

The “Candy Cane” Case:  
Implications of the First Amendment in Public Schools

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INTRODUCTION

Six students returned to school after winter break to discover that they were suspended. These students are members of L.I.F.E. Bible Club in Westfield High School, Massachusetts. The L.I.F.E. Club is a student-led campus organization; its acronym stands for Love and Insight for Eternity. On December 19, 2002, the day before Winter Break, the students asked the principal if they could pass out candy canes with attached religious messages during school hours. The principal refused the students’ request, but the students decided to distribute the candy canes anyway. On January 3, 2003, when the students returned from winter break, they were notified of their one-day in-school suspension. On January 13, 2003, attorney Mathew D. Staver of the Florida-based Liberty Council filed a complaint on behalf of the students in the Federal District Court in Springfield, Massachusetts.<sup>1</sup>

In response to their suspension, the students contacted Liberty Counsel to request assistance regarding the distribution of the candy canes. Prior to filing the students’ complaint, Liberty Counsel corresponded with the superintendent in writing.<sup>2</sup> The lawsuit claims that the school officials (named as “Defendants”) violated the students’ (named as “Plaintiffs”) rights under the First Amendment of the United States Constitution, particularly infringing

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<sup>1</sup> This article was written in the winter of 2003 shortly after the complaint was filed in Federal Court; therefore the factual background presented is based solely on the Plaintiffs’ allegations. See *Westfield High School L.I.F.E. Club v. Westfield Public Schools*, Civil Action No. 03-30008-FHF (D. Mass. complaint filed January 13, 2003).

<sup>2</sup> On December 18, 2003, Liberty Counsel faxed a letter to the superintendent requesting that he allow the students to distribute the candy canes. The superintendent responded the same day by stating that the distribution would not be allowed.

upon the right of free speech.<sup>3</sup> The students named in the suit are Stephan Grabowski, Timothy Souza, Daniel Souza, Sharon Sitler, Paul Sitler and Dustin Cooper. The school officials are Thomas McDowell, the superintendent and Thomas W. Daley, the principal.

It is not a coincidence that the freedom of speech is the first freedom listed under the First Amendment of the United States Constitution. The framers of the Constitution were especially concerned with limiting the power of the government and securing the liberty of citizens. The Constitution is the fundamental law of the United States and the government is obliged to respect the basic rights of individual citizens. The most significant limitations to government power over the individual are listed in the Bill of Rights; the right to speak freely is listed as one of the first protections. This freedom is precisely under scrutiny in this case.

The issue at hand is whether the restriction and punishment by the school authorities violate the students' First Amendment right to freedom of speech. This paper will argue that that even though the students distributed the candy canes with attached religious messages in a public high school, the school authorities violated the students' right to freedom of speech. First, this paper will review the three key Supreme Court case precedents. It will then synthesize the presented issue using relevant case law and given facts. The analysis will particularly focus on the nature of the distributed material, its effects on the student body and school administration, and relevant school policies.

## CASE PRECEDENT

### *A. Establishment Clause in the Public Schools*

Public schools, particularly because they are funded by taxpayer money, are special educational environments. Education is non-exclusionary

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<sup>3</sup> The complaint alleges that the Defendants violated the Plaintiffs' rights to freedom of speech, freedom of assembly, equal protection and free exercise of religion under the First and Fourteenth Amendments of the United States Constitution, and that the Defendants were also in violation the Establishment Clause of the First Amendment of the United States Constitution. The claim also asserts that the Defendants' Literature Distribution Policy is unconstitutional. However, this article will focus only on the Plaintiffs' claims that their First Amendment right to free speech was violated.

in that it is open to all children. Furthermore, the authority of education remains in the hands of the state and the individual school districts, thus invoking responsibility not just for the curriculum but also for the students themselves. Today public schools try to accommodate students of different races, creeds and religious backgrounds on the assumption that all students have the right to learn in a favorable and comfortable environment. However, an interesting question arises from the assumption stated above: how should the rights of individual students be protected? Does the expression of students comprise a minority opinion less important than the opinion of those students comprising the majority? All law-abiding citizens should be protected individually and equally by the United States Constitution. There are at least two sets of interests that are being balanced in public school settings: 1) the views of the majority versus the views of the minority and 2) free speech versus the need to keep order in the school. The Supreme Court has attempted to balance these interests, through opinions, in what is commonly referred to as the “trilogy” of student speech cases, *Tinker-Bethel-Hazelwood*.

