

**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.)

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 2320

INTRODUCER: Senator Siplin

SUBJECT: Code of Student Conduct

DATE: April 16, 2010

REVISED: 04/19/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carrouth</u>	<u>Matthews</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Daniell</u>	<u>Maclure</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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**I. Summary:**

This bill requires district school boards to expand provisions within their adopted code of student conduct to include student responsibilities for appropriate dress. Specifically, the code of conduct 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.

This bill amends sections 1006.07 and 1006.15, Florida Statutes. The bill reenacts section 1002.23, 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 to distribute the code to all teachers, school personnel, students, and parents at the beginning of the school year.<sup>1</sup> A school district's code of student conduct must include, among other things: 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

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<sup>1</sup> Section 1006.07(2), F.S.

information on the specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, and expulsion.<sup>2</sup>

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.<sup>3</sup> 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 statute.

The exposure of underwear, also known as “sagging,” allegedly originated in prisons, where inmates are denied belts for security reasons.<sup>4</sup> There appears to be a growing number of cities that are banning sagging.<sup>5</sup> Several Florida school districts have adopted policies that establish specific standards for dress and grooming for public school students.<sup>6</sup> For example, the existing policy of 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.<sup>7</sup> 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 and intrascholastic 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.;<sup>8</sup>
- 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.;

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<sup>2</sup> *Id.*

<sup>3</sup> Section 1001.43(1)(b), F.S.

<sup>4</sup> Abhijit Naik, *Sagging Pants History* (Jan. 19, 2010), <http://www.buzzle.com/articles/sagging-pants-history.html> (last visited Apr. 15, 2010).

<sup>5</sup> Opa-Locka, Florida, enacted a sagging ban ordinance on October 24, 2007, in city parks and other city-owned property. Art Levy, *Can State Legally Outlaw Saggy Pants?*, FLORIDA TREND (Apr. 1, 2008), available at [http://www.floridatrend.com/print\\_article.asp?aID=48655](http://www.floridatrend.com/print_article.asp?aID=48655) (last visited Apr. 15, 2010). The Atlanta Board of Education has banned sagging in all of the system’s public schools. *Atlanta Cracks Down on Low-riding Jeans* (Dec. 11, 2007), <http://blogs.bet.com/news/newsyoushouldknow/atlanta-cracks-down-on-low-riding-jeans/> (last visited Apr. 15, 2010).

<sup>6</sup> The Duval County Public Schools’ dress code includes a prohibition on the exposure of underwear. Duval County Public Schools, *Code of Appearance*, <http://www.duvalschools.org/static/students/codeofconduct/codeofappearance.asp> (last visited Apr. 15, 2010). Santa Rosa County School District’s code of student conduct prohibits the wearing of clothing that reveals undergarments. Santa Rosa County School District, *Code of Student Conduct* (Aug. 24, 2009), available at <http://www.santarosa.k12.fl.us/files/csc.pdf> (last visited Apr. 15, 2010).

<sup>7</sup> Orange County Public Schools, *Code of Student Conduct*, 5 (2009-2010), available at <https://www.ocps.net/SiteCollectionDocuments/Docs%20Continually%20Updated/Code%20of%20Conduct.pdf> (last visited Apr. 15, 2010).

<sup>8</sup> Section 1003.43, F.S., specifies the general requirements for high school graduation.

- 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
- Maintain satisfactory conduct.<sup>9</sup>

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:

This bill requires district school boards to expand provisions within their adopted code of student conduct to include student responsibilities for appropriate dress. Specifically, the code of conduct 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 while on the grounds of a public school during the school day. 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, events that take place on school grounds outside of normal school hours, 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 the principal must call the student's 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 30 days.<sup>10</sup> Also, the principal is required to call the parent or guardian and send a written letter regarding the in-school suspension and ineligibility to participate in extracurricular activities.

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<sup>9</sup> If a student is convicted of, or is found to have committed, a felony or a delinquent act that 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. Section 1006.15(3)(a), F.S.

<sup>10</sup> 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.

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.

The bill provides an effective date of July 1, 2010.

#### **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:**

This bill requires a school board to include in its code of student conduct a prohibition against a student wearing clothing that exposes underwear or body parts in an indecent manner or that disrupts the orderly learning environment. Accordingly, this bill may implicate the Florida Constitution and the First Amendment of the United States Constitution. The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Additionally, article I, section 4 of the Florida Constitution provides, in part, that “[n]o law shall be passed to restrain or abridge the liberty of speech or of the press.”

