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UNTIL RECENTLY, the general public and the legal profession have had little concern about the civil rights of the individual student in our public educational system. The student has been forced to fight his own battle against school regulations and penalties and the procedures by which these regulations have been enforced. The result often has been the loss of some of his personal freedoms.

The right of the public school system to establish dress and appearance regulations, and the right of the student to dress as he desires, have brought the conflict to the foreground. The student wants the benefit of a public education without sacrificing his personal and political beliefs.[1] To attain his freedom he often defies authority. The school's interests are in efficient, effective and orderly conduct of the public school system.[2] Conformity, discipline, and the enforcement of moral and political values are said to be the primary concerns.[3]

Student Regulations

Although case law on this subject is inconsistent and not well developed, litigation between students and schools is increasing. As a general rule courts have upheld school regulations unless they are arbitrary or unreasonable.[4] Such rulings have given local boards of education wide discretionary powers without fear of court intervention.[5]

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[1] Rothwax, The Rights of Public School Students, in, Course on Law and Poverty: The Minor, 2.01 Ohio State Legal Services Association (1968).

[2] Ibid.

[3] Id.

[4] Holroyd v. Eibling, 116 Ohio App. 440, 188 N.E.2d 797 (1962). See also, Ohio Rev. Code § 3313.20 (Supp. 1967), which provides, in part:

> The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises.

[5] State v. Chamberlain, 39 Ohio Op.2d 262, 175 N.E.2d 539 (C.P. 1961) which upheld a local school board's regulation requiring pregnant students to withdraw from school. The court said that the school board could not prohibit attendance solely on the basis of marriage, but that here attendance was denied in the interest of a student's physical well-being and not as a punitive measure. The court said that after the birth of the child the student could return to school; and see, Mosely v. City of Dallas, 118 Tex. 461, 17 S.W.2d 36 (Tex. Civ. App. 1929). Here a Texas court said that judgments of school authorities on how to create a proper school environment should not be set aside, unless there is a clear abuse of their discretion, or a violation of the law; where there is no such abuse, the law will not substitute the discretion of the courts for that of the board.

Suspension of a student for disobedience is within this power.[6] For example, *Jones v. Day*[7] upheld a regulation adopted by an agricultural high school which required the wearing of a khaki uniform by all male students attending school.

In *Stromberg v. French*[8] the court upheld the reasonableness of a rule prohibiting male students from wearing metal heel plates on their shoes. The court stated that sometimes the interests of the public are paramount to the rights of individual students; the regulation in question was clearly exercised in good faith, for the maintenance of good order and discipline in the classroom. Compare this with *Byrd v. Gary,*[9] which upheld the suspension of students for violating an instruction against attempting to organize a student boycott of food served by the school in its cafeteria.

Membership in high school fraternities and sororities is another area over which school authorities have almost complete control.[10] *Wilson v. Abilene Independent School District*[11] upheld the action of a school, prohibiting students from becoming members of high school fraternities and sororities. The Texas court said:

> The Superintendent, a principal and board of trustees of a public free school, to a limited extent at least, stand, as to the pupils attending the school, in loco parentis, and they may exercise such powers of control, restraint as are necessary to enable teachers to perform their duties and to effect the general purposes of education. The courts will not interfere in such matters unless a clear abuse of power and discretion is made to appear.[12]

When dealing with school regulations on student marriage or pregnancy, however, the courts have been inconsistent. Generally, courts will not uphold a school regulation permanently excluding a student from public schools solely on the basis of his marriage.[13] In *Anderson*

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[6] In Ohio, it has long been recognized that boards of education are authorized by law to suspend pupils for disobedience of rules and regulations of the board, barring a reasonable excuse. Sewell v. Board of Education, 29 Ohio St. 89 (1876); accord, Roe v. Deming, 21 Ohio St. 666 (1871). See Ohio Rev. Code §§ 3313.66 and 3313.44, which provide Ohio public schools with the statutory authority to suspend or expel pupils.

[7] 127 Miss. 136, 89 So. 906 (1921).

[8] 60 N.D. 750, 236 N.W. 477 (1931).

[9] 184 F.Supp. 388 (E.D. So. Car. 1960). The court held that the discretionary action taken by the school officials was not a violation of the student's constitutional or civil rights.

