



# Unit 5

## Free Speech Rights in Schools

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**Unit Questions**

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How are students' free speech rights protected in a public school environment? To what extent can public school officials exercise discipline and control over a student's speech without infringing on the First Amendment? What role do negotiations play in the legal process and how can parties use a negotiation to resolve conflict without trial? How do court arguments work in the legal process?

**Length of Unit**

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This unit consists of six one-hour class sessions.

Lessons 1-3 develop the factual background of a fictional case involving a First Amendment controversy in the public school context. These lessons introduce Supreme Court decisions about students' First Amendment rights, as well as a complaint and three depositions from the fictional case. Depositions are interviews with witnesses conducted under oath. After completing these first three lessons, teachers have two options:

- Proceed to lessons 4-6, which allow students to conduct a mock negotiation, OR
- Proceed to lessons 7-8, which allow students to conduct a mock oral argument.

**Overview**

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This unit asks students to consider the permissible restrictions schools can place on students' freedom of speech, as they learn about the (fictional, but realistic) case of *Davis v. Ann Arbor School Board*. Students will either conduct a mock negotiation in which they will try to resolve a First Amendment related conflict between a student and his public high school, or a mock argument in which they will argue for one side in front of a panel of student judges.

**Unit Objectives and Standards**

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By the end of this unit, students will be able to:

- Summarize the facts and identify the First Amendment issues and holdings in opinions from the United States Supreme Court.
  - [CCSS.ELA-LITERACY.RI.11-12.1](#); [CCSS.ELA-LITERACY.RI.11-12.8](#);  
[CCSS.ELA-LITERACY.RH.11-12.2](#);
  - [C3 D4.2.9-12](#);
  - [MI-HSCE P2.3](#);
- Explain the importance and scope of First Amendment rights and the reasons for limitations on those rights in the public school context.
  - [NSCG I.L.D.3](#); [NSCG I.L.D.4](#); [NSCG V.B.2](#); [NSCG V.B.5](#)
  - [CCSS.ELA-LITERACY.RI.11-12.8](#);
  - [C3 D2.Civ.4.9-12](#);

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- [MI-HSCE 5.3.2](#); [MI-HSCE 5.3.4](#); [MI-HSCE 5.3.6](#);
- Assess whether a (fictional) student's First Amendment rights were violated; support arguments with specific facts from the case materials and authority from United States Supreme Court opinions.
  - [CCSS.ELA-LITERACY.SL.11-12.4](#); [CCSS.ELA-LITERACY.RI.11-12.7](#);
  - [C3 D3.3.9-12](#); [C3 D3.4.9-12](#); [C3 D4.1.9-12](#); [C3 D4.2.9-12](#);
  - [MI-HSCE P2.3](#); [MI-HSCE P2.4](#);
- Evaluate the advantages, disadvantages, and overall effectiveness of negotiations and oral arguments as a means of conflict resolution.
  - [NSCG III.D.1](#); [NSCG III.D.2](#); [NSCG V.D.4](#)
  - [C3 D2.Civ.14.9-12](#); [C3 D2.Civ.11.9-12](#);
- Collaborate with other students to resolve multiple pieces of a conflict through a mock negotiation or mock argument.
  - [CCSS.ELA-LITERACY.SL.11-12.1](#)
  - [C3 D2.Civ.7.9-12](#); [C3 D2.Civ.10.8-12](#);
  - [MI-HSCE P4.1](#);

### **Anticipated Student Understanding/Challenges to Understanding**

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This unit assumes that students have *not* been introduced to the litigation process and court procedures which are addressed more fully in Unit 1 on this website. Unit 1 provides useful background information but is not a prerequisite for this unit, as basic explanations and resources are included throughout the lessons as needed.

### **Materials Needed**

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#### *What we provide:*

- Unit readings and handouts
- Teacher answer keys
- Sample court documents including a complaint and depositions

#### *What you provide:*

- Hard copies of handouts
- A stopwatch for the mock argument

### **Unit Assessment**

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Students will either:

- conduct a mock negotiation and develop a settlement agreement that addresses the interests and goals of each party in the case *Davis v. Ann Arbor School Board*; or
- prepare and deliver a mock oral argument advocating for one of the parties, while supporting the arguments with holdings and reasoning from the U.S. Supreme Court.