### *B. Student Speech Cases*

The initial case of the “trilogy” is *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969). This is a landmark decision pertaining to students rights. The historical context of this case was the late 1960s, a tumultuous period in the United States history. The country was involved in the Vietnam conflict, which caused much dissent and unrest among citizens. Five students were suspended from Des Moines schools for wearing black armbands to protest the Vietnam War. This demonstration, which did not cause disturbance in the schools, was akin to “pure speech.”<sup>4</sup> “Pure speech” is the “communication of ideas” through dialogue, writings, or conducts and “is accorded the highest degree of protection under the First Amendment.”<sup>5</sup> The Court held that students, though they are not adults, do not lose their right to free expression under the First Amendment of the Constitution when they enter school. The Court reasoned that even though students may be prevented in some circumstances from expressing their views, they cannot be prohibited in

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<sup>4</sup> *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 508 (1969).

<sup>5</sup> Definition from the Findlaw online dictionary <<http://dictionary.lp.findlaw.com>> (visited May 2003).

making the expression unless the speech “materially and substantially” disrupts the work and discipline of the school.<sup>6</sup> The test for material and substantial disruption in school settings came to be known as the “*Tinker* standard.” This standard is strictly applied in legal analyses of activities of speech and expression.

In *Bethel School District v. Fraser*, 478 U.S. 675 (1986), the Supreme Court upheld a suspension of a student who delivered a speech before the student body at a school assembly. The student was nominating a fellow classmate for elected office while narrating the nomination as an extended sexual metaphor. In part, the metaphor used by the student stated “I know a man who is firm—he’s firm in his pants, he’s firm in his shirt, his character is firm—but most...of all, his belief in you, the student body of Bethel, is firm.”<sup>7</sup> The Court considered the speech to be “an elaborate, graphic and explicit sexual metaphor,”<sup>8</sup> and deemed it “obscene speech.”<sup>9</sup> The Court observed that schools have an “interest in teaching students the boundaries of socially appropriate behavior”<sup>10</sup> and, therefore, such speech undermined the school’s basic educational mission. The standard in *Bethel* reviews the conduct of the student and its juxtaposition to sustaining the proper educational environment of the school.

Lastly, in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1987), the Supreme Court upheld the power of school officials to control the content of school-financed newspapers. Student newspapers are considered by some as an avenue for students to offer critiques and commentary on a variety of topics. The court in this case considered the appropriateness of factual stories about pregnancy and divorce written by students for a school sponsored newspaper. The articles were considered by school officials to substantially disrupt the educational process of the school. The Court explained that such student speech may cause substantial disruption and therefore may be censored. In other words, the Court ruled that student speech, which is

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<sup>6</sup> *Tinker*, 393 U.S. at 509.

<sup>7</sup> *Bethel School District v. Fraser*, 478 U.S. 675, 687 (1986).

<sup>8</sup> *Bethel*, 478 U.S. at 677.

<sup>9</sup> *Id.* at 680.

<sup>10</sup> *Id.* at 675.

endorsed by the school, must be reasonably related to legitimate pedagogical concerns of the school.<sup>11</sup>

Each case in the *Tinker-Bethel-Hazelwood* “trilogy” is unique in its own light and forms important case precedent. To determine the distinctiveness of each case, it is important to analyze the type of speech under scrutiny and the distribution to cases. In *Tinker*, the speech was politically motivated and was therefore, as described above, akin to “pure speech.” In *Bethel* and *Hazelwood*, the speech was expressed in an open school forum, either in an assembly or in a school newspaper. *Bethel* particularly dealt with “offensively lewd and indecent”<sup>12</sup> speech, and *Hazelwood* addressed speech that was school sponsored. The Court, in the two instances, determined the severity of the speeches in terms of their disruption by referring to the *Tinker* standard. For example, in *Bethel*, the high school’s policy regarding obscene language, in part, stated, “conduct which materially and substantially interfere with the educational process” shall be regulated by school officials.<sup>13</sup> Thus, each of the three cases in the grand “trilogy” stand apart in determining a situation as it is most favorable to a particular speech.