[10] Smith v. Board of Education, 182 Ill. App. 342 (1913). See also, Waugh v. Board of Trustees of University of Mississippi, 237 U.S. 589 (1915), here the court found that a state college also has the right to restrict affiliations with fraternities and sororities.

[11] 190 S.W.2d 406 (Tex. Civ. App. 1945).

[12] Id. at 410. In Ohio membership in public school fraternities and sororities is prohibited by statute. See Ohio Rev. Code § 2923.35.

[13] Nutt v. Board of Education of Goodland, 128 Kans. 507 (1929).

v. Canyon Independent School District,[14] the court struck down a regulation which stated that all students who marry during the school term must withdraw for the remainder of the school year. The court held that the school board was not empowered to adopt such a rule, and based its decision mainly on the compulsory attendance laws of Texas.[15] Almost ten years earlier, a Tennessee court had held exactly opposite in a similar situation.[16]

However, in *Board of Directors of the Independent School District of Waterloo v. Green,*[17] the court, in upholding a school regulation excluding married pupils from participation in extracurricular activities, found that such a rule was neither arbitrary nor unreasonable. Thus, although married students cannot be permanently excluded without cause, school authorities may place limitations upon their activities within the school setting. Pregnant students have not done as well in the courts; they must withdraw from school until after the birth of the child, at which time they may return.[18] The argument is that such a regulation is in the interest of a student's physical well-being and is not a punitive measure.[19]

The above illustrate only a few of the many restrictions which school administrators have successfully placed upon public school students. Other areas where the courts have ruled in favor of the school system include regulating the student's right to park his car and remove it during lunch hour,[20] his right to leave the school grounds during noon hour,[21] and his right to eat the food he desires.[22]

Personal Appearance

We exist today in a world of Carnaby Street clothes, fishnet stockings, Beatle haircuts, mini-skirts, Nehru jackets, and midi-skirts. Prob-

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[14] 412 S.W.2d 387 (Tex. Civ. App. 1967) (writ of Mandamus adjudicated).

[15] Id. at 390. The student in question was under seventeen and thus within the statutory Texas age limit requiring admission of all students under twenty-one years of age.

[16] Thompson v. Marion County Board of Education, 202 Tenn. 29, 302 S.W.2d 57 (1957) upheld a similar regulation as in Anderson, as being neither arbitrary nor unreasonable. The court said that the first few months after marriage the student could have a "disruptive effect" on the other pupils.

[17] 147 N.W.2d 854, 860 (1967); accord, Baker v. Stevenson, 27 Ohio Op.2d 223, 189 N.E.2d 181 (1962); Kissick v. Garland Independent School District, 330 S.W.2d 708 (Tex. Civ. App. 1959).

[18] State v. Chamberlain, *supra* note 5.

[19] Id. The court also discussed the so called "disruptive effect" that a pregnant student might have on the other pupils.

[20] McLean Independent School District v. Andrews, 333 S.W.2d 886 (Tex. Civ. App. 1960).

[21] Bozeman v. Morrow, 34 S.W.2d 654 (Tex. Civ. App. 1931).

[22] Bishop v. Houston Independent School District, 119 Tex. 403, 29 S.W.2d 312 (1930).

lems of student appearance and style, as they were treated in the past are no longer analogous to the problems which face us today.[23] In 1923, for example, the Supreme Court of Arkansas upheld the right of a school principal to refuse admission to a girl because of a school regulation against talcum powder.[24] The court said:

> The wearing of transparent hosiery, low-necked dresses, or any style of clothes tending toward immodesty in dress, or in the use of face paint or cosmetics, is prohibited.[25]

The School's Contention

One of the leading cases involving rules about the length and style of an individual student's hair is *Leonard v. School Committee of Attleboro.*[26] In *Leonard* the Massachusetts Supreme Court upheld a school regulation which barred students with unacceptable haircuts from attending high school. As in most cases of conflict between an individual student's views, and a school regulation, the court held that the school regulation must be arbitrary or unreasonable before it would be overruled.[27]

In this case, the plaintiff was a high school senior who had been suspended from classes after only two days of the school term, due to his "unacceptable" hair style. Previous to this incident, the school officials described him as a model student. The student argued that he was a professional musician and that his hair style was an important factor in his success.[28] In addition, he claimed that the regulation in question had not been formally adopted and published. He argued that it was unenforceable. The court, in rejecting these arguments, said:

> The law, however, does not thus restrict the manner in which a school committee, school administrators, or teachers shall maintain discipline and decorum in the classroom.[29]

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[23] Martin, The Right To Dress And Go To School, 37 Univ. of Col. L. Rev. 492 (1965).

