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FREE SPEECH AND THE END OF DRESS CODES AND MANDATORY UNIFORMS IN MISSISSIPPI PUBLIC SCHOOLS

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I. INTRODUCTION

In 1969, the United States Supreme Court in *Tinker v. Des Moines Community School District*[1] granted broad First Amendment rights to students in the areas of freedom of speech and expression.[2] Since *Tinker*, courts have often had to weigh and balance school districts' authority to govern students' First Amendment rights, and parents' rights to control their children's education. This article examines those cases and, specifically, how courts in Mississippi and the Fifth Circuit Court of Appeals balanced those competing interests.

II. SYMBOLIC CLOTHING AND THE FIRST AMENDMENT

Three years before *Tinker*, the Fifth Circuit Court of Appeals decided *Blackwell v. Issaquena County Board of Education*.[3] In *Blackwell*, students at the all-black Henry Weathers High School sought to enjoin school administrators from enforcing a regulation that prohibited students from wearing freedom buttons.[4] The buttons depicted a joined white and black hand and the acronym "SNCC" (Student Nonviolent Coordinating Committee).[5] The students contended that the school's regulation violated their rights under the First and Fourteenth Amendments.[6]

Almost thirty students wore freedom buttons to class one Friday morning.[7] The principal learned that some of the button-wearing students were talking loudly in the hall instead of going to class.[8] Three students were brought to the office when they failed to remove their buttons.[9] When school resumed on Monday, almost 150 students wore the buttons.[10] Students handed buttons to other students and even pinned them on some students who had not asked for them.[11] The school alleged that the students' actions created chaos, interfered with instruction, and caused a complete collapse of discipline.[12] In light of these disturbances, the principal banned the buttons and sent home those students who disregarded the ban.[13] The next day, notwithstanding the ban, nearly 200 students wore the buttons.[14]

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1. 393 U.S. 503 (1969).
2. *Id.*
3. 363 F.2d 749 (5th Cir. 1966).
4. *Id.* at 750.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 750-51.
9. *Id.* at 751.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* at 751 n.3.
14. *Id.* at 751.

The court concluded that the regulation that forbade the buttons in school was reasonable and denied the injunction.[15] By the court's definition, a reasonable regulation is one that is "essential in maintaining order and discipline on school property" and "which measurably contributes to the maintenance of order and decorum within the educational system."[16] Applying the definition of reasonable regulation to the circumstances at hand, the court found that the regulation was necessary to keep students from disrupting the school climate.[17] The court further noted that when a regulation limits freedom of expression and the communication of an idea that is protected by the First Amendment, reviewing courts must balance the circumstances and weigh the substantiality or sufficiency of the reasons advanced which gave rise to the need for the regulation.[18]

The Fifth Circuit pointed out that the right to freedom of speech is not an "absolute right to speak."[19] Nevertheless, a substantial and fundamental interest must exist in order for the regulation or restriction of speech to be upheld.[20] The *Blackwell* court found that the school had both a legitimate, substantial interest in the orderly conduct of the school and a duty to protect that interest.[21] Accordingly, the regulation was upheld.[22]

Burnside v. Byars,[23] a case from the Booker T. Washington High School in Philadelphia, Mississippi, which also involved freedom buttons, was decided by the Fifth Circuit on the same day as the *Blackwell* case but, interestingly, with a different result.[24] The buttons in *Burnside* were inscribed with the slogan "One Man One Vote" and the acromoym "SNCC."[25] The principal summarily banned the buttons.[26] He testified that the regulation was enacted because the buttons were irrelevant to student education, would cause commotion, and would disrupt the school day.[27] Approximately thirty to forty students wore the buttons in spite of the ban.[28] The evidence also revealed that students formerly wore "Beatle" buttons, "his and her" buttons, and buttons with student initials, none of which were banned.[29] Furthermore, the record revealed that the students wore the freedom buttons to silently communicate an idea and to encourage the community to exercise their civil rights.[30]

