

STUDENTS' CONSTITUTIONAL RIGHTS

Students' free speech rights must be "scrupulously" protected if we are to have any hope of "educating the young for citizenship" and teaching students not to "discount important principles of our government as mere platitudes."

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943)

To the extent that students are contemplating walking out during class to protest, both educators and students should keep in mind the following **THREE Constitutional principles**.

1. PUBLIC SCHOOL STUDENTS HAVE RIGHTS to FREEDOM of SPEECH and EXPRESSION.

Both students and teachers have First Amendment rights, applied in light of the special characteristics of the school environment. The United States Supreme Court has long held that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 506 (1969)

2. The U.S. CONSTITUTION PROHIBITS VIEWPOINT DISCRIMINATION.

The First Amendment to the U.S. Constitution prohibits school officials from engaging in viewpoint discrimination or punishing students because of their expression. That means that to the extent that being absent from school to join a nationwide protest is considered an unexcused absence, such unexcused absences must be treated just like other unexcused absences. The consequences for a student who engages in civil disobedience by missing class to attend a protest must be the same as a student who misses class to go to the mall.

3. "MATERIAL" or "SUBSTANTIAL" DISRUPTION MAY BE PUNISHED.

Schools may only punish speech or expression at school if it has a "material" and "substantial" disruption on school activities or interferes with other students' rights. Decades ago, courts held that it was wrong for a school to categorically punish any student who wore "Freedom Buttons" to school during the civil rights movement without evidence that it would actually materially or substantially disrupt school activities.

See *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966); *Tinker*, 393 U.S. at 505 n.1 (citing *Burnside* with approval)

Similarly, it is not clear that any and all classroom walkouts will have a “material” or “substantial” disruption on school activities, and we in fact encourage teachers to plan for any silent classroom walkout so that it does not materially and substantially disrupt their classes. Thus, while a school may punish students for missing class on equal terms as it might punish students for any other unexcused absence, it would be constitutionally questionable to preemptively and categorically punish impost additional punishments for the mere act of walking out of class without evidence of material and substantial disruption.

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