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STUDENT T-SHIRTS: LEGAL AND POLICY ISSUES

Overview

With few exceptions, student dress (attire) and appearance remain consistent “issue producers” in this nation’s public school systems. Not a school year passes without public school administrators encountering problems caused by something worn by a student. Over the years, hairstyles, dress, armbands, buttons, flags and other insignias, and jewelry have produced numerous disciplinary situations in public schools. More recently, however, controversies have arisen involving controversial T-shirts. Shimmel (2005). The subject of this commentary is to explore this issue area.

Codes of Student Conduct. Most public school systems have policies and rules governing student dress and appearance. More often than not, these policies and rules include T-shirts and are applicable to all students while they are in school and in attendance at school sponsored functions.

As a general rule, specific policies and rules governing T-shirts can be found in a school system’s *Code of Student Conduct*, where *prohibited items* (e.g., wearing T-shirts bearing gang-related symbols; or containing obscene and vulgar words; or promoting harmful activities; or displaying threatening symbols) are separated from *permissible exceptions* (e.g., T-shirts worn on special occasions, such as “school spirit day”). In recent years, some school systems have included a *mandatory category* (e.g., uniforms) in their student appearance codes of conduct. Boshier, Kaminski, and Vacca (2004)

First Amendment Issues. Nowhere in the United States Constitution is the word “expression” used. In the 1960’s, however, the federal courts created a substantive right of “free expression” by expanding the First Amendment’s free speech clause. Similarly, while the words “dress” and “appearance” are not specifically included in the United States Constitution’s First Amendment, they can be characterized and included as forms of “speech” and “expression.” Essex (2002) The United States Supreme Court in *Tinker v Des Moines* (1969) “recognized the First Amendment free speech rights of public school students.” Russo (2004) It is within this First Amendment context that most issues involving student T-shirts can be found.

Privacy Issues. In addition to possibly implicating basic First Amendment protections, so too can T-shirts, as a form of student dress and attire, be characterized as involving personal privacy (e.g., a student’s right to freely

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select what she/he shall wear to school). However, since student speech and expression rights have never been declared absolute, experts in school law consistently remind us, “[t]he great weight of judicial authority supports the proposition that a board of education possesses the authority to regulate pupil dress and personal appearance if they become so extreme as to interfere with the school’s favorable learning environment.” Alexander and Alexander (2005) Moreover, “[e]ven in situations where students’ rights to govern their appearance have been recognized, the judiciary has noted that attire can be regulated if immodest, disruptive, or unsanitary.” McCarthy, et al. (1998)

School Board Authority. Today’s public school officials do not have limitless discretion to suppress student expressive activities. What is more, school officials know that style and personal taste are not the bases upon which to build a rationale for drafting and implementing sound student dress and appearance policies and rules. The courts have consistently held that such policies and rules must be justified as necessary to: (1) protect the learning environment from disruption, (2) keep the learning environment free from threatening, harmful, and dangerous activities, and (3) establish proper decorum. Vacca and Boshier (2003)

Locus of Implementation. The enforcement of student T-shirt policies and rules (along with carrying out disciplinary procedures when necessary) more often than not is the responsibility of public school principals. Vacca and Boshier (2003) As a general rule, school principals are granted discretion to interpret and apply the specific policy or rule. In doing so, however, they are often faced with the following questions and subsequent choices. When is something worn or displayed on a student’s T-shirt intended to convey a political message? When is it intended simply to express a “personal opinion” or “personal belief”? When is it intended to provoke a reaction from others? When can something depicted on a T-shirt be characterized as expressing a “personal moral conviction”? When does it contain a distasteful characterization? When does it contain words or pictures that are hateful, or obscene, or pornographic, or threatening, or harmful? When does something said on a T-shirt encourage disruptive behavior or promote illegal activity? Does it matter? Should it matter? In most public school systems it does matter and the building principal is vested with authority to decide what, if anything, must be done?

