will ask student to consider the following question:

Have you ever posted something on a blog, Facebook or Twitter about school?

Teacher will allow students time to answer. (Yes, they probably have since students spend so much time in school or at school-sponsored activities)

Now consider this: what if you posted something your principal, superintendent or teacher didn't like on social media? What if you were a teacher, and posted something your principal, superintendent or a school board member didn't like? Under the First Amendment, would those authorities be allowed to punish you or prevent you from expressing your views, however critical or objectionable, on social media or the Internet? Would it matter whether you expressed the views while at school or from home?

Teacher will give students time to respond.

Procedure

Last night we read about a Connecticut case involving Manchester Public Schools, where the school board drafted a policy that would have threatened the First Amendment rights of teachers. We also read two different views on a case in Florida involving a teacher expressing views on social media that school authorities and probably many students didn't like, but for which the teacher was ultimately not punished by the school board – a decision the ACLU in Florida supported and agreed with.

Teacher will ask students to show their completed homework or "ticket" to the seminar and instruct those with "tickets" to put their chairs in a circle at the center of the room. Students without tickets will sit just outside the circle. During the discussion, they will write down at least two questions and/or observations related to the topic being discussed. These students will listen to the discussion, but not participate. (For seminar

procedure, see notes and instructions following this lesson plan.) (20-25 minutes)

Teacher will pose opening question: i.e. The Internet enables individuals to reach more people with their words than ever before. If that means more people are offended by some online content, is that a reason to restrict speech on the Internet?

Students will continue discussion independently, using their questions and seminar stems. If the conversation gets off track, teacher will refocus students on the opening question by restating it. Teacher will use additional questions to move the discussion along, if needed. Suggested questions include:

- The policy created by the school board in Manchester applied to adults employed by the school district. Would it have been constitutional if it applied to students?
- Had it gone into effect, the policy would have prohibited the use of social networking to harass coworkers, create a hostile work environment or violate student confidentiality. Why didn't the ACLU object to those provisions in its letter to the school board chair?
- In the Florida case, did teacher Jerry Buell make Facebook an extension of his classroom by allowing students to "friend" him on the social network?
- Beull's attorney said that once teachers clock out, they are private citizens and "full heirs to the same God-given, constitutionally guaranteed freedoms that you and I enjoy...." What do you think? What did the courts rule about that same issue in a case in Missouri?

After the seminar teacher will ask a debriefing question. Suggested questions include:

- Should offended parties use the Internet to spread their opposing message? (While some people want to control so-called "hate speech," free speech advocates say the best way to address offensive speech is with more speech.)
- One of the reasons given for restricting speech, especially online speech, is to prevent bullying. Is there a difference between criticizing another person and bullying?

At the conclusion of the seminar, students will return to their seats and complete the post-seminar form. Teacher will collect completed packets.

Closure:

If you could sum up the effect of the Internet on free speech in schools in one word, what would the word be? (possible answers include confusing, fuzzy, complicated, depends, etc.)

Materials

Lesson 4 Packet (contains case background, summary of standards, one news story, two op-ed pieces, and a pre and post seminar worksheet)

Assessment

Student participation in seminar and completed pre- and post-seminar forms

Explanation and instructions for Socratic Seminar (Lesson 4)

Summary

The National Paideia Center, which has developed extensive material on using seminars in classrooms, defines a Socratic seminar as a “collaborative, intellectual dialogue facilitated with open-ended questions about a text.” (More information can be found at <http://nwabr.org/sites/default/files/SocSem.pdf>)

Purpose

The purpose of a Socratic Seminar is to achieve a deeper understanding about the ideas and values in a text. In the seminar, participants systematically question and examine issues and principles related to a particular text, and articulate different points of view. The group conversation assists participants in constructing meaning through disciplined analysis, interpretation, listening and participation.

Background

In a Socratic Seminar, the participants carry the burden of responsibility for the quality of the discussion. Good discussions occur when participants study the text closely in advance, listen actively, share their ideas and questions in response to the ideas and questions of others, and search for evidence in the text to support their ideas. The discussion is not about right answers; it is not a debate. Students are encouraged to think out loud and to exchange ideas openly while examining ideas in a rigorous, thoughtful, manner.