Because the wearing of the buttons did not disturb classroom instruction or the school day, the school failed to show that its regulation was necessary to

15. *Id.* at 754.
16. *Id.* at 753 (quoting Burnside v. Byars, 363 F.2d 744, 748 (5th Cir. 1966)).
17. *Id.*
18. *Id.* (citing Thornhill v. St. of Alabama, 310 U.S. 88 (1940)).
19. *Id.* at 754 (quoting Whitney v. California, 274 U.S. 357 (1927)).
20. *Id.* (quoting Dennis v. United States, 341 U.S. 494 (1951)).
21. *Id.*
22. *Id.*
23. 363 F.2d 744 (5th Cir. 1966).
24. *Id.*
25. *Id.* at 746.
26. *Id.*
27. *Id.* at 746-47.
28. *Id.* at 747.
29. *Id.* at 746 n.2.
30. *Id.* at 747 n.5.

keep order and discipline.[31] Therefore, the regulation promulgated by the principal was unreasonable and infringed, without justification, on students' protected rights of freedom of expression.[32] School administrators are not free to ignore expressions of opinions which they do not want to address.[33]

Shortly after the Fifth Circuit decided the *Burnside* and *Blackwell* cases, the United States Supreme Court decided *Tinker v. Des Moines* which addressed whether a regulation prohibiting students from wearing armbands protesting the Vietnam War and advocating peace violated their free speech rights.[34] The armband that the students wore on their sleeves consisted of a two-inch wide band of black cloth.[35] Students who wore the armband did not disrupt school activities although some discussion occurred outside the classroom.[36] Apparently, only seven students refused to comply with the regulation.[37]

The Supreme Court recognized that teachers and students have protected First Amendment rights that are not "shed . . . at the schoolhouse gate."[38] The wearing of the armbands involved First Amendment rights "akin to pure speech" and caused no disruption of school.[39] In *Tinker*, the Des Moines Community School District felt that demonstrations should not occur at school, which was based partly on the fact that a student was killed in the Vietnam War and his friends still attended the school.[40]

"In order for a [school district] to [defend its] prohibition of a particular expression [or] opinion, it must [show] . . . more than a mere desire to avoid discomfort and unpleasant[ry] that always accompan[ies] an unpopular viewpoint."[41] Absent a finding or showing that participating in the proscribed "conduct materially and substantially" interferes with school operations and discipline, the regulation cannot be upheld.[42]

School administrators do not have absolute authority over their students.[43] Therefore, when the administration cannot advance constitutionally valid reasons to support regulation of student speech, "students are entitled to freedom of expression of their views" and opinions.[44] The Court reversed the suspensions and remanded for proceedings consistent with its opinion.[45]

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31. *Id.* at 748.
32. *Id.* at 748-49.
33. *Id.* at 749.
34. *Tinker*, 393 U.S. 503.
35. *Id.* at 514.
36. *Id.*
37. *Id.* at 516 (Black, J. dissenting).
38. *Id.* at 506.
39. *Id.* at 505-06.
40. *Id.* at 509 n.3.
41. *Id.* at 509.
42. *Id.* (quoting *Burnside*, 363 F.2d at 749).
43. *Id.* at 511.
44. *Id.*
45. *Id.* at 514.

A. Students' School Appearance and the First Amendment

The *Tinker* Court noted that the offensive school regulation did not relate to the regulation of skirt or dress length, other type of clothes, or hairstyle.[46] This dictum may lead one to suspect that the right to select one's hairstyle or length or skirt length may enjoy less protection under the First Amendment than speech or symbolic conduct.

