



LAW WISE

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Greetings from the Kansas Bar Association (KBA).

Welcome to this edition of *Law Wise* and the fourth edition of the 2013-2014 school year.

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WELCOME

What’s new in student First Amendment speech rights? This month, *Law Wise* looks at the familiar topic of students’ free speech rights, but in a new context that you’ve probably encountered recently at your school. Do students have a First Amendment free speech right to wear “I ♥ Boobies” bracelets to school? Some school districts have placed restrictions on students wearing tee-shirts or bracelets which bear this message.

Kansas has no reported case resolving this issue, and recent cases in other jurisdictions have reached opposite conclusions. Some schools, including the Junction City High School, have lifted their restrictions on these bracelets in response to ACLU’s or others’ complaints about students’ suspensions. See Associated Press, Kan. School Drops ‘Boobies’ Bracelet Ban, First Amendment Center (Dec. 10, 2010), <http://www.firstamendmentcenter.org> (noting the California-based nonprofit Keep-A-Breast Foundation believes a bracelet with a catchy, envelope-pushing slogan is a better way to teach children and teenagers about breast cancer than more traditional methods, such as pink ribbons, but schools across the country have responded with bans).

Read on to see why these recent cases reached opposite conclusions and to find out what the federal courts in Kansas would likely do if such a suit were brought here. ■

CALENDAR OF EVENTS

March 1, 2014	Regional Mock Trial Competition
March 28-29, 2014	State Mock Trial Competition



DO STUDENTS HAVE A FIRST AMENDMENT SPEECH RIGHT TO WEAR “I ♥ BOOBIES” BRACELETS?

By Kathryn Gardner, J.D.

To date, two reported cases have addressed this issue, reaching opposite conclusions. A Pennsylvania case created a new rule and found that the school district could not restrict students from wearing these bracelets because they contain speech that was not plainly lewd and that could plausibly be interpreted as commenting on a political or social issue. An Indiana case applied the traditional legal standard and found that the school district could restrict this speech because the district reasonably believed it was lewd, vulgar, obscene or plainly offensive, and the Court

(continued on next page)

deferred to the school district's judgment. Neither case found the phrase to be substantially disruptive. These cases are explained further, below.

I. BAN ON BRACELETS VIOLATES STUDENTS' FIRST AMENDMENT RIGHTS

In a Pennsylvania case, two female middle school students started wearing the "I ♥ Boobies" Bracelet? bracelets to school in 2010. Administrators allowed students to wear the bracelets for several months before banning them because they were concerned that students would use the bracelets as an excuse to make inappropriate sexual comments. The students sued in federal court seeking an injunction, claiming the ban on the bracelets violated their First Amendment free speech rights. The district court granted the injunction after finding the phrase "I ♥ boobies" could not "reasonably be deemed to be vulgar" because it was used in the "context of a national breast cancer awareness campaign." *B. H. et al. v. Easton Area Sch. Dist.*, 827 F.Supp.2d 392, 406 (E.D.Pa. 2011).

The Court of Appeals affirmed, 725 F.3d 293 (3d Cir. 2013) holding:

- (1) the district could not restrict speech that could plausibly be interpreted as commenting on any political or social issue;
- (2) the district's fear of a slippery slope in fact cut against the district;
- (3) the bracelets were not plainly lewd;
- (4) the bracelets were not substantially disruptive;
- (5) the district failed to establish a Title IX-based defense of the ban; and
- (6) the factors weighed in favor of granting preliminary injunction.

The Third Circuit held that the bracelet's commentary on social or political issues provided it additional protection under the First Amendment.

That approach essentially created a new rule modifying the traditional *Fraser* standard (see below for more on *Fraser*). The court held that a school can only limit student speech under *Fraser* if the speech can reasonably be interpreted as either: (1) plainly lewd, or (2) ambiguously lewd and cannot "plausibly be interpreted as commenting on political or social issues." *B.H.*, 2013 WL 3970093. In crafting this rule, the Third Circuit relied on Justice Alito's concurring opinion from *Morse v. Frederick*, 551 U.S. 393, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007) (discussed below), instead of on the majority opinion from that case. The Third Circuit thus upheld the district court's decision because it found that the bracelet's language was not plainly lewd and could be interpreted as commenting on a social issue. The Court did not decide whether a reasonable observer could interpret the bracelets' slogan as lewd.

