A SHORT HISTORY AND FUTURE DEVELOPMENTS REGARDING SCHOOL DRESS AND GROOMING CODES

Due to the recent flood of cases testing dress and grooming codes of public schools, it is worthwhile to examine the case development over the last five years in order to determine the various theories proposed as well as the current direction of the law. Most of the recent cases have essentially the same fact pattern: the student was expelled from the school for wearing long hair in violation of a dress and grooming code promulgated by the school authorities.

I. Development of the Law

The first important case to arise was *Leonard v. School Committee of Attleboro*.[1] There, the right of the student to attend public school was qualified by the school committee's power to make reasonable regulations in running the school system. The power of the school authorities to institute regulations was found to be extremely broad; it could only be overcome if it was found that the regulation had no reasonable connection with the successful operation of a public school.

This case reaffirmed a long line of cases which had held that the school authorities' broad power to make regulations was to be challenged successfully only if the rules were obviously arbitrary and capricious.

In *Ferrell v. Dallas Independent School District*,[2] the federal court, relying on *Leonard*, dismissed a student's action because it did not want to disturb the delicate state-federal balance by interfering in state proceedings. The court stated that only when the students' rights were affected outside of the classroom would the court inquire into the justification for the rules promulgated.

In *Burnside v. Byars*,[3] decided the same year as *Ferrell* the student's rights were finally given priority. Upon close examination of the student's conduct the court found that it did not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."[4] *Burnside* also stated that the liberty of expression guaranteed by the first amendment could be abridged by state officials if their protection of legitimate state interests necessitates an invasion of free speech.

At this stage in the battle over school regulations, the burden of proving the reasonableness of the regulations had been shifted to the state. It is for the state to show that its interest is so great as to deny a student his constitutionally protected rights.

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[1] 212 N.E.2d 468 (Mass. 1965).

[2] 261 F. Supp. 545 (N.D. Texas 1966).

[3] 363 F.2d 744 (5th Cir. 1966).

[4] *Id.* at 749.

In *Zachry v. Brown*,[5] decided shortly after *Burnside*, the basic question of student rights was confronted and discussed in depth. In that case, the fourteenth amendment rights of students as "persons" under the Constitution were recognized. It was also stated that the equal protection clause prohibits any classification that is founded on an unreasonable or arbitrary basis. The court further held that the classification of male students by their hair styles, based only on personal dislike of long hair and not any moral or social grounds was unreasonable and unconstitutional under the equal protection clause.[6]

At this point the court seems to be willing to accept *some* reasonable relationship between the dress and grooming regulations and the state interests. So far the cases decided against the school officials were dictated by their facts in that the officials had formulated dress and grooming codes which were clearly arbitrary on their face. However, at this point, the burden to be met by the state is increasing heavily as seen by more recent decisions.

In *Breen v. Kahl*,[7] while the court could not quite define the exact right the students were deprived of, it likened the right to dress and groom oneself as one pleases to the right of privacy delineated in *Griswold v. Connecticut*.[8] The court further stated that the state, to use its power to impair this freedom, must bear a "substantial burden of justification." The court also enunciated various reasons sufficient to uphold a dress and grooming code: health, physical danger to others, obscenity, or distraction. The school officials in this instance failed in their proof of any of the above justifications. They further failed to prove that there was a difference in school performance between male students with long hair and those with short hair.

One of the landmark decisions to arise in recent years concerning dress and grooming was *Tinker v. Des Moines School District*.[9] The Court compared the wearing of black armbands to symbolic speech, protected by the first amendment. It was decided further that the school's attempts to regulate silent, passive expressions of opinions (such as the wearing of armbands) unaccompanied by any disturbance or disorder were improper.

"Fear or apprehension of a disturbance is not enough to overcome the right of freedom of expression."[10] The school must show more than a mere desire to avoid a difference of opinion or unpleasantness when it interferes with a first amendment right. *Tinker* is important in establishing the students' dress and grooming as symbolic speech, therefore en-

[5] 299 F. Supp. 1360 (N.D. Ala. 1967).

[6] *Id.*

[7] 296 F. Supp. 702 (W. D. Wis. 1969).

[8] 381 U.S. 479 (1965).

[9] 393 U.S. 503 (1969).

[10] *Id.* at 508.

titling them to first amendment protection. Although first amendment rights are not absolute ones, the state has the burden of establishing an overriding state interest and showing a valid relationship between that interest and the means used to attain it.

