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# WHAT TO EXPECT ON LAW SCHOOL EXAMS

Law School exams don't ask students to describe court decisions that they have read. Instead, they require students to identify general principles established by the cases that they are assigned and apply those principles to a new set of facts. To discuss that process effectively with prospective law students, below are a series of three U.S. Supreme Court cases that explore the subject of the free speech rights of public school students and a sample exam question on that subject. It would be useful for you to read this material in advance of our session on July 19th.

## FREE SPEECH RIGHTS OF K-12 PUBLIC SCHOOL STUDENTS

### Introduction

The First Amendment to the United States Constitution provides: "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." Despite the fact that the text refers to a limit on the actions of the U.S. Congress, the First Amendment is applicable to the federal government generally and not just to actions by Congress. It is also applicable to the states. This is because freedom of speech and the other individual rights included in the First Amendment are fundamental liberties protected by the Fourteenth Amendment Due Process Clause.

While the text of the First Amendment states that "no law" can infringe the right of free speech, the U.S. Supreme Court has interpreted the First Amendment to allow the government to regulate speech in a variety of circumstances and for a variety of reasons. Therefore, the Court has devised a set of doctrines to answer the question of whether a particular form of government regulation of speech is or is not constitutionally permissible.

The U.S. Constitution does not mention public education or educators. However, since the public schools are operations of the government and public school administrators, teachers, and staff are agents of the government, the U.S. Constitution applies to public schools and imposes constitutional limits on their actions. Since 1969, those limitations have included student free speech rights. The Supreme Court first recognized that students have rights of freedom of expression while at school in that year in *Tinker v. Des Moines Independent Community School District* and since that time it has decided four additional cases that address various limits on those rights. In addition, in 2021 the Court for the first time decided a case that discussed the rights of public schools to discipline students for speech they engage in away from school. Below are edited versions of the first three of the school speech cases as well as a sample law school

essay exam question based on the three cases.

**1. Tinker v. Des Moines Independent Community School District No. 21**
393 U.S. 503 (1969)

JUSTICE FORTAS delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school. In December 1965, a group of adults and students held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired—that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers. It prayed for an injunction restraining the respondent school officials and members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages.

I

The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it.

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.

In *West Virginia v. Barnette*, 319 U. S. 624 (1943), this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. Speaking through Mr. Justice Jackson, the Court said:

> The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that

> they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment. It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech." The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966), the prohibition cannot be sustained.

In the present case, the District Court made no such finding, and our independent examination of

the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption.

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam. It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper.

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

In *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923), Mr. Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to "foster a homogeneous people." This principle has been repeated by this Court on numerous occasions during the intervening years. In *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967), Mr. Justice Brennan, speaking for the Court, said:

> 'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an

inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. But conduct by the student, in class or out of it, which for any reason materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. In the circumstances of the present case, the prohibition of the silent, passive "witness of the armbands," as one of the children called it, is no less offensive to the Constitution's guarantees.

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit the State to deny their form of expression.

JUSTICE BLACK, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools . . ." in the United States is in ultimate effect transferred to the Supreme Court. The Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are "reasonable."

While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked" chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the

classwork, I think the record overwhelmingly shows that the armbands did exactly what school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war.

School discipline, like parental discipline, is an integral and important part of training our children to be good citizens. Here a very small number of students have refused to obey a school order designed to give pupils who want to learn the opportunity to do so. After the Court's holding today some students will be ready, able, and willing to defy their teachers on practically all orders. It is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

JUSTICE HARLAN, dissenting.

School officials should be accorded the widest authority in maintaining discipline and good order in their institutions. I would cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion. Finding nothing in this record which impugns the good faith of respondents in promulgating the armband regulation, I would affirm the judgment below.

**2. Bethel School District No. 403 v. Fraser**
478 U.S. 675 (1986)

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the First Amendment prevents a school district from disciplining a high school student for giving a lewd speech at a school assembly.

On April 26, 1983, respondent Matthew N. Fraser, a student at Bethel High School in Pierce County, Washington, delivered a speech nominating a fellow student for student elective office. Approximately 600 high school students, many of whom were 14-year-olds, attended the assembly. The assembly was part of a school-sponsored educational program in self-government. Students who elected not to attend the assembly were required to report to study hall. During the entire speech, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.[1] Two of Fraser's teachers, with whom he discussed the contents of his speech

[1] Professor's note: Below is the text of Fraser's speech:

" 'I know a man who is firm - he's firm in his pants, he's firm in his shirt, his character is firm- but most . . . of all, his belief in you, the students of Bethel, is firm.

