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ABSTRACT

In the past few years numerous cases have appeared before the courts concerning the dress and grooming of students. In many of these cases, the issue has been related to male students' hair length. Throughout the nation, conflicting trends have emerged from a legal point of view, and the issues remain largely unresolved. This paper discusses the status of legislation on students' rights on matters of dress and grooming according to (1) Mississippi statutory law, (2) statutory law in five other States, (3) major cases that have been in Mississippi courts, (4) the status of the case law on the subject elsewhere, (5) model legislation that has been proposed or recommendations for legislative action proposed by various agencies, and provides (6) recommendations developed on the basis of the material presented in the paper. (Author)

STUDENTS' RIGHTS IN MISSISSIPPI ON MATTERS OF DRESS AND GROOMING

by

Jerry H. Robbins, Ed.D.

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed or what recommendations for legislative action, if any, have been proposed by various agencies? (6) What recommendations seem to follow from the information presented to the answers to questions 1-5?

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In the past few years numerous cases have appeared before the courts concerning the dress and grooming of students. In many of these cases, the issue has been related to male students' hair length. Throughout the nation conflicting trends have emerged from a legal point of view, and the issues remain largely unresolved.

Statutory Law

The statutes in most states are no more specific on the matter of dress and grooming than is the one in Mississippi. In Mississippi, the board of trustees of a school district has the power "to suspend or expel a student for misconduct in the school . . .," and it may "assist the superintendent, principal and teachers where necessary for the proper discipline of the school. . . ." (1)

As a result, most cases involving the dress and grooming of students have been argued on bases other than the applicability of a particular statute.

Case Law in Mississippi

As early as 1921, courts in Mississippi were concerned with students' dress. In Jones v Day (2) the regulation of an agricultural high school was held not to be such an unreasonable

exercise of the school authority as to justify intervention of the court, since the testimony showed that the regulation aided in the discipline of the school. The regulation required students to wear a specified uniform at school and when visiting public places within five miles of the school seven days a week. However, the court construed the regulation as being applicable only while the students were under the care and custody of the school authorities, holding that regarding the boarding pupils the rule would apply throughout the term, while concerning the day pupils it would not be applicable after they had returned to their homes and were under the custody and control of their parents.

In more recent times, two cases in Mississippi have attracted national attention. In Burnside v Byers (3) the wearing of "freedom buttons" by high school students was held to involve the protected rights of free speech which could not validly be inhibited by a school regulation unless the wearing of the buttons created a disciplinary problem, or in some way interfered with the educational process. The "freedom buttons" were approximately 1 1/2 inches in diameter and were inscribed "One Man One Vote" and "SNCC." There was no showing that the wearing of the buttons caused a disturbance or interfered with the regular schedule of school activities.

However, in Blackwell v Issaquena County Board of Education (4), the same court on the same day sustained a school regulation forbidding the wearing of such buttons on evidence that students wearing the buttons had tried to force them on others, and that discussion of the buttons had caused class disturbances and problems leading to a complete breakdown of discipline.

In August, 1968, the Board of Trustees of the New Augusta Attendance Center passed a resolution delegating the discretion to decide whether "a student's hair is too long" to the principal of the school. Subsequently, Principal William T. Freeman discussed the particular restriction about hair length with the Perry County School Board and the Board of Trustees of the attendance center. The boards directed Mr. Freeman to make reasonable rules.

At the opening of school in September, 1968, notice was given to all enrolled students of the principal's specific policy regarding hair length. The policy stated that male students should not wear their hair longer than two inches or two finger widths above the eyebrows. After several requests and warnings, the principal suspended Glenn Shows for willfully refusing to comply with the rules and policies of the school. The student's hair had extended to a length that violated the adopted rule. Glenn was, at that time, a 13 year old eighth grader. The matter eventually came before the Supreme Court of Mississippi. The court held that

> Provided there is some rational basis for a rule by school authorities, the courts will not pass upon its wisdom or desirability. Unusual male hair styles may disrupt and impede maintenance of proper classroom atmosphere or decorum. Although a rule of this type may affect the private lives of students outside as well as in the school, this was not an improper invasion of family privacy, which must give way to the rights and the interests of the community, teachers, and other students in an adequately disciplined and efficient school system. The purpose of a school is to educate, and school administrators have the duty to prevent disruptions of an atmosphere of learning. (5)

School authorities were also upheld in Pound et al. v Holladay et al. (6) The three plaintiffs were David Lee Pound, a 16 year old eleventh grader, James Allen McGregor, a 19 year old

eleventh grader, and Joe Wood, Jr., a married 19 year old in the twelfth grade. The plaintiffs and twenty-four other male students at Tupelo High School were suspended from school on Monday, January 4, 1971, for violation of the school's dress code regarding hairstyles. The dress code provided that "Hair may be blocked, but it is not to hang over the ears or the top of the collar of a standard dress shirt and must not obstruct vision."

