



Striking a Balance on Student Free Speech

Grade level: 9-12

Number of class periods: Two 50-Minute Classes

INTRODUCTION

This lesson will encourage students to investigate Supreme Court cases in conjunction with the Annenberg Classroom video "[First Amendment: Student Freedom of Speech](#)" to evaluate the decisions handed down by the Court in the effort to find the balance between a school's need for order and a student's right to expression. Students will explore five Supreme Court cases with the purpose of determining if the Court's decisions helped or hindered defining "protected speech" for students in public school environments.

Supreme Court Cases - Free Speech in High School

- *Tinker v. Des Moines Independent Community School District* (1969)
- *Bethel School District v. Fraser* (1986)
- *Hazelwood School District v. Kuhlmeier* (1988)
- *Morse v. Frederick* (2007)
- *Mahanoy Area School District v B.L.* (2021)

OBJECTIVES

- Students will be able to analyze primary sources to identify the point of view, purpose, and audience of a source. They will also use primary sources to analyze historical arguments.
- Students will be able to use historical thinking to analyze patterns and connections between historical events and developments.
- Students will be able to understand and articulate the distinctions between protected and unprotected speech in public school environments.
- Students will be able to evaluate the conditions under which the government, including public schools, may restrict speech.
- Students will be able to critically analyze free speech issues concerning public schools as well as the proper balance between First Amendment protections and legitimate educational/disciplinary concerns.

9th - 10th Grade Common Core Standards

- CCSS.ELA-LITERACY.RH.9-10.1 Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.
- CCSS.ELA-LITERACY.RH.9-10.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.
- CCSS.ELA-LITERACY.RH.9-10.6 Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.
- CCSS.ELA-LITERACY.RH.9-10.8 Assess the extent to which the reasoning and evidence in a text support the author's claim.
- CCSS.ELA-LITERACY.RH.9-10.9 Compare and contrast treatments of the same topic in several primary and secondary sources.

11th - 12th Grade Common Core Standards

- CCSS.ELA-LITERACY.RH.11-12.1 Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.
- CCSS.ELA-LITERACY.RH.11-12.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.
- CCSS.ELA-LITERACY.RH.11-12.7 Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.
- CCSS.ELA-LITERACY.RH.11-12.8 Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

- CCSS.ELA-LITERACY.RH.11-12.9 Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

Essential Questions

1. How is student “protected speech” defined in public schools based on Supreme Court cases?
2. What are the challenges facing schools when trying to balance a school’s need for order and a student’s right to expressions?
3. What is the Tinker Test for “protected speech” in public schools and how has that test been altered by the Supreme Court?

LESSON PLAN

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| <p>Day 1 50-55 minutes</p> | <p>Warm-up (7-10 minutes): Handout 1: What are my rights in school?</p> <ul style="list-style-type: none"> • Without any explanation of content, have the students complete Handout 1. Give them 3-5 minutes to do so independently. • Designate two sides of the room to represent TRUE and FALSE. • Teacher should read each statement and have the students move to the side of the room that represents their answer. • After each one, the teacher will reveal the answer. <p>Activity (30-35 minutes): Video and Student Viewing Guide - Partner Activity Step 1: Have students independently complete the Pre-viewing questions on Handout 2. (2-3 minutes) Step 2: Have the partners share their answers. (2-3 minutes) Step 3: Have the partners decide who will be completing the vocabulary part of the viewing guide and who will be completing the Case Chart. Step 4: (This will vary based on accessibility to technology.) Have students watch the video independently and complete their portion of Handout 2. (25 minutes) Step 5: Partners share their recorded answers. (5 minutes)</p> <p>Exit Ticket (10 minutes): AFTER VIEWING THE VIDEO, reflect (option: independently or with a partner). After a discussion with your partner, answer the following question independently. (extension/homework]</p> | <p><u>Materials Required:</u> Handout 1 Handout 2 Device for video viewing</p> <p><u>Extension/Homework:</u> Complete a written response to the following questions: How has watching this video altered your understanding regarding protected speech for students in public schools? Did watching this video confirm any knowledge you already had regarding this topic? If so, how?</p> |
| <p>Day 2 50-55 minutes</p> | <p>Warm-up (7-10 minutes): Question: Turn to a partner (other options Jamboard, Post-Its) and share three new bits of information you learned in our last class about free speech.</p> <p>Activity (30-35 minutes): Handouts 3-4 Step 1: Divide students into five Supreme Court</p> | <p><u>Materials Required:</u> Handout 3 (Multiple) Handout 4</p> <p><u>Extension/Homework:</u> <i>Step 4 can be easily turned into an out-of-class written</i></p> |