In December of 2013, the Easton, PA school board challenged the Third Circuit's decision by filing a petition for review with the U.S. Supreme Court. The U.S. Supreme Court has not yet decided whether to review this case.

II. BAN ON BRACELETS DOES NOT VIOLATE STUDENTS' CONSTITUTIONAL RIGHTS

An Indiana federal court reached the opposite conclusion in a case involving the same bracelets, finding that the school can ban it as arguably lewd, even if it could be interpreted as commenting on political or social issues. In reaching its decision, this Court asked solely whether the school made an objectively reasonable decision in determining that the bracelet was lewd, vulgar, obscene or plainly offensive. Under that test, the school district won. No appeal was filed. *J.A. v. Fort Wayne Community Schools*, 2013 WL 4479229 (N.D.Ind. 2013).

After consulting the dictionary definition for "booby," the Court found evidence that a reasonable observer could interpret the bracelet's speech as being vulgar, and not just an innocuous informal synonym used by young people to refer to breasts. However, its appropriateness is highly contextual, so it examined the school's environment to evaluate the age and maturity of the students. The Court recited several incidents relating to the bracelets which supported its conclusion that there was a "low maturity level at the school." Considering all these factors, the Court found that the bracelet "falls into a gray area" between being "plainly lewd and merely indecorous." Accordingly, the Court concluded: "School officials, who know the age, maturity, and other characteristics of their students better than federal judges, are in a better position to decide whether to allow these products into their schools. Issuing an injunction would take away the deference courts owe to schools and make their job that much harder." 2013 WL 4479229, *7.

The court rejected the new test used by the Pennsylvania court in the *Easton* case, finding that Justice Alito's concurrence was merely his own "view of the permissible scope of [school] regulation [of student speech]." *Id.* It relied on the majority's opinion in *Morse*, which did not establish new limits on a school's ability to regulate student speech commenting on political or social issues. The only possible limit the opinion placed on *Fraser* was an instruction to schools to avoid banning "any speech that could fit under some definition of 'offensive.'" *Morse*, 551 U.S. at 409. Therefore, the bracelet's commentary on social or political issues does not provide additional protection under the First Amendment.

III. WHAT WOULD A KANSAS FEDERAL COURT DO?

The First Amendment speech rights of students in Kansas are primarily determined by two courts: the United States Supreme Court, and the Tenth Circuit, which is the court of appeals for the federal courts in Kansas. Because this issue presents a question of interpretation of federal law, decisions from these two courts are binding.

This particular issue has not been specifically addressed by a Kansas federal court. Supreme Court cases make clear that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969). But the Court has held that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986). Instead, the rights of students "must be 'applied in light of the special characteristics of the school environment.'" *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (quoting *Tinker*, 393 U.S. at 506).

The Kansas federal appeals court (the Tenth Circuit) has already interpreted the *Morse* in the same manner as did the *Fort Wayne* case (above), although in a different factual setting. See *Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1228 (10th Cir. 2009) (treating Justice Alito's concurrence as the basis for *Morse*'s "narrow holding"). So Kansas federal courts would likely follow the same approach as in the *Fort*

Wayne case and uphold such a ban, particularly if the school district showed it restricted the message because it considered the message to be lewd, and that the bracelets had already caused some incidents at the school.

The most relevant cases, *Tinker*, *Fraser* and *Morse* are further addressed in our Lesson Plan this month, which follows. ■

LESSON PLAN: STUDENT'S FIRST AMENDMENT RIGHT TO FREE SPEECH IN PUBLIC SCHOOLS

Lesson plan by Farid Zakaria

<http://www.bordc.org/resources/k12workshop-first.pdf>

Who

High school students

Suggested time

Three hours

Objective

Introduce high school students to the First Amendment generally and its protection of free speech in particular. Illustrate the operation of that protection by examining three US Supreme Court cases involving speech in the public school setting. Explain the legal process by conducting an in-class exercise where students are asked to argue and decide a case involving speech in the public school setting.

