FIRE
Foundation for Individual Rights and Expression

December 10, 2024

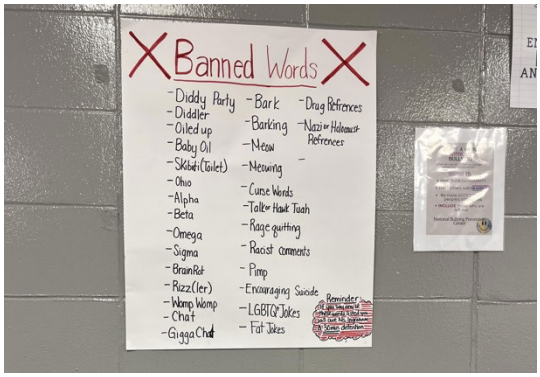
Kurt Hanna
7-12 Principal
Fremont-Mills Community School District
1114 US Highway 275
Tabor, Iowa 53913

Sent via U.S. Mail and Electronic Mail (khanna@fmtabor.org)

Dear Principal Hanna:

The Foundation for Individual Rights and Expression (FIRE) is concerned by Fremont-Mills Community School District (Fremont-Mills CSD) teacher Leah Ingraham's list of "banned words" in her classroom. As a nonpartisan nonprofit dedicated to defending freedom of speech, FIRE is committed to ensuring public schools do not infringe students' First Amendment rights. We understand schools have a legitimate interest in preventing classroom disruptions, but that does not justify categorically banning a long list of words, phrases, and references—including ordinary words like "Ohio" and "chat"— without regard to context. FIRE thus calls on Fremont-Mills CSD to remove the unconstitutional list of banned language from Ingraham's classroom.

Ingraham, a seventh-grade social studies teacher at Fremont-Mills CSD, posted this list of "Banned Words" in her classroom:[1]



[1] The narrative in this letter represents our understanding of the pertinent facts, but we appreciate that you may have additional information to offer and invite you to share it with us.

As the poster indicates, use of any terms on the list (which includes not just banned words but banned references and categories of jokes) automatically results in a thirty-minute detention. Ingraham reportedly has punished at least ten students under this rule, which cannot withstand First Amendment scrutiny.

It is well-established that public school students do not shed their First Amendment rights at the schoolhouse gate.[2] As the Supreme Court recently reaffirmed, "America's public schools are the nurseries of democracy."[3] They accordingly maintain an interest in *protecting* students' freedom to express themselves.[4] While schools may restrict student speech in limited situations for limited purposes, "[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."[5]

In the seminal student speech case *Tinker v. Des Moines Independent Community School District*, the Supreme Court held the First Amendment protected public school students' right to wear black armbands to school to protest the Vietnam War.[6] The Court explained school officials cannot restrict student speech absent concrete evidence it "would materially and substantially disrupt the work and discipline of the school" or "inva[de] the rights of others."[7] Substantial disruption is a "demanding standard"[8] that requires more than "undifferentiated fear or apprehension of disturbance."[9] School officials lack authority to limit speech simply because it is controversial or elicits *some* reaction from others.[10]

As the Court explained:

> Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is 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.[11]

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[2] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

[3] *Mahanoy Area School District v. B.L*, 594 U.S. 180, 190 (2021).

[4] *Id.*

[5] *Tinker*, 393 U.S. at 511.

[6] *Id.* at 513–14.

[7] *Id.* at 513; *see also Saxe v. State College Area Sch. Dist.*, 240 F.3d 200, 211 (3d Cir. 2001) ("*Tinker* requires a specific and significant fear of disruption").

[8] *Mahanoy*, 594 U.S. at 193.

[9] *Tinker*, 393 U.S. at 508.

[10] *Id.* at 510 (explaining that school authorities' "urgent wish to avoid the controversy which might result from the expression" does not justify censorship); *see also C1.G v. Siegfried*, 38 F.4th 1270, 1279 (10th Cir. 2022) (holding that four emails from parents, an in-school discussion, and news reports about a student's Snapchat post fell short of "*Tinker*'s demanding standard" for substantial disruption).

[11] *Id.* at 508–09.

Since *Tinker*, the Supreme Court has recognized only "three specific categories of student speech that schools may regulate in certain circumstances."[12] First, schools may regulate student speech "bear[ing] the imprimatur of the school," such as a school newspaper, so long as its "actions are reasonably related to legitimate pedagogical concerns."[13] That standard does not, however, apply to "a student's personal expression that happens to occur on the school premises."[14] Second, schools may curb speech during school activities "that can reasonably be regarded as encouraging illegal drug use."[15] And third, schools may prohibit plainly vulgar and lewd speech during school activities.[16] While *Fraser* suggested public schools could also prohibit "offensive" student speech, the Court's subsequent decision in *Morse* retreated from that language, explaining that *Fraser* "should not be read to encompass any speech that could fit under some definition of 'offensive.'"[17]

The upshot of these decisions is that public schools may regulate student speech only if it falls within one of these narrow exceptions or causes substantial disruption. School authorities do not have unfettered discretion to ban any speech they subjectively deem inappropriate or contrary to the school's educational mission.