An examination of the Fifth Circuit Court of Appeal's decision in *Ferrell v. Dallas Independent School District*[47] shows that the suspicion is correct. The Dallas Independent School District refused to enroll three male students who wore "Beatle" haircuts.[48] The students also played in a band or with other musical groups, and argued that their long hair was standard and necessary in the entertainment industry.[49]

The principal said that boys with long hair experienced harassment and taunting from other students.[50] The students challenged the school's rule to cut or trim their hair on the grounds that it was unconstitutional under state law, that it denied them due process under the Fourteenth Amendment, and that it resulted in discrimination against them under § 1981 and § 1983 of the Civil Rights Act.[51]

The Texas State Constitution, Article 7 contained the following language: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."[52]

State laws vested in the board of trustees the exclusive authority to manage and govern the public schools.[53] The long hair ban violated neither the state statute nor the state constitution.[54] The Fifth Circuit Court of Appeals held that the ban was not arbitrary, an abuse of discretion, or unreasonable in light of the broad statutory authority to manage schools and problems that the long hair caused.[55]

The court then addressed whether a violation of the due process clause of the Fourteenth Amendment occurred. It assumed, but did not decide, that one's hair style was a form of expression protected by the Constitution.[56] However, this protection did not afford an absolute right to freedom of expression. The right could be impeded upon if the State presented compelling reasons to do so.[57] The court concluded that the school, acting for the State of Texas, had a com-

46. *Id.* at 507-08.
47. 392 F.2d 697 (5th Cir. 1968).
48. *Id.* at 698.
49. *Id.*
50. *Id.* at 700-01.
51. *Id.* at 698.
52. *Id.* at 701 (quoting TEX. CONST. art. 7, § 1).
53. *Id.* (citing TEX. REV. CIV. STAT. ANN. art. 2780).
54. *Id.* at 702.
55. *Id.*
56. *Id.*
57. *Id.* at 702-03.

pelling interest in the management of an efficient, effective school.[58] Distractions that hinder or interfere with that interest must be eliminated or diminished.[59] Accordingly, the Dallas school district did not violate the substantive or procedural due process protections of the Fourteenth Amendment.[60]

The school's regulation also passed muster under 42 U.S.C. § 1981 and 42 U.S.C. § 1983.[61] Neither did the regulation interfere with the students' liberty interests because they could continue with their professional career as musicians.[62]

The regulation of hair length was again challenged by a high school male student in *Karr v. Schmidt*.[63] The district court struck down the regulation, but the Fifth Circuit reversed and held that a student had no constitutional right to wear his or her hair as it suited the wearer.[64]

The First Amendment is the most frequently asserted basis to wear long hair as symbolic speech.[65] Arguably, long hair symbolizes one's uniqueness and rejection of conventional values.[66] However, the court in *Karr* was not fully persuaded by the First Amendment argument.[67] The court was not convinced that long hair had sufficient communicative content to warrant constitutional protection under the First Amendment.[68] Some students wore their hair long to convey a message, but for others such as Chelsey Karr, it was a purely personal preference.[69] The *Karr* Court read the *Tinker* language about hairstyles and skirt lengths to mean that the right to style one's hair as one wishes in public school was not protected by the First Amendment.[70]

The Fifth Circuit further opined that the right to wear long hair does not create a risk to the level of fundamental significance or a fundamental individual liberty such as marital privacy, freedom of speech, association, and religion.[71] The interference with one's liberty is, as the court noted in *Ferrell v. Dallas Independent School District*, temporary and insignificant due to the various grooming options.[72] Neither did the regulation violate the Equal Protection Clause of the Fourteenth Amendment.[73] Because a suspect class such as race or wealth is not involved, the school district need only show a rational basis for the classification.[74] The regulation or classification met this standard of review.[75]

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58. *Id.* at 703.
59. *Id.*
60. *Id.*
61. *Id.* at 704.
62. *Id.*
63. 460 F.2d 609 (5th Cir. 1972).
64. *Id.* at 613.
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 614.
71. *Id.*
72. *Id.* at 615 (citing Ferrell v. Indep. Sch. Dist., 393 U.S. 856 (5th Cir. 1968) (Douglas, J., dissenting)).
73. *Id.* at 616.
74. *Id.*
75. *Id.*