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| | <p>Case Groups 2 (2-3 minutes)</p> <p>Step 2: With your Supreme Court Case Group Read the Background and Decision/Reasoning and answer the following questions</p> <ul style="list-style-type: none">• Should students be entitled to the same rights as adults while on school property or attending school-supervised events?• Specifically regarding your group's case, do you agree or disagree with the decision? Discuss your reasons and be able to share your group's opinion to the whole class. (If there is disagreement among the group that is acceptable, be ready to explain those differences in the larger group discussion.) <p>Step 3: Supreme Court Case Group Share-out</p> <ul style="list-style-type: none">• <i>Tinker v. Des Moines Independent Community School District</i> (1969)• <i>Bethel School District v. Fraser</i> (1986)• <i>Hazelwood School District v. Kuhlmeier</i> (1988)• <i>Morse v. Frederick</i> (2007)• <i>Mahanoy Area School District v. B.L.</i> (2021) <p>Step 4: Teacher-led Large Group Discussion Questions</p> <ol style="list-style-type: none">1. How have the Supreme Court's decisions changed over time? What reasons can you share to support this/these change(s)?2. How has studying these Supreme Court cases altered your previous understanding of the following:<ol style="list-style-type: none">a. Protected speechb. Tinker Testc. The lines defining protected speech for students in public schools <p>Exit Ticket (10 minutes): Question: Predict what the next BIG student protected speech case will look like.</p> | <p><i>component or a formative assessment for the two-day lesson plan.</i></p> |
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Handout 1 - Warm-up: WHAT ARE MY RIGHTS IN SCHOOL?

In the space provided CIRCLE EITHER True or False based on current knowledge.

| STATEMENT: | |
|--|----------------------|
| Students have the right to speak out, hand out flyers and petitions, and wear expressive clothing in public school — as long as they don't disrupt the functioning of the school or violate school policies that don't hinge on the message expressed. | TRUE or FALSE |
| What counts as "disruptive" will vary by context, but a school disagreeing with a student's position or thinking his/her/their speech is controversial or in "bad taste" is not enough to qualify. | TRUE or FALSE |
| Schools can have rules that have nothing to do with the message expressed, like dress codes. So, for example, a school can prohibit you from wearing hats — because that rule is not based on what the hats say — but it can't prohibit students from wearing only pro-choice or pro-NRA hats. | TRUE or FALSE |
| Outside of school, students enjoy essentially the same rights to protest and speak out as anyone else. This means students are likely to be most protected if you organize, protest, and advocate for specific views off campus and outside of school hours. | TRUE or FALSE |
| Students have the right to speak their mind on social media, and your school cannot punish you for content posted off campus and outside of school hours that does not relate to school. | TRUE or FALSE |
| Public schools can have dress codes, but dress codes can't treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. | TRUE or FALSE |

Handout 2 - Video Viewing Student Guide

Directions: Watch the assigned video and complete this Video Viewing Student Guide.

Link to [Video](#):

BEFORE YOU VIEW THE VIDEO, reflect and answer the following questions.

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| Define "protected speech" as explained in the First Amendment of the Constitution. | |
| Do you think it is appropriate to expand freedom of speech to students in public schools? Explain your answer. | |

WHILE YOU ARE WATCHING THE VIDEO, reflect and answer the following questions.

Video Vocabulary: Throughout the video, various terms will be used and defined. Complete this vocabulary chart as you progress through the video. There are extra lines for any terms beyond this list you would like to list and define. [\[partner 1\]](#)

| | |
|------------------------------------|--|
| Define "public schools." | |
| Define "freedom of speech." | |
| What does the ACLU stand for? | |
| Define "viewpoint discrimination." | |
| Define "substantial disruption." | |
| | |
| | |

Why did the framers believe freedom of speech was so vital to their founding principles?

Handout 2 - Video Viewing Student Guide (cont.)

