

WHOSE SPEECH IS IT ANYWAY?

What the Law Says About Student Protests

Jamie Kudlats and Christopher D. Thomas

Can students walk out in protest during the school day? What can they say—and what can schools do when they say it?

Courts have wrestled with these questions and provided guardrails and guidance, but like most situations, complexity, nuance, and heightened emotions can muddy the waters.

Student protests addressing a wide array of social, political, and educational issues persist in schools. In fact, students in the United States have been protesting at and against their schools for as long as we've had schools. From LGBTQ+ rights to climate change, and from curriculum content to immigration issues and racial justice, students can feel passionately about the issues that affect them and others.

The question of how schools should navigate potentially problematic student speech is regularly in the spotlight. Recently, for example, students in Chapel Hill, North Carolina, wishing to protest the war in Gaza, opted to take their protest off-campus after students alleged administrators wouldn't allow them to use the word "genocide." So, to avoid being beholden to administrators' requirements, they chose to leave school grounds.

So, what does the law say about all of this?

One of the most relevant recent cases stems from a Kansas school district's reaction to students planning and participating in a protest in response to the 2018 Parkland school shooting in Florida. In the Shawnee Mission School District, administrators informed par-

ents that students could participate without discipline and that the protests were not school-sponsored. But what happened next set off some legal alarm bells.

Administrators in Shawnee prohibited students from mentioning guns, school shootings, or gun violence—arguing that the district, as a public institution, couldn't appear to take a political stance. But if this protest wasn't school-sponsored, did they have that authority? Not really.

The Legal Framework

Two major U.S. Supreme Court precedents define this issue:

- **Tinker v. Des Moines** (1969) protects student speech unless it causes a substantial disruption or infringes on the rights of others.
- **Hazelwood v. Kuhlmeier** (1988) allows schools to exercise greater control over school-sponsored speech, such as curricular activities or official school publications.

So the question became: Was the protest in Shawnee a form of pure student speech (protected under Tinker) or school-sponsored speech (more limited under Hazelwood)?

Despite labeling the protest "student-led," school administrators exercised control, telling students what topics were off limits, confiscating speeches,

shutting down protests early, and threatening discipline. One student organizer was told to stop mid-speech when she referenced gun violence. Student journalists were even barred from covering the protests and had their equipment confiscated.

In this case, the court rejected the district's attempt to reframe the protest as school-sponsored simply because it happened during school hours and was monitored for safety. The takeaways? On school grounds, during school hours, and being monitored for safety doesn't necessarily make a protest "school sponsored." Plus, you're on shaky ground when you declare a protest "student-led" in one breath and then attempt to control the message in the next.

Implications for School Leaders

School and district leaders are often caught in the middle—balancing the need to maintain order with a duty to uphold students' constitutional rights. While the line can be a bit blurry, here are a few key considerations:

- **Clarity matters.** If you're allowing students to protest, decide in advance whether it is school-sponsored or not. You can supervise for safety without "sponsoring."
- **Tinker still rules.** The decision in the landmark student protest Supreme Court case affirmed that, unless student speech threatens to materially disrupt the school day or harm others, it's likely protected...even if it's controversial.
- **You can only go so far with discipline.** When considering what types of consequences should apply to students who decide to "exempt themselves" from your regularly scheduled programming, be careful about what consequences you're applying and what you're applying them for. You can typically punish students for their conduct, but be careful about punishing students for their speech. In other words, if they're missing class to protest, you

should consider applying the typical consequence for skipping class. Applying a different or more severe consequence because they're protesting or based on the positions they're taking runs the risk of connecting that new consequence to the protest or the speech itself, and that could get you in some legal hot water.

- **Don't play content referee.** Trying to shape the message (e.g., "don't talk about gun violence") is exactly the kind of viewpoint-based censorship the courts tend to reject. You can still restrict content that 1) will materially and substantially disrupt the school environment, 2) will violate the rights of others (note: mere offense probably doesn't rise to the level of violating their rights), or 3) is vulgar, lewd, or promotes illegal drug use.
- **Train your team.** Many missteps happen because leaders haven't been trained on the legal boundaries. Know the difference between monitoring speech and controlling it.

In Shawnee, the case eventually settled. Students received just \$1 in damages, but as a part of the settlement, the cost came in policy reforms, staff training mandates, and paying thousands in legal fees. The more important takeaway, though, was the message that students' voices matter, even when it's uncomfortable.

When students speak out, schools have a choice. It's not just about how to respond, but about what kind of civic learning environment schools want to foster. As one superintendent put it in a post-settlement apology: "It is our responsibility to help our students find their voice."

That's not just a legal principle. It's an educational one.

ABOUT THE AUTHORS



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