Key Elements

There are three basic elements of a Socratic Seminar:

- Text
- Classroom Environment
- Questions

Text

For the purposes of this unit, the text for the seminar will be the documents in the Lesson 4 Packet. The material in the packet includes:

- Summary of School Free Speech Standards
- Letter from the ACLU of Connecticut to Chris Pattacini, chair of the Manchester Board of Education
- Manchester Public Schools Social Networking Policy
- ACLU: Policy Violates Free Speech. Union Says social Media Regulation Infringes on Rights of School System’s Employees, *Hartford Courant*, May 26, 2012
- 2 Views on Teachers and social media: Schools must enforce teachers’ boundaries, keep students safe, and Schools can’t squelch free speech outside the classroom, op-eds, *Orlando Sentinel*, Sept. 23, 2011

Sections of each text have been numbered. During the discussion, students should identify the name and section number of the document to which they are referring.

Sections of each text have been numbered. During the discussion, students should identify the name and section number of the document to which they are referring.

Classroom Environment

The classroom should be arranged so that students can look at each other directly. A circle or square works well. The teacher should review discussion norms with students before the discussion and post or project the norms prominently for use during the discussion. The following norms are recommended:

- Don't raise hands
- Listen carefully
- Address one another respectfully, using the seminar stems listed on the pre-seminar form
- Base any opinions on the text
- Address comments to the group. No side conversations.
- Try to limit remarks to two minutes or less, so that others have time to speak
- Don't be afraid to present your own thoughts and reasoning, but be flexible and willing to change your mind when presented with new and compelling evidence

Questions

In addition to the questions prepared by students, there are times during the Socratic Seminar for teachers to pose questions. Seminars generally begin with an opening question posed by the teacher. If the conversation gets off track, the teacher will refocus students on the opening question by restating it. The teacher can use additional questions to move the discussion along. A list of recommended questions designed for Lesson 4, have been included in the lesson plan. The types of questions used during the seminar are:

Interpretive Questions

- The core of the Socratic Seminar is devoted to considering interpretive questions. These are questions that ask students to interpret the text. The questions posed by teachers should be those in which they would have a genuine interest themselves. No single right answer exists, but arguments can be made to support different positions. Students need to make their points using passages from the text to answer these questions.

Literal Questions

- Literal questions are used to ensure comprehension of the text. These are questions that can be answered directly from the text. The answers are contained within the text and are stated clearly. These questions might have to do with a detail of the text, fact or quote.

Evaluative Questions

- Evaluative questions are sometimes used at the very end of a seminar to allow students to share or reiterate their own positions and opinions, often in relation to their own experiences.

Seminar Structure

Before the seminar:

- Introduce the seminar and its purpose
- Restate that the completed pre-seminar homework is a student's "ticket" to participate in the seminar. Students without "tickets" will listen to the discussion and complete a related activity assigned by the teacher, but will not be allowed to participate.
- Review discussion norms with students
- Review Seminar Stems on pre-seminar form with students

During the seminar:

- Teacher will sit at the level of students but remind them to address each other, not the teacher.
- Ask participating students to relate their statements to particular passages, to clarify and to elaborate
- If the conversation gets off track, refocus students on the opening questions by restating it
- Use additional question to move the discussion along
- Invite those who have not spoken into the conversation.
- Teachers may wish to record for their own purposes the main ideas discussed and the contributions students make (using shorthand or a diagram) to refer to as you facilitate.
- It can be helpful to summarize the points made in the discussion, either at a quiet point or toward the end of the discussion

After the seminar:

- Ask debriefing questions of the students
- Share your own experience of the seminar as facilitator

Lesson 4 Packet: Manchester Public Schools Social Media Policy

Instructions

- Read the material in this packet carefully, highlighting key facts and noting any questions you have. Reading material includes: ACLU letter, Manchester Social Media Policy, Hartford Courant news article and two opinion pieces from the Orlando Sentinel.
- Complete the pre-seminar worksheet on the last page of the packet and draft three questions based on your reading in the spaces provided.
- Familiarize yourself with the seminar stems on the worksheet and be prepared to use them, along with your questions, during the Socratic Seminar.
- Completed homework is your “ticket” to participate in the seminar. Students who do not complete the homework will not be able to participate in the discussion

Background

In May 2012, the Manchester, CT, Board of Education was considering a policy that would have restricted social networking by teachers and other employees. The policy would have imposed rules about employees' comments and posts on personal accounts on Facebook, Twitter and other social networking sites. Employees could be punished or fired for violating the rules.

