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**“TINKERING” WITH STUDENT RIGHTS:
SCHOOL WALKOUTS AND THE IMPLICATIONS OF DISCIPLINE
PRACTICE AND POLICY ON STUDENTS’ RIGHT TO PROTEST**

by

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**SUBMITTED TO SCRIPPS COLLEGE IN PARTIAL FULFILLMENT OF THE
DEGREE OF BACHELOR OF ARTS**

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PROFESSOR REBECCA HATKOFF, CLAREMONT GRADUATE UNIVERSITY**

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Abstract

In this study, I examine the extent to which students' rights to free speech and expression were violated in response to the nationwide school walkouts that took place during the spring of 2018. Students hold the right to political speech and expression under the landmark Supreme Court Case, *Tinker v. Des Moines* (1969). However, the rights students maintain to participate in protest during school hours is somewhat unclear. Using a two-pronged case study analysis, I explore the question of student rights and potential violations in the face of protest through examining school disciplinary responses alongside disciplinary policy and disciplinary policy in the context of *Tinker*. Findings highlight a widespread gap in school and district-level policy specific to protest or other types of political expression and the need for such policy when protecting the rights students hold under *Tinker*.

Introduction

Student activism and protest has warranted national attention on many occasions throughout the 20th Century (Joseph, 2018). In May of 1963, more than a thousand students in Birmingham, Alabama skipped class to protest against segregation and were met with police clubs, fire hoses, and arrest (NMAAHC, n.d.; Levingston, 2018). On February 3, 1964, approximately 460,000 students in New York City boycotted school to push for school integration (Khan, 2016). This tradition does not show signs of ending anytime soon.

During the spring of 2018, over a million students walked out of class in the span of about a month to protest gun violence in the United States (Campo-Flores, 2018). The legal rights students hold to participate in these protests are somewhat unclear. In the face of student activism in the past, many schools across the nation violated students' rights because they were unaware of, or chose to ignore, the legal protections afforded to students (Tashman, 2017). Students speaking out against injustice are frequently silenced or punished by school administration (Brown, 2012). Silencing student speech poses an especially dangerous risk of disenfranchisement for already marginalized populations of students; the right to freedom of expression has historically allowed marginalized populations, who do not have access to the center of power and decision-making, to make their voices heard (ACLU, 2013). School disciplinary procedures must align with the legal protections afforded to students in order to ensure students are empowered to exercise their rights, fully. To do this requires first identifying the rights students hold during school hours to partake in activism and protest.

With 50.7 million students enrolled in public elementary and secondary schools, approximately 90 percent of children in the United States, the public schooling system stands a colossal public institution (Jennings, 2013; NCES, 2018). In society, all of these students maintain the right to free speech and expression as laid out by the Constitution.¹ But, do these students' rights change when they step on school grounds and officially take on the role of students? By the mid 20th Century, the Supreme Court had clarified and defined many of the free speech protections afforded to the general public.² But the question of if and how these rights apply to the masses of students enrolled in public schools remained more uncertain.

The free speech rights of K-12 public school students were first comprehensively established and defined by the landmark Supreme Court Case, *Tinker v. Des Moines* (1969). To this day, *Tinker* remains the most holistic overview of free speech rights within schools. Thus, all school policies and punishments that are relevant to student free speech and expression should be consistent with the standards and principles of *Tinker* and the rights it affords. In the context of the spring 2018 walkouts and the uncertainty surrounding the exact rights students held to participate, two questions remain: To what extent did disciplinary actions in response to the spring 2018 walkouts align with school and district-level disciplinary policy? And, to what extent do school and district-level policies align with the law set forth by *Tinker v. Des Moines*?

¹ The most basic protections of free speech afforded to the public are found under the First and 14th Amendments of the United States Constitution. The First Amendment states that, "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" (U.S. Const. amend. I & XIV).

² Several Supreme Court cases have grappled with the scope of free speech protections afforded to the general public. A few of these cases stand out as "historic" due to the high frequency at which other free speech cases cite their precedents (ALA, 2006). These cases are *Schenck v. United States* (1919), *Whitney v. California* (1927), *Near v. Minnesota* (1931), and *Brandenburg v. Ohio* (1969).

Literature Review

I. Free Speech in Schools Prior to Tinker

Minersville School District v. Gobitis (1940) first brought the discussion of students' rights within school to the national stage; in 1935, Lillian and William Gobitis were expelled from their Pennsylvania public school after they refused to salute the American flag (Oyez, n.d.) The Gobitis children were Jehovah's Witnesses and argued that saluting the flag went against their religion and that the expulsions were a violation of their First Amendment rights (Ibid). The Court ruled in favor of the mandatory flag salute and claimed that the secular state interest of "national cohesion" ranked higher than the individual religious interests of these students (Ibid). *West Virginia State Board of Education v. Barnette* (1943) overturned this decision when the Court held that compelling public school students to salute the flag violated the students' rights (Oyez, n.d.). This decision was made on the basis that the First Amendment cannot enforce unanimity of opinion and that respect for national symbols should not trump constitutional rights (Ibid).

Through these cases, the Court began to confront how constitutional rights transfer to students during school hours. However, much of this question continued to be uncertain and legally untouched until the landmark Supreme Court case, *Tinker v. Des Moines* (1969).

II. Overview of *Tinker v. Des Moines* (1969)

In 1965, a group of students in Des Moines, Iowa planned to wear black armbands to school to protest the Vietnam War (Oyez, n.d.). When school officials heard of this plan, they created a policy that students would be suspended if they refused to remove the

armbands at school and not allowed back until they agreed to remove the armbands. On December 16, 1965 Mary Beth Tinker and Christopher Eckhardt refused to remove their armbands and were suspended from school. The next day, John Tinker refused to remove his armband and was suspended, as well. The students did not return to school until after News Year's Day, when they ended the protest. The students and their parents sued the school district for violating their First Amendment rights to free speech and expression. A four-year-long legal battle ensued, culminating in the Supreme Court ruling in favor of *Tinker* in 1969.

Justice Abe Fortas delivered the majority opinion, in which he famously stated that neither students nor teachers, “shed their constitutional rights at the schoolhouse gate” (*Tinker v. Des Moines*, 1969, p. 506). Fortas went on to say that schools may not suppress or prohibit student speech or expression unless it “materially and substantially interfere[s]” with the educational process or impinges on the rights of others (Ibid). In the case of *Tinker*, Fortas asserted that the disciplinary consequences stemmed from a fear of disruption rather than any tangible interference (Ibid).