Apparently frustrated with the flurry of similar cases involving hair length, the Fifth Circuit announced a per se rule that regulations prohibiting long hair are valid.[76] Lower courts were instructed to grant motions of dismissal for failure to state a claim upon which relief can be granted.[77]

B. Exceptions To Protection of Student Free Speech

The United States Supreme Court decided three significant cases that dealt with students' freedom of speech and expression under the First Amendment. This trilogy of cases created three exceptions to the absolute protection of student speech that would keep school officials in compliance with the First Amendment. As discussed earlier in this article, in *Tinker*, the Court required a material and substantial disruption to the school operation or interference with the rights of other students before school officials could regulate student speech.[78] In *Bethel School District v. Fraser*,[79] the Court retreated from *Tinker* and allowed the regulation of student speech that is offensive, lewd, or vulgar and occurs during a school-sponsored activity or assembly.[80] Finally, in *Hazelwood v. Kuhlmeir*,[81] the court approved the regulation of student speech in school-sponsored publications and productions when it is related to legitimate pedagogical concerns.[82] *Fraser* and *Hazelwood* are each examined below.

Fraser, a high school student, delivered a nominating speech to an assembly of approximately 600 students.[83] Excerpts of the speech follow:

> I know a man who is firm—he's firm in his pants, he's firm in his shirt . . . his belief in you, the students of Bethel, is firm.
>
> Jeff Kulman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds.
>
> Jeff is a man who will go to the very end—even the climax, for each and every one. . . .[84]

Aware of his intentions to deliver the speech, teachers warned Fraser that it might violate the school's disruptive conduct rule which banned conduct that would substantially interfere with the educational process, including obscene, profane language.[85]

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76. *Id.* at 617.
77. *Id.* at 618.
78. *See supra* notes 34-46 and accompanying text.
79. 478 U.S. 675 (1986).
80. *Id.*
81. 484 U.S. 260 (1988).
82. *Id.*
83. *Fraser*, 478 U.S. at 677.
84. *Id.* at 687 (Brennan, J., concurring).
85. *Id.* at 678.

Chief Justice Burger noted that children do not have the same latitude as the adult citizenry. In its deliberation of what level of First Amendment protection to give Fraser's speech, the Court noted that the freedom to advocate unpopular and controversial views in public schools must be balanced against society's interest in educating students about the limitations of acceptable behavior.[86] "[T]he constitutional rights of students in public school[s] are not automatically coextensive with rights of [adult citizens] in other settings."[87] School boards should be empowered to determine what type of speech in the class or assembly is appropriate.[88]

The Court contrasted *Tinker* by noting that the penalties imposed in *Fraser* were unrelated to any political viewpoint.[89] The First Amendment did not prevent schools from determining that a vulgar statement would undercut its educational mission.[90] Accordingly, the Court held that the school acted within its permissible authority to discipline Fraser because of his "offensively lewd" statements.[91]

In *Hazelwood*, the court failed to find a violation of students' free speech rights when the principal deleted pages from the school newspaper.[92] The respondents were three former high school students who served as staff members of the school's newspaper, *Spectrum*.[93] They alleged that the school district violated their First Amendment rights when the principal deleted from a certain issue of the paper two pages that included an article about pregnant students and an article about divorce.[94] The principal deleted the article about pregnancy because he was fearful that students who were pregnant could be identified by the text of the article.[95] He also deleted the article about divorce because he initially thought a student was named in the article and that her parents should have the opportunity to consent to the article or to respond to it.[96] The school district allocated funds on an annual basis for the printing of the newspaper.[97] These funds were supplemented by sales of the paper.[98] During the 1982-1983 school year, more than 4,500 copies of the paper were distributed.[99]

The question in *Hazelwood* concerned the school's authority over school-sponsored publications, theatrical productions, or other expressive activities that students or the public might reasonably perceive to bear the school's stamp of approval.[100] Although these activities may not occur in the traditional class set-

