

## Parameters of Student Conduct

Beverly L. Hall

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# PARAMETERS OF STUDENT CONDUCT

BEVERLY L. HALL\*

Twenty-five years after *Tinker v. Des Moines Independent Community School District*,<sup>1</sup> New York City public school educators continue to balance an individual student's rights against their responsibility to provide all children a safe and orderly environment in which to learn.

In the past ten years, the number of student protests advancing the right to freedom of expression has declined. Occasionally, schools have confronted issues balancing individual students' rights against the public good in areas such as dress,<sup>2</sup> discipline,<sup>3</sup> and oral and written expres-

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\* Dr. Beverly L. Hall is the Acting Schools Superintendent of the Newark school system. She left her post as the Deputy Schools Chancellor of the New York City schools in 1995 to take over the Newark school system.

<sup>1</sup> *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1969). In *Tinker*, two public high school students and one public junior high school student wore black armbands to school as a symbol of their opposition to the United States' involvement in the Vietnam conflict. *Id.* at 504. They were suspended by school officials who had banned students from wearing armbands two days earlier in anticipation of the students' protest. *Id.* The Supreme Court held that the prohibition on armbands violated the students' First Amendment rights; the students' protest was analogous to "pure speech." *Id.* at 505-07. The Court found that students are "persons" under the Constitution and school officials may only limit students' freedom of expression if the expression would "materially and substantially interfer[e] with the requirements of appropriate discipline in the operation of the school." *Id.* at 513 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (1966)). The Court analyzed the First Amendment as permitting reasonable regulation of expression in restricted circumstances. *Tinker*, 393 U.S. at 508. The Court noted, however, that the regulation of expression based on its communicative impact or simply to avoid a controversy is not enough to overcome the students' right to freedom of expression. *Id.* at 511.

<sup>2</sup> *See, e.g., Pyle v. South Hadley Sch. Comm.*, 55 F.3d 20 (1st Cir. 1995). In *Pyle*, two high school students attacked the validity of their school's prohibition of shirts exhibiting messages that the school considered obscene, lewd, or vulgar, as a violation of their First Amendment rights. *Id.* Both students had, at some point, been expelled for violating the dress code. *Id.* The court reiterated that students' freedom of expression should not be abridged unless it causes disturbances within the school. *Id.* at 22. The court, however, did not decide whether the school can limit vulgar non-school sponsored activity when it does not cause a disturbance. *Id.* at 22; *see also Broussard v. School Bd. of Norfolk*, 801 F. Supp. 1526 (E.D. Va. 1992) (holding that student's due process and free speech rights not violated when student was suspended for wearing shirt that said "Drugs Suck!").

<sup>3</sup> *See, e.g., Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986) (finding that school officials' interest in maintaining school discipline entitled authorities to regulate speech in certain instances). In *Fraser*, a high school student delivered a nomination speech at a school-sponsored assembly. *Id.* at 677. The student's speech referred to the candidate through a graphic, explicit

sion.<sup>4</sup> It appears that public school educators have worked hard to respect students' rights. The public school system, however, still has a responsibility to uphold common societal values. If we are to survive in New York City, we must learn to respect each other and to be cognizant and appreciative of cultural diversity. We have to be able to live together without offending each other. We must subscribe to a common level of decency which includes knowing when and where certain dress and certain speech are appropriate, and the audience for which written work is intended.

I submit that most students in our public schools appreciate boundaries and are themselves not happy or productive in an atmosphere where they feel that "anything goes." My experience as an elementary and

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sexual metaphor. *Id.* at 677-78. The student was thereafter suspended for violating the school's rule prohibiting the use of obscene or profane language "which materially and substantially interferes with the educational process." *Id.* at 678. The Court found that the "freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior." *Id.* at 681. The Court held the school's interest in prohibiting vulgar and offensive language outweighed the student's First Amendment rights. *Fraser*, 478 U.S. at 683-86; *see also* *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). In *T.L.O.*, a student's purse was searched upon reasonable suspicion that the student had been smoking in violation of school rules. *Id.* at 328. The Court held that the constitutional rights of students in public schools are not necessarily co-extensive with the rights of adults; the students' rights must be weighed against the need for discipline. *Id.* at 340-42; *see also* *Rosa R. v. Connelly*, 889 F.2d 435 (2d Cir. 1989) (holding that public school student's due process rights not violated when school denied him credit for "time served" out of school during pendency of expulsion hearing), *cert. denied*, 496 U.S. 941 (1990); *Palmer v. Merluzzi*, 868 F.2d 90 (3d Cir. 1989) (holding that student's due process and equal protection rights not violated when he was suspended from participating in athletic activities for smoking marijuana and drinking beer on school grounds).