" 'Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue

in advance, informed him that the speech was "inappropriate and that he probably should not deliver it," and that his delivery of the speech might have "severe consequences."

During Fraser's delivery of the speech, a school counselor observed the reaction of students to the speech. Some students hooted and yelled; some by gestures graphically simulated the sexual activities pointedly alluded to in respondent's speech. Other students appeared to be bewildered and embarrassed by the speech. One teacher reported that on the day following the speech, she found it necessary to forgo a portion of the scheduled class lesson in order to discuss the speech.

A Bethel High School disciplinary rule prohibiting the use of obscene language in the school provides: "Conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures."

The morning after the assembly, the Assistant Principal called Fraser into her office and notified him that the school considered his speech to have been a violation of this rule. Fraser admitted to having given the speech described and that he deliberately used sexual innuendo in the speech. Fraser was then informed that he would be suspended for three days, and that his name would be removed from the list of candidates for graduation speaker at the school's commencement exercises.

Respondent, by his father as guardian ad litem, then brought this action. Respondent alleged a violation of his First Amendment right to freedom of speech.

This Court acknowledged in *Tinker v. Des Moines Independent Community School Dist.* that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The Court of Appeals read that case as precluding any discipline of Fraser. The marked distinction between the political "message" of the armbands in *Tinker* and the sexual content of respondent's speech in this case seems to have been given little weight by the Court of Appeals. In upholding the students' right to engage in a nondisruptive, passive expression of a political viewpoint in *Tinker*, this Court was careful to note that the case did "not concern speech or action that intrudes upon the work of the schools or the rights of other students." It is against this background that we turn to consider the level of First Amendment protection accorded to Fraser's utterances and actions before an official high school assembly attended by 600 students.

The role and purpose of the American public school system were well described by two historians, who stated: "[P]ublic education must prepare pupils for citizenship in the Republic. . . . It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation." In *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979), we echoed the essence of this statement of the objectives of public education as the "inculcat[ion of] fundamental values

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and nail it to the wall. He doesn't attack things in spurts - he drives hard, pushing and pushing until finally - he succeeds.

" 'Jeff is a man who will go to the very end - even the climax, for each and every one of you.

" 'So vote for Jeff for A. S. B. vice-president - he'll never come between you and the best our high school can be.' "

necessary to the maintenance of a democratic political system."

These fundamental values of "habits and manners of civility" essential to a democratic society must, of course, include tolerance of divergent political and religious views, even when the views may be unpopular. But these "fundamental values" must also take into account the sensibilities of others, and, in the case of a school, the sensibilities of fellow students. The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Even the most heated political discourse in a democratic society requires consideration for the personal sensibilities of the other participants and audiences.

The First Amendment guarantees wide freedom in matters of adult public discourse. It does not follow, however, that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school. Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the "work of the schools." The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers - and indeed the older students - demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models. The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy.

The pervasive sexual innuendo in Fraser's speech was plainly offensive to both teachers and students. By glorifying male sexuality, and in its verbal content, the speech was acutely insulting to teenage girl students. The speech could well be damaging to its less mature audience, many of whom were only 14 years old and on the threshold of awareness of human sexuality. Some students were reported as bewildered by the speech and the reaction of mimicry it provoked.

We hold that petitioner School District acted within its authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech. Unlike the sanctions imposed on the students in *Tinker*, the penalties in this case were unrelated to any political viewpoint. The First Amendment does not prevent school officials from determining that to permit a vulgar and lewd speech such as respondent's would undermine the school's basic educational mission. A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students. Accordingly, it was appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the "fundamental values" of public school education.

**3. Hazelwood School District v. Kuhlmeier**
484 U.S. 260 (1988)

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.

I

Petitioners are the Hazelwood School District in St. Louis County, Missouri; various school officials; Robert Eugene Reynolds, the principal of Hazelwood East High School; and Howard Emerson, a teacher in the school district. Respondents are three former Hazelwood East students who were staff members of Spectrum, the school newspaper. They contend that school officials violated their First Amendment rights by deleting two pages of articles from the May 13, 1983, issue of Spectrum.

Spectrum was written and edited by the Journalism II class at Hazelwood East. The newspaper was published every three weeks or so during the 1982-1983 school year. More than 4,500 copies of the newspaper were distributed during that year to students, school personnel, and members of the community. The Board of Education allocated funds for the printing of Spectrum. These funds were supplemented by proceeds from sales of the newspaper.

The Journalism II course was taught by Robert Stergos for most of the 1982-1983 academic year. Stergos left Hazelwood East to take a job in private industry on April 29, 1983, when the May 13 edition of Spectrum was nearing completion, and petitioner Emerson took his place as newspaper adviser for the remaining weeks of the term.