Twenty-four students secured a hair cut and returned to their classes. On Tuesday, January 5, 1971, the remaining three students, through counsel, requested a disciplinary hearing with school authorities. Such a hearing was given them on Friday, January 8, 1971. As a result, the students were promptly notified that they would be suspended indefinitely unless their hair was cut to conform with the regulation governing hairstyles for male students.

All parties agreed that the three students were in violation of the code. On appeal, the only issue presented to the court was the constitutionality of the hairstyle regulation.

According to the court, the burden rested on the school authorities to show that the hairstyle regulation was reasonably necessary to alleviate interference with the educational process. The evidence presented by the school authorities was contrary to that presented by the students. The superintendent of schools, the high school principal, one junior high school principal, the Trade and Industrial Coordinator, the athletic director and football coach, the librarian at the high school, the industrial arts

teacher, a chemistry teacher, and an instructor in high school English testified that the hairstyle regulation adopted by the school was necessary to alleviate interference with the educational process.

The court found from the evidence in this case that the school authorities met the burden of proof and were within their rights in adopting the regulation. The court also held that school authorities were the sole judges of the existence of circumstances which would require the adoption of regulations such as the one in question in this action. If the question were within the range where reasonable minds would differ, then the school authorities' decision would govern.

Case Law Elsewhere

In 1923, a court in Arkansas held that a rule forbidding girls to wear transparent hosiery, low-necked dresses or any other style of clothing tending toward immodesty in dress and to use face paint or cosmetics did not constitute an abuse of discretion on the part of the school directors. (7) This decision applied to the exclusion from school of an 18-year-old girl who had insisted on wearing talcum powder on her face. Affirming the power of the courts to pass on the reasonableness of such rules, the court added that it had other and more important functions to perform than to hear the complaints of disaffected pupils regarding the rules adopted by school boards elected by the patrons of the schools and who were closely in touch with the affairs of the districts.

In Massachusetts a school regulation forbidding extreme

haircuts or anything else felt to be detrimental to classroom decorum was held to be within the school board's discretion. The court said it must sustain the rule unless it could find no rational basis for it. The court felt that unusual hairstyles could disrupt and impede the maintenance of a proper school atmosphere. The court felt that the matter involved an aspect of personal appearance akin to matter of dress, and as with any unusual, immodest, or exaggerated mode of dress, conspicuous departures from accepted customs concerning haircuts could result in the distraction of other pupils. The plaintiff had been in all other respects a conscientious, well-behaved, and properly dressed student, and he had had considerable success as a professional musician. The student contended that his image as a performer, in part based on his hairstyle, was an important factor. However, this argument was held to be immaterial. The court said that the discretionary powers of the school committee were broad, and the committee could have concluded that, regardless of the detriment to the plaintiff's professional life, only the strictest application could insure the success of the regulation. (8)

Upon evidence indicating that students' metal heelplates caused excessive noise in the halls and classrooms, and tended to deteriorate the hardwood floors of the school at an inordinate rate, it was held in a 1931 case that the school authorities were justified in enacting a regulation forbidding such heelplates, and in expelling a student who, at his father's direction, refused to comply with the rule. (9)

In a landmark case in Iowa, the action of students in wearing black armbands to protest the Vietnam war was held to be both entitled to free speech protection and a proper subject for school regulation. The court sustained a regulation forbidding the wearing of such armbands, saying that it was not necessary to find that the wearing of the bands had caused any substantial or material interference with school discipline. In view of the highly controversial matters involved, the school officials were said by the court to have a wide discretion regulating matters which they believed might cause trouble in the school. (10)

In the compilation of 77 recent cases concerning student dress and grooming, the courts essentially found for the students in 36 instances, for the school authorities in 35 instances, and in some way begged the question in six instances.

Cases finding for students. of the 36 cases found essentially for the students, 25 dealt with hairstyle and hair length. One of these specifically concerned the hair length of athletes. Three of the other cases referred to the wearing of armbands, and two to a dress code or grooming in general. There was one case each concerning moustaches, the length of girls' hair, sideburns, hair style and sideburns, and the wearing of slacks by girls.