[24] Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923) (hereinafter cited as Pugsley).

[25] Id. However, thirty-nine years later a school principal had almost the opposite problem. A young girl refused to participate in a school's physical education program because the costume prescribed for students and certain physical exercises required were immodest and sinful, according to her religious beliefs. The court denied relief and held that the State of Alabama could place reasonable conditions upon the privilege of attending public school. Mitchell v. McCall, 273 Ala. 604, 143 So.2d 629 (1962).

[26] 349 Mass. 704, 212 N.E.2d 468 (1965) (hereinafter cited as Leonard).

[27] Id at 471. The court said:
> Thus a school committee may make reasonable rules and regulations for the discipline, management, and government of the schools, and may exclude a child from school for sufficient cause.

[28] The facts indicate that since the age of twelve, plaintiff has been a professional musician. He is proficient in playing several instruments and has successfully performed at the Newport Jazz Festival and at the New York World's Fair.

[29] Leonard, *supra* note 26 at 472; accord, Hodgkins v. Inhabitants of Rockport, 105 Mass. 475, 476 (1870).

School regulations, the court continued, are essential. Without such control, administrators and teachers would be unable to cope with problems of student management and discipline.[30]

Plaintiff-student then argued that the restriction on his hair operated beyond the school's jurisdiction, and was an invasion of his family privacy rights, which are within the exclusive control of his parents. However, the court said:

> The domain of family privacy must give way in so far as a regulation reasonably calculated to maintain school discipline may affect it. The rights of other students, and the interests of teachers, administrators and the community at large in a well run and *efficient school system* are paramount.[31] (Emphasis added.)

Holding that the regulation was neither arbitrary nor unreasonable, and was essential for the successful operation of the school, the court stated:

> . . . any unusual, immodest or exaggerated mode of dress, conspicuous departures from accepted customs in the matter of haircuts could result in the distraction of other pupils.
> . . . (and thus) disrupt and impede the maintenance of proper classroom atmosphere or decorum.[32]

In *Marshall v. Oliver*,[33] the court upheld the right of the Richmond Professional Institute to deny admission to three college students because of the length and style of their hair and beards. The Circuit Court held that educational regulations must be arbitrary or unreasonable if they are to be struck down.[34] Again, the general rule was advanced. The court further stated that university or college authorities stand *in loco parentis* concerning the physical and moral welfare and mental training of their students.[35]

The court added that it would not interfere with the exercise of the discretion of such authorities unless the rules and purposes were unauthorized.[36] The court concluded that it was of the opinion that the authorities:

> . . . clearly dictate a distinction between the freedom to believe, which is absolute, and our freedom to exercise one's belief, which is subject to regulation for the protection of society.[37]

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[30] Leonard, *supra* note 26 at 472.

[31] Id. at 473.

[32] Id. at 473. In reaching this important conclusion, the court cited the 1923 case of Pugsley, which upheld a school regulation against the use of talcum powder.

[33] In, Brief for Appellee at Appendix A-1, Ferrell v. Dallas Independent School District, No. 24301 (5th Cir., March 29, 1968).

[34] Id. at A-5.

[35] Id.

[36] Id. at A-6.

[37] Id. at A-7.

Another case involving male hair styles and school regulations is that of *Ferrel v. Dallas Independent School District.*[38] In *Ferrel,* the court held that the suspension of the students involved was neither arbitrary nor unreasonable, and did not violate the students' State or Federal rights.[39] Discussing the possible disruptive effect a student's dress and appearance might have on the other pupils, the court said:

> Since confusion and anarchy have no place in the classroom, school authorities must control the behavior of their students. If the student's dress is lewd or his appearance is a studied effort to draw attention to himself, his presence is disruptive—such behavior is no different than verbal rudeness.[40]

The court continued, saying that either the school principal or the administrators could exercise powers of control and correction over the pupils, as might be "reasonably necessary to enable teachers to perform their duties and to effect the general purpose of the educational system." [41]

Citing *Leonard,* the court said that although it was concerned with the welfare of the individual students, "the rights of other students and the interests of educators and the community at large were paramount." [42]

In concluding its opinion, the court expressed the view that society expects more from our public education than just teaching the 3 R's to our students.[43] The court said:

> One of the aims of the school should be to educate the individual to live successfully with other people in our democracy. Since school authorities, by legislative grant, control the public education system, their regulations play a part in the education process.[44]

Davis v. Firment,[45] represents another recent decision upholding the power of school authorities to establish dress and appearance regulations. In *Davis,* the district court found that a high school student has

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[38] 261 F.Supp. 545 (N.D. Tex. 1966), aff'd, No. 24301 (5th Cir., March 29, 1968 (hereinafter cited as Ferrell).

