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News for School Clients

School Board Policies Regulating Student Appearance

Many school boards grapple with the question of whether they can implement policies regulating student appearance. Legal precedent suggests that a school board will not be able to enforce such policies unless the board can show that the policies are rationally related to a legitimate school interest.

Students who challenge policies regulating student appearance generally do so under either the Free Speech clause of the First Amendment or the Due Process clause of the Fourteenth Amendment to the United States Constitution. Students who bring a claim under the Free Speech clause usually do not prevail because courts have long held that matters of personal appearance generally are not “speech.” In order to gain Free Speech clause protection, a student must show that through his or her appearance, he or she intends to convey a particular message, and that there is a great likelihood that the message will be understood by those observing it. Generally, students have been unable to make such a showing. Rather, courts have held that piercings, tattoos, hair length, and certain types of clothing are merely forms of self-expression, which is not protected speech under the First Amendment.

Students have fared better when basing their claims on the Due Process clause. Courts have recognized that the Due Process clause, in connection with privacy interests guaranteed in the Constitution, grants students a right to

control their appearance. To withstand a challenge under the Due Process clause, a school board must show that the policy is based on specific objectives that are related to the educational mission of the school.

School board policies that attempt to regulate student appearance have been struck down when the school board was unable to provide sufficient justification for the policy, or when the policy was vague or unclear. For example, in a trilogy of cases from the 1960’s and 1970’s, courts held that school boards cannot prohibit long hair on males without showing that males with long hair create a disruption that is “frequent,” “aggravated,” “general,” and “persistent,” or without showing some other legitimate school interest such as a relationship between long hair and poor academic performance, health problems, or safety risks. In none of the three long-hair cases was the school board able to show that a policy banning long hair on males was rationally related to a legitimate school interest. A mere desire to force students’ appearances to fall within the tastes of certain policymakers will be insufficient to withstand a challenge under the Due Process clause.

However, school board policies that regulate student appearance have been upheld in several cases when the school board was able to show that the policy was related to a legitimate school interest. For example, one school board

adopted an anti-gang policy that prohibited male students from wearing earrings. Because the school board was able to show that the school indeed had a gang problem and that many male students wore earrings to demonstrate gang affiliation, the court found that the school board's desire to curtail gang activities was directly related to the safety and well-being of its students. In another case, however, a court did not find support for a school board's argument that its earring ban served to prevent the influx of gangs and cults into its schools because the board was unable to show that any cults or gangs actually existed in its schools. That court also did not agree that the earring ban was necessary to protect male students who may be inclined to roughhousing during gym class, because female students, who were permitted to wear earrings, avoided potential injury by removing their earrings before gym class.

One court upheld a policy prohibiting males from wearing earrings when the school board was able to show that the enforcement of a strict dress code was a factor in improving students' attitudes toward school, which led to improvements in attendance, drop-out rates, and academic performance. In another case, a school board "clearly show[ed]" that a male student wearing an earring can disrupt an elementary classroom, and the court was convinced that a school board may avoid distractions in the classroom through the implementation of a consistent dress code.

That court also found it reasonable to allow a school to reflect the values of its community through the use of a dress code prohibiting males from wearing earrings.

When drafting a policy regulating student appearance, school boards may consider various objectives as the reasons for the policy. Examples of legitimate objectives include curtailing gang activity, avoiding disruptions in the classroom, discouraging rebelliousness, fostering respect for authority, encouraging conformity to community standards, and instilling discipline in students.

Although several courts have upheld policies regulating student appearance, it is important for school districts to be aware that such policies will not necessarily withstand a constitutional challenge. The school board must be able to show not only that its policy is based on specific, identifiable objectives, but also that the objectives are related to the educational mission of the school, that the objectives are reasonable in light of the particular school environment, and that the policy actually relates to those objectives.

Notwithstanding the discussion above, school boards will be given more latitude to regulate the appearance of students who participate in extra-curricular activities because participation in such activities is voluntary and students have a choice whether to conform their appearance to the policy requirements.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

Michael J. Julka (608) 286-7238
Ronald J. Kotnik (608) 286-7214
William L. Fahey (608) 286-7234

David E. Rohrer (608) 286-7249
Michael J. Lawton (608) 286-7236
Frank C. Sutherland (608) 286-7243
Joanne Harmon Curry (608) 286-7248

Shana R. Lewis (608) 286-7202
Richard F. Verstegen (608) 286-7233
Carrie M. Benedon (608) 286-7208

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