Although most recent decisions have been decided in favor of the student in dress and grooming code cases, it is well to note a recent district court decision, *Crew v. Cloncs*, upholding a dress and grooming code.[11]

The court emphasized the fact that the long hair directly caused disturbances and disruption of the educational process. It further stated that "the disruption resulted not from the very fact that a student had violated a rule; rather, it resulted from the plaintiff's wearing long hair."[12] In other words, the court found this student's hair intrinsically disruptive. The court further stated that wearing long hair is not pure speech and is not a fundamental right granted by the first amendment; therefore, the state does not have to declare an overriding interest in order to interfere with this right. This court considered the regulation as to hair length reasonable and stated that the Constitution only prohibits *invidious* discrimination.

The *Crews* case, however, deviates significantly from the pattern of other recent decisions. While the court stated that the hair directly caused the alleged disturbances, it did not state any causal relationship. The existence of such a relationship is particularly important and will be discussed later in this article.

In *Griffin v. Tatum*,[13] a case with similar facts, an opposite conclusion conforming more closely with the recognized pattern of decisions was reached. In that case it was decided that the Constitution protects the "freedom to determine one's own hair style and otherwise govern one's personal appearance." It also stated that the school official's fear that his authority would be undermined was not a basis for upholding the regulation. The court further found that the fact that the long hair *might* interfere with discipline is no reason to arbitrarily impose an unreasonable condition on a student who prefers long hair. As long as there is not a finding of fact so as to show there was a health, performance, or disruption problem caused directly by the long hair, the regulations concerning hair length are unreasonable and can not be conditions for entering the school premises.[14]

The majority view today appears to be that a state has not, upon an arbitrary basis, an absolutely unlimited right to refuse opportunities respecting education in the public schools. "Merely arbitrary choices by States or their official representatives cannot be enforced against any individual's

[11] 303 F. Supp. 1370 (S. D. Ind. 1969).

[12] *Id.* at 1376.

[13] 300 F. Supp. 60 (M. D. Ala. 1969).

[14] *Id.*

serious claim of liberty."[15] The court also indicated that the claims of students in regard to their appearances are entitled to protection from actions by the state or by its agents both under the terms of the "due process clause" of the fourteenth amendment and under the specific provisions of the Civil Rights Act.[16]

Recent decisions indicate that the courts are finally looking into the reasons behind the codes to discover if they are reasonable. In *Westley v. Rossi*,[17] the court dissected the facts, looking for a relationship between what the rule tended to prohibit and the result the school desired. The court ended its opinion by stating, "Regulations of conduct by school authorities must bear a reasonable relationship to the ordinary conduct of the school curriculum or to carrying out the responsibility of the school."

II. Trilogy of Rights

This brief, recent case history brings to light the rights which are to be protected. A necessary part of any case of this sort depends upon what, if any, constitutional rights are infringed upon.

Most commonly the courts analogize the rights of the student to appear as he pleases to the first amendment right of freedom of expression. The mode of dress or style of grooming is often thought of as symbolic speech and is given the same protection as other first amendment rights. While the first amendment rights are not absolute, the state has the burden of showing a material and substantial interference with valid state interests before it can infringe upon those rights.[18]

Another common constitutional justification for protecting the students' rights to dress and groom as they please is found in the fourteenth amendment. The equal protection clause of the fourteenth amendment protects the students from arbitrarily being denied the right to a public education. It enforces the rights of students to have an equal opportunity for a public education. "Such an opportunity . . . is a right which must be made available to all on equal terms."[19]

The final area courts have looked to as a constitutional safeguard for a student's rights is the right of privacy. Appearance is a form of personal privacy. The way one dresses and the appearance of one's hair are both considered to be within the private domain of each individual. The right of privacy and its offshoot, one's appearance, are not rights that are explicitly protected by the Bill of Rights. Certain rights are not specifically stated in the Bill of Rights but are said to be peripheral to them and thus

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[15] Richards v. Thurston, 304 F. Supp. 449 (D. Mass. 1969).

[16] 42 U.S.C. § 1983 (1964).

[17] 38 U.S.L.W. 2257 (D. Minn. Oct. 8, 1969).

[18] Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966).

[19] Brown v. Board of Education, 347 U.S. 483, 493 (1954).

protected by the Constitution. The first amendment has a penumbra where privacy is protected from governmental intrusion.[20] In the same context, grooming and appearance are very special personal matters and are by their very nature intimately related to privacy.