[39] The hair styles of appellant students are described in the following excerpt from the trial court's opinion: ". . . Stephen's hair is over his ears but one can see the lobe of his ear. It is not over his collar, but is over his forehead and down to his eyebrows . . ." his (Paul's) hair is about 1 inch over his ears and about 1½ inches above his eyebrows . . . (Phillip's) hair is hanging straight forward, would come below his eyebrows, but is combed and turned to the side so as to be a very short distance above his eyebrows. The hair extends down the ear lobe on the side and to the collar in the back. (These hair styles, adopted by the students, are in conformity with the so-called "Beatle" hair styles.)

[40] Ferrell, *supra* note 38 at 551.

[41] Id. at 552.

[42] Id.

[43] Id.

[44] Id.

[45] 269 F.Supp. 524 (E.D. La. 1967).

no constitutional right, through the Civil Rights Act, to keep his hair long in direct defiance of reasonable rules and regulations of the school board acting directly through its superintendent and its principal.[46] The facts, in *Davis,* are typical of most of the cases in this area. Dave Davis, a fifteen year old boy, was suspended from John F. Kennedy Senior High School after failing to have his hair cut in conformity with the principal's instructions. Several conferences between student Davis, his father, and the school authorities then ensued. Only after he had his hair cut, some sixteen days later, was Dave Davis finally readmitted to the high school. The court justified its position by citing *Ferrell,* saying:

> It is inconceivable that a school administrator could operate his school successfully if required by the courts to follow the dictates of the students as to what their appearance shall be, what they shall wear, what hours they will attend, etc.[47]

Tinker v. Des Moines Independent Community School District[48] is another case often cited by school authorities. In *Tinker,* the court upheld the suspension of students who violated a rule against the wearing of black arm bands protesting the war in Viet Nam. The court said that school authorities did not have to wait for an actual disturbance before they acted to prevent an incident reasonably anticipated; and that this action by school authorities was not in violation of freedom of speech as protected under the due process clause of the Fourteenth Amendment.[49]

In essence, the school authorities believe that they have not only the *right* but the *duty* to promulgate reasonable rules and regulations in order to create a favorable learning atmosphere.

The Students' Contentions

The students, just like the courts, have beliefs as to what constitutes proper dress and appearance regulations. They seem to feel that education is too important to the person to be granted or denied on the basis of standards of personal appearance.[50] The contention is that as long as a student's appearance does not *in fact* disrupt the educational process, or constitute a threat to safety, it should not be of any concern to the school.[51]

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[46] Id. at 529.

[47] Id. at 528.

[48] 258 F.Supp. 971 (S.D. Ia. 1966). In upholding the school regulation, the court (on page 972) said that unless the actions of the school officials in this connection are unreasonable, the courts should not interfere.

[49] Id. at 972.

[50] Pamphlet, Academic Freedom in the Secondary Schools, at 19, American Civil Liberties Union (Sept. 1968).

[51] Id.

In *Myers v. Arcata Union High School District*[52] the court held in favor of this student view. The court said that regulations made by school authorities must have some "reasonable connection to school matters, departments, discipline, etc., or to the health and safety of the students." [53] In discussing dress regulations as a "discipline," the court continued:

> The court has too high a regard for the school system . . . to think they are aiming at *uniformity* or *blind conformity* as a means of achieving their stated goal in educating for responsible citizenship.[54] (Emphasis added.)

