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TYNER, BEVERLY BERNARD

THE LEGAL ASPECTS OF TEACHER DRESS AND GROOMING IN THE UNITED STATES

The University of North Carolina at Greensboro ED.D. 1980

THE LEGAL ASPECTS OF TEACHER DRESS AND GROOMING IN THE UNITED STATES

by

Beverly B. Tyner

A Dissertation submitted to
the Faculty of the Graduate School at
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Approved by

Joseph E Bryson
Dissertation Adviser

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at the University of North Carolina at Greensboro.

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TYNER, BEVERLY BERNARD. The Legal Aspects of Teacher Dress and Grooming in the United States. (1980) Directed by: Dr. Joseph E. Bryson. Pp. 166.

Historically teachers have been restricted in dress and grooming more than have other citizens. In many instances teachers have been reprimanded or dismissed for appearing at work dressed or groomed in a manner considered unconventional by school officials and the citizenry in general. Although present restrictions on teacher dress and grooming are somewhat more flexible than those previously exercised, school officials still attempt to control many aspects of a teacher's appearance. As a result, the past two decades have seen significant litigation in the areas of teacher dress and grooming.

The purpose of this study was to provide school officials with a comprehensive set of data concerning the legal aspects associated with the dress and grooming of teachers in the United States. The study also identified the constitutional protections given teachers in support of their chosen mode of dress and grooming and the reasons given by local school boards for regulating a teacher's appearance.

Data and information for this study were obtained from a comprehensive analysis and review of the major court cases which relate to the dress and grooming of teachers. Legal precedents and trends were identified and the following conclusions were drawn:

1. The courts have established two bases for the constitutional protection of teachers who object to regulations controlling their dress and grooming. These include the First Amendment rights to freedom of speech and religion and the Fourteenth Amendment guarantees prohibiting the deprivation of life, liberty, or property of any person without due process of law

2. The teacher is usually protected under the Constitution if his appearance is seen as an expression of personality, heritage, race, or culture, as long as it does not impair the educational process

3. When dress or grooming is considered to be a form of symbolic speech and is thus very close to pure speech, e.g., the wearing of black armbands, the First Amendment protection is high

4. Local school boards and administrators must be prepared to establish a need for their dress and grooming regulations

5. The teacher must bear the burden of proof and show that the regulation is arbitrary and discriminatory when the facts in the case indicate that the board has, within its implied powers, the right to enforce the dress or grooming regulation

6. The school board must bear the burden of proof and demonstrate a rational relationship between the necessity and desirability of the rule if it is established that the

constitutional rights of the teacher have been violated

7. A teacher cannot be lawfully dismissed for his dress or grooming unless: (1) there is a published policy prohibiting the dress and grooming, (2) the teacher is given notice of the policy and of the consequences of not adhering to it, and (3) a hearing is held to judge the specific alleged violation

8. The courts usually treat rules of "dress" differently from rules of "grooming" because clothing can be more easily changed after the teacher leaves the school grounds than can a grooming style

9. The courts generally uphold dress codes imposed by school officials as long as they are reasonable and are not enforced discriminately

10. A grooming regulation is usually struck down by the courts unless the school board can prove that the teacher's grooming is causing disruption of the educational process, collapse of student discipline, or that his appearance is untidy

11. While the courts have been divided on the issue concerning the wearing of religious garb by public school teachers, the most recent court decision has upheld a teacher's right to appear in the classroom dressed in this garb, as long as the teacher does not impart religious doctrine to the students

12. School boards and administrators are not immune from liability for damages in cases involving the infringement of constitutional rights in enforcing dress and grooming codes

13. Determining what aspects of a teacher's appearance are constitutionally protected will continue to be a legal issue for the courts to decide

The uniqueness of the dissertation lies in the proposed set of dress and grooming guidelines which, if followed, should enable school officials to make decisions which will be both educationally and legally sound.

ACKNOWLEDGMENTS

I wish to express sincere appreciation to Dr. Joseph E. Bryson for serving as my Dissertation Adviser and for his encouragement and assistance during the process of this study. Special appreciation is also extended to Dr. Dale Brubaker, Dr. Dwight Clark, Dr. Donald Russell, and Dr. Nancy White for their encouragement and for their service as committee members.

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CHAPTER I

INTRODUCTION

From the time of the earliest attempts at colonization and settlements in the New World, educators have enjoyed a privileged status in the eyes of society. Respect for their superior levels of education and their abilities to impart that knowledge to others forced upon teachers the burden of exemplifying proper deportment in all aspects of public and private life. Teachers' rights to personal privacy were always balanced against the consequences of public behavior that was considered unacceptable.

Without question the initial impression communicated by a teacher to the public was exhibited through personal appearance. It was expected and mandated that sedate attire and conservative habits of grooming would be maintained. Failure to adhere to these standards frequently resulted in immediate dismissal and public ostracism.

As America became more industrialized and its citizenry, as a result, grew more sophisticated, social mores underwent corresponding transitions. Public school teachers, however, were forced to remain outside the mainstream of these new lifestyles. They were slow in acquiring the acquiescence of the public and in shedding the stereotyped mold into which

they had been cast. Only in the past two decades have teachers' demands for the free exercise of their civil rights been given more than lip service by school authorities and the public in general.

The civil rights movement of the sixties gave impetus to what had been, heretofore, an underground discontent among teachers regarding the regulation of their personal and professional lives. Educators, along with others who considered themselves unduly deprived of constitutional freedoms, marched to the courthouse to ascertain their rights.

The past twenty years have seen significant court litigation within the areas of teacher dress and grooming. Teachers have felt that regulations controlling their appearance have been in violation of their constitutional rights. School authorities, on the other hand, have argued that teachers, as models for students, must maintain a proper standard of dress and grooming to uphold a disciplined learning environment. The courts have been faced with balancing the circumstances to determine whether a school district's interest is sufficient to restrict teachers' constitutional rights.

This is a legal-historical study designed to explore the legal aspects of teacher dress and grooming. The legal ramifications are important to teachers, educational decision makers, and the public in general. Selected studies relating to the actual effects teacher dress and grooming have on

students are reviewed in order that judicial issues can be better interpreted.

The purposes of this research study concerning the courts and teacher dress and grooming are fourfold:

1. To historically trace court decisions through all actions which have evolved in the areas of teacher dress and grooming

2. To provide detailed analysis of illustrative landmark court cases in the areas of teacher dress and grooming

3. To clearly establish the judicial trends and directives of the courts in regard to teacher dress and grooming

4. To provide school authorities with appropriate information in order that decisions regarding these issues be both educationally and legally sound

Statement of the Problem

School administrators and the courts, in dealing with the issues of teacher dress and grooming, are faced with the dilemma of balancing the individual rights of teachers, the concerns of parents, and the state's compelling interest in education.

Considerable discussion has taken place in educational circles relative to the dress and grooming of teachers. Opinion varies as to the amount of emphasis that should be placed on these issues. The few research studies that have been conducted have yielded scattered results and have failed to substantiate the effect that dress and grooming may have had on students.

This points up the necessity for examining the legal issues associated with teacher dress and grooming. Court decisions have been made, but syntheses of these decisions and their resultant ramifications are sparse. Moreover, specific guidelines based on this research need to be developed for use by school boards, administrators, and teachers.

Questions To Be Answered

An important purpose of this study is to develop reasonable legal guidelines for school authorities to utilize in making decisions concerning teacher dress and grooming. Research focuses on answering questions necessary to the development of the proposed guidelines.

1. To what extent can school authorities constitutionally control a teacher's mode of dress and grooming?

2. Can school officials constitutionally discipline or terminate the employment of a teacher because of nonconformity to conventional standards of dress and grooming?

3. Do the courts treat the issues of teacher "dress" and teacher "grooming" as separate entities?

4. Based on the results of recent court decisions, what are the litigable issues?

5. From an analysis of judicial decisions, are there specific trends to be determined?

Scope of the Study

This is a research study of the legal ramifications of teacher dress and grooming as it has developed in the public schools of the United States. The research describes the extent to which these issues have been challenged and litigated, the reasons for litigation, the results of major court cases, and the possible effects these court decisions may have on school boards and school officials. The research is concerned, not only with an analysis of decisions in pertinent court cases, but also with synthesizing the implications of these separate decisions. Discussion of the consequences upon the future of teacher dress and grooming is rendered.

Although this study reviews selected educational research dealing with the significance teacher dress has on teacher effectiveness, no attempt is made to settle this controversial issue.

Based upon the research findings and included in the summary are some practical applications for those concerned with seeking changes in the present system.

Methods, Procedures, and Sources of Information

To establish the need for this research, a search was made of Dissertation Abstracts for related topics. The Reader's Guide to Periodical Literature, Education Index, and Index to Legal Periodicals were used to locate relevant journal articles.

The basic research technique used in conducting this research study involved examination and analysis of the available primary and secondary resources concerning the legal aspects of teacher dress and grooming.

A variety of books on school law and teacher rights were reviewed for pertinent information. A computer search conducted through the Educational Resources Information Center (ERIC) also provided useful materials. The Encyclopedia of Educational Research summarized general research on the subject.

Primary sources were those applicable federal and state court cases located through the National Reporter System, the American Digest System, Corpus Juris Secundum, and American Jurisprudence. More recent court cases were examined and reviewed as found in the NOLPE School Law Reporter.

Definition of Terms

For the purposes of this study, the following selected terms are defined:

Disruption. Any event which significantly interrupts the educational process.

In loco parentis. (Latin for "in place of the parent.") Being charged with some of the responsibilities of the parent.

Litigation. The act or process of carrying on a lawsuit.

Religious garb. Those clothes or symbols unique to a particular order of a particular church, whose wearers are dedicated to religious work under the direction of that church.[1]

Teacher dress. That apparel which can be changed immediately when a teacher gets home from school.[2] This includes badges, insignia, buttons, armbands, jewelry, makeup, and other clothing not an integral part of the costume.

Teacher grooming. Those parts of a teacher's appearance which can not be easily altered when a teacher enters his personal life.[3] These include control of hair, beards, sideburns, mustaches, goatees, and other facial hair.

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[1]Thomas Flygare, The Legal Rights of Teachers (Bloomington, Indiana: Phi Delta Kappa Education Foundation, 1976), p. 31.

[2]Ibid. [3]Ibid.

Significance of the Study

The mode of dress and grooming practices of teachers has been widely debated by teachers, school authorities, and the public in general. Although the controversy has been extant virtually from the beginning of the American public school system, its focus has changed with the times. Whereas teachers of the early 1900s were faced with denunciations for bobbed hair and short-sleeved dresses, the controversy today is more likely to be concerned with short skirts and beards.

The post-industrial age has seen dramatic expansion in the civil rights of teachers as part of a more general movement toward the increased recognition of human rights.[4] An increasing number of teachers argue against school board restrictions imposed upon them. They feel that dress and grooming are personal matters, and that they should be allowed to dress as they like. Many school boards, however, believe it is their responsibility to insure that a teacher's appearance is in accordance with the professional standards of the community.[5] It seems that the courts have reached a crossroads in deciding just where teachers' rights end

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[4]Louis Fischer, "The Civil Rights of Teachers in Post-Industrial Society," High School Journal 61 (May 1978):380-92.

[5]Louis Fischer and David Schimmel, The Civil Rights of Teachers (New York: Harper and Row Publishers, Inc., 1973), p. 64.

and the state's compelling interest in education begins. This is precisely the status of the issues of teacher dress and grooming.

The current urgency of this problem is indicated by the fact that an overwhelming majority of cases dealing with these issues have been heard since the late sixties. There is little consistency among the decisions on the extent to which a teacher has a right to freedom of appearance, or the degree to which school authorities may restrict it.[6] In writing the decisions, judges have settled the questions in a variety of ways--on constitutional grounds, on the reasonableness of school policies, and on general principles.

Rapidly changing styles of dress and grooming will certainly continue to give rise to the controversy that surrounds this issue. Thus, this study is significant in that it provides future educational decision makers with a comprehensive analysis of the legal aspects of teacher dress and grooming. The study also establishes a set of legally sound guidelines which may deter further litigation in these areas.

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[6]H. C. Hudgins, Jr., "Are Teachers Subject to Dress Codes?" NASSP Bulletin 55 (February 1971):79-84.

Design of the Study

The remainder of the study is divided into three major parts. Chapter II contains a review of literature related to teacher dress and grooming. This section goes beyond the legal limits and reviews issues and research pertaining to these areas. These are included to enhance the legal aspects so that cases may be more appropriately analyzed. The status of present dress and grooming regulations is reviewed, and discussion of court involvement is rendered.

Chapter III includes an historical narrative of the major legal issues related to teacher dress and grooming. The legal basis for court involvement is discussed with emphasis on (1) dress and grooming as a religious freedom, (2) dress and grooming as symbolic speech, and (3) dress and grooming as a liberty or privacy interest worthy of due process.

The fourth chapter contains a general listing and discussion of court cases which refer to the general topic of teacher appearance. The first category of cases includes those landmark decisions relating to the broad constitutional issues of dress and grooming. Other categories of cases selected for review in this section include cases related to the wearing of religious garb by public school teachers, teacher dress, and teacher grooming.

The final chapter of the study includes a review and summary of information obtained from the review of literature

and analysis of selected court decisions. The questions posed in the introductory chapter are reviewed and answered. A listing of legally sound criteria and recommendations for controlling teacher dress and grooming are given. Recommendations for further study conclude the dissertation.

CHAPTER II

REVIEW OF THE LITERATURE

Overview

Traditionally teachers have been expected to give proper attention to their dress and grooming. Both the favorable reaction of students and the enhancement of the quality of the learning environment have been justifications for demanding that teachers present a pleasing appearance. An historical review of the literature serves to lend credence to the legitimacy of the controversy which continues to surround the issue today.

While many educational issues explored through research have given strength to opposing viewpoints, such is not the case in the areas of teacher dress and grooming. Paucity of materials reveals that researchers have all but neglected investigation into these areas. This is not to say, however, that the public and school authorities have been equally reticent to comment on and invoke regulations to control the appearance of teachers. On the contrary, constrictive statements regarding dress and grooming have been made either an integral part of the contractual agreement or have been written into policies of local governing boards. This inconsistency, that is, the writing of policy without benefit of adequate corroborating research, has

resulted in complicating the decision-making process regarding teacher dress and grooming issues.

Widely variant opinions still abound today as to the relevance of dress and grooming to teacher effectiveness. Many citizens, parents, teachers, and administrators still concur that dress and grooming continue to be important components of the educational process and are reflections of the professionalism of teachers. Those opposing this philosophy feel that control over these personal matters is an infringement upon their constitutional rights.

Strict control and enforcement of dress and grooming regulations began to fade with the advent of the sixties and the civil rights movement. Teachers marched to the courthouse to demand their rights and to be assured that they, like students, did not "shed their constitutional rights at the schoolhouse gate."[1] Few school boards presently stipulate specific dress codes for teachers, and those which do exist are flexible and are based on the foundation of reasonableness.

Involvement by the courts ushered in a new era of freedom and equal protection for those in the teaching profession. The courts have carefully scrutinized school board regulations which seek to establish standards regarding a teacher's

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[1]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

appearance and have considered teacher dress and grooming as forms of constitutionally protected expression.[2]

Although these issues are far from settled, teachers are now able to move ahead, firm in the knowledge that their interests, as teachers and as individuals, will be considered and will be balanced against the state's compelling interest in education.

Historical Perspective

> People have been conscious of personal appearance and fashion from the time our forefathers crawled out of what Judge Learned Hand so onomatopoetically referred to as the "primordial ooze."[3]

Roman, Grecian, and European citizens placed great importance on their styles of dress and hair. Sampson, for example, felt sapped of his strength when Delilah rid him of his locks.[4]

The devotion man has given to his clothing and appearance can be traced from the ancient Egyptians to Henry VIII's armor. Dress often conveyed a message,

> whether it be one of martyrdom in the sackcloth and ashes of the early Christians, respect for God in the skullcaps worn by many Jews, or achievement and calling in the regalia worn in academic processions.[5]

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[2]Robert H. Chanin, Protecting Teacher Rights (Washington: National Education Association, 1970), p. 14.

[3]East Hartford Education Association v. East Hartford Board of Education, 562 F.2d 838 2nd Cir. (1977).

[4]Ibid. [5]Ibid.

Robes have been worn by many priests and judges as symbols of authority and the monk's baldness has been a sign of asceticism. Englishmen of the seventeenth and eighteenth centuries wore powdered wigs as symbols of wisdom, authority, and influence.

Conversely, dress has been used to signify restriction of action in the military, in prisons, and in parochial schools. Leaders have deprived these groups of the privilege of expressing their individualities through dress in the hope that such restriction would result in more conformity of action and, subsequently, would be the means by which stricter discipline could be maintained.

Throughout history instances of oppression accomplished by body-tegument conformity can be noted. Following the Manchus' invasion of China in 1644, the conquerors sought to consolidate their power by requiring the population to wear a prescribed hair style and clothing. Many of these people chose to die rather than conform to these symbols of servitude. In an attempt to impose a more western lifestyle upon his country, Peter the Great imposed a heavy tax on the beards that were universally worn by seventeenth-century Russian men. Heavy religious significance was placed on these beards in the Russian Orthodox Church, and many men, after shaving their beards, saved them and requested that they be placed in their coffins to insure entry into the heavenly kingdom. These traditions of culture, along with others, and the importance assigned to dress and grooming

were subsequently brought to this country by the earliest explorers and settlers.[6]

Historically, Americans have demanded that their public and religious servants conform to prescribed standards of deportment and dress. Since the very early history of this country, public expectations concerning proper dress and grooming have been far more restrictive for teachers than for the average citizen.

This situation was reinforced in colonial New England by the fact that religion and education were nearly indistinguishable. This concept was so firmly entrenched that it was still in evidence as late as 1841. An annual report of the board of education in Boston expressed the necessity for teachers to set examples for students.

> If then, the manners of the teacher are to be imitated by the pupils, if he is the glass, at which they "do dress themselves," how strong is the necessity that he should understand those nameless and innumerable practices, in regard to deportment, dress, conversation, and all personal habits, that constitute the difference between a gentleman and a clown.[7]

Evidence of the importance of teacher dress in the late 1800s can be found in an article that appeared in a popular teacher's magazine:

> Dress is always more or less an indicator of character, and public opinion of us will be partly governed by it. Public opinion makes or unmakes

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[6]Ibid.

[7]Willard S. Elsbree, The American Teacher (New York: American Book Company, 1939), p. 297.

> our reputations as teachers and therefore, we may not entirely ignore it, even from a business point of view--for on our success hangs our bread and butter.[8]

The article went on to offer suggestions on a teacher's proper appearance. It recommended neatness, which included clean clothes, combed hair, and polished shoes. Plain clothes, rather than fancy, in colors of gray, brown, or any neutral shade were preferable. Jewelry was disallowed as proper adornment for a proper teacher. Good taste and common sense were acknowledged as guides to appropriate dress.[9]

In determining the qualities in dress which would be most admired in a prospective teacher, one school official voiced a strong dislike for careless and untidy dressing. He furthermore suggested that a teacher who wore tight dresses, collars, or shoes was thought to have "no command of her mind or temper; the whole intellectual and emotional tone is lowered, just as the physical powers are limited."[10] There was a preference for a teacher whose dress was neat, well chosen, and hygienic over one who was untidy or who dressed in violation of well-known laws of health.[11]

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[8]Eugene Harrell, "A Teacher's Dress," The North Carolina Teacher 1 (June 1883):249.

[9]Ibid., pp. 249-250.

[10]"Dress of Teachers," The North Carolina Teacher 5 (January 1892):249-250.

[11]Ibid.

