

Lawsuit: Black teens unfairly expelled from Ohio high school after making rap music videos

By Elahe Izadi

Parents of four black teenagers say the students were expelled for making rap videos, and in a \$25,000 federal lawsuit filed Tuesday, allege that an Ohio high school unfairly targeted the students because of their race, the Cincinnati Enquirer reported.

The lawsuit against the Northwest Local School District and the Colerain Township Board of Trustees in Ohio stems from an April 2014 incident when the school was abuzz with rumors of gang activity. The lawsuit alleges that on April 10, school and police officials “interrogated” the black students about their social media activity and affiliations with other black youth, the Associated Press reported. According to the lawsuit, the students were shown images of them in rap videos, and images from their social media accounts of them making hand signs. “Based on these images, school administrators accused more than a dozen African-American students of making ‘street signs’ and belonging to a ‘gang,’” the lawsuit states. Additionally, the lawsuit claims that white students who did similar things were left unquestioned and unpunished.

The district’s attorney, John Concannon, told the Enquirer that the lawsuit includes major inaccuracies; students of other races, not just black students, were suspended and expelled, he said. Concannon also told the Associated Press that 14 students in all faced disciplinary action on April 10, mainly for threats made against students or staff via social media or at school, and that it wasn’t related to gang activity or rap videos.

Extra police were at the school on April 11, a day after hundreds of parents came to pick up their kids when rumors of gang activity abounded. The school even sent a letter home to parents explaining why more police would be at the school; the letter

referred to an investigation and made vague mention of “gang activity.”

The parents suing the school district also want the expulsions wiped off the students’ records. The students referred to themselves as the “money gang”; their parents said that’s what a group of student athletes call themselves, and that it’s not a real gang, the Enquirer reported. “It is not a crime to be an African-American teenager,” the lawsuit states. “Yet, on April 10, 2014, Colerain High School administrators in coordination with Colerain Township police officer acted as if it were.” Rap music and videos have become a battleground for school disciplinary actions. In 2010, Mississippi teen Taylor Bell was suspended for a rap song he posted online. The same year, Trevor Moore of Maine was expelled after he posted a satirical rap video about his school online.

Teachers, too, have gotten into trouble over their use of rap. An eighth-grade Florida teacher was suspended in January after she assigned explicit Lil’ Wayne lyrics to her students as homework. And a Washington state teacher was put on leave in 2010 after handing out copies of lyrics from a song by a Seattle-based hip-hop group on the first day of class.

Essential Question: Are Students Protected by the First Amendment?

Guiding Question #1 What is the difference between the Tinker Standard and Fraser Standard as they relate to students' free speech?

Document 1

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Respond: In your own words, explain (don't substitute words) what the first amendment of the US Constitution says.

Document 2: Supreme Court Case: Tinker vs Des Moines (1969)

Petitioner: John F. Tinker and Mary Beth Tinker, Minors et al.

Respondent: Des Moines Independent Community School District et al....

First Amendment

Facts of the Case

In December 1965, a group of students in Des Moines held a meeting in the home of 16-year-old Christopher Eckhardt to plan a public showing of their support for a truce in the Vietnam war. They decided to wear black armbands throughout the holiday season and to fast on December 16 and New Year's Eve. The principals of the Des Moines school learned of the plan and met on December 14 to create a policy that stated that any student wearing an armband would be asked to remove it, with refusal to do so resulting in suspension. On December 16, Mary Beth Tinker and Christopher Eckhardt wore their armbands to school and were sent home. The following day, John Tinker did the same with the same result. The students did not return to school until after New Year's Day, the planned end of the protest.

Through their parents, the students sued the school district for violating the students' right of expression and sought an injunction to prevent the school district from disciplining the students. The district court dismissed the case and held that the school district's actions were reasonable to uphold school discipline. The U.S. Court of Appeals for the Eighth Circuit affirmed the decision without opinion.

Question

Does a prohibition against the wearing of armbands in public school, as a form of symbolic protest, violate the students' freedom of speech protections guaranteed by the First Amendment?

Respond: What are your initial thoughts on the question? What should the Supreme Court justices consider when making their decision on the question?

Conclusion:

Decision: 7 votes for Tinker, 2 vote(s) against

Legal provision: Amendment 1: Speech, Press, and Assembly

Yes. Justice Abe Fortas delivered the opinion of the 7-2 majority. The Supreme Court held that the armbands represented pure speech that is entirely separate from the actions or conduct of those participating in it. The Court also held that the students did not lose their First Amendment rights to freedom of speech when they stepped onto school property. In order to justify the suppression of speech, the school officials must be able to prove that the conduct in question would “materially and substantially interfere” with the operation of the school. In this case, the school district’s actions evidently stemmed from a fear of possible disruption rather than any actual interference.

In his concurring opinion, Justice Potter Stewart wrote that children are not necessarily guaranteed the full extent of First Amendment rights. Justice Byron R. White wrote a separate concurring opinion in which he noted that the majority’s opinion relies on a distinction between communication through words and communication through action.

Justice Hugo L. Black wrote a dissenting opinion in which he argued that the First Amendment does not provide the right to express any opinion at any time. Because the appearance of the armbands distracted students from their work, they detracted from the ability of the school officials to perform their duties, so the school district was well within its rights to discipline the students. In his separate dissent, Justice John M. Harlan argued that school officials should be afforded wide authority to maintain order unless their actions can be proven to stem from a motivation other than a legitimate school interest.

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http://www.oyez.org/cases/1960-1969/1968/1968_21.

1. What do the terms “concurring opinion” and “dissenting opinion” mean?

2. Of the two opinions, which do you agree with more? Explain your reasoning.

Document 3: Bethel School District vs. Fraser (1986)

The Issue

Does the First Amendment prevent a school district from disciplining a high school student for giving a lewd speech at a high school assembly?

Facts and Background

Mathew Fraser, a senior at Bethel High School in Bethel, Washington, spoke to a school assembly to nominate a classmate for an office in student government. His speech was filled with sexual references and innuendos, but it contained no obscenities. The good news is that Fraser's candidate was overwhelmingly elected. The bad news was that Fraser was suspended from the school for three days and removed from the list of students who were eligible to make graduation remarks. (Fraser was second in his class at that time.) His parents appealed the school's disciplinary action. The Washington Supreme Court agreed that his free speech rights had been violated. The school board then appealed the case to the U.S. Supreme Court.

The Decision

The Court had earlier held, in *Tinker v. Des Moines Independent School Board*, that students do not shed their constitutional rights at the school gate. In that case, the Court said that the First Amendment gave students the right to wear black armbands to school to protest the Vietnam War.

In the Bethel case, however, the Court upheld the school district. The Court held, by a 7-2 margin, that school officials acted within the Constitution by disciplining Fraser. Chief Justice Burger wrote for the majority. He pointed out that there was a huge difference between the protest in *Tinker*, which dealt with a major issue of public policy, and the lewdness of Fraser's speech. "The purpose of public education in America is to teach fundamental values," he wrote. "These fundamental values...must...include consideration of the political sensibilities of other students."

Burger conceded that the First Amendment might permit the use of an offensive form of expression by an adult making a political point, but "the same latitude of expression is not permitted to children in a public school."

Justices Stevens and Marshall dissented. Stevens wrote, "I believe a strong presumption in favor of free expression should apply whenever an issue of this kind is arguable."

The Impact of the Decision

Along with *Hazelwood School District et al. v. Kuhlmeier et al* (1988), a case involving a school district that censored a student newspaper, the Bethel case shows the Court re-examining the issue of student expression in the schools and finding that certain limits on expression are permitted by the First Amendment.