A situation involving the distribution of candy canes by students on school grounds is not a unique occurrence. After all, during the winter holiday season many students do distribute candy canes and such other treats to their fellow classmates and school friends. Similarly, on Valentines Day students may also give out heart shaped candies and Valentine cards. However, the Plaintiffs’ situation is unique because each distributed candy cane had an attached religious message, and the students were told by school officials that the distribution of such objects was not allowed on school grounds. The *Tinker-Bethel-Hazelwood* “trilogy” commonly holds that students do retain certain expressive speech rights in school; however, these speech rights must be consistent with the educational mission of the school. The “*Tinker* standard” of material and substantial disruption will be applied to the analysis of this case. The application of *Tinker* will be applied because it is an important precedent, which is more factually similar to the present case than *Bethel* or *Hazelwood*. The factual similarities are based on the conduct of the

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<sup>11</sup> *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 273 (1987).

<sup>12</sup> *Bethel*, 478 U.S. at 685.

<sup>13</sup> *Id.* at 678.

speech. In both instances, the student speeches were not school sponsored or obscene, they were merely a form of expression. This expression was a desire to convey an important message to the student body of the school, whether it was about Vietnam or an earnest belief in Jesus Christ. Thus, in *Tinker* as in the present situation, such expression can be attributed to “pure speech.”

### ANALYSIS

Candy canes are popular symbols of the winter season and Christmas time and they are, in such instances, distributed in schools between classmates. So why were the students specifically singled out by the Westfield High School administration for distributing candy canes? Each candy cane that was distributed by the Plaintiffs had an attachment, which was in a form of a folded card (hereafter the candy cane with the attachment will be collectively referred to as “candy cane”) that, on the inside, contained the story of a candy cane maker as well as Bible verses. The outside of the card read “Merry Christmas” and on the backside of the attachment was information on the L.I.F.E. Bible Club (of which the students were members), the time and location of club’s meetings, and a prayer. The story, an old legend, told of an old candy cane maker who invented a confection that validated the existence of Christ. The “J” shape of the candy cane represented Jesus, the white stripe of the cane represented purity, while the red stripe was a representation of the blood that Christ shed for the sins of the world. The scripture verse inscribed at the end of the story in part read: “It is not a prayer that saves you. It is trusting Jesus Christ.”<sup>14</sup>

The school’s principal, Thomas W. Daley, (from now on referred to as “principal”) eventually refused the students’ request to distribute the candy canes despite many initiatives and inquiries made by the students and the Liberty Council. The principal explained that the Christian message of the attachments might be “offensive” to some students. The principal also consulted with the Westfield School District’s superintendent, Dr. Thomas Y. McDowell, (hereafter referred to as “superintendent”), who agreed with the initial decision of the principal. However, the Plaintiffs, knowing that they may face disciplinary proceedings, decided to distribute the candy canes

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<sup>14</sup> Westfield High School L.I.F.E. Club v. Westfield Public Schools, Civil Action No. 03-30008-FHF (D. Mass. complaint filed January 13, 2003) at 7.

because they believed “that they were obeying God’s command...to share the Gospel with their fellow students.”<sup>15</sup> About 450 candy canes were distributed to students during non-class time.

*A. Legal Standard*

The First Amendment of the United States Constitution states that “Congress shall make no law...abridging the freedom of speech.” The Plaintiffs argue that the prohibition from, and punishment for, distributing candy canes was in violation of their First Amendment right to freedom of speech. They contend that the distribution of the candy canes was a form of speech, which is protected by the First Amendment. Meanwhile, the Defendants claim that they were following school policy, which prohibits students from passing out anything in school which is not classroom related.

