

STATE OF RHODE ISLAND
COMMISSIONER OF ELEMENTARY AND
SECONDARY EDUCATION

Monique Richard, on behalf of herself
and Amy Richard, and Amanda Richard,
Tiffany Johnson, on behalf of herself and
Samantha Johnson
Angela Lemoine, on behalf of herself and
Noah Lemoine and
Nathan Lemoine, and
Lisa Desplaines, on behalf of herself and
Nathan Desplaines, Noah Desplaines,
and Aaron Andrews

-v-

**School Committee of
The City of Woonsocket**

APPEAL
Pursuant to Rhode Island General Laws
Section 16-39-2

I. Introductory Statement

1. This appeal to the Commissioner of Elementary and Secondary Education is brought by parents of students in the Woonsocket Public Schools, under Rhode Island General Laws Section 16-39-1 et seq., from a notice and decision of the Woonsocket School Committee to implement a new “uniform policy” effective September 1, 2010, also referred to as the “Readiness for School Policy”, a copy of which is attached hereto.

II. The Parties

2. The Woonsocket School Committee is the duly constituted body which adopted the uniform policy and is a party to this appeal pursuant to Rhode Island General

Laws Section 16-39-2: “Any person aggrieved by any decision or doings of any school committee or in any other matter arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved.”

3. Plaintiff Lisa Desplaines is an adult resident of the City of Woonsocket and the parent of three minor children attending elementary school and high school in Woonsocket: Nathan Desplaines, Noah Desplaines, and Aaron Andrews.
4. Plaintiff Tiffany Johnson is an adult resident of the City of Woonsocket and the parent of a minor child, Samantha Johnson, attending elementary school in Woonsocket.
5. Angela Lemoine is an adult resident of the City of Woonsocket and the parent of two minor children attending elementary school in Woonsocket: Noah Lemoine and Nathan Lemoine.
6. Monique Richard is an adult resident of Woonsocket and the parent of two students who are subject to the Woonsocket uniform dress code policy, Amy and Amanda Richard.
7. All plaintiff children are subject to the “Readiness for School” uniform policy.

III. Factual Background

8. Prior to the upcoming school year, 2010-2011, the Woonsocket School Committee had in place a “Dress Code” (copy attached hereto), which proscribed particular items but did not otherwise mandate any uniform.

9. The prior “Dress Code” policy noted that “Due to the proposed District uniform policy, the WMS Dress Policy is subject to change if necessary.” (Emphasis added).
10. Without in any way agreeing that the prior policy satisfied applicable legal standards (e.g. vagueness of undefined “gang colors”), plaintiffs do not presently contest the prior “Dress Code” policy.
11. In 2009 the General Assembly enacted Rhode Island General Laws Section 16-2-33.1 (City of Woonsocket – School Dress Code). That enactment states: “The Woonsocket school committee, in conjunction with the superintendent, may adopt a school dress code for Woonsocket elementary, middle and high school students; provided that:
 - (1) The principal, staff and parents have had an opportunity to offer suggestions and comments;
 - (2) The dress code shall be adopted at a time determined by the school committee, and the school committee shall give notice to the parents three (3) months before a dress code is required; and;
 - (3) That on days when a nationally recognized youth organization has a scheduled function, students participating in this organization shall be exempt from the dress code on that day.” P.L. 2009, Ch. 179, Sec. 1.
12. The statute, Section 16-2-33.1, nowhere mentions or authorizes a “uniform.”
13. The School Committee of Woonsocket adopted the new “uniform” policy on or about April 14, 2010.