III. Direct Implications of *Tinker* on School Discipline Practices

Before *Tinker*, students' rights at school were not a topic that was frequently discussed; *Tinker* shifted the public school system into an era where students were not only guaranteed certain rights at school, but also where students' rights were considered more relevant (Deveaux, 2017). As seen in *West Virginia State Board of Education v. Barnette*, some students' rights in the school setting had been upheld in the past, but there had never been a statement of protection as wide-reaching and all-encompassing as *Tinker*. As a result of *Tinker*, students could only be legally punished for speaking out or

dissenting in a manner that proved to “materially and substantially” disrupt the educational process or impinge on the rights of other students (*Tinker v. Des Moines*, 1969, p. 503). And, they could not be punished additionally or more harshly because of the content of their message or the political, personal, or religious nature of their expression (Eidelman, 2018).

IV. Is *Tinker* still “Good Law?”

Since the 1969 ruling, the Supreme Court has addressed students’ right to free speech in three other cases: *Bethel School District No. 403 v. Fraser* (1986), *Hazelwood School District v. Kuhlmeier* (1988), and *Morse v. Frederick* (2007). These cases have served to clarify the scope of *Tinker* in specific circumstances. In the case of *Bethel School District No. 403 v. Fraser*, 17-year-old Matthew Fraser delivered a “crude and sexually suggestive” speech to the student body at his high school (Dever, 1985, p. 1169). Fraser was suspended for disrupting school and filed a lawsuit claiming that the school violated his First Amendment rights (Ibid). The Supreme Court ultimately ruled against Fraser, making the distinction between the political speech protected in *Tinker* and the sexual speech used by Fraser (Oyez, n.d.). In his majority opinion statement, Chief Justice Burger concluded that it was appropriate to suppress “vulgar and offensive” speech, as this type of expression goes against the “fundamental values necessary to the maintenance of a democratic political system” (Cornel LII, n.d.).

In the case of *Hazelwood v. Kuhlmeier*, student journalists at Hazelwood East High School submitted two articles for publication to the school newspaper that revolved around the topics of divorce and teenage pregnancy (U.S. Courts, n.d.). The school principal felt these topics to be inappropriate for the school paper and did not allow the

articles to be published (Ibid). The student journalists filed a lawsuit, asserting that their First Amendment rights had been violated. The Supreme Court ruled in favor of the school, holding that because the paper was sponsored by the school, the paper was a limited forum with a specific purpose; thus, the school maintained the right to inhibit the publication of material it determined to be inappropriate (Ibid).

Lastly, in *Morse v. Frederick*, Joseph Frederick, a senior at Juneau-Douglas High School, displayed a banner that said, “Bong Hits 4 Jesus” during an event he was attending as part of a school-supervised activity (U.S. Courts, n.d.). When the school principal told Frederick to put the banner away and he refused, the principal took the banner from him, and he was suspended for violating school policy by seemingly advocating for the use of illegal drugs (Ibid). Frederick filed a lawsuit, declaring that the school principal had violated his First Amendment rights (Oyez, n.d.). The Supreme Court ruled in favor of the school, stating that school officials can prohibit messages that promote illegal drug use, and that pro-drug speech does not warrant the same protections as the political speech addressed in *Tinker* (Ibid).

Bethel v. Fraser and *Morse v. Frederick* further clarify what is meant by a “material and substantial” disruption in the *Tinker* decision, but do not shrink the scope of *Tinker* in the context of political voice and expression. Rather, the cases set the precedent that overtly sexual or drug-promoting content is disruptive enough that schools may prohibit speech of this nature. And, both cases highlight the need to maintain the free speech protections afforded to students exercising political speech or expression. While *Hazelwood v. Kuhlmeier* establishes that school-sponsored organizations have the authority to control the student speech that it promotes, this ruling in no way affords

schools the power to limit the speech of students who are not using a school-sponsored platform as a medium of expression. Thus, even after these subsequent Supreme Court cases, *Tinker's* basic principles remain intact, and students uphold the great majority of their free speech rights to personally express themselves and their views. The foundation of *Tinker* can very much be considered good and accurate law, today.

V. Current Realities: Parkland, Florida and Student Walkouts

On February 14, 2018, Nikolas Cruz entered Marjory Stoneman Douglas High School in Parkland, Florida and opened fire, killing 14 students and three teachers (Chavez, 2018). With a total death count of 17, this was the ninth deadliest mass shooting in modern U.S. history (Ahmed, 2018). Prior to Parkland, there had been seven other school shootings where someone was either hurt or killed in 2018 (Ahmed & Walker, 2018). School shootings have proven to be a consistent phenomenon, with the likelihood of a school shooting standing approximately the same in 2018 as it was in the 1990s (Cox & Rich, 2018). However, mass shootings, in and out of schools, are getting deadlier as time goes on (Duwe, 2017), with 19 of the 30 deadliest U.S. shootings dating back to 1949 occurring in the last 10 years (Ahmed, 2018). The tragic events of Parkland appeared to to be the straw that broke the camel's back and spurred a massive wave of student activism.

The Women's March Youth EMPOWER group planned a national school walkout that was to take place on Wednesday, March 14, 2018, one month after the Parkland shooting (Gray, 2018). The organization called on students, teachers, administrators, parents, and allies across the nation to walk out of their schools at 10:00 a.m. for 17 minutes, one minute for every person killed in the Parkland shooting. (Ibid).

The walkout's website states that the purpose of the demonstration was to protest the lack of legislative progress surrounding gun control and to advocate for students' right to attend school without the fear of gun violence (WMYE, 2018). On March 14, 2018, at 10:00 a.m., over 3000 registered walkouts took place across all 50 states, with the estimated total of student participants exceeding one million (Campo-Flores, 2018).

On Saturday, March 24, 2018, in between one and two million people marched at more than 700 locations throughout the country in the "March for our Lives" (Bond et al., 2018). This march was a combined effort of high school students and other organizers and was a direct response to the Parkland shootings, aiming to argue that "not one more" death should result from senseless gun violence (MFOL, 2018).

