

From Arm Bands to Bracelets: The Limits of Students' First Amendment Free Speech Rights

by Melissa A. Ebel and René L. Rimelspach



Every year school administrators are confronted with numerous decisions regarding whether they can restrict student speech through enforcement of the school's dress code policy. As schools prepare for a new academic year, administrators and boards should review the school's dress code policy to ensure that it provides administrators with sufficient guidance on how to navigate the difficult issues that can arise.

Recently, the U.S. Third Circuit Court of Appeals held that a school's decision to ban students from wearing rubber bracelets with the phrase "I ♥ Boobies! (Keep a Breast)" violated students' First Amendment rights. Despite the school's argument that the ban was permissible under both the school's dress code policy and the school's right to restrict speech that was "lewd, vulgar, profane, or plainly offensive," the court held that the phrase was not lewd, vulgar, profane, or plainly offensive; that a reasonable observer would interpret the bracelet as part of a national breast-cancer awareness campaign; and that the school failed to establish that the bracelets caused, or threatened to cause, a substantial disruption to the educational environment.

The U.S. Supreme Court has only rarely commented on free speech in schools. In 1969 the Court held that three public school students in Iowa were wrongly suspended from school for wearing black armbands to protest the Vietnam War, because the speech was clearly political, the students were quiet and passive and the activity did not substantially interfere with school discipline or the rights of others (*Tinker v. Des Moines School Dist.*).

Nearly two decades later, a Washington student was suspended for making a speech full of sexual double entendres at a school assembly nominating a fellow classmate for student body vice president. In *Bethel School District v. Fraser*, the U.S. Supreme Court upheld the student's suspension, reasoning the school was well within its rights to prohibit student speech which was disruptive during a school activity and sexually vulgar in nature.

More recently, in *Morse v. Frederick*, the Supreme Court held that the First Amendment does not prohibit schools from regulating student speech appearing to promote illegal drug use. Alaskan high school students were permitted to leave class to watch the Olympic torch pass by, and a student unfurled a banner proclaiming "Bong

Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-5847
Fax: 419-424-9860

Novi Office:

28175 Haggerty Rd.
Novi, Michigan 48377
Phone: 248-994-7757
Fax: 248-994-7758

Hits 4 Jesus.” The student’s sign was confiscated by a school administrator, and the student was suspended. In upholding the suspension, the U.S. Supreme Court acknowledged the school’s reasonable interpretation of the sign that it promoted illegal drug use, despite the student’s argument “the words were just nonsense meant to attract television cameras.”

A dress code policy should be carefully drafted in light of these court decisions and should provide a framework by which administrators can navigate the difficult issues that arise. Because social media increasingly is launching political and social issue campaigns in attention-grabbing ways, especially among school-aged children, for example “Save the Ta-Tas” (another breast cancer campaign), a well drafted dress code policy is essential to help administrators respect students’ First Amendment rights yet maintain the school’s interest in controlling the educational environment.

If you have any questions regarding dress code policies, students’ rights or another education law issue, please contact either [Melissa A. Ebel](#) or [René L. Rimelspach](#) in our Toledo or Columbus offices, or visit our website at www.eastmansmith.com.

Disclaimer

The article in this publication has been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.