

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 Judiciary Committee

BILL: SB 228

INTRODUCER: Senator Siplin

SUBJECT: Code of Student Conduct

DATE: March 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Matthews</u>	<u>ED</u>	Favorable
2.	<u>O'Connor</u>	<u>Maclure</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires student conduct codes to include provisions on student dress and style of wearing clothing. District school boards are specifically required to adopt a dress code policy that prohibits students from wearing clothing in a revealing manner or in a way that is disruptive to learning. This bill provides sanctions for violators, which range from a verbal warning and parental notice to in-school suspension.

To maintain eligibility to participate in interscholastic extracurricular activities, students are required to comply with the district school board student conduct code, including the section on dress code policy.

This bill substantially amends sections 1006.07 and 1006.15, and reenacts section 1002.23(7), Florida Statutes.

II. Present Situation:

As part of their duties to maintain student discipline and preserve school safety, district school boards are required to adopt student conduct codes for public schools, from elementary through high school, and distribute the codes annually to teachers, school employees, students and parents.¹ Certain material is required for inclusion in each code, such as:

- Consistent policies and specific grounds for disciplinary action, including school suspensions, expulsions, and other responses to certain substance-related offenses;

¹ Section 1006.07(2), F.S.

- The process to be followed for discipline, including corporal punishment;
- Student rights and responsibilities; and
- Notice of various infractions and penalties.²

In accordance with the supplemental powers and duties of district school boards, permissive authority is provided to school boards to require students to wear uniforms, or adopt other dress-related requirements, if considered necessary to protect the safety or welfare of the student body or school employees.³

Section 1006.15, F.S., addresses student criteria for participation in extracurricular activities. To maintain participation eligibility, this provision requires certain factors to be met, such as a minimum grade point average, execution of an academic performance contract, and compliance with certain conduct requirements.⁴

The exposure of underwear, also known as “sagging,” allegedly originated in jails, where inmates are denied belts for security reasons.⁵ There appear to be a growing number of cities that have banned sagging.⁶ Several Florida school districts have, in fact, adopted policies that establish specific standards for dress and grooming for public school students.⁷

An example of a dress code policy in a student conduct code is that adopted by the School Board of Orange County, which provides, in part:

Clothes shall be worn as they are designed – suspenders over the shoulders, pants secured at the waist, belts buckled, no underwear as outerwear, no underwear exposed....Clothing with holes, tears, or inappropriate patches will not be allowed if considered obscene....Bare midriffs and bare sides should not show even when arms are extended above the head.

A violation of the code based on dress is considered to be a Level I, or least serious, offense. Penalties range from parental contact and a verbal reprimand to a withdrawal of privileges and detention. Repeat offenders are reclassified to Level II, which authorizes in-school suspension.⁸

² *Id.*

³ Section 1001.43(1)(b), F.S.

⁴ Section 1006.15(3)(a), F.S.

⁵ <http://www.buzzle.com/articles/sagging-pants-history.html>.

⁶ 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/>.

⁷ 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>.

⁸ The Orange County School District code is available online at:

https://www.ocps.net/Documents/CodeofStudentConductandParentGuide_2010-11.pdf.

III. Effect of Proposed Changes:

This bill requires district school boards to include a student dress policy in student conduct codes. It also requires language to be included in the policy which prohibits students from wearing clothing to school during the regular school day that indecently or in a vulgar manner exposes underwear or body parts or that is disruptive to an orderly learning environment.

Schools will then be required to monitor this component of the policy and impose sanctions for students who violate the policy. The extent of involvement required by the school is contingent on how many times a student has committed an offense as follows:

- For first offenders, the school is required to give the student a verbal warning, and the principal must call the student's parent or guardian;
- For second offenders, the student is ineligible to participate in extracurricular activities for up to 5 days, and the principal must meet with the parent or guardian;
- For third or subsequent offenders, the extracurricular activity exclusion is extended to up to 30 days; the school must place the student in in-school suspension for up to 3 days; and the principal must both call and send written notice to a parent or guardian.

In addition, it is expected that the school will incur related recordkeeping duties, and provide some level of training to school personnel regarding observation of student dress and the process for enforcement.

Finally, a section of the Family and School Partnership for Student Achievement Act is republished to indicate that its reference to the student code of conduct refers to the updated code as amended by the bill.

This bill provides an effective date of July 1, 2011.

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 association,¹² 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 in which a policy restricts dress that cannot be shown to be political speech.

Specifically on point is a case that involved a school prohibition on the wearing of pants in a manner that is known as “sagging.” In spite of the 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 In fact, the court noted that the wearing of a certain clothing style is generally not considered to be expressive conduct.¹⁵

Also, since *Tinker v. Des Moines Independent Community School District*, even in the presence of political expression, some courts have recognized as valid a school’s restriction on speech in furtherance of education interests. In so doing, the court has reiterated that First Amendment rights are not automatically coextensive with the rights of adults in other environments, and that even if the government could not censor the same speech outside of the school setting, “A school need not tolerate student speech that is inconsistent with its basic educational mission.”¹⁶ In another case, the U.S. Supreme Court upheld a school’s disciplinary action of sanctioning speech that contained language considered vulgar and obscene, based on a rule that prohibited “conduct that substantially interfered with the educational process, including the use of obscene, profane language or gestures.”¹⁷

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

¹⁰ *Id.* at 507.

¹¹ *Tinker*, 393 U.S. 503.

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

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

¹⁴ *Bivens By and Through Green 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).

¹⁵ *Bivens*, *supra* note 14, at 560.

¹⁶ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 266 (1988).

¹⁷ *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986).

Therefore, it appears that precedential support exists for the prohibition of certain clothing, or the manner in which clothing is worn, based on an assertion that it is otherwise disruptive to learning. Still, without knowing the specific language that district school boards would draft should this bill become law, it is unclear whether a potential challenge could result on the premise that the actual provision would be unconstitutionally vague or overbroad.¹⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

District school boards may incur a slight cost from adding a student dress policy to existing codes on student conduct. Schools may incur an indeterminate impact in monitoring and enforcing the student dress component of the conduct code.

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.

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

¹⁸ Laws that regulate speech can be subject to a facial constitutional challenge if they are vague or overbroad. A law is unconstitutionally vague if a person “of common intelligence must necessarily guess at its meaning.” *Connolly v. General Construction Co.*, 269 U.S. 385, 391 (1926). A law is overbroad if it substantially threatens protected speech. *See Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569 (1987).