

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 2320

INTRODUCER: Senator Siplin

SUBJECT: School Dress Code

DATE: April 8, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	ED	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires district school boards to expand provisions within their adopted code of student conduct to include student responsibilities for appropriate dress. Specifically, a district school board must prohibit a student from wearing clothing that exposes underwear or body parts in an indecent manner or in a manner that disrupts the orderly learning environment. A student who fails to comply would be subject to disciplinary actions, which would increase in severity with each additional infraction.

Students who violate the expanded code of student conduct and accompanying dress code policies are ineligible to participate in extracurricular activities.

This bill amends sections 1006.07 and 1006.15 of the Florida Statutes.

II. Present Situation:

Code of Student Conduct

District school boards are required to adopt a code of student conduct for elementary and secondary schools and distribute the code to all teachers, school personnel, students, and parents at the beginning of the school year. A school district's code of student conduct must include: an explanation of student rights and responsibilities with regard to attendance; respect for persons and property; knowledge, observation, and consequences of failing to abide by the rules of conduct; the right to learn, free speech, assembly, and privacy; and participation in school

programs and activities. In addition, the code must include information on the specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, and expulsion.¹

District school boards may impose reasonable restrictions on student dress, including the requirement of school uniforms, if the requirements are necessary for the safety or welfare of the student body or school personnel.² Although s. 1006.07, F.S., does not explicitly reference a standard of student dress, it requires each district school board to provide for the control of students and to preserve the health, safety, and welfare of students. Prohibitions on the exposure of undergarments are not specifically referenced in the school code.

The exposure of underwear, also known as “sagging,” allegedly originated in jails, where inmates are denied belts for security reasons.³ There appears to be a growing number of cities that are banning sagging.⁴ Several Florida school districts have, in fact, adopted policies that establish specific standards for dress and grooming for public school students.⁵ For example, existing policy under the School Board of Orange County provides that clothes must be worn as they are designed with pants secured at the waist and no underwear exposed.⁶ Moreover, individual schools in Orange County are encouraged to extend their own standards to meet the unique needs of their school community.

Eligibility to Participate in Extracurricular Activities

Section 1006.15, F.S., provides standards for student participation in interscholastic extracurricular activities. To participate in interscholastic extracurricular activities, a public school student must:

- Maintain a grade point average (GPA) of 2.0 or above on a 4.0 scale in the previous semester or in the courses required in s. 1003.43(1), F.S.;
- Meet the requirements of an academic performance contract among the student, the district school board, the appropriate governing association, and the student’s parents if the student’s cumulative GPA falls below 2.0, or its equivalent, on a 4.0 scale in the courses required by s. 1003.43(1), F.S.;
- Have a cumulative GPA of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1003.43(1), F.S., during the student’s junior or senior year; and

¹ s. 1006.07(2), F.S.

² s. 1001.43(1)(b), F.S.

³ <http://www.buzzle.com/articles/sagging-pants-history.html>

⁴ Opa-Locka, Florida, enacted a sagging ban ordinance on October 24, 2007, in schools, parks, and city-owned property. *See* http://www.floridatrend.com/print_article.asp?aID=48655. The Atlanta Board of Education has banned sagging in all of the system’s public schools. *See* <http://blogs.bet.com/news/newsyoushouldknow/atlanta-cracks-down-on-low-riding-jeans/>.

⁵ Duval County Public Schools’ dress code includes a prohibition on the exposure of underwear. *See* <http://www.duvalschools.org/static/students/codeofconduct/codeofappearance.asp>. Santa Rosa County School District’s code of student conduct prohibits the wearing of clothing that reveals undergarments. *See* <http://www.santarosa.k12.fl.us/files/csc.pdf>.

⁶ Orange County Public Schools, Code of Student Conduct (2010). *See* <https://www.ocps.net/SiteCollectionDocuments/Docs%20Continually%20Updated/Code%20of%20Conduct.pdf> at pages 5-6.

- Maintain satisfactory conduct.⁷

District school boards may establish additional requirements for participation in interscholastic extracurricular activities, and students must also meet those requirements.