These cases were found in the states of Iowa, Wisconsin, Massachusetts, Alabama, Indiana, Texas, Missouri, Pennsylvania, Minnesota, Connecticut, Vermont, California, Illinois, Ohio, New Hampshire, Nebraska, Florida, West Virginia, Arkansas, Idaho,

Arizona, and New York.

In many of these instances, it was essentially held that students had the right to dress and groom themselves as they pleased, provided there was no disruption of the educational process, and that there was no health or safety problem involved. Often the school authorities were unable to prove any relationship between dress and grooming and the educational process.

Cases finding for school authorities. Of the 35 cases in which the courts essentially found for the school authorities, 26 dealt with hair length and style. One of these cases involved the hair length of athletes and another involved the hair length of band members. Four other cases dealt with a dress code in general, two with facial hair, one with the wearing of buttons, one with the wearing of black berets, and one with the wearing of arm bands.

These cases were found in the states of Connecticut, Texas, Tennessee, Georgia, Ohio, California, Pennsylvania, Louisiana, Colorado, Arkansas, Oklahoma, Missouri, Illinois, Mississippi, North Carolina, Florida, and South Carolina.

In many of these instances, it was held to be a right of the school board to enact reasonable policies regarding dress and grooming. In a good number of cases, school authorities were able to prove disruption or potential disruption of the educational process because of the dress or grooming matter under consideration.

Other cases. In four of the remaining cases, the court

found no substantial federal question. In one additional case, the court held that if the rule was justified, it could be implemented. In another case, the court disallowed the general rule as vague. It upheld a suspension, however, because of the possible disruption resulting from a student's Confederate arm patch.

Summary

In summary, it may be stated that:

1. There are few, if any, statutory guides in Mississippi or elsewhere that deal with specific matters of the dress and grooming of students.

2. School authorities have the right to enact reasonable policies affecting student behavior and to exclude those students who do not conform to these policies, provided due process is observed.

3. In Mississippi, because of the precedents set by courts in this state and the Fifth Circuit Court of Appeals, students are obligated to observe all reasonable rules established by the school authorities regulating dress and grooming.

4. In Mississippi, as elsewhere, students may dress or groom themselves as they wish, provided there is no disruption (actual or potential) to the educational process, and provided that there are no violations of conventional health and safety standards. However, in Mississippi, it appears that school authorities have a greater latitude at present to define "actual" or "potential" disruption of the educational process than in some other jurisdictions.

5. If a student's activity, dress, or grooming can be classified as speech or expression which is protected by the First Amendment, curtailment of such is measured by the courts against disruption of the educational process and there will be a heavier burden placed on the school authorities to show actual disruption.

Recommendations

It is recommended that:

1. Conflict be avoided by initiating instruction for all students regarding good grooming, tastefulness, and appropriateness of dress in each junior and senior high school in Mississippi.

2. Conflict be avoided by providing in-service education for school leaders on procedures for obtaining community consensus on appropriateness of dress and good grooming.

3. Most problems related to the dress and grooming of students be resolved by enlightened practice by administrators and teachers rather than by the courts or the Legislature.

4. If the desire is to be restrictive of the dress and grooming of students, there be no additional legislation. School boards have sufficient authority at the present time to enact all reasonable rules. However, school boards should not enact rules that restrict free speech and expression.

5. If the desire is to be less restrictive, legislation be passed prohibiting school boards and school administrators from establishing policies on matters of dress and grooming. Another possibility might be to define an "actual" or "potential" disruption so that school authorities might invoke this reason for a rule less frequently.

Notes

(1) Mississippi Code Annotated 1942, § 6328-24 (Supp. 1968)

(2) Jones v Day, 127 Miss 136, 89 So 906, 18 ALR 645

(3) Burnside v Byars, 363 F2d 744 (1966, CA5 Miss)

(4) Blackwell v Issaquena County Board of Education, 363 F2d 749 (1966, CA5 Miss)

(5) Shows v Freeman, Miss. 230 So. 2d 63

(6) Pound et al. v Holladay et al. 322 F. Supp. 1000 (1971)

(7) Pugsley v Sellmeyer, 158 Ark 247, 250 SW 538, 30 ALR 1212

(8) Leonard v School Committee of Attleboro, 349 Mass 704, 212 NE 2d 468, 14 ALR 3d 1192.

(9) Stromberg v French, 60 ND 750, 236 NW 477.

(10) Tinker v Des Moines Independent Community School District, 258 F Supp 971