The practice at Hazelwood East during the spring 1983 semester was for the journalism teacher to submit page proofs of each Spectrum issue to Principal Reynolds for his review prior to publication. On May 10, Emerson delivered the proofs of the May 13 edition to Reynolds, who objected to two of the articles scheduled to appear in that edition. One of the stories described three Hazelwood East students' experiences with pregnancy; the other discussed the impact of divorce on students at the school.

Reynolds was concerned that, although the pregnancy story used false names "to keep the identity of these girls a secret," the pregnant students still might be identifiable. He also believed that the references to sexual activity and birth control were inappropriate for some younger students. In addition, Reynolds was concerned that a student identified by name in the divorce story had complained that her father "wasn't spending enough time with my mom, my sister and I" prior to the divorce, "was always out of town on business or out late playing cards," and "always argued about everything" with her mother. Reynolds believed that the student's parents should have been given an opportunity to respond to these remarks or consent to publication. He was unaware that Emerson had deleted the student's name from the final version of the article.

Reynolds believed that there was no time to make the necessary changes before the scheduled press run and that the newspaper would not appear before the end of the school year if printing were delayed to any significant extent. He concluded that his only options were to publish a

four-page newspaper instead of the planned six-page newspaper, eliminating the two pages on which the offending stories appeared, or to publish no newspaper at all. Accordingly, he directed Emerson to withhold from publication the two pages containing the stories on pregnancy and divorce. He informed his superiors of the decision, and they concurred.

Respondents commenced this action in the United States District Court for the Eastern District of Missouri seeking a declaration that their First Amendment rights had been violated.

II

Students in the public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker,* 393 U.S. 503, 506 (1969). They cannot be punished merely for expressing their personal views on the school premises unless school authorities have reason to believe that such expression will "substantially interfere with the work of the school or impinge upon the rights of other students."

We have nonetheless recognized that the First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings," *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 682 (1986), and must be "applied in light of the special characteristics of the school environment." A school need not tolerate student speech that is inconsistent with its "basic educational mission," even though the government could not censor similar speech outside the school.

The policy of school officials toward Spectrum was reflected in Hazelwood School Board Policy and the Hazelwood East Curriculum Guide. Board Policy provided that "[s]chool sponsored publications are developed within the adopted curriculum and its educational implications in regular classroom activities." The Hazelwood East Curriculum Guide described the Journalism II course as a "laboratory situation in which the students publish the school newspaper applying skills they have learned in Journalism I." The lessons that were to be learned from the Journalism II course, according to the Curriculum Guide, included development of journalistic skills under deadline pressure, "the legal, moral, and ethical restrictions imposed upon journalists within the school community," and "responsibility and acceptance of criticism for articles of opinion." Journalism II was taught by a faculty member during regular class hours. Students received grades and academic credit for their performance in the course.

School officials did not deviate in practice from their policy that production of Spectrum was to be part of the educational curriculum and a "regular classroom activit[y]." The District Court found that Robert Stergos, the journalism teacher during most of the 1982-1983 school year, "was the final authority with respect to almost every aspect of the production and publication of Spectrum, including its content." Moreover, after each issue had been approved by Stergos or his successor, the issue still had to be reviewed by Principal Reynolds prior to publication.

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 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. Hence, a school may in its capacity as publisher of a school newspaper or producer of a school play "disassociate itself," not only from speech that would "substantially interfere with [its] work . . . or impinge upon the rights of other students," but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences. In addition, a school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school setting. A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with "the shared values of a civilized social order" or to associate the school with any position other than neutrality on matters of political controversy.

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 editorial 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.

This standard is consistent with our oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges. It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so "directly and sharply implicate[d]" as to require judicial intervention to protect students' constitutional rights.

III

We also conclude that Principal Reynolds acted reasonably in requiring the deletion from the May 13 issue of Spectrum of the pregnancy article, the divorce article, and the remaining articles that were to appear on the same pages of the newspaper.

The initial paragraph of the pregnancy article declared that "[a]ll names have been changed to keep the identity of these girls a secret." The principal concluded that the students' anonymity was not adequately protected given the other identifying information in the article and the small

number of pregnant students at the school. Reynolds therefore could reasonably have feared that the article violated whatever pledge of anonymity had been given to the pregnant students. In addition, he could reasonably have been concerned that the article was not sufficiently sensitive to the privacy interests of the students' boyfriends and parents, who were discussed in the article but who were given no opportunity to consent to its publication or to offer a response. The article did not contain graphic accounts of sexual activity. The girls did comment in the article, however, concerning their sexual histories and their use or nonuse of birth control. It was not unreasonable for the principal to have concluded that such frank talk was inappropriate in a school-sponsored publication distributed to 14-year-old freshmen and presumably taken home to be read by students' even younger brothers and sisters.