On Friday, April 20th, 2018, which marked the 19th anniversary of the Columbine shooting, National School Walkout, an organization founded by three high school students, called for students to walkout of class at 10:00 a.m. until the end of the school day to protest gun violence (Gray, 2018). Students were encouraged to observe 17 minutes of silence to honor the 17 Parkland victims, and then to hold open mics, rallies, or move on to larger demonstrations (Ibid). Hundreds of thousands of students walked out, and over 2000 separate groups registered for the walkout (Ibid).

In just a little over a month, the United States saw three large-scale, student-led demonstrations against gun violence, two of which occurred during school hours. While school walkouts have been occurring for decades (Waxman, 2018), the sheer size and back-to-back nature of these walkouts garnered massive attention and instigated much debate surrounding how schools should handle students leaving class for political reasons. Some schools allowed for and even promoted students' participation in the

walkouts, while other schools warned students of disciplinary consequences should they choose to participate (Yee & Blinder, 2018); some students completed the walkout without any disciplinary action and some faced consequences as serious as suspension (Andone & Williams, 2018). In light of this variance, the ACLU has issued multiple statements stressing that students are allowed to be punished for their actions as long as the punishment aligns with existing school policy; *Tinker* establishes that students may not receive additional or harsher punishment due to the political nature of their actions (Eidelman, 2018).

The widespread variation in school responses could potentially highlight confusion surrounding the rights students can lawfully exercise through protest. This movement is less than a year old; as the movement continues to grow, we must ensure that students are aware of the rights they hold and are able to exercise them fully.

Research Methods

I. Methodology

I perform a two-pronged case study analysis of two specific school walkouts that took place on March 14, 2018 and analyze the extent to which the disciplinary measures taken align with school and district-level discipline policy and with *Tinker*. My analysis also examines the actions and rights of the student protestors to determine the extent to which their rights were violated. First, I examine the actions of the student protestors and the school responses through the lens of school and district-level discipline policy. Second, I conduct a content analysis of the *Tinker v. Des Moines* majority opinion using a grounded theory approach to identify underlying principles of *Tinker*; a content analysis will most effectively aid in illuminating implicit principles and explicit messages stated

in *Tinker*. I then use this content analysis as a lens to analyze school and district-level policies, and determine the extent to which these policies are consistent with the principles set forth by *Tinker*. Only policy identified as relevant to students' rights to free speech and expression is analyzed.

When combined, these two layers of analysis provide a snapshot into the constitutionality of these discipline policies as well as the punishments given in response to these walkouts. As this analysis encompasses only two case studies, it cannot claim to be representative of widespread trends within this movement. Rather, this analysis aims to highlight circumstances students face and prompt a wider discussion about students' free speech rights in the context of protest.

I am analyzing the events of March 14, 2018 as opposed to the events of March 24, 2018 or April 20, 2018 because of the relevance and specificity offered. The walkouts of March 14 occurred during school hours, which allows for a deeper analysis of free speech rights in school than the events of March 24 would provide. Additionally, the walkouts on March 14 only called for 17-minute-long demonstrations that would start at a precise time, compared to the full day demonstrations called for by the April 20 walkouts; the criteria of the March 14 walkouts were very clear and the window of class time students missed was much smaller. This specificity allows for a more precise examination alongside local policy, and will illuminate the logic underlying students' punishments. Furthermore, the March 14 walkouts involved the most schools, which provides a larger sample from which to pull case studies.

II. Case Study Selection

The cases were selected using a Most Similar Systems Design (MSSD), which is commonly used for small-N case study analyses (Halperin & Heath, 2012). Both walkout cases were comprised of approximately 200 students, took place at the high school level, resulted in disciplinary action, and occurred on March 14, 2018 at 10:00 a.m. These cases were identified through an extensive search of national and local news outlets. A limitation arose when searching for cases, as many news outlets reported on the walkouts and threats of punishment made by school administration, but few reported the actual punishments given to students. The punishment given to the students must be known in order to evaluate whether disciplinary actions aligned with local disciplinary policies. After accounting for this factor, the pool of potential case studies lessened significantly. From the potential case studies that remained, the two cases that differed the most in student demographics, geographical location, and school ranking were selected. It should be noted that the majority of cases with sufficient news coverage were majority-white schools. The varying demographic-makeups between the cases selected do not represent the demographic diversity present in United States public schools.

This method aims to control for differences between walkouts so that the disciplinary outcomes of the walkouts may be more accurately studied alongside one another. Additionally, the cases that differed the most demographically, geographically, and in school ranking were not selected as a means of highlighting disciplinary patterns based off different student-makeups, school location, or ranking; two cases will not provide enough information to infer such patterns. Rather, selecting cases that differed by these variables was a deliberate effort to make this case study analysis more inclusive and

counter the finding that the majority of walkouts with sufficient reporting were majority-white schools.

III. Limitations

One limitation to this method is that the pool of potential cases was limited to those that had been sufficiently reported. Many potential cases lacked sufficient detail, which excluded them from this study. Another limitation is that there is no database that organizes the walkouts by size, disciplinary action taken, or location. There is a list of all the walkouts registered for March 14 provided by the Women's March website. However, this list is not organized in any particular way and contains approximately 3000 schools and is 371 pages long, making case selection from this list fairly unfeasible (Dwilson, 2018). Thus, cases had to be searched for rather than methodically selected from a comprehensive list, which means search engine algorithms and searching bias most likely factored into the case study selection process.

Despite these limitations, this method stands the strongest and most effective way to approach the questions being asked. As the disciplinary responses and policies varied so substantially on a school and district level, a case study analysis of individual schools is the only way to accurately assess disciplinary actions in relation to policy, and the policy in relation to *Tinker*. Many of the limitations of this study are a result of time constraints rather than of the methods, themselves. A longer research process would allow for a more extensive case selection process; with more time, interviews could have been conducted which would diminish the limitation of what information was available through news outlets. And, a longer research process would allow for a larger-N sample, which would more accurately depict trends to draw inferences from. Future research

should aim to allot the time to gather more data and analyze the disciplinary practices and policies of a larger sample of schools.