Introduction

Ask for a volunteer to read the text of the First Amendment to the class.

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

Ask the class how many parts they see in the First Amendment.

Identify the rights protected under the First Amendment: religion, speech, press, association, petition.

Vocabulary of the First Amendment

- Abridge: to reduce in scope, to diminish
- Redress: to set right, to remedy
- Grievances: a cause for distress (as an unsatisfactory working condition) felt to afford reason for complaint or resistance

Historical Background of the Bill of Rights

Adapted from A History of the Bill of Rights (American Civil Liberties Union-FL) and The Constitution in the Classroom 2010, the Fourth Amendment Search and Seizure (American Constitution Society)

In the summer of 1787, delegates from the thirteen newly-independent states assembled in Philadelphia to discuss the government of the United States. They drafted a Constitution

which created a system of checks and balances between the executive, the legislative, and judiciary branches of government. By 1790, all states had ratified the new Constitution.

This Constitution, however, did not include a declaration of rights; it did not specify what the government could not do. The American people who had fought a war against the despotic English monarchy insisted that the new Constitution must include principles limiting the power of the federal government. As a result, Congress added provisions to the Constitution, known as "amendments," that guaranteed certain rights to the people including free speech, freedom of religion, due process of law, and freedom from governmental search and seizure. These rights were listed in ten amendments which were ratified in 1791 and became known as the Bill of Rights.

The Bill of Rights assumes that we have certain basic and inalienable rights. In other words, the Bill of Rights does not create these rights. Rather, its purpose is to protect them from the power of the government. Thus, when the First Amendment says that Congress shall make no law interfering with freedom of speech, it assumes that we have the freedom to speak and think as we wish, and ensures that the government does not interfere with it.

When it was created, the Bill of Rights restricted only the power of Congress. Today, most of the rights guaranteed in the Bill of Rights are also applicable to the States. For example, the Supreme Court decided in 1925 that First Amendment is also applicable to laws passed by the states, including local governments. So, the First Amendment applies to governmental action, be it state, federal, or local.

Discussion: Ask the students if they can come up with examples of governmental action that restricts freedom of speech (e.g. Congress passes a law, the school principal enacts a rule that applies to the school, the county board of education enacts a policy, etc).

The United States Supreme Court

Questions for the class:

- Where is the Supreme Court building?
- Can you name a current Supreme Court Justice?
- How many Justices serve on the Court? How many must agree for the decision to be binding?

The Supreme Court of the United States is the highest court in our country, meaning that no further appeals may be made

from its decisions. As an institution, it is required by the United States Constitution which provides in Article III, section 1, that “the judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress from time to time ordain and establish.” In this section, “inferior Courts” refers to the other federal courts that are part of the federal judicial system.

Discussion: Ask the class if they know where the closest federal courthouse is.

The Constitution does not mandate the number of judges who must serve on the Supreme Court. It is up to Congress to decide that number. Under current law, the Court consists of nine judges (called Supreme Court Justices). The Constitution, however, provides the President with the power to nominate the Supreme Court justices in Article II, section 2. Before serving on the Court, the nominees must be approved by the Senate.

Article III, section 1 of the Constitution provides that “the Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour.” This means that Supreme Court Justices and all federal judges may serve for the remainder of their lives.

Discussion: What are benefits for judicial independence when judges are appointed for life?

The power of the Supreme Court to hear cases is largely discretionary. This means that the Court can decide which cases it will review. Most of the cases that arrive at the Supreme Court are appealed either from the lower federal courts or from the State supreme courts.

The American legal system follows the doctrine of *stare decisis*. According to this principle, a prior Supreme Court decision will be taken into consideration when the Court is confronted with a case that deals with similar legal issues. A decision is binding on subsequent cases when at least five justices agree on the outcome. The Court can overrule its own decisions only if there is a strong reason to do so but this happens rarely.