The student who was quoted by name in the version of the divorce article seen by Principal Reynolds made comments sharply critical of her father. The principal could reasonably have concluded that an individual publicly identified as an inattentive parent was entitled to an opportunity to defend himself as a matter of journalistic fairness.

Principal Reynolds testified credibly at trial that, at the time that he reviewed the proofs of the May 13 issue, he believed that there was no time to make any changes in the articles. We agree with the District Court that the decision to excise the two pages containing the problematic articles was reasonable given the particular circumstances of this case.

In sum, we cannot reject as unreasonable Principal Reynolds' conclusion that neither the pregnancy article nor the divorce article was suitable for publication. Reynolds could reasonably have concluded that the students who had written and edited these articles had not sufficiently mastered portions of the Journalism II curriculum that pertained to the treatment of controversial issues and personal attacks, the need to protect the privacy of individuals whose intimate concerns are to be revealed, and "the legal, moral, and ethical restrictions imposed upon journalists within [a] school community" that includes adolescent subjects and readers. Finally, the principal's decision to delete two pages of Spectrum, rather than to delete only the offending articles or require that they be modified, was reasonable under the circumstances as he understood them. Accordingly, no violation of First Amendment rights occurred.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

Free student expression undoubtedly sometimes interferes with the effectiveness of the school's pedagogical functions. Some brands of student expression do so by directly preventing the school from pursuing its pedagogical mission: The young polemic who stands on a soapbox during calculus class to deliver an eloquent political diatribe interferes with the legitimate teaching of calculus. Other student speech, however, frustrates the school's legitimate pedagogical purposes merely by expressing a message that conflicts with the school's, without directly interfering with the school's expression of its message: A student who responds to a political science teacher's question with the retort, "socialism is good," subverts the school's inculcation of the message that capitalism is better. Even the gossip who sits in the student commons swapping stories of sexual escapade could readily muddle a clear official message condemning teenage sex. Likewise, the student newspaper that, like Spectrum, conveys a moral position at odds with the

school's official stance might subvert the administration's legitimate inculcation of its own perception of community values.

If mere incompatibility with the school's pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could censor the students or student organizations in the foregoing hypotheticals, converting our public schools into "enclaves of totalitarianism," that "strangle the free mind at its source." The First Amendment permits no such blanket censorship authority. Public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate.

In *Tinker*, this Court struck the balance. We held that official censorship of student expression 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 taxonomy of school censorship, concluding that *Tinker* applies to one category and not another. On the one hand is censorship "to silence a student's personal expression that happens to occur on the school premises." On the other hand is censorship of expression that arises in the context of "school-sponsored . . . expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school."

The Court does not, for it cannot, purport to discern from our precedents the distinction it creates. Nor has this Court ever intimated a distinction between personal and school-sponsored speech in any other context. Even if we were writing on a clean slate, I would reject the Court's rationale for abandoning *Tinker* in this case.

*Tinker* teaches us that the state educator's undeniable, and undeniably vital, mandate to inculcate moral and political values is not a general warrant to act as "thought police" stifling discussion of all but state-approved topics and advocacy of all but the official position. Otherwise educators could transform students into "closed-circuit recipients of only that which the State chooses to communicate," and cast a perverse "pall of orthodoxy over the classroom." The mere fact of school sponsorship does not license such thought control in the high school, whether through school suppression of disfavored viewpoints or through official assessment of topic sensitivity. The former would constitute unconstitutional viewpoint discrimination.

Official censorship of student speech on the ground that it addresses "potentially sensitive topics" is, for related reasons, equally impermissible. I would not begrudge an educator the authority to limit the substantive scope of a school-sponsored publication to a certain, objectively definable topic, such as literary criticism, school sports, or an overview of the school year. Unlike those determinate limitations, "potential topic sensitivity" is a vaporous nonstandard that invites manipulation to achieve ends that cannot permissibly be achieved through blatant viewpoint discrimination and chills student speech to which school officials might not object.

The sole concomitant of school sponsorship that might conceivably justify the distinction that the Court draws between sponsored and nonsponsored student expression is the risk "that the views of the individual speaker [might be] erroneously attributed to the school." But " 'that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.' " Dissociative means short of censorship are available to the school.

It could, for example, require the student activity to publish a disclaimer, such as the "Statement of Policy" that Spectrum published each school year announcing that "[a]ll . . . editorials appearing in this newspaper reflect the opinions of the Spectrum staff, which are not necessarily shared by the administrators or faculty of Hazelwood East."

