



Mahanoy Area School District v. B.L.

This moot court is based on the Supreme Court case of *Mahanoy Area School District v. B.L.* The issue is whether *Tinker v. Des Moines Independent Community School District*, 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. The lesson should begin with an overview of the federal and state court system and a brief explanation of appellate advocacy and the difference between a trial and an appellate argument. In order to make the event as interactive as possible in the large group, give the students the summary of the facts followed by a brief discussion of the Supreme Court decision. Students should then be asked to take a stand “for or against” the majority decision. If one side lacks enough support, students should be encouraged to challenge themselves to defend the position they disagree with. Being able to understand and represent the other side’s arguments is the sign of a sharp legal mind.

Once students have taken sides, divide them into three groups, Petitioner (Mahanoy Area School District), Respondent (B.L.) or Supreme Court Justices. The groups can then, on their own, prepare their arguments to the Supreme Court during the mini moot court. A group of 9 students should be selected to serve as the Justices of the Supreme Court.

In the small groups, have the students discuss the fact pattern and the applicable law as outlined in the FACT PATTERN.

Instructions for the students

Start with the FACT PATTERN, BRAINSTORMING SHEET & ARGUMENT SHEET. Review the case (fact pattern), then work through the SHEETS which will help the group prepare their arguments. During the discussion period you will need to select representatives (2-4) who will act as the advocates during the moot court. Students (Advocates) from each side will present a brief argument that reflects their group’s strongest points for an affirmative or negative response to the question posed. Afterwards, the mock Supreme Court will decide the outcome of the case. Students will be instructed that all students on each side can raise their hand to

answer questions posed by the Justices of the Court if their advocates need assistance or do not have a satisfactory answer. Advocates will only have 15 minutes to present their arguments to the Supreme Court. Mahanoy may reserve up to five (5) minutes for rebuttal which must be done at the start of their oral argument (kindly remind Mahanoy to reserve time if he or she forgets as a rebuttal is a powerful tool during oral arguments). The rebuttal should focus on responding to issues that the government raised during their oral argument. You will also need to craft responses to any questions the Supreme Court might ask. The ARGUMENT SHEET is an excellent way to organize your group's thoughts.

BRAINSTORMING SHEET

Which side do you represent?

Your Group's Arguments (Rank from best to worst):

Opposition's Arguments (Rank from best to worst):

Counterarguments To Opposition's Arguments:

Possible Supreme Court Questions:

Responses To Supreme Court Questions:



FACT PATTERN *Mahanoy Area School District v. B.L.*

How do you think the Court should decide the matter?

We will argue and decide it today.

BACKGROUND:

This moot court case was prompted by the actions of a Ninth-grade high school student, B.L., who having not been selected for the varsity cheerleading team posted on Snapchat a selfie of herself and a friend extending their middle fingers with the caption, “F**k school, f**k softball, f**k cheer, f**k everything.” The school had a rule that students must “have respect for [their] school, coaches . . . [and] other cheerleaders” and avoid “foul language and inappropriate gestures.” Another school rule prohibited cheerleaders from posting negative information about cheerleading on the internet. Accordingly, for her posting, B.L. was suspended from the junior varsity cheerleading team.

Decisions by the Supreme Court of the United States have held that almost all the provisions of the Bill of Rights, designed originally only to limit the federal government, now restrict State governments as well. The same Supreme Court, however, has not automatically ruled that the guarantees of the Bill of Rights apply in the same way or, in some cases, at all to juveniles. The question, therefore, is how the guarantees of the Bill of Rights affect the ability of public school officials to discipline students in public schools.