14. The notice to parents from Superintendent Robert Gerardi, Jr. was dated June 10, 2010, was received by parents along with report cards on or about June 20, 2010, and is to be effective on September 1, 2010, the first day of school.
15. The Committee refers to the new dress code as a “uniform dress code.” Policy, p.1.
16. Inter alia, the uniform policy requires:
- a) pants that are only black or khaki and are only “Dickie style.”
 - b) only maroon or gray shirts
 - c) no “writing” on shirts, except school related “logos.”
 - d) sweatshirts, with no zippers or pockets, also must be maroon or gray.
 - e) footwear that must be white, brown, or black, with “low” heels and closed toe and heel.
17. The uniform policy grants a principal discretion to waive the code, inter alia, “to raise money for a cause,” or for “specific groups for events (scout days, ROTC, athletic championships, band/chorus events).” No definitions of any of these terms are included.
18. The uniform policy also grants the Superintendent discretion to waive the policy based on the filing of an advance request citing religious freedom, health consideration, “or the Legitimate exercise of free speech.” (Emphasis added). Again, no definitions of any terms are included.
19. Following the enactment of Rhode Island General Laws Section 16-2-33.1, there has been no approval by a majority of the qualified electors of the City of Woonsocket voting at a general or special election.

20. Section 16-2-33.1 applies by its terms only to Woonsocket, and the General Assembly has not authorized or mandated any “dress code” policies for any other cities or towns in Rhode Island.
21. Plaintiffs and their minor children object to any mandated school uniform; they agree with the statement in the prior Woonsocket policy that “dress is a matter of taste”; they object to the additional costs that will be imposed on limited budgets to purchase numerous items that will be worn only at school and will therefore be an addition to clothing expenses; they object to the restrictions on expression and choice inherent in a uniform, the restriction of writing to only school related or approved expression such as ROTC, and to the undefined and unrestricted discretion of administrators to grant waivers.
22. Plaintiffs and their children fear the consequences of any actual or perceived violation of the uniform policy (p.2), which can include, inter alia, in-school suspension and referral for truancy.

IV. Legal Claims

A. Rhode Island Constitution Article XIII, Section 4

23. Plaintiffs incorporate paragraphs 1-22, supra.
24. The Rhode Island Constitution, Article XIII, Section 4, limits the powers of the General Assembly by allowing legislation “in relation to the property, affairs and government of any city or town by general laws which shall apply alike to all cities and towns, ...” The Section goes on to state that the General Assembly may also legislate in relation to “a particular city or town provided that such legislative action shall become effective only upon approval by a majority of the

qualified electors of the said city or town voting at a general or special election...”

25. Rhode Island General Laws Section 16-2-33.1, which both the State and Woonsocket itself have considered an essential prerequisite for the uniform policy, is clearly an act in relation to just one city, and it has not been approved at any election.
26. Although constitutional questions are usually not decided first or preliminarily, this issue under Article XIII, Section 4, is so fundamental and so clear that it obviates the need to consider any other issues at this time. See McCarthy v. Johnson, 574 A.2d 1229 (R.I. 1990).

B. Rhode Island Constitution
Article I, Section 2

27. Plaintiffs incorporate paragraphs 1-26, supra.
28. Enactment of a uniform dress code only for the students of Woonsocket, restricting what would otherwise be their freedom of expression and dress, denies to them the rights guaranteed under Article I, Section 2, of the Rhode Island Constitution, to equal protection of the laws and that “all laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens.” Woonsocket is a community with a higher than average proportion of low-income and racial minority residents. Section 16-2-33.1 contravenes the rights guaranteed by Article I, Section 2.

C. Inadequate Notice
Section 16-2-33.1 (2)

29. Plaintiffs incorporate paragraphs 1-28, supra.

30. By its own terms, Section 16-2-33.1(2) requires that the School Committee “shall give notice to the parents three (3) months before a dress code is required.”
31. The notice in this case failed to satisfy the statute. The first day of school is September 1, the notice was dated June 10, not received until approximately June 20 when it was sent with report cards, and to be effective September 1, 2010.
32. The notice states that the uniform policy is “for 2010-2011.”
33. The statute requires explicit notice. Thus it is not possible to now “interpret” the notice to imply that an effective date would be September 10 or September 20. No such effective date was ever mentioned.

