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Zero Tolerance and Student Dress Codes

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IN BRIEF

Citing the example of a Texas school district that suspended over 700 students in a single month for dress code violations, the author questions the reasonableness of zero-tolerance dress codes. He notes that while the courts have been inconsistent in cases involving dress codes, they have generally ruled that schools must justify code enforcement. The article includes guidelines for developing legally defensible dress codes.

Fairness is the essential requirement in creating and enforcing dress codes.

In recent years, zero-tolerance policies have emerged in public schools as a means of reducing and preventing violence. From their inception, most of these policies were aimed at deterring serious student offenses involving possession of firearms and other weapons, drugs, tobacco, and alcohol.

However, zero tolerance has taken a different twist in a small Texas school district where over 700 students were suspended in a single month last year for violating a zero-tolerance dress code policy. Under its policy involving student dress, the suburban Duncanville Independent School District in Texas penalizes students in grades 7–12 with a one-day suspension for the first violation, two days for a second violation, and two days plus loss of school privileges for a third violation.

These suspensions, which attracted national

attention and threats of lawsuits by parents, raise four fundamental questions:

- How far should school officials go in enforcing a zero-tolerance policy relating to student dress?
- Does the student dress in question pose a health or safety hazard?
- Does student dress create material or substantial disruption?
- Is there an educational justification for zero-tolerance dress code restrictions?

Guidelines for Dress Codes

The following guidelines can assist school officials in developing defensible dress code policies while minimizing legal challenges.

1. Be certain that administrative actions are based on well-developed and legally defensible school or district policies. If policies are not defensible and result in infringement on students' personal freedoms, it is unlikely they will receive favorable support by the courts when challenged by students and parents.

2. Involve representation by parents, civic leaders, citizens and, when appropriate, students during the policy development process. Their involvement adds more objectivity to the policy development process, generates favorable support for policy implementation, and minimizes legal challenges by parents.

3. Take necessary steps to ensure that students and parents understand what is expected in the schools. School rules should be stated clearly and thoroughly discussed with students and parents prior to their implementation.

4. The gravity of the situation and need to act should guide administrative action. Minor infractions that do not interfere with the educational process should be treated differently than those that create material or substantial disruption.

5. Minimal due process should always be provided students who are facing short-term suspension. Based on the U.S. Supreme Court ruling in *Goss v. Lopez*, students facing short-term school suspension (10 days or less) must be provided a fair and impartial hearing to ensure that all due process requirements are met.

6. In loco parentis (in place of parents) is not a license to treat students in an arbitrary and capricious manner. Students are entitled to First and Fourteenth Amendment protections within reasonable limits. These rights must be recognized and respected by school officials when disciplining students for school infractions.

7. Students are entitled to equal protection guarantees under the Fourteenth Amendment. For example, a valid reason must be established in order to deprive a student of personal rights.

8. A reasonable exercise of administrative authority will pass court scrutiny. School officials who act in a reasonable and prudent manner will receive less scrutiny by the courts, which recognize that school officials have broad discretion in establishing rules governing student behavior. Their powers, however, are subject to standards of reasonableness.

9. Policies are considered reasonable when they are necessary to maintain proper order, decorum, and a peaceful school environment. The test used by the courts to determine enforceability is whether there is sufficient justification by school officials of the need to enforce the policy, rule, or regulation from its inception. Prudent judgment should be exercised to ensure that this standard is met.

10. Sound judgment by school officials should guide decisions regarding dress code violations. School officials should attempt to build consensus to the greatest extent possible that reflects the community's values and desires. Without a reasonable level of agreement and support among parents, citizens, and community leaders, conflicts and legal challenges become inevitable when policies are enforced.

There is little debate that school officials are vested with broad and implied powers designed to protect the health and safety of students and maintain a peaceful school environment. Consequently, school officials may promulgate *reasonable* rules and regulations necessary to address health and safety concerns and orderly conduct among students (Essex 2002). A central issue involving zero tolerance in the Texas district is whether the dress code policy is reasonable. Emphasis on reasonableness centers around the well-established fact that students have protected constitutional rights and that those rights must be weighed against a

compelling need to restrict them.

Courts have generally supported the view that school boards have the authority to regulate student dress and appearance if they become so extreme as to interfere with the school's favorable learning atmosphere (Alexander and Alexander 2001). Challenges to dress code enforcement have relied on a number of legal issues, including First Amendment freedom of speech and Fourteenth Amendment rights to due process and liberty. However, the courts have not consistently agreed upon the application of these rights regarding dress code enforcement. For example, they have upheld regulations prohibiting

excessively tight skirts or pants, and skirts more than six inches above the knee, while disallowing regulations prohibiting frayed trousers, tie-dyed clothing, and longer skirts.

