YMCA New Mexico
Youth & Government
2026 Judicial Court Case Documents

APPEALS COURT OVERVIEW

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2026 New Mexico YMCA Youth & Government Judicial Case File

I. Introduction to Wexler et. al. v. YAG High School

Below is the 2026 Judicial Problem. You will find the facts of the case, a procedural history, the issues on appeal, and attached case law. This is a closed universe, which means that you should only reference the cases provided to you for your brief and in your arguments.

II. Relevant Background

Kim and Jimmy filed separate lawsuits in the Sixty-Sixth Judicial District Court of New Mexico. After those cases were decided, Kim and Jimmy separately appealed and the New Mexico Court of Appeals consolidated the cases, meaning they heard and decided both cases together. After the Court of Appeals made its decision, Kim and Jimmy appealed again. The New Mexico Supreme Court also heard the cases together.

Cases that have more than one party will typically only name one party in the caption and will use "et. al." for the other parties. Et. al. is latin for "and others". While the case is *Wexler et. al. v. YAG High School*, you can refer to both Kim and Jimmy as appellants or petitioners.

III. Facts

Worried about the impact of cellphones and other electronic devices on the learning environment, YAG High School decided to change its cellphone policy for the 2025-2026 school year. At the beginning of the school year, Principal Horanburg issued the following policy:

> YAG High School is dedicated to creating a culture of learning which requires students to be fully engaged in their education and interact face-to-face with their peers and teachers. It has been proven that students who are on cell phones or other personal electronic devices during instructional time are not fully participating in their learning. In addition to disrupting the educational process, personal electronics have created security and safety issues, including, but not limited to, academic integrity/cheating, bullying, and harassment. In order to ensure an environment conducive to learning, the use of personal electronic devices will be regulated, and their use is prohibited during instructional time.

Starting in the 2025-2026 school year, YAG High School will be implementing an electronic device policy that cell phones and other personal electronic devices (e.g.: earbuds, headphones, smart watches, etc.) will be stored in a classroom pocket holder during instructional time, unless staff designates otherwise. Electronic devices may not be taken from the classroom while taking a restroom break.

Electronic device usage is allowed during passing periods and at lunch, as we recognize that students have legitimate reasons to use their devices during the day.

Violation of the electronic device policy will result in the following:

- 1st Violation – Teacher issues a verbal warning. The warning is issued only one time per teacher per student; not one time per day.
- 2nd Violation – Teacher documents and notifies parents/guardians of violation.
- 3rd Violation – Teacher documents, notifies parents/guardians of violation, and submits a referral to administration. School administration will determine a punishment.

Each student who attends YAG High School received a copy of the new policy prior to the start of the school year.

Kim Wexler is a sixteen-year-old junior at YAG High School. In the middle of the fall semester, Kim tried out for the girls' basketball team. Kim had played on the junior varsity team her freshman and sophomore year and was hopeful that she would make the varsity team. However, after tryouts the team lists were posted, and Kim was once again placed on the junior varsity team. Kim was very upset about being placed on junior varsity, especially because two sophomores had been selected to be on the varsity squad.

The next day at school, as Kim was walking to the cafeteria during lunch, she overheard the following conversation between two sophomore girls, Lydia and Stacey, who had made the varsity basketball team:

"I can't believe Kim didn't make varsity!"
"I know, I couldn't imagine being a junior on JV."
"I'd be so embarrassed I'd quit!"

Kim, upset after hearing their conversation, ran to the bathroom. She opened up Instagram and posted the following story:

> "You sophomores have a lot to say behind my back but are too scared to say it to my face. We all know the only reason you made the team is because your moms are friends with coach, you're the worst basketball players I've ever seen hope y'all lose every game."

The Instagram story exploded—over 700 students at the school read it over the next 24 hours. Lydia and Stacey took a screenshot and reposted Kim's story, with added text that called her a "Bitter Betty." The social media back-and-forth continued throughout the week with many of Kim's friends in the junior class and the sophomore players joining in by making posts, all during passing periods. Seemingly the whole school was following the drama, causing chaos during passing periods for three days. Students would often wait until the last possible second to arrive at their classrooms for each period, and some would request to keep their phones for "emergency purposes." Teachers reported many disruptions at the beginning of instructional periods. One teacher opined that, on average, he had to take 5 extra minutes at the beginning of classes to get students to focus on the instruction.

Principal Horanburg learned of the incident and responded to the story and reports of disruptions from teachers by 1) giving Kim a week of in-school suspension for making the post knowing that it would cause drama in the school and increase disruptions; and 2) making the following change to the cellphone policy:

> ~~Electronic device usage is allowed during passing periods and at lunch, as we recognize that students have legitimate reasons to use their devices during the day.~~
>
> Electronic device usage is <u>NOT</u> allowed during passing periods or at lunch. During those periods, students shall keep their electronic devices in their backpacks.

The change to the cellphone policy was announced by Principal Horanburg during morning announcements on a Friday, to be effective the following Monday. The students were provided a copy of the new policy that day. The change was made without input from students or parents.

Jimmy McGill is a fifteen-year old freshman at YAG High School and a long-time friend of Kim, who he grew up with. Upset about how Kim received in-school suspension, and now not being allowed to use his cellphone during passing period and lunch, Jimmy organized a student protest of Kim's punishment and the new cellphone policy.