Case Study Summaries

I. Park Hill High School, Kansas City, MO³

| | |
|--|----------|
| Total Student Enrollment | 1877 |
| State Ranking | #7 |
| National Ranking | #912 |
| Graduation Rate | 94% |
| Percent of Student Body on Free or Reduced Lunches | 27% |
| College-Readiness Index ⁴ | 47.4/100 |
| State Test Performance Index ⁵ | 97.4/100 |

Figure 1: Park Hill Enrollment and Performance

| | |
|---|-------|
| Black Students | 14% |
| Asian Students | 5% |
| Hispanic Students | 10% |
| Two or More Races | 5% |
| American Indian/Alaskan Native Students | 0.30% |
| White Students | 65% |
| Total Minority Enrollment | 35% |

Figure 2: Park Hill Student Demographics (2018)

Summary of March 14 Walkout Conditions

Roughly 200 students walked out of Park Hill High School on March 14, 2018 (Greenwood, 2018). Students walked out of school at 10:00 a.m., tied 17 balloons to a flag pole to honor the lives of the Parkland victims and gave speeches (Londberg, 2018). The students re-entered the school 17 minutes later, but upon re-entry, some teachers locked doors and blocked students from re-entering their classrooms until the next class

³ U.S. News, 2018

⁴ This is a weighted average based 25 percent on the AP or IB participation rate and 75 percent on the quality-adjusted AP or IB participation rate (U.S. News, 2018).

⁵ This measures student mastery of state exit exams based on the proportions of students who achieved each proficiency level (U.S. News, 2018).

period began, approximately 15 minutes later (O'Brien, 2018; Greenwood, 2018; Londberg, 2018). A statement by a district spokesperson explains that all students who walked out were marked truant and were required to attend an administrative conference if it was the student's first offense (PHSD, 2018). Students report being given the option to either serve an after-school detention or attend an administrative conference (Greenwood, 2018; O'Brien, 2018).

II. Johansen High School, Modesto, CA⁶

| | |
|--|----------|
| Total Student Enrollment | 1747 |
| State Ranking | unranked |
| National Ranking | unranked |
| Graduation Rate | 89% |
| Percent of Student Body on Free or Reduced Lunches | 78% |
| College-Readiness Index ⁷ | 12.2/100 |
| State Test Performance Index ⁸ | 54.6/100 |

Figure 3: Johansen Enrollment and Performance

| | |
|---|-------|
| Black Students | 4% |
| Asian Students | 3% |
| Hispanic Students | 64% |
| Two or More Races | 5% |
| American Indian/Alaskan Native Students | 0.50% |
| White Students | 22% |
| Total Minority Enrollment | 78% |

Figure 4: Johansen Student Demographics (2018)

Summary of March 14 Walkout Conditions

When the word spread of plans for the student walkout, Associate Superintendent of Modesto City Schools, Marla Mack, sent a message to Modesto staff saying that

⁶ U.S. News, 2018

⁷ This is a weighted average based 25 percent on the AP or IB participation rate and 75 percent on the quality-adjusted AP or IB participation rate (U.S. News, 2018).

⁸ This measures student mastery of state exit exams based on the proportions of students who achieved each proficiency level (U.S. News, 2018).

teachers should not “prevent students from participating,” however they should remind students that “there are consequences for leaving class” (Farrow, 2018). On the day of the walkout, there was a passing period that lasted from 10:00 a.m. to 10:05 a.m., and students walked out of school at the beginning of the passing period (Ahumada & Farrow, 2018). Between 200 and 250 students walked out (Ibid). Students stood silently for the majority of the walkout, forming a circle at one point and discussing their goals of activism (Ibid). After 17 minutes, students re-entered the school and returned to class (Ibid). A statement by Interim Superintendent, Craig Rydquist, remarks that disciplinary actions given to those who walked out would be in line with the guidelines laid out in the Conduct Code (Farrow, 2018). When asked about the disciplinary measures used in response to the March 14 walkout, Principal Nathan Schar reaffirms that the Conduct Code was followed (N. Schar, personal communication, November 1, 2018). Schar added that because the walkout aligned with the passing period, the class time missed by those who walked out was minimal, and, “the worst consequence any student received was a tardy to class” (Ibid).

Results

I. Content Analysis of *Tinker v. Des Moines*

The content analysis of *Tinker v. Des Moines* revealed two main underlying principles in the majority opinion statement: the responsibility of schools to help prepare students for civic engagement and democratic involvement and the responsibility of schools to encourage and foster dissenting opinions among students. These principles were identified by coding the majority opinion for terms and phrases alluding to the *purpose of school*, the *relationship between school and the state*, *student expression*, and

school disturbance. Figure 5 includes text excerpts supporting each underlying principle.

The content analysis also further reinforced that much of *Tinker*'s foundation rests on the standard of "material and substantial" disruption (*Tinker v. Des Moines*, 1969, p. 509).

Principle 1: Schools Should Help Prepare Students for Civic Engagement and Democratic Involvement

The State and its "creatures [Boards of Education not excepted]" have "important, delicate, and highly discretionary functions, but... that they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its sources and teach youth to discount important principles of our government as mere platitudes" (*Tinker v. Des Moines*, 1969, p. 3).

"The principle use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This... is an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours" (*Tinker v. Des Moines*, 1969, p. 6)

"The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection'" (*Tinker v. Des Moines*, 1969, p. 5).

Principle 2: Schools Should Encourage and Foster Dissenting Opinions Among Students

"undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression... our constitution says we must take this risk... the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society" (*Tinker v. Des Moines*, 1969, p. 508)

"Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible" (*Tinker v. Des Moines*, 1969, p. 511).

"They [students] may not be confined to the expression of those sentiments that are officially approved [by a school]. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views... school officials cannot suppress 'expressions of feelings with which they do not wish to contend'" (*Tinker v. Des Moines*, 1969, p. 511).

"If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or if the expression by any student of opposition to it anywhere on school property except as a part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students" (*Tinker v. Des Moines*, 1969, p. 513)

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines*, 1969, p. 506).

Figure 5: Main Underlying Principles of *Tinker v. Des Moines* and Text Excerpts

II. To What Extent Were School Punishments Aligned with School and District-Level Policy?

Park Hill High School, Kansas City, MO

Only two concrete student actions from the Park Hill High School March 14 walkout were identified. Figure 6 shows that the disciplinary response to students walking out aligns with school policy. When the students walked out at 10:00am, they were exiting during school hours without the school administration's consent, which is consistent with school policy standards for being marked truant. And, detention is within the Park Hill Handbook's scope of consequences that may result from truancy. Although the Handbook has no mention of an "administrative conference," the students' choice to *either* serve detention or attend an administrative conference indicates that an administrative conference was not an additional punishment; students maintained the agency to opt in to an administrative conference *or* to receive the policy-mandated punishment.