**D. A Mandated Uniform is Beyond
the Scope of Section 16-2-33.1**

34. Plaintiffs incorporate paragraphs 1-33, supra.
35. Section 16-2-33.1 authorizes a dress code, which can be implemented without contravening the standards of Tinker v. Des Moines or Gardner v. School Committee of Cumberland. It does not authorize a “uniform” nor does it even mention it. See paragraph 37, infra.

**E. Freedom of Expression
Rhode Island Constitution, Article I, Section 21, 24
United States Constitution, Amendment I**

36. Plaintiffs incorporate paragraphs 1-35, supra.
37. Plaintiffs’ rights to freedom of expression and choice in their dress are unduly restricted by a uniform policy, which goes beyond legitimate and minimum

safety and educational concerns. As such, the policy contravenes the Rhode Island Constitution, Article I, Section 21, 24, and the United States Constitution, Amendment I. Tinker v Des Moines School District, 393 U.S. 503 (1969); Gardner v. School Committee of the Town of Cumberland, 3-24-71 (Decision of Commissioner William P. Robinson, Jr., Rhode Island Commissioner of Elementary and Secondary Education).

**F. The Uniform Policy Introduces
a de facto Educational Fee**

38. Plaintiffs incorporate paragraphs 1-37, supra.
39. The addition of numerous required items of clothing specifically for school imposes a significant financial burden. Plaintiff Desplaines, for example, would have to purchase sufficient new items to cover three children and five days each week. The expense will be far higher than the \$70.00 testing fee at issue in Sullivan v. Cumberland School Committee, 0002-01, 1-10-01, Decision of Hearing Officer Forrest L. Avila, or the “pay to play” athletic fees at issue in the Opinion of Commissioner Gist to Rhode Island Interscholastic League, 8-5-09, reviewing the history and policy issues involved.
40. Just as there would be no practical distinction between a policy mandating a “fee” for a school-provided laptop and a policy mandating that the family purchase a laptop, there is also no practical distinction between a “fee” for a school uniform and a policy mandating that the family purchase the uniform.

Wherefore, plaintiffs request that the Commissioner proceed with this appeal pursuant to Rhode Island General Laws Section 16-39-2 and invalidate the Woonsocket uniform dress code for any or all of the above reasons.

Plaintiffs
By their Attorney

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CERTIFICATION

I certify that on August _____, 2010, I faxed a copy of this appeal to: Attorney Richard Ackerman at (401)766-5807 and mailed a copy to him at 191 Social Street, Suite 620, Woonsocket, RI 02895; I also mailed a copy to: Robert J. Girardi, Jr., Superintendent of Schools, 108 High Street, Woonsocket, RI 02895.

John W. Dineen

Appendix of Documents

1. Excerpt: West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)
2. Rhode Island General Laws – Section 16-2-33.1
3. Notice from Woonsocket Superintendent, dated June 10, 2010
4. School “Readiness Policy” Uniform Dress Code, two pages
5. Former “Dress Code” – one page
6. Decision, Sullivan v. Cumberland School Committee, 0002-01, 1-10-01
7. Letter, Commissioner Gist to Rhode Island Interscholastic League, August 5, 2009
8. Order Form, for approved Uniform Shirts for Woonsocket
9. Decision, McCarthy v. Johnson, 574 A.2d 1229 (R.I. 1990)

**West Virginia State Board
of Education v. Barnette,
319 U.S. 624, 637 (1943)**

[Note: In the short space of three years, from 1940 to 1943, the Supreme Court reversed position on a highly charged issue involving public schools – whether the First Amendment protected the right of Jehovah’s Witness children to not salute the flag. The earlier decision was Minersville School District v. Gobitis, 310 U.S. 586 (1940), where Justice Frankfurter’s opinion stressed deference to school administrators. During the darkest days of World War II, when totalitarianism threatened everywhere, Justice Jackson’s opinion in 1943 affirmed both the strength and the purpose of the Bill of Rights]

The [Constitution] protects the citizen against the State itself and all of its creatures – Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous [judicial] protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

- Justice Robert Jackson, in West Virginia State Board of Education v. Barnette, 319 U.S. 624, 637 (1943)