During the first week after the new cellphone policy went into effect, Jimmy spoke to his friends about organizing a walkout during the last period of the day on that Thursday. He encouraged friends to spread the word to their sports teams and clubs and to share on social media. The hashtag #JusticeForKim was trending on TikTok among users at YAG High School by Wednesday night. On Thursday, students arrived at their last period class, placed their cellphones in the classroom pocket holders as required, and sat down.

Two minutes after the bell rang and two minutes into the teacher's instructional time, about half the students at the school stood up, took their cellphones, and walked out of their classrooms. Because YAG High School has a policy that students may not leave campus without permission, students gathered in the courtyard outside the administration office and shouted their demands: Reverse Kim's in-school suspension, reverse the new strict cellphone policy, and get student and parent input before any new school policy change. With half of their students missing from class, most teachers could not properly complete their instruction that day and knew they would fall behind in their lesson plans.

Through social media sleuthing, Principal Horanburg figured out that Jimmy instigated and organized the walkout. He called Jimmy and his parents into his office the next day and informed them that Jimmy would be suspended from school for one week for organizing the walkout and protest and interfering with the educational process.

IV. Procedural History

Kim Wexler and her parents sued YAG High School in the State of New Mexico Sixty-Sixth Judicial District Court, alleging that the School violated Kim's First Amendment rights by punishing her for speech made during lunch, in compliance with the cellphone policy.

The District Court concluded that the school did not violate Kim's First Amendment rights because Kim could reasonably foresee that her speech would cause disruptions to the educational process.

Specific findings of the Sixty-Sixth District Court:

1. Teachers lost an average of 30 minutes of instructional time in the three days after Kim's post.
2. School counselors saw an increase in student reports of bullying in the three days after Kim's post

Jimmy McGill and his parents sued YAG High School in the State of New Mexico Sixty-Sixth Judicial District Court alleging that the School violated Jimmy's First Amendment rights by punishing him for protected speech during the protest.

The District Court concluded that the School did not violate Jimmy's First Amendment rights because the protest was a substantial disruption to the operation of the school.

Kim and Jimmy separately appealed their cases and the New Mexico Court of Appeals consolidated the cases, meaning they heard and decided both cases together. The Court of Appeals affirmed the District Court on both cases.

The Court of Appeals reasoned that Kim's post and Jimmy's subsequent protest were substantial disruptions to the education process and were not protected under the First Amendment.

Kim and Jimmy filed a Petition for Writ of Certiorari in the New Mexico Supreme Court. The Supreme Court granted Kim and Jimmy's petition.

V. Issues on Appeal

1. Whether Kim Wexler's First Amendment rights were violated when she received in-school suspension for the Instagram story she made.
2. Whether Jimmy McGill's First Amendment rights were violated when he was suspended for his protest.

VI. Case Law

1. Mahanoy Area School District v. B.L., 594 U.S. 180 (2021)
2. Bethel School District v. Fraser, 478 U.S. 675 (1986)
3. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)
4. Corales v. Bennett, 567 F.3d 554, (9th Cir. 2009)

Mahanoy Area School District v. B.L., 594 U.S. 180 (2021)

Justice BREYER delivered the opinion of the Court.

A public high school student used, and transmitted to her Snapchat friends, vulgar language and gestures criticizing both the school and the school's cheerleading team. The student's speech took place outside of school hours and away from the school's campus. In response, the school suspended the student for a year from the cheerleading team. We must decide whether the Court of Appeals for the Third Circuit correctly held that the school's decision violated the First Amendment. Although we do not agree with the reasoning of the Third Circuit panel's majority, we do agree with its conclusion that the school's disciplinary action violated the First Amendment.

B. L. (who, together with her parents, is a respondent in this case) was a student at Mahanoy Area High School, a public school in Mahanoy City, Pennsylvania. At the end of her freshman year, B. L. tried out for a position on the school's varsity cheerleading squad and for right fielder on a private softball team. She did not make the varsity cheerleading team or get her preferred softball position, but she was offered a spot on the cheerleading squad's junior varsity team. B. L. did not accept the coach's decision with good grace, particularly because the squad coaches had placed an entering freshman on the varsity team.

That weekend, B. L. and a friend visited the Cocoa Hut, a local convenience store. There, B. L. used her smartphone to post two photos on Snapchat, a social media application that allows users to post photos and videos that disappear after a set period of time. B. L. posted the images to her Snapchat "story," a feature of the application that allows any person in the user's "friend" group (B. L. had about 250 "friends") to view the images for a 24 hour period.

The first image B. L. posted showed B. L. and a friend with middle fingers raised; it bore the caption: "Fuck school fuck softball fuck cheer fuck everything." The second image was blank but for a caption, which read: "Love how me and [another student] get told we need a year of jv before we make varsity but tha[t] doesn't matter to anyone else?" The caption also contained an upside-down smiley-face emoji.

B. L.'s Snapchat "friends" included other Mahanoy Area High School students, some of whom also belonged to the cheerleading squad. At least one of them, using a separate cellphone, took pictures of B. L.'s posts and shared them with other members of the cheerleading squad. One of the students who received these photos showed them to her mother (who was a cheerleading squad coach), and

the images spread. That week, several cheerleaders and other students approached the cheerleading coaches "visibly upset" about B. L.'s posts. Questions about the posts persisted during an Algebra class taught by one of the two coaches.