The symbolism of the armbands worn by students in *Tinker* is similar to the candy canes distributed by the Plaintiffs. In *Tinker*, the “school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance caused by the petitioners.”<sup>16</sup> In the *Westfield* case, the Defendants denied the Plaintiffs their right to free speech by discriminating against the religious viewpoint of their speech. Religion was particularly singled out because of its sensitive nature. The school administration placed much importance on the subject of religious speech. In the *Tinker* and the *Westfield* instances, the actions set forth by the schools were content-based restrictions. Furthermore, and most importantly, the majority opinion of the *Tinker* case stated, “it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>17</sup> Thus, students do retain their constitutional right to free speech upon entering school grounds. Such a right to free speech may be superseded if a material and substantial disruption occurs on school grounds. With the application of the *Tinker* standard, “[t]he distribution of the candy canes...did not materially or substantially disrupt the education environment of Westfield High School.”<sup>18</sup> Furthermore, as the

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<sup>15</sup> Id. at 13.

<sup>16</sup> *Tinker*, 393 U.S. at 508.

<sup>17</sup> Id. at 506.

<sup>18</sup> *Westfield L.I.F.E. Club* at 14.

Plaintiffs argue in their complaint, “[t]he [sole] content of the candy cane attachment would not have led school officials to fear disruption of the educational environment by its distribution.”<sup>19</sup>

*B. Substantive Reasoning*

The present case is much like *Tinker* in that the Plaintiffs’ actions were a “silent, passive expression of opinion, unaccompanied by any disorder or disturbance.”<sup>20</sup> Even though the distribution occurred against the wishes of the school’s officials, it did take place during non-instructional time: lunch break and periods between classes. There were no reports of any interference with classes and homerooms in session. According to a census, as of October 2002, there were 1,626 students enrolled in Westfield High School. It has been reported that approximately 450 students were given the candy canes. This meant that less than 30% of the entire student body received the candy canes. In addition, no students were stopped or prevented from entering a classroom, nor was there any incited violence or disruption caused by the distribution.<sup>21</sup> Though not all the details of the distribution are available, it can be assumed that the Plaintiffs approached various students and no students complained that the distribution was coercive. In other words, if the students did not feel comfortable accepting the candy canes, they simply did not have to do so. The Plaintiffs, therefore, peacefully distributed the candy canes; and regardless of how one may view the percentage, whether it is significant or insignificant, there has not been a single complaint.

It has been previously documented that there have been similar candy cane distributions by the Bible Club (in the 2000-2001 and 2001-2002 school years).<sup>22</sup> Such distribution is part of the Bible Club’s annual activity, much like any fundraising or awareness activity conducted by school organizations, such as the drama club. In the current situation, the Bible Club even referred to the distribution of the candy canes as “Operation Candy Canes” or “OCC.”

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<sup>19</sup> *Id.*

<sup>20</sup> *Tinker*, 393 U.S. at 508.

<sup>21</sup> It is worth repeating that only the Plaintiffs’ complaint was available for review; thus, the analysis might be different if evidence were to be presented that real disruption occurred.

<sup>22</sup> The complaint does not mention or discuss: (a) past distributions causing a disruption, or (b) changes in the school administration that occurred during the past two years.



In the past two years, the candy canes also had the attached message, which told of the candy cane maker, a Bible verse and a prayer. Such past student-based initiatives, which occurred outside of class, were permitted by the Westfield school authorities and did not create a disruptive threat to the school's environment. The importance of the material and substantial disruption is stated as such in *Tinker* that "[a] student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects."<sup>23</sup> The following section will examine what constitutes a controversial subject, and if the distribution was itself controversial.

Based on the facts presented in the Plaintiffs' complaint, it appears that a material and substantial disruption did not occur on the school grounds. Because there was no disruption, the *Tinker* standard was not violated. However, to prove that the Defendants erred in prohibiting the Plaintiffs from distributing the candy canes three other elements of the distribution must be analyzed.

First, even though there was not a material and substantial disruption, as explained above, the distributed material, itself, must be acceptable in an academic setting. A public educational environment must "inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation."<sup>24</sup> Second, at the time of the distribution, a school policy entitled "Freedom of Speech, Assembly or Congregation" (hereafter "Free Speech Policy") was in effect, and it is important to analyze whether the policy was violated or if it, itself, was in violation of the Plaintiffs rights. Thirdly, a different school policy, entitled "Posting of Information and Distribution of Materials" (hereafter "Distribution Policy") was also in effect during the time that the Plaintiffs distributed the candy canes. Once again, as with the above policy, this policy will be examined to determine if the students were in violation of it or if the policy was valid.

