



# Know Your Rights As a Student Journalist



Nieman Foundation  
for Journalism at Harvard

Jonathan Gaston-Falk, Esq.  
[jfalk@splc.org](mailto:jfalk@splc.org)

***SPLC.org***

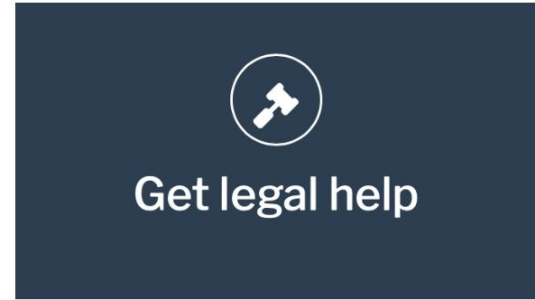
X: @SPLC  
Instagram: @StudentPressLawCenter  
Facebook: Student Press Law Center

# Student Press Law Center

---

Provides free legal help and information on media law issues to student journalists and their advisers

*SPLC.org*



# Note on the Shifting Ethics of Anonymization

— — —

- Review takedown and anonymity policies
- Be transparent with contributors and audience about bylines and sourcing
- Re-educate staff on risks related to confidential sources and data storage

# Board Policy Check

---

- Find and analyze your freedom of expression/publication policy
- With problematic policies, inform your advisers and then act independently
- Appeal any unsavory or unlawful parts
- This is your right as a student

# Forms of Censorship

---

- Direct
  - Prior restraint (admin, CGA, or adviser)
  - Newspaper theft/destruction
  - Systemic prior review or required approval of content

# Forms of Censorship Continued

---

- Indirect
  - Funding and opportunity revocation
  - Firing editors or staff and “stacking” a publication board
  - Discipline or removal of media adviser
  - Media/public relations “gag orders”

# Forms of Censorship Continued

---

- Self-censorship
  - The “chilling effect” of repeated direct and/or indirect censorship



# Public vs. Private Schools

---

- As government agencies, the First Amendment limits censorship at public schools.
- The First Amendment does not regulate the behavior of private schools. However, state law or school policy could provide legal protection for press freedom.

# Private Schools: First Amendment-like Protection

- Contract Law Arguments;
- Certain State Law;
- Policy Considerations and Alumni Networks

# Public vs. Private Censorship

SAVE THE  
WHALES!

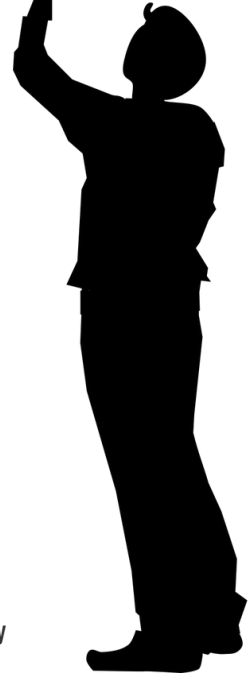


Image by OpenClipart-Vectors from Pixabay

# Contract Law Arguments: Private Schools

---

- Focuses on the published output of the private school itself:
  - Recruitment materials;
  - Governance documents or policy; and
  - Student handbooks
- Language in these documents function as implicit and explicit promises for acceptance of tuition, creating contractual relationship

# Contract Law Arguments Continued

— — —

- The “basic legal relation between a student and a private university or college is contractual in nature. The catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant become a part of the contract”...
- “a breach of contract action might exist if a student enrolled in a course explicitly promising instruction that would qualify him as a journeyman, but in which the fundamentals necessary to attain that skill were not even presented.”