After discussing the matter with the school principal, the coaches decided that because the posts used profanity in connection with a school extracurricular activity, they violated team and school rules. As a result, the coaches suspended B. L. from the junior varsity cheerleading squad for the upcoming year. B. L.'s subsequent apologies did not move school officials. The school's athletic director, principal, superintendent, and school board, all affirmed B. L.'s suspension from the team. In response, B. L., together with her parents, filed this lawsuit in Federal District Court.

The District Court found in B. L.'s favor. It first granted a temporary restraining order and a preliminary injunction ordering the school to reinstate B. L. to the cheerleading team. In granting B. L.'s subsequent motion for summary judgment, the District Court found that B. L.'s Snapchats had not caused substantial disruption at the school. Consequently, the District Court declared that B. L.'s punishment violated the First Amendment, and it awarded B. L. nominal damages and attorneys' fees and ordered the school to expunge her disciplinary record.

On appeal, a panel of the Third Circuit affirmed the District Court's conclusion. In so doing, the majority noted that this Court had previously held in Tinker that a public high school could not constitutionally prohibit a peaceful student political demonstration consisting of " 'pure speech' " on school property during the school day. In reaching its conclusion in Tinker, this Court emphasized that there was no evidence the student protest would "substantially interfere with the work of the school or impinge upon the rights of other students." But the Court also said that: "[C]onduct by [a] student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is ... not immunized by the constitutional guarantee of freedom of speech."

Many courts have taken this statement as setting a standard—a standard that allows schools considerable freedom on campus to discipline students for conduct that the First Amendment might otherwise protect. But here, the panel majority held that this additional freedom did "not apply to off-campus speech," which it defined as "speech that is outside school-owned, -operated, or -supervised channels and that is not reasonably interpreted as bearing the school's imprimatur."Because B. L.'s speech took place off campus, the panel concluded that the Tinker standard did not apply and the school consequently could not discipline B. L. for engaging in a form of pure speech.

A concurring member of the panel agreed with the majority's result but wrote that the school had not sufficiently justified disciplining B. L. because, whether the Tinker standard did or did not apply, B. L.'s speech was not substantially disruptive.

The school district filed a petition for certiorari in this Court, asking us to decide "[w]hether [Tinker], which holds that public school officials may regulate speech that would materially and substantially disrupt the work and discipline of the school, applies to student speech that occurs off campus." Pet. for Cert. I. We granted the petition.

We have made clear that students do not "shed their constitutional rights to freedom of speech or expression," even "at the school house gate." But we have also made clear that courts must apply the First Amendment "in light of the special characteristics of the school environment. One such characteristic, which we have stressed, is the fact that schools at times stand in loco parentis, i.e., in the place of parents.

This Court has previously outlined three specific categories of student speech that schools may regulate in certain circumstances: (1) "indecent," "lewd," or "vulgar" speech uttered during a school assembly on school grounds, (2) speech, uttered during a class trip, that promotes "illegal drug use," and (3) speech that others may reasonably perceive as "bear[ing] the imprimatur of the school," such as that appearing in a school-sponsored newspaper,

Finally, in Tinker, we said schools have a special interest in regulating speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." These special characteristics call for special leeway when schools regulate speech that occurs under its supervision.

Unlike the Third Circuit, we do not believe the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. The school's regulatory interests remain significant in some off-campus circumstances. The parties' briefs, and those of amici, list several types of off-campus behavior that may call for school regulation. These include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices, including material maintained within school computers.

Even B. L. herself and the amici supporting her would redefine the Third Circuit's off-campus/on-campus distinction, treating as on campus: all times when the school is responsible for the student; the school's immediate surroundings; travel en route to and from the school; all speech taking place

over school laptops or on a school's website; speech taking place during remote learning; activities taken for school credit; and communications to school e-mail accounts or phones. And it may be that speech related to extracurricular activities, such as team sports, would also receive special treatment under B. L.'s proposed rule.

We are uncertain as to the length or content of any such list of appropriate exceptions or carveouts to the Third Circuit majority's rule. That rule, basically, if not entirely, would deny the off-campus applicability of Tinker's highly general statement about the nature of a school's special interests. Particularly given the advent of computer-based learning, we hesitate to determine precisely which of many school-related off-campus activities belong on such a list. Neither do we now know how such a list might vary, depending upon a student's age, the nature of the school's off-campus activity, or the impact upon the school itself. Thus, we do not now set forth a broad, highly general First Amendment rule stating just what counts as "off campus" speech and whether or how ordinary First Amendment standards must give way off campus to a school's special need to prevent, e.g., substantial disruption of learning-related activities or the protection of those who make up a school community.

We can, however, mention three features of off-campus speech that often, even if not always, distinguish schools' efforts to regulate that speech from their efforts to regulate on-campus speech. Those features diminish the strength of the unique educational characteristics that might call for special First Amendment leeway.

First, a school, in relation to off-campus speech, will rarely stand in loco parentis. The doctrine of in loco parentis treats school administrators as standing in the place of students' parents under circumstances where the children's actual parents cannot protect, guide, and discipline them. Geographically speaking, off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility.

