*Talking Points When Students are Jurors* ***and*** *When Students are Judges*

*Tinker v. Des Moines* **Applied to a School Dress Code and Student Walkout**

**Presiding Judge: We have two issues before us today.**

1.Are students’ First Amendment rights violated when school officials establish a dress code prohibiting students from wearing clothing with messages or slogans at school?

2. Are students’ First Amendment rights violated when school officials punish students who walk out of school to protest the policy?

|  |  |
| --- | --- |
| **Presiding Judge: We will start with Issue #1.**  Were students’ free speech rights violated by the school when it prohibited certain clothing from being worn at school because messages on the clothes may be disruptive or offensive to other students?  **Because the students brought this action, their attorney will go first.** | **Presiding Judge: Now we will hear from counsel for the school officials – on Issue #1.**  Did school officials violate students’ free speech rights when they prohibited certain clothing from being worn at school because messages on the clothes may be disruptive or offensive to other students? |
| **Students’ Attorney #1** | **School Officials’ Attorney #1** |
| **YES**   * Students don’t lose their constitutional rights to free expression at the schoolhouse gate. * Schools are the ultimate “marketplace of ideas.” The best antidote to offensive speech is more speech – not less. * Civil discourse is vital to a well-rounded education. Some speech is disturbing and thought-provoking in a way that furthers critical thinking skills that schools promote. * Free speech on campus is not confined to teacher-supervised discussions in classrooms. * At minimum, the dress code policy is overbroad because it prohibits apparel with messages or slogans **of any kind.**   **When Students are Jurors**  **The Presiding Judge asks questions.**  **When Students are Judges**   1. **The Presiding Judge asks the first question.** 2. **He/she allows students on the bench to ask questions.** 3. **The Presiding Judge has the option of asking the last question before moving on.** | **NO**   * Schools officials are obligated to maintain an orderly learning environment. * Certain messages, regardless of how they are conveyed, can be disruptive and can deprive students of the right to learn in a safe and positive environment. * The dress code was not based on a **prediction** of harm, but rather was in response to **actual disruptions** of the learning environment. The open letter to students and the community referred to specific examples of clothing that had been worn at school and sparked heated discussions that took up class time. * In light of the Supreme Court’s recent decision that federal law cannot prohibit registering “immoral or scandalous” trademarks, the school must enforce a strict dress code to prohibit clothing with such disruptive slogans or logos from being worn by students.   **When Students are Jurors**  **The Presiding Judge asks questions.**  **When Students are Judges**   1. **The Presiding Judge asks the first question.** 2. **He/she allows students on the bench to ask questions.** 3. **The Presiding Judge has the option of asking the last question before moving on.** |
| **Presiding Judge: We turn our attention now to**  **Issue #2, starting with the Students.**  Were students’ free speech rights violated when they were punished for engaging in a walkout to protest the dress code during the school day? | **Presiding Judge: Issue #2 for the School is the same:**  Did school officials violate students’ free speech rights when they punished students who protested the dress code by engaging in a walk out during the school day? |
| **Students’ Attorney #2** | **School Officials’ Attorney #2** |
| **YES**   * The fear -- or anticipation -- of disruption is not a valid reason to restrict speech on campus. There was no evidence that the silent walkout disrupted the learning environment at the time the administration made the decision to punish the participants. * Speech cannot be prohibited unless it materially and substantially interferes with appropriate discipline and the operation of the school. The silent walkout did neither. * The walkout was scheduled during a lunch hour so that students had the option to participate when they were not in class. Students who were scheduled to be in class could choose to remain in class. * Students were passive. They wore their protest shirts only during the walkout and did not infringe on the rights of others.   **When Students are Jurors**  The Presiding Judge asks questions.  **When Students are Judges**   1. **The Presiding Judge asks the first question.** 2. **He/she allows students on the bench to ask questions.** 3. **The Presiding Judge has the option of asking the last question before moving on.** | **NO**   * Schools officials are obligated to maintain an orderly learning environment. * Walkouts, although silent, cause major distractions. They disrupt the structure and routine of the school day that are fundamental to creating a productive learning environment. * Walkouts divert students from their studies and pull them into class discussions about the protest and the school administration’s reaction to it. * Walkouts can become a slippery slope. They can set an expectation that students can walk out of class anytime. * In troubled times like these, walkouts are a security risk when students leave the school grounds to participate.  The school cannot keep students safe if they are off campus.  Also, the disruption caused by a walkout may be taken advantage of by an active shooter or someone else seeking to harm members of the school community.   **When Students are Jurors**  The Presiding Judge asks questions.  **When Students are Judges**   1. **The Presiding Judge asks the first question.** 2. **He/she allows students on the bench to ask questions.** 3. **The Presiding Judge has the option of asking the last question before turning the program over to the facilitator for jury deliberations.** |