*Ross v. Creighton Univ.*, 957 F.2d 410, 415 and 417  
(7th Cir. 1992)

# Certain State Law: Constitutions

---

- The Supreme Court in 1980 indicated that individual states may require First Amendment-like protections of private schools
  - Highlights the importance of approaching legislatures through New Voices (CA + RI)
- 44 State Constitutions proactively give freedom of expression; as to *private* parties, only NJ, PA, MA impose that mandate, but courts have not yet interpreted for our context

# Policy Considerations and Alumni Networks

- 
- Policy: less of a legal argument, more of a foundational principle:
    - Being able to censor does not make it right or good educational practice
    - Advantage for public school students
    - Religious schools: freedom of press/religion
  - Alumni: private schools often rely heavily on alumni networks, seek out journalist alumni

# Public Schools: Censorship and the First Amendment

What authority do government actors have to control the content of college student media?

---



# The First Amendment

**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.

# The “Publisher” Myth

— — —

## Public School Officials

- Do not own the publication
- Taxpayer dollars used to support publication
- Administrators and other employed actors are government officials
- First Amendment limits ability of government officials to control student media content

## Private Publishers

- Legally own the publication
- Private money used to fund the publication
- Private publisher is not a state actor limited by the First Amendment
- Can freely dictate publication's content

# The “Publisher” Myth

— — —

“The University... is clearly an arm of the state, and this single fact will always distinguish it from the purely private publisher as far as censorship rights are concerned.”

- *Bazaar v Fortune* (5th Cir. 1973)

# Dickey v Alabama State Bd of Educ. (1967)

Essentially the birth  
of college press freedom



# *Dickey v Alabama State Bd of Educ. (1967)*

— — —

“State school officials cannot infringe on their students’ right of free and unrestricted expression as guaranteed by the Constitution of the United States where the exercise of such rights does not ‘materially and substantially’ interfere with the requirements of appropriate discipline in the operation of the school.”

- *Dickey v Alabama (M.D.Ala. 1967)*

# Tinker v. Des Moines Independent Community School District (1969)

The U.S. Supreme Court recognizes that the First Amendment protects on-campus student speech

# The *Tinker* Case

---

Mary Beth Tinker  
(right) with her  
mother, Lorena, and  
younger brother,  
Paul.



© 2006 Corbis. Reprinted with permission.

Neither students nor teachers “shed their constitutional rights to freedom of expression or speech at the schoolhouse gate.”

— Supreme Court majority opinion

*Tinker v. Des Moines Independent Community School District* (1969)



# The *Tinker* Standard

Student speech is protected from censorship except for:

- Speech that invades the rights of others (unprotected speech)
- Speech that creates a material and substantial disruption of normal school activities



# Always-Unprotected Speech

— — —

- Defamation (libel/slander)
- Invasion of privacy
- Copyright infringement
- Speech that advocates illegal drug use
- Obscenity (legal obscenity)
- “Fighting words”
- “True threats”
- Incitement to imminent lawless action

# “Material and Substantial Disruption”

— — —

- Serious, physical disruption of the learning process generally required
- Reasonable forecast of disruption required that is more than just a hunch

# Post-*Tinker* College Press Freedom Decisions

---

“Censorship of constitutionally-protected expression cannot be imposed at a college or university by suspending editors, suppressing circulation, requiring [prior approval] of controversial articles, excising repugnant material, withdrawing financial support, or asserting any other form of censorial oversight based on the institution’s power of the purse.”

- *Joyner v Whiting* (4th Cir. 1973)

# Post-*Tinker* College Press Freedom Decisions

— — —

“The campus newspaper of a state supported university is entitled to the constitutional protections afforded the ‘press’, including freedom of expression for the editors.”