Alerted by a newspaper report, the American Civil Liberties Union of Connecticut objected to provisions in the proposed policy that would have forbidden speech that would harm "the goodwill and reputation of the school district in the community" and speech that was not "appropriately respectful."

In a letter to the school board, the ACLU-CT pointed out that the speech the policy sought to restrict is protected by the First Amendment. It cited the case of *Pickering v. Board of Education*, in which it was held that a public school teacher could not be punished for criticizing a school board's handling of its budget.

After receiving the ACLU letter, the school administration withdrew the policy from consideration, and it was not adopted.

Chris Pattacini, Chair
Manchester Board of Education
cpattacini@manchesterct.gov
By Electronic Mail

May 25, 2012

Re: Proposed Manchester Board of Education Social Networking Policy

Dear Mr. Pattacini,

We are writing to express concerns regarding the Social Media Policy ("policy") being considered by the Manchester Board of Education. The proposed policy would violate the First Amendment of the United States Constitution by prohibiting school employees from engaging in protected speech. We urge you to reject this policy.

Item six in the policy's introduction would prohibit personal use of social media that harms "the goodwill and reputation of the school district in the community." In *Pickering v. Board of Education*, 391 U.S. 563 (1968), the United States Supreme Court ruled that a public school teacher could not be disciplined for criticizing a school board in a letter to a newspaper for its handling of a budget. Item six prohibits the very type of speech that was at issue in *Pickering* and was found by the U.S. Supreme Court to be protected.

The entire policy must be read in conjunction with the introduction, particularly including, Item six. Therefore, Item six taints the entire policy.

Item four of the Administrative Regulations, All Social Media Activity, mandates that employees use "appropriately respectful speech" in their personal social media. This mandate is unconstitutional because it restricts disrespectful speech even when it addresses matters of public concern - whether or not it interferes with the work of the school district. This mandate runs afoul of the First Amendment protection of speech that is "vehement, caustic and sometimes unpleasantly sharp" *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Finally, the requirement in item two of the Administrative Regulations, Personal Use of Social Media, that "[e]mployees must use caution in mentioning other Board of Education employees or other members of the school community" is unconstitutionally vague. It is vague despite - and indeed precisely because of the exception for speech that "falls under applicable constitutional protections." An average Manchester school employee will not be able to determine what speech "falls under applicable constitutional protections" when First Amendment experts - lawyers, judges, law professors - cannot agree on the subject. This proposed exception mirrors Professor Lawrence Tribes' textbook illustration of a vague statute: "It shall be a crime to say anything in public unless the speech is protected by the frst and fourteenth amendment." Lawrence Tribe, *American Constitutional Law*, §§12-29, 1031 (2nd Ed. 1988).

This unconstitutional policy is intended to restrict employees' personal use of social media. If this policy is adopted, the ACLU of Connecticut will monitor its application to ensure that employees' rights are re-

spected. We encourage the board to reject this policy.

Please do not hesitate to contact us with any questions regarding our position.

Sincerely,

David McGuire ·

Staff Attorney

Martin B. Margulies

Cooperating Attorney

Cc: Dr. Richard Kisiel, Interim Superintendent (By Electronic Mail)

Manchester Board of Education Members (By Electronic Mail)

Revised: March 14, 2012

POLICY: SOCIAL NETWORKING

The Board of Education recognizes the importance of social media for its employees, and acknowledges that its employees have the right under the First Amendment, in certain circumstances, to speak out on matters of public concern. However, the Board will regulate the use of social media by employees, including employees' personal use of social media, when such use substantially and materially interferes with the employee's bona fide job performance or the working relationship between the employee and the employer by:

- 1) interfering with the work of the school district;
- 2) harassing coworkers or other members of the school community;
- 3) creating a hostile work environment;
- 4) breaching confidentiality obligations of school district employees,
- 5) disrupting the work of the school district;
- 6) harming the goodwill and reputation of the school district in the community; or
- 7) violating the law, board policies and/or other school rules and regulations.

The Board of Education, through its Superintendent, will adopt and maintain administrative regulations to implement this policy.

