



---

## Discipline For Protest Did Not Violate Students' First Amendment Rights

The Ninth Circuit Court of Appeals recently held in *Corales v. Bennett*, (2009) WL 1508581, that a school district did not violate students' First Amendment rights when it disciplined them for skipping school to participate in a protest.

In *Corales*, four middle school students in Ontario, California walked off their school campus to participate in a rally against federal legislation that would have criminalized assisting illegal immigrants. The Vice Principal disciplined the students and lectured them regarding possible legal consequences of their actions, including police involvement, a \$250 fine, and a juvenile hall sentence. The students filed a lawsuit against the Vice Principal, Principal and the school district, alleging, among other things, violations of their First Amendment right to engage in expressive conduct.

The Ninth Circuit initially recognized that the students arguably engaged in expressive conduct when they walked off campus to protest the pending legislation. However, the Court found that the Vice Principal did not discipline the students for their expressive conduct, but for the disruption caused by their act of leaving campus without permission in violation of the school's anti-truancy policy. As a result, the Court analyzed the Vice Principal's actions under the "Intermediate Scrutiny Test," an analysis that allows school districts to prohibit certain types of student conduct so long as the prohibition is (1) content neutral and (2) narrowly drawn to further a substantial government interest.

In applying the "Intermediate Scrutiny Test," the Court explained that the school's anti-truancy policy was a content-neutral rule that furthered important interests unrelated to the suppression of student speech. For example, it enforced compulsory education, helped protect minors from outside influences, maximized school funding based on attendance, and limited potential liability for negligent failure to supervise truant students. In addition, the anti-truancy policy only limited students' expression during school hours, leaving ample alternative channels for student communication. Consequently, the Court held that the school district did not violate the students' First Amendment rights when it disciplined and reprimanded them for leaving campus.

This decision demonstrates that school districts can discipline students who violate school policy by leaving campus during the school day to engage in off-campus events, even if those events would be constitutionally-protected conduct. However, school districts must ensure that their policies are content neutral and narrowly tailored to address only the violation of the school's policy.

Should you have any questions regarding this matter, please contact one of our four offices listed below.

*F3 NewsFlash prepared by Melanie Petersen and Susan Winkelman.  
Melanie is a partner in the F3 San Marcos office.  
Susan is an associate in the F3 San Marcos office.*

**This F3 NewsFlash is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this case may apply to your specific facts and circumstances. Information on a free NewsFlash subscription can be found at [www.fagenfriedman.com](http://www.fagenfriedman.com).**

141853

---

6300 Wilshire Blvd., Suite 1700, Los Angeles, California 90048 Tel. 323.330.6300 Fax 323.330.6311  
70 Washington St., Suite 205, Oakland, California 94607 Tel. 510.550.8200 Fax 510.550.8211  
520 Capitol Mall, Suite 400, Sacramento, California 95814 Tel. 916.443.0030 Fax 916.443.0030  
1 Civic Center Dr., Suite 300, San Marcos, California 92069 Tel. 760.304.6000 Fax 760.304.6011

© 2009 Fagen Friedman & Fulfroft, LLP

All rights reserved, except that the Managing Partner of Fagen Friedman & Fulfroft, LLP hereby grants permission to any client of Fagen Friedman & Fulfroft, LLP to use, reproduce and distribute this NewsFlash intact and solely for the internal, noncommercial purposes of such client.