86. *Id.* at 681.
87. *Id.* at 682 (quoting N. J. v. T.L.O., 469 U.S. 325, 340-42 (1985)).
88. *Id.* at 683.
89. *Id.* at 685.
90. *Id.*
91. *Id.*
92. 484 U.S. 260.
93. *Id.* at 262.
94. *Id.* at 262-63.
95. *Id.* at 263.
96. *Id.*
97. *Id.* at 262.
98. *Id.*
99. *Id.*
100. *Id.* at 270-71.

ting, they can be viewed as part of the school curriculum if they are supervised by faculty members and if the purpose of the activities is "designed to impart particular knowledge or skills to student[s] . . . and [the] audience[]."[101]

The Court recognized that schools must "have the authority to refuse to sponsor student speech that might reasonably be perceived to advocate" unsavory activity such as "drug or alcohol use [or] irresponsible sex," or any other behavior that is "inconsistent with the 'shared values of a civilized social order.'"[102] Failure to exercise such authority would restrict or limit the schools in their role as "a principle instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."[103] The Court found no violation of the First Amendment and held that "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech . . . [if] their actions are reasonably related to legitimate pedagogical concerns."[104] The Court concluded that the school acted reasonably in requiring the redaction or deletion of the offending articles on teenage pregnancy and divorce.[105]

C. Students' Constitutional Rights and Mandatory School Uniforms

Often the courts are called to address matters by school officials that deal with quality of education in public schools. The Fifth Circuit in *Canady v. Bossier Parish School Board*[106] addressed whether or not the school board's mandatory school uniform policy violated the First Amendment rights of students.[107] In that case, the Louisiana legislature gave school boards the authority to implement mandatory school uniforms provided that the boards notified parents in writing of the dress requirement.[108]

In an effort to withstand the parents' and students' challenge of the uniform policy, the school district introduced affidavits of teachers and principals who concluded that the uniform policy reduced behavioral problems and increased student achievement.[109] The parents argued that the enforcement of the school uniform policy violated their constitutional rights.[110]

Before analyzing the parents' argument, the Fifth Circuit considered whether a person's choice of attire is a form of speech protected by the First Amendment.[111] The court acknowledged certain clothing may have sufficient communicative content to warrant First Amendment protection.[112] The test used

101. *Id.* at 271.
102. *Id.* at 272 (quoting *Fraser*, 478 U.S. at 683).
103. *Id.* (quoting Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954)).
104. *Hazelwood*, 484 U.S. at 273.
105. *Id.* at 274.
106. 240 F.3d 437 (5th Cir. 2001).
107. *Id.*
108. *Id.* at 438 (citing LA. REV. STAT. ANN. § 17:416.7 (1997)).
109. *Id.* at 439.
110. *Id.*
111. *Id.*
112. *Id.* at 441 n.3.

in *Texas v. Johnson* later addressed symbolic conduct.[113] The court acknowledged that while certain forms of expressive conduct and speech are sheltered under the First Amendment, constitutional protection is not absolute, particularly in a public school.[114] "School boards, [rather than] federal courts, [are empowered to] decide what constitutes appropriate behavior and dress in public schools."[115]

The Fifth Circuit applied the test articulated by the Supreme Court in *O'Brien v. United States* to the school's uniform policy, and stated that the policy passed muster "if it further[ed] an important or substantial governmental interest; if the interest [was] unrelated to the suppression of student expression; and if the incidental restrictions on First Amendment activities [were] no more than . . . necessary to facilitate that interest."[116] In its analysis of the *O'Brien* test, the Fifth Circuit determined that improving the educational process is unquestionably an important interest of the school board.[117] The board's purpose for enacting or enforcing the uniform policy was to increase student achievement and to reduce disciplinary problems.[118] That purpose was "in no way related to the suppression of student speech."[119] The incidental restrictions were few. Students remained free to wear what they wanted after school hours. They could express their views through other means during the school day. The regulation did not bar any important communication among students.[120]

