

***Free Speech Guidelines and Ethics in American Educational Institutions:
Contemporary Educational Policy and the Constitutional Rights of Students***

Nathaniel Edwards, Yamaguchi National University, Japan

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Abstract

This paper examines the legal status of free speech in American educational institutions, the need for school leaders to have clear ethical guidelines regarding free speech, the attitude of society toward free speech in schools, and the importance of ethical decision making and personal values in free speech issues. The Constitution of the United States protects the right to free speech in American society, and the Supreme Court has ruled that students in public schools, as members of society, are also entitled to the same right to free speech (Essex, 2005). Teachers and students have a right to free speech according to the law, but some educational institutions may place various restrictions on the free speech of teachers and students. Some school leaders may believe that, in certain cases, reasonable limits should apply to the opinions that students and teachers can express verbally and in writing in an educational environment. School leaders have a duty to avoid harming the rights of students and teachers (Starratt, 2004). The leaders of schools must balance the constitutional rights of students and teachers to free expression and the expectations of a free and democratic society with the need to protect the private lives of individuals in schools from any form of harm. Students must learn that responsible journalism, ethical decision making, and critical thinking skills are essential when exercising the right to free speech in diverse educational environments.

Keywords: Free Speech, Ethics, Guidelines, Educational Policy

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Introduction

The personal beliefs and values of educational leaders who favor certain restrictions on free speech in schools in some cases may conflict with legal requirements and with the expectations of school stakeholders. Some school leaders may believe that, in certain cases, reasonable limits should apply to the opinions that students and teachers can express verbally and in writing in a diverse educational environment. School leaders are responsible for the safety of a school environment and need to take reasonable measures to protect teachers and students from any form of harm, including psychological harm (Starratt, 2004). The leaders of schools must balance the constitutional rights of students and teachers to free expression and the expectations of a free and democratic society with the need to protect the private lives of individuals from any form of harm. Students must learn that responsible journalism, ethical decision-making, and critical thinking skills are essential when exercising the constitutional right to free speech in a democracy.

The Use of Free Speech in Educational Institutions

The Constitution of the United States protects the right to free speech in society, and the U.S. Supreme Court has ruled that students in public schools are also entitled to the same right to free speech as other members of society (Essex, 2005). Teachers and students have a right to free speech according to the law, but some school leaders may sometimes try to place various restrictions on the speech of teachers and students. School leaders with strong personal views on potentially controversial topics such as religion or politics may create a school environment that explicitly or implicitly discourages open expression on certain issues in a school. Some high school teachers may try to discipline students who deliberately insult teachers, use foul or threatening language, or express blatantly racist or sexist views. Some colleges and universities have fired teachers for expressing certain points of view that school leaders or community members strongly oppose. American universities have a legal obligation to prevent activities which support dangerous extremist groups (Cram & Fenwick, 2018). Despite having the constitutional right to free speech, teachers and students in the United States are not always completely free to say whatever they wish to say at any time in a school or campus environment.

The increasingly diverse communities that American schools serve increase the chances for controversy in issues related to the use of free speech. Some opinions that teachers or students openly express in schools may offend certain ethnic or religious groups in a diverse community. A code of ethics can provide useful guidelines for the teaching profession (Gordon & Sork, 2001). Some stakeholders may oppose any attempts to place restrictions of any form on free speech in schools, despite legal precedents for such restrictions. Schools and universities need clear guidelines to regulate events and activities related to free speech which may be controversial and cause harm (Lange, 2020). School leaders have a duty to ensure the physical and psychological safety of students while promoting free speech. Universities can protect and promote free speech in a safe campus environment by creating clear guidelines (Ceci & Williams, 2018). Teachers and schools can focus on common goals and involve all stakeholders in the community to create official school guidelines regarding the acceptable use of free speech.

The First Amendment of the U.S. Constitution prevents the congress from creating laws that prohibit the freedom of religion or free speech (Lowery, 2004). The concept of due process in the legal system helps to ensure that citizens and students cannot arbitrarily be deprived of basic rights such as free speech. However, in some cases, school leaders may place restrictions on speech that may cause significant problems in the operation of a school and the maintenance of a safe and orderly educational environment (Wheeler, 2004). A fair balance must be found between the rights of individual students and the needs of all school stakeholders. In the United States, in special cases, some liberties can be limited to prevent harm (Brown, 2016). School administrators and teachers must not be allowed to abuse their authority by punishing students who express views that may be unpopular. Ideas and opinions cannot be banned on university campuses simply because they are unpopular (Kaplan, 2007). Aristotle described the delicate balance point that is situated between two extremes in ethical decision-making as the golden mean (Beckner, 2004). Wise, ethical, and effective school leaders must consistently strive to achieve a balanced approach in their ethical decision-making process regarding the use of free speech.

The Present Legal Stance Regarding Free Speech in Schools

Regardless of the personal values or beliefs of school leaders, students and teachers have a right to due legal process to protect their constitutional right to free speech and other rights. Substantive due process and procedural due process must be strictly followed by the courts in all cases and by school officials when disciplining students for any reason. The U.S. Supreme Court has ruled that students and adults have the same basic rights under the U.S. Constitution, and that students can exercise free speech in schools (Essex, 2005). Past court cases have shaped the present legal stance towards free speech in American schools.