The court's conclusion was that the school should not allow its administrators' personal preferences to be forced upon others in order to achieve orderly conduct of school business.[55]

A ruling by the Commissioner of Education of New York held that New York schools have no right to bar merely unorthodox school attire (in this case the wearing of slacks).[56] The ruling recognized the school's power to prohibit wearing of noisy and destructive metal cleats, unduly restrictive clothing in gym class, and apparel which indecently exposes.[57] This decision would seem to indicate, as one writer recently put it, that "many educational administrators are far in front of the courts." [58]

In *Zachry v. Brown*,[59] the court overruled a Jefferson State Junior College's regulation pertaining to permissible hair styles. The district court found the regulation was unreasonable and that it failed to "pass constitutional muster." [60] However, the value of *Zachry* in future litigation is probably minimal. Most school authorities defend their actions in the suspension of long-haired students on the ground that these students would have a "disruptive influence" on the classroom atmosphere.[61] Yet, no suggestion was made by the school authorities in *Zachry* that such haircuts had any effect upon the health, discipline, or decorum of the institution.[62] In fact, the district judge pointed out in his opinion

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[52] *Supra* note 1 at 2.08; Myers v. Arcata Union High School District (Cal. Sup. Ct. 1966).

[53] Id.

[54] Id.

[55] Id. at 2.09.

[56] Id. at 2.08, Ruling No. 7594 (March 14, 1964).

[57] Id.

[58] *Supra* note 1 at 2.08.

[59] In, Ferrell v. Dallas Independent School District, No. 24301 (5th Cir., March 29, 1968) at 14.

[60] Id.

[61] Leonard, *supra* note 26; accord, Ferrell, *supra* note 38.

[62] Ferrell v. Dallas, *supra* note 59.

that such regulations were promulgated solely because the school administrators disliked what they considered "exotic hair styles." [63]

Constitutional Arguments

The plaintiff-students usually place their main emphasis on the Constitution, in their attack on the interpretations of school dress and appearance regulations. These arguments usually involve the First, Ninth, and Fourteenth Amendments.

The students advance the view that by compelling them to cut their hair the school authorities have infringed their First Amendment right of freedom of expression.[64] This argument is based on the view that choice of a particular hair style is a form of "symbolic expression" akin to thought and speech, and that such free exercise of thought and speech is protected by the Fourteenth Amendment. To illustrate, the students cite *West Virginia State Board of Education v. Barnette,*[65] where it was held that symbolic expression is entitled to First Amendment protection. In *Barnette,* the Supreme Court said that the action of a State in making it compulsory for children in public schools to salute the flag and pledge allegiance was a violation of the students' First and Fourteenth Amendment rights.[66]

However, the courts have not been inclined to follow the reasoning advanced by the students under the "symbolic expression argument." [67] In *Davis,* the court said that a symbol must stand for a specific concept or viewpoint; it is just a device by which an idea is transmitted from person to person.[68] Thus, it is meaningless unless it expresses a particular idea. Hair does not symbolize anything. In rejecting the students' contentions, the court found that the symbolic method of expressing loyalty to one's nation, *i.e.*—saluting a flag—was not analogous to the wearing of long hair.[69]

Thus, no educator may compel a student to surrender his constitutional rights as a prerequisite for the privilege of attending school.[70] The court said, in part:

> The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—the

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[63] Id. at 14.

[64] Davis v. Firment, *supra* note 45.

[65] 319 U.S. (1942) (hereinafter cited as Barnette).

[66] Id. at 642.

[67] Davis v. Firment, *supra* note 45 at 527; accord, Ferrell v. Dallas, *supra* note 59.

[68] Davis v. Firment, *supra* note 45 at 527.

[69] Id.

[70] *Supra* note 50 at 20.

> Board of Education not excepted . . . that they are educating the young for citizenship is reason for scrupulous protection of constitutional freedom of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles as mere platitudes.[71]

Burnside v. Byars,[72] is another decision which upholds students' rights. In *Burnside,* school officials were attempting to enforce regulations forbidding students from wearing "freedom buttons." These buttons contained the wording "One Man, One Vote" around the outside, with "SNCC" inscribed in the center. The court held that Negro students wore the buttons as "a means of silently communicating an idea and to encourage the members of their community to exercise their civil rights." In finding the high school regulation to be arbitrary and unreasonable, the court found that there was no evidence of the disruption of school activities. In dealing further with the First Amendment, the court said:

> (School Officials) cannot infringe on their students rights to free an unrestricted expression as guaranteed to them under the First Amendment . . . where the exercise of such rights did not materially and substantially interfere with the requirement of appropriate discipline in the operation of the school.[73]

The court, however, softened its statement when it indicated that there must be a balancing of First Amendment rights against the duty of the State to further and protect the public school system. The court recognized the general rule that the school authorities have the right to adopt and enforce reasonable rules and regulations which are essential in maintaining order and discipline on school property.[74]

In *Griswold v. Connecticut,*[75] the Supreme Court invalidated a Connecticut statute which made the use of contraceptives a criminal offense. The court held that the statute was invalid as an unconstitutional invasion of the right to privacy of married persons. Justice Douglas, in giving the opinion of the court, pointed out that First Amendment protec-

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[71] Barnette, *supra* note 65 at 637.