In *Griswold v. Connecticut*[21] it was said that the framers of the Constitution did not intend the first eight amendments to be construed to exhaust the basic and fundamental rights which the Constitution guaranteed.

> The specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life. . . .[22]

Liberty protects those personal rights that are fundamental and is not confined to the specific terms of the Bill of Rights. Where fundamental personal liberty is involved, it may not be abridged by the state simply showing that a regulatory statute has some rational relationship to effect a proper state purpose.

> Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling.[23]

When a student's freedom of expression or appearance comes into conflict with school regulations, those regulations should be based on sound legitimate interests of the state. Nothing less than an actual disruption, health and sanitary reasons, lowering of student performance, or other such important considerations will permit the state to regulate the expression or appearance of its public school students.

Since the subject matter of this article concerns dress and grooming, two features which change drastically with time, any opinions expressed will be relevant only to this particular period in time. We are in the midst of a great social upheaval which will not only change society but which will change the very law upon which society is structured. Smoking marijuana will, in all probability, be legalized or at least accepted if done privately; sexual freedom and nudity will in all liklihood become common; and young people will not only be allowed to vote but will have the ability, by sheer numbers alone, to control their own destinies. It must be in this light then that the school and dress codes are looked at. It is well founded by now that each person has certain undeniable rights. The freedom of speech, freedom from discrimination, and the right to privacy are but a few of these rights.

These rights, although ingrained in the Constitution, are not absolute. One may *not* claim the right of freedom of speech to instigate a riot or

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[20] Griswold v. Connecticut, 381 U.S. 479 (1965).

[21] *Id.*

[22] *Id.* at 484.

[23] Bates v. Little Rock, 361 U.S. 516, 524 (1960).

to conspire to overthrow the government; one may not invoke the right to be free from discrimination to avoid the draft; and one may not claim one's right of privacy in order to harbor known criminals. Thus, all of the rights set out in the Constitution must be balanced against the government's, be it state or federal, interest in that particular area sought to be controlled. The line to be followed in this balancing technique is by necessity a fine one. That line can only be relevant in the context of the period of time in which it is drawn. Twenty years ago the government's interest in maintaining discipline and order in the classroom was undoubtedly stronger than the rights of the individual students to wear long hair or for the girls to wear mini-skirts. Today this trend is reversing. A young man with long hair will not cause the same disruption in a classroom that he would have caused twenty years ago. Thus, the right of freedom of expression, privacy, and freedom from discrimination far outweigh the state's interest in the small disruption, if any, that he may cause today.

This is not to say that the scales are never to be balanced in favor of the state and against the individual's rights. For instance, at this point in time, the state's interest in maintaining order and an atmosphere favorable to learning would be far greater than the right of a young lady to attend class wearing a see-through blouse with no bra. Our society has not yet accepted this mode of dress, and it would undoubtedly disrupt any teaching effort. Another argument in favor of the state in a case like this is the small infringement on one person's rights measured against the greater possibility of distraction she would cause. In future years this young lady's attire may become entirely acceptable or at least less disconcerting and, at that period in time, her personal rights may outweigh the state's interest in maintaining order.

The balancing tests are not new by any means. Constitutional law is saturated with cases of state police power versus individual rights. The state must protect the safety and welfare of all of its citizens within the limits of substantive due process and equal protection.[24] It has always been the case that the state, under its police power, may enact laws which interfere with the right of speech or liberty where they are reasonably necessary for the protection of the general public.[25]

The rights guaranteed to citizens by the Constitution are usually given priority[26] and only when a state's interest was threatened by a clear and

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[24] Gitlow v. New York, 268 U.S. 652 (1925).

[25] *See* Thomas v. Collins, 323 U.S. 516 (1945).

[26] United Mine Workers of America v. Illinois State Bar Association, 389 U.S. 217, 222 (1967):

> [L]aws which actually affect the exercise of these vital rights [freedom of speech] cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil.

present danger were the state's interest upheld over the rights guaranteed by the Constitution.[27]

By way of analogy the state has an interest in maintaining order and discipline in its schools. It also has an interest in the health, safety, and performance of its students. These state interests must be balanced against the rights of a student to be free from discrimination, to express himself freely, and not to have his right of privacy invaded. Thus, it is only when the state has a completely overriding concern in protecting its interests that it can infringe upon the constitutionally protected rights of students in its public schools.