The landmark Supreme Court case of *Tinker v. Des Moines Independent Community School District* (1969) continues to significantly influence the legal stance towards free speech in schools. The case involved Mary Beth Tinker, a high school student in Des Moines, Iowa. To express her support for a truce in the Vietnam War and her disapproval of America's involvement in the escalating Vietnam War, the student chose to wear a black cloth band around her arm while in school (Driver, 2020). Many teachers and school leaders disapproved of this form of open student protest in the school. The Supreme Court concluded that the act of wearing an armband did not interfere with the operation of the school and was a legitimate form of free speech that the school teachers did not have a right to suppress or prevent (Essex, 2005). The case had a positive impact on education by protecting free speech in schools and by promoting the free exchange of opinions and ideas among students in a manner that is not disruptive to the operation of regular school activities.

A landmark court case involving unethical journalism for a school newspaper set a legal precedent for some restrictions of free speech in schools in special circumstances. The case of *Hazelwood School District et al. v. Kuhlmeier et al.*, (1988) involved a school in St. Louis and the publication of a school newspaper (Buller, 2013). A student journalist in a writing class attempted to publish controversial articles that the school principal deemed to be unsuitable for the school newspaper. The student journalist wrote articles concerning three students who were pregnant and detailed interviews with other students regarding the reasons

surrounding the divorce of their parents (Essex, 2005). The principal believed the topics to be inappropriate for the young students in the high school, was concerned about protecting the identity of the pregnant students, and thought that the parents in the divorce article should be allowed to read the article and to give their official consent before it was published in the school newspaper (Buller, 2013). The Supreme Court ruled in favor of the school and asserted the importance of legal and ethical limits placed on student journalists to protect other students, teachers, and community members from harm (Essex, 2005). The case exerted a positive impact on contemporary education by helping to ensure that student journalists observe ethical guidelines when writing and editing school publications.

Free speech must be allowed on university campuses, but measures need to be taken to avoid causing serious psychological harm to individuals or groups (Cohen, 2017). The decisions of educational leaders regarding free speech are also influenced by state laws and policies. The policies of some state governments can reduce the ability of a university to control or prevent free speech that may promote discrimination or hatred of certain individuals or groups (Constantino, 2018). Students enjoy the First Amendment right of free speech but are sometimes not allowed to write or say whatever they want without regard to ethical conduct and responsible guidelines for free speech.

Educational Leadership and Ethical Decision-Making Regarding Free Speech

The views and attitudes of society towards free speech in schools may sometimes seem ambiguous or contradictory. The majority of Americans seem to support the right to free speech at least in theory, but some school leaders or groups may oppose the completely unrestricted use of free speech in schools, especially if the opinions expressed by students directly challenge the personal values, beliefs, and opinions of school leaders, teachers, and parents. Unrestricted free speech in schools may lead to lively debates and highly developed critical thinking skills in students. Unfortunately, if teachers and students use unrestricted free speech to deliberately provoke or attack specific individuals and groups, the result may be bitter conflicts between individual stakeholders and groups that significantly disrupt school management and operations. A moral compass is as important in the decision-making process of school leaders as technical and administrative skills (Starratt, 2004). Educational leaders without a moral compass might ignore abuses of free speech that harm others and divide the school community, diminishing the effectiveness of school leadership and management. Unethical, authoritarian school leaders might be tempted to restrict free speech in schools and to heavily censor student publications to suppress valid criticism. Effective school leaders must actively engage in ethical decision-making and strive to promote free speech while protecting individuals and groups in a school and in the surrounding community from potential harm.

School leaders are important role models for students and for community members, and a strong sense of justice, empathy, and caring should influence the decisions of leaders in diverse communities (Gorman & Pauken, 2003). Educational leaders must try to avoid extreme positions and try to act in a balanced, responsible manner that vigorously protects individual rights and upholds the democratic tradition of freedom of expression in various forms. School leaders must set a good example through their statements, policies, and actions for future leaders to follow in a free, democratic, and

open society that values individual rights and that respects a wide range of views and opinions.

The landmark case of *Hazelwood School District et al. v. Kuhlmeier et al.*, (1988) demonstrates the importance of personal values, empathy, and ethical decision-making for school leaders. An educational leader such as the principal in the Hazelwood School District can believe in the fundamental importance of free speech in schools and society and in the ethical responsibilities that the use of free speech requires. The Hazelwood School District principal carefully balanced the needs of the school and the rights of community members with the rights of the student journalist in an ethical and responsible manner that the court accepted (Buller, 2013). The actions of the principal were responsible, avoided unnecessary harm to many students and community members, and set a good example of responsible leadership in matters of free speech and student journalism for all school stakeholders. Citing legal precedents, school leaders may temporarily restrict the free speech rights of some students in some cases to avoid unnecessary or excessive harm to certain individuals in the school or community.

Conclusion

American students possess the same basic constitutional right to free speech as adults in society. The use of free speech in schools requires critical thinking skills, careful ethical decision-making, and entails a responsibility to engage in ethical journalism that does not cause harm to individuals or groups. An ethical and effective school leader has a duty to act to avoid harm to any stakeholders in an educational environment (Starratt, 2004). In some cases, a school leader may need to temporarily place certain restrictions on the free speech rights of some students to avoid unnecessary or excessive harm to other students, teachers, parents, or members of the community. American society supports the constitutional right to free speech, but the free expression of opinions is sometimes restricted overtly or covertly in American educational institutions. An ethical educational leader must be willing and able, when necessary, to carefully balance the free speech rights of students and teachers with the interests of all school stakeholders and members of the surrounding community.

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