

## Walking the T-Shirt Tightrope

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**THE SCHOOL DAY** is just starting when the principal calls the superintendent. Students have arrived wearing matching T-shirts reading “Let’s Go Brandon,” a political slogan referencing former President Joe Biden.

Meanwhile, another student walks in wearing a shirt stating, “There Are Only Two Genders.” Down the hall, a parent is demanding action about a student’s shirt proclaiming, “Be Happy, Not Gay.”

The principal urgently requests advice about whether to require any of the students to remove their shirts.

### A Complex Reality

The superintendent faces three distinct First Amendment challenges. Her response could either resolve these situations smoothly or trigger litigation that consumes months of time and thousands of dollars in legal fees.

These scenarios — each based on a federal court case — illustrate the complex reality school leaders face when navigating student speech as expressed through apparel. Understanding the legal framework governing these decisions can help district administrators craft defensible policies and respond appropriately when such conflicts arise.

### Constitutional Protection

The Constitution’s First Amendment guarantees the freedom of speech. The Supreme Court established in *Tinker v. Des Moines* (1969) that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

However, schools may restrict student expression where the facts might reasonably lead school authorities to forecast “substantial disruption of or material interference with” the work and discipline of the school. The *Tinker* standard remains the cornerstone for analyzing student expression on clothing. It requires more than mere speculation about disruption. To regulate expressive student apparel, administrators must demonstrate a reasonable forecast of substantial disruption based on specific facts, not mere fear or apprehension. Courts give significant weight to concrete evidence of prior incidents supported by documentation.

### Political Speech

Political messages on clothing receive the strongest First Amendment protection. Recent controversies over Black Lives Matter, MAGA apparel and LGBTQ+ messages have tested these boundaries. School officials cannot prohibit messages simply because they are controversial or because some find them offensive. Any restrictions must be viewpoint-neutral and consistently applied.

For example, in *L.M. v. Town of Middleborough* (2024), the First Circuit upheld a school’s decision to prevent a student from wearing a shirt stating, “There Are Only Two Genders.” School officials reasonably determined that the apparel could be understood to demean the identity of transgender students, which could “poison the educational atmosphere” and thus cause material disruption. The U.S. Supreme Court recently declined to review the decision.

However, the Seventh Circuit earlier reached a different result in *Nuxoll v. Indian Prairie* (2008). The court held that the school failed to justify banning a T-shirt reciting “Be Happy, Not Gay,” where there was only speculation regarding potential disruption.

### Restrictable Speech

Beyond the disruption standard, subsequent Supreme Court decisions have identified specific categories of student speech that schools may regulate more readily, without a showing of material disruption.

Following *Bethel School District v. Fraser* (1986), schools can prohibit vulgar and lewd speech. Applying this standard, the Sixth Circuit in *B.A. v. Tri County Area Schools* (2025) upheld a school’s order that students remove “Let’s Go Brandon” shirts. The court determined the school reasonably understood the term to be vulgar.

Additionally, the decision in *Morse v. Frederick* (2007) permits schools to ban messages promoting illegal drug use.

### Practical Guidance

To prepare for these thorny issues, schools should develop clear, written dress code policies that specify prohibited categories. Schools also should establish consistent enforcement procedures and train staff on uniform application.



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