

# ***Tinker v. Des Moines* / The Internet, Schools, and Symbolic Speech: A Jigsaw Activity**

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## **Directions:**

1. Each of the cases below represents a case heard in the federal or state courts. Your job will be to become an expert on one of the cases. Your teacher will assign you a case; closely read your assigned **case summary** (below).
  2. Complete the appropriate section of the **chart** (page 4) to “brief” your case.
  3. After becoming an expert on your assigned case, you will teach the key components of the case to your classmates and learn about their cases. Add what you learn to the chart.
  4. Answer the **Question to Consider** (page 5).
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### **Case #1: O'Brien v. Westlake City Schools Board of Education (1998)**

Sean O'Brien was a junior at Westlake High School when he created a website that criticized his band teacher called “raymondsucks.org.” School officials suspended Sean for 10 days for violating a rule in the Student Conduct Handbook. The handbook stated “students shall not physically assault, vandalize, damage, or attempt to damage the property of a school employee or his/her family or demonstrate physical, written, or verbal disrespect/threat.”

As a result of his suspension, Sean's grades plummeted and he failed band. Believing that the suspension was an unconstitutional violation of his First Amendment right to free speech, Sean filed a lawsuit against the school district's board of education. U.S. District Court Judge John M. Manos heard the case and agreed with Sean's lawyer who stated that school officials do not have the authority to regulate speech made by students off campus grounds. While admitting that the case may have been different had Sean “hurled obscenities at his teacher face-to-face on school grounds, in front of other students,” the judge recognized that “the involvement by the school in punishing plaintiff for posting an Internet website critical of defendant . . . raises the ugly specter of Big Brother.”

Upon losing the case, school officials expunged Sean's suspension, wrote him a letter of apology for “abridg[ing] students' legitimate exercise of their constitutional rights,” and paid Sean \$30,000.

### **Case #2: Beussink v. Woodland R-IV School District (1998)**

Brandon Buessink, a junior at Woodland High School, added comments to his personal website that criticized teachers and administrators at his school. When a student showed Brandon's

website to a teacher, the teacher was upset by the vulgar language and criticism the site contained. The school principal suspended Brandon for five days due to the “offensive nature” of his website. At the end of the five days, the principal decided to extend Brandon’s suspension for 10 more days.

Brandon took his case to U.S. District Court, arguing that the First Amendment’s protection of free speech meant his suspension was unconstitutional. District Judge Rodney Sippel agreed. In his ruling, Judge Sippel said that school officials did not “show that its action [suspension of Brandon] was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”

Summarizing his opinion, Judge Sippel concluded, “[t]he public interest is not only served by allowing Beussink’s message to be free from censure, but also by giving the students at Woodland High School this opportunity to see the protections of the United States Constitution . . . .”

### **Case #3: Emmett v. Kent School District Number 415 (2000)**

The “Unofficial Kentlake High Home Page,” published by an 18-year-old student at that school, allowed visitors to vote on which mock-obituary subject posted on the site should be “next to die.” Shortly after school administrators learned of the site, a local news station ran a story in which the site was described as containing a “hit list” of people to be killed. While the site contained a disclaimer stating that the site was an independent effort and for entertainment purposes only, school officials immediately placed the site’s author on emergency expulsion. The school’s action was based on a school policy prohibiting “harassment, intimidation, disruption to the educational process and violation of Kent School District copyright.”

Although the student’s expulsion was quickly converted to a five-day suspension, the student sued in U.S. District Court arguing that their First Amendment freedom of expression rights were violated. District Court Judge John C. Coughenour admitted in his ruling that student websites “can be an early indication of a student’s violent inclinations.” However, the judge also stated that the student-generated nature of the site, combined with the failure of school officials to present any evidence that “the mock obituaries and voting on this website were intended to threaten anyone . . . .” did not meet the standards laid out in preceding student free speech cases.

Upon conclusion of the case, the school district agreed to pay the student one dollar plus attorney’s fees and remove the student’s suspension from school records.

### **Case #4: Beidler v. North Thurston School District Number Three (2000)**

While completing his junior year at Timberline High School, Karl Beidler created a website depicting one of the school’s assistant principals as a Nazi, drunk, and graffiti artist. The principal placed Beidler on emergency suspension after testifying that he found the website

“appalling and inappropriate” and after teachers complained about feeling uncomfortable with Beidler in their class. Beidler was ultimately transferred to an alternative educational program in his school district, but he was allowed to return to Timberline for his senior year.

Beidler took his case to a state-level trial court and argued that his suspension and placement were unconstitutional under the First Amendment. Specifically, Beidler’s attorney argued that because the website “caused no substantial disruption” and school officials had no “authority to police off-campus or Internet student speech,” the suspension was unconstitutional.

The trial court agreed with Beidler’s attorney, ruling that the school district had failed to meet *Tinker’s* standard governing disruptive speech.

### **Case #5: *J.S. v. Bethlehem Area School District* (1998)**

An eighth-grade student in Bethlehem, Pennsylvania, was suspended for 10 days before being permanently expelled from middle school as a result of the website he published from his personal computer. This website contained vulgar and derogatory information about several employees from his middle school, asking questions like, “Why should she [his algebra teacher] die? . . . Take a look at the diagram and reasons I give, then give me \$20 dollars to help pay for the hitman.”

After his expulsion, the student appealed the school board’s decision by taking his case to his the Pennsylvania Court of Common Pleas and the Commonwealth Court of Pennsylvania. Claiming a violation of his First Amendment right to free speech, the student and his attorney argued that his expulsion was unconstitutional.

A majority of the Commonwealth Court of Pennsylvania disagreed, stating that the student’s website “materially disrupted the learning environment” because students were discussing the site during school and at school-sponsored activities. Furthermore, the court ruled that the medical leave taken by the teacher as a result of the website was clear evidence that the student’s site was distracting.

Case	Background Facts	Constitutional Question Raised	Was the Tinker standard applied? How?	Court's Ruling
<p><b>Case #1:</b> <i>O'Brien v. Westlake City Schools Board of Education</i></p>				
<p><b>Case #2:</b> <i>Beussink v. Woodland R-IV School District</i></p>				
<p><b>Case #3:</b> <i>Emmett v. Kent School District Number 415</i></p>				
<p><b>Case #4:</b> <i>Beidler v. North Thurston School District Number 3</i></p>				
<p><b>Case #5:</b> <i>J.S. v. Bethlehem Area School District</i></p>				

### **Question to Consider**

After learning about all the cases, evaluate the following statement. Be sure to answer in paragraph form and include a topic sentence, three specific supporting details, and a conclusion.

**The Supreme Court's decision in *Tinker v. Des Moines* (1969) should be considered a landmark decision because the standards developed in *Tinker* are being used today in student free speech cases involving the internet.**