The principle of *stare decisis* also requires courts to abide by the rulings of superior courts. Thus, lower courts are obligated to follow the decisions of the Supreme Court when they rule in their own cases.

Supreme Court case law dealing with speech in the public school setting

Case #1: *Tinker v. Des Moines Independent Community School District* (1969)

Facts of the case

The petitioners were two high school students, ages 15 and 16, and one junior high school student, age 13, in Des Moines, Iowa. In December 1965, a group of adults and students met at the home of one of the petitioners and decided to show their opposition to the Vietnam War by wearing black armbands during the holiday season.

The principals of the schools that petitioners attended became aware of the group’s plan to wear armbands. They adopted a policy that any student wearing an armband to school would be asked to remove it. Under the new policy, if the student refused, he or she would be suspended until he or she returned without the armband.

When the petitioners came to school with black armbands and refused to remove them, they were suspended. They did

not return to school until the end of the holiday season in keeping with their group’s plan.

The petitioners sued in federal court and argued that the policy implemented by the school principals violated their First Amendment right to free speech. They asked the court to prevent the principals from continuing that policy.

Group activity

Divide class into groups of 5 students. Each group makes arguments in support of either Tinker or the school. Allow 15 minutes for group discussion.

Reconvene class. Each group presents its arguments.

Court’s opinion – Summary

The Court pointed out that both teachers and students continue to enjoy their constitutional rights to free speech and expression in school. As a result, a school policy that limited a teacher or a student’s free speech is illegal unless it is justified by the need to maintain order or conduct normal school work. Wearing the armbands, however, constituted “silent, passive expression of opinion” and did not create disorder or disturbance. It did not interfere with school work or the other students’ right to be secure and let alone. In fact, the Court stated that wearing the armbands was entitled to very strong protection under the First Amendment because it “was entirely divorced from actually or potentially disruptive conduct by those participating in it.”

The lower court had decided that the policy was reasonable based on a fear of disturbance. This was unconvincing, the Supreme Court explained, because “apprehension of disturbance is not enough to overcome the right to freedom of expression.”

Thus, when it cannot be proven that engaging in the forbidden conduct would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,” the school policy is illegal under the First Amendment.

The Court also indicated that school officials cannot be given absolute power over what sentiments students are allowed to express. It was important that students be exposed to different points of views, a principle that is fundamental to democracy. The classroom operates as the “marketplace of ideas” and students should be encouraged to express their opinions even on controversial subjects so long as they do not interfere with discipline or the rights of other students.

Dissents

In his dissent, Justice Black argued that sufficient evidence was presented in the case showing that the armbands distracted other students from school work. They were distracting, he stated, because they called attention to the soldiers who died or were wounded in the Vietnam War. This as a result caused students to think about the War rather than their school work.

He also argued that both teachers and students do not enjoy the same First Amendment rights in the school setting. Teachers are hired to teach subjects that are part of a curriculum. Similarly, students attend school to obtain an education, not to publicize their political views.

Optional: Discuss Justice Black’s dissent with the class. Shouldn’t students think about wars that our country is engaged in?

Justice Harlan also dissented. He argued that schools officials should be given great authority in maintaining discipline and order. He would not hold a school policy illegal unless

the petitioners could show that it was motivated by a purpose other than legitimate school concerns such as a desire to prohibit the expression of an unpopular view point.

Case #2: *Bethel School District v. Fraser* (1986)

Facts of the case

In 1983, Matthew Fraser, a high school student gave a speech before an assembly of 600 students in which he nominated a fellow student in a student election. The assembly was part of an educational program in self-government. The students participating in the assembly were as young as 14 years old.

Two of Fraser's teachers had seen the speech he prior to the assembly and had counseled Fraser against giving it because it was inappropriate. They also informed him that he might face severe consequences if he gave the speech.

A rule at the high school specifically prohibited the use of obscene, profane language or gestures.

During the speech, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor. His speech contained the following:

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 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.