Justifying Dress Codes

Codes that place restrictions on student dress are not unusual in public schools. However, they must be justified by demonstrating that the student's attire materially or substantially disrupts school operations, infringes on the rights of others, creates health and safety concerns, or focuses too much attention to students' anatomy. According to the *Tinker* ruling, disruption must be viewed as more than a mere

desire to avoid the discomfort and unpleasantness that always accompanies an unpopular view or an unidentified fear or apprehension (*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, at 511, 89 S.Ct. 733, 21 L. Ed. 2d, 731 1969).

However, the courts provide broad latitude to school officials on matters involving dress so long as they provide a justification for invoking restrictions. Dress is generally viewed as a form of self-expression reflecting a student's values, background, culture, and personality. Thus, students must be provided opportunities for self-expression within reasonable limits. Student rights regarding dress must be balanced with school officials' responsibility to provide a safe, secure, and orderly educational environment for all students.

Therefore, while students have a responsibility to conform to reasonable dress standards, school officials have a responsibility to ensure that rules do not unduly restrict the personal rights

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of students. As school officials implement zero-tolerance policies, they are expected to do so in a thoughtful and deliberate fashion, ensuring that their approach is fundamentally fair and legally defensible. Dress policies that do not weigh the severity of the infraction, the student's history of past behavior, due process, and First Amendment rights are at best highly risky.

A Drastic Dress Code

In the Duncanville district, the dress code forbids Capri pants, overalls, sweat pants, athletic jerseys,

tank tops, and tube tops. Students are not permitted to wear low-riding, hip-hugging pants or display body piercing. No hats or hooded sweat-shirts may be worn. Belts are required unless pants or skirt lack belt loops. Shirts and blouses must be tucked in at all times and should be long enough to stay in. No dress or grooming is permitted that, in the principal's judgment, is “startling, unusual, immodest, disruptive, or brings undue attention to a student's anatomy.”

As can be seen, many of these requirements are highly subjective and may create confusion for students. For example, what constitutes unusual or startling dress? School rules should not be so broad and nebulous as to allow for arbitrary and inconsistent interpretation. Fundamental fairness requires that students know precisely what behavior is required of them by school officials.

It is important to remember that schools must exercise fair and reason-

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able administrative authority that will withstand court scrutiny. For example, there is a question as to whether the suspension of a 13-year-old honor student for having her shirt untucked was reasonable, even though she immediately tucked it in after she was pulled aside by an administrator. Another student was suspended when her shirt had come untucked when she sat down, and she was not allowed to tuck it back. All students were asked to stand up in their classrooms so that an administrator could determine whether shirts were tucked in and belts worn. If these practices are challenged in court, there would likely be a question of fairness, particularly if no disruption occurred, the student had no history of misbehavior and, did in fact, attempt to conform to the school's policy.

The Key Element: Fairness

School officials should proceed with caution as they develop dress codes, especially those that involve zero tolerance. Student dress may be restricted if school officials can provide concrete evidence that it communicates a message that appears to invite disruption. However, if student dress does not communicate such a message, school officials must demonstrate a reasonable justification for restrictions. The burden of proof rests with them, although community representatives—parents, community leaders, and citizens—should be involved in the policy development to ensure that it reflects community values and sentiment.

Policies that do not take into account the seriousness of the infraction, the student's record of behavior in school, and the immediate need to act are very risky, as are dress codes that provide no flexibility in enforcement and result in suspension for very minor infractions. When challenged in these cases, the burden will fall on school officials to justify their rules on the basis of past disruption or a legitimately based expectation of disruption.

School officials should always be

guided by fundamental fairness and a regard for the individual rights of all students. The Supreme Court's *Tinker v. Des Moines* case reminded all of us that students do not shed their constitutional rights at the schoolhouse door. In formulating dress codes, school officials should demonstrate fairness not because the court requires it, but because it is the right thing to do. ■

References

- Alexander, Kern and David Alexander. *American Public School Law*, 5th ed. Belmont, Calif.: West/Thomson Learning, 2001.
- Essex, Nathan. *School Law and the Public Schools: A Practical Guide for School Leaders*, 2nd ed. Boston: Allyn and Bacon, 2002.

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WEB RESOURCES

KTRK-TV in Houston has a news story about Duncanville's zero-tolerance dress code.

http://abclocal.go.com/ktrk/news/92903_APstate_dresscode.html

Vidor Junior High School in Vidor, Texas, posts its dress code and penalties online.

www.vidor.k12.tx.us/vjhs/dresscode.html

Richland School District 2 in South Carolina established a uniform dress code in 2003 for its middle and high schools.

www.richland2.k12.sc.us/nse/dresscode.htm

Personnel Policy Service, Inc. provides a guide to dress code legal issues for businesses, including tips for drafting and enforcing codes.

www.ppspublishers.com/articles/dress_code_policy.htm

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