Under these principles, courts do not tolerate overly broad restrictions on large swaths of legitimate student expression. For example, the U.S. Court of Appeals for the Third Circuit struck down a public school's harassment policy because it prohibited a significant amount of speech that was neither vulgar, school-sponsored, nor likely to cause substantial disruption.[18] And the Fourth Circuit preliminarily enjoined a public school dress code barring messages that relate to weapons, observing it excluded "a broad range and scope of symbols, images, and political messages that are entirely legitimate and even laudatory."[19] The court emphasized the lack of evidence that clothing expressing nonviolent and nonthreatening messages related to weapons "ever caused a commotion or was going to cause one" at the school.[20]

Ingraham's list of "banned words" likewise prohibits a substantial amount of protected student speech. While many have slang meanings, slang is not inherently disruptive or vulgar. The banned word "Ohio," for example, recently gained popularity among Generation Alpha—those born after 2009—to "describe something weird or bizarre."[21] "Rizz" is slang for "charisma."[22]

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[12] *Mahanoy*, 594 U.S. at 187–88.

[13] *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271–73 (1988).

[14] *Id.* at 281.

[15] *Morse v. Frederick*, 551 U.S. 393, 397 (2007).

[16] *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683–85 (1986).

[17] *Morse*, 551 U.S. at 409.

[18] *Saxe*, 240 F.3d at 216.

[19] *Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 260 (4th Cir. 2003).

[20] *Id.* at 259.

[21] Arianna Johnson, *The Meaning Behind The 'Ohio' Meme And Why It's Taken Off In Popularity This Summer*, Forbes (Aug. 30, 2024), https://www.forbes.com/sites/ariannajohnson/2024/08/30/the-meaning-behind-the-ohio-meme-and-why-its-taken-off-in-popularity-this-summer.

[22] *Id.*

"Sigma," in slang, refers to "men who are successful and popular, but also silent and rebellious, a type of man who likes to 'play by his own rules.'"[23] Absent more, these innocuous uses are protected. Many of the banned words also carry traditional, non-slang meanings, yet the list does not make an exception even for these uses. Can a student refer to the state of Ohio? Or mention a "chat" with a friend? Or describe a "barking" dog (or "alpha" wolf)? Benign student speech must not be a casualty of efforts to prevent disruption.

The bans on "references" to certain topics present the same problem. While Fremont-Mills CSD may ban speech that encourages illegal drug use,[24] that does not justify banning *any* reference to drugs. After all, speech that *discourages* illegal drug use also references drugs but remains protected. Nazi and Holocaust references are similarly not *per se* disruptive. They may even be relevant to the curriculum in a social studies class. Or students may make such references or use other words on the list as part of commentary on social or political issues—speech that is "at the core of what the First Amendment is designed to protect."[25]

While *some* uses of the banned words, references, and jokes in *some* contexts may be grounds for discipline if they cause *substantial* disruption or otherwise fall outside First Amendment protection, there is no constitutional justification for outright banning them. A general "fear or apprehension of disturbance" arising from certain uses of these words is not enough.[26] It would be a strange First Amendment that protected the right of middle school students to wear breast cancer awareness bracelets with the slogan, "I 🖤 boobies,"[27] but allowed school authorities to impose an absolute ban on the word "Ohio."

For the foregoing reasons, FIRE calls on Fremont-Mills CSD to remove the list of "banned words" from Ingraham's classroom. We request a substantive response no later than December 23, 2024.

Sincerely,

Aaron Terr, Esq.
Director of Public Advocacy

Cc: Dave Gute, Superintendent, Secondary

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[23] *Sigma Males*, KNOW YOUR MEME, https://knowyourmeme.com/memes/sigma-males (last visited Dec. 4, 2024).

[24] *Morse*, 551 U.S. at 408. To be clear, this authority is narrow and should not be interpreted as a blessing for broader censorship. The Court described deterring drug abuse by schoolchildren as an important, perhaps compelling, government interest and distinguished it from "an abstract desire to avoid controversy." *Id.* at 407, 409. In concurrence, Justices Alito and Kennedy clarified that they joined the narrow 5-4 majority opinion on the understanding that "it goes no further than to hold that a public school may restrict speech that a reasonable observer would interpret as advocating illegal drug use." *Id.* at 422.

[25] *Id.* at 403. (citation omitted).

[26] *Tinker*, 393 U.S. at 508.

[27] *B.H. v. Easton Area Sch. Dist.*, 725 F.3d 293, 305 (3d Cir. 2013) (*en banc*).