

# First Amendment: Free Speech

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## First Amendment Attitudes Found Troubling

In a survey of 112,000 students at 544 public and private schools nationwide it was discovered:

- 75% erroneously think flag burning is illegal
- 50% believe the government can censor the Internet
- Over 30% think the First Amendment goes too far in the rights it guarantees
- Only 50% believe newspapers should be allowed to publish freely without government approval of stories

"Future of the First Amendment: What American High School Students Think About Their Freedoms," available at <http://firstamendment.jideas.org>

## Dress Code

### Blau v. Fort Thomas Public School District

**Dress Code:** Among other things the dress code restricted the following:

- Clothing that is too tight, revealing or baggy as well as tops and bottoms that do not “overlap”
- Hats, caps, scarves, or sweatbands except on “special event days” such as spirit or reward days
- Non-jewelry chains and chain wallets
- Clothing that is distressed or has holes in it
- Visible body piercing (other than ears)
- Pants, shorts or skirts that are not of a solid color of navy blue, black, and shade of khaki, or white

Blau v. Fort Thomas  
Public School District

**Student infraction:**

Student opposed the dress code because she wanted to be able to wear clothes that look nice on her, that she feels good in, and that express her individuality.

Blau v. Fort Thomas  
Public School District

**Court held:**

“Under these circumstances, the Blaus have not met their burden of showing that the First Amendment protects Amanda’s conduct—which in this instance amounts to nothing more than a generalized and vague desire to express her middle-school individuality.”

## Barber v. Dearborn Public Schools

### **Dress Code:**

Student was asked to remove his t-shirt after an assistant principal deemed it inappropriate because it had already created a disruption or had the possibility of being disruptive.

## Barber v. Dearborn Public Schools

### **Student Infraction:**

Student wore a t-shirt displaying a photograph of President George W. Bush with the caption "International Terrorist."

## Barber v. Dearborn Public Schools

### Court held:

“Defendants’ decision to ban Barber’s shirt only can withstand constitutional scrutiny if they show that the t-shirt caused a substantial disruption of or material interference with school activities or created more than an unsubstantiated fear or apprehension of such a disruption or interference. Based on the evidence presently before this Court, it does not appear that Defendants can meet their burden.”

## Griggs v. Fort Wayne School Board

### Dress Code:

*“Inappropriate clothing or other attire that may disrupt the classroom is not allowed. Examples include shirts...and/or apparel depicting derogatory or inflammatory racial, ethnic, religious slogans or symbols, or symbols of violence.”*

## Griggs v. Fort Wayne School Board

### **Student Infraction:**

Student wore a t-shirt that had “My Rifle: The Creed of a United States Marine” on it. In addition, there was a large picture of an M16 rifle between the two stanzas of the creed and the seal of the Marines beneath the last line of text.

## Griggs v. Fort Wayne School Board

### **Court held:**

“Although this Court trusts that the Board and its administrators generally interpret Rule 3 within the confines of the First Amendment, in the case of Grigg’s Marine Creed shirt, they have gone a bit too far.”

## Student Newspapers

### Draudt v. Wooster City School District Board of Education

**What school did:**

The school principal impounded the bi-weekly student newspaper prior to its distribution.

## Draudt v. Wooster City School District Board of Education

### **Why school did so:**

The principal and school officials believed an article on underage drinking contained potentially defamatory information.

## Draudt v. Wooster City School District Board of Education

### **Court held:**

“[T]he Students will succeed on their First Amendment claim only if the disputed speech does not substantially interfere with the school’s work or impinge upon the rights of other students.”

“Accordingly, the Blade article may infringe on this student’s rights because it is potentially defamatory.”

## Dean v. UTICA Community Schools

### **What school did:**

School officials removed a student's article from the school's newspaper. The article dealt with a suit currently pending against the school district.

## Dean v. UTICA Community Schools

### **Why school did so:**

The reason given for removal was that the district was involved in litigation and it "would be inappropriate for the school newspaper to comment on that."

## Dean v. UTICA Community Schools

### Court held:

“The freedoms of student journalists are by no means un-fettered by legitimate concerns for school administration and education. However, the First Amendment undoubtedly protects the freedom of student journalists, under circumstances such as those presented in this case, to maintain their school-sponsored publications as limited public forums for the expression of viewpoints that question, endorse, or deviate from the official viewpoints of state authorities.”

## Other Student Issues

## Holloman v. Harland

### **What happened:**

Student silently raised his fist in the air during the daily flag salute instead of reciting the Pledge of Allegiance.

## Holloman v. Harland

### **School's response:**

The student was paddled. In addition, he was required to apologize to his class.

## Holloman v. Harland

### **Court held:**

“Holloman had the constitutional right to raise his fist during the Pledge of Allegiance so long as he did not disrupt the educational process or the class in any real way.”

