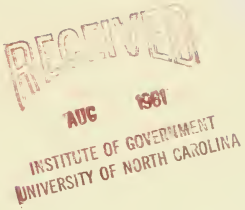

SCHOOL LAW BULLETIN INDEX

(1970 – 1975)

Editor: Robert E Phay

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School Law Bulletin

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Robert E. Phay

Editor

Dear Reader:

The School Law Bulletin is a new service from the Institute of Government to North Carolina attorneys and school administrators who have an interest in the field of school law. The Bulletin will be published quarterly. It will summarize recent court decisions and opinions of the North Carolina Attorney General and report on pending or enacted legislation during legislative years. Most issues also will consider a specific school law problem in some detail. The topic discussed in this issue is school regulation of student appearance.

The Institute hopes the Bulletin will keep you better informed about issues and trends in the school law area. Suggestions for improving future issues and information you may have for the Bulletin, such as pending litigation, will be very welcome.

Robert E. Phay
Editor

SCHOOL REGULATION OF PERSONAL APPEARANCE

Schools have always regulated student dress and appearance and will undoubtedly continue to do so to some degree. The day has passed when public schools can require a uniform for class attendance or prohibit, as one school did, "the wearing of transparent hosiery, low-necked dresses or any style of clothing tending toward immodesty of dress or the use of face paint or cosmetics."[1] But schools can properly prohibit obscene dress or dress that is clearly inappropriate for school. For example, pupils may be forbidden to wear spike heels or metal heel plates when they create unnecessary noise and injure the floor.[2] A student may be prohibited from wearing a hat in the classroom,[3] dress that is evidence of membership in a secret society,[4] or a bikini. On the other hand, a student may be required to wear a hairnet while serving food or a helmet while playing football. These requirements are related to the health, safety, or proper conduct of students in the class and can be imposed upon them as a condition for school attendance.

Historically, schools have been able to exercise strict control in matters of student dress. This control has been substantially reduced. In recent years students and their parents increasingly have challenged school dress codes in courts and been granted relief. The courts have knocked down codes that seemed out of touch with the latitude our society now grants in the matter of personal appearance. For example, a New York lower court recently nullified a school dress regulation that prohibited girls from wearing slacks except when permitted by the principal upon petition by the student council. School dress regulations were found to be valid only to the extent that they protect the safety of the wearer or prevent

disturbances that interfere with school operation. The court found the anti-slack provision unjustified by either of these reasons.[5] This decision indicates the lessening control that schools may exercise over student dress and appearance. Courts are increasingly likely to say that unless the school can show good reason for the dress regulation, the regulation will be overturned as arbitrary and an improper infringement of student freedom.[6]

The subject in the area of personal appearances most often brought before the courts is the prohibition of long hair on males. Judicial opinion has been divided; some courts have upheld suspensions for long hair while others have held the right to wear long hair to be constitutionally protected. In *Ferrell v. Dallas Independent School District*,[7] the court upheld a high school requirement prohibiting long hair on males--in this instance, Beatle-type haircuts. The school board introduced testimony that problems had been caused in the school by the hair style: obscene language had been used, the boys had been challenged to fight, and they had been told that the "girls' restroom is right down the hall." The court upheld the regulation on the basis that it was reasonably calculated to maintain school discipline and prevent disruptions with the educational process.

Many of the cases decided at the time of the *Ferrell* decision reached a similar result.[8] But after *Tinker v. Des Moines Independent School District*,[9] which held that the right of students to wear black armbands protesting the Vietnam War is protected by the constitutional guarantee of free speech so long as material and substantive disruption of school operation does not result from their doing so, the courts began granting relief to students challenging "hair" regulations.[10] When the "material and substantive

disruptive" test was applied to the hair cases, most courts sustained student attacks on hair regulations. This direction in the hair cases is best represented by *Breen v. Kahl*,[11] which found hair regulation to be unconstitutional. In *Breen*, a Wisconsin board of education expelled two high school students for violating the following regulation:

> Hair should be washed, combed, and worn so it does not hang below the collar line in the back, over the ears on the side and must be above the eyebrows. Boys should be clean shaven; long sideburns are out.[12]

