Student Dress Codes in Public Schools: A Selective Annotated Bibliography*

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Ms. Pedzich compiles and summarizes recent legal and educational literature on the constitutionality and viability of student dress codes in the public schools. The annotations cover the legal issues and the practical problems of drafting and enforcing dress policies that will pass the scrutiny of the courts.

¶1 In an attempt to curb the rising presence of gangs in public schools and to reduce disciplinary conflicts, officials in school districts across the United States are implementing dress codes or introducing uniforms.1 School appearance policies may mandate a specific outfit or seek to limit or ban such regalia as bandannas, hats, jewelry, religious symbols, team jackets, and immodest clothing. These items can be associated with gang membership or generally represent a distraction in the learning environment. Authorities believe their presence leads to an unhealthy school atmosphere, disruption, intimidation, and violence.

¶2 Empirical evidence is scant, but newspaper and magazine accounts are replete with enthusiastic anecdotes about successful dress code programs,2 and President Bill Clinton endorsed them in his 1996 State of the Union Address.3 Some school administrators report that dress codes not only aid in curbing violence and gang activity, but also help to level the socioeconomic playing field.4 The competition to sport new fashions such as expensive sneakers or team jackets is reduced. Students from poorer families no longer feel pressured to keep up in the fashion race. Still, First Amendment scholars eye the trend warily.5 The case law that informs the debate over the constitutionality of public school appearance

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2. See, e.g., Robin Hamilton, Back to School in Uniforms—More Schools Are Adopting Dress Codes, SEATTLE TIMES, Aug. 15, 1995, at F1; Verna Noel Jones, Dressed to Perform, ROCKY MTN. NEWS, Aug. 10, 1995, at 6D.
3. Address Before a Joint Session of the Congress on the State of the Union, 1 PUB. PAPERS 79, 81 (Jan. 23, 1996) (“I challenge all our schools to teach character education, to teach good values and good citizenship. And if it means that teenagers will stop killing each other over designer jackets, then our public schools should be able to require their students to wear school uniforms.”).
regulations reflects the endless tension between school authorities attempting to provide an atmosphere in which learning can take place and students testing the limits of acceptable, protected behavior.

¶3 The public school free speech cases that are cited again and again in dress code debates represent a variety of fact patterns, some unrelated to actual dress or appearance conflicts. The first important case, *Tinker v. Des Moines Independent Community School District,* in which Mary Beth Tinker led a group of students in wearing black armbands to school. The students were suspended when administrators enforced a new school regulation prohibiting the armbands. Ultimately, the Supreme Court reversed lower court decisions and found that absent a material, substantial disruption of school operations, the students had a protected right to wear the armbands.

¶4 In *Bethel School District v. Fraser,* Matthew Fraser was suspended for giving a student government election nomination speech that was filled with thinly veiled sexual metaphors. The Court distinguished the political “speech” in *Tinker* from the lewd references in Fraser’s nomination address. Consequently, it found that Fraser’s offensive speech was not protected by the First Amendment and upheld his discipline.

¶5 Forum analysis was used in *Hazlewood School District v. Kuhlmeier,* in which the school principal removed two student-written articles from the school newspaper. One article discussed the effect of divorce on students and the second covered teenage pregnancy issues. The Court found for the school, which, as a closed forum, had the right to exercise reasonable control over the contents of the newspaper. These and other cases, taken together, offer guidance on drafting dress code and appearance policies.

¶6 Many articles and other sources examine the applicable cases and offer pointers for thinking through dress code issues and crafting policies. To provide access to this extensive literature, this bibliography compiles recent legal and educational materials that report and analyze the activity of courts and schools regarding the use of public school dress and uniform codes for students. It is a selective, annotated bibliography of English-language literature published in the United States from 1967 through September 2001. While it consists primarily of legal and educational journal literature, standard computer and manual search tools were used to identify conference proceedings, dissertations, monographs, books, book chapters, Web sites, and government documents that relate to the topic. Excluded from selection are popular magazines and newspapers.

¶7 The target audiences for this compilation are educators, attorneys who practice in education law, scholars, and observers of educational trends. For purposes

of accessibility, the bibliography is divided into two parts. The first lists works that study the legal issues applicable to the implementation and enforcement of dress codes or uniform policies in public schools. The second assembles the literature that offers studies on the effects of dress codes in schools as well as advice for educators and those attorneys who advise them on how to write and effect the use of dress and uniform policies.

**Legal Issues**


Aho provides a condensed history of the judicial treatment of appearance codes and looks at *Breen v. Kahl,* a case that voided a hair regulation as violative of due process rights.