Definitions:

Social media includes, but is not limited to, social networking sites, such as Twitter, Facebook, LinkedIn, YouTube, and MySpace.

Board of Education includes all names, logos, buildings, images and entities under the authority of the Board of Education.

Administrative Regulations

All Social Media Activity (Personal and District-Sponsored)

1. Employees are required to comply with all Board of Education policies and procedures, and all applicable laws with respect to the use of computer equipment, networks or electronic devices when accessing social media sites. Any access to personal social media activities while on school property or using school district equipment or the school district network must comply with those policies, and may not interfere with an employee's duties at work.
2. The Board of Education reserves the right to monitor all employee use of district computers, the district website, other electronic devices, or the district network, including employee blogging and social networking activity. An employee should have no expectation of personal privacy in any personal communication or post made through social media while using district computers, cellular telephones, other electronic data devices or the district network.
3. All posts on personal or district sponsored social media must comply with the Board of Education's policies concerning confidentiality, including the confidentiality of student information. If an employee is unsure about the confidential nature of information the employee is considering posting, the employee shall consult with his/her supervisor prior to making the post.

4. Employees are required to use appropriately respectful speech in their social media posts on personal and district-sponsored sites; and to refrain from harassing, defamatory, abusive, discriminatory, threatening or other inappropriate communications. Such posts reflect poorly on the school district's reputation, can affect the educational process and may substantially and materially interfere with an employee's ability to fulfill his/her professional responsibilities.
5. Employees are required to comply with all Board of Education policies that regulate off-duty conduct apply to social media activity including, but not limited to, policies related to public trust, illegal harassment, code of conduct, and protecting confidential information.
6. Employees are required to use their district email for all work related communications with other employees and students. Absent a prior unrelated special relationship (e.g., relative or family friend), employees are required to use their district email for all email communications with students.

Administrative Regulations

Personal Use of Social Media

1. An employee may not mention, discuss or reference the Board of Education, the school district or its individual schools, programs or teams on personal social networking sites in a manner that could reasonably be construed as an official school district communication, unless the employee also states that the post is the personal communication of the employee of the school district and that the views posted are the employee's alone and do not represent the views of the school district or the Board of Education.
2. Employees must use caution in mentioning other Board of Education employees or other members of the school community (e.g., parents or others) on personal social networking sites, without such individuals' express consent unless the employee is addressing an issue of public concern and the employee's speech falls under applicable constitutional protections. Such postings are outside of the employee's job responsibilities, and employees are subject to potential liability as described in the next paragraph.
3. Employees are individually responsible for their personal posts on social media. Employees may be sued by other employees, parents or others, and any individual that views an employee's social media posts as defamatory, pornographic, proprietary, harassing, libelous or creating a hostile work environment. As such activities are outside the scope of employment, employees may be personally liable for such claims.
4. Unless given written consent, employees may not use the Board of Education's logo or trademarks on their personal posts. Please note that this prohibition extends to the use of logos or trademarks associated with individual schools, programs or teams of the school district.
5. An employee may not link a personal social media site or webpage to the Board of Education's website or the websites of individual schools, programs or teams; or post Board of Education material on a social media site or webpage without written permission of his/her supervisor.

Disciplinary Consequences

Violation of the Board's policy concerning the use of social media or these administrative regulations may lead to discipline up to and including the termination of employment consistent with state and federal law.

ACLU: Policy Violates Free Speech

Union Says Social Media Regulation Infringes On Rights Of School System's Employees

By Jesse Leavenworth
The Hartford Courant
Saturday, May 26, 2012

The American Civil Liberties Union of Connecticut on Friday urged the Manchester school board to reject a proposed policy that would regulate professional and personal use of social media sites.

The ACLU maintains the policy would restrict speech that is clearly protected by the First Amendment, "imposing a set of regulations that are overly broad and impermissibly vague," the ACLU said in a statement. The organization sent a letter to school board Chairman Chris Pattacini saying the proposed policy violates the U.S. Constitution.

"Free speech protections apply to social media as much as to any other form of communication," said David McGuire, staff attorney for the ACLU of Connecticut. "Teachers and other staff don't lose their constitutional rights at the schoolhouse gate, and they don't lose them when they sign into Facebook."

"The policy as written would not be likely to withstand a legal challenge," McGuire said. "If the board adopts it, the ACLU of Connecticut will monitor its application and encourage employees to contact us if they feel their rights have been violated."