The turn of the century brought few changes for teachers in the way that their lives were controlled by school authorities and the public. In the early 1900s, a country school teacher was dismissed when the wives of several prominent citizens protested the poor dress the teacher maintained on her salary of forty dollars a month. A wealthy patroness of a private school voiced concern when a teacher wore a work shirt with a soft collar, resulting in the subsequent dismissal of the teacher.[12]

In 1915 one teaching contract forbade a female teacher to dress in bright colors, to dye her hair, to wear less than two petticoats, or to wear dresses more than two inches above the ankle.[13] In Santa Paula, California, in 1924, one teacher was dismissed solely because she bobbed her hair when the school board strictly prohibited it. As late as 1928, women teachers in a West Virginia town were required to fasten their galoshes up all the way. Sleeveless dresses, sheer stockings, and cosmetics were also banned or discouraged in their turn.[14]

It is interesting to note that "pedagogue" is the Greek word for a kind of slave, but the commonly held connotation

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[12]Marguerite Wilkinson, "Are Teachers Underpaid?" Independent (December 1919):173.

[13]David Rubin, The Rights of Teachers (New York: Doubleday and Company, Inc., 1971), p. 117.

[14]Howard Beale, Are American Teachers Free? (New York: Charles Scribner's Sons, 1936), pp. 390-391.

of the word is "teacher." Accordingly, teachers in the early history of this country were treated much like second-class citizens. The following excerpts from a teaching contract are illustrative of the stringent controls under which a teacher accepted a position in the 1920s.

> I promise to take a vital interest in all phases of Sunday-school work, donating of my time, service, and money without stint for the uplift and benefit of our community.
>
> I promise to abstain from all dancing, immodest dressing, and any other conduct unbecoming to a teacher and a lady.
>
> I promise not to go out with any young men except in so far as it may be necessary to stimulate Sunday-school work.
>
> I promise not to fall in love, become engaged, or to be secretly married.
>
> I promise not to encourage or tolerate the least familiarity on the part of any of my boy pupils.
>
> I promise to sleep at least eight hours a night, to eat carefully, and to take every precaution to keep in the best health and spirits, in order that I may be better able to serve my pupils.
>
> I promise to remember that I owe a duty to the townspeople who are paying me my wages, that I owe respect to the school board and the superintendent that hired me, and that I shall consider myself at all times the willing servant of the school board and the townspeople.[15]

These restrictions reflected the folkways and mores of the times, but were applied more strictly to teachers, perhaps, than to other public figures. Although only one section of the contract directly pertained to teacher dress,

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[15]T. Minehan, "The Teacher Goes Job-Hunting," The Nation 124 (August 1927):606.

it is important to note the stringent controls under which a teacher was placed.

The life of a teacher was similar to that of a goldfish in a glass bowl and, much like that of a minister, was closely regulated by public rules and expectations.

> The explanation for this lies in the nature of the business in which they are engaged. Entrusted with the responsibility of instructing the young, they stand in loco parentis before the law and the public and are expected to keep themselves above reproach and to be subservient to the wishes of the most pious patrons in the community.[16]

Thus parents, as well as the community, saw the role of the teacher as one of providing an adult model for children. Life in rural America called for almost constant face-to-face confrontation with students, parents, and the community. These restrictions on teachers made it virtually impossible for them to separate their private from their professional lives.

That public school employees should bow submissively to these stringent rules and regulations can be explained by the fact that job opportunities during this period were very limited, especially for young, unmarried females. These restrictions, therefore, were of little concern. Many prospective teachers cared nothing for their loss of freedom, nor realized how limited in their dress and activities they were to be. They wanted only to draw their salaries with as little conflict as possible.

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[16]Elsbree, The American Teacher, p. 296.

A book written in 1925, concerning the problems of teachers, also addressed the issues of dress and grooming. The author encouraged modesty in dress that did not exhibit "showiness or dowdiness."[17] He further emphasized that the criterion that should be met in choosing the proper dress is one of "good taste."[18]

If controls were imposed in the matter of teacher dress, the use of cosmetics and jewelry was considered to be even more taboo. "Painting, powdering, and mutilation of the ears" were strictly forbidden in the schoolhouse, and considered to be very distasteful adornments to be worn in public.[19] "Probably there is no situation which cannot be met as successfully without the adornments as with them."[20]

A couplet from Pope seems to best summarize the views held by most people concerning the dress and grooming of teachers during this era:

> Be not the first by whom the new is tried,
> Nor yet the last to lay the old aside.[21]

An early rebellion by teachers was voiced in 1917 when a school board designated that teachers wear ankle-length smocks in the day when knee-length dresses were fashionable. The teachers were victors in this round when they earned the support of the state superintendent and the press. In a

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[17]John C. Almack and Albert Lang, Problems of the Teaching Profession (Cambridge, Massachusetts: The Riverside Press, 1925), pp. 304-305.

[18]Ibid. [19]Ibid. [20]Ibid. [21]Ibid.

similar case in Chicago in 1925, Superintendent Ray McAndrew dictated that teachers wear long loose skirts, but the Federation of Teachers was strong enough to defy his wishes. An Arkansas school board also attempted to control strictly a teacher's dress when they promulgated a rule prohibiting

> . . . the wearing of transparent hosiery, low-necked dresses, or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics.[22]

When confronted with the legality of this regulation, the school board was supported by the courts.[23]

By the 1920s not all teachers were meekly submitting to the archaic thinking of employing boards. Following World War I, a combination of circumstances had given teachers a new frontier of freedom that was unprecedented. Teacher training had become more specialized with the professionalization of teachers, while the war had hastened the industrialization of the country. The old concepts of morality, long established social controls, and ancient standards of conduct were, in many areas, destroyed by wartime experiences.[24]

Young teachers, affected by these social changes, cast aside the old beliefs and developed a new attitude toward

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[22]Almack and Lang, Problems of the Teaching Profession, pp. 304-305.

[23]Ibid.

[24]Howard Beale, A History of Freedom of Teaching in American Schools (New York: Charles Scribner's Sons, Inc., 1941), p. 243.

the teaching profession. The activities of teachers, which had made them subject to dismissal before World War I, were now given a more liberal view. "Freedom is now permitted in dress, in conduct, and in habits that would once have been considered 'immoral' by a stricter, pre-war generation."[25]

The degree of freedom varied with the community and section of the country in which the teacher resided. In actuality, it was only the teacher in the big city who saw any real change. Beale found rural communities still quite restrictive through the late 1930s.[26] The community, in any case, still expected the teacher to lead an exemplary life upon which children might model their own actions. Many teachers found little freedom in their personal lives until the tenure laws were enacted in their respective states.

This movement toward freedom lost momentum during the depression. The country and the state of education were in a period of severe deprivation, and the discussion of teachers' freedom seemed meaningless. The issues of dress and grooming lost importance, for many found it difficult to clothe themselves in the most modest way. In a time when the economy required a minimum number of teachers to be

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[25]Ibid.

[26]Beale, Are American Teachers Free? pp. 374-375.

employed, it was foolish and dangerous to express opinions that opposed school authorities. This insecurity went a long way toward destroying teacher quest for freedom.[27]

By 1939, however, teachers enjoyed a great deal more freedom than had those of the late 1800s and early 1900s. This freedom was reflected not only by the sweeping social upheaval of post-World War I, but also was the result of the new status which many women were beginning to enjoy in the eyes of the public. The status of women had been drastically altered forevermore by the excesses of the twenties and the deprivation-ridden thirties. No longer content or allowed by economic circumstances to remain in the work force only until marriage returned them to their traditional roles as full-time homemakers, women, including teachers, were beginning to demand more consideration in their public and professional lives.

The post-industrial era, following World War II, ushered in a new expansion in the rights of teachers. This was accompanied by a movement toward increased recognition of human rights which established a kind of "new morality," giving people in general and teachers in particular more rights, both personally and professionally.[28]

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[27]Beale, A History of Freedom of Teaching in American Schools, p. 267.

[28]Fischer, "The Civil Rights of Teachers in Post-Industrial Society," p. 383.

A study conducted in 1950 clearly showed a dramatic change in public attitudes. Calloway surveyed a sample of Missouri teachers and found that 75 percent of those who responded felt no public pressure against dancing, smoking, or card playing. In response to social drinking, 58 percent felt that this practice was frowned upon by the public while 20 percent said that they found no opposition to their participation in activities open to other citizens.[29] In analyzing the results of this study, Story concluded that the evidence "seems to point to a growing change in public attitudes toward teachers."[30]

The prosperity enjoyed by the nation following World War II, in the late 1940s and 1950s, was followed by an era in which many youth initiated a quest for quality rather than quantity of life. There was an increased interest in the rights of the individual as expressed in the Civil Rights Act of 1964. The National Education Association and the American Federation of Teachers became more militant and pushed for the rights of teachers. Women joined the ranks in requesting equalization of rights and were backed by such organizations as the National Organization of Women which

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[29]B. Calloway, "Are Teachers Under Community Pressure?" School and Community 458 (May 1951):83.

[30]T. Story, "Public Attitude Is Changing Toward Teachers' Personal Freedom," Nation's Schools 45 (November 1950):70.

worked for passage of the Equal Rights Amendment. A combination of these events had a profound effect upon the entire fabric of life. There was an upsurge of splinter groups--hippies, yippies, and flower children--who viewed themselves as symbols of this quality of life movement.

Cultural changes, such as those experienced during this era, are usually accompanied by drastic changes in fashion and hair style. This movement was accompanied by shorter dresses for women, longer hair for men, and a generally less formal mode of dress. Concern for the short dresses worn during this period was voiced by one teacher in a popular education magazine:

> When in the latest fashion
> So attractively you've dressed,
> Won't you try some exercises
> As just a little test?
>
> Stand before your mirror
> Full length upon the wall,
> Turn around, bend over
> As if picking up a ball.
>
> (Are garters peeking back at you?
> Stocking tops and flesh?
> Remember children's thoughts
> Can easily digress.)
>
> Next reach high into the air
> As on the chalkboard you write,
> Ask someone who's watching
> Exactly what's in sight.
>
> (Will small folks on lower chairs
> Get quite a different view?
> Is it Playtex they are seeing
> When they are watching you?)

Now sit before your mirror
And try a pose or two,
Like crossing right leg over left,
As we are prone to do.

You may be teaching something
That needs some careful thought,
But perhaps it's difficult
To tell what they've been taught.

While keeping up with fashion,
Remember in the end,
It's little things that really count,
Like how to sit and bend.

Jeanne Gaughan
The Instructor (March 1968)

Almost overnight men too transformed themselves from the close-cropped Ivy League look to emulate the Beatles' shaggy, carefree style.

Teachers, in the past, were regulated by the historic doctrine of "teaching as a privilege."[31] In accepting a position, teachers were, in fact, giving up their constitutional rights. This doctrine has more recently been set aside by the courts, although some evidence of it still lingers.

The United States Supreme Court acknowledged the rights of public employees in the case of Keyishian v. Board of Regents.[32] It repudiated the ancient distinction in constitutional status between public and private employees whereby

> public employment, including academic employment, may be conditioned upon the surrender of

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[31]Fisher, "The Civil Rights of Teachers in Post-Industrial Society," p. 383.

[32]Keyishian v. Board of Regents, 385 U.S. 589 (1967).

> constitutional rights which could not be abridged by direct government action.[33]

The Supreme Court stated:

> . . . the theory that public employment may be denied altogether, may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected.[34]

Public employees cannot be "regulated to a watered-down version of constitutional rights solely because they are public employees."[35]

According to Chester Nolte, the board of education may legally expect the teacher to exhibit exemplary behavior and to comply with local mores in dress and conduct.[36] It has also been established that teachers have a property interest in their jobs, and this is protected by a full range of constitutional rights. Along with these rights come certain responsibilities which must be accepted by the person. The very nature of the teaching profession calls for discretion and revocation of constitutional rights that are sometimes viewed as unreasonable.[37]

Some school authorities today, nevertheless, attempt to control teachers' dress and grooming. The traditional battleground has changed, however, and today's restrictions

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[33]Ibid. [34]Ibid.

[35]Garrity v. New Jersey, 385 U.S. 493, 500 (1967).

[36]Chester Nolte, "Teacher's Image, Conduct Important," American School Board Journal 154 (January 1967):29.

[37]Fischer, "The Civil Rights of Teachers in Post-Industrial Society," p. 383.

are more likely to be those that forbid the wearing of jeans, sweat shirts, or see-through blouses. Men, who were not often subject to the strict dress and grooming requirements traditionally imposed on their female co-workers, are now the target of much of the litigation surrounding these issues. Although Sampson had flowing locks, Aristotle, Plato, Jesus, Moses, and Lincoln wore beards, and Uncle Sam sports a goatee, official discipline of those male teachers who have chosen to follow in their footsteps has been almost inevitable.[38]

The cultural influences of the past still informally control the lives of teachers today. This is especially true of small communities where one religion is dominant, and the selection of teaching personnel is systematically based upon these religious affiliations. A common example of this is found in the control of hair, beards, and mustaches. Many advisors to beginning teachers seeking positions suggest shaving facial hair and keeping a moderate hair style for interviews to prevent presenting a bad first impression that could lose a job offer. After one is established in his profession and accepted for his talents, these rights can be more freely exercised.

One reason for the dramatic expansion of teachers' rights is the support offered from professional organizations. The American Federation of Teachers and the National

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[38]Rubin, The Rights of Teachers, p. 117.

Education Association have shown a great amount of supportive interest in these matters. The National Education Association, for example, has established the Dushane Fund to deal with issues involving teachers' rights. Some of the cases have dealt with teacher dress and grooming, and the fund has offered both legal and financial support to those involved in such litigation.

Review of Related Research

Although teacher-rating scales frequently include an item asking respondents to assess teacher appearance, teacher effectiveness in relationship to teacher appearance is one aspect of teaching that has been greatly neglected in terms of research. "The inclusion of appearance on rating scales seems to imply that if teachers are to do a neat job of teaching, they must do a neat job of dressing."[39] It must be remembered that a teacher's effectiveness is multidimensional and cannot be accurately determined by examining single factors that contribute to it.[40] Two research studies have been conducted to determine the effect a teacher's dress and grooming have on students.

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[39]Tracy Menard, "An Analysis of the Relationship Between Teacher Effectiveness and Teacher Appearance," Journal of the Student Personnel Association for Teacher Education 13 (September 1974):27.

[40]D. Ryans, "Prediction of Teacher Effectiveness," Encyclopedia of Education Research (October 1957):1486-1491.

The purpose of a study done by Menard was to determine if the appearance of teachers had an impact on their effectiveness based on the criteria of student ratings and student achievement.[41] The researcher sought to answer the following questions:

> Is there a significant difference in teacher effectiveness due to a difference in the appearance of the teacher in two consecutive quarters of teaching?
>
> Can the student characteristics of sex, academic major, achievement, and socio-economic status be used efficiently in predicting teacher effectiveness based upon a difference in teacher appearance?[42]

A sample of 156 freshmen students at the University of Northern Colorado in 1972 was chosen for the study. The subjects were enrolled in a course in introductory psychology with two classes meeting during the winter quarter and two in the spring quarter. All received instruction on the same material, were taught by an identical method, and were evaluated with the same test instruments. The only variable between the winter and spring quarters was in the appearance of the instructor. The instructor during the winter quarter wore long hair, a full beard, and was dressed in faded blue jeans, a work shirt, and boots. His attire for the spring quarter consisted of a white shirt, tie, dress slacks, and

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[41]Menard, "An Analysis of Teacher Effectiveness and Teacher Appearance," p. 27.

[42]Ibid.

dress shoes. He wore short hair and had a clean-shaven face. The study concluded that there was no difference in teacher effectiveness as measured by student ratings or student achievement, regardless of the appearance of the teacher. The student characteristics of sex, academic major, achievement, and socio-economic status did not aid in the prediction of teacher effectiveness. The researcher made the following inferences based on her research.

First, many public school districts and some colleges and universities have dress codes, either written or implied, for students and teachers. Although caution should be maintained in generalizing the results of this study to all situations, the implication that a certain standard of dress does not reflect teacher effectiveness is certainly relevant, and the abandonment of dress codes might be in order.[43]

Secondly, school officials in charge of hiring teaching personnel are sometimes reluctant to employ someone whose appearance does not fit the stereotyped, conservative image of a teacher. The results of this study indicate that school officials should emphasize factors other than appearance when selecting future personnel.[44]

There are further implications for dress in relation to teachers. Administrators, counselors, and others should

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[43]Ibid. [44]Ibid.

be cognizant of the possibility that appearance does not significantly alter effectiveness when teachers are interacting with young adults.[45]

Again, the majority of the rating scales for teacher effectiveness contain an appearance item, although it may be couched in terms such as "well-groomed" or "neatly dressed." This study implies that an appearance item might be useless in measuring teacher effectiveness and, therefore, could be excluded from the scales.[46]

Although the results of this study indicate that there is no relationship between teacher effectiveness and teacher appearance, further research is needed to validate and clarify the role that teacher appearance plays in the complex teaching-learning process.[47]

In a similar study, Rollman made an exploratory investigation to uncover potential effects, if any, of teachers' styles of dress upon students' perceptions of teachers' characteristics.[48] The researcher produced two sets of stimulus photographs made of male and female teachers from the waist down. Each set of photographs contained three models exhibiting relatively formal, informal, and moderate

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[45]Ibid. [46]Ibid. [47]Ibid.

[48]Steve Rollman, "Nonverbal Communication in the Classroom: Some Effects of Teachers' Style of Dress Upon Students' Perceptions of Teachers' Characteristics," (Ph.D. dissertation, Pennsylvania State University, 1977).

dress of the male and female. A sample of one hundred university students was selected to view the stimulus photographs with fifty to rate the male and the other fifty to rate the female. Each group was instructed to note characteristics of the teachers.

Based on student responses, the researcher concluded that a male teacher who dresses informally would enhance the probability of being perceived as sympathetic toward students' problems, would be friendly, and would be flexible. The moderately dressed male was perceived to be most stimulating and clear. The male teacher most formally dressed was judged most knowledgeable, organized, and well-prepared for class.[49]

The very informally dressed female was considered to be very fair, sympathetic toward students' problems, enthusiastic, friendly, flexible, and stimulating. When moderately dressed, the female teacher was perceived to be the most clear. The female teacher most formally attired was thought to be well-organized and well-prepared for class.[50]

The results of this study point up the fact that a teacher's style of dress does have some impact on students' perceptions of them. This clearly establishes a need for more serious attention to be given the subject by researchers.

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[49]Ibid. [50]Ibid.

The very limited research that has been conducted concerning the importance of teacher dress and grooming makes it impossible to substantiate the scattered results. In both of the studies reviewed, college students were used as the sample populations. Serious attention should be directed to further exploration of this area using more varied age groups as samples.

Significance of Teacher Dress and Grooming

Opinions vary as to the significance that should be placed upon teacher dress and grooming practices. Historically, the view was held that a teacher's proper dress and grooming were essential in maintaining discipline and enhancing an atmosphere conducive to learning. More recently, however, many have questioned the real importance that these practices actually play in the overall effectiveness of a teacher.

A poll conducted by the National Education Association randomly selected five hundred members from the association's records division to determine the opinions that teachers held relative to their dress and grooming in the classroom.[51] Of the 28 percent of teachers who responded, an overwhelming majority felt that teachers have a responsibility to set an example for students in matters of

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[51]"Teachers' Dress and Grooming," Today's Education 58 (January 1969):46-47.

appearance, and many of the respondents elaborated their personal feelings on the questionnaire.

One teacher stated that "teachers should set an example for youth in dress, morals, and all things--if they don't want to be examples, they shouldn't be teaching."[52] A male teacher felt that it was unfair to impose dress codes on students when female teachers wore dresses six inches above the knee. Many of the teachers pointed out that a teacher's dress and grooming influence the entire tone of the classroom. The general feeling was one of responsibility to be well-dressed with resulting respect and appreciation from students.[53]

The poll revealed that very few teachers had arbitrary dress or grooming standards imposed upon them. Again, the respondents felt that any established rules were unnecessary in light of the fact that, as professionals, teachers should automatically act and dress accordingly. In school systems where such standards of dress and grooming prevailed, few viewed this as an infringement on their individual rights.[54] The limited sample used in this study restricts the validity of the findings.