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<sup>23</sup> *Tinker*, 393 U.S. at 512-13.

<sup>24</sup> *Bethel*, 478 U.S. at 681.

## 1. "Offensive" Speech

The Westfield High School principal refused the Plaintiffs request for distribution because he deemed such action as "offensive." However, it is not clear whether the principal was personally offended by the overall message attached to the candy canes or whether he believed that the student body would be. In *Tinker*, keeping in regard that the students were silently protesting the Vietnam War by wearing black armbands at a time of social instability, the Court stated, "the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression."<sup>25</sup> The Defendants were worried about how the majority of the students might react to the candy canes distributed by the minority of the students, and especially, that the distributed speech may have caused disorder in the school. After all, religious disagreements may be potentially disruptive and upsetting to the student body.

The ambiguity of the word "offensive" presents three possible assumptions: 1) the principal was personally offended by the message in the attachments, 2) he believed that the student body would be offended by the attachments, or 3) he defined "offensive" based on his understanding or bias of the word. The case, *Boroff v. Van Wert Board of Education*, clarifies the meaning of "offensive" and its relation to law. "[V]ulgar' and 'offensive'..[ i]n First Amendment cases, those terms refer to words and phrases that are themselves coarse and crude, regardless of whether one disagrees with the overall message that the speaker is trying to convey."<sup>26</sup>

The dissenting opinion in *Boroff* describes the meaning of the word offensive vis-à-vis personal preconceived notions. In *Boroff*, a high school student wore a Marilyn Manson t-shirt to Van Wert High School. Marilyn Manson was a popular "Goth" rocker, who maintained an "anti-Christ," devilish persona. According to the media, Manson was an open illegal drug-user. The front of the t-shirt depicted a three-faced Jesus accompanied by the inscription "See No Truth. Hear No Truth. Speak No Truth." The back of the t-shirt read "BELIEVE" with "LIE" highlighted. A different Marilyn Manson t-shirt was worn by the student in three separate instances. In all three cases,

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<sup>25</sup> *Tinker*, 393 U.S. at 510.

<sup>26</sup> *Nicholas J. Boroff v. Van Wert City Board of Education*, 220 F.3d 465, 473 (2000).

the principal of the school asked the student to take off the “offensive” t-shirt or face the necessary consequences. The student refused to change or remove the t-shirts and thus was suspended from school. The student’s mother filed a lawsuit alleging that the administrators’ refusal in allowing the student to wear the t-shirts violated her son’s First Amendment right to free expression. The Court stated, “[Marilyn Mason] promotes disruptive and demoralizing values which are inconsistent with and counter-productive to education.”<sup>27</sup> The ruling was in favor of the school administration. However, the dissent explained that the school administration found such a shirt offensive because it represented a sacred religious figure in an unfavorable light. The officials simply disagreed with such a message, which they found personally to be “offensive” because “[the T-shirts] said something about a venerated religious figure..and because many people in Van Wert..happen to disagree vehemently with what they perceived the T-shirt was saying.”<sup>28</sup> Furthermore, the dissent stated that such a t-shirt did not cause a “material and substantial interference with the schoolwork or discipline.”<sup>29</sup> Thus, based on the analysis presented by the dissent, the school officials presumed that the t-shirt on its face would offend the students as well as themselves.

The term “offensive” is interpreted differently by the court in *Boroff* than it would be, for instance, in a colloquial conversation. For the purpose of this discussion, “offensive” will refer to coarse and crude statements or concepts. Based on the previously analyzed facts, the Westfield High School principal might have believed that the attachments, in themselves, were not crude or vulgar, but “offensive” because they may be disfavored by other students or because he personally disagreed with the message. After all, it can be reasonably presumed that every student has his or her own opinion about religion and that not all of the student body is of the Christian faith. The principal refused to allow the distribution of the candy canes because he might have been apprehensive about the possible student reaction to the message of the attachment, or he may have looked at the wider scope of the situation and not wanted to distract and upset students by the distributed messages. The “fundamental values” [those of manners of civility] must also take into

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<sup>27</sup> Id. at 471.