Supreme Court Cases Chart: Complete this chart as you progress through the video. [\[partner 2\]](#)

| Court Case | Year | Describe what 'speech' is being defined as protected. | Ruling |
|---|------|--|--------|
| <i>Tinker v. Des Moines Independent Community School District</i> | | Tinker Test: 1. Does the speech interfere with the rights of others? 2. Does the speech create substantial disruption? | |
| <i>Bethel School District v. Fraser</i> | | <u>Exception to Tinker Test:</u> | |
| <i>Hazelwood School District v. Kuhlmeier</i> | | <u>Exception to Tinker Test:</u> | |
| <i>Morse v. Frederick</i> | | <u>Exception to Tinker Test:</u> | |
| <i>Mahanoy Area School District v. B.L.</i> | | | |

AFTER VIEWING THE VIDEO, reflect (with your partner). After a discussion with your partner, answer the following question independently.

How has watching this video altered your understanding regarding protected speech for students in public schools? Did watching this video confirm any knowledge you already had regarding this topic? If so, how.

Handout(s) 3 - Supreme Court Cases - Free Speech in High School

Group 1: [*Tinker v. Des Moines Independent Community School District*](#) (1969)

| Background | Decision and Reasoning |
|--|---|
| <p>At a public school in Des Moines, Iowa, students planned to wear black armbands at school as a silent protest against the Vietnam War.</p> <p>When the principal became aware of the plan, he warned the students that they would be suspended if they wore the armbands to school because the protest might cause a disruption in the learning environment. Despite the warning, some students wore armbands and were suspended.</p> <p>During their suspension, the students' parents sued the school for violating their children's right to free speech. The U.S. District Court for the Southern District of Iowa sided with the school's position, ruling that wearing the armbands could disrupt learning.</p> <p>The students appealed the ruling to the U.S. Court of Appeals for the Eighth Circuit but lost and took the case to the Supreme Court of the United States.</p> | <p>In a 7-2 decision, the Supreme Court's majority ruled that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The Court took the position that school officials could not prohibit only on the suspicion that the speech might disrupt the learning environment.</p> <p>The dissent argued that the First Amendment does not grant the right to express any opinion at any time. Students attend school to learn, not teach. The armbands were a distraction. School officials, acting on a legitimate interest in school order, should have broad authority to maintain a productive learning environment.</p> |

Handout(s) 3 - Supreme Court Cases - Free Speech in High School

Group 2: [*Bethel School District v. Fraser*](#) (1986)

| Background | Decision and Reasoning |
|---|--|
| <p>In the spring of 1983, at an official school event, Matthew Fraser delivered a speech nominating a fellow student as an officer for study body government. The speech, which was laced with sexual innuendo and double entendre, was presented to an auditorium of about 600 students, ages 14 and older. Fraser had discussed the speech with several teachers before the assembly. Two of them found it “inappropriate” and advised against it. He disregarded a warning that it could have “severe consequences.”</p> <p>After giving the speech, he was notified that he had broken the school’s “disruptive rule of conduct” policy, which stated: “Conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures.” Fraser then admitted that he had intentionally used sexual innuendo. The school suspended him for two days and banned him from speaking at the forthcoming graduation. He sued, and the district court decided in his favor, ruling that the school’s code of conduct was unduly vague and overly broad.</p> | <p>The Supreme Court then reversed by a vote of 7–2. In the majority opinion it was distinguished that there was a difference between the passive political expression of the armbands in <i>Tinker v. Des Moines</i> and Fraser’s lewd and sexually charged message. Though <i>Tinker</i> was not overturned in <i>Bethel</i>, it was narrowed by tilting the scale in favor of state authorities. The decision granted local school boards wider latitude in maintaining appropriate discipline and civil discourse in the classroom setting.</p> |

Handout(s) 3 - Supreme Court Cases - Free Speech in High School

Group 3: [Hazelwood School District v. Kuhlmeier](#) (1988)

| Background | Decision and Reasoning |
|---|--|
| <p>Students in the Journalism II class at Hazelwood East High School in St. Louis, Missouri, wrote stories about their peers' experiences with teen pregnancy and the impact of divorce. When they published the articles in the school-sponsored and funded newspaper <i>The Spectrum</i>, the principal deleted the pages that contained the stories prior to publication without telling the students.</p> <p>Claiming that the school violated their First Amendment rights, the students took their case to the U.S. District Court for the Eastern District of Missouri in St. Louis. The trial court ruled that the school had the authority to remove articles that were written as part of a class.</p> <p>The students appealed to the U.S. Court of Appeals for the Eighth Circuit, which reversed the lower court, finding that the paper was a "public forum" that extended beyond the walls of the school. It decided that school officials could censor the content only under extreme circumstances. The school appealed to the U.S. Supreme Court.</p> | <p>In a 5-3 ruling, the U.S. Supreme Court held that the principal's actions did not violate the students' free speech rights. The Court noted that the paper was sponsored by the school and, as such, the school had a legitimate interest in preventing the publication of articles that it deemed inappropriate and that might appear to have the imprimatur of the school.</p> <p>Specifically, the Court noted that the paper was not intended as a public forum in which everyone could share views; rather, it was a limited forum for journalism students to write articles, subject to school editing, that met the requirements of their Journalism II class.</p> |