Another contention by some teachers is that, in order to do an outstanding job, the teacher must first earn the respect and admiration of students. To establish this relationship, a teacher must display self-confidence, and good

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[52]Ibid. [53]Ibid. [54]Ibid.

grooming and attention to dress are important factors in helping to accomplish this goal. "A teacher's first responsibility--before she can sell her product--is to sell herself to her students."[55] Students have a strong feeling of admiration for an attractive-looking teacher. In order to obtain the distinction of being attractive, teachers must give careful attention to their good health, cleanliness, and choice of wardrobe.[56]

Louana Trout, 1964 National Teacher of the Year, always made a point of wearing shoes to match her dresses. She felt that she was paying her students a subtle compliment by "dressing up" for them. The trait individualized her and made her "Mrs. Trout" and not just another teacher.[57]

When one speaks of the importance of an attractive teacher, it should be noted that beauty is not a prerequisite for attractiveness. Children are "quick to see beauty whenever there is a trace of it."[58] Bright cheerful colors in choices of clothing, a special piece of clothing, or nicely manicured nails can all contribute to a teacher's attractiveness and are noticed by students. Morale is

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[55]Lucy G. Mayo, "Attractive Packaging Helps Sell the Product," NEA Journal 42 (October 1953):447.

[56]Ibid.

[57]"Teachers' Dress and Grooming," pp. 46-47.

[58]Margaret O. James, "She Walks in Beauty," Clearing House 18 (April 1944):487-488.

boosted in both teachers and students when teachers take an interest in their dress and grooming.[59]

The opinions rendered thus far on teacher dress and grooming do not stand without opposition. Some teachers feel that "worrying less about dress codes for teachers and students and more about meaningful education would be a step forward."[60] A first-year teacher expressed concern that the way teachers dress makes students feel "stiff and out of it."[61] This teacher felt that it would be more appropriate for elementary teachers to dress like mothers in the home, and that high school teachers should wear a T-shirt and blue jeans. The feeling in both instances was that the child could better relate to a teacher dressed in familiar attire with whom he could identify.[62]

Students also hold opinions on the dress and grooming of teachers. One fifth-grade boy went so far as to say that he would try to flunk his grade if he had a teacher that met his expectations in attractiveness. This further indicates a preference by students for an attractive-looking teacher.[63]

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[59]Ibid.

[60]"Teachers' Dress and Grooming," pp. 46-47.

[61]Clara Cockerille, "Dear Miss North," Pennsylvania School Journal CXX (November 1971):79.

[62]Ibid.

[63]Mayo, "Attractive Packaging Helps Sell the Product," p. 447.

An informal survey done in 1951 was carried out to determine if pupils paid attention to the clothes their teachers wore. The sample consisted of graduate and undergraduate students who had attended both large and small public school systems. The study revealed students to be "acutely conscious of what teachers wore and how they dress--and the memory lingers on for years."[64] Many students maintained vivid recollections of the dress of particular teachers and were anxious to discuss them. The way a teacher dressed often affected the way a student felt. One subject commented on a former teacher who always wore something with ruffles and frills. "I remember that she made me feel as gay as she looked."[65] Another commented on a teacher who "seemed to be in the same black dress every day--her class was as dull as she looked."[66] Other teachers identified in the study were remembered for variations in ties, costume jewelry, perfume, messiness, and monotonous one-color wardrobes.

The evidence in this survey strongly suggests that pupils pay close attention to the way teachers dress. It further suggests that students are opinionated as to their likes and dislikes regarding the way teachers dress and groom themselves.[67]

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[64]Helen Ellis, "Everyone Remembers What the Teacher Wore," Clearing House 26 (February 1952):371-372.

[65]Ibid. [66]Ibid. [67]Ibid.

Many parents feel that the dress and grooming of teachers contributes to the success or failure of the schools. This is not a recent criticism, but one that has been voiced for quite some time and is still in the forefront of educational issues. When New York City parents were questioned about their dissatisfaction with the school system, "mini-skirted women teachers and long-haired men teachers 'who don't act like men'" were listed among the causes.[68] Parents have traditionally entrusted teachers to set examples for students, and many still expect the same considerations today.

In many instances, the principal ultimately decides the fate of a teacher who deviates from standard dress and grooming practices. The radical changes in styles of dress and grooming in the 1960s have brought many principals precisely to this situation. The way in which an individual principal deals with these incidences of non-conforming dress and grooming directly relates to the importance that a principal places on the issue.

An overwhelming majority of principals feel that teachers should set examples and use common sense in their own dress. They feel that the main consideration should be good taste--no matter what the fashion. The dress of a teacher should command the respect of the students in his

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[68]"Teachers' Dress and Grooming," p. 46.

or her class. Inappropriate dress usually brings protests from other teachers and from parents who frown on this as a possible disruptive influence upon the learning that should be taking place in the classroom. One principal found that a woman who tried to look her best at school usually was enthusiastic and interested in her teaching.[69]

While many point out the importance and influence a teacher's dress and grooming have on the educational process, opinions vary as to the principal's role in controlling these situations. "Within the limits of acceptable fashion, bounded by decency, a principal has no right to censor the dress of fellow professionals in the classroom."[70] The right to control dress and grooming should come only when a principal can clearly establish that this appearance proves disruptive in the classroom.

> A principal would be hard-pressed to prove that poor control is due to the attire of the teacher. In every school there is a teacher who could develop a good learning environment dressed in fig leaves, while another teacher in the school could not develop a comparable learning environment dressed in armor.[71]

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[69]Sam Stimple, Audine Agend, and John Gist, "Principal's Problem: Appropriate Dress for Teachers," Instructor 179 (February 1970):39.

[70]Ibid. [71]Ibid.

Status of Teacher Dress and Grooming Regulations

Available information indicates a scarcity of regulations that currently control the dress and grooming of teachers. A survey, conducted by the National Education Association in 1969, revealed that very few school systems arbitrarily imposed dress and grooming standards.[72]

A more recent survey, completed in 1978, further substantiates and updates these findings.[73] Questionnaires were sent to one hundred rural and urban school districts, including two in each of the fifty states and one to the District of Columbia, to determine the status of dress and grooming regulations for teachers. The findings showed that very few school districts presently enforce dress or grooming codes for teachers. In instances where regulations did exist, only 11 percent reported that the principal had the option of dealing with dress and hair styles at the building level. This situation was more prevalent in rural than in urban settings.

There has been a dramatic revision of dress codes in the last ten to fifteen years. An astounding 82 percent of those polled indicated that the dress and grooming regulations in their schools have changed during this time. The

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[72]"Teachers' Dress and Grooming," pp. 46-47.

[73]Bettye Johnson, "Goodbye to Dress Codes for Now," Phi Delta Kappa 61 (November 1979):217.

new trend has been directed toward flexibility and generality in regulations.[74]

Strict dress and grooming regulations have been virtually eliminated for public school teachers, especially those dealing with hair styles. Those regulations that do remain deal mainly with cleanliness, neatness, appropriateness, safety, and health.[75]

A look at some representative dress and grooming codes gives further evidence to substantiate the relaxation and generalization of policies.

The following dress code was mandated in 1978 in the Madawaska Public Schools in Madawaska, Maine:

> Teaching as a profession demands setting a good example for boys and girls in every possible way. As adults and professionals, teachers are expected to be guided in their grooming habits by what is most generally acceptable in the business and professional world. Dress that could be described as "sportswear" is not considered acceptable for teachers, unless it is appropriate to the specific class or activity.[76]

This code adopts the traditional doctrine that recognizes teachers as examples for students, but avoids harsh and unreasonable restrictions on their dress and grooming. This delegates more responsibility to the teacher and places less liability upon the school board.

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[74]Ibid. [75]Ibid.

[76]"Teachers' Dress Code," Educational Policies Service of the National School Boards Association, Madawaska Public Schools, Madawaska, Maine (1968).

A policy on staff conduct, written in 1975, for the North Panola Consolidated School District, North Panola, Mississippi, clearly states that "conduct and dress should be a personal matter."[77] The school board in this instance strongly encourages its staff to act and dress in a way that is a credit to the teaching profession. "The only limitations shall be those that affect professional performance, health of associates and students, and level of community tolerance."[78] More specifically, the board stated that any limitations would be:

(1) to guard against jeopardizing the effectiveness of the teacher-student relationship;

(2) to foster rather than destroy the popular concept of "teacher";

(3) to set standards which will prevent too wide a deviation from normal business/professional attire and conduct;

(4) any other limits to demonstrate the harmony between stated school goals and expectations concerning teacher dress and conduct.[79]

Again, the school board is very selective in its limitations, hoping to avoid lengthy and costly litigation.

A more restrictive philosophy was adopted by the Superintendent of Schools in Newark, Ohio. She felt that restrictions on teacher dress should be regulated by

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[77]North Panola Consolidated School District, North Panola, Mississippi, Educational Policies Service of the National School Boards Association (1975).

[78]Ibid. [79]Ibid.

educational implications and the attitude of the people in the community. She considered the people of Newark to be very conservative in dress, and expected teachers to conform to these standards. The superintendent felt that, as long as public education continues to be primarily financed through taxes, the public will feel free to establish rules that affect educators. The statement on dress included flexibility in changing fashion as a part of the dress code. "Generally speaking, acceptable dress for males is a coat and necktie, and for ladies an appropriate dress."[80]

A dress code for teachers in New Jersey was based on the outcome of a case that established the school board's authority to enforce a dress code for its teaching staff members. In enforcing it, however, three tests of validity had to be passed.

> It must be reasonable; it must be consistent with statutes and rules of the State Board of Education; and its effect must be toward the maintenance and support of a thorough and efficient system of public schools.[81]

An earlier dress code requiring men teachers to wear ties and coats at all times was considered to be unreasonable in that the rule did not serve a legitimate purpose in the operation of the school, despite the board's position that

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[80]Loren H. Briggs, "A Statement on Staff Dress and Appearance," Educational Policies Service of the National School Boards Association (1976).

[81]Ibid.

it was necessary to help train young students in decency and decorum.

The public schools are increasingly avoiding formal, specific regulations pertaining to teachers' grooming and attire. Most policies are very general and give teachers leeway as long as health standards are observed and classroom performance is not hindered. While many schools still observe dress codes for students, they have been abandoned for teachers generally, and are rarely mentioned in contracts.

The future resolutions of this issue will probably lie in the power of collective negotiations contracts, typically by means of binding arbitration. An example of this is seen in a recent controversy that was resolved by an arbitrator in a Michigan school system. These arbitrations state that teachers can consider many situational variables such as age and maturity of students, the subject taught, and the health and safety factors of the situation. This resolution could be less expensive than court involvement.[82]

Court Involvement

Over the years, teachers have made significant gains in rights through court action. Legal bases for these rights stem from a number of clearly defined sources including constitutions, both federal and state, and federal, state, and local statutes.

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[82]Fischer and Schimmel, The Civil Rights of Teachers, p. 153.

The main sources of constitutional protection for the rights of teachers are found in the First Amendment guarantees of freedom of speech and religion, and the due process and equal protection clauses of the Fourteenth Amendment. The full text of the First Amendment and the relevant portion of the Fourteenth Amendment reads as follows:

Amendment I:

> Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.[83]

Amendment XIV: Section 1

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.[84]

The courts have scrutinized with great care school board regulations that seek to establish standards regarding a teacher's appearance. They have viewed the appearance of teachers as a form of constitutionally protected expression, an aspect of liberty protected by the Fourteenth Amendment, and an aspect of privacy to which they are entitled.[85]

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[83]U.S. Const. amend. I, sec. 1.

[84]U.S. Const. amend. XIV, sec. 1.

[85]Chanin, Protecting Teacher Rights, p. 14.

In considering these issues, the courts have dealt with "dress" and "grooming" as two separate entities. "Grooming" is generally interpreted to mean beards, mustaches, and length and styling of hair. Court interpretation of "dress," on the other hand, usually denotes attire which can be removed after school hours.[86]

Much controversy has surfaced in attempting to control and regulate grooming as it has been defined here. Although the Constitution does not specifically address the issue, controls have been established so that states may not infringe upon the constitutional rights of teachers. The courts have designated the wearing of beards, mustaches, and hair styles as a constitutional right protected by the First Amendment as "symbolic speech."[87]

In addition to the protection established in the First Amendment, some courts have found supplementary protection in the due process clause of the Fourteenth Amendment. The concept of "liberty" in this same amendment can be interpreted to include grooming. It is considered an arbitrary action by the school board to prohibit these grooming habits unless it can be proved that they interfere with the school's operation.[88]

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[86]Fischer and Schimmel, The Civil Rights of Teachers, p. 152.

[87]Ibid. [88]Ibid.

In dealing with a teacher's dress, the law is somewhat different. The courts generally uphold a school district's right to impose reasonable regulations. The distinction between "dress" and "grooming" becomes then a matter of permanency. After school a teacher is free to follow his or her personal taste in clothing. Beards and other facial foliage, however, cannot be removed for school hours and replaced afterwards in the same way as can short skirts, pants, or see-through blouses.

The courts are thus faced with a balancing test which must weigh a teacher's right to wear what he wishes against the community's interest in placing adult models in schools who exemplify community standards, and whose appearance will minimize interference with the educational process. The courts, in these instances, tend to rule in favor of the school board.[89]

The issue of the wearing of religious garb by public school teachers has been in litigation, at various times, since a landmark case was heard in 1894.[90] In that case the authority of a local board of education was questioned when it employed nuns as teachers and permitted them to appear in the classroom wearing the habits of their order.

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[89]Ibid.

[90]Hysong v. Gallitzin Borough School District, 164 Pa. 629, 30 A. 482 (1894).

To the present day, litigation has failed to resolve the issue to the satisfaction of all parties concerned.

Those opposing the practice feel that the employment of nuns as teachers constitutes the use of public funds for sectarian instruction. The nuns reply that to deprive them of their positions because of their distinctive religious dress would be to deny them religious freedom established by the First Amendment.

The wearing of religious garb by public school teachers has been challenged also on numerous occasions on the grounds that it violates state constitutional prohibitions against sectarianism in the schools.

> Whether, in the absence of a state statute or state-level regulation forbidding it, local boards can permit the wearing of religious garb by teachers seems far from settled.[91]

The right to employ also includes the right to discharge, except as restricted by contractual or constitutional considerations. In many states, statutes provide that teachers may be dismissed only upon stated grounds. Where teachers have been dismissed because of their personal dress and grooming, boards have used, as grounds, immorality, insubordination, and neglect of duty. The courts have become involved, however, where the legality of the dismissal was questioned.

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[91]E. Edmund Reutter, Jr. and Robert R. Hamilton, The Law of Public Education (Mineola, New York: The Foundation Press, 1976), p. 29.

During the 1800s and early 1900s, immorality was associated with dress which was not in accordance with community standards. The wearing of short skirts, makeup, and even transparent hosiery was considered immoral as late as the 1920s and constituted grounds for dismissal. The Supreme Court upheld regulations that prohibited dress and grooming that tended toward immodesty. This included the wearing of cosmetics and jewelry.[92]

As the morals and lifestyles of the country changed, so did the public's view that a teacher's nonconforming dress should be considered "immoral." More recent dismissal cases are based on charges of neglect of duty and insubordination. The insubordination charges result solely from the teacher's refusal to comply with an order to change his appearance. Neglect of duty has been charged in such instances where the board feels that the manner in which a teacher dresses affects school-community relations.

A review of the statutes of all fifty states concerning teacher dismissal reveals that twenty-three states list insubordination as cause for dismissal, and twenty-nine include neglect of duty as grounds for such action. The courts must examine individual situations and weigh all evidence in deciding each case.

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[92]Beale, Are American Teachers Free? p. 381.

The majority of cases concerning teacher dress and grooming have been heard in the last two decades. With an increased interest in individual rights during this period, teachers have initiated litigation to ascertain their rights. The precarious position of the teacher, in relation to exposure to young children, forces the courts to balance these individual rights against community interest and the state's compelling interest in education. This has contributed to the illusive and contradictory decisions rendered by the courts concerning matters of teacher dress and grooming.

CHAPTER III

LEGAL ASPECTS OF TEACHER DRESS AND GROOMING

Introduction

As citizens, public school teachers enjoy many of the same freedoms guaranteed to all Americans. They have the right to speak, think, and associate with groups of their own choosing under most circumstances. They may also hold office and espouse political philosophies as they desire. As public school teachers, however, they are obligated to exercise these freedoms with restricted discretion and due consideration of their effects upon others, especially children.

By virtue of their positions, teachers perform government functions which require that they conform to certain laws, rules, and regulations not ordinarily applicable to citizens outside the profession. When the regulations and restrictions imposed upon them appeared to be unnecessary, unreasonable, or in conflict with constitutional guarantees and statutory provisions, however, teachers have sought legal relief.[1]

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[1]Edmund C. Bolmier, Schools in the Legal Structure (Cincinnati: The W. H. Anderson Company, 1973), p. 198.

Teachers and school boards often disagree as to what is reasonable and legal. In many instances, litigation arises from such incidents, and the courts must decide the reasonableness and legality of the school-board-imposed restrictions. It is, therefore, the courts which must make the ultimate decision as to the limits to which teacher rights extend.[2]

The courts, in recent years, have been called upon to determine the legality of a bewildering array of cases dealing with school board rules prohibiting certain modes of dress and grooming by teachers. In most instances the discussions of teacher "dress" and teacher "grooming" have been meshed as one issue, but there is a subtle distinction between the two. When teachers get home from school, they can change their clothing immediately, but grooming is not so easily altered when teachers enter their private lives. For this reason, grooming rules have had a more significant impact on a teacher's private life than rules affecting a teacher's dress. This distinction is sometimes, but not always, emphasized in the resolution of court cases.[3]

The majority of court cases involving teacher dress and grooming have been associated, either directly or indirectly,

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[2]Ibid., pp. 208-209.

[3]Thomas J. Flygare, "Teachers' Public Lives and Legal Rights," Education Digest 42 (February 1977):26-27.

with the First or Fourteenth Amendments to the Constitution. The relevant section of the First Amendment deals with the guaranteed freedoms of speech and religion. Section 1 of the Fourteenth Amendment, which prohibits any governmental body from depriving any person of life, liberty, or property without due process of law, has also been grounds for litigation. Generally, the plaintiffs allege that dress and grooming are forms of symbolic speech protected by the First Amendment. When public school teachers have worn religious garb, they have declared that this is a right to freedom of religion also guaranteed by the First Amendment. In such cases where dress and grooming have been considered liberties, some teachers have initiated litigation on the grounds that these liberty interests have been taken away without due process of law guaranteed by the Fourteenth Amendment.

In discussing legal issues, it is important to remember that each decision of the court relates only to the specific issues in that particular case. Some decisions, however, do tend to establish legal precedents or "case law" more than do others. In rendering decisions, courts often depend heavily on rulings made by influential judges in other cases. Decisions from a United States Circuit Court of Appeals tend to establish precedents more than do decisions from a Federal District Court, while decisions rendered by the United States Supreme

Court, binding across the country, establish the greatest precedent in regard to a particular issue.[4]

Although a legal precedent may have been established concerning an issue, this does not prevent an individual from pursuing his grievance in court. A different set of facts and circumstances can easily change the outcome of the litigation. Consequently, generalizing and drawing specific conclusions from legal research is especially difficult.[5]

The courts, in recent years, have handed down numerous decisions concerning constitutional questions relating to the dress and grooming of public school teachers. These include cases dealing with the denial of freedom of speech, freedom of religion, and of due process. As a result of these court decisions, certain legal principles involving teacher dress and grooming have evolved. Established on the basis of the First and Fourteenth Amendments, these will be enumerated and discussed in this chapter.

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[4]Alan Abeson, "Litigation," Public Policy and the Education of Exceptional Children, ed. Frederick J. Weintraub (Preston, Virginia: The Council for Exceptional Children, 1976), p. 254.

[5]Ibid.