The parents advanced a Fourteenth Amendment argument that students had a liberty interest in choosing to wear whatever they wish.[121] However, the court failed to address this issue.[122] The parents then argued that requiring parents to buy uniforms created or placed too great of a financial burden on them and denied some students who could not afford the uniforms the right to a free education as provided by the state constitution.[123] The court did not address this issue because the parents did not outline a recognizable argument on which relief could be granted.[124] The court noted, however, that the school board had furnished evidence that community organizations donated uniforms to the schools for those who could not afford them and that uniforms were inexpensive and even less expensive than a normal outfit.[125]

The Fifth Circuit also addressed the mandatory uniform policy in *Littlefield v. Forney Independent School District*.[126] A school district in Texas had adopted

113. *Id.* at 441 (citing Texas v. Johnson, 491 U.S. 397, 404 (1989)).
114. *Id.* at 441.
115. *Id.* (citing Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 266 (1988)).
116. *Id.* at 443 (citing United States v. O'Brien, 391 U.S. 367, 377 (1968)).
117. *Id.* (citing *Hazelwood*, 448 U.S. at 271-72).
118. *Id.*
119. *Id.*
120. *Id.* (citing *Tinker*, 393 U.S. at 512).
121. *Id.* at 444.
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. 268 F.3d 275 (5th Cir. 2001).

a mandatory uniform policy as authorized by the Texas statutes.[127] In Texas, the statute provided that school boards could adopt a school uniform policy if the board determined that the requirement would improve the learning environment at the school.[128] The statute further provided that the regulations of the board must identify a funding source that can be used to provide uniforms to students who are financially or educationally disadvantaged. The statute further provided that a parent could elect for a student to be exempt from the requirement and to transfer to a school where uniforms were not required, based on space availability and the statement of a bona fide, religious or philosophical objection to the requirement.[129]

In *Littlefield*, the court recognized that the First Amendment protected symbols and conduct.[130] The Fifth Circuit applied the O'Brien test and found that the policy did not violate the First Amendment.[131] The school district asserted that the uniform policy was adopted to promote school spirit, school values, promote decorum and respect for authority, and to reduce drop out rates.[132] Its purpose was also to increase student safety by reducing gang and drug-related activity.[133] Failure to comply with the policy resulted in a progression of disciplinary action including placement of students in isolation until the parent brought appropriate clothing or for the entire day, placement in behavior adjustment modification for a minimum of three days, placement in the behavior adjustment modification program for a maximum of two weeks, or expulsion to the alternative program.[134]

D. Implementation of a Dress Code or Mandatory Uniform Policy in Mississippi

The Mississippi Constitution entitles children to a free public education.[135] The Mississippi Supreme Court also recognizes public education as a fundamental right.[136] Local school boards govern the local school districts.[137] School boards are vested with broad statutory powers and authority, which includes the power to suspend or expel students, change the placement to the alternative school, and provide support to the superintendent, teachers, and principals to ensure proper discipline.[138] Superintendents are the chief executive officers of school districts, and are responsible for the administration of the district and implementation of board policy.[139] Each year, the superintendent prepares a Code of Conduct handbook for parents and students.[140] The handbook outlines

127. *Id.* at 279.
128. *Id.* at 279 n.2 (citing TEX. EDUC. CODE ANN. § 11.162 (Vernon 1996)).
129. *Id.*
130. *Id.* at 282.
131. *Id.* at 286.
132. *Id.* at 280.
133. *Id.*
134. *Id.* at 280-81.
135. MISS. CONST. art. VIII, § 201 (1890).
136. Clinton Mun. Separate Sch. Dist. v. Byrd, 477 So. 2d 237, 240-42 (Miss. 1985).
137. MISS. CODE ANN. § 37-7-301 (1972).
138. *Id.* at § 37-7-301(e), (g).
139. MISS. CODE ANN. § 37-9-301 (1972).
140. MISS. CODE ANN. § 37-9-14 (1972).

the district's discipline plan.[141] Parents must sign a statement indicating that they have received notice of the handbook or discipline plan.[142] The handbook usually contains a list of articles of clothing that cannot be worn at school. Dress codes and mandatory school uniforms are tools that schools use to address safety concerns and promote high student achievement.