Second, from the student speaker's perspective, regulations of off-campus speech, when coupled with regulations of on-campus speech, include all the speech a student utters during the full 24-hour day. That means courts must be more skeptical of a school's efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all. When it comes to political or religious speech that occurs outside school or a school program or activity, the school will have a heavy burden to justify intervention.

Third, the school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off campus. America's public schools are the nurseries of democracy. Our representative democracy only works if we protect the "marketplace of ideas." This free exchange

facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection. Thus, schools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, "I disapprove of what you say, but I will defend to the death your right to say it." (Although this quote is often attributed to Voltaire, it was likely coined by an English writer, Evelyn Beatrice Hall.)

Given the many different kinds of off-campus speech, the different potential school-related and circumstance-specific justifications, and the differing extent to which those justifications may call for First Amendment leeway, we can, as a general matter, say little more than this: Taken together, these three features of much off-campus speech mean that the leeway the First Amendment grants to schools in light of their special characteristics is diminished. We leave for future cases to decide where, when, and how these features mean the speaker's off-campus location will make the critical difference. This case can, however, provide one example.

Consider B. L.'s speech. Putting aside the vulgar language, the listener would hear criticism, of the team, the team's coaches, and the school—in a word or two, criticism of the rules of a community of which B. L. forms a part. This criticism did not involve features that would place it outside the First Amendment's ordinary protection. B. L.'s posts, while crude, did not amount to fighting words. And while B. L. used vulgarity, her speech was not obscene as this Court has understood that term. To the contrary, B. L. uttered the kind of pure speech to which, were she an adult, the First Amendment would provide strong protection.

Consider too when, where, and how B. L. spoke. Her posts appeared outside of school hours from a location outside the school. She did not identify the school in her posts or target any member of the school community with vulgar or abusive language. B. L. also transmitted her speech through a personal cellphone, to an audience consisting of her private circle of Snapchat friends. These features of her speech, while risking transmission to the school itself, nonetheless diminish the school's interest in punishing B. L.'s utterance.

But what about the school's interest, here primarily an interest in prohibiting students from using vulgar language to criticize a school team or its coaches—at least when that criticism might well be transmitted to other students, team members, coaches, and faculty? We can break that general interest into three parts.

First, we consider the school's interest in teaching good manners and consequently in punishing the use of vulgar language aimed at part of the school community. The strength of this anti-vulgarity

interest is weakened considerably by the fact that B. L. spoke outside the school on her own time. B. L. spoke under circumstances where the school did not stand in loco parentis. And there is no reason to believe B. L.'s parents had delegated to school officials their own control of B. L.'s behavior at the Cocoa Hut. Moreover, the vulgarity in B. L.'s posts encompassed a message, an expression of B. L.'s irritation with, and criticism of, the school and cheerleading communities. Further, the school has presented no evidence of any general effort to prevent students from using vulgarity outside the classroom. Together, these facts convince us that the school's interest in teaching good manners is not sufficient, in this case, to overcome B. L.'s interest in free expression.

Second, the school argues that it was trying to prevent disruption, if not within the classroom, then within the bounds of a school-sponsored extracurricular activity. But we can find no evidence in the record of the sort of "substantial disruption" of a school activity or a threatened harm to the rights of others that might justify the school's action. Rather, the record shows that discussion of the matter took, at most, 5 to 10 minutes of an Algebra class "for just a couple of days" and that some members of the cheerleading team were "upset" about the content of B. L.'s Snapchats. But when one of B. L.'s coaches was asked directly if she had "any reason to think that this particular incident would disrupt class or school activities other than the fact that kids kept asking ... about it," she responded simply, "No." As we said in Tinker, "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." The alleged disturbance here does not meet Tinker's demanding standard.

Third, the school presented some evidence that expresses (at least indirectly) a concern for team morale. One of the coaches testified that the school decided to suspend B. L., not because of any specific negative impact upon a particular member of the school community, but "based on the fact that there was negativity put out there that could impact students in the school." There is little else, however, that suggests any serious decline in team morale—to the point where it could create a substantial interference in, or disruption of, the school's efforts to maintain team cohesion. As we have previously said, simple "undifferentiated fear or apprehension ... is not enough to overcome the right to freedom of expression."

It might be tempting to dismiss B. L.'s words as unworthy of the robust First Amendment protections discussed herein. But sometimes it is necessary to protect the superfluous in order to preserve the necessary. "We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated."

Although we do not agree with the reasoning of the Third Circuit's panel majority, for the reasons expressed above, resembling those of the panel's concurring opinion, we nonetheless agree that the school violated B. L.'s First Amendment rights. The judgment of the Third Circuit is therefore affirmed.

It is so ordered.

Bethel School District v. Fraser

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. Students were required to attend the assembly or to report to the study hall. 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.

Two of Fraser's teachers, with whom he discussed the contents of his speech 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 with the class.

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 was presented with copies of five letters submitted by teachers, describing his conduct at the assembly; he was given a chance to explain his conduct, and he 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.