Legal Bases for Court Cases Regarding Teacher Dress and Grooming

Overview

An increasing number of teachers protest against requirements made by school boards which attempt to regulate the manner in which they dress and groom themselves. They feel that dress and grooming are personal matters, and they should be allowed to appear as they like. On the other hand, many school boards feel that it is their obligation to insure that a teacher's appearance is in accordance with the standards of the professional community.

The quest by teachers for liberty to exercise their personal freedoms received much recognition by the public and the courts during the late sixties and early seventies. Although courts, in the past, were reluctant to become involved in school affairs, they have been willing to intervene in situations where a teacher's constitutional rights may have been violated through arbitrary rules and regulations. While the courts have been clear in stating that teachers possess constitutional rights, both in and out of the schoolhouse, they have also been careful to balance these rights against the teacher's responsibility as a public employee, and as an exemplar to students.

If it had not been for the noble efforts made by students in advancing their constitutional rights, teachers might never have stepped forward to ascertain their freedoms.

Several decisions rendered by the courts in relation to student dress and grooming were broadened to encompass teachers. This opened the litigable door for teachers who felt they too deserved constitutional considerations the same as students and other public employees did.

Control of the Schools

Education, per se, is not a federal matter; it was left as one of the powers of the states or to the people by the framers of the Constitution. At no point does the Constitution refer expressly to education. Thus, education became a state function under the Tenth Amendment which provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[6]

A change in the Supreme Court's interpretation of the Fourteenth Amendment made the Bill of Rights, the first ten amendments, applicable to the states. This opened up a new area for the courts to regulate. Originally, the Bill of Rights applied only to the federal government, but in 1925, these ten amendments, which guarantee the rights of the individual, were absorbed into the Fourteenth Amendment and were made applicable to the states as well. This then made the personal rights expressed in the First Amendment

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[6]U.S. Const. amend. X, sec. 1.

"liberties" protectable by the due process clause in the Fourteenth Amendment.[7]

Prior to the 1950s, the federal courts rarely intervened in educational matters. Because of this lack of interest, the states began to develop a body of case law which permitted the enactment of state and local educational policies and practices that failed to meet minimal constitutional requirements under the First and Fourteenth Amendments. This set the stage for attracting federal court attention toward the schools' regulation of both students and teachers.[8]

The courts have clearly stated that, while they do not wish to intervene in educational matters, they will not tolerate violations of constitutional rights. In the case of Hobson v. Hanson, heard in 1967, Judge J. Skelly Wright so eloquently stated:

> It is regrettable, of course, that in deciding this case, the court must act in an area so alien to its expertise. It would be far better indeed for those great social and political problems to be resolved in the political arena by other branches of government. But these are social and political problems that defy such resolution. In such situations, under our system, the judiciary must bear a hand and accept its responsibility where constitutional rights hang in the balance.[9]

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[7]John C. Hogan, The Schools, the Courts, and the Public Interest (Lexington, Massachusetts: D. C. Heath and Company, 1974), p. 9.

[8]Ibid., p. 5.

[9]Hobson v. Hanson, 269 F. Supp. 401 (D.D.C. 1967).

When teachers have defended their dress and grooming practices, they have done so on the claims of violations of their First and Fourteenth Amendment rights. While the courts are quick to state that teachers are citizens, recognized by the Constitution, they have been slow to remand regulations imposed by school boards that are neither arbitrary nor unreasonable.

The courts, feeling that they could not possibly foresee all the numerous and perplexing problems that might arise in the day-to-day business of running the public schools, entrusted to boards of education the authority to make such rules and regulations as might be necessary for the governing of these public institutions, as long as the requirements were reasonable and not discriminatory. In the case of State v. Marion County Board of Education, the courts further elaborated on this position:

> Boards of Education, rather than the courts, are charged with the important and difficult duty of operating the public schools. So, it is not a question of whether this or that individual judge or court considers a given regulation adopted by the Board as expedient. The Court's duty, regardless of its personal views, is to uphold the Board's regulation unless it is generally viewed as being arbitrary and unreasonable ; any other policy would result in confusion detrimental to the progress and efficiency of our public school system.[10]

This opinion was supported in the black armband case of

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[10]State v. Marion County Board of Education, 202 Tenn. 29, 302 S.W.2d (1957).

Tinker v. Des Moines by Justice Hugo Black, who said that the day-to-day operation of the public schools should be left up to the "school masters."[11]

As previously stated, the Tenth Amendment to the Constitution relinquishes control of the public schools to the states, and the individual states organize their school boards. In one recent decision concerning teacher dress, the court referred several times to the fact that schools are under the control of local boards of education, and that these are elected bodies.[12] The appellant's claim to free expression, in choice of dress, had to be balanced against the board's responsibility to promote respect for authority, traditional values, and discipline. The court would not substitute its judgment and gave the school board the power to decide in the absence of an arbitrary act. It was decided in this case that the board did not abuse its discretion. The court further stated that "public education" implies control by the public, not by the teachers.[13]

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[11]Tinker v. Des Moines Independent School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

[12]East Hartford Education Association v. East Hartford Board of Education, 562 F.2d 838, 2nd Cir. (1977).

[13]William J. Ceccolli, "The Courts and Teacher Grooming, Dress Codes," NASSP Bulletin 64 (May 1980):90-91.

This decision was even more significant since it occurred in the Second Circuit, which has been rather liberal in its decisions concerning the rights of teachers. Perhaps the most crucial statement made by the court in rendering this decision was its feeling that "the benefit to the public by the servant outweighs the impairment of individual rights."[14] Labeling this claim of rights "frivolous," the court said: "By bringing trivial activities under the constitutional umbrella, we trivialize the constitutional provision itself."[15]

Rights of Teachers as Public Employees

The history of public education is replete with incidents illustrating that teachers have been restricted in their personal, professional, and political rights more often than members of other professions. Numerous efforts by both professional organizations and individual teachers have been made in attempts to help remedy the situation through negotiation and litigation. Many of the limitations placed upon teachers have resulted from the exemplary nature of their profession. Citizens, boards of education, and the courts have felt that they are justified in holding teachers to higher standards of behavior than others have been

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[14]East Hartford Education Association v. East Hartford Board of Education, p. 860.

[15]Ibid.

expected to uphold. This expectancy on the part of the public has caused many educators to feel that they are second-class citizens.[16]

Traditionally, a teaching position was granted as a "privilege" on the condition that the range of constitutional rights available to citizens, in general, would not be exercised by those who entered the occupation of teaching. This historic doctrine of "teaching as a privilege" has been discredited and discarded by the courts. They have held that teachers cannot be governed by a watered-down version of the Constitution. It is now recognized, through authoritative court holdings, that teachers have a "property" interest in their jobs and that such interest is protected by a full range of constitutional guarantees.[17]

Because no rights are absolute, however, the civil rights of teachers may be legally curtailed in certain circumstances. The particular status of a teacher is unique, and responsibilities may justify the application of constitutional principles in ways which some people consider to be undue restrictions of civil rights. Teachers often have been included in the same category as governmental

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[16]Louis Fischer, "The Rights of Teachers in Post-Industrial Society," Education Digest 42 (February 1977):383.

[17]Ibid.

workers and the armed services, in that they have had limitations placed upon them because of their unique status.[18]

An early court decision, while not directly related to teachers, helped to establish guidelines under which public employees could be controlled. In the case of Bagley v. Washington Township Hospital District, the Supreme Court defined the limits of public restrictions upon political activities of public employees, another First Amendment right.[19] The Court established that, in order to waive constitutional rights as a condition of public employment, the employer must demonstrate (1) that the political restraints rationally relate to the enhancement of the public service, (2) that the benefits which the public gains by the restraints outweigh the resulting impairment of constitutional rights, and (3) that no alternatives less subversive of constitutional rights are available. The ruling made in Finot v. Pasadena City Board of Education (1967), involving a bearded teacher, referred to these guidelines in remanding a school board's regulation against the wearing of beards.[20]

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[18]Ibid.

[19]Bagley v. Washington Township Hospital District, 955 Cal. Rptr. 401, 421 P.2d 409 (1963).

[20]Finot v. Pasadena Board of Education, 250 Cal. App. 2d 189, 58 Cal. Rptr. 520 (1967).

In the landmark court case of Pickering v. Board of Education (1968), which involved the right to freedom of speech for teachers, the Supreme Court noted that state employment may not be conditioned on the relinquishment of First Amendment rights.[21] The Court stated that,

> at the same time it cannot be gainsaid that the state has interests as an employer in regulating the speech of its employees that differ from those it possesses in connection with regulation of the speech of the citizenry in general.[22]

More recently, the courts have sustained comprehensive and substantial restrictions upon activities of both federal and state employees.[23]

In the majority of cases in which the federal courts have upheld dismissals in the face of constitutional challenges, the public employer has presented evidence of a compelling interest in enforcing the dress and grooming regulations in question. In Stradley v. Anderson (1973), for example, the city offered evidence that beards and long hair might interfere with the proper wearing of a fireman's oxygen mask.[24] In cases upholding a city or state's right to regulate the appearance of policemen or firemen, the

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[21]Pickering v. Board of Education, 391 U.S. 563 (1968).

[22]Ibid.

[23]See CSC v. Letter Carriers, 413 U.S. 548 (1973); See also Broadwick v. Oklahoma, 413 U.S. 601 (1973).

[24]Stradley v. Anderson, 478 F.2d 188 (8th Cir. 1973).

courts have recognized the need for establishing discipline and maintaining the public's confidence in employees working in such sensitive and highly visible roles. In other cases, however, the courts have felt that teachers, working in public institutions, simply do not have the public exposure which policemen and other public employees have, dealing as they do, directly with the public.[25]

The United States Supreme Court, in Kelley v. Johnson (1976), ruled on the constitutionality of grooming regulations applicable to male police officers.[26] Directed at style and length of hair, sideburns, and mustaches, beards and goatees being prohibited except for medical purposes, the Court ruled that under certain specified instances, the State could make and enforce restrictive grooming codes. The test used in determining the legality of such regulations answered the question of whether the individual could demonstrate that there was no rational connection between the regulations and the promotion of safety of persons and property. In addressing the county police department's decision to adopt a dress code, the Court maintained that:

> this choice may be based on a desire to make police officers readily recognizable to the members of the public, or a desire for the

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[25]Handler v. San Jacinto Junior College, 519 F.2d 273 C.A. Tex. (1975).

[26]Kelley v. Johnson, 425 U.S. 238 (1976).

> esprit de corps which such similarity is felt to inculcate within the police force itself.[27]

The Court held that either purpose was a sufficient rational justification for regulations. This, in effect, defeated the policeman's claim based on the liberty guarantee of the Fourteenth Amendment.

The Court cautioned those wishing to make a sweeping generalization from this decision, warning that the regulation should not be viewed in isolation, but in the context of the county's chosen mode of organization for its police force.

> When the state has an interest in regulating one's personal appearance . . . there must be a weighing of the degree of infringement of the individual's liberty interest against the need for regulation.[28]

Kelley determines that the right of public employees to dress and groom as they please is not "fundamental" in the constitutional sense. Accordingly, the state carries no burden of justification in this case.[29]

The full impact of the Kelley decision on school districts is unknown. The Circuit Court in Tardif v. Quinn (1976) relied, in part, on Kelley in sustaining a board's dismissal of a teacher for reason of dress length.[30] It would appear that a board may adopt reasonable grooming

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[27]Ibid., p. 256. [28]Ibid. [29]Ibid.

[30]Tardif v. Quinn, 545 F.2d 761 (1st Cir. 1976).

codes which are applied equitably and which can be defended on the basis of some educationally sound rationale.

> Whatever constitutional aspect there may be to one's choice of apparel, generally it is hardly a matter which falls totally beyond the scope of the demands which an employer, public or private, can legitimately make upon its employees.[31]

Some courts have argued that teachers are established in exemplary roles in the community and must adhere to reasonable dress codes. In the more recent case of East Hartford Education Association v. Board of Education (1977), the Kelley principles were the foundation for the court's decision.[32] The court, in this case, upheld as reasonable the school board's requirement that men wear neckties. The Second Circuit Court said that, although there are differences between the functions of policemen and teachers, the same constitutional test applies. Noting the presumption of constitutionality for legislative (school board) acts, the court found that the teacher had not carried his burden of demonstrating that the school board's dress code was "so irrational that it may be branded as 'arbitrary.'"[33]

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[31]Ibid.

[32]East Hartford Education Association v. East Hartford Board of Education, p. 863.

[33]Ibid.

Parallel Development of Student and Teacher Rights

Certain parallel developments have occurred in recent years that have aided in expanding the areas of student and teacher rights under the First and Fourteenth Amendments. These developments have come about as a result of attempted regulation by school authorities of dress and grooming of both students and teachers. Because of a long period of laissez-faire and apparent lack of interest of state and federal judges in school matters, a body of law had developed at the state level which permitted school authorities to make rules and regulations governing student and teacher conduct, but which failed, in many instances, to meet minimal constitutional requirements. Much of the recent court activity in this area, therefore, has been initiated to correct these inequities. Courts have been asked to review the constitutionality of such school rules and practices on the grounds that they were in violation either of the First Amendment "freedom of expression" or of personal "liberties" guaranteed by the Fourteenth Amendment.[34]

The analytical tools used have been the "standard of review" and the establishment of who carried the "burden of proof." Formerly, it was the responsibility of the party attacking the statute, educational practice, or school rule

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[34]Hogan, The Schools, the Courts, and the Public Interest, p. 79.

to carry the burden of proving that the intrusion by the state was not for the purpose of the legitimate state interest. This has now evolved into a different level of scrutiny which sheds new light on First Amendment rights. In cases involving dress and grooming as a liberty interest, the burden now rests on school authorities to justify regulation of that liberty.[35]

The classical view of the courts on student and teacher rights was set forth in the landmark Arkansas case in 1923 of Pugsley v. Sellmeyer.[36] The case involved a challenge by a female student of a school regulation that stated: "The wearing of transparent hosiery, low-necked dresses, or any style of clothing tending toward immodesty in dress, the use of face-paint or cosmetics is prohibited."[37] The school board viewed Miss Pugsley's defiance of the rule as a challenge to its authority and denied her admission to the school.

In ruling on this case, the Arkansas Supreme Court held that the rule was "reasonable" and that the school board had the right to make and enforce it. They further stated that the management of the public schools is vested in local boards, which have broad discretionary powers.[38]

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[35]Ibid.

[36]Pugsley v. Sellmeyer, 158 Ark. 247 (1923).

[37]Ibid., pp. 251-252. [38]Ibid.

The court was most forceful in stating that it would not interfere with regulations adopted by school boards and would not consider the expediency and wisdom of such regulations. In addition, they would accept for deliberation only those questions dealing with the reasonable exercise of the power and discretion of the board. The point was made, also, that the courts had more important duties to perform than to attend to the everyday management of the schools, and that the business of education should be left to the educators.[39]

The guidelines established in this case became known as the "Pugsley Principles."[40]

1. Education is a state matter: courts will not normally interfere in the management of the schools.

2. The state has delegated authority over the schools to local boards, and the actions, therefore, in general are immune to court scrutiny unless such boards fail to perform a clear duty or unless they act unreasonably.

3. Reasonableness--not the wisdom or expediency--of school rules would usually discourage review by a state court. (The educational wisdom that called forth the rule in the first instance was presumed.)

4. Courts have more important functions to perform than to hear schoolboys' complaints about the government of their schools.

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[39]Ibid.

[40]Hogan, The Schools, the Courts, and the Public Interest, p. 82.

5. Obedience (to submit to or obey the rules) and respect for constituted authority are appropriate lessons for teaching good citizenship in the classroom.

6. The measures of "unreasonableness" include: student oppression or humiliation; consumption of time or expenditure of money; imposition of an unusual affirmative duty; and medical reasons.

7. The "burden of proof" is on the party (student) challenging the rule. A valid reason for annulling a school rule must be shown by the student attacking the rule, while no valid reason at all need be shown by the school board for the rule's promulgation in the first instance for its validation by the courts.[41]

This case solidly established the courts' feeling in dealing with the issues of dress and grooming. It may very well have been a deterrent to further litigation of these issues during this time period, for court cases involving teacher appearance during this era were virtually nonexistent. Teachers vigorously prescribed to standards of dress and grooming established by the community and were aware that to venture beyond those was to jeopardize their positions.

Around 1950, the federal courts, and particularly the Supreme Court, began to realize that many educational policies and practices, which had developed under state laws and through state court decisions, were not in conformity with federal constitutional requirements. Thus federal

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[41]Ibid.

attorneys initiated action, entering the educational arena to untangle constitutional issues.

The decades of the sixties and seventies brought with them a movement toward recognition of the rights of the individual. Students were among the first, through court action, to demand that their rights be recognized. Simultaneously, with all the "pupil appearance" cases, a number of cases were adjudicated which involved the dress and grooming of teachers. The teachers did, in a sense, ride in on the coattails of the students in their demands for civil rights.

Although allegations abound that the appearance of the teacher has a definite effect on student dress by way of example and, in turn, has a definite correlation with student behavior, the courts appear to be more lenient toward teachers than toward pupils in matters regarding dress and grooming.[42]

Whereas the courts, in 1923, apparently thought that the First and Fourteenth Amendments were not applicable to a school rule that prohibited a girl from wearing talcum powder on her face, times had changed. Until 1969, the courts almost unanimously adopted the concept of "reasonableness" established in the Pugsley case as a standard for measuring the constitutionality of an educational practice or a school rule.

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[42]Bolmeier, Schools in the Legal Structure, p. 198.

The year 1969, however, ushered in a new era in student-teacher rights which made it clear that the constitutional rights of students and teachers, whether on the campus or elsewhere, are subject to a different level of scrutiny. The decision which was instrumental in changing the attitude of the courts toward issues involving student and teacher rights was Tinker v. Des Moines Independent School District (1969).[43] This case involved students acting in a passive, orderly manner, who were suspended for wearing black armbands to protest the government's Vietnam policy. Justice Abraham Fortas, who wrote the majority opinion, concluded that their conduct came under the protection of the Constitution in the free speech clause of the First Amendment and the due process clause of the Fourteenth.

This case clearly established that both teachers and students have constitutional rights which shall be recognized both in and out of the school environment, as long as their actions do not materially or substantially disrupt the educational process. The burden of proof, which, in Pugsley, was carried by the student attacking the "reasonableness" of the school rule, thus has been shifted, in Tinker, to the school authorities, who now must justify

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[43]Tinker v. Des Moines Independent School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

their actions by showing that the prohibitions they impose on freedom of expression are necessary to deter conduct which interferes materially and substantially with school operations.[44]

A grooming case decision, originally established for students, was broadened to encompass teachers in Conard v. Goolsby.[45] The court, in this case, cited the principles established in Lansdale v. Tyler Junior College with regard to male college students and grooming codes.[46] The court maintained that a fitting boundary line for determining when a public institution can no longer enforce regulations of a student's liberty lies between high school and college:

> The state has no total rights to regulate hair styles--today the court affirms that the adult's constitutional right to wear his hair as he chooses supersedes the state's right to intrude.[47]

In citing the principles established in Conard, the court held that the teacher, as an adult and as a citizen, had a right to appear as he pleased, within reason. Although the court did not clearly establish whether the

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[44]Hogan, The Schools, the Courts, and the Public Interest, pp. 83-84.

[45]Conard v. Goolsby, 350 F. Supp. 713 (N.D. Miss. 1972).

[46]Lansdale v. Tyler Junior College, 470 F.2d 659 (5th Cir. 1972).

[47]Ibid., pp. 662-663.

right was fundamental in nature, it did question the power of the state to regulate in this area.[48]

It was the court's view, in this case, that the state had no right to interfere in an employee's appearance when it was not related to his ability to perform in his work. In effect, it transferred the initial burden of proof from the teacher to the board. A key factor in the court's decision was a lack of proof that the teacher's appearance inhibited the students' ability to learn.[49]

It is interesting to note that the number of cases heard on student dress and grooming far surpasses those which deal with teachers. Much of this is due to the fact that a teacher, being a public employee, is under unique circumstances unlike those of the student. A teacher is paid to go to school, and a student is not.

