School Dress and Grooming Policies

The U.S. Supreme Court has not directly ruled on a student dress and grooming case. In *Tinker* the Court noted that the "problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment." These issues were not before the Court in *Tinker*. But in view of the Court's decision in *Tinker*, concerning individual symbolic expression in schools, what would the Court have likely said about legal limits on dress and grooming policies in public schools?

There have been two distinct schools of thought on this issue among the U.S. Courts of Appeals: 1) Student dress and grooming is individual symbolic expression protected under the Constitution; or 2) Student dress and grooming rules are general regulations within the lawful province of school board members and not federal judges, and objections to local policies should be addressed to local school officials and resolved through the political process.

The U.S. Courts of Appeals for the First, Fourth, Seventh, and Eighth Circuits generally follow the first approach, balancing student interests in self-expression through dress and grooming against the interests of school officials in maintaining appropriate student discipline and avoiding disruptions of the educational process. The U.S. Courts of Appeals for the Third, Fifth, Sixth, Ninth, and Tenth Circuits, however, follow the second approach. These Circuits treat student dress and grooming issues as disputes over local school policies, giving great deference to the decisions of local school officials. Policies that are clearly discriminatory; arbitrary and capricious; violate due process; or directly intrude on protected religious or political speech are likely to receive judicial attention. But otherwise courts in the Circuits that follow this second approach tend to hold that dress and grooming disputes should be resolved through appeals to local school officials and the political process, and these disputes are not appropriate issues for federal judicial intervention.

Many of the student dress and grooming decisions from U.S. Courts of Appeals date back to the late 1960s and early 1970s, when the length of a student's hair or a skirt above the knee seemed to provoke much more zealous social and political debate among students, school officials, parents, and community members. In this time period, long hair was seen by many students as a political rejection of discredited establishment values, and by many school officials as a rebellion against legitimate authority and respectable social norms. In this political culture, dress and grooming may very well have been political speech for some students.

More recently, however, were saggy pants a political statement or a fashion trend? Are the real issues individual and cultural expressions; or health, safety, and discipline problems? The current trend in dress and grooming cases appears to be greater judicial deference to school dress and grooming regulations, especially when these regulations are based on legitimate health, safety, or educational concerns.

Dress and grooming policies that are still likely to provoke judicial intervention are those that unnecessarily intrude on sincere religious beliefs; take sides in a political dispute; or fail to provide sufficient notice and due process. For example, a rule that requires a Native American child to cut his hair, when doing so violates a sincerely held tribal belief, is likely to be declared unconstitutional as applied to the Native American child. A practice that allows campaign t-shirts for one candidate but prohibits t-shirts representing opposing candidates is unlawful. And all government regulations are subject to the requirements of the Due Process Clause.