Conversely, also seen in Figure 6, Park Hill's decision to not let some students re-enter class was not driven or backed by policy. Nothing in the school policy states that students should not be let into class if they come late. The Handbook's policy surrounding "behavior that interferes with the academic setting or learning environment" states that said behavior will result in a consequence "determined by [the] site, scope and sequence" of a student's actions (PHSD, 2017, p. 77). The action of multiple students attempting to re-enter class could be viewed as "interfere[ing]" with the "learning environment." However, the fact that only *some* students were blocked from re-entering

suggests that this punishment was determined subjectively by teachers in the moment, instead of the teachers or administrators analyzing the “site, scope and sequence” of the situation, as the policy requires. Teachers and administrators certainly had the opportunity to determine these parameters, as they were aware of the walkout multiple days prior to its occurrence (Greenwood, 2018). Furthermore, this form of discipline also contradicts the district’s “commit[ment] to the philosophy that every student should attend every class, every period, every day” (PHSD, 2017, p. 17).

| Student Action | School Action | Is Consequence in Line with Policy? |
|---|--|-------------------------------------|
| Approximately 200 students walked out at 10:00am and re-entered school about 17 minutes later | All students who walked out were marked truant. School officials claim all students were required to attend an administrative conference. Some students report being given the option to either attend an administrative conference or serve an after-school detention | Yes |
| Students re-entered school at approximately 10:17 and attempted to return to class | Some teachers locked their classroom doors and blocked students from re-entering their classrooms until the next class period began, about 15 minutes later | No |

Figure 6: Evaluation of Park Hill Walkout in Context with Local Policy

Johansen High School, Modesto, CA

As seen in Figure 7, only two student actions from the Johansen High School March 14 walkout were identified, as well. Both disciplinary measures taken against these actions were consistent with school policy. When accounting for the five-minute passing period that occurred at 10:00 a.m., students are estimated to have missed approximately 15 minutes of class. School policy states that students may be marked tardy if they are not in class when the bell rings (JHS, 2018), which justifies the decision to mark those who walked out as tardy. School policy also states that students who leave “campus or the classroom without proper school authorization will be considered truant” (Ibid). According to these guidelines, it would have been within the school’s jurisdiction

to mark all students who participated in the walkout as truant. However, the school administration opted for the lighter mark of tardiness. In addition to being marked tardy, it is unclear if students were allowed to make up missed work. Though, teachers were within their rights to permit this or not, as the school’s Conduct Code holds that teachers may decide to allow makeup work or not when students are more than 10 minutes late to class (MCS, 2018).

| Student Action | School Action | Is Consequence in Line with Policy? |
|--|--|-------------------------------------|
| Between 200 and 250 students walked out of school at the beginning of the 10:00 a.m. - 10:05 a.m. passing period. Students re-entered school approximately 17 minutes later. | Students who walked out were marked as tardy. | Yes |
| Students are estimated to have missed about 15 minutes of class, total. | It is unclear whether students were allowed to complete a make-up assignment to make up for time missed. | Yes |

Figure 7: Evaluation of Johansen Walkout in Context with Local Policy

III. To What Extent Are School and District-Level Policies Consistent with Tinker?

As the most comprehensive legal standard of students’ right to free speech, *Tinker* stands the law of the land for public schools seeking to enact provisions that interact with student free speech or expression. The *Tinker* decision rests upon the principle that schools cannot limit student speech or expression unless said speech or expression “materially and substantially interfere[s]” with the functioning of the school or the rights of others (*Tinker v. Des Moines*, 1969, p. 509). In his majority opinion statement, Justice Fortas asserts that, “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression” (*Tinker v. Des Moines*, 1969, p. 508). What “materially and substantially” disruptive behavior looks like, and how it is to be

distinguished from “undifferentiated fear or apprehension of disturbance,” is vague and a difficult standard to apply (LoMonte, 2008). Though this ambiguity gives schools agency in deciding what disrupts the school environment, local school policy could be positioned as inconsistent with *Tinker* if it enables punishment of students based on potential rather than tangible disruption.

The two underlying principles of *Tinker* established in the content analysis relate to civic engagement and dissenting opinions, the logical outgrowth of the Supreme Court’s emphasis on the harm of limiting student speech and expression. Accordingly, school policies that go against the ethos of these principles could also be considered inconsistent with *Tinker*. To determine the extent to which school and district-level policy is consistent with *Tinker*, it must be analyzed through the lens of the *Tinker* standard of “material and substantial” disruption, as well as through the lens of both underlying principles.

Park Hill High School, Kansas City, MO

Two pieces of Park Hill school policy were identified as relevant to student protest and expression and were thus analyzed in relation to *Tinker*. Both of these policies were found in the general discipline information section of the Park Hill School District Handbook. There was no policy specific to protest in the Handbook. The definition for interfering behavior seen in Figure 8, row 1 is consistent with the *Tinker* standard of “material and substantial” disruption. Because the definition states “behavior that interferes” in the present tense, it communicates that only behavior that has already occurred and has been shown to interfere may warrant disciplinary action.

This definition is less aligned with the *Tinker* principle of encouraging dissenting opinions. *Tinker* states that students, “may not be confined to the expression of those sentiments that are officially approved” by a school (*Tinker v. Des Moines*, 1969, p. 511). And, that, “[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views” (Ibid, p. 511). “Disrespect” and “failure to obey” are not “specific” constitutional justifications to prohibit student speech or expression; rather, they are vague standards that enable teachers and administration to “confine” student expression to the sentiments held by the school or themselves, which certainly does not serve to encourage dissenting speech in the way the Court envisioned.

The second piece of Park Hill policy seen in Figure 8, row 2 gives school administrators the power to enforce additional disciplinary measures than what is mandated by policy when they deem additional punishment to be necessary. This policy does not fully align with the *Tinker* standard of disruption, as the first provision allows for school administration to bypass disciplinary guidelines for harsher disciplinary action, solely based on their own assessment of a situation. With no necessitation that administration identify a materialized disturbance before administering additional disciplinary action, there is potential for the imposition of disciplinary action based on *intuition* of disrespect or disobedience rather than the “material and substantial” evidence thereof.