Fraser sought review of this disciplinary action through the School District's grievance procedures. The hearing officer determined that the speech given by respondent was "indecent, lewd, and offensive to the modesty and decency of *679 many of the students and faculty in attendance at the assembly." The examiner determined that the speech fell within the ordinary meaning of "obscene," as used in the disruptive-conduct rule, and affirmed the discipline in its entirety. Fraser served two days of his suspension, and was allowed to return to school on the third day.

Respondent, by his father as guardian ad litem, then brought this action in the United States District Court for the Western District of Washington. Respondent alleged a violation of his First Amendment right to freedom of speech and sought both injunctive relief and monetary damages under 42 U.S.C. § 1983. The District Court held that the school's sanctions violated respondent's right to freedom of speech under the First Amendment to the United States Constitution, that the school's disruptive-conduct rule is unconstitutionally vague and overbroad, and that the removal of respondent's name from the graduation speaker's list violated the Due Process Clause of the Fourteenth Amendment because the disciplinary rule makes no mention of such removal as a possible sanction. The District Court awarded respondent $278 in damages, $12,750 in litigation costs and attorney's fees, and enjoined the School District from preventing respondent from speaking at the commencement ceremonies. Respondent, who had been elected graduation speaker by a write-in vote of his classmates, delivered a speech at the commencement ceremonies on June 8, 1983.

The Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court, holding that respondent's speech was indistinguishable from the protest armband in Tinker v. Des Moines Independent Community School Dist., 393, The court explicitly rejected the School District's argument that the speech, unlike the passive conduct of wearing a black armband, had a disruptive effect on the educational process. The Court of Appeals also rejected the School District's argument that it had an interest in protecting an essentially captive audience of minors from lewd and indecent language in a setting sponsored by the school, reasoning that the School District's "unbridled discretion" to determine what discourse is "decent" would "increase the risk of cementing white, middle-class standards for determining what is acceptable and proper speech and behavior in our public schools." Finally, the Court of Appeals rejected the School District's argument that, incident to its responsibility for the school curriculum, it had the power to control the language used to express ideas during a school-sponsored activity. We granted certiorari.

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 for indecent speech and lewd conduct in the school assembly. That court appears to have proceeded on the theory that the use of lewd and obscene speech in order to make what the speaker considered to be a point in a nominating speech for a fellow student was essentially the same as the wearing of an armband in Tinker as a form of protest or the expression of a political position.

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, we echoed the essence of this statement of the objectives of public education as the "inculcat[ion of] fundamental values 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 expressed may be unpopular. But these "fundamental values" must also take into account consideration of 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.

In our Nation's legislative halls, where some of the most vigorous political debates in our society are carried on, there are rules prohibiting the use of expressions offensive to other participants in the debate. The Manual of Parliamentary Practice, drafted by Thomas Jefferson and adopted by the House of Representatives to govern the proceedings in that body, prohibits the use of "impertinent" speech during debate and likewise provides that "[n]o person is to use indecent language against the

proceedings of the House." The Rules of Debate applicable in the Senate likewise provide that a Senator may be called to order for imputing improper motives to another Senator or for referring offensively to any state. Senators have been censured for abusive language directed at other Senators. Can it be that what is proscribed in the halls of Congress is beyond the reach of school officials to regulate?

The First Amendment guarantees wide freedom in matters of adult public discourse. A sharply divided Court upheld the right to express an antidraft viewpoint in a public place, albeit in terms highly offensive to most citizens. 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. In New Jersey v. T.L.O., we reaffirmed that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings. As cogently expressed by Judge Newman, "the First Amendment gives a high school student the classroom right to wear Tinker's armband, but not Cohen's jacket."

Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Indeed, the "fundamental values necessary to the maintenance of a democratic political system" disfavor the use of terms of debate highly offensive or highly threatening to others. 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—indeed to any mature person. By glorifying male sexuality, and in its verbal content, the speech was acutely insulting to teenage girl students. The speech could well be seriously 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.

This Court's First Amendment jurisprudence has acknowledged limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children. In Ginsberg v. New York, this Court upheld a New York statute banning the sale of sexually oriented material to minors, even though the material in question was entitled to First Amendment protection with respect to adults. And in addressing the question whether the First Amendment places any limit on the authority of public schools to remove books from a public school library, all Members of the Court, otherwise sharply divided, acknowledged that the school board has the authority to remove books that are vulgar.

These cases recognize the obvious concern on the part of parents, and school authorities acting in loco parentis, to protect children—especially in a captive audience—from exposure to sexually explicit, indecent, or lewd speech.
We have also recognized an interest in protecting minors from exposure to vulgar and offensive spoken language. In FCC v. Pacifica Foundation, we dealt with the power of the Federal Communications Commission to regulate a radio broadcast described as "indecent but not obscene." There the Court reviewed an administrative condemnation of the radio broadcast of a self-styled "humorist" who described his own performance as being in "the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say ever." The Commission concluded that "certain words depicted sexual and excretory activitites in a patently offensive manner, [and] noted that they 'were broadcast at a time when children were undoubtedly in the audience.' " The Commission issued an order declaring that the radio station was guilty of broadcasting indecent language in violation of 18 U.S.C. § 1464. The Court of Appeals set aside the Commission's determination, and we reversed, reinstating the Commission's citation of the station. We concluded that the broadcast was properly considered "obscene, indecent, or profane" within the meaning of the statute. The plurality opinion went on to reject the radio station's assertion of a First Amendment right to broadcast vulgarity:

> "These words offend for the same reasons that obscenity offends. Their place in the hierarchy of First Amendment values was aptly sketched by Mr. Justice Murphy when he said: '[S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.'