Many of the rights gained by teachers have been established only since students gained them. The courts have found it difficult to deny teachers the same rights that they have guaranteed to students.

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[48]Conard v. Goolsby, pp. 718-719.

[49]Ibid.

Teacher Dress and Grooming Related to the First Amendment

Overview

The First Amendment was designed to protect certain basic personal freedoms or civil rights. Two segments have been governing factors in court proceedings involving the legality of controlling a teacher's dress and grooming. The relevant portions state:

> Congress shall make no law respecting establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press . . . .[50]

The oldest issue involving teacher dress revolves around the right of public school employees to wear religious garb while instructing. Teachers who wish to wear such garb feel that this is a freedom guaranteed them by the First Amendment. Those opposing this practice feel that this enhances a sectarian environment in the public schools. There has been much litigation involving this issue, and the legislatures enjoy a wide range of discretion concerning this question.

The "freedom of speech" provision has become litigable grounds in preventing regulation of a teacher's dress and grooming. Some courts have classified "dress" and "grooming" as forms of "symbolic speech," entitled to the same constitutional protection as "pure speech." When

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[50]U.S. Const. amend. I, sec. 1.

symbolic speech is very close to pure speech, the First Amendment protection is high. The courts, however, have been more lenient in recognizing grooming as "symbolic speech" than they have in recognizing dress. This is because a teacher may change his or her dress after school, but grooming is a more permanent aspect of one's appearance and personal expression.

Dress as Religious Freedom

The controversy surrounding the right of public school authorities to forbid the wearing of distinctive religious garb by public school teachers has been questioned for over three-quarters of a century. The controversy usually reaches the courtroom when an attempt is made to restrain the board from hiring nuns to teach in the public schools, if they expect to wear their distinctive garb. Opponents of the practice argue that the employment of nuns who wear religious garb constitutes the use of public school funds for sectarian instruction. The reply of the teachers is that to deny them this privilege is to deny them religious freedom guaranteed by the free exercise clause of the First Amendment. This is answered by the contention that opposition is not targeted to the individual religious beliefs of the teachers, but to the wearing of clothes unique to a particular order of a particular church.[51]

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[51]Reutter and Hamilton, The Law of Public Education, p. 18.

It can scarcely be denied that such distinctive garb tends to create a religious environment in the classroom. In view of the fact that the garb serves as a constant reminder of the teacher's religious affiliation, and that children develop impressions just as much from what they see as from what they hear, it would not be difficult to conclude that the wearing of religious garb constitutes sectarian influence. While such influence may fall short of sectarian "teaching," it would appear to have a "propagandizing effect," especially when the garb includes religious insignia. Thus, the practice of wearing religious garb in the public schools might be recognized as an unconstitutional advancement of religion.[52]

The opposing argument, that the wearing of religious garb is protected by the "free exercise" clause, can be answered in two ways. First, the religious liberty of one person may not be exercised so as to limit the freedom of others. Secondly, a prohibition against religious garb in the public schools does not in any way interfere with a teacher's freedom of belief; it only means that, during the time in which the teacher is employed as an agent of the state, she cannot engage in a practice which constitutes sectarian influence.[53]

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[52]Williard R. Hazard, Education and the Law (New York: MacMillan Publishing Company, 1978), pp. 61-62.

[53]Ibid.

An early court decision that did not deal directly with this issue further substantiates this view. In the case of Reynolds v. United States (1878), the court refused to allow a religious belief as a defense against a polygamy prosecution.[54] Speaking for the court, Chief Justice Morrison Waite stated: "Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices."[55]

In instances where specific dress of particular sects, such as Quakers, Amish, Dunkards, Catholic religious orders, and other clergymen, has been considered commonplace, the courts have upheld the right of the individual to wear a particular garb. In the case of Hysong v. Gallitzen Borough School District, decided in Pennsylvania in 1894, the court agreed that such manner of dress conveyed to students the idea of membership in a sect.[56] The court, nevertheless, pointed out that the religious belief of such teachers was well known throughout the community even without their wearing a special type of dress and upheld the right of such teachers to be employed by the public schools. The court, however, did suggest that the legislature might, by statute,

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[54]Reynolds v. United States, 98 U.S. 145 (1878).

[55]Ibid., p. 166.

[56]Hysong v. Gallitzen Borough School District, 164 Pa. 629, 30 A. 482 (1894).

require the teachers in the public schools to wear a particular style of dress and prohibit all others.

The Pennsylvania lawmaking body took the advice rendered by the court and enacted a statute in 1895 that prevented any teacher in the public schools from wearing any dress, insignia, marks, or emblems indicating the fact that such teacher was an adherent or member of any religious order, sect, or denomination. This was followed by a court decision which judged the statute valid and which commented that the prohibition was directed against the actions, not the beliefs, of a teacher while in the performance of his or her duties.[57] The Supreme Court of the state held that the statute did not unconstitutionally prescribe a religious test for public school teachers, but was merely a valid exercise of the legislature's power to regulate the administration of the state schools. The statute's declared purpose, that it was "important that all appearances of sectarianism should be avoided in the administration of the public schools of this commonwealth," was a valid legislative object.[58]

In the absence of specific statutes, it appears to be the law in most states that the mere wearing of religious

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[57]Commonwealth v. Herr, 229 Pa. 132, 78 A. 68 (1910).

[58]Ibid., p. 68.

garb by an otherwise qualified and competent teacher does not violate federal or state constitutional rights concerning sectarian influence. A New York case, decided in 1906, was suggestive in stating that the mere wearing of a religious costume of a religious sect brings into the school "sectarian influence" inconsistent with the state's constitutionally declared policy against sectarianism.[59] The court held that a regulation of the State Superintendent of Public Instruction, that prohibited the wearing of religious garb by teachers, was a reasonable and valid exercise of the powers conferred on him. It must be realized, the court said, that:

> Some control over the habiliments of teachers is essential to the proper conduct of public schools, thus, vagaries in costume could not be permitted without being destructive of good order and discipline. So, also, it would be manifestly proper to prohibit the wearing of badges calculated on particular occasions to constitute cause of offense to a considerable number of pupils as, for example, the display of orange ribbons in a public school in a Roman Catholic community on the 12th of July . . . .[60]

The court further declared that the effect of the costume worn was to inspire respect and sympathy for the religious denomination to which the wearer belonged. To this extent, the influence was judged to be sectarian.

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[59] O'Connor v. Hedrick, 184 N.Y. 421, 77 N.E. 612 (1906).

[60] Ibid., p. 615.

A North Dakota case, in the absence of legislative policy on the subject, upheld the right of an individual to wear religious garb. Litigation was brought by four qualified teachers in a consolidated school system to secure approval to wear the particular dress of a religious order. In upholding the right of teaching nuns to wear their religious habits while teaching, the court said:

> We are all agreed that the wearing of the religious habit . . . does not convert the school into a sectarian school, or create sectarian control within the purview of the Constitution. Such habit, it is true, proclaimed that the wearers were members of a certain denominational organization, but so would the wearing of the emblem of the Christian Endeavor Society or the Epworth League. The laws of the state do not prescribe the fashion of dress of the teachers in our schools . . . . [61]

One court has disqualified all nuns from teaching in the public schools, apparently on the grounds that their lives are dedicated to the teaching of religion. In the case of Harfst v. Hoegen (1972), the court recognized the absolute separation of church and state, not only in governmental matters, but also in educational ones as well.[62] This was one of many cases that involved the incorporation of a parochial school into the public school system. The court not only disqualified the members involved in this litigation, but included also even those who had not yet taught in the public schools.

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[61]Gerhardt v. Heid, 66 N.D. 444, 267 N.W. 127 (1936).

[62]Harfst v. Hoegen, 349 Mo. 808, 163 S.W.2d 609 (1942).

A court case with a different flavor concerned the city of New Haven which sought to recover from the defendant town, Torrington, expenses incurred in the education of children which the plaintiff claimed were properly chargeable to the defendant under the provisions of the general statutes.[63] The defendant appealed, claiming no liability on the grounds that the school in which the children were educated was not a public school. The court stated as criteria that a school, to be a public school, must (1) be under public control and (2) be free from sectarian instruction. In deciding for the town of Torrington, the court felt that the atmosphere implicit in the daily school routine, the physical surroundings, and the religious garb worn by the instructors, all contributed to the sectarian environment of the school.

The view that a nun may not be excluded from employment as a teacher in the public schools was espoused by the American Civil Liberties Union in a New Mexico case.[64] The plaintiffs, in this case, sought to have all members of Catholic religious orders declared ineligible and forever barred from teaching in the public schools. The basis for this demand was the assertion that the oath taken by nuns on joining a religious order, coupled with the doctrinal

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[63]City of New Haven v. Town of Torrington, 132 Conn. 194, 43 A.2d 455 (1945).

[64]Zellers v. Huff, 55 N.M. 501, 236 P.2d 949 (1951).

teachings of the Catholic Church regarding education, would make it impossible for a nun conscientiously and completely to perform the duties of her office. The Civil Liberties Union, which took the same position with respect to public school teachers who were members of the Communist Party, felt that the right to hold public employment must be judged exclusively by acts and not by beliefs. If, however, the teacher were shown to have abused her position by indoctrinating her pupils in her own sectarian beliefs, the Union felt that this justified disciplinary action or even dismissal. On the other hand, to disqualify a teacher in advance would be to punish her for thoughts and beliefs, thus violating the whole spirit of the First Amendment. The court, nevertheless, upheld the regulation adopted by the State Board of Education barring the wearing of religious garb by public school teachers.

In 1952 a lower court in Missouri held that the dogmatic educational teachings of the Catholic Church, the duties of Catholic teachers within, as well as outside, the public school system coupled with the oath of discipline taken by nuns, disqualified them from employment as public school teachers. The case of Berghorn v. Reorganized School District (1953) involved two teaching orders of nuns, one of which was involved in the previous Harfst case.[65]

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[65]Berghorn v. Reorganized School District No. 8, 364 Mo. 121 (1953).

The court quoted the law of the Third Plenary Council of Baltimore, a pastoral letter of the hierarchy, and the sections of the Canon Law dealing with the duties of members of religious orders and with education. On the basis of these teachings, the court found that these religious personnel may not be lawfully employed as teachers in any free public schools.

A change in judicial thinking occurred with the decision written in the most recent case heard on this subject, Rawlings v. Butler (1956). This involved action to enjoin school officials from spending public and school funds to compensate teachers who were members of a religious society.[66] The Circuit Court of Appeals denied and dismissed the action whereupon the plaintiffs appealed. The court held that employment of members of religious orders to teach in public schools who wore religious garb or emblems did not, of itself, violate constitutional guarantees of freedom of religion.[67]

Dress as Symbolic Speech

One of the claims most often voiced by teachers in defense of their style of dress is that it denotes a kind of "symbolic speech," protected by the First Amendment to

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[66]Rawlings v. Butler, 290 S.W.2d 801 Ky. (1956).

[67]Ibid., p. 813.

the Constitution. The Constitution traditionally went only as far as to protect "pure" speech, but the famous landmark case of Tinker v. Des Moines (1969) went one step further in including certain nonverbal expressions as a part of the protection.[68] This case involved the suspension of public school pupils for wearing black armbands to protest the government's Vietnam policy. Justice Abe Fortas, in deciding the case, felt that the students' conduct was within the protection of the free speech clause of the First Amendment. He also found the wearing of armbands closely akin to "pure speech," which is entitled to comprehensive protection under the First Amendment. One statement included in his opinion has been crucial in establishing the rights of students and teachers.

> It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.[69]

This became an open invitation to both students and teachers to enter the litigable arena in establishing their rights.

Following the tradition established by Tinker, the 1974 case of James v. Board of Education was decided in favor of the teacher in much the same way that Tinker had

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[68]Tinker v. Des Moines Independent School District, p. 506.

[69]Ibid.

decided for the students.[70] In this case it was held that school officials, in discharging a teacher, violated his constitutional rights because he wore a black armband to school as a symbolic protest against the Vietnam War. The court held that the wearing of a black armband, as in Tinker, was a First Amendment right akin to "pure speech."[71]

Although the wearing of armbands was ruled permissible, the courts are more likely to uphold a school's dress code prohibiting the wearing of certain clothing. A case, decided in 1969 by the Louisiana Court of Appeals, dealt with a school-board-adopted rule requiring all male teachers to wear neckties.[72] The plaintiff in this case was suspended pending his compliance with the rule, whereupon he filed suit asserting that the necktie rule was unrelated to any legitimate educational objective, and that it violated his constitutional right to dress as he pleased. In effect, the plaintiff claimed that his clothing was a form of symbolic expression. The court found that such a rule did not reasonably restrict such expression and held that the necktie requirement was valid.

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[70]James v. Board of Education of Central District No. 1, 385 F. Supp. 209 D.C.N.Y. (1974).

[71]Ibid., p. 215.

[72]Blanchet v. Vermilion Parish School Board, 220, So. 2d 534 (1969).

In the more recent case of East Hartford Education Association v. Board of Education (1977), the Second Circuit Court of Appeals conducted an extensive examination of this issue.[73] This case involved a dress code written by the board of education that required male teachers to wear a jacket, shirt, and tie during classroom activities. The plaintiff, Mr. Brimley, was required to wear a tie while teaching English, but not while teaching filmmaking. He refused to wear a tie to teach the English class and was reprimanded. He and his union sued in federal district court, seeking both a declaratory judgment that the dress code was unconstitutional and an injunction against its enforcement. Mr. Brimley claimed, in part, that by refusing to wear a necktie, he made a statement on current affairs that aided him in speaking. In other words, he felt that wearing a tie was "symbolic speech" protected by the First Amendment.

This claim required the court to balance the teacher's alleged interest in free expression against the school board's goals in requiring its teachers to dress more formally than they would otherwise choose. First, the court pointed out that symbolic speech is not pure speech; rather, it is mixed with conduct and is not afforded the same protection

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[73]East Hartford Education Association v. East Hartford Board of Education, p. 864.

as pure speech.[74] The court further noted that, as the action or thing being controlled becomes less like pure speech and more like conduct, the governmental interest that must be shown to justify restricting it is progressively loosened. In cases where symbolic speech is very close to pure speech, such as in Tinker v. Des Moines (black armbands worn to protest the Vietnam War) and in Russo v. Central School District (teachers refusing to recite the Pledge of Allegiance), protection under the First Amendment is substantial.[75] The judge in the Hartford case, however, found the speech to be vague and unfocused and close to the "speech-conduct" continuum. It was established by the court that Brimley had more effective ways of expressing his social views to his students. This fact reduced the burden of proof that the school board was required to meet in justifying regulation of his dress. In the conclusion of the discussion relevant to the First Amendment, the court stated that Brimley's speech claim was "so unsubstantial as to border on the frivolous."[76]

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[74]See Cox v. Louisiana, 379 U.S. 536 (1965).

[75]Tinker v. Des Moines, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969). See also Russo v. Central School District, 469 F.2d 623 (2d Cir. 1972), cert. denied, 411 U.S. 932 (1973).

[76]East Hartford Education Association v. East Hartford Board of Education, p. 860.

Although the impact of this court decision is yet to be determined, it is certain to establish new precedents in court cases dealing with teachers' First Amendment rights.

Grooming as Symbolic Speech

Claims have been made by teachers that their personal grooming practices are a form of their symbolic expression and thus are protected by the First Amendment. Some courts have agreed with this rationale as long as this grooming has not interfered with the educational process or has not created a health hazard. Other courts have considered beards and mustaches to be simply personal preferences not sufficiently important to merit constitutional protection, and they have upheld school regulations controlling grooming unless they were clearly arbitrary or unreasonable.

In a leading case in the area of grooming, Finot v. Pasadena City Board of Education (1967), the California Supreme Court dealt with a teacher's refusal to shave his beard after having been requested to do so by the school's principal.[77] Finot arrived at school wearing a recently grown beard, and the principal asked him to shave it off. Upon his refusal to do so, the board of education transferred Finot to home teaching, despite the fact that he was a challenging and effective classroom teacher. Finot

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[77]Finot v. Pasadena City Board of Education, pp. 520-529.

branded his transfer "unconstitutional" and went to court to force the board to change its action.

After hearing arguments from lawyers for both sides, the trial judge found the board's action in changing Finot's teaching assignment to be a lawful and reasonable exercise of discretion. Both Finot and the American Civil Liberties Union disagreed and took the case to the U.S. District Court in California which supported Finot's argument. The court suggested that a beard may be considered an element of symbolic expression and, accordingly, must be given at least peripheral constitutional protection.[78]

The court also found that, although the rule against beards may be somewhat related to educational objectives, the burden on Finot's freedom of speech was greater than the benefits to the public. If the school board wanted to prevent students from wearing beards, it could accomplish this goal with less drastic alternatives than requiring Finot to shave.[79]

In Braxton v. Board of Public Instruction of Duval County, Florida (1969), the court held that a school board could not constitutionally deny reappointment of a black teacher for refusal to shave off his goatee.[80] No written

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[78]Ibid. [79]Ibid.

[80]Braxton v. Board of Public Instruction of Duval County, Florida, 303 F. Supp. 958 (1969).

rule or established policy existed within the school district as to the discretion conferred on each principal relative to personal appearance. Also, there was no evidence that the wearing of the goatee by the teacher might cause disruption to the educational process. This case involved a dimension that had not existed in previously cited cases. Not only did the court find that the insistence upon removal of the goatee was "arbitrary, unreasonable and based on personal preference," but it also characterized the goatee as a symbol of racial pride and therefore protected by the First Amendment.[81]

A case that was found to be in direct contrast to the decision in Braxton was Ramsey v. Hopkins, decided one year later.[82] A District Court in Alabama felt that the wearing of a mustache by a member of the Negro race was not appropriate as a cultural symbol and therefore found no abridgement of First Amendment rights. The court, in this case, struck down the regulation opposing the wearing of beards. It did state, however, that the plaintiff had failed to meet his burden of proof in declaring First Amendment protection.

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[81]Ibid.

[82]Ramsey v. Hopkins, 320 F. Supp. 477 N.D. Ala. (1970).

Teacher Dress and Grooming Related to the Fourteenth Amendment

Overview

The Fourteenth Amendment to the Constitution of the United States prohibits any state or governmental creation from depriving any individual of life, liberty, or property without the benefit of due process of law. This amendment is now interpreted to mean that personal rights, such as the right to have long hair or short skirts, are protected rights in the category of liberty. Property is interpreted as including intangibles, such as public services, jobs, and public education.

Another major basis for challenging appearance regulations is the deprivation of a teacher's "liberty" interest in the freedom to choose his or her own style of dress and grooming. Assuming one has a fundamental right to appear as he wishes, within reason, the Fourteenth Amendment protects one from infringement upon that right without procedural due process.

Even if dress and grooming have not been established as constitutional rights, school officials cannot dismiss teachers on these grounds unless clear written rules have been published and communicated to teachers and are applied with reasonable due process.

While the state takes an interest in the actions of the public in general, it has a particular interest in the

conduct of its public employees. "Liberties," then, are treated differently in relationship to these two groups. Teachers, as public servants in unique positions of trust, can be subjected to many restrictions in their professional lives. The task of the court, therefore, is to weigh the evidence presented in each case to determine which legal ingredients apply. If it is established that the Fourteenth Amendment rights of the teacher have been violated, the burden of proof is then on the school board to demonstrate a rational necessity or desirability for such a rule. If the evidence indicates that the board has, within its implied powers, the right to enforce the regulation, the burden of proof shifts to the teacher to show that the regulation is arbitrary, or that it has been enforced discriminatorily.