- *Sinn v. Daily Nebraskan* (D. Neb. 1986)

# Combatting Censorship with the Law

---

- Must establish a relationship between the censoring act or decision and *content*
- Demonstrating the action was taken against student media is not enough
- Administrative appeal
- Federal “1983 action” (42 USC 1983 – civil action for deprivation of rights)

# *Hazelwood School District v. Kuhlmeier (1988)*

---

The U.S. Supreme Court significantly reduces the level of First Amendment protection provided to most school-sponsored student media at public high schools

# Censored page 141

## Pressure describes it all for today's teenagers

### Pregnancy affects many teens each year

Pressure describes it all for today's teenagers. Pregnancy affects many teens each year. Teenage pregnancies are on the rise, and the pressure on teenagers to have sex is increasing. This is due to a variety of factors, including the availability of birth control, the influence of the media, and the desire for independence. Many teenagers feel that they are being pressured into having sex, and this can lead to unwanted pregnancies. The pressure to have sex is often来自于 friends and family, and it can be very difficult for teenagers to resist. This is why it is important for teenagers to have access to accurate information about sex and pregnancy, and to have the support of a trusted adult.

TEENAGE PREGNANCY RATES

AGE	1974	1977	1978	1979	1980
Total	13,605	14,762	17,785	21,267	21,271
Under 15	237	256	250	293	253
15-17	1,345	2,239	2,694	3,001	2,679
18-19	2,020	2,247	2,840	3,969	3,787

runaway teenagers are on the rise. This is due to a variety of factors, including the desire for independence, the influence of the media, and the lack of support from family and friends. Many teenagers feel that they are being pressured into running away, and this can lead to serious consequences. It is important for teenagers to have access to accurate information about the risks of running away, and to have the support of a trusted adult. Runaway teenagers are often at risk of becoming involved in dangerous situations, and they may have difficulty finding a safe place to live. This is why it is important for teenagers to have a plan in place before they decide to run away.

Runaways and juvenile delinquents are common occurrences in large cities. This is due to a variety of factors, including the high population density, the lack of resources, and the influence of the media. Many teenagers in large cities feel that they are being pressured into running away or becoming involved in delinquent behavior. This is why it is important for teenagers in large cities to have access to accurate information about the risks of these behaviors, and to have the support of a trusted adult.

Teenage marriages face 75 percent divorce rate. This is due to a variety of factors, including the lack of maturity, the influence of the media, and the desire for independence. Many teenagers who get married do so because they are being pressured into it, and they may not have the necessary resources to make the marriage work. This is why it is important for teenagers who are considering marriage to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

Divorce's impact on kids may have lifelong effect. This is due to a variety of factors, including the emotional trauma of divorce, the loss of a parent, and the influence of the media. Many children who experience divorce have difficulty in their relationships with their parents, and they may have difficulty finding a safe place to live. This is why it is important for children who experience divorce to have access to accurate information about the risks of this experience, and to have the support of a trusted adult.

Pressure describes it all for today's teenagers. Pregnancy affects many teens each year. Teenage pregnancies are on the rise, and the pressure on teenagers to have sex is increasing. This is due to a variety of factors, including the availability of birth control, the influence of the media, and the desire for independence. Many teenagers feel that they are being pressured into having sex, and this can lead to unwanted pregnancies. The pressure to have sex is often来自于 friends and family, and it can be very difficult for teenagers to resist. This is why it is important for teenagers to have access to accurate information about sex and pregnancy, and to have the support of a trusted adult.

runaway teenagers are on the rise. This is due to a variety of factors, including the desire for independence, the influence of the media, and the lack of support from family and friends. Many teenagers feel that they are being pressured into running away, and this can lead to serious consequences. It is important for teenagers to have access to accurate information about the risks of running away, and to have the support of a trusted adult. Runaway teenagers are often at risk of becoming involved in dangerous situations, and they may have difficulty finding a safe place to live. This is why it is important for teenagers to have a plan in place before they decide to run away.

low-minded old. I just was coming late in January when I was in the hospital. When I first heard that I was pregnant, I was shocked. I had never thought about having a baby, and I was not ready for it. I was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

At first both families were disappointed, but the third of us was not. I was not sure if I was ready for the responsibilities of a parent, but I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.