The extent to which this piece of policy is consistent with *Tinker’s* principle of encouraging dissenting opinions remains unclear. The policy enables administrators to surpass disciplinary guidelines if they believe a situation warrants more “severe” action,

which empowers the subjective judgment of an administrator. This policy allows for disciplinary action without requiring the “specific” constitutional justification that *Tinker* calls for (*Tinker v. Des Moines*, 1969, p. 511), which poses great risk to students’ abilities to appropriately dissent within school.

| | School Policy⁹ | In line with Tinker Standard of "material and substantial" disruption | In line with Tinker principle of schools' responsibility to prepare students for lives of civic engagement and democratic involvement | In line with Tinker principle of schools' responsibility to foster and encourage dissenting opinions among students |
|---|--|--|--|--|
| 1 | "disrespect, classroom disruption, disruptive behavior, failure to obey, [and] defiant, or unruly conduct" = "behavior that interferes with the academic setting or learning environment"(p. 77). | Yes | Not Addressed | Unclear |
| 2 | “The principal, assistant principal or designee has the authority to impose more discipline than set forth in the guidelines if, in his or her judgment, the totality of the circumstances warrants such action. In addition, if appropriate under the circumstances, the principal, assistant principal, or designee may impose more severe disciplinary action if, in a short period of time or in a single event, a student engages in multiple acts that violate the discipline rules. Finally, the principal, assistant principal or designee may use discretion in the imposition of discipline when a student engages in a pattern of unacceptable conduct or otherwise displays a persistent refusal to comply with school rules. The superintendent or his or her designee has the discretion to modify these guidelines if deemed necessary under all of the circumstances” (p. 61). | Unclear | Not Addressed | Unclear |

Figure 8: Park Hill Policy and Determination of Alignment with *Tinker*

⁹ Selected policy was retrieved from the Park Hill School District Handbook, 2017

Johansen High School, Modesto, CA

As seen in Figure 9, seven pieces of Johansen school policy were analyzed through the lens of *Tinker* due to their identified relevance to student speech and expression. These seven pieces were found throughout different sections of Modesto City Schools' Conduct Code. Similarly to the Park Hill Student Handbook, there was no specific reference to protest at any point in the Conduct Code. Both the definitions for "willful defiance or disobedience" and "interfering with the peaceful conduct of the campus or classroom," seen in rows 1 and 2 of Figure 9, are consistent with the *Tinker* standard for "material and substantial" disruption; both connote that disciplinary action is only to be taken against an "act" that has already materialized. "Willful defiance or disobedience" is defined with specific language that protects students from subjective judgment calls, thus aligning it with *Tinker's* principle of encouraging dissenting opinions. Wording such as "refusal to obey a *reasonable* request" creates room for students to dispute requests they do not view as reasonable, allowing for the type of dissent the Court necessitates. The definition for interference with "peaceful conduct," seen in row 2, is not as clearly aligned with the dissenting opinions principle, as dissenting opinions may very well come across as "annoying," regardless of whether or not it is disruptive. The essence of the word "annoying" enables punishment of a student's speech or expression simply on the basis of displeasure held by the teacher, rather than genuine disruption.

Johansen's policies addressing "Off-Campus Misconduct," and dress code, found in rows 3 and 4 of Figure 9, both directly counter the *Tinker* standard of "material and substantial" disruption. Within the definition of "Off-Campus Misconduct," the phrase,

“is reasonably likely” permits disciplinary actions based on suspicion of disruption, rather than already materialized disruption, which directly opposes the *Tinker* standard. And, the inclusion of the phrase, “tends to,” in the dress code provision, allows for disciplinary action to be taken against an aspect of a student’s appearance that has not *yet* caused a disturbance. Even if an aspect of appearance has demonstrated a past pattern of disruption, Fortas asserts that “we must take t[he] risk of disturbance,” as “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression” (*Tinker v. Des Moines*, 1969, p. 508). The entire premise of *Tinker* was built off the suspicion that a student’s appearance would disrupt the school environment. Hence, any school policy that pre-emptively serves to punish students for potential disruption stemming from appearance surely goes against the very core of the *Tinker* decision.

Johansen’s three provisions describing the school’s citizenship standards, seen in rows 5,6, and 7, are the only pieces of policy that address *Tinker*’s principle of civic engagement and democratic involvement, and all are consistent with this underlying principle. The policy states that the school holds citizenship standards as a means of “preparing” students for active lives of citizenship, following school. This reasoning very much speaks to Fortas’s statement that the State and all of its “creatures” serve to “educat[e] the young for citizenship” (*Tinker v. Des Moines*, 1969, p. 507). Fortas asserts that this responsibility to educate students for lives of citizenship necessitates that students maintain a “scrupulous protection of Constitutional freedoms,” so that they may explore what citizenship entails within the principles of our government, without said principles being reduced to “mere platitudes” (*Tinker v. Des Moines*, 1969, p. 507). The

list of criteria used to assess students' citizenship, found in row 6, focuses more on participatory requirements such as punctuality and productivity than on providing students with said "scrupulous" protections as a means of fully engaging with citizenship education. Nonetheless, this policy supports the ethos of *Tinker's* civic engagement principle through placing importance on exploring the intersection between citizenship and school. And, the inclusion of the option to appeal citizenship marks given, seen in row 7, indicates that the district views citizenship as rooted in the sharing of perspectives and mutual understanding, rather than in a one-sided verdict. Promoting students to reach mutual understanding through communication encourages students to discover "truth 'out of a multitude of tongues, [rather than through any kind of authoritative selection]," as the Court advocates for. Furthermore, such an openness surely yields a great deal of ability for students to express dissenting opinions without fear of punishment, as they are given the opportunity to rationalize their opinions if they do not feel consequences to be fair.