The board will consider the policy at its meeting Tuesday. The policy would require teachers and other workers "to use appropriately respectful speech" in their personal and professional posts.

"The board of education recognizes the importance of social media for its employees, and acknowledges that its employees have the right under the First Amendment, in certain circumstances, to speak out on matters of public concern," the proposed policy says.

"However, the board will regulate the use of social media by employees, including employees' personal use of social media, when such use substantially and materially interferes with the employee's bonafide job performance or the working relationship between the employee and the employer..."

Prohibited posts would be those that interfere with or disrupt the work of the school district; harass coworkers or other members of the school community; create a hostile work environment; breach confidentiality obligations; harm the good will and reputation of the school district in the community; and violate the law, board policies and/or other school rules and regulations.

Interim Superintendent Richard Kisiel said Friday he would have no comment on the ACLU's opinion other than to say the board's attorneys would review it.

Kisiel has said previously: "We've got to establish some limits."

And Pattacini has agreed.

"I think we need a policy like this that clarifies expectations and protects staff and students, making it clear what the bounds are," Pattacini has said. "Obviously, we need to balance First Amendment rights with safety and protecting staff and students."

Social media under the policy would include sites such as Twitter, Facebook, LinkedIn, YouTube and MySpace.

Violation of the proposed policy could lead to discipline, up to and including termination.

Asked how the school board would regulate employees' personal postings, Pattacini said it would be done on a case-by-case basis and both he and Kisiel said any enforcement would be sparked by a complaint from a parent, student, fellow employee or other member of the school community.

"This is not about getting into people's personal accounts and getting their passwords," Pattacini said. "We expect the staff to be professional."

Asked how school officials will decide what is "appropriately respectful speech," Kisiel said that when postings cause harm or disruption or create hostility within a school, "I think I have the right to step in."

"We're trying to set some reasonable guidelines."

2 views on Teachers and social media:

Schools must enforce teachers' boundaries, keep students safe

September 23, 2011 | By Nadine Smith | Guest columnist, Orlando Sentinel

Many years ago I had a teacher who assigned our class the task of answering the question: "How had slavery benefited black people by bringing them to the new world?"

He was a popular coach who was also known to use ugly racial slurs while chastising black athletes. If the school disciplined him, I never knew about it. I transferred out of his class as quickly as possible and felt ill every time I encountered him in the hallways.

That teacher came to mind as news broke last month of a Mount Dora High School teacher who took to Facebook to express his disgust that gay couples are now free to marry in New York. He called those marriages "a cesspool."

While some rushed to defend Jerry Buell's anti-gay posts as private, protected speech under the First Amendment, others argued that Facebook had become an extension of his classroom, since Buell actively made students his "friends" on the popular social network.

Would it be acceptable for a teacher to express disgust toward a particular race or religious background in a forum where his students were expressly invited? Buell cannot reasonably now assert that his hateful words have no impact in his classroom.

On the contrary, one Mount Dora student responded to Buell's Facebook posts saying, "This just made me more excited for your class next year. lol"

There is clear evidence that Buell violated the teachers' Code of Ethics and Principles of Professional Conduct. It is also clear that his classroom has long been a hostile environment for anyone who does not agree with his particular religious and political views. Reports of his classroom behavior from students themselves certainly warrant a deeper investigation by the district and the state.

Even some early defenders are backing away from Buell as details emerge that suggest his anti-gay attitudes and religious bias were on display in a classroom — a place he called his religious "mission field."

Buell's class syllabus warned students who didn't like his brand of Christianity to choose another class.

He went further, using the school's website to declare, "I try to teach and lead my students as if Lake Co. Schools had hired Jesus Christ himself."

Lake County schools Superintendent Susan Moxley has concluded that Buell "clearly crosses the line of separation of church and state that public school employees must follow. Future breaches and failure to maintain the separation of church and state may lead to more serious disciplinary issues."

Thousands have written to the Lake County school district angered by this abuse of power. Some expressed their unwillingness to spend money at Mount Dora shops and restaurants until this matter is resolved. Others recounted their personal experiences with bullying.