The Seventh Circuit affirmed the trial court, finding that the regulation was unconstitutional on the basis "that the right to wear one's hair at any length or in any desired manner is an ingredient of personal freedom protected by the United States Constitution."[13] In reaching this result the court specifically rejected the school's argument that discipline alone justifies this type of regulation. The court found instead that the regulation was arbitrary and unnecessary. The U.S. Supreme Court unanimously turned down the school board's request for *certiorari*.[14]

Although the cases are divided, it is increasingly clear that blanket prohibitions on long hair are unlikely to be sustained. A statement of the American Civil Liberties Union in a publication issued three years ago provides a good summary of the extent of school control that courts are likely to sanction in the area of student appearance:

> Education is too important to be granted or denied on the basis of standards of personal appearance. As long as a student's appearance does not, in fact, disrupt the educational process, or constitute a threat to safety, it should be no concern of the school.
>
> Dress and personal adornment are forms of self-expression; the freedom of personal preference should be guaranteed along with other liberties.[15]

NOTE: Since preparing the Bulletin for publication, the U.S. Supreme Court denied certiorari in Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970), thereby sustaining the Sixth Circuit upholding a school regulation prohibiting male students from wearing long hair. Evidence was introduced to show that "the wearing of excessively long hair by male students ... did disrupt classroom atmosphere and decorum, caused disturbances and distractions among other students, and interfered with the educational process." The court was then able to conclude that the regulation had "a real and reasonable connection with successful operation of the educational system and the maintenance of school discipline" and was not a denial of constitutional rights.

FOOTNOTES

1. Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923).

2. Stromberg v. French, 60 N.D. 750, 236 N.W. 477 (1931).

3. Decision of N. Y. Comm'r. of Educ. (1969).

4. Antell v. Stokes, 287 Mass. 103, 191 N.E. 407 (1934).

5. Scott v. Board of Educ. 61 Misc.2d 333, 305 N.Y.S.2d 701 (Sup. Ct. 1969); accord, Matter of Downey, 9 ED. DEP'T REP. ___. But see Matheson v. Brady, 202 Ga. 500, 43 S.E.2d 703 (1947), which upheld a school regulation forbidding girls to wear slacks.

6. See Mitchell v. McCall, 273 Ala. 604, 143 So.2d 629 (1962), approving modification of school rule that had required a girl student to wear gym clothes that she objected to as being immodest and in violation of her religious beliefs. The court held, however, that the girl could be required to attend class in her more conservative dress.

7. 392 F.2d 697 (5th Cir. 1968), cert. denied, 393 U.S. 856 (1968).

8. See, e.g., Leonard v. School Comm. of Attleboro, 349 Mass. 704, 212 N.E.2d 468 (1965); Marshall v. Oliver, No. B-2932, Richmond, Va. Cir. Ct. (1965), cert. denied by Va. Sup. Ct. of App. and by U.S. Sup. Ct. at 385 U.S. 945 (1966); Davis v. Firment, 260 F. Supp. 524 (E.D. La. 1967), aff'd per curiam, 408 F.2d 1085 (5th Cir. 1969); Akin v. Board of Educ. of Riverside Unified School Dist., 262 Cal. App.2d 161, 68 Cal. Rptr. 557, cert. denied, 393 U.S. 1041 (1968); Contreras v. Merced Union High School Dist., Civil No. F-245 (E.D. Cal. 1968).

   A few cases at this time granted students relief from school regulations prohibiting long hair. See, e.g., Zachary v. Brown, 299 F. Supp. 1360 (N.D. Ala. 1967) (suspension based on prejudice of school administrator regarding hair and not disruption; student was reinstated); Pelletreau v. Board of Educ. of New Milford, 1967 N.J. School Law Decision 45 (state board reversed Commissioner, finding hair regulation had no legitimate purpose); Bertin v. Boyle, 1968 N.J. School Law Decision.

9. 393 U.S. 503 (1969).

