School officials have a most difficult, unenviable task. They must ensure a safe learning environment for their students while at the same time not crossing the line and violating their students' constitutional rights. The line between unprotected disruption and protected expression can be a hazy one. It can be difficult to discern the boundaries in what seems like an overly litigious society.

But, fortunately there are guiding principles. In 1969, the U.S. Supreme Court established a legal test in Tinker v. Des Moines Independent Community School District that still stands as good law. In Tinker, the Supreme Court ruled 7-2 that public school officials violated the free-speech rights of three public school students in Iowa when they suspended them for wearing black peace armbands in protest of the Vietnam War and to mourn those who had passed. John Tinker, his sister Mary Beth Tinker and Christopher Eckhardt were suspended for their acts of symbolic speech.

The Court in Tinker wrote that "[i]t can hardly be argued that students or teachers shed their constitutional rights at the schoolhouse gate." This means that students in public schools possess some level of free-speech rights. The Tinker case remains the seminal U.S. Supreme Court establishing that students have free-speech rights.

On the other hand, the Court in Tinker did not say anything goes or that school officials don't retain the ability to discipline students and enforce codes of conduct. Consider that the Court also wrote in Tinker about "the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." In other words, school officials have the ability to maintain control among the student body.

The question facing the Supreme Court in Tinker was how to balance students' constitutional rights with the paramount duty to provide a safe learning environment. It is the perennial challenge still facing school officials forty-five (45) years later.

The Court in Tinker struck the balance in favor of the three Iowa students, finding: "the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred."

The Supreme Court explained: "They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression." To paraphrase, the Tinker kids and Chris Eckhardt wore their armbands but they didn't yell, start fights or attempt to start a mass student walk-out. They didn't harass or antagonize other students. Rather, they engaged in passive political speech – the core type of speech the First Amendment was designed to protect.

The key words from Tinker are "reasonably," "forecast," "substantial" and
"Students in public schools possess some level of free-speech rights. The *Tinker* case remains the seminal U.S. Supreme Court establishing that students have free-speech rights."

Let's apply these principles in practice using two hypotheticals.

In the first hypo, a student comes to school wearing a t-shirt with the message "Free Deron." Deron refers to a former student at the school who allegedly was affiliated with a gang. The school has had a problem of gang-related activity at the school, though not direct acts of violence. Deron faces second-degree murder charges for shooting another young person, Terry, who also was a former student at the school. Terry may have been affiliated with a rival gang. The principal knows there are different factions of the student body — some of whom were friends with Deron and some of whom were friends with Terry. Relatives of both Deron and Terry attend the school. The principal fears the potential for violence is palpable and prohibits the student from wearing the t-shirt. This would satisfy the "reasonable forecast of substantial disruption."

Let's take another example. A student wears a pink bracelet to school to support her aunt who battles breast cancer. The student does not draw attention to the bracelet or pass out other bracelets during the middle of class. However, the principal worries that the pink bracelet might cause other students to wear other colored bracelets. He has heard about students in other schools wearing bracelets with the message "I Love Boobies" and doesn't want any lawsuits or more students wearing similar symbols. The principal also simply doesn't like the bracelets. He attempts to convince the student to remove the bracelet. If the student ended up being punished, this would not satisfy the "reasonable forecast of substantial disruption" standard.

Granted, many incidents involving student expression will present a much closer question. But, school officials will do well to understand the lessons and language of *Tinker* — reasonable forecast of substantial disruption.