Bert Royal, screenwriter for the film "Easy A," which featured a character targeted by bullies, wrote: "I am a 33-year-old gay man from Florida. I wrote the movie 'Easy A,' which came out last year and lightly addressed how schools turn a blind eye toward gay bashing. Which is why I never made it to my senior year. (Or even my sophomore year.)"

School districts have two primary responsibilities: to educate students and to keep them safe.

What will the Lake County School Board and the Mount Dora High School administration do now to create a safe learning environment for students who are gay or those who do not share the same religious beliefs as their teachers?

Nearly 60 percent of Florida's students live in school districts that provide specific protections from anti-gay bullying and discrimination. Lake County students deserve these protections and have never needed them more than today.

Nadine Smith is executive director of Equality Florida in St. Petersburg.

Schools can't squelch free speech outside the classroom

September 23, 2011 | By Horatio Mihet | Guest columnist, Orlando Sentinel

The Lake County School Board correctly concluded that it could not punish Jerry Buell, Mount Dora High School's teacher of the year, for voicing outside the classroom his strong disapproval of same-sex marriage.

Buell, who teaches the virtues of free speech to high-school seniors, ignited an international controversy when he wrote on his personal Facebook page, from his personal living room, on his personal time, using his personal computer, that seeing two grooms kissing on television repulsed him. Although Buell's moral objection to same-sex marriage is in line with at least 62 percent of Floridians who voted in 2008 to make same-sex marriage illegal in Florida, one adult who was never a student in Buell's class took offense.

Rather than engage Buell in dialogue and debate on this issue of public importance within a free marketplace of ideas where the best ideas prevail, this individual sought to squelch Buell's viewpoint by complaining to his employer.

The School Board's decision to exonerate and reinstate Buell, after initially suspending him from the classroom, was hailed as a victory for the First Amendment by groups as divergent as Liberty Counsel and the American Civil Liberties Union.

Still, some groups led by Equality Florida remain unsatisfied, contending incredibly that Buell's personal opinions expressed to his personal Facebook friends are not protected by the First Amendment. This idea is not only intolerant, but also dangerous.

If Buell could be punished for expressing his personal viewpoint on his personal Facebook page, what would stop the government from punishing any employee for expressing any unpopular viewpoint publicly, whether on Facebook, at the mall, at church or in a newspaper editorial? Nothing!

That may fly in North Korea, Iran or former communist Romania, where growing up I saw my dad routinely

hauled to jail by the secret police for speaking his conscience. But ours is still the "land of the free."

"But teachers are held to a higher standard," decry those who seek to silence Buell. That may be so inside the classroom, while they are acting in their official capacity as agents of the state. Once they clock out, however, teachers are private citizens and full heirs to the same God-given, constitutionally guaranteed freedoms that you and I enjoy.

As the Supreme Court has noted, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years." If teachers retain their First Amendment rights inside the schoolhouse, they surely retain them outside the schoolhouse, where they are private citizens.

"But Buell's friends on Facebook included some of his students," his detractors retort. So what? That's no basis for muzzling him or forcing him to conform his views to those of Equality Florida. If it were, no one would be safe. No teachers could criticize same-sex marriage (or voice any politically incorrect viewpoint) at church, or at the mall, or in a newspaper column, because their students might read or hear their personal opinions. Equality Florida may be content with such totalitarianism, but our founders would roll over in their graves.

Buell's high-school students should know the difference between class time and personal time. On Facebook, they are free to listen to him, ignore him or even "unfriend" him, just as they were free to "friend" him in the first place. For this reason, a court in Missouri just last month suspended a state law that attempted to ban teachers from interacting with students through personal Facebook pages, finding such law a "staggering" violation of the First Amendment.

Horatio Mihet is Jerry Buell's attorney and senior litigation counsel for Liberty Counsel in Orlando.

Name: _____

Date: _____

Free Speech in Schools-Lesson 4

Pre-Seminar

My personal seminar goal is to: _____

Our overall class goal is to: _____

Possibilities:

To speak at least three times

To allow others to speak, even if I have something really great to say!

To focus on the speaker

To ask at least two questions that prompt discussion

To refer to the text at least twice

To not engage in side talk or interrupt

To not look at the teacher when I speak

To use appropriate seminar stems

In preparation for the seminar, please draft three questions you have about the material you read in the packet. Please frame your question in a way that will stimulate your thinking about the material. Here are some examples:

What puzzles me is.....

I'd like to talk with people about...