The Liberty or Privacy Interest in Personal Appearance

The constitutional basis used in a majority of cases challenging a school board's dress and grooming policies is the "liberty interest" clause of the Fourteenth Amendment. Teacher plaintiffs have argued that enforcement of such codes deprives them of the freedom to choose their own styles of dress and grooming. The right to dress and groom as one pleases can best be considered as an aspect of personal liberty analogous to a privacy right.

Because the element of self-expression is visibly stated through appearance, one's styles of dress and grooming become more important to the individual as he moves about in public than they do in the confines of his own home. This right bears some resemblance to the right of personal autonomy first recognized in the case of Roe v. Wade (1973), which determined whether a woman has the right to choose to have an abortion.[83]

The connection between personal appearance cases and those dealing with abortion rests on the notion, present in each case, of control over one's body. The Supreme Court played down this aspect in Roe, at least in terms of privacy, but there is little doubt as to its opinion that an individual feels a strong and legitimate interest in his person, and that the state must have a good reason to interfere with it.[84]

The right of privacy was established in the landmark decision of Griswold v. Connecticut (1965), in which the Court held that "privacy" protected a married couple's decision to use contraceptives.[85] This case marked an important turning point in a renaissance of protection for unenumerated

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[83]Roe v. Wade, 410 U.S. 113 (1973).

[84]"On Privacy: Constitutional Protection for Personal Liberty," New York University Law Review 670 (October 1973: 760-770.

[85]Griswold v. Connecticut, 381 U.S. 479 (1965).

rights. This intrusion into the personal rights of citizens prompted the Court to find for the right to privacy that could not be infringed upon by the government without substantial justification.

The Finot court turned to Griswold in determining the degree of protection to which one's personal liberty, such as wearing a beard, is entitled.[86] Griswold had considered the private, personal liberties established in the cases of Pierce v. Society of Sisters of the Holy Names of Jesus and Mary (1925), and in Meyer v. Nebraska (1923), which allowed parents to educate their children as they saw fit.[87] The court concluded that the right to wear a beard was entitled to constitutional protection in light of these cases.

A similar decision was rendered on this basis in the case of Braxton v. Board of Public Instruction.[88] The Braxton court, in recalling, from Finot, the "liberty" interest established in wearing a beard, stated that "the wearer of a goatee here involved deserves no less protection."[89]

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[86]Finot v. Pasadena Board of Education, 250 Cal. App. 2d 189, 58 Cal. Rptr. 520 (1967).

[87]Pierce v. Society of Sisters of Holy Names of Jesus and Mary, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); See also Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

[88]Braxton v. Board of Public Instruction of Duval County, Florida, p. 959.

[89]Ibid., p. 959.

Although many courts, when faced with dress and grooming questions, have considered Griswold relevant to their inquiries, the right to appear as one pleases has been treated as a right of privacy by very few of them. The trend established by the courts in viewing dress and grooming as a constitutionally protected "liberty" was short-lived and began to change after the Braxton case.

> Recent court decisions suggest that the Fourteenth Amendment may have been stripped of encompassing the liberty interest in dress, shaved of guaranteeing a protected right to face hair, and trimmed neatly of guaranteeing a protected interest in hair style.[90]

Illustrative of this change in court thinking is the Blanchet case, involving a suit questioning a regulation requiring teachers to wear neckties.[91] The plaintiff pleaded that the regulation deprived him of his personal liberty to dress in accordance with the mode of the community. He pointed out the personal liberties protected by the Fourteenth Amendment which include rights of a private and individual nature, such as the right to marry whom one wishes, the right to travel, the right to educate children as parents wish, and the right to wear clothes as one chooses. The court, nevertheless, held that the regulation was not so unreasonable as to go beyond the school board's

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[90]M. A. McGhehey, "Teachers and the Courts: School-Related Activities," School Law Update (Topeka, Kansas: NOLPE, 1977), p. 337.

[91]Blanchet v. Vermilion Parish School Board, pp. 534-541.

powers and did not unreasonably restrict the personal liberty of teachers.

The Supreme Court of Tennessee rejected a bearded teacher's claim that a school board regulation which restricted apparel considered potentially disruptive to the classroom atmosphere interfered with his constitutional liberty to wear a beard. The court in Morrison v. County Board of Education (1973) upheld the dismissal of the bearded teacher.[92]

In the case of Miller v. School District Number 167, the Federal Appellate Court considered the argument of whether a teacher's dress and hair length requirements violated a constitutionally protected liberty interest.[93] In an opinion rendered by Justice Warren Stevens, the court held that a school board can refuse to renew a teacher's employment if it finds that his appearance--in this case long sideburns and a beard--is inappropriate for the position. He summarized the rights of school and employee thus:

> If a school board should correctly conclude that a teacher's style of dress or plumage has an adverse impact on the educational process, and if that condition conflicts with the teacher's interest in selecting his own life style, we have no doubt that the interest of the teacher is subordinate to the public interest. We must assume, however, that sometimes such a school

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[92]Morrison v. Hamilton County Board of Education, 494 S.W.2d 770 (Tenn. 1973).

[93]Miller v. School District Number 67, 495 F.2d 658 (7th Cir. 1974).

> board determination will be incorrect. Even on that assumption, we are persuaded that the importance of allowing school boards sufficient latitude to discharge their responsibilities effectively--and inevitably, therefore, to make mistakes from time to time--outweighs the individual interest at stake.[94]

The United States Supreme Court, in a case concerning grooming codes imposed on policemen, further established guidelines for which one's "liberty" interest in these areas would be observed in public employment. The decision in the case of Kelley v. Johnson (1976) distinguished privacy claims made by state employees from those made by members of the general public, noting that the government has a much greater interest in regulating its employees than it does in regulating the general citizenry.[95] It then set forth the standard of constitutional challenge: whether the regulation is "so irrational that it may be branded 'arbitrary,' and therefore a deprivation of a 'liberty' interest in freedom to choose his own hairstyle."[96] In balancing the competing interests, between that of the county and of the individual policeman, the Court found that the grooming code was not irrational and therefore was permissible.

The impact of the Kelley decision upon future litigation involving teachers is yet to be determined. It will

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[94]Ibid., p. 667.

[95]Kelley v. Johnson, p. 686.

[96]Ibid.

certainly have considerable influence on decision makers in future claims of a "liberty" interest in dress and grooming.

A school board policy restricting teacher dress was also upheld in a Circuit Court in 1976. The court in Tardif v. Quinn backed the school board's termination of a French teacher after three years of teaching because her hemline came only "half-way down her thigh."[97] The court explained that the teacher's interest in selecting her own life style was subordinate to the public interest.

In the East Hartford case, the school board promulgated a dress code which required male classroom teachers to wear a jacket, shirt, and tie.[98] The plaintiff teacher sought to restrain the board from enforcing the code on the grounds that it infringed on his protected interest in "personal liberty" in dressing as he pleased. The court held that a dress code does not unconstitutionally restrain the liberty of an individual, and thus it was within the discretion of the board to require some formality of dress.

In a 1978 opinion, written in the case of Pence v. Rosenquist, the Seventh Circuit modified its 1974 stance

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[97]Tardif v. Quinn, 545 F.2d 761 (1st Cir. 1976).

[98]East Hartford Education Association v. East Hartford Board of Education, p. 862.

taken in Miller.[99] The Pence case involved a plaintiff who was employed in two positions: as a tenured teacher and as a part-time school-bus driver. He was suspended from his employment as a bus driver, but not from his position as a tenured teacher, because he had a mustache, although it was described as being clean and neat. The court held that the suspension denied the plaintiff his substantive due process rights to liberty and to equal protection under the law of the Fourteenth Amendment, because it lacked any rational relationship to a proper school policy. As a result of the Pence opinion, the court ruled Miller to be too sweeping. That decision had stated that an individual's liberty, exercised in the choice of appearance, was so insignificant that the denial of public employment did not represent a deprivation that is forbidden by the due process clause. The court also pointed out a discrepancy in the 1978 Pence opinion and in the Supreme Court's rationale in Kelley v. Johnson, the police hair-grooming case. In Kelley, the plaintiff had not proven that there was no legitimate purpose served by the regulation for policemen; therefore, the regulation was upheld. In Pence, however, the plaintiff had shown that there was no legitimate purpose served in the regulation prohibiting bus drivers from wearing mustaches. Therefore,

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[99]Pence v. Rosenquist, 573 F.2d 395 (7th Cir. 1978). See also Miller v. School District Number 67, 495 F.2d 658 (7th Cir. 1974).

when the plaintiff can carry his original burden of proof, the grooming code will be struck down unless the school can show that it serves a proper purpose.[100]

Due Process

The claim to a "liberty" interest in one's personal appearance is vested in the due process clause of the Fourteenth Amendment, which guarantees procedural due process before a person may be deprived of life, liberty, or property. Holding a teaching position clearly qualifies as a property right, if the teacher has an unexpired contract or is tenured, while nontenured teachers may qualify for constitutional due process only under certain circumstances. In instances where teachers have been dismissed because of their appearance, they often have claimed that they were denied procedural due process.[101]

States have established a variety of statutes governing procedures relative to the termination of teachers. This statutory due process is strictly enforced by the courts, and if a procedure is not observed by the school board, the discharge will probably be held invalid. In contrast, constitutional due process is not stated in terms as specific; therefore, requirements for enforcement are far from

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[100]Robert E. Phay, "Dress Codes for Teachers," School Law Bulletin X (January 1979):11-12.

[101]Reutter and Hamilton, The Law of Public Education, p. 491.

definite. For this reason, the question of "fair play" is considered, with the concept encompassing different rules in accordance with differing facts and kinds of proceedings.[102]

Procedural due process begins with a hearing at which the teacher must have an opportunity to refute the charges or to establish that they do not constitute grounds for dismissal. Following the hearing, the board must state specific findings of fact based on evidence introduced at the hearing.[103]

The due process clause of the Fourteenth Amendment gives one the right to appear "tonsorially unhampered" by administrative decree. Such was the ruling in Finot, the first of the teacher grooming cases, and it served as a precedent for Braxton, which held that the constitution likewise protects a teacher wearing a goatee.[104]

In Lucia v. Duggan (1971), the teacher was ordered reinstated in his position after being dismissed for ignoring an order to remove the beard grown during a vacation period.[105] The decision was based, not on his right to grow a beard, but on procedural grounds. The board was found to be remiss in failing to notify him of charges or of the

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[102]Ibid. [103]Ibid.

[104]Finot v. Pasadena Board of Education, 250 Cal. App. 2d 189, 58 Cal. Rptr. 520 (1967); See also Braxton v. Board of Instruction of Duval County, Florida, 303 F. Supp. 958 (1969).

[105]Lucia v. Duggan, 303 F. Supp. 112 (D. Mass. 1969).

consequences of refusing to shave. The board was cited, also, for its failure to have a written and announced policy on the wearing of facial hair. With regard to the importance of the personal liberty involved in this case, the court said:

> Whatever the derivation and scope of the plaintiff's alleged freedom to wear a beard, it is at least an interest of his, especially in combination with his professional reputation as a school teacher, which may not be taken away without due process of law.[106]

The absence of proper due process procedures led the court to void Lucia's suspension and dismissal, and to order his reinstatement. The board was further ordered to compensate him for lost salary and the costs of his court suit, and to award him $1,000 of "compensatory damages" for the pain and suffering incurred due to his weight loss and for the aggravation of an ulcer.[107]

It should be noted that in this case, the defendant was not tenured. Under the common law, a nontenured teacher need not be granted a hearing unless his constitutional rights have been violated. Thus it was necessary to establish that a violation of Lucia's constitutional rights had, in fact, occurred in order to verify his claim to a hearing.

In citing this decision, the court in Ramsey v. Hopkins (1970) declared that a principal's rule barring mustaches was in violation of a teacher's right to due process and equal

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[106]Ibid., pp. 117-118. [107]Ibid.

protection under the law.[108] The court noted that "personal tastes of administrative officials is not permissible grounds upon which to base rules for the organization of public institutions."[109] Since the teacher's position had already been filled, the court ordered that he be offered another job in the school system.

In the case of McGlone v. Mt. Diablo (1970), the Superior Court of Contra Costa County upheld the dismissal of a probationary teacher.[110] Among the accusations made by the board was that the plaintiff wore "Capri pants" to a football game at a time when the school's official standards of dress for female students specifically prohibited them from wearing such attire. In upholding the board's decision, the court disallowed the claim by the plaintiff that she did not receive a proper hearing.

Action was brought by a teacher seeking judicial review of a school board's decision to terminate his employment because he wore a beard and sideburns in the Miller case.[111] The United States District Court for the Northern District of Illinois dismissed the complaint, and the teacher appealed.

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[108]Ramsey v. Hopkins, 320 F. Supp. 477 N.D. Ala. (1970).

[109]Ibid., p. 489.

[110]McGlone v. Mt. Diablo Unified School District, 82 Cal. Rptr. 224 (1969).

[111]Miller v. School District Number 67, p. 658.

The Court of Appeals held that the school board's desire to terminate the teacher's employment, allegedly because he wore a beard and sideburns, did not constitute deprivation of due process.

In a similar opinion rendered in the same year, the Tennessee Supreme Court upheld the discharge of a teacher who refused to shave even though a school board policy strictly forbade facial hair.[112] The courts, in deciding the case of Morrison v. Hamilton, declared that this did not deny the bearded teacher due process or equal protection.

Conversely, in the absence of a regulation prohibiting the wearing of beards by teachers, the Texas Civil Court in Ball v. Kerrville (1975) ruled that the termination of a bearded teacher was illegal.[113] The plaintiff in this case was awarded the remainder of his salary, plus interest.

In a more recent court case involving teacher dress, East Hartford v. Board of Education, the court found that the local board did not violate due process of law under the Fourteenth Amendment.[114] This was in light of the plaintiff's claim that the imposed dress code infringed upon his First Amendment right to free expression and his rights to privacy

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[112]Morrison v. Hamilton County Board of Education, p. 770.

[113]Ball v. Kerrville Independent School District, 529 S.W.2d 792 (Tex. Civ. App. 1975).

[114]East Hartford Education Association v. East Hartford Board of Education, p.860.

and liberty. The court in responding to both claims found the regulation to be reasonable and, therefore, not in violation of these constitutional rights.

CHAPTER IV

REVIEW OF COURT DECISIONS

Introduction and Overview

In reviewing court cases of teacher dress and grooming litigation, certain categories of issues emerge as distinctive because of the grounds upon which suits were instituted and the decisions rendered in them.

The oldest and most litigated area involves the wearing of religious garb by public school teachers. Because of the sensitivity of the issue, this area has been neglected in most discussions centering on the dress and grooming of teachers and has been treated as a separate entity. It has been challenged on numerous occasions, usually on the grounds that it violates state constitutional prohibitions against sectarian influence in the public schools. Although the question of whether local boards can permit the wearing of religious garb seems far from settled, the constitutionality of statutes and regulations forbidding the wearing of religious garb have been generally sustained.[1]

While dress and grooming are considered by the general population to be one and the same, the courts have made a subtle distinction between the two, which, in turn, has led

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[1]Reutter and Hamilton, The Law of Public Education, p. 29.

to the rendering of different opinions in the disposition of these cases. The courts generally have recognized grooming as a symbol of masculinity, authority, wisdom, or racial pride, and as such, under appropriate circumstances, have merited it constitutional protection. Although not within the literal scope of the First Amendment, various grooming practices are usually entitled to peripheral protection as a form of symbolic speech and a right of expression. This protection is offered in the absence of the condition that it has an adverse effect on the educational process.[2]

Courts consider it to be a more serious invasion of a teacher's rights to order him to shave his beard than it is to expect him to follow a dress code. The one regulation affects a more permanent part of his appearance while the other is in effect only during the work day. The courts have become increasingly hesitant to interfere with school-board-established regulations of dress as long as they are not unreasonable and arbitrary.[3]

Organization of Cases Selected for Review

Cases chosen for review in this chapter were selected because they met one or more of the following criteria:

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[2]Fischer and Schimmel, The Civil Rights of Teachers, p. 73.

[3]Ibid.

1. The case is considered to have been a landmark decision in establishing constitutional rights regarding dress and grooming and has had a significant impact upon subsequent decisions regarding teacher appearance

2. The case helped to establish a legal precedent or case law in a particular issue

3. The issues in the case presented conflicting opinions in the areas of religious garb worn by public school teachers, teacher dress, or teacher grooming

The first category selected for review are those landmark United States Supreme Court cases relating to dress and grooming. Decisions in these cases have helped to establish legal precedents that have significantly influenced teacher dress and grooming litigation. Included in this category are the following:

1. Tinker v. Des Moines Independent School District (1969)
2. Kelley v. Johnson (1976)

The second series consists of those cases which have significantly contributed to the establishment of case law or have set legal precedents concerning the religious garb worn by public school teachers. Cases selected for review in this category include:

1. Hysong v. Gallitzen (1894)
2. O'Connor v. Hendrick (1906)
3. Rawlings v. Butler (1956)

The third category of cases reviewed in this chapter consists of those decisions relating to the grooming of teachers. These cases have had a substantial impact on the legal precedents established in this area. Included are the cases of:

1. Finot v. Pasadena Board of Education (1967)
2. Braxton v. Board of Public Instruction (1969)
3. Lucia v. Duggan (1969)
4. Morrison v. Hamilton County Board of Education (1969)

The final category of cases are those concerning the dress of teachers. Again, selection was made from those recent court decisions which have been pertinent to the establishment of case law in this area. The following key court decisions were selected for review:

1. Blanchet v. Vermilion Parish School Board (1969)
2. James v. Board of Education of Central District No. 1 (1974)
3. East Hartford Education Association v. East Hartford Board of Education (1977)

United States Supreme Court Landmark Decisions--Constitutional Rights in Dress and Grooming

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969)

Overview

This case was the most far-reaching landmark decision and pointed up the changing attitude of courts toward cases involving student and teacher freedom of expression. It was the basis for many subsequent cases brought by both students and teachers in ascertaining their constitutional rights.

Facts

Several children, whose families were concerned about the nation's involvement in the Vietnam War, decided to wear black armbands to school in support of a protest calling for a moratorium in the conflict. When the students appeared at school wearing the armbands, they were suspended on the basis of a recently adopted school regulation forbidding such demonstrations. The parents sued the school district, claiming the constitutional rights of their children had been abridged.[4]

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[4]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

Decision

Justice Abe Fortas of the United States Supreme Court announced that, even in light of the special needs of the school environment, neither teachers nor children left their constitutional rights at the "schoolhouse gate."[5] The wearing of black armbands was declared to be "symbolic speech" and was ruled to be under First Amendment protection. The Court placed considerable weight on the fact that the activity which the school sought to regulate had not caused any significant disruption, nor had the school any history of conflict or disruptive activity. The Court, more importantly, established a "balancing test" which was to guide school authorities seeking to regulate student behavior in constitutionally protected interests.

Legal Precedents Established

While the issue of armbands directly related to students, the courts also went one step further in establishing the constitutional rights of teachers. Other legal principles established in this decision are as follows:

1. The wearing of arm bands for the purpose of expressing certain views is a type of symbolic act that is within First Amendment guarantees.

2. First Amendment rights, applied in light of the special characteristics of the school environment, are

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[5]Ibid., p. 506.

available to teachers and students. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[6]

3. Where there has been no evidence shown that engaging in the forbidden conduct would "materially and substantially" interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained.

4. Schools are not "enclaves of totalitarianism," and school authorities do not possess "absolute authority" over their students.[7]

Kelley v. Johnson
425 U.S. 238 (1976)

Overview

Although this case deals with dress and grooming regulations imposed upon police officers, the decision has been instrumental in resolving recent cases involving teacher dress and grooming. Much of this is due to the fact that both teachers and police officers, as public employees, are regulated by rules not ordinarily mandated for other citizens.

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[6]Ibid.

[7]Hogan, The Schools, the Courts, and the Public Interest, pp. 84-85.