My father was a high-achieving student, and I was not sure if I was ready for the responsibilities of a parent. I was also worried about the financial aspects of having a child. I was not sure if I could afford to raise a child, and I was not sure if I could find a safe place to live. This is why it is important for teenagers who are considering pregnancy to have access to accurate information about the risks of this decision, and to have the support of a trusted adult.



# The *Hazelwood* Standard

- Censorship must be “reasonably related to legitimate pedagogical concerns.”
- Is there a reasonable educational justification?

---



*Photo by Emiliano Bar on Unsplash.*

“When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.”

– Turner v. Safley,  
482 U.S. 78 (1987)

---

## **Footnote 7:**

“We need not now decide whether the same degree of deference [to censorship by school officials] is appropriate with respect to school-sponsored expressive activities at the college and university level.”

– *Hazelwood v Kuhlmeier* (1988)

# Post-*Hazelwood* College Press Freedom Decisions

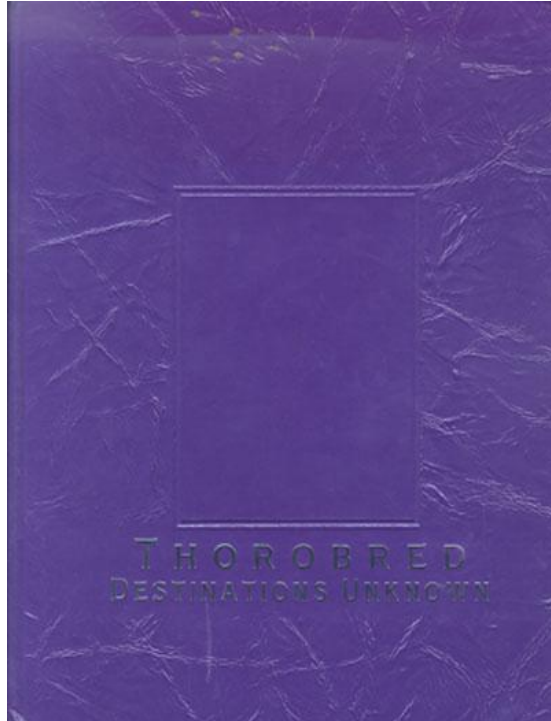
— — —

“The university environment is the quintessential ‘marketplace of ideas’ which merits full, or indeed heightened, First Amendment protection.”

- *Kincaid v Gibson* (6th Cir. 2001)

# Post-*Hazelwood* College Press Freedom Decisions

— — —



# Post-*Hazelwood* College Press Freedom Decisions

— — —

“*Hazelwood* provides our starting point.”

- *Hosty v Carter* (7th Cir. 2005)

# State Laws Protecting Public College Media

— — —

- Arkansas
- California (and private)
- Hawaii
- Illinois
- Maryland
- New Jersey
- North Dakota
- Oregon
- Rhode Island (and private)
- Vermont
- Washington
- West Virginia

# Liability for Public College Student Media

— — —

“We find that the First Amendment... would bar [the university] from exercising anything but advisory control over the paper, therefore exempting the university from liability or responsibility.”

- *Milliner v Turner* (La. Ct. App. 1983)



# The Court of Public Opinion



Photo by [Kane Reinholdtsen](#) on [Unsplash](#)



“[W]ere it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.”

**-Thomas Jefferson**

Letter to Colonel Edward Carrington (January 16, 1787)



# Stay in touch!

Want the latest news about student press freedom, helpful legal guides, examples of bold student journalism, tips for your own newsroom and more?

**Sign up for the  
SPLC Newsletter.**



**[splc.org/newsletter](https://splc.org/newsletter)**

# Seek help when you need it.

---

Hotline: *[SPLC.org/legalhelp](https://splc.org/legalhelp)*

Emergency: (202) 785-5450



@SPLC



@StudentPressLawCenter



Student Press Law Center

# SPLC.org/LegalHelp

***SPLC.org***



@SPLC



@StudentPressLawCenter



Student Press Law Center