| | School Policy¹⁰ | In line with Tinker Standard of "material and substantial" disruption | In line with Tinker principle of schools' responsibility to prepare students for lives of civic engagement and democratic involvement | In line with Tinker principle schools' responsibility to foster and encourage dissenting opinions among students |
|---|--|--|--|---|
| 1 | "willful defiance or disobedience" = "A willful act, verbal or non-verbal, that demonstrates deliberate resistance or refusal to obey a reasonable request or directive issued by a school district employee" (p. 31). | Yes | Not Addressed | Yes |
| 2 | "Interfering with the peaceful conduct of the campus or classroom" = "Any willful act of a minor but annoying nature, verbal or non-verbal, that disrupts the educational process, distracts from the educational environment, or interrupts any administrative, disciplinary, or other activity sponsored or approved by the district" (p. 31). | Yes | Not Addressed | Unclear |
| 3 | "Off-Campus Misconduct" = "Misconduct related to school activity or attendance [that] causes or is reasonably likely to cause a substantial disruption to school activity" (p. 64). | No | Not Addressed | Not Addressed |
| 4 | "Any dress, grooming, or appearance which disrupts, or tends to disrupt the educational process, or affect the health or safety of individuals shall be prohibited" (p. 35). | No | Not Addressed | Not Addressed |
| 5 | Reasoning for Citizenship Standards: "It is one of the school's duties to assist parents in helping students develop responsible attitudes and behavior. This means preparing students for adult citizenship as well as preparing them for jobs and higher education" (p. 47). | Not Addressed | Yes | Not Addressed |
| 6 | Criteria for Citizenship Mark: "Attends class daily, comes to class on time, comes to class with necessary materials, turns in assignments/homework/projects on time, does his/her own work when independent work is required, shows respect for others, does not disrupt class; exercises good conduct" (p. 47). | Not Addressed | Yes | Not Addressed |
| 7 | "Students and parents have the right to appeal citizenship marks which they feel are in error or unjustified" (p. 47). | Not Addressed | Yes | Yes |

Figure 9: Johansen Policy and Determination of Alignment with *Tinker*

Discussion

The results found through these analyses are not representative of punishment or policy trends across the nation, but they do reveal several noteworthy points. The content analysis of *Tinker* demonstrates that, by the logic of *Tinker's* underlying principles, American public schools must serve to teach students how to engage with society and communicate their wants and desires through the democratic systems in place. It is unclear, however, if all schools see this as their responsibility (Labaree, 2010).

Whenever a school disciplines a student for something they should “not” do, the school sends a message of what is considered right and wrong. Many of these messages do not line up with the underlying principles of *Tinker*. How is this purpose undermined when students are punished for speaking out and protesting gun violence? What do punishments teach students about active participation in democracy? Students should not necessarily be allowed to leave school without consequence, but disciplinary actions and policy contribute to students’ understanding of the purpose of school and their place in democracy.

Results also show that three out of four of the disciplinary actions reviewed were consistent with school disciplinary policy. The one exception did not involve acting against school policy, but rather a situation in which there was a complete absence of relevant school policy. Park Hill does not have a policy that tells teachers what to do when students leave class to participate in a political protest and seek to reenter the classroom afterwards. The most relevant school policy available, in that moment, was the procedure for “general interference,” but this procedure was not followed. These teachers

¹⁰ Selected policy was retrieved from the Modesto City Schools (MCS) Handbook, 2018

decided on their own to simply refuse reentry to class for some students. There was much uncertainty surrounding how teachers were *supposed* to respond as these students came back inside, which gave teachers the power to respond in the way they *wanted* to, based on their personal opinions of the walkout. This resulted in many Park Hill students being punished for attempting to exercise their right to political expression, when punishment may not have been warranted. This sequence of events suggests that when there is a lack of sufficient guidance or uncertain policy, students' rights are more likely to be violated.

Furthermore, results show that hardly any of the policies analyzed address *Tinker's* underlying principle of preparing students for civic engagement and democratic involvement. Modesto City Schools' "Citizenship Mark" policy is the sole one to directly engage with it. While also not representative of widespread trends, in the context of these case studies, one must wonder why the school policies address dissenting opinions and the standard of disruption much more. It is possible that the promotion of civic engagement and democratic involvement are not seen as policy issues by school districts. It is also possible that promoting civic engagement and democratic involvement is not as widely valued by school districts as other principles or standards. Regardless, just as the lack of relevant guidance surrounding how Park Hill teachers should respond to students re-entering class prompted rights violations, the lack of policy on this topic may open the door for students' right to civic engagement to be violated, as well. The right to civically engage certainly does not equate to the right to leave school to protest. However, the two are related and *Tinker's* underlying principle of civic engagement should factor into disciplinary decisions surrounding student protest. Though, without sufficient guidance,

this principle may be overlooked in the face of student protest, and the rights students hold to civically engage may be disregarded, in the process.

These findings indicate a risk to students' right to free speech when there is a lack of policy detailing how to respond to specific, and somewhat unique, manifestations of speech and expression. Protest is one example of such a manifestation. Thus, the two previous findings and the finding that there were no pieces of policy, at either school, that directly referred to protest, politically-motivated speech, or any topic of this nature should be deeply concerning. Furthermore, additional research revealed that there are only a few school policies, nationwide, that specifically address the act of protest or similar types of political expression (Heim, 2018). Without specific policy addressing the rights students hold in the case of protest, much uncertainty arises when analyzing the extent to which existing policies violate students' rights to political speech and expression, as discussed in the next finding.

In regard to the second research question, the results reveal that the extent to which school and district-level policies align with *Tinker* is not always clear cut. Many pieces of policy use vague language that *allow* for *Tinker* to be violated but do not necessarily *call* for *Tinker* to be violated. The policies that were identified as firmly aligned with *Tinker's* standards and principles were those that utilized specific and detailed language. Few of the policies analyzed are directly contrary to *Tinker* and thus would not legally necessitate immediate change. However, as future policies related to student conduct are crafted, it is crucial for students' ability to fully exercise their rights to free speech and expression that these policies are as specific and consistent with *Tinker's* standards and underlying principles as possible. With policies as vague as those

found in both case studies, and with the extensive lack of protest-specific policy, there are very few safeguards in place to ensure that teachers and administrators do not violate students' rights as they attempt to exercise them. More pertinently, in the context of the March 14 walkout, there were very few safeguards in place to ensure that students were not being punished when they should have maintained the right to participate.