Handout(s) 3 - Supreme Court Cases - Free Speech in High School

Group 4: [Morse v. Frederick](#) (2007)

| Background | Decision and Reasoning |
|---|---|
| <p>Joseph Frederick, a senior at Juneau-Douglas High School, held up a banner saying: “Bong Hits 4 Jesus” during the Olympic Torch Relay through Juneau, Alaska, on January 24, 2002. Frederick's attendance at the event was part of a school-supervised activity.</p> <p>School principal Deborah Morse told Frederick to put away the banner because it could be interpreted as advocating illegal drug activity. When Frederick refused, she took the banner. Frederick was suspended for 10 days for violating a school policy forbidding advocacy for the use of illegal drugs.</p> <p>The U.S. District Court in Juneau ruled for the principal, saying that Frederick's action was not protected by the First Amendment. The U.S. Court of Appeals for the Ninth Circuit reversed and held that Frederick's banner was constitutionally protected. The principal appealed, and the U.S. Supreme Court granted certiorari (agreed to hear the case).</p> | <p>In a 5-4 decision, the U.S. Supreme Court ruled that the First Amendment does not prevent school administrators from restricting student expression that reasonably is viewed as promoting the use of illegal drugs.</p> <p>The majority acknowledged that the Constitution affords lesser protections to certain types of student speech at school or at school-supervised events. It found that Frederick's message was, by his own admission, not political, as was the case in <i>Tinker</i>. The Court said the phrase "Bong Hits 4 Jesus" reasonably could be viewed as promoting illegal drug use.</p> <p>As such, the state had an "important" if not "compelling" interest in prohibiting/punishing such student speech. The Court held that schools may "take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" without violating a student's First Amendment rights.</p> |

Handout(s) 3 - Supreme Court Cases - Free Speech in High School

Group 5: Mahanoy Area School District v B.L. (2021)

| Background | Decision and Reasoning |
|--|---|
| <p>On September 25, 2017, the ACLU-PA filed suit on behalf of B.L., a high school sophomore who had been cheerleading since she was in fifth grade and was expelled from the team as punishment for out-of-school speech.</p> <p>The case involves a First Amendment challenge to the Mahanoy Area High School's "Cheerleading Rules," which prohibit cheerleaders from posting any "negative information" about cheerleading online.</p> <p>B.L. was kicked off the junior varsity cheerleading squad for posting a Snap to Snapchat during the weekend that school officials believed was "negative," "disrespectful," and "demeaning." B.L. posted the Snap on a Saturday and made it available only to her Snapchat friends.</p> | <p>In a 5-4 decision, the U.S. Supreme Court ruled the school district's decision to suspend student Brandi Levy from the cheerleading team for posting to social media (outside of school hours and away from the school's campus) vulgar language and gestures critical of the school violated the First Amendment.</p> |

Handout 4: Supreme Court Cases - Student Evaluation Questions

Step 1: With your Supreme Court Case Group:

Read the Background and Decision/Reasoning and answer the following questions:

- Should students be entitled to the same rights as adults while on school property or attending school-supervised events?
- Specifically regarding your group's case, do you agree or disagree with the decision? Discuss your reasons and be able to share your group's opinion to the whole class. (If there is disagreement among the group, that is acceptable and be ready to explain those differences in the larger group discussion.)

Step 2: Supreme Court Case Group Share-out

- Tinker v. Des Moines Independent Community School District (1969)
- Bethel School District v. Fraser (1986)
- Hazelwood School District v. Kuhlmeier (1988)
- Morse v. Frederick (2007)
- Mahanoy Area School District v. B.L. (Levy) (2021)

Step 3: Teacher-led Large Group Discussion Questions

- How have the Supreme Court's decisions changed over time? What reasons can you share to support this/these change(s)?
- How has studying these Supreme Court Cases altered your previous understanding of the following:
 - Protected speech
 - Tinker Test

- The lines defining protected speech for students in public schools
- Predict what the next BIG student protected speech case will look like.