Although the First Amendment literally forbids the abridgment of speech, its protection has also been recognized as reaching certain conduct that communicates an idea.<sup>11</sup> Courts have long held that students do not lose their constitutional right to freedom of speech or expression at the schoolhouse gate.<sup>12</sup> However, courts have also repeatedly affirmed the authority of the states and school districts to prescribe and control conduct in schools.<sup>13</sup>

“The test for determining whether conduct qualifies as protected ‘speech’ is whether ‘[a]n intent to convey a particularized message was present, and [whether] the likelihood was

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<sup>11</sup> *Bivens v. Albuquerque Public Schools*, 899 F.Supp. 556, 559 (D. N.M. 1995).

<sup>12</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).

<sup>13</sup> *Id.* at 507.

great that the message would be understood by those who viewed it.”<sup>14</sup> In other words, if the conduct in question is not communicative or expressive, then no First Amendment protection attaches.<sup>15</sup> Generally, the mere regulation of clothing or dress is not constitutionally problematic.<sup>16</sup> Rather, a 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, courts have upheld on First Amendment grounds the ability of individuals to wear armbands to protest the Vietnam War,<sup>17</sup> armbands signifying allegiance to a Nazi association,<sup>18</sup> and hoods and robes indicating membership in the Ku Klux Klan.<sup>19</sup>

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.<sup>20</sup> 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, a United States District Court held that this did not rise to the level of constitutionally protected speech.<sup>21</sup> However, another court has stated that:

Although this sort of expression may not convey a particularized message to warrant First Amendment protection in every instance, we cannot declare that expression of one’s identity and affiliation to unique social groups through choice of clothing will never amount to protected speech.<sup>22</sup>

Accordingly, courts must analyze the speech or expressive conduct on a case-by-case basis.

In relation to this bill, not only must a student be trying to convey a particular message by “sagging,” but there must also be a great likelihood that the message will be understood by those who view it. Although a student may make the argument that “sagging” represents a fashion statement by particular minority groups, it is unlikely that the message will be generally understood. This was the argument made in *Bivens*, which the court found persuasive:

<sup>14</sup> *Hernandez v. Superintendent, Fredericksburg-Rapahannock Joint Security Ctr.*, 800 F.Supp. 1344, 1349 (E.D. Va. 1992) (quoting *Texas v. Johnson*, 491 U.S. 397, 404 (1989)).

<sup>15</sup> *Id.* at 1350.

<sup>16</sup> See *Bivens*, 899 F.Supp. at 560; *Brandt v. Bd. of Education of City of Chicago*, 480 F.3d 460, 465 (7th Cir. 2007).

<sup>17</sup> *Tinker*, 393 U.S. at 514.

<sup>18</sup> *Collin v. Smith*, 578 F.2d 1197 (7th Cir. 1978).

<sup>19</sup> See *Hernandez*, 800 F.Supp. at 1351. The court in *Hernandez* found that, in this particular case, the petitioner’s mask-wearing did not constitute expressive conduct entitled to First Amendment protection; however, the court suggested that because the wearing of the robe and hood symbolized the Ku Klux Klan’s beliefs, it is protected.

<sup>20</sup> See *Bivens*, 899 F.Supp. at 561 (holding that wearing sagging pants was not “speech” for First Amendment purposes); *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*, 480 F.3d at 468 (upholding dress code restriction on “gifted” T-shirt); *Canady v. Bossier Parish School Bd.*, 240 F.3d 437 (5th Cir. 2001) (upholding mandatory school uniforms); *Bar-Navon v. School Board of Brevard County, Florida*, 2007 WL 3284322, \*10 (M.D. Fla. 2007) (finding that school district’s dress code that limited pierced jewelry to the ears was facially constitutional).

<sup>21</sup> *Bivens*, 899 F.Supp. at 561.

<sup>22</sup> *Canady*, 240 F.3d at 441.

Plaintiff's subjective message supposedly conveyed by wearing sagging pants is by no means apparent to those who view it. For example, sagging is understood by some as associated with street gang activity and as a sign of gang affiliation. Sagging pants and other gang style attire is also understood by some as would-be gang affiliation, because it is often adopted by "wannabes," . . . Sagging is not necessarily associated with a single race or cultural group, and sagging is seen by some merely as a fashion trend followed by many adolescents all over the United States.<sup>23</sup>

Accordingly, if the bill is challenged on First Amendment grounds, it may pass constitutional muster.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>23</sup> *Bivens*, 899 F.Supp. at 561.