Conclusion

School administrators hold a significant amount of discretionary power in deciding how their schools respond to instances of protest. At Park Hill, all students who walked out were marked truant and given detention or required to attend an administrative conference. And, some students were not let back into their classes after walking out. At Johansen, policy states that students could have been marked truant for walking out, but the principal decided that the situation only warranted marking those who walked out as tardy. Beyond the case studies, at Santa Monica High School in Southern California, teachers led participating students outside and stood with them for the 17-minute protest (Yee & Blinder, 2018). At Clark High School in Clark County, Nevada, the Principal supported the walkout and identified it as a good opportunity for student expression (Kudialis, 2018). By contrast, over 200 students at Pennridge High School in Perkasie, Pennsylvania received detention for participating in the walkout (Strauss, 2018). And, approximately 75 students at South Plainfield High School in South Plainfield, New Jersey received in-school suspensions for participating in the walkout (Davis, 2018).

Varying local policy is to be expected, but vague disciplinary criteria about federally protected rights creates opportunity for responses based on administrators'

personal discretion; school administrators are deciding when student protests warrant full enforcement of disciplinary policy and when disciplinary guidelines should be disregarded due to the nature of the protest. Significant discretion, in turn, leaves room for those with decision-making power to rely inordinately on their subjective values. However, *all* students maintain the same rights to political speech and expression under *Tinker*; how, and in what context, they can exercise these rights should not be a decision made by individual administrators. Relying on administrative discretion sends the message to students that their rights to speech and expression in certain circumstances are dictated by their school, rather than by their constitutional rights. This cannot be what Justice Fortas envisioned when he stated that teachers and students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (*Tinker v. Des Moines*, 1969, p. 513). And, while this high level of discretion and subjectivity holds potential to wrongly discipline all students for instances of speech or expression, the potential to be wrongly punished stands higher for some students.

As a general proposition, when there is significant room for discretion and subjectivity in disciplinary processes, racial bias has been shown to play a significant role in disciplinary decision-making. A joint 2014 Dear Colleague Letter put out by the Department of Justice and the Department of Education discusses how, “racial biases or stereotypes may be manifested” in the face of “unguided discretion” (Lhamon & Samuels, 2014). The effects of such racial bias are evident in the discipline gap between white students and students of color: as of 2014, non-disabled African-American students were three times as likely to be suspended or expelled than their white peers (Ibid). African-American students are also disproportionately represented among those reported

to be suspended once, multiple times, expelled, or referred to law enforcement (D.O.E., 2018). Racial biases among teachers is a widely documented phenomenon (Gershenson et al., 2016). The more teachers are enabled to employ subjectivity, or “unguided discretion,” in their disciplinary decisions, the more these biases will play a role in this process.

Such discretion is not only dangerous within the disciplinary process; historically, discretionary power has led to inequity in a wide variety of educational contexts. Common Schools in the 1830s increased access to elementary education at the discretion of local officials who left, “millions of poor, non-white and special-needs children drastically underserved and undereducated” (Goldstein, 2013, p. 3). The landmark Supreme Court Case, *Brown v. Board of Education* (1954) ruled that school segregation was unconstitutional (Oyez, n.d.). However, the Court did not provide any guidance or regulations stating how school integration should be implemented. As a result, those with decision-making power set policies that disproportionately disadvantaged African-American students and teachers in the process (Gladwell, 2017). The Elementary and Secondary Education Act of 1965 (ESEA) was part of the Johnson administration’s War on Poverty. But, it provided little guidance on how funds should be allocated to aid the most “economically-deprived” students (Peters, 2013). Consequently, state and local authorities could “pork barrel” the funds, allotting money to school districts, “regardless of the concentration of low-income students,” and typically harming non-white students (Ibid, p. 359; NCCP, 2016).

If discretion and subjectivity are spurring inequity in various educational arenas and are impacting the general disciplinary process, the biases that come with these

practices may also be playing into disciplinary decisions related to protest. Thus, the high level of discretion and subjectivity allowed in protest-related disciplinary decisions is a crucial factor to consider when assessing the rights students of color maintain to protest. This data suggests that, as long as school administrators are permitted to subjectively decide when students should be punished in response to protest, students of color will be punished at a higher frequency and will therefore be more dissuaded from participating in protest, which certainly qualifies as a rights violation, in itself.

Due to the ways that protest directly intersects with students' rights under *Tinker*, and the extent to which other Supreme Court cases have emphasized the need to protect students' political speech, protest stands a unique and separate issue from matters such as routine truancy, tardiness, and absence policies. As future instances of student protest inevitably arise, school districts should start to formulate and implement disciplinary policy related to student protest and political expression, specifically. To do this, though, administration must first understand the rights students hold under *Tinker* and then decide how the standards they establish on a school or district-level can serve to afford students these rights. Given the variance in responses seen in spring 2018, and the history of schools being unaware of the legal protections students hold in other forms of student activism (Tashman, 2017), there appears to be widespread ignorance surrounding the rights students maintain under *Tinker*. Therefore, a good first step to this process would be the creation of more clear and comprehensive guidance on *Tinker* and for this guidance to be distributed to schools and districts, nationwide.

The school board in Montgomery County, Maryland recently proposed a policy that would allow high school students to take up to three excused absences a year to

“participate in political protests and other forms of ‘civic engagement’ during the school day” (Heim, 2018). If passed, this policy would be one of only a few school policies, nationwide, that directly addresses student protest (Ibid). School protest policy does not necessarily need to enable students to leave school to protest; these policies need only standardize and specify the criteria for disciplinary action in response to protest in a way that affords students the rights they maintain under *Tinker*. Montgomery County’s proposed policy recognizes political protest and expression as a unique issue and provides distinctive and unambiguous guidelines, accordingly. In this way, Montgomery County should serve as an example for other school districts, moving forward.

Student protest is not a new phenomenon, and protests of this nature will inevitably arise again. However, the student walkouts of spring 2018, nonetheless, seem somewhat exceptional in the massive amounts of student participants and national attention they garnered. This is a crucial moment at the intersection between student protest, student rights, and school policy, and the way schools across the country respond to these walkouts has the potential to set the precedent for how schools will respond in the future. Future research should continue to examine the questions of how, when, and to what extent students’ rights were violated during the spring 2018 walkouts. These answers will help to craft effective protest-policy that protects the rights of all students to free speech and expression.

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