**PERSPECTIVE: Some First Amendment back-to-school advice**

What can public school students say and do when it comes to expressing themselves in school this year?

And what can parents or administrators do if they don’t like what those students are saying and doing?

The very accurate, highly technical answer is: It depends. Primarily, it depends on how and when and where students speak, protest or assemble but also on what you say.

Specific legal advice is necessary to deal with both the details of any conflict and to consider local and state laws that vary across the nation (and this column should not be taken as legal advice). But here’s a general guide for students, administrators and parents:

**STUDENTS**

You do not leave behind your First Amendment rights at the school doorway, to paraphrase [a landmark 1969 U.S. Supreme Court decision](https://www.freedomforuminstitute.org/2019/01/30/tinker-after-50-a-historic-ruling-still-relevant-after-all-these-years/). But your free speech rights have limits. First and foremost: The First Amendment does not provide you an excuse to skip classes to speak, write, assemble or petition for change.

Limits on expression increase as we move from speech that occurs off-campus but impacts the school community to on-campus speech and finally into the classroom or other school-sponsored educational activities.

That 1969 case — Tinker v. Des Moines Independent Community School District — held that students may be disciplined if their speech “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” These concerns are less likely to materialize when you speak off campus.

This is why, in the most recent case involving student speech, the U.S. Supreme Court [upheld the speech rights of a student](https://www.freedomforum.org/2021/06/30/perspective-students-parents-and-free-speech-win-in-cheerleading-case/) who posted on social media vulgar criticisms of the school and its cheerleading squad when she failed to make the varsity team.

The court said the school offered no evidence that her comments had disrupted the educational work of the school and overturned her one-year suspension from the junior varsity cheer squad.

Noting the off-campus nature of the case, Justice **Stephen G. Breyer** wrote that since school officials already can regulate in-school student speech that otherwise would be protected for others, extending that wide range of authority to off-school hours “may mean the student cannot engage in that kind of speech at all.”

But don’t assume just being outside the school building or beyond the parking lot means you can speak as freely as non-students. Breyer notes exceptions such as field trips, athletic events, bullying that continues off-campus or when student speech targets an individual teacher or student.

And not all on-campus speech is treated equally. In the 1988 Hazelwood School District v. Kuhlmeier case, the court held that a different standard applies in the context of the classroom or school-sponsored activities and a school can restrain or regulate speech that is “reasonably related to legitimate pedagogical [educational] concerns.”

Taken together, you must observe certain limits on speech. You cannot speak out on behalf of a political candidate during a math or science class; you cannot use obscene language when speaking to a school assembly; and the school [can outright censor what you write for student publications](https://www.freedomforuminstitute.org/about/faq/can-a-public-school-official-legally-censor-a-school-sponsored-publication-like-a-newspaper-or-yearbook/) done primarily as a class exercise.

**ADMINISTRATORS**

You have great legal leeway to restrain or punish certain kinds of student speech that would have First Amendment protection virtually anywhere else, if your decision is rooted in protecting the educational process. That decision must be based in facts, not merely a general concern that disruption might occur.

You can act to protect the rights of students from being intruded upon by others. And while the [cheerleader case](https://www.freedomforum.org/2021/06/30/perspective-students-parents-and-free-speech-win-in-cheerleading-case/) set limits on when you can reach out beyond the schoolhouse, those limits likely will remain in play. Breyer noted that circumstances vary and “given the advent of computer-based learning, we hesitate to determine precisely which of many school-related off-campus activities” might warrant future oversight.

Remember that Breyer called schools “the nurseries of democracy,” saying our democracy works only when it protects “the marketplace of ideas” in which **“**free exchange facilitates an informed public opinion.”

So heed the words of Justice **Abe Fortas** in Tinker: “State-operated schools may not be enclaves of totalitarianism.” Respect the lines drawn in that case to ensure that speech is not restricted based on fears that classwork might be disrupted, the possibility of disorder or a fear of disrupting another student’s rights.

One option that is both First Amendment-friendly and a good educational approach is to [create teachable moments](https://www.youtube.com/watch?v=OcEVQKVHfRo).

When students are denied permission to skip or leave school to join a demonstration, why not encourage teachers to spend a class offering discussion or debate over the issue involved?

When you decide to restrain or punish student speech or protest, transparency about that decision can help others reconcile the balance between student rights and a school’s educational responsibilities and duty to protect other students’ rights.

And how about providing in advance information about the First Amendment as it applies to students’ lives outside and after school years? The Freedom Forum offers [free lesson plans and supporting materials](https://newseumed.org/) to help you with that work.

**Free Speech Essentials Lesson Plan: Snapping Back at Snapchat**

Do schools have the right to punish students for online speech when they are off campus?

Explore this question and the Supreme Court’s decision in the case of the Snapchatting cheerleader with your class using [this Freedom Forum case study](https://newseumed.org/tools/lesson-plan/free-speech-essentials-2021-snapping-back-snapchat).

**PARENTS**

You are the primary authority over your children. Unlike the government, you are not bound by the First Amendment’s rule that neither viewpoint nor content can be reasons to censor or punish — at least until your child reaches adulthood, age 18 in most states.

But you might consider something else Breyer observed: The First Amendment exists to provide strong protection for vulgar “or even hurtful speech on public issues to ensure we do not stifle public debate.”

Remember: You — not teachers or administrators — are your child’s primary educator. Help them understand their free speech rights and responsibilities. Support them when they are faced with unlawful censorship and be ready to help engage in an often-uphill battle to protect their rights. Be transparent and honest when they run afoul of the law or could otherwise do better.

Know, too, that you would likely be financially responsible for consequences of your child’s on or off-campus speech that is not protected by the First Amendment, such as defamation.

While most Americans value the core freedoms of the First Amendment, most are uncertain about exactly how they apply to their lives.

Could students, administrators and parents have a higher mission than to improve that knowledge and understanding, and in the process better prepare the next generation of citizens and public officials?

Feel free to talk about *that* idea anytime and anyplace this school year.