We hold that petitioner School District acted entirely within its permissible authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech. Unlike the sanctions

imposed on the students wearing armbands in Tinker, the penalties imposed in this case were unrelated to any political viewpoint. The First Amendment does not prevent the 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 perfectly 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. Justice Black, dissenting in Tinker, made a point that is especially relevant in this case:

> "I wish therefore, ... to disclaim any purpose ... 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."

Respondent contends that the circumstances of his suspension violated due process because he had no way of knowing that the delivery of the speech in question would subject him to disciplinary sanctions. This argument is wholly without merit. We have recognized that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship." Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions. Two days' suspension from school does not rise to the level of a penal sanction calling for the full panoply of procedural due process protections applicable to a criminal prosecution. The school disciplinary rule proscribing "obscene" language and the prespeech admonitions of teachers gave adequate warning to Fraser that his lewd speech could subject him to sanctions.

The judgment of the Court of Appeals for the Ninth Circuit is Reversed.

Tinker v. Des Moines Independent Community School District

Mr. 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 in Des Moines 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 by 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, under section 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the respondent school officials and the respondent members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline. The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that the wearing of symbols like the armbands cannot be prohibited unless it 'materially and substantially interfere(s) with the requirements of appropriate discipline in the operation of the school.'

On appeal, the Court of Appeals for the Eighth Circuit considered the case en banc. The court was equally divided, and the District Court's decision was accordingly affirmed, without opinion. We granted certiorari.

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. It was closely akin to 'pure speech' which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment.

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 Meyer v. Nebraska, and Bartels v. Iowa, this Court, in opinions by Mr. Justice McReynolds, held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent.

In West Virginia State Board of Education v. Barnette, 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 the States and 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.

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,' 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 for prohibition. 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. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress 'expressions of feelings with which they do not wish to contend.'

In Meyer v. Nebraska, 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.' He said:

> 'In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any Legislature could impose such restrictions upon the people of a state without doing violence to both letter and spirit of the Constitution.'

This principle has been repeated by this Court of numerous occasions during the intervening years. In Keyishian v. Board of Regents, 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—whether it stems from time, place, or type of behavior—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.

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

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 officials of the State to deny their form of expression.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

Corales v. Bennett

HALL, Circuit Judge:

On March 28, 2006, Anthony Soltero, Annette Prieto, and two other students walked out of De Anza Middle School with the intent to participate in protests in their neighborhood against then-pending immigration reform measures. Two days later, they were disciplined for their one-day absence from school by Vice Principal Gene Bennett (Bennett), who took away one of their year-end activities and lectured them harshly regarding the possible legal consequences of truancy, including police involvement, a $250 fine, and a juvenile hall sentence.

I. Background

On Tuesday, March 28, 2006, Anthony Soltero, an eighth-grade, fourteen-year-old student at De Anza Middle School (De Anza), Annette Prieto, and "one or two" other middle school students walked out of school around 8:30 or 9:00 in the morning. They did not have prior permission from the school or their parents. They left school to participate in protests against the impending passage of federal immigration legislation that would have made it a crime to assist or help undocumented immigrants. In addition to Annette's deposition, Plaintiffs submitted Annette's handwritten account of the events of the week, which was written a few weeks after the incident at the direction of De Anza's principal. Annette testified in her deposition that the students' plan was to walk to nearby Ontario High School and to participate with other students in a protest. She testified that "mostly the whole schools, like, everybody in the schools were walking out and getting cited for it. Everybody was missing a lot of school because of that." When they got to Ontario High School however, no one was there. They noticed the school was on lockdown. Eventually a few students from Ontario High School arrived and they walked for 60 to 90 minutes to Ontario Middle School, but nobody was there. At that point, it was about 11:00 am and De Anza Middle School had been let out for the day because of scheduled teacher conferences. The students decided to go home. While only four students left De Anza to participate in walkouts, two other Ontario middle schools had walkouts involving 50 to 150 students, and Montclair police issued citations to 125 students who had walked out of one of the middle schools.

Bennett testified that on the morning of Tuesday, March 28, 2006, a teacher told him "a girl had come up and asked another girl to leave campus with her as they were entering the classroom...." Bennett was able to identify the girl and discover the identities of Anthony, Annette, and two other students. He required the four students to meet with him at his office Thursday morning when classes began.

Annette met with the other students before they entered Bennett's office. They discussed the consequences they were likely to face in the meeting, including that they "were going to have to pay a fine" and "lose one of [their] year-end activities." Annette testified that Anthony told her he was "scared

of what was going to happen and nervous about just the consequences." Annette, too, stated she was so sick with nervousness about the consequences of missing school that she had stayed home from school on Wednesday as well.