The result of the balancing test usually hinges on the arbitrariness of the regulation, the application of a defined means to reach a specified end, and the reasonableness of the regulation.[28]

The state, in some cases, has an interest in enforcing its regulations even though it may infringe upon students' rights.

> The police power may be exerted in the form of state legislation where otherwise the effect may be to invade rights guaranteed by the Fourteenth Amendment only when such legislation bears a real and substantial relation to the public health, safety, morals, or some other phase of general welfare.[29]

Courts have only of late dissected the school regulations to determine the reasons behind them and their relation to the end sought by the state.[30] Prohibiting long hair in a dress and grooming code is explained by school officials as a means used to lessen disruption in the classroom. The court must ask whether this is a valid method to reach the desired goal. The desired goal is an atmosphere free from disruption where the learning process can take place. The facts in almost all of the cases today concerning school codes show that the hair, in and of itself, does not cause disruption. Considering that the Beatles started the fad some five to ten years ago, it is safe to assume that school age children are not inordinately disconcerted by having a student with long hair in the classroom. However, school officials contend that the long hair causes dissension and leads to fights and other similar disturbances. It is this threat of disturbance which is designed to be dealt with by the dress and grooming codes.

It has long been recognized that school authorities are possessed with the power to establish and enforce regulations to deal with activities which

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[27] Thomas v. Collin, 323 U.S. 516 (1945).

[28] Nebbia v. New York, 291 U.S. 502 (1934).

[29] Louis K. Liggett Co. v. Baldridge, 278 U.S. 105, 111 (1928).

[30] Nebbia v. New York, 291 U.S. 502 (1934).
The due process clause of the 14th Amendment conditions the exertion of regulatory power by requiring that the end shall be accomplished by methods consistent with due process, that the regulation shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.

may materially interfere with the requirements of appropriate discipline in the schools.[31] It has also been held that a possible threat of violence is no excuse for the failure of the court to issue an injunction to protect the constitutional rights of private citizens.[32] The classroom is the proper place for divergent views and customs to be forged together in a melting pot of intellectual exchange.

The reasonableness of the regulation must also be measured by the availability of another course of action which may be just as effective but which does not infringe upon individual rights.[33] If the end sought is to maintain order and discipline, it seems that a regulation which prohibits fighting or disorderly conduct would be much more effective and less of an encroachment upon the students' rights than a prohibition of long hair.

Again, this is not to say that a student's dress and grooming habits may never be infringed upon. What is being established is that the regulation against long hair would appear to have no reasonable relationship to the attainment of order and discipline, especially in view of a more effective alternative solution which requires less of an infringement upon the constitutional rights of a student. It may be, however, that a student who wears cow bells to class, as an example, would effectively be prohibited from such conduct by a dress code. It is obvious that the bells would cause a direct physical disturbance in a classroom and no alternative solution is available.

In cases of dress and grooming codes a direct causal relationship must be shown; the mode of dress or method of grooming must directly cause the disruption before it can validly be prohibited by a dress code. Until one's appearance carries with it a substantial risk of harm to others it should be dictated by one's own taste or lack of it.[34]

Another pertinent example of this reasonable relationship requirement is the claim by a principal that the long hair causes students to be late for class because they spend too much time grooming themselves.[35] Here, too, the means used to obtain the end result are much too broad. Instead of prohibiting long hair *per se*, there should be a regulation against tardiness, the "evil" which is sought to be remedied. The dress and grooming codes can be effective in preventing disturbances when a clear causal relationship is shown between the mode of dress and style of grooming, and the disturbance. Often dress codes are used to prevent a condition which could be effectively remedied in another manner with less of an infringement upon the students' rights; these codes and the administrators who enforce

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31 Griffin v. Tatum, 300 F. Supp. 60 (M. D. Ala. 1969).

32 Cooper v. Aaron, 358 U.S. 1 (1958).

33 *See* Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951).

34 Breen v. Kahl, 296 F. Supp. 702 (D. Wis. 1969).

35 Griffin v. Tatum, 300 F. Supp. 60 (M. D. Ala. 1969).

them must be charged with denying a student his constitutionally protected rights.

In addition, health and sanitation are often given as valid reasons for enforcing a dress and grooming code.[36] To say that long hair is intrinsically dirtier than short hair and therefore should be prohibited is an attempt to cloud the real issue. Again, the relationship of the rule prohibiting long hair to the end sought is unreasonably broad. If there is a sanitation hazard, the student can be directed to wash his hair or clean his clothes, or some other directive that will have a direct causal link with the "evil" to be prohibited can be given. If a student's hair is dirty or lice-ridden, it cannot be said that the length of the hair directly causes the filth or lice. There is an intermediate step which causes the condition, namely, not cleaning the hair properly. It is far easier and less restrictive to require clean hair than short hair.