Case Law

The United States Supreme Court and the courts below it have held that school policies and rules governing student appearance (including student T-shirts) cannot be overbroad and vague, and that public school officials do not have limitless discretion to suppress student speech. Chandler v McMinnville School District (9th Cir. 1992). The most consistent standards applied by the courts in resolving student T-shirt controversies are the: (1) Tinker v Des Moines (1969) standard of “material and substantial disruption,” (2) Bethel School District v Fraser (1986) “lewd, vulgar, or profane language” standard, and (3) “legitimate pedagogical concerns” standard created in Hazelwood v Kuhlmeier (1988). What follow are *four* randomly selected examples of recent case law on point.

In Sypniewski v Warren Hills (2002), a student was suspended from school for wearing a T-shirt making fun of “rednecks.” The school system had a policy prohibiting wearing “symbols implying racial hatred and prejudice.” The suspended student went to federal court where the court ultimately ruled in his favor. In the court’s view, school officials could not show where the wearing of this particular T-shirt caused substantial interference (material disruption) with either school operation or with the rights of other students.

Brandt v Board of Education (2004) involved students in a program for the gifted. The students wanted to create and wear an official class T-shirt. Even though school officials rejected their proposed design, they made the T-

shirt and wore it to school. Determining that the message (including a caricature) on the T-shirt was “offensive” and as such violated the school system’s dress code, the school principal set restrictions on wearing the T-shirt while at school. Subsequently, parents and students went to federal court claiming that the principal’s restrictions violated the First Amendment. The court dismissed their complaint. In the court’s view the evidence demonstrated that the principal’s actions were based on “reasonable pedagogical concerns.”

That same year, in Harper v Poway Unified School District (2004), a high school student unsuccessfully argued that a message displayed on his T-shirt (expressing an objection to homosexuality) was “religiously motivated.” The school board had a policy prohibiting “violence, derogatory messages, or hateful behavior” directed toward an individual based on his/her “sexual identity.” In the court’s opinion the policy was not vague and it definitely applied to the T-shirt statement involved in this particular case.

More recently, in Griggs v Fort Wayne School Board (2005), a student was disciplined for wearing a T-shirt in support of the United States Marine Corps. On the T-shirt was, among other things, the picture of an M-16 rifle. Applying a school system policy prohibiting students from wearing apparel depicting “symbols of violence,” the student was disciplined. The student took his case to a federal district court where he prevailed. The court did not see where the T-shirt caused disruption at school. What is more, no other student had complained about the T-shirt message. In other words, in the court’s opinion the school system policy as applied to this particular T-shirt served “no legitimate pedagogical concern.”

Policy Implications

As stated at the outset of this commentary, student T-shirts have been and continue to be a major source of disciplinary issues in public schools. Experience has taught school officials, principals, and classroom teachers that a proactive stance must be taken to prevent possible disruption of the school’s learning environment. At the same time, however, because students “do not shed their First Amendment right to free expression at the school house gate,” Tinker v Des Moines (1969), the possibility of a student T-shirt problem morphing into a constitutional issue is a reality. It therefore follows that policies and rules, as well as implementing procedures, specifically written to cover T-shirts, must be drafted with care and caution. What follow are a few simple suggestions to consider when formulating a T-shirt policy.

Local school boards must make it clear that:

- The intent of the school board is to respect student rights. However, student “free speech and expression” rights are not absolute while in attendance at school and at school sponsored functions.
- The school board is vested under state law with the authority to decide what is or is not appropriate student dress and appearance on school property and at school sponsored functions.
- T-shirts are included in student dress and attire policies.
- Specific types of T-shirts (a list of specific examples must be included) will not be tolerated on school grounds or at school- sponsored activities.
- School principals are delegated the school board’s authority to decide what is or is not an appropriate T-shirt worn by a student.
- School principals are vested with school board’s authority and discretion to take immediate and appropriate disciplinary action if and when the T-shirt policy is violated.

One final question is in order. Why not enact a policy completely banning T-shirts of any type? Some school systems have done so. Maybe it would cut down on the time taken away from instruction and education,

currently consumed by student disciplinary matters? But, is a complete ban the least burdensome alternative, or will it simply produce a different set of problems? In my opinion it would be wise to do some research before automatically selecting this approach.

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