The De Anza Parent Handbook explains that the consequences for a first-occurrence unexcused absence can range from after-school intervention (presumably detention) to Saturday Academy. Students participating in any protest that involves nonattendance at school are specifically identified as truant in the Ontario–Montclair School District regulations. In early March, a supplemental policy letter was mailed to the homes of all eighth-grade students explaining that if any disciplinary issues arose, the student could lose one or more of their promotional activities, including a dance, a trip to Disneyland, or the promotion ceremony itself.

Though accounts of the meeting between Bennett and the students differ substantially, Annette testified in her deposition that:

Me, [two other students] and Anthony walked in, and he pointed at the three of us and said, "You guys are all dumb, dumb, and dumber." He said, "You guys are going to have to pay $250 fine;" that he is going to get the cops involved, and we're going to have to go to Juvenile Hall for, like, certain amount of years; and that we're stupid for doing it, and why did we think that we weren't going to get caught.

Bennett also told the students that they were going to lose a year-end activity, ultimately the Disneyland trip for each student. The reason for the students' absence was not discussed. After the meeting, the students returned to class for the day. None of the students were fined or sent to juvenile hall, and the police were never involved with the students' truancies.

On August 8, 2006, Louise Corales and Jaime Soltero (Anthony Soltero's parents) filed suit in the federal district court for the Central District of California against Bennett; the Ontario–Montclair School District; and Kinley, the principal of De Anza Middle School at the time of the protests.

II. Discussion

A. First Amendment Retaliation Claim

Although the students' walkout was ostensibly to protest immigration reform legislation, there is no evidence that the students gave speeches, that they discussed matters of immigration reform, or that they carried placards or signs that conveyed their messages during the walk-out. Rather, the evidence reveals that the students left their school to engage in a protest march, met up with like-minded individuals from a local high school, and walked together to a third school. In the absence of any

identifiable speech, these activities, if they are to be protected by the First Amendment, must fall within the definition of expressive conduct.

The First Amendment protects conduct that is not speech but is nevertheless expressive in nature. However, First Amendment protection does not apply to all cases in which someone intends to convey a message by his or her conduct; rather, First Amendment protection applies only when "it is intended to convey a 'particularized message' and the likelihood is great that the message would be so understood."

Here, the record is clear that the students intended to show their opposition to the proposed immigration reform by participating in a walkout. The record is less clear as to whether the walkout was likely to be perceived as such. Though Bennett admitted he knew of the walkouts taking place in the area, the reason for the students' absence was not discussed in the meeting. Likewise, while 100 to 150 students walked out of neighboring middle schools, only four students from De Anza appeared to have missed school that day. Still, because of warnings from school administrators about potential walkouts to protest the immigration reform, it is likely that an actual walkout of the four students would be perceived as a protest. Thus, we agree with the district court that a reasonable jury, when presented with this evidence, could conclude that the students were engaging in expressive conduct.

We next consider whether the conduct was protected, and if the school violated the students' First Amendment rights by disciplining them for their participation in the walkout. Plaintiffs concede that the school had a right to discipline the students for the actual act of leaving campus without permission. Plaintiffs argue that the students were not disciplined for violating that rule, but rather for their expressive choice to participate in the immigration protests. As such, Plaintiffs assert a First Amendment retaliation claim.

"To establish a First Amendment retaliation claim in the student speech context, a plaintiff must show that (1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant's conduct."

As a threshold matter, we must first determine the scope of the discipline the students received before we can consider whether that discipline constituted retaliation for their activity. Plaintiffs assert that the discipline imposed was comprised of both the loss of a year-end activity and Bennett's threats of police involvement, a $250 fine, and juvenile hall. Plaintiffs argue this total discipline imposed exceeded the Parent Handbook's stated maximum consequence of a Saturday Academy for a first-time truancy. Plaintiffs contest the district court's characterization of Bennett's words as merely a harsh lecture about the possible consequences of truancy, and assert that they instead constituted a "true

threat" of corporal punishment by Bennett, and were reasonably interpreted by the students as such. The assumption that Bennett's words constituted not only a true threat, but "punishment," is incorrect.

Plaintiffs' invocation of the "true threat" strand of First Amendment case law is misplaced. The true threat analysis is employed to determine when speech that is "an expression of an intention to inflict evil, injury, or damage on another" does not receive First Amendment protection. " 'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." Whether an objective or subjective standard is applied to determine "an intent to inflict bodily harm" exists, the speech is examined in the "light of its entire factual context, including the surrounding events and reaction of the listeners."

Because Bennett's statements cannot be interpreted as intended to cause any unlawful injury to the students, they do not constitute a true threat of corporal punishment. We thus agree with the district court's characterization of Bennett's statements as a stern lecture. Moreover, Plaintiffs cite no case law to support the proposition that threats of potential future consequences can alone constitute punishment. Even if Bennett had the authority to impose a juvenile hall sentence as a form of retaliatory discipline, threatening an action is not the same as imposing discipline.

Here, the only consequence actually suffered by the students was the loss of one year-end extracurricular activity. Plaintiffs contend that even the loss of a year-end activity was a form of retaliation because the discipline did not comport with the consequences outlined in the Parent Handbook. The eighth-grade students were adequately warned, however, that they would not earn the privilege of attending the year-end activities unless they met all academic and behavioral requirements. Annette testified that the students realized they would likely lose their year-end activities as a result of their truancy even before they met with Bennett.

