

School Uniforms



To improve both school safety and student achievement, school districts across the country have implemented policies mandating school uniforms. Approximately 21 states and the District of Columbia have passed policies authorizing districts or schools to require uniforms if they choose.

The Fifth Circuit Court observed, “[A] uniform code is merely a strict version of a dress code.” But, in accordance with the First Amendment, the policy must be content-neutral—in other words, not favor any particular viewpoint or message.

The following case and the accompanying question-and-answer discussion examine the case law specific to school uniforms and other relatively strict dress codes. The focus here is on federal constitutional challenges.

The Case¹

At the end of the 2010-2011 school year, Roy Gomm Elementary School in Reno, Nevada, instituted a policy requiring students to wear a uniform. When the principal surveyed parents, more than two-thirds of them voted in favor of the policy. But one parent, Mary Frudden, vigorously objected.

The policy required students to wear a uniform during the school day and at all formal school activities outside the school day. The uniform consisted of a red or navy polo-style shirt and tan or khaki bottoms. The shirt has the school logo on the front, a gopher with the words, “Roy Gomm Elementary School.” The shirt also includes a written message above the logo with the school’s motto: “Tomorrow’s Leaders.” The policy specified limited exemp-

tions, including wearing “a uniform of a nationally recognized youth organization such as Boy Scouts or Girl Scouts on regular meeting days.” The policy also spelled out consequences for non-compliance, including multiple days of out-of-school suspension for more than three offenses.

For the first two weeks of the 2011-2012 school year, Mary Frudden’s children—a third-grade girl and a fifth-grade boy—did not wear the school uniform. On Monday of the third week, in response to a notice from the principal, both children wore American Youth Soccer Organization (AYSO) uniforms to school. AYSO is a nationally recognized youth organization that regularly meets each school day. Mrs. Frudden claimed coverage under the exemption, but the principal informed her that it

did not apply because the children did not have soccer practice or a meeting that day. Mrs. Frudden immediately contacted the area superintendent, who agreed with the principal.

Later that day, the principal had the two children change into loaner uniforms. The next day, both children wore AYSO uniforms, and the principal again required them to change into the school uniform. On the third day, they arrived in the school uniform, but the boy wore his inside out, thus with the logo not visible. The principal summoned him to her office and had him turn the shirt right-side out.

The Fruddens filed suit in federal court. Their primary claim was that the mandatory school uniform policy violated the children’s First Amendment freedom of expression. The trial court granted the school district’s motion to dismiss based on *Jacobs v. Clark County School District* (2008), a Ninth Circuit Court of Appeals decision that upheld the constitutionality of a content-neutral school uniform policy. The Fruddens filed an appeal with the Ninth Circuit.

What was the judicial outcome of the appeal in this case?

In *Frudden v. Pilling* (2014), the Ninth Circuit reversed and remanded the trial court’s decision, concluding that the school uniform policy at issue was distinguishable from the one in *Jacobs*. Specifically, the court found that the policy in this case had two independently sufficient problems not present in *Jacobs*. First, this policy required students to wear a uniform with a written message, thus constituting compelled speech, which the Supreme Court struck down in its flag salute decision in *West Virginia Board of Education v. Barnette* (1943) and its license plate “Live or Die Free” decision in *Wooley v. Maynard* (1977). Citing precedents, the court clarified that whether the students were allowed to disclaim agreement with the motto or whether the motto was good, bad, or merely innocuous was immaterial to this compelled speech defect.

Second and alternatively, the exemption contradicted the policy's content neutrality. By favoring the uniforms of nationally recognized youth organizations over all other clothing that students might wear, the uniform policy's exemption was content-based.

As the Ninth Circuit clarified in remanding the case back to the trial court for further proceedings, the entire policy was not necessarily invalidated. First, the district would have the opportunity to show that its motto or exemption had a compelling justification and, if so, in the least restrictive way—a highly unlikely possibility. Second and more likely, if the policy continued without the motto and exemption, it would fit within the *Jacobs* precedent, with a possible challenge to the logo and its school label.

Does a dress code that prohibits messages on shirts, but exempts small logos and principal-approved shirts that promote school spirit, meet the First Amendment standard of being content-neutral?

Not according to the Fifth Circuit Court of Appeals in *Palmer v. Waxahachie Independent School District* (2009). The court concluded that the policy's "allowance for school logos and school-sponsored shirts does not suppress unpopular viewpoints but provides students with more clothing options than they would have had under a complete ban on messages." Thus, the constitutional status of logos is not entirely settled, depending on the nature and extent of the message and the jurisdiction of the court.

If the school uniform policy provided an exemption for sincerely held religious beliefs, would it pass constitutional muster?

Yes, according to the Third Circuit Court of Appeals' decision in *Wilkins v. Penns Grove-Carneys Point Regional School District* (2005). In this case, the Third Circuit upheld such a religious exemption upon the 14th Amendment equal protection challenge of a parent who

was an atheist. The court concluded that the religious exemption rationally furthered the legitimate interest of accommodating students' free exercise of religion without undermining the pedagogical goals of the school uniform policy.

Would an informal opt-out procedure for religious or medical reasons, without any formal exemption in the policy, be unconstitutional in terms of either vagueness or overbreadth?

Not according to a New Jersey appellate court decision in *Dempsey v. Alston* (2009). The court concluded that the content-neutral policy was reasonably clear and did not affect a substantial amount of protected speech.

Do the plaintiffs fare better by basing their challenges on the student's due process rights or the parents' corresponding 14th Amendment "liberty" for child rearing?

No. For example, in *Blau v. Fort Thomas Public School District* (2005), the Sixth Circuit Court of Appeals rejected these alternative challenges to a school dress code, finding that the rather relaxed rational review standard applied and the governmental interests in student achievement and safety easily met this standard. Similarly, the New Jersey appeals court in *Dempsey* (2009) rejected the parents' 14th Amendment "liberty" claim as well as the student's privacy claim. Finally, in *Derry v. Marion Community Schools* (2008), a federal district court in Indiana concluded that the content-neutral mandatory uniform policy did not violate either substantive or procedural due process under the 14th Amendment.

If empirical research fails to show that school uniforms do not improve achievement or safety, do these case law contours not apply?

The courts generally avoid basing their rulings on empirical research, instead applying principled precedents to the specific facts of the

case, with due deference to school authorities. While acknowledging that research has generally found their perceived effectiveness, Vopat (2010) concluded that: "The results of small- and large-scale studies of the actual effectiveness of uniforms ... has proven, at best, indeterminate."

Yet, the Fifth Circuit Court in *Palmer* clarified:

We do not ... require statistical or scientific evidence to uphold a dress code; improvements in discipline or morale cannot always be quantified. The sworn testimony of teachers or administrators would also suffice.... [T]hey are in a better position than are we to determine the benefits of the dress code.

Conclusion

The courts generally leave school uniform policymaking considerations to local school boards and their administrators. In making such decisions, the usual professional procedures apply, such as (a.) examining the experience of other comparable districts; (b.) surveying the parents and other constituents; (c.) having a balanced committee make recommendations to the school board or school leadership; and (d.) holding a public meeting before reaching a final decision.

Similarly, if the decision is in favor of adopting mandatory school uniforms, practical administrative wisdom suggests the need to provide ample time and well-planned procedures for implementation. As a legal matter, the key is keeping the policy reasonably clear and content-neutral, with special cautions regarding any written or particular messages on the required uniform, and the wording and application of any exemptions or exceptions. 

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1. Because the court's decision arose on the defendant-district's motion for dismissal, the "facts" are merely allegations construed in the plaintiff-students' favor.