There is no Mississippi statute that addresses dress codes and mandatory uniforms. Nevertheless, in 2003-04, the Jackson Public School District implemented a dress code policy that required the shirttails of all students to be tucked in pants or skirts.[143] The district had learned that weapons could be easily hidden underneath shirttails. The district also wanted to promote high self-esteem. It published pictures of appropriate dress and inappropriate dress in its handbook.[144] Inappropriate dress included house slippers, shirts with spaghetti straps, shirts with the midriff exposed, muscle shirts, sagging pants, revealing underwear, unkempt facial hair, and short dresses or skirts.[145]

The following year, based upon a recommendation from an ad hoc school uniform committee, the board of trustees approved a one-year mandatory uniform policy for those elementary and middle schools whose site councils chose to participate.[146] The policy was modeled upon the policy approved by the *Littlefield* court. The administration of participating schools will study the pilot program for permanent implementation in the 2005-2006 school year.[147] The purpose of the policy was to promote a positive school environment, which is a major factor in high student achievement.[148] The district wanted to ensure safety, discipline, and school unity to reflect its strategic goal of 95% overall proficiency per student.[149] The uniform policy identifies students who belong on campus, making it easier to identify visitors who may be there for disruptive purposes.[150] Wearing uniforms fosters unity by reducing negative competition and arguments over dress styles, which allows students to focus on academic standards, self-confidence and understanding diversity.[151]

The uniforms are inexpensive and readily available for all students.[152] Parents who cannot afford the uniforms may complete a Declaration of Hardship in Providing Student Uniform form to request assistance from the local site council or other district resources as required by Miss. Code Ann. § 37-7-335.[153] Parents who object to their children wearing uniforms for religious reasons may submit their reasons in writing to the principal for consideration by the adminis-

141. MISS. CODE ANN. § 37-11-53 (1972).
142. *Id.*
143. *Id.*
144. JACKSON PUB. SCH. DIST. HANDBOOK AND CODE OF CONDUCT 51-52 (2003-2004).
145. *Id.* at 52.
146. *Id.*
147. JACKSON PUB. SCH. DIST. HANDBOOK AND CODE OF CONDUCT 54-55 (2004-2005).
148. JACKSON PUB. SCH. DIST. BD. OF TRUSTEES POLICY JCSA.
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*

tration and site council.[154] The school district uses a progression of discipline for non-compliance with the uniform policy.[155] The discipline ranges from a letter of warning to the parent to two days of suspension that may occur in school or at home.[156] The school district only imposes a suspension as a last resort.[157]

Although at the time of this article school has only been in session a short time, school officials have reported a positive response to the uniform policy. Community organizations have been supportive by donating uniforms. Most parents have also expressed their support. As of the writing of this article, there have been no legal challenges to the implementation of the policy.

III. CONCLUSION

Under certain circumstances, the imposition of a mandatory uniform policy and student dress code does not violate the First Amendment rights of public school students. The Court of Appeals for the Fifth Circuit set out in *Littlefield* the appropriate analysis for weighing the competing student, parental and district interests. Presumably, so long as the policy incorporates the following criteria:

- The availability of financial assistance or free uniforms for parents and students who cannot afford the uniforms;
- A series of escalating disciplinary consequences;
- An exemption for religious or similar philosophical reasons; and
- Prior notification and an opportunity to be heard;

a mandatory uniform policy should be upheld.

154. *Id.*
155. *Id.*
156. JACKSON PUB. SCH. DIST. HANDBOOK AND CODE OF CONDUCT 55 (2004-2005).
157. *Id.*