## Porter v. Ascension Parish School Board

### **What happened:**

A student, while at home, drew a picture depicting a violent siege on the school. Two years later his younger brother inadvertently brought it to school where it was seen by school officials.

## Porter v. Ascension Parish School Board

### **School's response:**

Student was called to the office and his bag and person were searched. The student was recommended for expulsion. A warrant for arrest was later brought against the student for "terrorizing" the school and he spent four nights in jail.

## Porter v. Ascension Parish School Board

### **Court held:**

"Private writings made and kept in one's home enjoy the protection of the First Amendment, as well as the Fourth. For such writings to lose their First Amendment protection, something more than their accidental and unintentional exposure to public scrutiny must take place."

## Bannon v. School District of Palm Beach County

### **What happened:**

Students painted murals as part of a school-wide construction beautification project. A student's murals contained various religious messages and symbols and attracted media attention.

## Bannon v. School District of Palm Beach County

### **School's response:**

The student was told that she would need to paint over the overt religious words and sectarian symbols. She was not the only student whose mural was edited.

## Bannon v. School District of Palm Beach County

### Court held:

“We hold [the school district’s] censorship of [the student’s] murals was a reasonable content-based restriction that was rationally related to the legitimate pedagogical concern of avoiding the religious controversy and debate generated by [the student’s] murals.”

## Caudillo v. Lubbock Independent School District

### What happened:

An unincorporated gay-straight student association asked to post and distribute fliers about the association at the high school, use the public address system for announcements, and be recognized as a student group with rights to meet on campus.

## Caudillo v. Lubbock Independent School District

### **School's response:**

The school denied these requests after reviewing the organization's website.

## Caudillo v. Lubbock Independent School District

### **Court held:**

"[T]he LISD campus is not the appropriate setting for such subject matter and LISD has a compelling interest in preventing such subject matter from its campuses. Listing as a goal the discussion of safe sex and advertising a website with links to obscene and explicit sexual conduct go beyond the bounds of First Amendment protection in the public school setting.

## Flaherty v. Keystone Oaks School District

### **What happened:**

Student posted 3 inappropriate messages on a website message board, 2 from home and 1 from school, regarding an upcoming school volleyball game.

## Flaherty v. Keystone Oaks School District

### **School's response:**

The school punished the student for these postings based on policies in the Student Handbook governing student expression.

## Flaherty v. Keystone Oaks School District

### Court held:

“Based on the evidence, the policies are overbroad because they are not limited to speech that causes, or is likely to cause a substantial disruption with school operations as set forth in *Tinker*. Moreover, the Student Handbook policies do not contain any geographical limitations. Thus, the policy could be read to cover speech that occurs off the school’s campus and not school related.”

## Chiras v. Miller

### What happened:

The State Board of Education rejected an environmental science textbook because they disagreed with one of the author’s conclusions and felt that the book did not accurately reflect the traditional, conservative values of most Texans.

## Chiras v. Miller

### Court held:

“The Court finds that, for the shaping of a high school curriculum, these alleged motives are legitimate pedagogical concerns.”

“[T]he Court holds that Defendants acted within their discretion under *Hazelwood* in rejecting Chiras’s textbook.”

## Parental Issues

## Chiu v. Plano Independent School District

### **What happened:**

Middle school students' parents attempted to distribute literature, display signs, and circulate a petition at public informational meetings concerning a new math curriculum.

## Chiu v. Plano Independent School District

### **School's response:**

School officials prohibited all of these actions based on district policies requiring advance notice and pre-clearance for distribution of non-school materials on school property.

## Chiu v. Plano Independent School District

### Court held:

“Here, a simple requirement that parents who distribute flyers at a meeting collect them at the end of the meeting, would be a sufficient and more narrowly-drawn way to meet the interests of maintaining discipline on school grounds and allowing parents their right to speak on a matter of public concern.”

## First Amendment Issues Are Not Easily Resolved

- The Most Important Skill for School Administrators is the Ability to Identify a Possible First Amendment Issue.
- The Second Most Important Skill is to Know How To Get Good Legal Advice
- The Most Important Challenge for Educators is To Find a Way to Continue to Teach Social Studies Effectively.

“The unintended consequence of NCLB has been to put history into an even more marginal position. It is clear that, with some notable exceptions nationwide, the amount of class time given to history, especially in the first eight grades, has been shrinking almost by the month.”

Theodore K. Rabb  
National Council for History Education

“The recent preoccupation of the nation with reshaping academics and raising academic performance has all but overpowered a task of equally vital importance – educating our young people to become engaged members of their communities as citizens.”

Restoring the Balance Between Academics and  
Civic Engagement in Public Schools  
<http://www.socialstudies.org/advocacy>