I'm confused about....

Don't you think this is similar to....

Do you agree that the big ideas seem to be....

I have questions about...

Another point of view is...

I think it means...

Do you think...

What does it mean when...

Do you agree that...

Three questions I have about the text are:

1. _____.

2. _____

3. _____

During the seminar, please use the following **sentence stems** when participating in the discussion.

Picking up on what _____ said.....

I'd like to build on

Going back to what _____ said.....

This idea ties in with the previous comment that.....

I agree with _____ about.....

I respectfully disagree with _____ about

I have a question about.....

I want to make a connection with.....

I'd like to pose a question to the group.....

Post-Seminar

Please answer the following questions about your participation in the seminar. Three of the four questions have two parts. You must answer both parts in complete sentences in order to receive credit.

1. Did you meet your personal seminar goal? How did this add or take away from your experience?

2. Did the class meet its goal? How did this add or take away from your experience?

3. Identify one thing you learned about free speech and social media from this seminar.

4. Do you feel like you understand the First Amendment in general, and in relationship to social media,

at a deeper level? Explain.

Glossary

These definitions reflect the legal meaning of the following terms, some of which have different meanings in other contexts.

Bill of Rights: the first ten amendments to the U.S Constitution, ratified together in 1791, which outline essential individual rights.

Circuit Court of Appeals: any one of 13 federal courts that handle appeals from the federal district courts, acting as intermediary between the district courts and the U.S. Supreme Court

complaint: in a lawsuit, the initial legal document describing the facts on which the legal claim is based

constitution: a document describing the fundamental principles of law that govern a nation, state or other political subdivision. The U.S. Constitution is sometimes called “the supreme law of the land.” Connecticut has its own constitution, which provides some individual rights in addition to those provided by the U.S. Constitution.

decision: the judgment of a court in a lawsuit or other matter brought before it.

defendant: in a lawsuit, the person or entity being sued

dissent: in a split court decision, the position of one or more judges or justices who disagree with the majority.

District Court: a trial court for federal cases, covering all or part of a state. A party can appeal a decision made in District Court to the Circuit Court of Appeals.

fighting words: words that cause injury or incite an immediate breach of peace. Fighting words are not protected by the First Amendment, but the Supreme Court has interpreted the term narrowly to mean words that are intended to cause immediate violence.

First Amendment: the first of ten amendments to the U.S Constitution that were ratified in 1791. The First Amendment prohibits government from interfering with freedom of religion, speech, press or assembly or the right to petition the government. These are sometimes called “the five freedoms.”

freedom of speech: the right to speak without government interference, guaranteed by the First Amendment. It has been broadly interpreted to cover a wide range of non-verbal expression, ranging from works of art to acts of political protest, such as flag burning.

hate speech: generally considered to be a communication that carries no meaning other than the expression of hatred for some group, it has no legal definition in the United States. Much of what could be considered hate speech, and which might be illegal in other countries, is protected by the First Amendment in the United States.

injunction: a judge’s order to prevent or require a particular action. In *Doninger*, the plaintiff sought an injunction requiring the school district to allow Avery Doninger to take office as student council secretary.

obscenity: material that depicts sexual activity in a an offensive way without artistic, scientific or cultural

value. (Acknowledging the difficulty of defining obscenity, Supreme Court Justice Potter Stewart wrote, “I know it when I see it.”)

opinion: the formal reason given for a court’s judgment or decision. A dissenting opinion expresses the reason one or more judges or justices disagrees with the majority opinion.

plaintiff: one who brings a complaint into a court of law

precedent: a settled legal case that supports an argument in a current case because it contains a relevant court decision or opinion.

prior restraint: governmental ban on expression before the expression takes place, usually referring to an order not to publish an article in a newspaper or magazine.

protected speech: speech or other forms of expression that are protected from government interference. Under the standards established by First Amendment cases, all speech is protected except for certain kinds of *unprotected* speech, such as obscenity, threats and fighting words.

standard: a rule or principle stemming from a settled legal case, for example *the Tinker standard* is based on the U.S. Supreme Court judgment in *Tinker v. Des Moines*

U.S. Supreme Court: the highest court and final authority on constitutional questions in the U.S. federal court system, it consists of a chief justice and nine associate justices appointed by the president with the approval of the U.S. Senate.