Thus, any retaliation claim must be evaluated solely on Bennett's decision to discipline the students at all, when their act of leaving school was intended as expressive conduct. We now turn to the question of whether disciplining this act at all violated the students' First Amendment rights.

1. Constitutionally Protected Activity

The first prong of the retaliation claim is the determination of whether the students were disciplined for engaging in constitutionally protected activity. Because this case involves school discipline for arguably expressive conduct, both parties and the district court have analyzed the facts under Tinker. The Tinker framework, however, is intended to apply to decisions by a school to punish a student's speech or expressive conduct as such, because of its potentially disruptive impact on appropriate discipline in the operation of the school. Thus Tinker contemplates a case-by-case decision by a school

whether student speech either on campus or at an off-campus school-sponsored event is disruptive and punishable under the general authority of the school to minimize disruptions.

Here, the students' expressive conduct, in seeking to participate in immigration protests, occurred entirely off-campus and was not school-sponsored. The students were punished not for any disruptive aspect of their expressive conduct, as expressive conduct, but for the disruption caused by the act of leaving campus without permission. Unlike in Tinker cases, the school was not exercising discretion when determining whether to discipline the student for their infraction of the general rule forbidding truancy. The disciplinary rules clearly specified both minimum and maximum sanctions for leaving campus without permission and missing school. In fact, district regulations specifically designated students participating in protests that involved nonattendance at school as truant, regardless of any parental approval of their act. The case is, therefore, better understood as questioning whether Plaintiffs can be disciplined under the general content-neutral rule that students are not allowed to leave campus without permission, when their purpose for leaving is to engage in expressive conduct.

The test for whether an exemption should be granted from a content-neutral rule of conduct to engage in expressive conduct was presented in Clark v. Community for Creative Non–Violence (CCNV).

Symbolic expression of this kind may be forbidden or regulated if the conduct itself may constitutionally be regulated, if the regulation is narrowly drawn to further a substantial government interest, and if the interest is unrelated to the suppression of free speech.

In Clark v. CCNV, the Supreme Court held that protestors were not entitled to an exemption to the National Park's general regulation limiting camping to designated areas simply because they were engaging in expressive conduct to protest homelessness. After determining that the rule was content-neutral, the Court went on to find that the interest in limiting wear and tear on parks was substantial and unrelated to the suppression of expression. The Court further held that in determining whether the regulation was narrowly drawn, the regulation should not be judged merely by the plaintiffs at hand, but also by all those similarly situated who would also be entitled to an exemption under the rule.

Similarly, the school's anti-truancy policy is a content-neutral rule that furthers an important interest unrelated to the suppression of expression. Indeed, Plaintiffs have repeatedly conceded that the school has a valid interest in forbidding students from leaving school without permission. The rule furthers several substantial government interests, including enforcing compulsory education, keeping minors safe from the influences of the street, maximizing school funding based on attendance and limiting potential liability for negligent failure to supervise a truant student properly. None of these justifications is related to the suppression of speech. The Supreme Court specifically upheld the

compelling government interests in compulsory education and keeping minors safe from the dangers of the streets in Prince v. Massachusetts.

The rules which discipline truancies and leaving campus without permission support these goals and are narrowly tailored to the government's interests. The narrowly tailored test was expressed in Turner Broad. Sys. Inc. v. FCC: "the means chosen [must] not 'burden substantially more speech than is necessary to further the government's legitimate interests.' " (The means chosen, however, "need not be the least speech-restrictive means of advancing the Government's interests ... so long as [the interest] would be achieved less effectively absent the regulation."

In Jacobs, this court upheld a school uniform policy under the Clark/O'Brien analysis, finding that the policy left open ample alternative channels for student communication. The policy in Jacobs only restricted students' speech during school hours and left the students free to "continue to express themselves through other and traditional methods of communication throughout the school day." "For example, students are still permitted (if not encouraged) to have verbal conversations with other students, publish articles in school newspapers, and join student clubs." Here too, the anti-truancy policy only limits students' expressive conduct during school hours. The students are free to participate in weekend or after-school events. De Anza was on a shortened schedule the week of the walk-outs, leaving greater-than-normal after-school time available to participate in immigration reform efforts. The students are free to engage in speech relating to immigrant rights on-campus, as the record suggests they did here, both amongst each other and in the classroom.

In light of this analysis, the school's policy of disciplining truancies and leaving campus without permission easily satisfies the intermediate scrutiny applied to content-neutral rules of conduct. As such, the incidental effect the rule has on the students' expressive conduct is permissible, and the students' First Amendment rights have not been infringed by punishing the act of leaving campus. Indeed, granting Plaintiffs an exemption to the otherwise generally applicable rule would cast suspicion on the Constitutionality of the rule itself, because it would no longer be content-neutral in application. To hold otherwise would be to allow 12 to 14 year old students to leave school without the permission of their parents or school authorities to engage in any claimed First Amendment activity, no matter the danger.

Because the rule satisfies intermediate scrutiny under Clark v. CCNV, the school was entitled to enforce the rule against truancy even when the students sought to leave for expressive purposes. In this context, the Plaintiffs' act of leaving campus was not a constitutionally-protected activity, and therefore, Plaintiffs do not satisfy the first prong of a First Amendment retaliation claim.