<sup>4</sup> *See, e.g.*, *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). In *Hazelwood*, the school principal objected to two articles scheduled to appear in the school newspaper: one article concerned high school students' experiences with pregnancy, the other discussed the impact of divorce on students. *Id.* at 263. Students objected to the principal's censorship of the articles and claimed he violated their right to freedom of expression. *Id.* at 264. The Court reasoned that school-sponsored publication of the school newspaper implied that the school supported the views in the newspaper. *Id.* at 271. Consequently, the Court held that the school could restrict school-sponsored expressive activities "so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.*; *see also* *Board of Educ. v. Pico*, 457 U.S. 853 (1982) (holding that school authorities had right to remove books from school library that were found to be unsuitable for educational purposes; however, removal must not be for purpose of denying access to ideas for political or partisan reasons); *Duran v. Nitsche*, 780 F. Supp. 1048 (E.D. Pa. 1991) (holding that teacher's decision to require students to give oral presentation on God only before teacher and not before class was reasonably related to legitimate pedagogical concerns and did not violate student's right to free speech), *appeal dismissed, order vacated*, 972 F.2d 1331 (3d Cir. 1992); *Slotterback v. Interboro Sch. Dist.*, 766 F. Supp. 280 (E.D. Pa. 1991) (student brought action challenging school district policy on distribution of non-school materials by students on school property).

middle school principal, as well as a superintendent in one of New York City's largest school districts, has demonstrated that in schools where student achievement is good, established parameters exist that govern student conduct. These parameters lead students to follow codes of behavior which are clearly articulated and supported by the majority of the staff, students, and parents.

On the other hand, when you visit low-performing schools and question the children or their parents, you will receive an overwhelming response that the reason the school is in such poor condition is that no one is enforcing a code or standard of behavior.

In our high schools, we must confront the challenge to establish a code of behavior that addresses the limits of written expression, oral expression, and dress. Although high schools in New York City contain vastly different modes of dress and expression, there is a line over which very few students cross. There is a limit to what is permissible.

The fact that we have not faced any serious challenge from a student body with many articulate leaders serves as a testimony to the success of the balancing act. That is not to suggest, however, that there are not individual incidents where these issues are confronted.<sup>5</sup> One recent example occurred at the end of the school year when a student won a literary contest sponsored by an outside agency. As part of the ceremony honoring the winners, the outside agency collaborated with the Division of Instruction and Professional Development<sup>6</sup> and the Board of Education to allow the students an opportunity, if they so chose, to read their winning entries. When the selections were reviewed by the staff, they found that one of the winning entries contained extremely graphic sexual material and profanity. We decided that it would be inappropriate to read that material during the ceremonies. This was explained to the sponsors and the student, all of whom agreed that it would be better if the winner's paper were not read aloud.

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<sup>5</sup> See, e.g., *Texas School Officials' Attempt to Target Skinheads Gets the Boot*, CHI. TRIB., Nov. 7, 1993, at N16 (banning of certain boots, shoes, Los Angeles Raider jackets, and other clothing from schools was protested by student walkout); Somini Sengupta, *Students Escape Dress Code for Now*, NEWSDAY (NEW YORK), Sept. 9, 1993, at 7 (noting principal's plan to regulate students' style of dress revoked after students expressed disapproval).

<sup>6</sup> The Division of Instruction and Professional Development, located at 110 Livingston Street, Brooklyn, New York, conducts staff training sessions to help improve the quality of the education students receive. See Russ Buettner & Edna Negron, *Who'll Train Teachers? Development Office Falls Victim to Cuts*, NEWSDAY (NEW YORK), Aug. 31, 1994, at A17. Among other things, this unit of the central Board of Education of New York City helps lead teams of teachers to improve low-performing schools, and helps school districts implement new teaching and classroom management methods. *Id.*

Educators must be aware of common values such as respect, honesty, and the responsibility to teach. They must also teach students that in order to provide a secure environment, there must be limits to their behavior. It is within those limits that the school setting can provide a model arena for the freedom of all students.