

STUDENT HANDOUT 17

Case Study: *Hazelwood School District v. Kuhlmeier* (1988)

Cathy Kuhlmeier and other students on a high school newspaper staff sued the Hazelwood school district in 1983. The students charged that, by deleting two pages of the school newspaper, the principal had violated their First Amendment rights, as guaranteed in *Tinker v. Des Moines* (1969).

But the Supreme Court distinguished the *Tinker* case, in which students were punished for wearing political symbols, from the *Hazelwood* case, in which the school sponsored the student expression. The Court said that educators have the right to edit school-sponsored student speech as long as their actions are “reasonably related to legitimate pedagogical concerns.”

JUSTICE WHITE delivered the opinion of the Court.

This case concerns the extent to which educators may exercise editorial control over the contents of a high school newspaper produced as part of the school’s journalism curriculum. . . .

The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators’ ability to silence a student’s personal expression that happens to occur on the school premises. The latter question concerns educators’ authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur [seal of approval] of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. . . .

Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Instead, we hold that educators do not offend the First Amendment by exercising 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. . . .

Free student expression undoubtedly sometimes interferes with the effectiveness of the school's pedagogical functions. . . . [Justice Brennan here argues that almost any type of student speech can arguably interfere with the school's educational mission on some level.]

If mere incompatibility with the school's pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could . . . [turn] our public schools into "enclaves of totalitarianism" that "strangle the free mind at its source." The First Amendment permits no such blanket censorship authority. . . .

In *Tinker*, this Court struck the balance. We held that official censorship of student expression—there the suspension of several students until they removed armbands protesting the Vietnam War—is unconstitutional unless the speech "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." . . .

The Court today casts no doubt on *Tinker's* vitality. Instead it erects a [classification] of school censorship, concluding that *Tinker* applies to one category and not another. . . .

I would reject the Court's rationale for abandoning *Tinker* in this case. The Court offers no more than an obscure tangle of three excuses to afford educators "greater control" over school-sponsored speech than the *Tinker* test would permit: the public educator's prerogative to control curriculum; the pedagogical interest in shielding the high school audience from objectionable viewpoints and sensitive topics; and the school's need to dissociate itself from student expression. None of the excuses, once disentangled, supports the distinction that the Court draws. *Tinker* fully addresses the first concern; the second is illegitimate; and the third is readily achievable through less oppressive means. . . .

Finally, even if the majority were correct that the principal could constitutionally have censored the objectionable material, I would emphatically object to the brutal manner in which he did so. . . . He objected to some material in two articles, but [cut] six entire articles. He did not so much as inquire into obvious alternatives, such as precise deletions or additions . . . , rearranging the layout, or delaying publication. Such unthinking contempt for individual rights is intolerable from any state official. It is particularly [dangerous] from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees.

The Court opens its analysis in this case by purporting to reaffirm *Tinker's* time-tested proposition that public school students "do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." That is an ironic introduction to an opinion that denudes high school students of much of the First Amendment protection that *Tinker* itself prescribed. . . . The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today.

Using the information in the case you have just read, answer the following questions:

1. How does the Court think this case differs from *Tinker*? Do you agree?
2. For what three reasons does the Court think that school officials are entitled to exercise greater control over school-sponsored student speech?
3. What condition must school officials meet if they are restricting student speech in a school-sponsored activity?
4. Why does Justice Brennan disagree with the Court's decision?
5. Why does Justice Brennan believe it is particularly dangerous when a school official restricts student speech?
6. Is there a difference between editing and censoring? Why or why not?
7. What is the principal's duty to protect the free speech rights of students? Does this conflict with the principal's duty to uphold the educational standards of the community?
8. Should school officials be tolerant of student speech they do not like? Are there limits to such tolerance?

STUDENT HANDOUT 18

Kathryn's Graduation Speech

PART I

Read the standards for student graduation speakers listed below, which are based on those issued by Kathryn Sinclair's high school, then answer the questions that follow.

- A. Write a verbatim draft of your speech and submit it for approval.
- check for correct form (punctuation, grammar, etc.)
 - check for clear, well-organized content
- B. Follow these general guidelines for appropriate material:
- keep it *positive* (this is a celebration—not the time for negatives, criticisms, complaints)
 - do not focus on one group (you represent the entire class)
 - keep it general (you represent the entire school and if you “name names,” someone gets left out)
- C. Practice! Practice! Practice!
- time yourself to stay within your time limits
 - enunciate clearly and speak slowly and loudly
 - make eye contact with the audience; do not read verbatim
- D. Smile! Be happy! Enjoy yourself!

1. Are these standards permissible under the Supreme Court's ruling in *Hazelwood School District v. Kuhlmeier*? Why or why not?
2. Which standards are most likely to be upheld under *Hazelwood*? Why?
3. Which standards are least likely to be upheld under *Hazelwood*? Why?

PART II

Read the excerpt from Kathryn Sinclair's graduation speech below and then answer the questions that follow.

The First Amendment of the Constitution of the United States of America 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."

The country song by Aaron Tippin entitled "You've Got to Stand for Something" says: "You've got to stand for something or you'll fall for anything. You've got to be your own man, not a puppet on a string." In my past four years at Riverdale High School, I have listened to this song and been inspired. I have been inspired to think freely and defend what I believe is right. The real world requires us to think and feel for ourselves because, realistically, there will not be anyone there to do it for us. We accomplish nothing by conformity if there are not first individuals willing to lead the crowd. However, individuality is not determined by the ability to lead groups but by the self-satisfaction that you are doing what is right even if you are the only one who thinks so. . . .

My challenge to you, the 1994 graduating class of Riverdale High School, is not to be afraid of the trials and battles you will confront in life. If no one else supports you, do not lose faith for you can support yourself. Do not follow the crowd and live your life as a number. Stand out and make yourself known to the world; but, most of all, believe in yourself because that will ultimately provide you with peace and happiness.

I wish to end my speech with a dedication. It has been an extreme honor in my life to have been acquainted with a special person who always believed in me even when I failed to believe in myself. Unfortunately, my love and faith in him were not enough. It is important to understand that you must first love and believe in yourself before you can ever love and believe in anyone else. I want to dedicate my speech with a poem to Robin Jarmon Hall, who was born April 27, 1977, and died November 20, 1993. This poem, written by Robert Frost in 1916, was one of Rob's favorites, and it best describes the message I have tried to convey to you today.

The Road Not Taken

Two roads diverged in a yellow wood,
And sorry I could not travel both
And be one traveler, long I stood
And looked down one as far as I could
To where it bent in the undergrowth,

Then took the other, just as fair,
And having perhaps the better claim,
Because it was grassy and wanted wear,

Though as for that, the passing there
Had worn them really about the same,

And both that morning equally lay
In leaves no step had trodden black.
Oh, I kept the first for another day!
Yet knowing how way leads on to way,
I doubted if I should ever come back.

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

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1. Does Kathryn's speech violate her school's standards? Explain.
2. Under the *Hazelwood* ruling, does the First Amendment protect the content of Kathryn's speech? Explain.
3. Would the content of her speech be protected by the First Amendment under the Court's decision in *Tinker v. Des Moines School District*? Why or why not?
4. Why do you think Kathryn insisted that her speech not be changed?
5. Why do you think Kathryn's classmates were not tolerant of her?
6. What would you have done if faced with the same situation as Kathryn?
7. How does the First Amendment protect people who choose the road less traveled?