



# Judges in the Classroom

## Freedom of Expression in Special Places

### Source:

Written by Margaret Fisher, Institute for Citizen Education in the Law, Seattle, Washington. Updated in 2017 and 2019 by the Washington Administrative Office of the Courts (AOC) and the Public Trust and Confidence Committee. For more information, contact AOC, Temple of Justice, 415 12th Ave SW, PO Box 41174, Olympia, WA 98504-1174. For an electronic copy of this lesson, or to view other lesson plans, visit Judges in the Classroom on the Washington Courts Web site at: [www.courts.wa.gov/education/](http://www.courts.wa.gov/education/)

### Objectives:

1. Students will identify at least three First Amendment problems in the case.
2. Students will analyze how the First Amendment applies to school newspapers.
3. Students will argue for and against limiting First Amendment rights in school.
4. Students will analyze the judicial decision making process.

### Grade Level:

Grades 9-12

### Time:

One class period (approximately 50 minutes)

### Materials:

One copy of Handout 1 (The Case of the School Newspaper) for each student  
One copy of Handout 2 (Opinion A and Opinion B) for each student

### Procedures:

1. **Begin the class by introducing yourself**, briefly telling a little about yourself if this is your first class.
2. **Explain to the students** that your presentation will involve them in a case study of an actual case decided by the United States Supreme Court.

Note: This lesson assumes that the teacher taught the First Amendment to students prior to the judge's coming, including *Tinker v. Des Moines School District* (1969). The judge will focus on expression in special places. See companion lesson on *Morse v. Frederick*, decided by the U.S. Supreme Court in 2007.

3. **Ask the students** what the Bill of Rights is. How did we get it? Why? What is the First Amendment? What does it protect? (May be helpful to read the First Amendment or put it on the board.)
4. **Ask the students** about the bounds of the First Amendment. What types of actions does the First Amendment protect against – Family? Neighbor? What is State Action? Is the First Amendment protection absolute?
5. **Tell students** that schools, military bases, and prisons are places where the First Amendment presents special problems. When the rights of students, the military, or prison inmates conflict with the rights of others or interfere with the need to preserve order, the courts often balance the competing interests. The case study they will work on today involves such a situation. Ask them how First Amendment rights apply in a public school.
6. **Ask someone** to summarize the *Tinker* case. Discuss what the “holding” of the case is. (Quote from the case to clarify if needed.) Discuss how that holding is applied to future cases with different facts. What happens when the facts are slightly different?
7. **Pass out the case study** on Handout 1 and have students read the facts of the case.
8. **To clarify that students understand** the facts, brainstorm with them to assess the important facts. For example, you might ask students to tell you what happened. Write the significant facts on the board.
9. **Pass out Handout 2** and ask students to read each opinion. Have them decide whether they agree with Opinion A or Opinion B and why they agree with that opinion. Tell students they should not try to guess what the United States Supreme Court did with this case, but instead to select the opinion with which they personally agree.
10. **Poll students as to which court opinion** they agree with by getting a show of hands. Divide the class into groups of no more than five. Depending upon the spread of opinions and the class size, construct the groups of persons with like opinions or with varied opinions. Each group should assign a recorder to write down their ideas and a spokesperson to report the arguments to the large group.
11. **Ask students to work within their group** to identify each argument in their opinion and to rank the arguments from most important to least important. Tell students they are free to add arguments that support their case even if those arguments are not contained in the

opinion. Even if some students in the group do not agree with the opinion, ask them to think like lawyers to help defend the opinion.

Confirm with students that they understand their task in groups. Tell students that they have 7 minutes to list their arguments. While students are working in groups, the judge should circulate and observe all groups to determine if they are on task. The judge should not take over any small group, but instead should give any needed instruction or prompt discussion with questions.