10. See e.g., Griffin v. Tatum, 425 F.2d 201 (5th Cir. 1970); Richard v. Thurston, 424 F.2d 1281 (1st Cir. 1970); Calbillo v. San Jacinto Junior College, 305 F. Supp. 857 (S.D. Tex. 1969); Westley v. Rossi, 305 F. Supp. 706 (D. Minn. 1969); Boyle v. Scapple, 38 U.S.L.W. 2614 (April 20, 1970); Miller v. Gillis, ___ F. Supp. ___, (N.D. Ill.); Peckham v. Komadina, No. 115283, Ariz. Super. Ct. 1969; Yoo v. Moynihan, 28 Conn. Sup. 375 (19); Olff v. East Side Union High School Dist., 305 F. Supp. 557 (N.D. Cal. 1969); Meyers v. Areata Union High School Dist., 269 Cal. App.2d 549, 75 Cal. Rptr. 68 (1969); Cirker v. Yohe, No. 2108

(C.P. Chester Co., Pa. 1969); Sims v. Colfax Community School Dist., 307 F. Supp. 485 (S.D. Iowa 1970); Crossen v. Fatsi, 309 F. Supp. 114 (D. Conn. 1970); Reichenberg v. Nelson, 310 F. Supp. 248 (D. Nebr. 1970) Alexander v. Thompson, 313 F. Supp. 1389 (C.D. Calif. 1970); and Cordova v. Chonko, 39 U.S.L.W. 2102 (U.S.D.C. N. Ohio July 30, 1970).

There have also been cases since Tinker upholding school regulations prohibiting long hair. See, e.g., Stevenson v. Wheeler County Bd. of Educ., 426 F.2d 1154 (5th Cir. 1970); Crews v. Cloncs, 303 F. Supp. 1370 (S.D. Ind. 1969) (hair regulation upheld on showing that classroom disruption would otherwise result); and Neuhaus v. Torrey, 310 F. Supp. 192 (N.D. Cal. 1970) (regulation upheld requiring male athletes to be clean shaven and to have hair out of their eyes and trimmed above ears and collar). But see Dunham v. Pulsifer, 312 F. Supp. 411 (D. Ver. 1970) (athletic grooming code held to be unconstitutional). See also Brick v. Bd. of Educ., 305 F. Supp. 1316 (D. Colo. 1969) (length and style of wearing hair is not within protection of First Amendment); Brownlee v. Bradley Co. Bd. of Educ., 311 F. Supp. 1360 (E.D. Tenn. 1970) (wisdom of dress code is not for court to decide); Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970) (regulation prohibiting long hair on males does not violate due process); Lovelace v. Leechburg Area School Dist., 310 F. Supp. 579 (W.D. Penn. 1970) (regulation was reasonable but application to this student was arbitrary, and suspension was overturned); Farrell v. Smith, 310 F. Supp. 732 (D. Me. 1970); Pritchard v. Spring Branch Ind. School Dist., 308 F. Supp. 570 (S.D. Tex. 1970); Wood v. Alamo Heights Ind. School Dist., 308 F. Supp. 551 (W.D. Tex. 1970); Shows v. Freeman, ___ Miss. ___ 230 So.2d 63 (1969); Corley v. Daunhauer, 312 F. Supp. 811 (E.D. Ark. 1970); Gfell v. Rickelman, 313 F. Supp. 364 (N.D. Ohio 1970); Giangreco v. Center School Dist., 313 F. Supp. 776 (W.D. Mo. 1969); Livingston v. Swanquist, 314 F. Supp. 1 (N.D. Ill. 1970); and Bishop v. Colaw, ___ F. Supp. ___ (E.D. Mo. 1970).

11. 419 F.2d 1034 (7th Cir. 1970), cert. denied, 38 U.S.L.W. 3474 (June 2, 1970).

12. 419 F.2d 1034, 1035 (7th Cir. 1970).

13. Id. at 1036.

14. 26 L. Ed.2d 268 (1970). In several other cases, teachers have successfully challenged a school regulation requiring male teachers to be clean shaven and to have short hair. See, e.g., Lucia v. Duggan, 303 F. Supp. 112 (D. Mass. 1969), and Braxton v. Board of Pub. Instruction, 303 F. Supp. 958 (M.D. Fla. 1969).

15. AMERICAN CIVIL LIBERTIES UNION, ACADEMIC FREEDOM IN THE SECONDARY SCHOOLS 19 (1968). See also Comment, Public Secondary Education Judicial Protection of Student Individuality, 42 S. CAL. L. REV. 126 (1969), and Comment, School Student Dress and Appearance Regulations 18 CLEV.-MAR. L. REV. 143 (1969); Comment, Personal Appearance of Students--The Abuse of a Protected Freedom, 20 ALA. L. REV. 104 (1967), and Comment, A Student's Right to Govern His Personal Appearance, 17 J. PUB. L. 151 (1968).