<sup>28</sup> Id. at 473.

<sup>29</sup> Id. at 474.

account consideration of the sensibilities of others, and in the case of a school, the sensibilities of fellow students.”<sup>30</sup> As suggested in *Bethel* and supported in *Hazelwood* “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.”<sup>31</sup> Thus, school officials may be apprehensive about certain student actions, only when they believe that there will be a substantial disruption.

However, in this case, neither the principal nor the superintendent should have feared that the candy canes would have caused a disruption. The students were adamantly clear that the distribution, as in previous years, would take place during non-instructional time. Therefore, the distribution would not interfere with the activities of the school. Furthermore, school officials cannot prohibit the distribution of literature and decide later that it would be disruptive. Prohibition could have only occurred in specific emergencies where imminent violence was reasonably feared. Such was not the case, because distribution was allowed previously. Thus, the principal was trying to avoid an assumed situation, which is not acceptable under the *Tinker* standard, for “fear and undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.”<sup>32</sup>

## 2. Free Speech Policy

The prohibition of distribution also violates Westfield High School’s Free Speech Policy. The policy, in relevant part, states: “Reasonable speech will be allowed in the proper location at the proper time, so as not to stop other people from entering classrooms, distributing literature during classes, or hold a demonstration, so that it interferes with classes or homerooms in session. The use of symbolic expressions of publishing/distributing of material is subject to the same limitations as listed for freedom of speech.”<sup>33</sup> The “freedom of speech” clause of the policy states: “These freedoms are subject to the limits of obscenity, defamation, fighting words, incitement or disruption.”<sup>34</sup>

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<sup>30</sup> *Bethel*, 478 U.S. at 681.

<sup>31</sup> *Id.* at 682.

<sup>32</sup> *Tinker*, 393 U.S. at 508.

<sup>33</sup> Westfield L.I.F.E. Club at 8.

<sup>34</sup> *Id.*

The majority in *Tinker* states, “[The] prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid a material and substantial interference with school or discipline, is not constitutionally permissible.”<sup>35</sup> Furthermore, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools... The classroom is particularly the ‘marketplace of ideas.’ The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of multitude of tongues, [rather] than through any kind of authoritative selection.’”<sup>36</sup>

There have been no reported disruptions caused by the distribution of the candy canes. In addition, no students were prevented from entering the classroom, and such distribution did not interfere with classes or homerooms in session. However, nowhere, in the given policy, is the “responsible speech” clause defined. The ambiguity of the term, “responsible,” inherently allocates too much regulatory power to school officials; for, one reasonable person may define “responsible speech” differently from another reasonable person, due to personal biases or differences in judgment. To hold students responsible for a situation that they might have created or been involved in without a clear definition of “responsibility,” would be to wrongfully punish the students.

Furthermore, the stated messages in the attachments of the candy canes and the actual distribution of the candy canes cannot be classified as obscene, defaming, fighting or disruptive words.<sup>37</sup> It should be noted that each of these four types of speech are not clearly defined within the policy, and thus it would be difficult for a high school student to understand what each word concretely means. The four types of speech, stated above, are not protected under the freedom of speech of the First Amendment—they are exclusions of such speech protection. Protected speech is any speech, such as religious or political commentary, which does not fall within the four speech types previously mentioned. Thus, protected religious or political commentary cannot be categorized into obscene, defaming, fighting or disruptive words. Therefore, neither the candy canes, nor the messages themselves, can be defined as obscene. Obscene words are defined as “coarse or crude.”<sup>38</sup>

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<sup>35</sup> *Tinker*, 393 U.S. at 511.

<sup>36</sup> *Id.* at 512.

<sup>37</sup> *Westfield L.I.F.E. Club* at 14.

<sup>38</sup> *Boroff*, 220 F.3d at 473.

Furthermore, the distribution of the candy caned did not defame either the student body or the school administration; the religious ideal behind such an action was out of piety and awareness. In addition, such action did not cause any threats, in terms of fighting words, or reported disruptions. In fact, no student complaints were filed the day of the distribution. Due to the ill-defined “responsible speech” clause and the lack of clarification of the four words stated above, the policy should be deemed overbroad.