Facts

In this case, the Police Commissioner had promulgated an order which established hair-grooming standards applicable to male members of the police force. The regulation was attacked by the plaintiff as violating his right of free expression under the First Amendment and his guarantee of due process and equal protection under the Fourteenth Amendment. The patrolman argued that the regulation was "not based upon the generally accepted standard of grooming in the community" and that it placed an undue restriction upon his activities.[8]

The District Court for the Eastern District of New York originally dismissed the plaintiff's request for relief whereby he sought action against a regulation limiting the length of a policeman's hair. The plaintiff then remanded to the Court of Appeals and ultimately to the United States Supreme Court for judgment.[9]

Decision

Justice William Rehnquist's opinion indicated that the enactment of the regulation was not so irrational that it could be considered a deprivation of the officer's liberty interest in freedom to choose his hair style. The United

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[8]Kelley v. Johnson, 425 U.S. 238 (1976).

[9]Ibid.

States Supreme Court ruled that, under certain specified instances, the state could make and enforce restrictive regulations. The test placed on such regulations, "where the claim implicates only the more general contours of the substantive liberty interest protected by the Fourteenth Amendment," is whether the individual can demonstrate that there is no rational connection between the regulations and the promotion of safety of persons and property.[10] In addressing the county police department's decision to adopt a dress and grooming code, the Court maintained that

> this choice may be based on a desire to make police officers readily recognizable to the members of the public, or a desire for the esprit de crops which such similarity is felt to inculcate within the police force itself.[11]

The Court held that either purpose was a sufficient rational justification for the regulations thereby defeating the policeman's claim based on the liberty guarantee of the Fourteenth Amendment.

Discussion

The full impact of this decision on school districts is not fully known. In light of this decision, it would appear that a school board may adopt reasonable grooming codes as long as they are applied equitably and can be defended on the basis of some educationally sound rationale.

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[10]Ibid., p. 245. [11]Ibid., p. 248.

Cases Related to the Religious Garb Worn by Public School Teachers

Hysong v. Gallitzin Borough School District 164 Pa. 629, 30 A. 482 (1894)

Facts

The question of the garb worn by Roman Catholic sisters while teaching came before the Supreme Court of Pennsylvania in 1894. The plaintiffs, John Hysong and others, sought to restrain the school district from permitting sectarian teaching in the common schools, from employing sisters of the Roman Catholic Church as teachers, and from permitting the wearing of religious garb by teachers in the public schools.[12]

Decision

The court, in ruling for the defendants, concluded that, in the absence of proof that religious instruction was imparted by the nuns, the school district could not be restrained from employing nuns to teach, nor could it be restrained from permitting them to teach garbed in religious attire.[13]

The court further stated that the wearing of the garb and insignia of such sisterhoods while teaching in the

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[12]Hysong v. Gallitzin Borough School District, 164 Pa. 629, 30 A. 482 (1894).

[13]Ibid., p. 482.

public schools could not be termed "sectarian teaching," and was, therefore, not unlawful.[14]

Discussion

The court in this instance felt that the religious belief of such teachers was well known to the neighborhood and to the pupils, even without their wearing a special kind of dress. The court, therefore, concluded that religious garb worn by the teachers would have little effect upon the students.

It is important to note that the court suggested that the legislature might, by statute, force all teachers in the public schools to wear a particular style of dress and to prohibit all others. As a result, several states passed legislative prohibitions of this nature which were subsequently upheld as valid by the courts. In this case, however, in the absence of such a statute, the court was forced to uphold the right of such teachers to be employed in the public school system.

Although this case is a very old one, the case law it established was used in the more recent cases of Gerhardt and Rawlings in upholding the right of teachers to wear

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[14]Ibid.

religious garb in the public schools, as long as they did not teach nor impart their religious beliefs.[15]

O'Connor v. Hedrick
184 N.Y. 421, 77 N.E. 612 (1906)

Facts

On May 28, 1903, the State Superintendent of Public Instruction promulgated a regulation which strictly forbade public school teachers from wearing "unusual dress or garb, worn exclusively by members of one religious denomination," during school hours.[16] The superintendent further declared it to be the duty of school authorities to require such teachers to discontinue the wearing of such garb while in the public school classroom.

On May 29, 1903, Patrick Hedrick, the school trustee, informed the plaintiff, Nora O'Connor, of the new requirement; nevertheless, she continued to teach school wearing the prohibited garb until the end of the school year, in June. Mr. Hedrick made no effort to dismiss Sister O'Connor during this time.

Action was brought against Mr. Hedrick by Sister O'Connor in an attempt to recover lost salary due her under the terms of her contract. Mr. Hedrick defended his action

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[15]Gerhardt v. Heid, 66 N.D. 444, 267 N.W. 127 (1936). See also Rawlings v. Butler, 290 S.W.2d 801 Ky. (1956).

[16]O'Connor v. Hedrick, 184 N.Y. 421, 77 N.E. 612 (1906).

on the grounds that she lost her right to recover anything because she continued to wear the distinctive religious garb after she had received word of the superintendent's decision.[17]

Decision

The court held that, when teachers in a public school refuse to comply with regulations forbidding the use of religious dress, they forfeit their rights to further compensation under their contracts.

The court also upheld, as reasonable and valid, the regulation prohibiting teachers in public schools from wearing distinctly religious garb while teaching. The effect of such apparel was viewed as being distinctly sectarian and as violating a state policy forbidding the use of state money to aid sectarian influences.

Discussion

This case was instrumental in the writing of subsequent decisions that prohibited public school teachers from wearing religious garb.

The court, in this decision, stated that the wearing of religious garb denoted sectarian influence even though the teachers did not instruct the students in their religious doctrines. Cases that have upheld the right of teachers to

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[17]Ibid., p. 613.

wear the religious garb conversely felt that the mere wearing of the garb did not suggest sectarian influence.

Rawlings v. Butler
290 S.W.2d 801 Ky. (1956)

Facts

In this Kentucky case a citizen of Marion County brought suit against the Superintendent of Public Instruction in Kentucky and the boards of education in the counties of Casey, Washington, Meade, and Grayson. He questioned the right of these school systems to spend tax funds to employ Catholic nuns, wearing religious garb and symbols, to teach in these public schools. In addition, he questioned the right of county boards to pay rent to the Catholic Church for the use of their buildings in which public school classes were taught and to pay for the transportation of Catholic children in attendance at parochial schools.[18] It was stipulated that the sisters, all members of orders within the Roman Catholic Church, wore a habit comprised of a tunic and scapular of white wool, a leather belt to which a rosary was attached, a veil, and a linen headband.[19]

The specific constitutional enactments that, it was alleged, forbade the boards' actions were Article 6 and the First Amendment of the Constitution and Sections 1 and 5 of

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[18]Rawlings v. Butler, 290 S.W.2d 801 Ky. (1956).

[19]Ibid., p. 803.

the Kentucky Constitution. These guaranteed religious freedom to all citizens of the state. The Kentucky Constitution also prohibited money, raised by taxation for public purposes or for educational purposes, from being used in the aid of any church, sectarian, or denominational school.[20]

Decision

The court, in ruling for the defendants, felt that, while the dress and emblems worn by these sisters proclaimed them to be members of certain organizations of the Roman Catholic Church who had taken certain religious vows, these facts did not deprive them of their right to teach in public schools, as long as they did not inject religion or dogma of the church into their instruction.[21]

The court noted further that the General Assembly of Kentucky had not prescribed what dress a woman must wear; therefore, to prevent them from teaching in the public schools because of their religious beliefs would be to deny them equal protection under the law, a violation of the Fourteenth Amendment of the federal Constitution.[22]

With respect to the renting of school buildings from the church, the court said the practice was not constitutionally illegal in the absence of evidence that the church attempted to influence or control the ways the schools were conducted or operated or how the students were taught.[23]

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[20]Ibid., pp. 801-802. [21]Ibid., p. 804.

[22]Ibid., p. 809. [23]Ibid., p. 801.

In commenting on the question of the school board's transporting children to parochial schools, the court ruled that the board could not use money raised by taxes for school purposes to pay for such services.[24]

Discussion

The fact that the plaintiff neither questioned the scholastic or moral qualifications of the sisters employed to teach in the public schools, nor contended that the sisters taught the tenets of their church, was instrumental in the court's decision. Instead, the plaintiff had based his objection solely on the fact that the sisters wore religious garments and emblems in the performance of their duties.

The court pointed out that the general assembly "has not yet prescribed what dress a woman teaching in the public schools must wear."[25] Here again, as in the Hysong case, it appears that, in the absence of a state law or statute forbidding it, teachers are allowed to wear religious garb as long as they do not force their religious views on the pupils under their charge.

This decision, however, was not unanimous since Judge J. Hogg wrote a significant dissenting opinion. In his analysis of previously cited cases, he came to different conclusions than did the majority. He felt that

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[24]Ibid., p. 802. [25]Ibid., p. 804.

> . . . by the majority opinion these children and their parents are deprived of their constitutional right to be free from sectarian influence and indirect teaching of the Catholic Church at public expense.[26]

This again points up the dilemma in this issue. The courts have been unable to balance the constitutional rights, that must be respected and observed, of both teachers and students.

Cases Related to Teacher Grooming

Finot v. Pasadena City Board of Education
250 Cal. App. 2d 189, 58 Cal. Rptr. 520 (1967)

Facts

In September 1973, Paul Finot, for seven years a high school teacher in the Pasadena school system, arrived at school wearing a recently grown beard. The principal promptly requested that he shave it off, and upon Finot's refusal, the board of education transferred him to a home teaching position, despite the fact that he was recognized as an effective and challenging teacher. Finot branded his transfer as "unconstitutional" and went to court to force the board to change its action.[27]

The board justified its actions on the basis of the professional judgment of the principal and superintendent and on the school's administrative policy which had been

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[26]Ibid., p. 812.

[27]Finot v. Pasadena City Board of Education, 250 Cal. App. 2d 189, 58 Cal. Rptr. 520 (1967).

in force for three years. This policy was based on the city's teacher handbook, which called for teachers to practice the common social amenities as evidenced by acceptable dress and grooming and to set an example of neatness and good taste.[28]

The board's action was also based on the "professional judgment" of Finot's principal and superintendent. They explained that the appearance of teachers has a definite effect on student dress, and that student dress has a definite correlation with student behavior. Their concern was that Finot's beard might attract undue attention, interfere with the process of education, and make the prohibition of beards for students more difficult to enforce. They also felt that wearing a beard did not meet the school's requirement for acceptable grooming and did not set an example of good taste.[29]

Decision

After hearing arguments from both sides, the trial judge found that the board's action in changing Finot's teaching assignment was a lawful and reasonable exercise of its discretion. Finot and the American Civil Liberties Union were not satisfied, however, and took the case to the United States District Court in California.

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[28]Ibid. [29]Ibid.

The District Court supported Finot's argument that the board's action in transferring him to home teaching was unconstitutional. The court stated that Finot's right to wear a beard was one of the liberties protected under the Fourteenth Amendment of the Constitution, which prohibits the deprivation of any person's life, liberty, or property without due process of law. In holding for the teacher the court stated, in part:

> A beard, for a man, is an expression of his personality. On the one hand, it has been interpreted as a symbol of masculinity, of authority, and of wisdom. On the other hand, it has been interpreted as a symbol of non-conformity and rebellion. But symbols, under appropriate circumstances, merit constitutional protection--his constitutional right to do so outweighs the judgment of the principal and superintendent, however experienced, expert, and professional such judgment may have been. Prior restraints of expression may not ordinarily be used to limit First Amendment freedoms.[30]

Discussion

The Finot case held that a beard is a form of personal expression or symbolic speech and is therefore entitled to peripheral protection under the First Amendment. This does not, however, mean that a school system can set no limits upon these grooming practices. It does mean that, for a school to require a waiver of such liberties as a condition of employment, it would probably have to meet three tests suggested by a California court: (1) there must be a rational

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[30]Ibid., pp. 528-529.

relationship between the restriction in question and the effectiveness of the educational system, (2) the benefits which the public gains by the restraints must outweigh the resulting impairment of constitutional rights, and (3) no alternatives less subversive of constitutional rights are available.[31]

The court held, in the Finot case, that the school board had failed to meet the second and third tests. It ruled that the benefit gained in supporting school rules outlawing student beards did not outweigh Finot's right to wear a beard while teaching in a classroom. Furthermore, there were other alternatives available to the school board to deter students from wearing beards that were less subversive of Finot's rights than the administrative regulation in question.

This case was the first of the grooming cases involving teachers and is still recognized in decisions as having set legal precedent on the subject.

Braxton v. Board of Public Instruction of Duval County, Florida, 303 F. Supp. 958 (1969)

Facts

A black male teacher was employed at Ribault Senior High School in Duval County, Florida, as an instructor in French. Booker C. Peek, considered a superior teacher,

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[31]Ibid., p. 199.

sported a goatee as a symbol of racial pride.[32] The principal had requested repeatedly that Peek remove his goatee, but Mr. Peek repeatedly refused. As a result, on the principal's recommendation, Mr. Peek was not reappointed to the Duval County School System for the 1969-70 school year.[33]

Peek felt that his constitutional rights had been violated by the action and went to court to seek reappointment. The school board claimed that its decision was based on a reasonable exercise of the principal's discretionary power to insure appropriate dress. No evidence was presented to indicate that Peek's goatee might reasonably be expected to disrupt discipline or cause students to wear inappropriate dress.[34]

Decision

The court held that the wearing of a beard by a teacher is a constitutionally protected liberty under the due process clause of the Fourteenth Amendment. The court stated that when a goatee is worn by a black man as an expression of his heritage, culture, and racial pride, "its wearer also enjoys the protection of First Amendment rights."[35]

There were no written policies or rules in the school system regulating the discretion conferred upon each

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[32]Braxton v. Board of Public Education of Duval County, Florida, 303 F. Supp. 958 (1969).

[33]Ibid. [34]Ibid. [35]Ibid., p. 958.

principal by the school board in matters of personal appearance. In the absence of such regulations, the action of the principal in requesting the removal of the goatee was, according to the court, "arbitrary, unreasonable, and based on personal preference."[36]

The decision not to reappoint Peek was found to be racially motivated and tainted with "institutional racism."[37] These effects were manifested in an intolerance of ethnic diversity and racial pride.

In view of these circumstances, the court ordered the school board to reappoint Booker Peek on the same basis and with the same assignment as would have been made if the recommendation of his principal had been favorable.

Discussion

This is the only court case to date relating to teacher dress and grooming which has been decided on the basis of racial overtones. Thus, the courts, in the future, might protect a black teacher of African Studies who wears a dashiki because of its direct relevance to his job or as a matter of academic freedom and racial pride. It is doubtful, however, that any court would protect an English teacher who insists upon appearing in class attired in jeans, sandals, and a T-shirt because he does not approve of middle-class attire.

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[36]Ibid. [37]Ibid.

The courts have clearly established that not all styles of grooming and dress will be considered as symbolic expression. Since beards and goatees apparently fall into this category, one could argue that an Afro hairstyle is a symbol of racial pride. A plaintiff's difficulty, in such a case, lies in convincing a court that the clothing or grooming style in dispute indeed represents symbolic expression.[38]

Lucia v. Duggan
303 F. Supp. 112 (D. Mass. 1969)

Facts

In a small Massachusetts town of about four thousand people, a teacher named David Lucia began growing a beard during the 1968-1969 winter vacation. He returned to teaching in January with a short, neat, and well-trimmed beard that caused no disruption in his classroom.

Within a week after school resumed, the superintendent told Lucia that there was an unwritten policy requiring teachers to be clean-shaven on the job. The following week, in accordance with instructions of the school committee, the superintendent informed Lucia by letter of a school policy against wearing beards and mustaches and specifically requested Lucia to shave his beard.

Lucia then met with the school committee, each of whose members stated his reasons for feeling it inappropriate for

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[38]Ibid.

a teacher to wear a beard in class. At the conclusion of the meeting, Lucia told one of the members that the town was behind the times.[39]

The following week the committee met and voted to suspend Lucia because he refused to shave and was setting an improper example for students to follow. Lucia was not notified of the meeting nor was he informed that the school committee was going to consider suspending him. Two weeks later the committee met in executive session to vote on Lucia's dismissal. Again, Lucia was not notified of the meeting but heard about it and asked for a postponement so that he could seek legal counsel. His request was denied, and the committee voted to dismiss him.[40]

Lucia attempted to secure employment as a teacher but was unsuccessful. He remained unemployed for six weeks and then worked periodically in a factory for about two-thirds of his former salary. During this trying time, Lucia lost fifteen pounds, and a pre-existing ulcer was aggravated. Lucia then went to court to reverse what he considered to be his "improper dismissal" and to seek damages against the school committee.[41]

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[39]Lucia v. Duggan, 303 F. Supp. 112 (D. Mass. 1969).

[40]Ibid. [41]Ibid.

Decision

The court did not decide on the question of whether or not wearing a beard was a constitutional right. Instead, it ruled that Lucia's freedom to wear a beard, especially in combination with his professional reputation as a teacher, could not be taken from him without due process of law.

The court noted two deficiencies in the procedures followed in suspending and dismissing Lucia. First, he was not specifically informed of the charges against him; neither was he made aware that his refusal to remove his beard would result in dismissal. Secondly, prior to Lucia's controversy with the school committee, no written or announced policy existed that stated teachers should not wear beards in the classroom. In criticizing the committee's lack of due process, the court observed:

> The American public school system, which has a basic responsibility for instilling in its students an appreciation of our democratic system, is a peculiarly appropriate place for the use of fundamentally fair procedures.[42]

This lack of fair procedures led the court to void Lucia's suspension and dismissal. It ordered his reinstatement, compensated him for lost salary and for the costs of his court suit, and awarded him $1,000 in compensatory damages. Payment was awarded for the pain and suffering incurred in connection with his loss of weight and the aggravation of his ulcer, both caused by his unlawful dismissal.

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[42]Ibid., pp. 118-119.

Discussion

The Lucia case held that, even if wearing a beard is not a constitutional right, school officials cannot dismiss teachers for wearing a beard unless (1) there is a published school policy outlawing beards, (2) teachers are given adequate notice of the policy and the consequences of not adhering to it, and (3) a fair hearing is held to judge the specific alleged violation.

Thus, the court established certain minimum due process procedures that would apply to a school system that wants to control whether or not teachers wear beards, mustaches, or long hair.

Morrison v. Hamilton County Board of Education
494 S.W.2d 770 (Tenn. 1973)

Facts

This case presents the issue of whether a teacher in the public schools in the state of Tennessee can wear a full beard in violation of a statute authorized by the board of education prohibiting it.

The school board discharged Jack Morrison, a tenured teacher in the system, for alleged insubordination for refusing to shave his beard. The board felt that the beard worn by Mr. Morrison was potentially disruptive of the educational process and was in violation of rules a teacher was required to obey. Mr. Morrison contended that the board, in discharging him, had deprived him of the right to teach, as

guaranteed by the tenure act, and of liberty or property without due process of law, guaranteed under the Fourteenth Amendment.[43]

Decision

The court concluded that the board's regulation forbidding teachers to wear beards was within the bounds of reason and did not deny the plaintiff any right under the Teacher Tenure Act. The court further stated that, because the rule was "reasonable and not discriminatory," and Mr. Morrison continued to fail to obey it, the plaintiff was accurately charged with insubordination.[44]

Discussion

The Morrison decision was influenced heavily by the court's conviction that the schools should be controlled by boards of education. This rule, of course, would apply only as long as the control could be considered reasonable and was not arbitrary.

The court also pointed out the special nature of the school that must be considered. While recognizing personal grooming to be largely a matter of choice, the court also contended that grooming affects everyone; "we have to look at each other whether we like it or not."[45]

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[43]Morrison v. Hamilton County Board of Education, 494 S.W.2d 770 (Tenn. 1973).

[44]Ibid., p. 774. [45]Ibid., p. 773.

The opinion in this case was in opposition to a majority of its predecessors. It is, therefore, important to consider the elements in each case rather than to make sweeping generalizations in those areas not clearly decided by the United States Supreme Court.