12. **Depending upon the time**, have students identify and rank the arguments from most important to least important in the opinion with which they do not agree.
13. **Begin discussion of the case** by asking one spokesperson from one group that is supporting Opinion A to give its highest ranked argument. Next ask a spokesperson supporting Opinion B to respond to the argument given for Opinion A. As the arguments are being elicited, write them on the board under the appropriate heading: *Opinion A* or *Opinion B*.
14. **Continue the discussion**, ensuring that students from each group have a chance to contribute. As the discussion progresses, invite individuals who are not designated spokespersons to provide additional input.
15. **When the arguments have been exhausted**, congratulate students on their creativity and analysis and respond to the arguments that students made.
16. **Now, ask students to identify** which opinion was that of the United States Supreme Court. Inform students that Opinion B is the opinion that reflects the majority opinion of the United States Supreme Court in *Hazelwood School District v. Kuhlmeier*, 108 S. Ct. 562 (1988). \*May want to quote from the opinion, particularly as it distinguished *Tinker*. Let students know that they are not wrong if they personally believe Opinion A is the better opinion. In fact, Opinion A is the decision of the Circuit Court of Appeals in this case. Explain that judges regularly disagree with other judges. Even in this case, three U.S. Supreme Court justices disagreed with the majority.
17. **Comment here about how a judge** decides a case, perhaps giving personal examples where you found it difficult to rule as you did, where you were overruled, or where you overruled another judge.
18. **Discuss how common law – particularly constitutional law – evolves.**
19. **Ask the class why students** should have fewer rights while they are in school than adults and youth have in the "outside world."
20. **Could the Washington State Constitution provide greater rights?** Discuss how the federal constitution sets the floor and how the state constitution can be more protective.

21. **Ask if there are other ways to protect these rights?** Discuss legislation. In 2018, Washington became the 14<sup>th</sup> state to protect student journalists. See SB 5064, RCW 28A.600.027.
22. **Bring this to conclusion** by reviewing the principles covered. As a follow up to this lesson, the teacher may work with students to study *Dariano v. Morgan Hill Unified School District* [a Ninth Circuit decision upholding a ban on students wearing American Flag t-shirts on Cinco de Mayo Day, at 767 F.3d 764, (2014)]. See also *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426 (4th Cir. 2013) (upholding school district's ban on student wearing shirt with confederate flag).

## Handout 1

### The Case of the School Newspaper

#### THE FACTS

A high school principal deleted two pages from the year's final issue of the school newspaper because the two pages contained one story on student experiences with pregnancy and another story about the impact of divorce on students. The school principal believed the stories had been written in such a way that the privacy rights of some students and some parents might be violated. He also believed the topics might offend some of the younger students at school.

The newspaper was written as part of the school's advanced journalism class. Following the school's regular practice, the journalism teacher had submitted the page proofs to the principal just before publication. The principal deleted the two pages on which the articles appeared. Those pages also contained several stories to which he did not object. His reason for deleting the pages was that the school year was almost over, and he did not believe that there would be enough time to rewrite the offensive stories.

The existing school board policy said: "School sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism."

**THE STUDENT EDITORS OF THE PAPER SUED THE PRINCIPAL AND THE SCHOOL DISTRICT, ARGUING THAT THEIR FIRST AMENDMENT RIGHTS HAD BEEN VIOLATED.**

## Handout 2

### **OPINION A**

The students' constitutional rights were violated when the principal deleted the two pages. The newspaper is a public forum. Even though the newspaper was produced by the journalism class, it is a "student publication" in every sense. The students chose the staff members, determined the articles to be written and printed, and determined the content of those articles.

In order for school officials to censor the newspaper, they must show that the censorship was necessary to avoid material and substantial interference with school work, or to enforce discipline, or to protect the rights of others.

There was no evidence that the principal could have reasonably believed there would be material disruption to the classroom or substantial disorder in school. There was no evidence that the pregnancy article would show administration agreement with the sexual norms expressed by students. Nor was there evidence to support that the topic is inappropriate given the age and maturity of the readers, especially since teenage pregnancy occurs in every high school in the United States.

School administrators may only censor the articles to prevent invasion of the rights of others when the school could be held liable in a civil lawsuit. There is no threat that this would happen.

### **OPINION B**

The principal has the right to delete the pages. School officials have the right to regulate student speech that conflicts with the school's basic educational mission, even though the government could not censor similar speech outside the school.

The school's newspaper is not a public forum for expression because it is not open to use by the general public or student organizations. Production of the newspaper is part of the educational curriculum and a regular classroom activity under the journalism teacher's control. Therefore, school officials may regulate the paper's contents in any reasonable manner. The school principal acted reasonably in requiring deletion of the pages.

The standard for determining when a school may punish student expression that happens to occur on school premises is not the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. The *Tinker* case does not apply. Educators have the right to edit the style and content of student speech in school-sponsored activities so long as their actions are reasonably related to legitimate educational concerns.

### **Directions:**

Identify and rank the arguments here. Add any arguments of your own that are not included in the opinion.