### 3. Distribution Policy

Westfield High School Distribution Policy states: “Handbills or any other printed matter may not be distributed or circulated in school or on the school grounds without proper authority. Arrangements should be made with an administrator or his designee.”<sup>39</sup>

After consulting with the superintendent, the principal made the final decision that the Plaintiffs were not to distribute the candy canes. Because permission was sought by the Plaintiffs and the Defendants rejected the Plaintiffs inquiries, facially the Plaintiffs are in violation of the school’s Distribution Policy. However, the policy is significantly overbroad in terms of its “printed matter” clause. Does this mean that students exchanging textbooks, magazines, notes, or any other printed matter must ask school officials for permission? The policy never defines “printed matter,” especially in context of school related items. If the classroom setting allows for “the marketplace of ideas” to prevail, and these ideas are printed, then the administration controls the means of intellectual discourse and thought. The students cannot be impeded of written dialogue on a daily basis by the administration—this will cease the original thought in “marketplace of ideas”—and ultimately, burden the pedagogy of the school.

Both the Free Speech Policy and the Distribution Policy (hereafter collectively referred to as “policies”) are overly broad. Particularly, the “reasonable speech” clause of the Free Speech Policy and the “printed matter” clause of the Distribution Policy, bear a burden of over breadth. Furthermore, the policies leave too much room for the administration to exercise their decisions under their discretion. The policies do not contain a limitation of time to which a decision must be made concerning the distribution of literature,

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<sup>39</sup> Westfield L.I.F.E. Club at 8.

nor do they allow students to appeal decisions made by school officials. In conclusion, the policies are overly broad, and even if the Plaintiffs did violate them, such as in the case of the Distribution Policy, such violations should be nullified.

### CONCLUSION

Perhaps the most important of all rights guaranteed in our society is the right to express our opinions freely about problems and issues that affect lives. That right is no less important for students than for adults. The policies that govern the school have as much impact on student lives as most policies formulated by the president and Congress have on the lives of adult citizens.

In both *Bethel* and *Hazelwood*, the authority of school officials is based on the principle of protecting the majority of the students, from the trouble-causing minority. *Tinker*, however, focuses on protecting the individual freedom of students. Thus, there is an allocated balance between protecting the views of the majority versus the views of the minority. In both *Bethel* and *Hazelwood*, school administrators and their designees are granted more school control under their discretion than the administrators in *Tinker*. The *Tinker* decision no longer permits school officials to silence students because of fear that controversy will disrupt the educational process. There is a fine balance between the expressions of students in a form of a speech versus the need to keep order in the school. Under the occurrences in *Bethel* and *Hazelwood*, student speech was considered inappropriate and disruptive. In *Bethel*, the student speech was considered vulgar and obscene, and in *Hazelwood*, the speech was dependent on financial school sponsorship. The distribution of the candy canes cannot be defined within the context of student speech presented in *Bethel* and *Hazelwood*.

The administration of Westfield High School cannot prohibit students from distributing candy canes with the attached religious messages. Such prevention would violate the Supreme Court's decision in *Tinker*. Barring such attachments may only be done if its distribution would materially and substantially interfere with the school's activity. The words, "material" and "substantial," are crucial because the Court recognized that any expression of opinion on a controversial issue might upset some people. A minor disturbance or disruption, however, is no justification for prohibiting students from expressing their views.

*Tinker* recognized that the First Amendment is fundamental to the American theory of education. Such a theory is coexistent in the right of students to express their opinions freely about issues that affect their lives. If students have to wait until they graduate to express their opinions, it may be too late for their opinions to have any impact—the impact that constitutes the basis of the “marketplace of ideas.”<sup>40</sup>

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<sup>40</sup> As mentioned in Footnote 2, this paper was written prior to the litigation of the case. However, on March 17, 2003, the District Court for the District of Massachusetts granted a motion for preliminary injunction and motion for waiver of security bond to the Plaintiffs. The Plaintiffs were granted relief from their initial punishment in the form of a suspension and were permitted to distribute the candy canes, with the attached messages, during non-instructional time. See *Westfield High School L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98 (D.Mass. March 17, 2003).