Bach expresses the view that officials have reacted to recent acts of violence in schools by trampling student rights with dress codes, curfews, and censorship.


Ballis offers a critical look at the decision in *Tinker,* finding that the Court did not provide much guidance to educators who may need help understanding what sort of behavior and disruption might “materially and substantially” threaten the school atmosphere so as to be subject to prohibition.


Barbarosh finds that dress codes and uniform policies not only violate the First Amendment, but fail to address the source of the violence they aim to curb. She pays particular attention to the application of rules on appearance in California.


Barnes summarizes First, Fourth, and Fourteenth Amendment issues as they arise in public schools. The current concerns about safety drive the willingness of the courts to defer to school administrators in conflicts involving uniform codes, student and locker searches, and disciplinary suspensions and expulsions.

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Bartlett reviews federal court holdings on hair and dress codes. His survey shows that the First, Fourth, Seventh, and Eighth Circuits are likely to decide against school administrators in hair and appearance policy conflicts, while the pattern in the Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits is to side with school officials.


Bartlett and Helms present an update on case law related to dress codes, student searches, grade reduction, public forum doctrine, and more.


In this student case note, Benezra finds the lesson of *Tinker* to be its delineation of the balance between preserving constitutional safeguards for student rights and ensuring that the exercise of those rights does not interfere with the educational mission of the school.


Bernhardt postulates that the free expression rights of students are on a par with adults in public fora and that attempts to restrict expression should be exercised within the confines of the compelling interests standard.


The authors summarize a variety of cases that deal with student dress, corporal punishment, due process, student speech, discipline of special education students, placement, drug testing, and more.


Burke looks at the gang phenomenon and efforts to control its influence in schools with clothing regulations. She cautions that schools must have a reasoned basis for the elements of their dress policy, one tied to the educational mission.


Carpenter discusses the tension between the free exercise of religion clause and the imposition of dress codes. After reviewing the pertinent case law, Carpenter suggests that courts inconsistently apply the strict scrutiny test required by *Sherbert v. Verner* when resolving dress policy conflicts.

The authors note the judicial trend toward defining the limits of school officials’ ability to regulate certain kinds of student conduct.


This case note reviews the holding of *King v. Saddleback Junior College District,* in which the Ninth Circuit held that rationally drafted, specifically worded dress codes are not violative of due process or equal protection rights.


Criticizes *Tinker* for lack of specificity as to the degree of “reasonable anticipation” of a student disruption that would be required to find a prospective rule acceptable.


This case note is useful for its lengthy list of hair regulation cases.


Dagley examines trends in judicial analysis as applied to student rights questions in public schools. He also discusses the types of situations that have spawned freedom of expression cases and looks at the legal tests applied by the courts.


An early look at the facts and issues presented and decided in *Tinker*. Denno takes the position that *Tinker* represented a sea change in the direction of public education, viewing the decision as the beginning of a recognition that the rigid, mechanical structure of education must change to allow students expression and exploration beyond the parameters of a curriculum.


In one of several comparisons of *Tinker* and *Fraser*, Dever claims the lower courts missed the importance of the public forum aspects of *Tinker* and speculates that the Court’s pending review of *Fraser* presents an opportunity to address that problem.

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11. 445 F.2d 932 (9th Cir. 1971).
Dodd casts doubt on the view that violence is increasing in American public schools and argues that students educated in an environment where expression is unnecessarily restricted will become adults who are insensitive to infringement issues.

Dowling-Sendor examines the case of *Chalifoux v. New Caney*, 12 in which the court voided for vagueness a gang-apparel policy because it violated the students’ free exercise rights.

Dowling-Sendor discusses South Carolina middle school’s ban on clothing displaying the Confederate flag and subsequent litigation in which the school district policy was upheld.

Dowling-Sendor discusses *Canady v. Bossier Parish School Board*, 13 a Fifth Circuit decision that reinforced the viability of student expression rights under the Fourteenth Amendment. In addition, the court found that students’ free expression rights are subject to the sometimes greater interest a school board may have in creating an atmosphere in which learning can take place.

Flygare questions the degree to which the subsequent application of *Fraser* will narrow *Tinker*. He sees the latter as a seminal case defining the principles of students’ constitutional rights.

Gluckman reviews the legal implications behind such issues as appearance codes, sex discrimination, and teen pregnancy in the educational setting.

Grandinetti updates an early article about a Massachusetts hair length case, *Leonard v. School Committee of Attleboro*, 14 by reviewing subsequent decisions presented either as civil rights cases or as examples of a school board’s right to exercise its authority.

