

# Your Library Today



Mr. Breitsprecher's Edition

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## Issues of the Day: Free Speech in Schools?

Do students have a constitutional right to free speech? That's a complex question. We have to start by asking, "What is free speech?"

The First Amendment of the U.S. Constitution boldly states:

*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.*

Strong language - clearly the intention of the nation's founders was to assume that speech is protected. However, this protection is not absolute. As a nation, there are many different interests and rights that need to be protected.

What happens when someone's speech creates problems for others? What happens when someone's speech is in conflict with other public interests? Are their situations where the rights of the nation, as a whole, override any one person's rights to express themselves?

The Supreme Court of the United States (SCOTUS) has ruled that our interests as a nation are more important than the interests of any one of us. Most of us would agree, there are times when what one person might say could be very harmful to others.

The SCOTUS has created some guidelines to help try to balance the rights of individuals and the rights of society. Here are some issues that courts recognize when looking at limits of free speech:

### **Clear and Present Danger.**

Some things are just not safe and it is fairly easy to see that they create dangerous situations. The First Amendment does not protect speech that incites violence or illegal actions.

**Fighting Words.** Likewise, the First Amendment does not apply to

### How Would Each Of These Groups Of People View These Issues?

- **Students.** Being able to express yourself is important. We all have opinions and feelings about what is happening. Talking about them can be helpful. Isn't a good education all about having a free dialog about learning?
- **Parents.** We love and care about our children. We want good things for them. We want to help them avoid problems. We want to share our experience, strength, and hope. As we get older, many decide that some battles are not worth fighting and that some things are better left unsaid.
- **School Administrators.** Being responsible for the welfare, education, and safety of hundreds of people is not easy. Looking out for everyone means creating an understanding of how we respect others and get along. Those that are responsible for dealing with bad situations that happen in school quickly learn that many problems are easier to avoid than solve.
- **Other School Stakeholders.** Everyone in a community and all taxpayers at all levels have an interest in schools. There are many different opinions, perspectives, and philosophies on life. Schools need to find ways to create and maintain support of the folks that live in communities and pay taxes to support schools. There are many different interests here - how do we best balance them all? How do we maintain support across diverse groups of stakeholders?

We all have a right to opinions on free speech in schools. Being able to persuade others to agree with us demands that we understand the issues. This will take some research. It will also require us to carefully choose our resources. This means we will have to carefully think about how we will locate and evaluate information.

statements that, when made directly to a person's face, are likely to be so upsetting that they will physically strike back.

**Libel and Slander.** The First Amendment does not protect false or misleading statements about others. Lies that damage another person's reputation are not protected by our Constitution.

**Obscenity.** In *Miller v California (1978)* the SCOTUS created a 3-part test to determine if speech is "obscene" and not protected or "indecent" but protected for adults but not for children.

**Conflict with Other Legitimate Social or Governmental Interests.** We can imagine any number of situations when one person's speech may harm others. For example, in times of war, speech has been restricted. Courts also allow "gag orders" that prevent participants in trials from talking. It is hard to point to one case that establishes the test for compelling interests. One important case is *Nebraska Press Association v. Stuart*.

### **Time, Place, and Manner.**

Sometimes, speech is protected, but not the way it is being distributed. The SCOTUS has determined that some protected speech is not protected when the time, location, or method of distribution interferes with a legitimate government interest. For example, we do not have the right to use excessive noise levels that create disturbances. We cannot create traffic jams because of the way we choose to express protected speech.

### **More on Free Speech**

This is the 40th Anniversary of *Tinker v. Des Moines Independent Community School District (1978)* a landmark case about student rights. You can learn more about this case, these issues, and free speech by visiting:

[www.breitlinks.com/FreeSpeech.htm](http://www.breitlinks.com/FreeSpeech.htm)