### **References**

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## Unit 5: Overview

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- Dorn, Jonathan, *For Argument's Sake: Playing "Devil's Advocate" With Nonfiction Texts* (last visited January 1, 2017), [http://www.readwritethink.org/files/resources/lesson-docs/HowtoPlay\\_Devils\\_Advocate.pdf](http://www.readwritethink.org/files/resources/lesson-docs/HowtoPlay_Devils_Advocate.pdf)
- *Teaching Materials & Publications*, Program on Negotiation at Harvard Law School (last visited December 25, 2016), <http://www.pon.harvard.edu/store>

## Lessons

### Lessons 1-3: Factual and Legal Background

#### **Lesson 1: Are schools permitted to limit students' First Amendment freedom of speech?**

Students will formulate hypotheses about the scope of a student's freedom of speech; read the fictional complaint; and read a seminal opinion from the U.S. Supreme Court on First Amendment rights in the public school context.

Students will be able to:

- Hypothesize scenarios where a student's freedom of speech might be limited in the school context, drawing on their own experiences and intuitions.
- Describe the factual background of *Davis v. Ann Arbor School Board*, the (fictional) case around which this unit is structured.
- Identify the rule of *Tinker v. Des Moines Independent Community Sch. Dist.* and explain the Court's rationale.

#### **Lesson 2: Under what circumstances may a school punish student speech?**

Students will continue reading and synthesizing opinions of the U.S. Supreme Court which describe situations in which a school may punish or otherwise censor student speech.

Students will be able to:

- Summarize and explain the rules from three Supreme Court opinions.
- Identify textual clues about how the Supreme Court rules might apply in the case at hand.

#### **Lesson 3: How does the law apply to our case?**

Students will read the depositions of three key players in the fictional case, and apply the Supreme Court opinions to the facts collected from the depositions.

Students will be able to:

- Contrast the facts of the complaint with the deposition testimony.
- Analyze how the law would apply to the facts of the case.

### Lessons 4-6: Negotiation

#### **Lesson 4: What are the key elements of a negotiation?**

Students will learn about the principles of a negotiation, identify the desires and demands of their clients, and begin planning and strategizing for a mock negotiation.

Students will be able to:

- Examine the key principles relating to negotiations.
- Formulate a negotiation plan for their side.

#### **Lesson 5: How can parties use negotiation to achieve the best solution?**

Students will engage in a mock negotiation with other students who are representing the opposite side.

Students will be able to:

- Practice their negotiation skills using the facts from *Davis v. Ann Arbor School Board*.
- Evaluate the outcomes of the negotiation.

**Lesson 6: Is negotiation an effective tool in the legal process?**

Students will evaluate and critique their negotiations and compare outcomes and strategies with other groups.

Students will be able to:

- Compare the results of their negotiations with their peers and evaluate their own negotiation strategies.
- Identify the advantages and disadvantages of engaging in negotiations.

Lessons 7-9: Mock argument

**Lesson 7: What is an oral argument?**

Students will learn about the role of summary judgment in the litigation process and practice using Supreme Court opinions to support their arguments.

Students will be able to:

- Identify some of the steps of the litigation process before trial
- Explain where an oral argument can take place in the litigation process
- Explain the key elements and roles of an oral argument

**Lesson 8: How do I prepare for a mock argument?**

Students will outline and strategize to prepare for their roles in the mock oral argument.

Students will be able to:

- Identify the strengths and weaknesses in their party's main arguments.
- Prepare arguments with textual support from the fictional depositions and the supporting Supreme Court opinions.
- Anticipate and respond to questions addressing weaknesses in each party's arguments.

**Lesson 9: How do attorneys conduct oral arguments to advocate for their clients?**

Students will conduct a mock oral argument and evaluate their performances.

Students will be able to:

- Organize and deliver oral arguments to a panel of judges during a mock argument exercise.
- Defend a position by referring to facts from fictional depositions and reasoning from Supreme Court opinions.
- Respond to questions from judges and rebut arguments from opponents.