When he was called to the principal's office, Fraser admitted that he deliberately used sexual innuendo in his speech. He was suspended for three days and his name was removed from the list of candidates for graduation speaker at the school's commencement ceremony. He served two days of his suspension and was allowed to return on the third day.

Fraser then sued in federal court and argued that the school had violated his First Amendment to free speech.

Optional: conduct same group activity as in case #1.

Court's opinion – Summary

The type of speech that Fraser used must be distinguished from the black armbands that were at issue in *Tinker*. While the armbands in *Tinker* represented the passive and nondisruptive expression of a political message, Fraser's speech, by contrast, was lewd and offensive.

In a democratic society, divergent political and religious views must be tolerated. In keeping with this principle, students are free to advocate unpopular and controversial views in schools. However, that freedom needs to be balanced against society's interest in promoting respect for the personal sensibilities of others. Even in the most heated political discussions, the participants must take into consideration the sensibilities of the audiences.

Moreover, even though the First Amendment protects the right of adults to use offensive speech, it does not necessarily mean that students enjoy the same right in school. One of the school's functions is to educate students on the appropri-

ate form of civil discourse and political expression. The pervasive sexual innuendo in Fraser's speech was plainly offensive to both teachers and students and undermined that function. The speech in fact could be seriously damaging to the young students (especially the girls) present in the assembly who were not yet aware of human sexuality.

In brief, the school administration could determine that the type of speech that Fraser used undermined the school's educational mission. Here, the school determined that the essential of civil, mature conduct cannot be conveyed in an environment that tolerates lewd, indecent, or offensive speech. In so doing, the school did not violate the First Amendment.

Dissents

Justice Marshall dissented because in his opinion the school failed to demonstrate that Fraser's speech was indeed disruptive of the educational process.

Justice Stevens also dissented. He argued that even though the school was entitled to regulate speech that interfered with its educational mission, a student who is to be punished for using offensive speech should be given a fair warning of the scope of the prohibition and the consequences of its violation. He should not be disciplined for speaking frankly in a school assembly if he had no reason to anticipate that he would be punished. The school rules were not sufficiently clear as to whether his speech was prohibited. In addition, the teachers' response also was not sufficiently clear that he would be punished if he did decide to give the speech at the assembly.

Case#3: *Morse v. Frederick* (2007)

Facts of the case

In early 2002, the Olympic Torch Relay passed in front of high school in Juneau, Alaska, on its way to the winter games in Salt Lake City, Utah. Deborah Morse, the school principal decided to permit students and staff to attend the event as an approved social event or class trip. Students left class to watch the relay from either side of the street.

Joseph Frederick was a senior at the high school. He and his friends attended the event while standing across the street from the school. When the torchbearers and camera crews passed by, they unfurled a 14-foot banner that contained the phrase: "Bong Hits 4 Jesus." The words were large enough to be seen from the other side of the street.

Upon seeing the banner, the principal immediately asked that Frederick and his friends take it down. Everyone complied except for Frederick. As a result, she confiscated the banner and asked Frederick to report to her office. She suspended Frederick for ten days. Principal Morse believed that the banner encouraged illegal drug use and that it violated a school policy that prohibited such messages.

Frederick appealed his suspension but the school district superintendent upheld it. The superintendent also believed that the banner advocated the use of illegal drugs. Frederick's speech, he explained, was not political; it did not advocate the legalization of marijuana or certain religious views.

Optional: conduct same group activity as in case #1.

Court's opinion – Summary

First, Frederick's speech must be considered school speech because it occurred during normal school hours and at a school-approved social event. Therefore, the school speech case precedents apply.

The message on the banner is ambiguous; it could be offensive to some, amusing to others, or may mean nothing at all. Even though Frederick claims that he intended it to be just nonsense so as to attract the attention of the cameras, the message on the banner could be interpreted as “take bong hits,” or “bong hits are a good thing,” or “we take bong hits.” Therefore, the principal’s belief that the students and parents viewing the banner would interpret it as promoting illegal drug use was reasonable.

