

This pamphlet provides answers to frequently asked questions about the rights of K-12 public school students in RI as they relate to school dress codes. Public school district policies on these issues vary greatly, and there will sometimes be disagreements about what constitutes appropriate clothing. A school's dress code policy can usually be found in the student handbook.

People often express who they are and what they believe with what they wear. Because students maintain certain constitutional rights to free expression when they are in a public school, their decisions about their appearance are, to some extent, protected as well.

CAN I WEAR CLOTHING THAT COMMUNICATES A POLITICAL OR RELIGIOUS MESSAGE?

Yes. In the 1969 case of *Tinker v. Des Moines*, one of the most well-known student rights' cases considered by the U.S. Supreme Court, the Court ruled that students had a constitutional right to wear a black armband to school to protest U.S. involvement in the Vietnam War. Since then, courts have continued to hold that students generally have a right to express political views through their clothing. This can include, for example, wearing clothing that endorses or criticizes a politician or, as in more recent cases, wearing t-shirts concerning gay rights. Additionally, schools cannot prohibit students from wearing clothes that are in observance of their religion, such as a Muslim wearing a hijab in school.

CAN MY SCHOOL RESTRICT OTHER TYPES OF MESSAGES ON MY T-SHIRT?

As a general rule, schools cannot bar you from wearing clothing simply because they disapprove of the message that the clothing conveys. However, schools can prohibit you from wearing clothing with "indecent" or other messages that may cause a disruption. Of course,

students and school officials can often disagree about what may be disruptive. For example, the RI ACLU successfully challenged a student's suspension for wearing a rock band t-shirt with the numerals "666" on it. On the other hand, although the ruling might very well come out differently today, a Virginia court ruled over two decades ago that a school could ban as "vulgar" a t-shirt with the phrase "Drugs Suck." To give another example, courts have agreed students can wear shirts supporting the Second Amendment's "right to bear arms," but differ on whether including an image of a gun is protected.

HOW MUCH CAN MY SCHOOL REGULATE WHAT ELSE I WEAR?

There is no simple answer. Back in 1972, in a case called *Gardner v. Cumberland School Committee*, the RI Commissioner of Education held that school districts are limited to regulating the dress of pupils to situations where "it presents a clear and present danger to the student's health and safety, causes an interference with school work, or creates a classroom or school disorder." In that case, the Commissioner overturned a school policy that barred a student from wearing a maxi-coat.

As a constitutional matter, for policies that are seemingly less arbitrary — such as bans on all hats, showing your undergarments or similar restrictions — courts will likely be more inclined to defer to a school's determination whether the clothing is disruptive or interferes with school activity. However, if there is a social, political or religious message associated with what you are wearing, the courts will be more sympathetic. For example, in Pennsylvania, the ACLU won a lawsuit against a school policy that banned students from wearing breast cancer awareness bracelets that said "I <3 boobies."

WHO DECIDES WHETHER SOMETHING I WEAR IS "DISRUPTIVE"?

Although their opinions are given significant weight by the courts, school administrators cannot rely on mere speculation that a particular message on a piece of clothing will be disruptive. Without an actual disruption of school activities, or a reasonable threat of one, a court may reject a school official's argument that banning clothing with a message was justified for that reason.

CAN MY SCHOOL BAN GANG-RELATED APPAREL?

Based on documented safety and disruption concerns, a school could probably ban particular types of clothing that were directly associated with gang activity. However, any policies along those lines would have to be clearly and reasonably drafted, and specific as to what was not allowed. One federal appeals court struck down a school policy barring "gang-related activities such as display of 'colors,' symbols, [or] signs," as unconstitutionally vague, and another court threw out a school policy against gang-related attire that was applied to a student who wore rosary beads to school.

CAN MY SCHOOL PUNISH ME IF I DYE MY HAIR OR HAVE BODY PIERCINGS?

In the 1970's, a federal appeals court with jurisdiction over Rhode Island ruled in favor of a student who had been suspended for violating a school rule banning long hair on boys; one could argue that the same rights apply to students who dye their hair. On the other hand, removable body piercings may be held to not fall within the realm of constitutionally protected expression at school. However, the ACLU believes that to punish you for your hairstyle or body piercings, your school should have to show that they were disruptive or caused a valid health or safety risk.

CAN MY SCHOOL REQUIRE ME TO WEAR A UNIFORM?

There is no direct case on this issue in Rhode Island, but the ACLU believes that forcing students to wear uniforms infringes on their right to free speech and expression, and violates the standards that have been set out in the previously mentioned *Tinker* and *Gardner* cases. However, schools can promote a voluntary student uniform policy, which a number of schools in RI have instituted.

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CAN A DRESS CODE DISCRIMINATE ON THE BASIS OF GENDER?

When a school disciplines a student based on their appearance solely on the grounds that it doesn't "match" their gender, it is likely violating the law. For example, a court recently ruled that a school violated a federal law known as Title IX, which prohibits sex discrimination in education, by allowing boys, but not girls, to wear pants or shorts. Similarly, boys as well as girls should have the right to wear earrings, and girls as well as boys should be able to wear a tuxedo to the prom.

Dress codes that discriminate on the basis of sex can also have an adverse impact on transgender students. In that regard, state education guidelines specifically provide that students should be allowed to dress in accordance with their gender identity. In short, if a restriction on what a student wears is truly reasonable, the student's gender should be irrelevant. As a result, school dress codes should be gender-neutral.

HAVE THERE BEEN ANY CASES INVOLVING WHAT STUDENTS WEAR FOR THEIR YEARBOOK PHOTO?

Yes. In 2006, we successfully sued the Portsmouth school district when it banned a student from wearing medieval garb and holding a prop broadsword in his senior yearbook photo. More recently, the ACLU of Mississippi successfully challenged a school district that would not allow a female student to wear a tuxedo in her senior photo.

CAN I BE PUNISHED FOR PROTESTING MY SCHOOL'S DRESS CODE POLICY?

You have the right to peacefully protest against a dress code policy you consider unfair or restrictive, and you can't be punished more harshly for violating a school policy simply because you were doing it in protest. In a Rhode Island case, Cumberland high school students walked out of school one day to protest a new dress code. Although the school had the right to punish the students for missing classes, they were given a longer suspension than if they had simply skipped class. The state Commissioner of Education held that it was illegal for school officials to punish the students for missing school to participate in a political protest more harshly than if they had missed school for any other purpose.

The information in this brochure should not be taken as legal advice. If you have additional questions, or feel your rights may have been violated, please contact the ACLU of Rhode Island.

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**STUDENTS &
DRESS CODES**

Information and frequently asked questions about students' rights and school dress codes.