13. 240 F.3d 437 (5th Cir. 2001).

School boards may be able to draft rules regulating body piercing if the policy is based on and tied to legitimate health and safety concerns. Haase discusses whether body piercing is likely to be considered speech and whether it may enjoy some Fourteenth Amendment protections.


Hays looks at contemporaneous cases on hair length regulations.

“High School Hair Regulations,” *Valparaiso University Law Review* 4 (1970): 400–16. This article traces the history of efforts by public school authorities to regulate behavior. It finds the courts’ perception of whether hair length causes disciplinary problems to be a determining element, and predicts a Supreme Court ruling upholding a student’s right to individual choice of hair style.


Reviews the facts of *Boroff v. Van Wert City Board of Education*,\(^\text{15}\) in which the Sixth Circuit Court of Appeals stated that the student’s civil rights had not been violated by banning him from school for wearing Marilyn Manson t-shirts. School authorities found the attire to be “vulgar, offensive and contrary to the mission of the school,” and the majority found the t-shirts fit that definition.


Jahn discusses school dress rules designed to suppress gang presence in the light of free speech concerns.


Critically looks at how a number of communities are addressing gang violence by imposing curfews, dress codes, and local loitering laws. Cautions that too vigorous regulation threatens civil liberties and unfairly penalizes minority groups.


Killen takes the position that determinations of what is proper attire are so problematic for school officials that they are legally safer and generally better off opting for school uniforms rather than dress codes. He examines case law to

document the argument that dress codes often miss the problems they are designed to solve and frequently suffer from vagueness and overbreadth. Uniform policies avoid the inconsistencies and arbitrary enforcement problems and enjoy the support of parents and educators; there is also a growing body of evidence that they are effective in reaching stated goals.

Klahr specifically indicts dress codes and curfews as ageist and broadly punitive. He suggests that such policies often penalize students and restrict their activity even though they have done nothing wrong.

Kordas examines cases in which school officials banned the wearing of religious symbols, arguing that prohibition of religious insignias is unconstitutional because it deprives the devout of freedom of expression, and that even gang expression is protected speech.

Kuhn finds categories of conflicts about dress codes based on the wording of the codes; the characterization of issues; the geographic, social, and political factors at play; and the willingness of particular courts to intervene. She then applies these elements to two county high school policies in Kentucky.

Levin offers a broad look at the conflict between ensuring order in the schools and the constraint of individual expression in light of the changed nature of educational institutions.

Leviton critically examines the seminal case law that created the “reasonableness” standard for limiting students’ First and Fourth Amendment rights.

Mahling examines dress codes and the dispute as to their constitutionality among the federal courts of appeals. She proposes a formula for balancing expression rights with the need to maintain a suitable educational environment.

Majestic traces the history of the trend toward stricter dress codes and documents
the increasingly sympathetic attitude the courts are taking toward school uniform policies.

Maloney contends that the constitutionality of antigang rules is in question and that an early settlement of the issues is not likely.

Maschinot analyzes secondary literature and court decisions to document shifts in attitudes about the viability and legality of dress codes. He describes a successful code as one that focuses on limiting distractions and promoting safety, employs the fewest possible restraints on student expression, uses precise language, and protects due process rights.

McKinney summarizes the legal standards used in significant dress code cases. He also looks at forum issues and how the court in Phoenix Elementary School v. Green16 departed from traditionally applied public forum analysis approach.

In this annotation, Miller surveys the cases on the regulation of student clothing and grooming by public school authorities.

Murphy describes the conditions under which dress codes will survive First Amendment challenges and the degree to which some dress codes would stand up to the free expression tests.

Myhra looks at the social and cultural forces that have led to the implementation of school appearance codes, noting the tension between the desire of students for autonomy and the societal trend toward using schools to teach values, and summarizing how courts have decided these issues.


Nahmod suggests a broad reading of *Tinker* which would compel school authorities to justify any restrictions on First Amendment activities. He considers its implications beyond armbands to other political “statements.”


Nelson summarizes the reasons for mandating uniforms in public schools and reviews the free speech considerations that apply.


Podgers summarizes three cases on dress codes decided during the summer of 1995, concluding that disagreement remains on the permissible scope of appearance regulations.


Podgor analyzes *United States v. O’Brien,* the seminal case on the concept of symbolic speech. She examines flag burning, adult entertainment, dress code and grooming issues, and artistic expression in the light of *O’Brien.*


Porto advocates the application of the *Tinker* rule on symbolic speech to Native American students’ braided hair.