In terms of the First Amendment’s guarantee of free speech, the case of *Tinker v. Des Moines Independent School District* (1969), constitutes an important benchmark. In *Tinker*, five students in Des Moines, Iowa, decided to wear black armbands to school in protest of the Vietnam War and were suspended by the School District as a result. The children and their parents brought suit in federal court challenging their suspension as a violation of their First Amendment right to freedom of speech. The Supreme Court held that students entering public school property do not forfeit their First Amendment free speech rights. Writing for a seven-member majority, Justice Abe Fortas held that “[t]he wearing of an armband for the purpose [of opposing the war in Vietnam] . . . is the type of symbolic act that is within the Free Speech Clause of the First Amendment. . . . It [is] closely akin to ‘pure speech’ which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. . . . [The wearing of the armband] does not concern aggressive, disruptive action. . . . There is here no evidence whatever of petitioners’ [the Tinkers] 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. . . . [T]he 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.” Thus, in order to justify the suppression of speech, the school officials must be able to prove that the conduct in question would “materially and substantially interfere” with the operation of the school; a high standard.¹

¹ *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 505, 505-06, 508, 511 (1969).

Subsequent decisions, however, have upheld the right of school authorities to suspend a student in a number of circumstances. First, in *Bethel School District No. 403 v. Fraser* (1986), Matthew Fraser, a high school senior, was suspended for two days by the School District after he gave a speech at a school assembly of 600 high schoolers supporting his friend's candidacy for a student government position. Some in the audience believed Fraser's speech was a graphic sexual metaphor and full of sexual innuendos. Fraser brought suit in federal court challenging his suspension as a violation of his First Amendment right to freedom of speech. The Supreme Court held that school officials may properly punish student speech with suspension if they determine that speech to be lewd, offensive, or disruptive to the school's basic educational mission. Writing for the seven-member majority, Chief Justice Warren Burger distinguished between political speech which the Court previously had protected in *Tinker* and the supposed sexual content of Fraser's speech at the assembly. The Court concluded that the First Amendment did not prohibit schools from prohibiting vulgar and lewd speech since such discourse was inconsistent with the "fundamental values of public school education."²

Next, in *Hazelwood School District v. Kuhlmeier* (1988), Cathy Kuhlmeier and two other students were staff members on *Spectrum*, the school newspaper at Hazelwood East High School. During the spring semester, the school principal reviewed a draft of the newspaper containing two articles on the topics of teen pregnancy and divorce and found them to be inappropriate. The principal ordered that the two articles be withheld from publication. Kuhlmeier argued that this decision violated her First Amendment rights to freedom of speech and brought suit against the School District. The Supreme Court held that educators did not violate the First Amendment by exercising editorial control over the content of student speech so long as their actions are "reasonably related to legitimate pedagogical concerns." In a 5-to-3 decision authored by Justice Byron White, the Court determined that schools must be able to set high standards for student speech disseminated under their supervision, and that schools retained the right to refuse to sponsor speech that "might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the shared values of a civilized social order." Thus, the principal's decision represented a legitimate pedagogical concern, and the student's First Amendment rights, under *Tinker*, were not violated.³

Lastly, in *Morse v. Frederick* (2007), Joseph Frederick, a high school senior, was suspended by the principal (Deborah Morse) for ten days after he displayed a large banner reading "Bong Hits 4 Jesus" at a school-supervised off-campus event. Morse justified her decision by citing the school's policy against material that promotes the use of illegal drugs. Fredrick sued, claiming a violation of his First Amendment right to freedom of speech. Fredrick lost in the district court, but the Ninth Circuit reversed, holding that under *Tinker*, student speech was protected except where the speech would cause a disturbance. On appeal, the Supreme Court reversed, holding that *Tinker* does not extend to this case and school officials may prohibit student speech that can reasonably be interpreted as promoting illegal drug use. Writing for a 5-4 majority, Chief Justice John Roberts held that Frederick's message, though "cryptic," was reasonably interpreted as promoting marijuana use. The Court also stated that the free speech rights of public school students are not as extensive as those adults normally enjoy, and that the highly protective standard set by *Tinker* would not always apply. Ultimately, determinations about when speech is disruptive to the school's work or mission are largely left to the school board.⁴

Mahanoy Area School District v. B.L. raises the issue of what protection student speech enjoys that occurs off campus, but that might interfere "with the school's work or . . . the rights of other students to be secure and to

² *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 685 (1986).

³ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 273 (1988).

⁴ *Morse v. Frederick*, 551 U.S. 393 (2007).

be let alone.” B.L. appealed her suspension from cheerleading. The District Court for the Middle District of Pennsylvania agreed and forbid the School from enforcing B.L.’s suspension. The School District appealed and a three-judge panel for the Third Circuit Court of Appeals upheld the District Court's ruling; finding that *Tinker* did not apply to students speech off campus. Such speech, however offensive, was protected unless school authorities could meet the highest standard for non-protected speech, *i.e.*, that such speech would incite immediate violence. The School District appealed again and the case has been taken by the Supreme Court of the United States and is likely to be argued in April. The Third Circuit’s decision differs from decisions by five of the other United States Courts of Appeal, all of whom have allowed regulation of off-campus speech if it can be shown to disrupt the educational process. In several of the cases so decided, students have been sanctioned for posting criticism of school principals. Other cases have involved racist and sexist speech.



ARGUMENT SHEET

Look over these arguments below. Note whether they help Mahoney (Appellant) or B.L. (Respondent). You can also decide the arguments help both sides (B) or neither side (N).

ARGUMENT SHEET

_____ Six of the United States Courts of Appeal have heard cases similar to the issues raised in *Mahanoy School District*, only the Third Circuit has found that student speech solely outside of school is not controlled by *Tinker*.

_____ Two of those decisions have led to students being disciplined for criticism of their schools' principals/administration. B.L.'s Snapchat is more materially and substantially disruptive the work and discipline of the school than criticizing the school administration.

_____ One of the judges participating in the Third Circuit's decision, while agreeing that B.L. had a First Amendment right to publish what she did on Snapchat, concluded that she did so only because the school presented insufficient evidence that the explicit communication would result in a substantial disruption of the school environment.

_____ The Third Circuit has jurisdiction over not only Pennsylvania, but Delaware and New Jersey as well. The State of New Jersey has a law requiring school districts to have in place policies that address off-campus threats, harassment, and bullying by students.

_____ The Pennsylvania Supreme Court has held that school administrations have the authority to sanction of off-campus speech that has a "sufficient nexus" to school activities.

_____ Posts on Snapchat are not permanent and disappear relatively quickly.

_____ The Third Circuit's decision did not mean that school authorities could not deal with "true threats."

_____ With the increased emphasis on "virtual" schooling, there is really no wall between what goes on in the physical school and the activities of students outside school.

_____ *Tinker*, while acknowledging that students do not give up their First Amendment rights when they are in school, did not equate the classroom to the public square.

_____ In *Hazelwood School District v. Kuhlmeier*, the Supreme Court upheld the authority of a school to censor articles in the school newspaper.

_____ “[The Supreme Court’s decisions] have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inviting or producing imminent lawless action and is likely to incite or produce such action.”



You are a Supreme Court justice hearing the case. Please answer the following questions. REMEMBER TO REFERENCE THE FACTS OF THE CASE AND THE CLASSIFYING ARGUMENTS.

1. Pretend that you are listening to the oral arguments of the attorneys representing the Mahanoy School District. What two questions would you ask?
 - A.
 - B.
2. Pretend that you are listening to the oral arguments of the attorneys representing BL. What two questions would you ask?
 - A.
 - B.
3. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of the Mahanoy School District or B.L.

Resources

Tinker: <https://www.oyez.org/cases/1968/21>

Bethel School District: <https://www.oyez.org/cases/1985/84-1667>

Hazelwood School District: <https://www.oyez.org/cases/1987/86-836>

Morse v. Frederick: <https://www.oyez.org/cases/2006/06-278>