RECENT COURT DECISIONS

School Capital Reserve Fund--*Yoder v. Board of Commissioners*, 7 N.C. App. 712 (1970).

Plaintiff sought to restrain Burke County commissioners from levying an ad valorem tax to establish a Burke County school capital reserve fund. Question presented was whether the reserve fund was a "necessary expense" within the meaning of Article VII, Section 6, of the North Carolina Constitution. Plaintiff argued that it was not a "necessary expense" and therefore the tax could not be levied, since it had not obtained voter approval.

The North Carolina Court of Appeals found that G.S. 115-80.1, authorizing the levy for a reserve fund, is a valid exercise of legislative authority. A reserve fund is created for purposes necessary to the operation of the public schools. Thus taxes levied for it are for a "necessary expense" and do not require a vote of the people.

ATTORNEY GENERAL'S OPINION

Subject: Assignment of Pupils

Date: 20 July 1970

Requester: A. C. Davis, Controller, N.C. Board of Education

Facts: County school board assigned pupils on the basis of geographic zones. To avoid attending the school to which they had been assigned, some pupils moved in with relatives or friends in another part of the county in order to attend the school in that district.

Questions: (1) What is the authority for a board of education to assign pupils on the basis of geographic zones?

(2) How is a pupil's residence in a zone determined?

(3) When parents are living, may persons other than the parents be appointed the legal guardian of the child for purposes of establishing residence in another geographic zone for purposes of pupil assignment?

Conclusions: (1) G.S. 115-163 and G.S. 115-176 authorize a board of education to assign pupils under a geographic plan. The school board has authority to assign pupils residing within the administrative unit as it deems best.

(2) Residency for purposes of the pupil assignment statutes means the child's "permanent home."

(3) A guardian may not be appointed in order to circumvent the pupil assignment plans when both parents are living and capable of caring for the child.

[A copy of the full opinion may be obtained by writing the Attorney General's Office or the Institute of Government.]

RECENT PUBLICATIONS

John H. Blackmon, Trustee Responsibility for Community Colleges & Technical Institutes of the North Carolina Community College System. Dept. of Community Colleges, Raleigh, N.C., 1970. 48 pages. Free on request.

Billye W. Brown and Walter R. Brown, Science Teaching and the Law. National Science Teachers Assn., 1201 16th St. N.W., Washington, D.C. 20036, 1969. 96 pages. Copies are $4.

H. C. Hudgins, Jr., The Warren Court and the Public Schools. Interstate Printers, Danville, Illinois, 61832, 1970. 178 pages. Copies are $4.95. Excellent discussion of the U.S. Supreme Court's decisions affecting public schools. Author divides the Court's opinions into three major areas: religion, segregation, and academic freedom. He makes no judgment as to the correctness of the court's opinions, but does an able job of analyzing the cases in each area and summarizing their holdings.

M. A. McGhehey, The School Attorney. Educational Service Bureau, Inc., 1835 K Street N.W., Washington, D.C. 20006. 1969. 45 pages. Copies are $5.95. Timely discussion of the role of the school board attorney. Discusses the duties, functions, selection, compensation, and contract of the school attorney.

Robert E. Phay, North Carolina Constitutional and Statutory Provisions with Respect to Higher Education, Institute of Government, The University of North Carolina at Chapel Hill. 1970. 163 pages. Copies are $3 plus 3% sales tax.

Russell Sage Foundation, Guidelines for the Collection, Maintenance, and Dissemination of Public Records. Sage Foundation, 230 Park Avenue, New York, N.Y. 1969. 48 pages. Free on request.

ANNOUNCEMENTS

NOLPE Meeting in New Orleans

NOLPE's (National Organization on Legal Problems in Education) annual convention will be in New Orleans on November 18-20, 1970. If you are interested in attending, write NOLPE, 825 Western Avenue, Topeka, Kansas 66606, or the Institute of Government.

School Attorneys Conference

The annual conference of school attorneys will be held at the Institute of Government on Friday and Saturday, February 5-6, 1971. You will receive a program and conference details closer to the date.