Since the censorship served no legitimate pedagogical purpose, it cannot by any stretch of the imagination have been designed to prevent "materia[l] disrup[tion of] classwork." "Any yardstick less exacting than [that] could result in school officials curtailing speech at the slightest fear of disturbance," a prospect that would be completely at odds with this Court's pronouncement that the "undifferentiated fear or apprehension of disturbance is not enough [even in the public school context] to overcome the right to freedom of expression."

**4. Sample Student Speech Exam Question (Suggested time: 1 hour) (50 points)**

Paul Park is a 16 year-old junior at the High School for Social Justice (HSSJ), a public high school. HSSJ has a specialized curriculum that includes a variety of social justice issues. Students like Paul Park who join the Social Justice Club, one of the school's major extracurricular clubs, are encouraged by the club's advisor, a government teacher at the high school named Nat Fraser, to create a social justice project in which they develop a plan to advocate for a social justice issue they select and work to implement their social justice plan. The work on the social justice project is not a required part of the curriculum, is not part of a course for credit, is not graded, and is not supervised by Mr. Fraser unless a student seeks his assistance. Mr. Fraser does, however, display information about the various social justice projects created by members of the Social Justice Club on a bulletin board in his classroom.

Paul Park, who joined the Social Justice Club when he was a sophomore, decided to develop a social justice plan to advocate for changes in the alcohol beverage control laws to allow some teenage purchase and consumption of alcoholic beverages. To accomplish this goal, he created an organization called Support Legalization of Alcohol for Minors (SLAM). Paul believes that the current alcohol beverage laws that prevent people under the age of 21 from purchasing or being served alcohol are unfair as well as foolish and do not encourage responsible drinking.

In implementing his social justice plan, Paul Park created a variety of social media pages to publicize and gain public support for his SLAM organization. He created all of the social media pages using his home computer. The social media pages, in addition to containing the SLAM name and logo (a wine glass with the number 16 and an up arrow on the glass), provide information about the laws in other countries that allow underage drinking, the lower rates of drunk driving and other alcohol-related problems in those countries, a proposed law that would legalize the sale and consumption of alcoholic beverages with low alcohol content to persons 16 and older, and the opportunity to purchase SLAM t-shirts. His t-shirts include the SLAM name and logo and various slogans including "You're old enough. Support Legalization of Alcohol for Minors" and "Sweet 16 and ready to drink. Support Legalization of Alcohol for Minors."

In addition to the social media pages and the SLAM t-shirts, Paul prepared a flyer that contained

information about SLAM, links to its social media presence, and advertisements for the t-shirts that could be purchased. He brought copies of the flyer to school and handed them out to students in the hallways between classes and in the cafeteria. As a result of the flyers, 20 students asked Paul Park if they could purchase SLAM t-shirts. He told them that they could order them on any of SLAM's social media pages and that he would bring them to school after they placed an order. As a result, over a several week period Paul delivered t-shirts to 20 of his classmates who began to wear the shirts to school.

When they were worn to school, the shirts caused comments in the hallways and discussions in the cafeteria and during recess about SLAM and whether Paul's proposed law was a good idea or not. In addition, the parents of 8 students who bought the shirts and wore them to school called Sylvia Sanchez, the high school principal, to complain that their children, some as young as 14, were wearing the SLAM shirts promoting underage drinking. They were upset that the school would allow a student to promote something as dangerous as drinking alcohol.

After receiving the phone calls from upset parents, and anticipating that other parents would complain as well, the principal called Paul Park into her office. She told him that his conduct in promoting SLAM to students at the school by distributing flyers and t-shirts to HSSJ students violated the student conduct code because it qualified as disruptive conduct. Ms. Sanchez asked Paul to cease promoting SLAM at school or he would be disciplined for violating the student conduct code. In response, Paul told Ms. Sanchez that he believed he had a First Amendment right to continue to promote SLAM. Since Paul Park refused to cease promoting SLAM at school, Ms. Sanchez told him that she had no choice, but to suspend him for 5 days.

After unsuccessfully appealing his suspension to the School Board, Paul Park's parents brought a lawsuit on his behalf against the High School for Social Justice and Principal Sanchez claiming that his First Amendment rights were violated by suspending him for distributing SLAM flyers and t-shirts at school.

You are a law clerk to the judge assigned to the case. The judge asks you to write a memorandum detailing the First Amendment arguments available to Paul Park to challenge his suspension as well as the First Amendment arguments available to the High School for Social Justice and Principal Sanchez to defend the decision to suspend Paul Park.