Tinker and *Fraser* reached their conclusions through different modes of analysis. *Tinker* emphasized on the question of whether the speech caused “substantial disruption” to school activities. The Court’s analysis in *Fraser* is not clear but it did not use *Tinker*’s “substantial disruption” standard. Rather, *Fraser* noted that the First Amendment rights of students were limited in school because of the special circumstances in the school environment. *Fraser* also established that the *Tinker* “substantial disruption” standard is not absolute, meaning that courts were not always obligated to apply it.

The concern in this case is not that Frederick’s speech was offensive but that it was reasonably viewed as promoting drug use. Deterring drug use among students is an important interest. In fact, drug abuse can cause severe and permanent damage to the health of young people. The dangers associated with drug abuse are more severe for students because school years are the time when the physical, psychological, and addictive effects of drugs are more severe. Children can become chemically dependent more quickly than adults and children’s nervous systems are more severely damaged than adults.

Moreover, peer pressure is probably the most important factor leading students to take drugs. Students are more likely to use drugs if it is portrayed as an accepted activity in the school environment.

Dissent

Three justices dissented. Frederick and his friends did not address the banner to their fellow students. Rather, they wanted to get the camera crews’ attention. They argued that the school was not justified in disciplining Frederick because he made an ambiguous statement that contained an oblique reference to drugs. The Court is correct in noting that the school has an important interest in deterring student drug abuse. The school was entitled to prohibit messages that encouraged students to use drugs. However, Frederick’s speech was not intended to persuade anyone to do anything. Frederick should not have been disciplined because his message did not violate an appropriate rule and because he did not advocate conduct that is illegal or harmful to students.

150+ NOTABLE KANSANS

Judge G. Joseph Pierron, Jr., and his list of 150+ Notable Kansans were featured on Timeline KLWN AM 1320 radio on Monday, January 27. The KBA assisted Judge Pierron in this project by providing Kansas students and teachers an opportunity to vote for Kansans to include in the collection. Judge Pierron talked about these Kansans with humor and affection as a celebration of the 153rd birthday of Kansas. All Timeline shows are archived and can be accessed anytime at <http://www.klwn.com/Timeline-Radio/15326698>.

Class Exercise

Students are presented with the following fact pattern that they must analyze in light of the Supreme Court precedents presented above.

George Washington High School (GWH) sponsored a race to promote breast cancer awareness and research. The race took place during the winter break when no classes were in session. Blake Anderson, a senior at GWH, decided to participate in the race to support his mother and other breast-cancer survivors. Blake’s mother was diagnosed with breast cancer a few years ago. She has undergone surgery and chemotherapy.

Blake is an outstanding student and athlete. He has received a full scholarship to attend a prestigious university. He learned about the race in June and obtained permission from his mother to participate. He trained daily for six months until he was confident that he could win the race.

The race was held at a park across the street from GWH. At the race, Blake wore a pink T-shirt designed specifically to express support for the legalization of marijuana. The T-shirt stated, “George Washington Athletes for Medical Marijuana,” on the front and, “Don’t just survive, take bong hits and thrive” on the back with a pink ribbon that is symbolic for breast-cancer awareness. Blake knew that the race had news media coverage. He wanted to support California’s Compassionate Use Act and to protest the federal government’s criminalization of the use of medical marijuana. Many GWH students and their families attended the race.

Before the race started, principal David Richards approached Blake. Although Blake was not on school grounds, Mr. Richards ordered him to remove the T-shirt. Blake responded that he was wearing the shirt to honor his mother’s battle with cancer, and that medical marijuana is legal in California. When Mr. Richards insisted that he remove the T-shirt, Blake stated that he had a First Amendment right to wear the T-shirt. Then, Mr. Richards called the race officials over, and asked them to remove Blake from the race. Blake tried to explain that he had a First Amendment right to wear the T-shirt, but Mr. Richards angrily stated that Blake was suspended for the first two weeks of the January semester. Mr. Richards claimed that he ordered Blake to remove his T-Shirt because it encouraged illegal drug use. However, principal Richards did not think that wearing the T-shirt disrupted classroom instruction or that it was obscene or offensive. He also didn’t believe Blake used illegal drugs or alcohol.

