

## ***Tinker v. Des Moines* / How Does a School Identify “Disruptive Speech?”—Answer Key**

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In the case of *Tinker v. Des Moines*, the Supreme Court of the United States ruled that student speech (expression) could not be punished or stopped unless officials could prove the speech would or did cause a substantial interference with the discipline required for the operation of the school. However, at what level of disruption must the school step in?

### **Directions:**

Read each example below and determine whether you think the student expression described is potentially disruptive enough to be punished or stopped by the school administration.

1. Two students come to school wearing new pants. On the back of the pants, where pockets usually are, the students put patches of the American flag. Therefore, when the students sat down, they sat on the flag.
  - How disruptive are these actions?  
These actions do not seem to be very disruptive.
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?  
It would not be constitutional for the school administration to restrict this form of speech because the action did not cause “material and substantial interference with schoolwork or discipline.” (Note: There are rules that govern the proper display of the flag that may forbid this type of display. These rules are broken quite frequently—often inadvertently.)
2. The student government organizes a protest in response to the poor quality of the new cafeteria food offered at Valley High School. During both lunch periods, SGA officials lead a walk-out from the cafeteria and a group march to the local McDonald’s.
  - How disruptive are these actions?  
These actions are potentially disruptive. If students do not normally leave school grounds for lunch, this would jeopardize student safety and could disrupt the normal lunch period.
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?  
If there were a school rule that prevents students from leaving school property during lunch, it would be constitutional for the school administration to restrict this form of speech because the safety concerns outweigh the free speech concerns.

3. Local gang members wear colored plastic bracelets on their wrists to declare their affiliation.
  - How disruptive are these actions?  
These actions are potentially very disruptive. At face value, the bracelets do not seem to be disruptive. However, if there is a problem with gang activity and gang-related violence, they could be very disruptive.
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?  
In the case of *Stephenson v. Davenport Community School District*, the Eighth Circuit Court of Appeals ruled that a school policy saying, “gang related activities such as display of ‘colors’, symbols, signs, etc. will not be tolerated on school grounds. Students in violation will be suspended from school and/or recommended to the Board for expulsion” was unconstitutional on the grounds that it was “too vague.” If a specific policy existed at this school, it would be constitutional to outlaw the bracelets.
4. During a pep rally, a student leader uses very obscene language in a speech.
  - How disruptive are these actions?  
The use of profanity violates the school’s rules, and thus, is disruptive.
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?  
It would be constitutional for the school administration to restrict this form of speech on the grounds that profanity is not a protected form of speech.
5. Atheist students want to publicize and educate others about their beliefs. To make their point, they begin wearing t-shirts that portray Jesus as a monster with three heads.
  - How disruptive are these actions?  
These actions do not seem to be very disruptive. The shirts may bother some students and initiate some conversation, but it does not seem that they would cause “material and substantial interference with schoolwork or discipline.”
  - Would it be constitutional for the school administration to restrict this form of speech? Why or why not?  
If the courts gave the same latitude toward anti-religion speech as is given toward anti-government speech, it would be unconstitutional for the school administration to prohibit the wearing of these shirts. Although it is less likely, a court may treat T-shirt as a personal attack on deeply religious Christians which may cause a substantial disruption and permit the school to ban it for that reason.