III. Effect of Proposed Changes:

The bill requires district school boards to expand provisions within their adopted code of student conduct to include student responsibilities for appropriate dress. Specifically, a district school board must prohibit a student from wearing clothing that exposes underwear or body parts in an indecent or vulgar manner or in a manner that disrupts the orderly learning environment. A student who fails to comply would be subject to disciplinary actions which would increase in severity with each additional infraction.

The bill does not define indecent or vulgar. Accordingly, the school district would need to define those terms in its code of student conduct. As a result, implementation of the revised code of conduct may vary by district. Additionally, the indecency requirement may have the unintended effect of repealing several school district policies on the prohibition of the exposure of underwear, as these policies may not be tied to establishing indecency as predicate for the prohibition. This unintended effect may be cured by the bill's reference to the disruption of the orderly learning environment.

Additionally, the bill requires the new dress code to apply to students on the school grounds during the regular school day. The prohibition does not appear to apply to after-school programs and events that take place on school grounds, school-sanctioned field trips, or school bus stops. It is unclear if the prohibition extends to transportation on school buses.

Under the bill, a student who fails to comply with these provisions would be subject to disciplinary action as follows:

- First Offense—A verbal warning and a call to the parent or guardian;
- Second Offense—Student ineligibility to participate in extracurricular activities for no more than five days and a meeting between the principal and the student's parent or guardian; and
- Third Offense— In-school suspension for the student, not to exceed three days, and ineligibility to participate in extracurricular activities for up to thirty days.⁸ Also, the principal is required to call the parent or guardian and send a written letter regarding the in-school suspension.

The bill also amends statutory provisions for student eligibility to participate in extracurricular activities. In addition to current eligibility requirements, a student must comply with the revised dress code.

⁷ If a student is convicted of, or is found to have committed, a felony or a delinquent act which would have been a felony if committed by an adult, the student's participation in interscholastic extracurricular activities is contingent upon district school board policy.

⁸ Section 1006.09(1)(b), F.S., provides that a principal may suspend a student only in accordance with district school board rules; therefore, these rules may need to be revised to meet the requirements of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

First Amendment

The bill may potentially implicate First Amendment concerns. Courts have long held that students do not lose their constitutional right to freedom of speech or expression at the schoolhouse gate.⁹ However, courts have also repeatedly affirmed the authority of the states and school districts to prescribe and control conduct in schools.¹⁰ Mere regulation of clothing or dress is not constitutionally problematic. Rather, the court will review the restriction in the context of whether the policy interferes with a constitutionally protected political viewpoint. Therefore, at different points in history, the court has upheld on First Amendment grounds the ability of individuals to wear armbands to school to protest the Vietnam War,¹¹ armbands signifying allegiance to a Nazi association¹² and hoods and robes indicating membership in the Ku Klux Klan.¹³ Likewise, courts have routinely denied the extension of First Amendment protections to instances where a policy restricts dress that cannot be shown to be political speech. For example, in spite of a student's assertions that sagging pants constituted the style of "hip hop", and the greater African-American group identity, the court held that this did not rise to the level of speech, thereby precipitating analysis of political content.¹⁴ Accordingly, courts must analyze the speech or expressive conduct on a case-by-case basis.

⁹ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).

¹⁰ *Id.* at 507.

¹¹ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

¹² *Collin v. Smith*, 578 F.2d 1197, 1201 (7th Cir. COA 1978).

¹³ *Hernandez v. Superintendent, Fredericksburg-Rappahannock Joint Security Center*, 800 F.Supp. 1344 (U.S.D.C. VA. 1992).

¹⁴ *Bivens v. Albuquerque Public Schools*, 899 F.Supp. 556, 558, 561 (U.S.D.C. N.M. 1995); *See also Blau v. Fort Thomas Public School District*, 401 F.3d 381 (6th Cir. 2005) (upholding dress code restriction on baggy or tight clothing, among other things); *Brandt v. Board of Educ. of City of Chicago*, 480 F.3d 460 (7th Cir. 2007) (upholding dress code restriction on "gifted" T-shirt); *Canady v. Bossier Parish School Bd.*, 240 F.3d 437 (5th Cir. 2001) (upholding mandatory uniform policy); *Bar-Navon v. School Board of Brevard County, Florida*, 2007 WL 3284322, (M.D. Fla. 2007) (granting motion for summary judgment for the school district on dress code policy that provides that pierced jewelry is limited to the ear).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.