

This brochure answers some frequently asked questions about students' rights as they relate to school dress codes. This information applies to K-12 public school students in Rhode Island. Rules for colleges and private schools will differ. Additionally, public school district policies on these issues will vary greatly, and there will sometimes be disagreements about what constitutes appropriate clothing. More information about these policies can generally be found in the school's student handbook.

People often express who they are and what they believe by 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?**

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Yes. In the 1969 case of *Tinker v. Des Moines*, one of the most well-known student rights' cases it has considered, the U.S. Supreme 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

supporting or opposing 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?**

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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 or may not be disruptive. For example, in 1998, the Rhode Island ACLU successfully challenged the suspension of a student for wearing a rock band t-shirt with the numerals "666" on it. On the other hand, although the ruling might come out differently today, a Virginia court ruled two decades ago that a school could decide to ban as "vulgar" a t-shirt with the phrase "Drugs Suck." If you think you were unfairly disciplined for something you wore to school, you should contact the ACLU.

### **HOW MUCH CAN MY SCHOOL REGULATE WHAT ELSE I WEAR?**

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There is no simple answer. Back in 1972, in a case called *Gardner v. Cumberland School Committee*, the Rhode Island 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 to school. But for policies that are seemingly less arbitrary — such as bans on all hats, showing your undergarments or similar restrictions — courts will 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 recently won a lawsuit against a school policy that banned students from wearing breast cancer awareness bracelets that said "I <3 boobies."

### **WHO GETS TO DECIDE WHETHER SOMETHING I WEAR IS "DISRUPTIVE?"**

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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?"**

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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?**

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In the 1970's, a federal appeals court that has 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?**

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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 set out in the previously-mentioned Gardner case. However, schools can promote a voluntary student uniform policy, which a number of schools in Rhode Island have done.

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

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In 2006, the Rhode Island ACLU successfully sued a school district that had 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?**

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You have the right to peacefully protest a dress code policy, but that does not mean you can violate the policy or engage in other activity legitimately banned in school. At the same time, 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, students walked out of school one day to protest a new dress code. Although the school had the right to punish the students for walking out of school and missing classes, they were given a longer suspension than if they had simply bunked 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.

For nearly 100 years, the American Civil Liberties Union has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and laws guarantee everyone in this country.

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 an attorney or the ACLU.

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## **KNOW YOUR RIGHTS: School Dress Codes**



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