This article highlights the constitutional challenges to hair length regulations as related to the states’ interest in safe and orderly administration of public schools, concluding that school officials should use traditional disciplinary means to exercise control rather than “wholesale regulation” of protected interests.


Ray condemns school uniform policies as unconstitutionally curbing the right of self-expression. She specifically examines California’s dress code law and suggests alternative programs to discourage gang activity.


Reeves argues that but for the most extreme circumstances, personal grooming and appearance regulations are constitutionally invalid and ultimately will not be upheld by the courts.


Rubel hypothesizes that the recent court cases related to students’ rights created cautious, tentative school administrators and that increased levels of violence were the result.


Rubin discusses the duty of a school to protect and provide an orderly learning environment, and looks at the unresolved constitutional limits on how far schools may go to fulfill this responsibility.


Sarke reviews the pros and cons of dress rules in public schools and includes statistics on school crime. She provides a summary of lower court cases that help resolve some of the ambiguities left by *Tinker*, *Fraser*, and *Hazlewood*.


This brief article looks at California’s legislation enabling school districts to draft and enforce dress policies. The American Civil Liberties Union’s opposition to the law on First Amendment grounds is noted, as is support for the law by those who hope it will reduce gang violence.


Simpson, a National Education Association attorney, looks at the problems schools encounter when instituting dress regulations and summarizes Supreme Court cases that affirm school officials’ ability to limit free expression.


Splitt uses *Fraser* as a springboard to examine legal aspects of disciplinary trends.


Starr analyzes *Phoenix Elementary School v. Green*, a case upholding mandatory school uniform policies.


Stein reveals the confusion over what is sexual harassment and opines that efforts to curb it (including the enactment of appearance policies) sometimes restrict one gender more than the other.


Stevens reviews Livingston v. Swanquist,\(^{19}\) which held that school boards have the authority to enact reasonable dress codes and to enforce them, and asserts that administrators’ fear of distractions and disturbances based on hair length are largely unjustified, as are the decisions that uphold dress codes based on those fears.


Stover examines the zeal with which some schools are investigating and implementing dress code and uniform policies, and considers the enforcement, legal, and administrative issues that ensue.


Sudo reviews the effect of the war on drugs on the public view of acceptable compromises to students’ civil liberties.


Tiersma attempts to delineate the elements of communication by conduct and what kind of nonverbal communication is speech. He applies those elements to such activities as burning draft cards or wearing armbands.


Weisenberger examines conflicts over student freedom of expression rights, with particular attention to message t-shirts.


Wilson outlines the controversies inherent in appearance codes in the schools and reviews specific kinds of regulations that have sparked litigation.


Zahnister summaries the issues in Alabama and Coushatta Tribes of Texas v. Trustees of Big Sandy Independent School District,\(^{20}\) a case in which Native American hair length was found to be symbolic speech based on religious and cultural traditions.


Zirkel reviews the decision in Pyle v. South Hadley School Committee,\(^{21}\) in which the court upheld the school administrator’s right to ban t-shirts with sexual messages. This is especially useful for its serviceable list of cases dealing with specific items of attire.

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The authors look at the impact of *Fraser* on *Tinker*, strongly cautioning not to oversimplify the differences. They recognize the functions of public schools as individualistic and societal, and see the courts struggling to reconcile the two. Both cases are analyzed in detail, as are helpful distinguishing and clarifying cases.

**Educational Issues**


Alvez offers activities to introduce discussion of dress codes and student rights in secondary school classrooms. A student handout is included which summarizes *Tinker, Fraser*, and *Hazlewood*. The goal of the class activities is to have students become conversant with applicable constitutional issues and to be able to articulate the reasons some might support dress codes. Useful in schools where the introduction of a dress policy is contemplated.


Clarkson and Coates offer a compilation of citations to educational literature on uniforms and dress policies with brief annotations.


Cohn reviews the successful implementation of a mandatory uniform policy in Long Beach, California. He includes suggested elements for such a policy.


The authors report on a survey of school principals’ views on dress code and mandatory uniform policies. They analyze the codes and policies submitted by those surveyed and propose a standard for determining the constitutionality of a dress code.


Morris and Wells advance the theory that improvements in school environments can have a positive impact on school safety. They present the arguments for and against uniforms and dress codes, a capsule analysis of significant cases, and summaries of the appearance-related problems that occur in schools.
Essex provides a how-to guide for principals that recommends soliciting community involvement. He cautions drafters to tie the policy to safety concerns and to be alert to low-income family needs for assistance in purchasing uniforms.