In the same vein, a regulation that deals with dirty hair, obnoxious odors, and scalp diseases would appear to be perfectly valid because there is a direct relationship between the end sought and the means devised to arrive at that goal. The state also has a valid interest in protecting the scholastic performance of its students. However, the relationship between long hair and scholastic performance has not been demonstrated.[37] Until a scientific study has been performed where the many variables can be controlled and conditions can effectively be measured, this reason for enforcing a dress and grooming code must be dismissed.

Thus, most of the effects of the dress and grooming codes are either too broad or are administered in such a way as to make them "unduly oppressive."[38] The main reason for holding the dress and grooming codes invalid is that the condition sought to be regulated is too remote from the result which is to be governed.

III. REMEDIES

The most common remedy available for protecting student rights is the injunction, along with reinstatement of the student. The school administration, in enforcing its dress and grooming codes, usually attempts to expel students until such time as the student complies with the school code. If these regulations or the administration of them impairs any constitutional rights of a student, equitable relief, in the form of an injunction, is available.[39]

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[36] *Id.*

[37] *See* Breen v. Kahl, 296 F. Supp. 702 (D. Wis. 1969).

[38] Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Rock Island, and Pacific R.R. Co., 393 U.S. 129, 143 (1968): ". . . statutes violate the Due Process Clause because they are unduly oppressive and impose costs on the regulated industry that exceed the public benefits of the regulation."

[39] Lester v. Parker, 235 F.2d 787 (9th Cir. 1956):

Neither the school board nor school officials can claim exemption from an injunction either because the board is incorporated by the state and given certain powers by the state[40] or because the official claims he is acting only in his official capacity.[41]

An injunction can be granted where a person's constitutional rights are infringed upon[42] or where a person's civil rights[43] are violated under the Civil Rights Act.[44] The injunction as a remedy is effective in that it permits the student to resume his educational activities and enjoins further action against the student by the school in enforcing its dress and grooming code.

The problem with injunctive relief is that the school officials can deprive a student of the school facilities and, by using various delaying tactics, a student might be forced to comply in order to graduate or to advance his class standing. The school officials feel relatively safe, since even if an injunction issues, they, personally, are not harmed. To solve this problem there are two other possible remedies available: (1) fines imposed by the Civil Rights Act, and (2) tort damages.

The student does not have to show diversity of citizenship nor the minimum amount in controversy to give federal courts jurisdiction of a cause of action asserted under the Civil Rights Act.[45] This solves the students' most important problems since damages are hard to assess and the students and the school officials are usually citizens of the same state.

The Civil Rights Act establishes a basis for possible penalties.[46] To be covered by this section of the Act one must show that the defendant was

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"Courts have fundamental power and duty to protect individual rights against unlawful and unauthorized administrative power by injunction, requiring affirmative action, particularly where the right is a Constitutional one."

[40] Board of Supervisors of La. State Univ. v. Fleming, 265 F.2d 736 (5th Cir. 1959).

[41] *See*, Baltimore Transit Co. v. Vlynn, 50 F. Supp. 382 (D. Md. 1943).

[42] Adams v. City of Park Ridge, 293 F.2d 585 (7th Cir .1961):
"Actions for injunctions . . . could be maintained . . . against alleged invasions of their Federal Constitutional rights under due process and equal protection clauses of the 14th Amendment . . ."

[43] Clemons v. Board of Eduction of Hillsboro, 228 F.2d 853 (6th Cir. 1965).

[44] 28 U.S. C.§ 1343 (1958):
The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
(3) To redress the deprivation, under color of any State law . . . [or] regulation. . . , of any right, privilege, or immunity secured by the Constitution of the United States . . . providing for equal rights of citizens. . . .
(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, . . .

[45] Ortega v. Ragen, 216 F.2d 561 (7th Cir. 1954).

[46] 18 U.S.C. 242 (1964):
Whoever, under color of any law . . . [or] regulation . . . willfully subjects, or causes to be subjected, any inhabitant of any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States . . . shall be fined not more than $1000 or imprisoned not more than one year or both.

acting under color of state law. This is easily shown since school officials, as agents of the state, are acting under the authority of the state. From the discussion of rights above, it is apparent that the student should have little trouble establishing that he was deprived of one or more of his first amendment rights of symbolic speech, right of privacy, fourteenth amendment rights to be free from individual discrimination, and the rights of a taxpayer to use facilities he was privileged to use.