[72] 363 F.2d 744 (5th Cir. 1966).

[73] Id. at 749. However, the same court, on similar facts in Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (5th Cir. 1966) reached the opposite conclusion. The case was distinguished from Burnside, on the grounds that here it was shown that a severe disciplinary problem was caused by the Buttons, *i.e.,* created a state of confusion, disrupted classes, and resulted in a general breakdown of orderly discipline.

[74] Id. at 748. However, the court (on page 748) said:

> But liberty of expression guaranteed by the First Amendment can be abridged by State officials if their protection of legitimate state interests necessitates an invasion of free speech.

This statement has often been quoted by advocates of the school's position.

[75] 381 U.S. 479 (1965) (hereinafter cited as Griswold).

tion includes more than mere spoken words.[76] In fact, Justice Douglas expressed the view that such protection, afforded by the First Amendment, includes "the freedom of the entire university community." [77] Continuing, Justice Douglas said that these various constitutional guarantees, such as the right of association contained in the penumbra of the First Amendment, the prohibition against quartering of soldiers under the Third Amendment, the right against unreasonable search and seizures under the Fourth Amendment, and the right against self incrimination under the Fifth Amendment, all create "zones of privacy." [78] In referring to this right of privacy in marriage he said of it that it is:

> . . . a right of privacy older than the Bill of Rights—older than our political parties, older than our school system.[79]

Thus, Justice Douglas appears to be suggesting that the right to marital privacy is only *one* of the various rights to privacy which the State may not invade.[80]

In a concurring opinion in *Griswold,* Justice Goldberg asserted that the Ninth Amendment expressed the desire to give constitutional protection to other *fundamental* rights not specifically mentioned in the Bill of Rights.[81] He asserted that the concept of liberty in the Fourteenth Amendment embraced the marital right to privacy.[82]

Thus, fundamental personal liberties may not be abridged by a State merely upon the showing that some regulatory statute (*i.e.*—school appearance regulation) has some rational relationship to effectuation of a reasonable state purpose.

> . . . Where there is significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling . . . the law must be shown necessary and not merely rationally related to the accomplishment of a permissible state policy.[83]

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[76] First Amendment protection includes the right to educate one's children as one chooses (citing) Pierce v. Society of Sisters, 268 U.S. 510; the right to receive, the right to distribute, and the right to read, (citing) Martin v. City of Struthers, 319 U.S. 141; freedom of inquiry, freedom of thought and freedom to teach, (citing) Wieman v. Updegraff, 344 U.S. 183.

[77] *Supra* note 75, at 482.

[78] Id. at 485.

[79] Id. at 486.

[80] Does not denying students access to public education, because of their hair-styling, become a restriction on their personal (*i.e.*-private) rights to free choice of grooming which the State has no power to regulate?

[81] Griswold, *supra* note 75 at 492.

[82] Id. at 487.

[83] Id. at 497.

Under *Griswold,* certain *fundamental* personal rights are protected from government intrusion. Does this not include the "fundamental personal choice of hair grooming"?

A Case Study

Legal Issues and resulting litigation are not the only problems created by school dress and appearance regulations. The following case is a good example of how debatable such regulations can be.

In re: Carl Towner

Carl Towner is a fourteen year old boy who had attended North Olmsted Junior High, in North Olmsted, Ohio. On September 27, 1967, Everett Seaman, director of pupil personnel for the North Olmsted Schools, filed a complaint against Carl in Cuyahoga County (Cleveland) Juvenile Court. The charges stemmed from the fact that Carl had been "truant" from North Olmsted Junior High since September 19, 1967, when he had been suspended by principal Charles Sewell; he had refused Mr. Sewell's request that he cut his hair to an "acceptable length," and had subsequently been suspended.

