

**CLIENT NEWS BRIEF**

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**STUDENT WALKOUTS FOR IMMIGRATION PROTESTS DO NOT RECEIVE  
FIRST AMENDMENT PROTECTION**

In Corales v. Bennett (9th Cir. 2009) \_\_\_ F.3d \_\_\_ (“Corales”), the United States Ninth Circuit Court of Appeals upheld the constitutionality of a middle school’s anti-truancy policy in the face of a First Amendment free speech challenge by students. The court concluded that a school’s anti-truancy policy is a content-neutral restriction on speech that serves important interests, including safeguarding the safety and education of students. As such, students’ violation of the truancy policy by leaving school midday to join a protest rally was not a protected activity under the First Amendment.

In 2006, four middle school students walked out of school without parental or school permission to join a protest of immigration reform legislation. Two days later, an assistant principal sternly lectured the students regarding truancy, and ultimately removed their privileges from attending an end of school year social event. That same day, one of the reprimanded students committed suicide. The parents of the students filed suit in federal district court, alleging the students’ walkout from school was a protected activity under the First Amendment, among other claims.

In 2007, a district court held that the First Amendment did not bar school officials from disciplining the students for leaving school without prior authorization or supervision. The district court refused to grant relief to the students under their First Amendment claims, relying on the seminal United States Supreme Court case of Tinker v. Des Moines Independent Community School District (1969) 393 U.S. 503 (“Tinker”). The district court held that the walkout was expressive conduct. However, the district court determined the conduct disrupted the school environment, was potentially damaging to student safety and, therefore, not protected speech under the First Amendment. The parents appealed.

The Ninth Circuit Court of Appeals affirmed the outcome of the district court's decision. However, unlike the district court or the parties, the court did not rely on Tinker and its exception to student free speech rights for expression that disrupts the school environment. Instead, the court analyzed whether a content-neutral rule prohibiting students from leaving school without permission violates student free speech rights, if students intend to engage in expressive conduct through the mere act of leaving school.

The court held that the Tinker framework is intended to apply only to decisions by a school to punish based on the student's speech or expressive conduct itself. In this case, the school did not punish the students for the disruptiveness of their expressive conduct itself, but for the disruption caused by leaving the campus inappropriately. Therefore, unlike in Tinker, the school did not exercise discretion in deciding whether to discipline the students based on their speech viewpoint. Instead, the school reprimanded the students based on school rules that clearly stated the minimum and maximum penalties for truancy, regardless of whether the students' truancy related to expressive conduct.

Corales relies, in part, on the Ninth Circuit's recent decision in Jacobs v. Clark County School District (2008) 526 F.3d 419 ("Jacobs"), holding that a school uniform policy is a permitted viewpoint and content-neutral restriction on student speech. Because the policy in Jacobs left open various alternative means of student communication and restricted speech only during school hours in order to promote student safety and achievement, the uniform policy did not violate students' free speech rights.

Similarly, in Corales, the court reasoned that the school's anti-truancy policy limited students' expressive conduct only during school hours and did not interfere with students' ability to engage in other speech regarding immigrants' rights during school hours, both in class and about campus. The court also reasoned that the content-neutral anti-truancy rule furthers important interests unrelated to the suppression of speech, due to the important school and government interests in enforcing compulsory education, keeping minors safe from the influence of the street, maximizing school funding based on attendance, and limiting potential liability for negligent failure to supervise a truant student properly. Further, the school sufficiently tailored the policy to meet these specific interests. As a result, the court concluded that the school's anti-truancy policy met the required standards to allow restriction of conduct even where the conduct is imbued with elements of student expression. Therefore, the plaintiffs' walkouts did not merit protection under the First Amendment, even if the students intended to express their support for immigration reform by participating.

The Ninth Circuit decision recognized that to allow students an exemption to school attendance requirements to take part in student walkouts or similar expressive conduct "would be to allow 12 to 14 year old students to leave school without the permission of their parents or school authorities to engage in any claimed First Amendment activity, no matter the danger." The analysis in Corales confirms schools' ability to limit expressive conduct via content-neutral rules concerning school disruption and student safety.

If you have any questions regarding the Corales decision, or student free speech rights in general, do not hesitate to contact one of our seven statewide offices.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

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