Finally, a litigant, to be successful, must show the willfulness of the action. The term willfulness usually not only implies a conscious purpose to do a wrong but also a specific intent to deprive a person of a federal right.[47] This may be difficult for a plaintiff student to prove. However, the student could allege that the school was aware of his federally protected rights and yet it still deprived him of those rights with full knowledge of the consequences. This would impute intent on the part of the school officials and even a defense of acting in good faith would not overcome this.[48] The proof of willfulness, however, is the weakest part of a student's claim. The court will probably want more than a mere declaration that an act was unconstitutional and evidence that a school official has participated in that act.

This leaves what is in all probability the most effective remedy, a tort action for damages under the Civil Rights Act,[49] in addition to injunctive relief. It has long been established that a deprivation of civil rights[50] entitles a person to a civil action sounding in tort.

The two criteria necessary to subject a defendant to tort liability under the Civil Rights Act are: (1) the act was done under the color of state law, and (2) such conduct subjected the plaintiff to the deprivation of his rights secured by the Constitution.[51] The school officials, as previously indicated, are agents of the state and, therefore, acting under color of state law when promulgating and enforcing dress codes. The deprivation of rights can be shown by the infringement upon first amendment rights, fourteenth amendment rights to be free from discrimination, the right of privacy, and the right of the taxpayer to use facilities which he has paid for. However, the extremely difficult task of proving damages must still be met. To show this, one must prove that the deprivation of the student's

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[47] Pullen v. United States, 164 F.2d 756 (5th Cir. 1947).

[48] *See* United States v. Buntin, 10 F. 730 (S. D. Ohio 1882).

[49] 42 U.S.C. 1983 (1964):

> Every person who, under color of statute . . . [or] regulation . . . of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity or other proper proceedings for redress.

[50] Antelope v. George, 211 F. Supp. 657 (D. Idaho 1962).

[51] Marshall v. Sawyer, 301 F.2d 639 (9th Cir. 1965).

right to attend school and wear his hair long caused some pecuniary damage.

Various attempts have been made to show certain intangible injuries such as mental suffering,[52] and subjective pain and humiliation.[53] While it is hard to affix a price tag to these intangibles, damages have frequently been awarded for them. Other possible sources for ascertaining damages are:

1. Cost of a substitute education.
2. Loss by taxpayer of his right to use public facilities.
3. Compensation for lost work (if long hair was a necessary part of an entertainment act).

Once these damages have been shown, a plaintiff may ask for punitive damages.[54] Since in most cases the general or special damages might be small, the ability to ask for and receive exemplary and punitive damages can be a vital deterrent to capricious behavior on the part of school officials. Once school officials are aware that fines or tort damages are being awarded, they will be less likely to be arbitrary in formulating school dress and grooming codes and more apprehensive about depriving a student of his basic rights.

IV. CONCLUSION

As a possible long-range alternative, schools should give some thought to acting less like a benevolent dictatorship and more like a democracy. By guaranteeing students their right of due process in formulating regulations, such as the dress and grooming codes, most of the constitutional objections raised above could be overcome.

The trend is definitely toward greater individual rights for public school students. The accent in today's society is on youth. In a few short years the youth of this country will have tremendous influence in the political arena. The youth of today, with its heavy responsibility, must accomplish more, with less experience than their parents had. Therefore, they must be free to discuss old ideas, generate new ones, and create genuine controversy in the hope of establishing new goals.

Of all of the institutions within our society, the school should be the place where new ideas are formulated and where divergent views can be brought together and discussed. The school should be a melting pot for different ideologies, not a place to standardize every response or to stifle new ideas.

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[52] Antelope v. George, 211 F. Supp. 657 (D. Idaho 1962).

[53] Rhoads v. Horvat, 270 F. Supp. 307 (D. Colo. 1967).

[54] Antelope v. George, 211 F. Supp. 657 (D. Idaho 1962): "Action for damages under the Civil Rights Act sounds in tort and is a proper action for the award of exemplary or punitive damages.

Most of our institutions are undergoing a tremendous change in order to keep pace with the times. It is about time our most archaic institution, the public school system, finally develops to its true potential.

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