

The Fashion Police Are Permitted In School Districts

By Jonathan P. Riba

Many school districts are faced with the task of addressing the issue of student dress and behavior in an ever-changing social environment. Unfortunately, all too often, educators find that students are more concerned about their appearance in school rather than their performance in school. In particular, numerous schools are attempting to address the problem of students wearing excessive piercings in school. This article explains whether school districts can act to prevent students from expressing themselves through body piercings.

It is now well established that school districts can implement a dress code. Specifically, in December 2005, the Pennsylvania Legislature amended 22 Pa.Code § 12.11 to state the following:

- (a) The governing board [school district] may establish dress codes or require that students wear school uniforms. Policies may apply to individual school buildings or to all school buildings...

The issue then becomes what “dress” may be regulated by the established dress code. Although no Pennsylvania or Third Circuit federal court has specifically ruled on whether a school district can prohibit students from wearing facial piercings pursuant to the above regulation, the United States Court of Appeals for the Sixth Circuit recently held in *Blau v. Fort Thomas Public School District* that a dress code containing a prohibition against wearing “visible body piercings other than ears” is constitutionally permissible. The court found that the comprehensive dress code did not violate students’ First or Fourteenth Amendment rights.

In analyzing whether the dress code violated students’ First Amendment rights, the Court applied the “traditional test” for assessing restrictions on expressive conduct. In short, a regulation on expression will be upheld if (1) it is unrelated to the suppression of expression, (2) it furthers an important government interest, and (3) it does not burden substantially more speech than necessary to further the interest.

With regard to analyzing whether the dress code violated students’ Fourteenth Amendment rights, the Court applied the “rationally related” standard of review. In so doing, the Court concluded that the school’s dress code did not violate a fundamental right. Therefore, because the school district presented evidence that they had a rational basis for the dress code, the Court found the plaintiff did not have a viable Fourteenth Amendment Claim.

Other cases across the country have also upheld school dress codes prohibiting students from wearing earrings/piercings. For example, in *Hines v. Caston School Corporation*, the Indiana Court of Appeals held that a school policy that forbids the wearing of earrings by male students was permissible as it was rationally related to the educational function of the school and did not violate the due process rights of students. Likewise, in *Oelsen v. Board of Education of School District No. 228*, the United States District Court for the Northern District of Illinois upheld a school district’s dress code that prohibited males from wearing earrings in an attempt to control the District’s gang activities.

In sum, a valid argument can be advanced to permit a school district to prohibit students from wearing facial jewelry. However, the district must be prepared to defend such action by articulating a “rational basis” for the policy, as well as be prepared to defend the policy on First Amendment grounds if a student challenges the prohibition as being a restriction on expressive conduct.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.