Blake contested his suspension. The school board held a hearing but ultimately upheld Blake’s suspension. Mary Anderson, Blake’s mother, is suing the school board and Mr. Richards on behalf of her son for the violation of his First Amendment rights. How should the court rule based on the cases described above?

Divide class in three teams: lawyers for student suspended for speech, lawyers for the school and the principal, and judges. Lawyers present arguments based on the cases covered in this module. Judges must decide who wins. All teams must explain their reasoning and how *Tinker*, *Fraser*, and *Frederick* apply to this case. ■

TERRIFIC TECHNOLOGY FOR TEACHERS

A Bonner Springs, Kansas school counselor allegedly violated a student's rights to free speech and equal protection by refusing to allow the student to post fliers promoting the Sept. "See You at the Pole" event, a national event in which teens pray around their school flagpoles. Read more about this federal lawsuit, *Henderson v. Unified School District No. 204*, filed in Kansas City in November 26, 2013, here:

<http://www.kansascity.com/2013/12/02/4665119/group-accuses-bonner-springs-school.html#storylink=cpy>

Review the Kansas Student Publications Act, K.S.A. 72-1504 – 1506, which protects student journalists in Kansas public high schools, as well as the school districts.

http://www.splc.org/knowyourrights/law_library.asp?id=

A review of student free speech cases and pertinent questions (great for student discussion):

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/studentspeech.htm>

Check out the following free curriculum which addresses the many privacy issues teens face as their use of technology skyrockets.

Volunteer Privacy Educators Program

In 2012, CLIP (Fordham Law School's Center for Law and Information Policy) launched a first-of-its-kind privacy education program aimed at engaging middle school students in discussions about privacy and its relevance in their lives. Based on research conducted by CLIP Privacy Fellow Jordan Kovnot, CLIP created a series of lesson plans and visual aids to be used by instructors in middle school classrooms. These lessons center on discussions of what privacy is, how it may be relevant to young people's lives, and how the technologies they regularly use impact their privacy. Specific topics include managing an online reputation, understanding how tech-

nologies like cell phones and facial recognition work, dealing with social media "drama," and maintaining secure passwords.

For the pilot run in spring 2013, CLIP recruited and trained a team of Fordham Law students to teach these lessons to 7th grade students at PS 191, a local public middle school in Manhattan. Fordham students served in the program on a volunteer basis and earned credit toward the New York Bar's pro bono admission requirement. Fordham CLIP has now made the curriculum available as a set of free open source documents to any educators who want to use the instructional materials to address the many privacy issues teens face as their use of technology skyrockets. The curriculum is downloadable below. CLIP officially launched the program on October 16, 2013.

Privacy Education Materials

Complete Curriculum (pdf)

http://law.fordham.edu/assets/CLIP/2013_CLIP_VPE_Complete.pdf

Lesson Plan Powerpoint Slides

Passwords & Behavioral Ads

[http://law.fordham.edu/assets/CLIP/2013_CLIP_VPE_Passwords_BehavioralAds\(1\).pptx](http://law.fordham.edu/assets/CLIP/2013_CLIP_VPE_Passwords_BehavioralAds(1).pptx)

Dealing with Social Media

http://law.fordham.edu/assets/CLIP/2013_CLIP_VPE_SocialNetworking.pptx

Technology: Mobile, WiFi, Facial Recognition

http://law.fordham.edu/assets/CLIP/2013_CLIP_VPE_CellPhones_WiFi_FacialRecog.pptx

Reputation

http://law.fordham.edu/assets/CLIP/2013_CLIP_VPE_Reputation.pptx

<http://law.fordham.edu/center-on-law-and-information-policy/30317.htm>

iCIVICS AND BROWN V. BOARD OF EDUCATION

iCivics has a *Brown v. Board of Education* lesson plan that covers the basics of the Supreme Court's decision that overturned "separate but equal" in public schools. Students learn about segregation and "equality under the law," and they use what they learned to craft compound sentences following a structured format. Check out all of the lesson plans available at <https://www.icivics.org/search-results?keywords=brown&type=All>.

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