Carl and his family were British subjects who had moved to the United States ten years earlier, from London, England, when his father became president of an American corporation. Eight years before the court filing, they had moved to North Olmsted. Carl's brother Curt, who also wore his hair long, was at this time attending another school in the North Olmsted School System. The policy of the North Olmsted School District is to allow each individual principal to decide what is "reasonable" dress and appearance at his particular school.[84]

Carl Towner's delinquency hearing for truancy from school, and the resulting appeal to the Court of Appeals, is not relevant for our discussion herein. What is of crucial interest are the issues and problems created by Carl's suspension.[85]

First, Curt's hair style was similar to Carl's. Yet, Carl's principal found his hair style unacceptable while nothing was ever said by Curt's principal about the way he wore his hair. Thus, even in the same school system there existed an obvious lack of uniformity of regulations. Are

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[84] The above facts were obtained by this writer during a newspaper interview with student Carl Towner, his father Ernest Towner, and a Cleveland Plain Dealer reporter. The interview was conducted at Cuyahoga County Juvenile Court on October 12, 1967.

[85] On October 12, 1967 Juvenile Court Judge John J. Toner adjudged Carl Towner to be delinquent. Juvenile Court No. 242128. On September 19, 1968, the Court of Appeals reversed Carl Towner's delinquency charge. The court said that since Carl Towner and his parents did not receive written notice under Sections 3321.19 and 3321.22 of the Ohio Revised Code about the ramifications of being truant from school, Carl was denied due process of law. C.P. 28766 (1968).

such dress and appearance regulations "fair" to students when two principals in the same school district cannot agree?

Closely related to uniformity, is the problem of "reasonableness." Assuming that school systems have the right to set reasonable dress and appearance regulations, what is a "reasonable hair length" for a fourteen year old boy? Should the hair be worn one inch down on the forehead? Two inches? Just above the eyebrows? Over the eyes?

Still another problem brought out by Carl's suspension is the issue of public interest versus private rights. Phrased differently, the question may be stated: Is the public interest paramount to the personal rights of Carl Towner?

Conclusion

In most of the cases dealing with dress and appearance regulations, the students have been suspended within the first few days of the school term. Yet, in almost every case the school authorities contend that their action was necessary for the successful operation of the school; that without such measures there would be a "disruption" of the proper classroom atmosphere. This contention, that the presence of long-haired students surely *would be* disruptive in the educational setting, has been accepted by the courts. At no time has there been actual proof of such adverse effects upon the school system. In fact, does not the school's own action in attempting to single out such behavior as disruptive, often create its own disruption? [86]

As previously stated, the students advance a strong argument that the test for such adverse behavior ought to be *factual* not what the principal *thinks* may result.[87] However, at the present time the burden to disprove disruptive effect remains on the shoulders of the student. Such a weight should be placed upon the *State,* to show that there *is* such disruption.[88]

School authorities usually advance the argument that education is a "*public* right." Because of this, they say, the State has a duty to protect the school system, *i.e.*—by adopting reasonable rules and regulations for maintaining discipline on school property. One writer, in rejecting this theory regarding dress regulations, stated:

> Can it be said that long hair on male students carries with it such a compelling state interest that the State can order it cut as a prerequisite to education? What can be said to be the danger to the

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[86] Ferrell, *supra* note 38 at 551.

[87] See, Burnside v. Byars, *supra* note 72.

[88] N.A.A.C.P. v. Alabama, 357 U.S. 449 (1958). The case upheld the right to associate and the right to privacy in one's associations.

State? And if the State can compel short hair today, it can compel long hair tomorrow.[89]

One device for solution of this perplexing problem might be a school board or panel, composed of both teachers and students. If a student and a principal disagree over a particular dress and appearance regulation, as arbitrary or unreasonable as to this student, the board could determine the best solution, thus preventing unnecessary court action. Then, if no workable agreement could be reached, the student could still resort to the courts for the proper relief. On the other hand, by turning the problem over to the board, the principal would guarantee his support of their solution.

These problems are not at all funny to the younger generation, and must be worked out, so that our school systems can return to their task of education. Education is too important a right to be denied or granted on the basis of shifting standards of personal appearance.[90]

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[89] Brief for the Appellants at 4, Davis v. Firment (1967), *supra* note 45.

[90] *Supra* note 50 at 19.