Finley and Huebner engage in a dialogue in which positions for and against dress regulations are outlined.

Gelfman and Gutman deliver practical advice for attorneys handling school discipline cases related to dress, attendance, offensive speech, locker searches, and school newspapers. They include a checklist of issues to consider when advising clients at odds with school authorities.

Gilbert addresses the First Amendment implications of dress and uniform policies and presents nine specific principles for writing, imposing, and enforcing policies.

Gluckman analyzes case law and provides guidelines for hair and dress rules and their implementation. Educators need to draft codes with specific and narrow rules that are tied to educational goals.

Granatham surveys the law on dress codes, explains the concept of symbolic speech, and examines the difficulty administrators may experience in distinguishing between communicative and noncommunicative attire. A flowchart graphic illustrates how school authorities might analyze the validity of contemplated restrictions.

This article explores ways to develop discipline while being mindful of constitutional protections in areas such as search and seizure and due process. It excerpts a seminar on discipline at the National Academy for School Executives in which an expert advised administrators on handling apparel conflicts, including vulgar t-shirts and immodest attire.

Herbon and Workman compare 154 secondary school dress policies from school
handbooks. Their analysis documents the tendency toward policies that prohibit unacceptable dress rather than encourage acceptable or required dress. Most codes include provisions stating that student dress must not interfere with the educational environment.

An attempt to study the concept of gang identity within the framework of adolescent expression. Hethorn implies that addressing behavior rather than dress will more positively affect schools.

Holloman calls for empirical research regarding the effectiveness of dress codes and uniforms. She asserts that home economics teachers can play a role in working with students and parents to draft appearance policies. The importance of student self-esteem and values education is stressed.

Lane and Richardson discuss five actual school board dress policies from California in the light of the lessons of Tinker, offering guidelines for writing codes with sufficient specificity to withstand judicial scrutiny.

This article focuses on crafting dress codes aimed at dealing with gang attire. Educators are warned to avoid policies that reference specific sports teams and to be clear about items of clothing not worn by the general student body. Five relevant court cases are summarized.

LaPoint looks at dress regulations and the particular conflicts they cause for urban minority youth. She suggests that African American youth favor bold colors and designs in clothing due to cultural influences. In addition, they may be subject to consumer exploitation and sometimes dress to compensate for low economic status. School dress codes should be drafted with these potential conflicts in mind.

Loesch describes the evolution of a voluntary uniform program in a California elementary school. The school’s policy had as its goal a sense of belonging, school spirit, and pride.

Olson documents observations in three high schools where dress codes and other measures were implemented to curb gang influences. He employed surveys to measure student impressions of gang influence and the effect of the school dress policies that prohibit gang attire.


Paliokas reviews the reasons for the rise in the number of dress policies in schools and outlines the legal hurdles writers of such policies need to clear. She posits that codes should state the connection between the prohibited attire and the behavior that will be minimized. In addition, she urges policies that avoid vague language and include procedures to ensure student due process rights.


Rappaport offers a classroom tool that re-creates the Tinker trial. It is a useful starting reference for discussions of First Amendment rights.


Sher reports the results of a study of three city elementary schools that sought to determine whether school uniform programs changed academic performance levels. She examined student discipline statistics, standardized test scores, attendance records, and statistics on subsidized lunches. The study found no empirical evidence to support school administrators’ views that uniforms positively influenced academic achievement or behavior.


Shimizu surveyed staff and students of three high schools where dress codes were in existence to assess perceptions about student performance, discipline, learning environment, and student participation. The results of the survey and data analysis showed that, in general, each of the schools experienced some positive effects in numbers of suspensions, student attendance, and the perceptions of staff and students about school atmosphere.


Sparks addresses the content and aim of dress codes as being fundamental to how
courts view their constitutionality, advising school personnel to craft policies consistent with school objectives.


Tipton documents disciplinary policy changes in a Midwestern high school that included requiring students to wear photo identification cards. An increase in the number of lunch periods and specifically assigned lockers also eased the disciplinary problems.


Trump reports on gang intervention efforts in Cleveland public schools. The warning signs of gang activity are enumerated. Preventive steps for staff are discussed with suggestions to develop policies and procedures at the local level. A dress code is recommended as a piece of the solution. It should be tied to behavior rather than specific items of apparel.


A Clinton-era guide for schools to use in creating uniform policies, it summarizes policies put in place around the country and offers a checklist of issues to consider in drafting a policy.


A compilation of guidelines developed in Virginia for the purpose of planning and implementing dress policies.