Cases Related to Teacher Dress

Blanchet v. Vermilion Parish School Board 220 So. 2d 534 (1969)

Facts

In September 1967, a Louisiana school board passed a policy requiring male teachers to wear neckties in the official performance of their duties during the course of the school day. They did, however, excuse teachers of physical education, industrial arts, and vocational agriculture when they taught outdoor or shop classes.[46]

Edward Blanchet, the father of seven and an exemplary teacher for eighteen years, asked the school board to reconsider the policy. Responding to the request, the board studied and reaffirmed its policy.

When Blanchet refused to comply with the necktie requirement, he was charged with "willful neglect of duty" and was suspended until he agreed to comply.[47]

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[46]Blanchet v. Vermilion Parish School Board, 220 So. 2d 534 (1969).

[47]Ibid.

Blanchet filed suit, asserting that the necktie rule was unrelated to any legitimate educational objective and that it violated his constitutional right to dress as he pleased. He proved that few other school boards in Louisiana required teachers to wear neckties, largely because neckties are extremely uncomfortable in the spring and summer months. The school board responded by showing that professional men in positions of authority were generally expected to wear neckties.[48]

Decision

Despite Blanchet's convictions, arguments, and evidence, the court did not rule in his favor. In weighing the evidence presented by both sides in this dispute, the court felt it was compelled to defer to the judgment of the members of the school board who were elected by their community to administer the schools. The court seemed to indicate that, if it had been the school board, it might not have passed the new policy, but it also indicated that it could not substitute its views for the judgment of the board.[49]

Blanchet had argued that the policy should be considered an unconstitutional infringement upon his personal liberty to dress as he wished. The court acknowledged that the "constitutional issue is not free from doubt," especially "in view of some of the more recent federal pronouncements."[50]

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[48]Ibid. [49]Ibid. [50]Ibid., p. 539.

Nevertheless, it ruled that "the school board's necktie regulation may be held valid as not unreasonably restricting the personal liberty of the teacher-employee to dress as he wills."[51]

Finally, the court decreed that Blanchet should be reinstated to his position "on his statement that he intends to comply with the policy requiring the wearing of neckties."[52]

Discussion

As previously suggested, courts sometimes treat rules of dress differently from rules of grooming because clothing can be more easily changed when a teacher leaves the school yard than can a grooming style. This may have played a significant role in the court's decision.

The Blanchet case held that a dress policy for teachers is a matter of administrative discretion and is not subject to judicial review, unless it is clearly unreasonable or arbitrary. This is based on legal principles providing that, within the limits of their authority, the wisdom or good judgment of school boards cannot be questioned by the courts. Members of school boards are presumably elected or appointed because of their fitness for the responsibility. In contrast, judges are chosen because of their legal knowledge, not for their experience in administering a public school

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[51]Ibid. [52]Ibid., p. 541.

system. Only when evidence shows that the action of a board is arbitrary or unreasonable is a court justified in interfering. Since, in this case, the court found that there was a rational basis for the board's policy, it could not be overturned as arbitrary and unreasonable.

James v. Board of Education of Central District No. 1
385 F. Supp. 209 D.C.N.Y. (1974)

Facts

In this case it was charged that school officials had violated the constitutional rights of a teacher by discharging him because he wore a black armband to school as a symbolic protest against the Vietnam War.[53]

Charles James, an eleventh-grade English teacher, observed November 14, 1969, a Moratorium Day in protest over the Vietnam War, and wore a black armband on the left sleeve of his sport coat when he arrived at school that morning. He followed a routine schedule and heard no complaints from either students or teachers concerning his actions.

Midway through his second period class, he was called to report to the principal's office. The principal, Mr. Dillard, asked James why he was wearing the armband. James responded, "Because I am against killing." Dillard told James that he considered the armband a political act against

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[53]James v. Board of Education of Central District No. 1, 385 F. Supp. 209 D.C.N.Y. (1974).

the President of the United States and asked James to take it off.

Dillard then sent James to the office of the District Principal, Edward J. Brown, who also asked why James was wearing the armband. James told Brown that it was to demonstrate his opposition to killing and explained his Quaker beliefs. Brown told James that he felt that the wearing of the armband had political connotations and that it was

> contrary to the teachers' code of ethics, felt it to be disruptive to the education process, and that it might lead to further disruptiveness and divisiveness among teachers.[54]

Brown thus suspended James pending Brown's seeking legal counsel and advice from the board of education. The school board met, without notifying James, and enacted a three-day suspension because of this "political act."[55]

James observed the suspension and returned to work without incident until another Moratorium Day was observed the following month, whereupon he again wore an armband. The school board promptly suspended him from his position. James then sought relief from the courts for what he considered to be a violation of his constitutional rights.[56]

Decision

In deciding for James, the court held that the wearing of a black armband, as in Tinker, was a right under the

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[54]Ibid., p. 212. [55]Ibid., p. 213. [56]Ibid.

First Amendment, akin to pure speech. The court added:

> Any limitation on the exercise of constitutional rights can be justified only by a conclusion, based upon reasonable inferences flowing from concrete facts and not abstractions, that the interests of discipline or sound education are materially and substantially jeopardized, whether the danger stems initially from the conduct of students or teachers.[57]

Chief Judge Curtin of the District Court held that (1) the school officials failed to prove, as justification for firing, some sort of actual educational or disciplinary disruption; furthermore, it was evident that only symbols expressing one side of the war issue were deemed to be a prohibited political act by the school officials, and (2) James was entitled to compensatory damages in the nature of back pay and was also entitled to an award of costs and attorneys' fees.[58]

Discussion

The court, in this case, was armed with guidelines from Tinker, which had been established for students in a 1969 case. In both instances, the court emphasized that, in dealing with symbols of expression, the burden of proof is on the school board to show that the symbol materially or substantially disrupts the educational process.

It is interesting to note, that although this armband is not a permanent part of one's appearance and could be

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[57]Ibid., p. 215. [58]Ibid., p. 209.

easily worn after school hours, the court deemed this a constitutionally protected expression of speech. This is in contrast to decisions handed down in dress cases where judges have generally felt that the freedom to dress as one wishes begins after school hours.

East Hartford Education Association v. East Hartford Board of Education
562 F.2d 838 2nd Cir. (1977)

Facts

Action was brought by a teacher challenging the constitutionality of a public school teachers' dress code adopted by the East Hartford Board of Education. This regulation required Richard Brimley, plaintiff in the case, to wear a tie while teaching English but not while teaching his film-making class. He refused to wear a tie to English class and was reprimanded. After exhausting the school's internal review procedure, he and his union, the East Hartford Education Association, sued in a federal district court, seeking both a declaratory judgment that the dress code was unconstitutional and an injunction against its enforcement.[59]

Brimley felt that the dress code infringed upon his protected interest in personal liberty in dressing as he pleased. In part, he argued that this was a symbolic act within the free speech clause of the First Amendment. He

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[59]East Hartford Education Association v. East Hartford Board of Education, 562 F.2d 838 2nd Cir. (1977).

stated the following reasons for his choosing to wear a sport shirt without a tie or a sport coat or sweater:

> (1) that he wishes to present himself to his students as a person not tied to establishment conformity; (2) he wants to symbolically indicate to his students, his association with what he believes to be the ideas of the generation to which the students belong, including the rejection of many of the customs and values and social outlook of the older generation; and (3) he believes that dress of this type enables him to achieve a closer rapport with his students and thus enhances his ability to teach.[60]

Brimley further stated that the board could not restrain his personal liberty in this fashion unless it showed that his dressing as he pleased "would materially and substantially interfere with the requirements of the appropriate discipline for the proper administration of the school."[61]

In summary, the constitutional issues raised in this case challenging a school dress code are basically two: (1) To what extent, if any, is the form of dress an expression of symbolic speech protected under the First Amendment? (2) Are a person's dress and liberty or privacy interest protected by the due process clause of the Fourteenth Amendment?[62]

Decision

The court concluded its discussion of the First Amendment by stating that Brimley's speech claim was "so

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[60]Ibid., p. 95. [61]Ibid., p. 96. [62]Ibid.

unsubstantial as to border on the frivolous."[63] It noted that only when symbolic speech is very close to pure speech does it warrant First Amendment protection, and it felt that Brimley had more effective ways of expressing his social views to his students.

The court held that a dress code does not unconstitutionally restrain the liberty of an individual, and thus it is within the discretion of the board to require some formality of dress. The court expressed its views regarding the interest of the board in requiring a male teacher to wear a coat and tie as follows:

> Teachers set an example in dress and grooming for their students to follow. A teacher who understands this precept and adheres to it enlarges the importance of the task of teaching, presents an image of dignity, and encourages respect for authority, which acts as a positive factor in maintaining classroom discipline.[64]

The plaintiff failed to carry his burden of proof in demonstrating that the school board's dress code was so irrational that it might be branded arbitrary. The court found that Brimley's freedom of choice was unlimited--that is, he was "free to go elsewhere and find a school system where conformity to a dress code is not required."[65]

Discussion

In this most recent case of teacher dress and grooming, the court strengthened the hand of the school board in

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[63]Ibid., p. 98. [64]Ibid. [65]Ibid., p. 99.

establishing the validity of a faculty dress code. In this case the court returned several times to the point that schools are under the control of duly elected local boards of education.

In addition, the court pointed out that states maintain interests in their employees beyond those they maintain over the public in general. For this reason, personal liberties, as an employee, differ from the liberties enjoyed as a citizen. Teachers, as public servants, are often placed under restraints in their professional lives to which other citizens are not subjected.

This case clearly demonstrates that the issue of "dress" is a facet of a teacher's professional life which can be regulated during school hours since it is regarded as a less serious interference with one's personal liberty than is "grooming."

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Historically, teachers have been held up as examples of proper dress and grooming. Their rights to personal privacy have always been restricted to guard against public appearance considered unacceptable. Before World War II, teachers were held under stringent control by school administrators and were expected, even required, to exhibit only the most sedate dress and grooming both in and out of the schoolhouse.

Through successful court action during the late sixties and early seventies, educators gained much recognition in their struggle for expression of personal freedoms. Among the cases heard were those in which teachers sought relief from school board and administrative regulations regarding personal dress and grooming.

From an analysis of judicial decisions, it appears that the major factor in deciding these cases was one of balance. On the one side, the teacher, as an adult and a citizen, argued for the fundamental right to dress and groom himself as he chose; on the other side, school authorities strived to maintain their long-established control over both teachers and students. While the right to adorn oneself as one chooses, within the bounds of decency, is a fundamental right of citizens of a democracy, the issue becomes more

complex as one moves from the general status of "citizen" to the particular status of "teacher." School authorities, in arguing for the validity of regulatory limitations regarding dress and grooming, have stressed the importance of such limits to ensure a climate favorable to the educational process. Judges have based their case decisions upon a variety of statutory and constitutional grounds, upon general principles, and upon the concept of reasonableness.

This study was not intended to reach any conclusions regarding the educational advantages or disadvantages of the various styles of dress and grooming a teacher might choose to display in the classroom. From a review of the research, however, it is apparent that this has been and will continue to be an issue for debate. For this reason, when boards of education or school officials feel the need to establish rules and regulations governing a teacher's appearance, they should have access to appropriate information concerning both the educational and legal ramifications of these issues in order that their decisions may be both legally and educationally sound.

As a guide to research, several questions were formulated and listed in the introductory chapter of this study. Although the review of literature provided the background necessary for examining these issues, most of the questions were answered in Chapters III and IV. These answers provide

the justification for the major portion of a set of legal guidelines which school administrators and other educational decision makers can use when formulating policies related to teacher dress and grooming practices.

Summary

The first research guide question listed in Chapter I was designed to determine the extent to which school authorities can constitutionally control a teacher's mode of dress or grooming. An analysis of research reveals that, at the least, any effort by a school system to regulate a teacher's mode of dress or grooming must be based upon factual conditions warranting the conclusion that the questionable attire would disrupt the educational process. Nevertheless, there is no question that school boards may establish reasonable standards with respect to the appearance of teachers. The courts have become increasingly hesitant to make "school decisions" as long as the imposed regulations do not restrict the constitutional rights of teachers. Judicial opinions have repeatedly stated that the day-to-day operations of the schools should be directed by the school board. Administrative decision makers, therefore, may assume that, as long as regulations are reasonable and are nondiscriminatory, they will be upheld by the courts.

The second question posed in the introductory chapter concerned the extent to which school officials can constitutionally discipline or terminate the employment of a teacher

because he does not conform to conventional standards of grooming. An analysis of cases reviewed in Chapters III and IV indicates that a teacher may face reprimand or termination of employment in instances where reasonable and nondiscriminatory rules are ignored. The courts have, however, remained adamant in insisting that due process procedures must accompany any disciplinary action or termination of a teacher's position. Defendants must show evidence of having established and published regulations, and the teacher must have been informed of the consequences of wearing his chosen dress or grooming before dismissal procedures can be initiated.

The third question examines the extent to which the courts have treated the issues of dress and grooming separately. The distinction made by the courts between teacher dress and teacher grooming has been instrumental in the outcome of many appearance cases. The courts, in most instances, have upheld the right of a teacher to groom as he wishes as long as it does not disrupt the educational process nor create a health or safety hazard. Teacher dress, on the other hand, has been viewed differently by the judiciary. The courts generally have ruled in favor of the school board in upholding its right to make and impose regulations deemed necessary for the enhancement of the educational environment. Judicial thinking has been that an individual's grooming practices are a personal aspect of

one's personality that cannot be easily removed when the teacher enters his professional role. Dress, however, is easily changeable upon leaving the school grounds and, therefore, dress regulations are not as restrictive of a teacher's private life.

The fourth question listed in Chapter I was to identify the litigable issues revealed through judicial decisions. The courts are faced with determining the extent to which a teacher's constitutional rights are violated and the point at which the state's interest in the education of its children should be paramount. In addition, the distinction made by the courts in dress and grooming has been instrumental in deciding individual cases. Determining what aspects of a teacher's appearance are constitutionally protected will continue to be a legal issue for the courts to decide.

The final question asks for specific trends to be identified from an analysis of court decisions. Most recently, the courts have upheld the right of school boards to impose regulations on dress and grooming as long as they are reasonable and not arbitrary. Future litigation is needed to substantiate this most recent decision made by the courts. An extensive examination of trends emerging through examination of judicial decisions is rendered in the Conclusions section of this study.

Conclusions

It is important to keep in mind the fact that not all courts will approach dress and grooming cases in the same way. Even when the legal issues appear to be identical to those in a case already decided, varying circumstances can produce entirely different decisions in subsequent cases. While conditions surrounding the cases may vary, common threads can be extracted, however. Based on an analysis of court decisions, conclusions concerning the legal aspects of teacher dress and grooming can be made:

1. The courts have established two bases for the constitutional protection of teachers who object to regulations controlling their dress and grooming. These include the First Amendment rights to freedom of speech and religion and the Fourteenth Amendment guarantees prohibiting the deprivation of life, liberty, or property of any person without due process of law

2. The teacher is usually protected under the Constitution if his appearance is seen as an expression of personality, heritage, race, or culture, as long as it does not impair the educational process

3. When dress or grooming is considered to be a form of symbolic speech and is thus very close to pure speech, e.g., the wearing of black armbands, the First Amendment protection is high.

4. Local school boards and administrators must be

prepared to establish a need for their dress and grooming regulations

5. The teacher must bear the burden of proof and show that the regulation is arbitrary and discriminatory when the facts in the case indicate that the board has, within its implied powers, the right to enforce the dress or grooming regulation

6. The school board must bear the burden of proof and demonstrate a rational relationship between the necessity and desirability of the rule if it is established that the constitutional rights of the teacher have been violated

7. A teacher cannot be lawfully dismissed for his dress or grooming unless: (1) there is a published policy prohibiting the dress and grooming, (2) the teacher is given notice of the policy and of the consequences of not adhering to it, and (3) a hearing is held to judge the specific alleged violation

8. The courts usually treat rules of dress differently from rules of grooming because clothing can be more easily changed after the teacher leaves the school grounds than can a grooming style

9. The courts generally uphold dress codes imposed by school officials as long as they are reasonable and are not enforced discriminately

10. A grooming regulation is usually struck down by the courts unless the school board can prove that the

teacher's grooming is causing disruption of the educational process, collapse of student discipline, or that his appearance is untidy

11. While the courts have been divided on the issue concerning the wearing of religious garb by public school teachers, the most recent court decision has upheld a teacher's right to appear in the classroom dressed in this garb, as long as the teacher does not impart religious doctrine to the students

12. School boards and administrators are not immune from liability for damages in cases involving the infringement of constitutional rights in enforcing dress and grooming codes

13. Determining what aspects of a teacher's appearance are constitutionally protected will continue to be a legal issue for the courts to decide

Again, it should be reiterated that the United States Supreme Court has yet to hear a case concerning the dress and grooming of teachers. It is necessary, therefore, to examine individual cases and the circumstances surrounding them before assuming that legal precedents established in one case might be applicable to similar cases.

Recommendations

It was not the intent of this study to determine what effect teacher dress and grooming have on the educational

process. Rather it was to provide appropriate information regarding the legal and educational aspects of these practices to assist decision makers in formulating policies which will be both educationally and legally sound.

Policy decisions have been and continue to be left to the discretion of local school officials. Without question, some restrictions, including those dealing with the dress and grooming preferences of teachers, are necessary if the public schools are to function in an orderly fashion. These officials, however, must guard against the adoption of any unreasonable regulations which might impair or deny a teacher's protected constitutional rights.

A plea of ignorance will no longer be accepted as a legal excuse for having violated a teacher's constitutional rights, nor will it provide an escape from the ensuing personal consequences of having committed such a violation. In order to ensure that the constitutional rights of all teachers are protected, school boards should adopt a written plan to be followed when and if such policies are initiated. Failure to do so will likely result in long and costly court action.

Based on the results of this study, the following guidelines concerning teacher dress and grooming have been formulated. These guidelines are based on legal principles established through the courts in cases related to these issues. While these appear to be legally acceptable criteria

to follow, school officials need to keep in mind that individuals who feel that their constitutional rights have been abridged may still initiate judicial grievances.

Guidelines for Teacher Dress and Grooming Policies

1. School boards must be able to justify that a compelling and overriding governmental interest is at stake, and that the regulation of dress and grooming is the only method of protection, since judges seek evidence rather than opinions or moral assertions

2. Guidelines should be cooperatively developed between teachers and school officials

3. All dress and grooming regulations should be reasonable and enforced in a nondiscriminatory manner

4. Dress codes should be simple but not vague; moreover, dress and grooming codes that are authoritarian or arbitrary are likely to be tested in court

5. School boards must establish due process procedures for teachers in cases where disciplinary action, including suspension or dismissal, results from a particular dress or grooming style

6. Teachers should be thoroughly informed as to the guidelines established by the school system in regard to dress and grooming

Concluding Statement

Both the changing values of society and the effect of litigation have certainly had an impact on school board-imposed dress and grooming regulations. This is especially evident in systems where policies have been challenged. Increasingly school administrators are liberalizing dress and grooming codes for teachers in the hope of avoiding such lengthy litigation.

While no school board plan or set of guidelines will ensure against the initiation of court action by individuals who feel their rights have been violated, school boards and school administrators can reduce the probability of litigation by formulating and implementing a set of guidelines governing teacher dress and grooming.

Fashion within a society is an everchanging phenomenon. Although there has been an increasing tolerance of extremes in fashion and a resultant reduction in litigation of this area, school boards and school officials must still bear responsibility for the orderly and efficient conduct of the educational process. Both the courts and educational standards demand, however, that school boards and administrators exercise a degree of judgment in their decisions.

Recommendations for Further Study

The very limited research that has been conducted concerning the importance of teacher dress and grooming as it

affects students, makes it impossible to substantiate the scattered results. In the studies reviewed in this paper, college students were used as the sample populations. Serious attention should be directed to further exploration of this area using more varied age groups as samples. The results of such research would give school authorities more confidence in establishing or ignoring dress and grooming regulations for teachers.

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