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The rights of students in public high schools

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AN ABSTRACT OF THE THESIS OF Keith James Lindahl for the Master of Science
in Teaching presented May 14, 1973.

Title: The Rights of Students in Public High Schools

APPROVED BY MEMBERS OF THE THESIS COMMITTEE:

Charles M. White, Chairman

Forbes Williams

Bernhard Fedde

The United States Bill of Rights guarantees American citizens personal freedom and at the same time places limitations on the actions of the various levels of government. Questions arise in regards to the age at which citizens are guaranteed rights and freedoms under the Bill of Rights. The young American citizen, in a public school, has not always enjoyed the exercise of the rights of American citizenship. This paper examines the current status of the rights of public high school students, specifically in the State of Oregon.

First to determine just which rights do apply in Oregon High Schools, court decisions, primarily from federal courts, were examined in order to

extract the current judicial definitions of civil rights and liberties. As a result of this research, [it was found that high school students are guaranteed the First Amendment rights of free expression and the Fourteenth Amendment privileges of due process or fair procedures in civil actions involving the school administration.] The [Fourth Amendment has been the basis of numerous cases dealing with locker searches and seizures } but the { courts have held that the guarantees of the Fourth Amendment do not apply in light of the special circumstances of the school environment }]

Secondly, the status of these student rights in the Oregon public school systems was examined by studying the state guidelines for student conduct codes and individual district codes from the 1971-72 and 1972-73 school years. It was concluded that as of 1972-73, most of Oregon's high school students are guaranteed the rights that have been judicially defined as applying to high school students; this guarantee, at the local school district level, came about as a result of new Oregon Revised Statutes and new Oregon Board of Education policy.

Third, the attitudes of high school students and principals towards student rights were polled and tallied. The results show that though both groups are not aware of all current judicial definitions, the students are more in accord with the courts' decisions and current legal interpretations than are the principals.

As a result, it is concluded that young Oregonians in public high schools are guaranteed rights under the United States Constitution; and, with the advent of detailed rights and responsibilities codes in the local school districts, students are now allowed to exercise their rights in most Oregon high schools. The majority of students are aware of their rights,

thus providing a situation in which students can function socially and politically as much as they would if they were out of high school.]

THE RIGHTS OF STUDENTS IN PUBLIC
HIGH SCHOOLS

by

KEITH JAMES LINDAHL

A thesis submitted in partial fulfillment of the
requirements for the degree of

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TO THE OFFICE OF GRADUATE STUDIES AND RESEARCH:

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CHAPTER I

INTRODUCTION

The American Republic was founded upon the belief, as expressed in the Declaration of Independence, that all men are granted by their Creator certain unalienable rights, among which are life, liberty, and the pursuit of happiness. In fact, the purpose of instituting government, according to the Declaration, is to secure these rights. This same philosophy, expressed over ten years later, resulted in the addition of a bill of rights to the new United States Constitution. During the period immediately following the Constitutional Convention of 1787, a heated debate over the new Constitution grew throughout the newly independent states; this debate centered primarily on the potential power of the new federal government over free men. In order to succeed in having the new document ratified, the backers of the Constitution promised to add a bill of rights once the new government was formed. This bill of rights would place limitations on the new government by specifically guaranteeing certain freedoms and rights. The Bill of Rights consists of the first ten amendments to the Constitution; which have been applied to state governmental actions by the Fourteenth Amendment. Before this nationalization of the first ten amendments, they applied only to the federal government.

Being as the United States Constitution is the supreme law of

the land, the national Bill of Rights supersedes all state constitutional or statutory laws that may conflict with the national constitutional law. Therefore, the guarantee of American liberty today is the United States Bill of Rights.

This Bill of Rights makes no reference to the age citizens must be before they can benefit from those guarantees of personal liberty. Numerous court decisions have been clarifying just whom those rights apply to and in what situations.

Over the last decade, American legislative and judicial institutions have been involved in the clarification of rights of students in public high schools, and under what circumstances those rights can be abridged by public school officials. This paper shall examine the Bill of Rights in the public high school and determine which rights and freedoms apply and which do not apply, due to the special circumstances of the school environment.

As mentioned previously, the United States was founded on the principles of individual liberty and the history of the United States of America is a history of expanding rights and freedoms. Gradually, the guarantees of freedom were applied to freed slaves, women, and persons under the age of majority.

In examining the results of this expanding definition of civil rights and liberties on minors, most attention is focused on the public school system where young Americans first come into almost continuous contact with the state. This paper shall include extensive information on student rights as defined in court decisions, as defined by Oregon State law, and finally the attitudes of those

parties in the public high school. Current status of student rights will be delineated and future trends will be forecast in the ensuing chapters.

CHAPTER II

THE JUDICIAL CLARIFICATION OF STUDENT RIGHTS

In December, 1791, the first ten amendments to the United States Constitution were ratified, thus establishing guarantees of specific freedoms and rights for American citizens. Today most of these freedoms and rights apply to the group of American citizens that are students in public high schools. Traditionally, high school students were not allowed to exercise their freedoms, nor in all cases were they given their rights, even though their rights were guaranteed in the federal Bill of Rights. In fulfilling their duty to maintain order, school officials would frequently abridge the freedoms and rights of the students in the interest of protecting the students, and of disciplining them. In legal terminology, the doctrine that gave school authorities this power is labeled in loco parentis. This doctrine that placed the school in place of the parent is declining rapidly throughout America, and, as a result, students are given an opportunity to exercise more fully their constitutionally guaranteed privileges. Young Americans are also given more opportunity to exercise their rights because of greater freedom in family life, due to the decline of arbitrary parental control of children. Perhaps this development is an influencing factor in the decline of in loco parentis as a doctrine of school operation. Other elements include the changing attitudes of youth

towards discipline policies and the changing attitudes of educators regarding rules and regulations governing student conduct. Even society as a whole has adopted a new belief about young Americans: Today's young are better educated and more responsible than were yesterday's youth. Young people are given more influence in formulating policies which affect them. Many public agencies now have teenagers help in decision making or serve in an advisory capacity. Schools have also given students the opportunity to express themselves on matters from course content to school lunches. These new beliefs and practices have resulted in more responsibility for high school students, and with the responsibility have come new use of rights. Some high schools have pioneered in allowing students to exercise their rights; others have resisted the societal changes and faced court action. These court cases have resulted in changes in the policies of many school districts throughout the United States. In some communities, the results of court decisions followed societal attitudes; in other areas the court decisions opened up new areas of freedom for high school students.

As first adopted, the Bill of Rights were applicable only to statutes that were enacted by the Congress. However, most state constitutions also contained bills of rights and therefore it was believed that a bill of rights in the United States Constitution need only apply to the central government. This view, plus the attitude that dangers to liberty were more likely to arise from a strong central government, resulted in the national Bill of Rights designed to protect citizens from the legislative, executive,

and judicial branches of the federal government.

The adoption of the Fourteenth Amendment in 1868 meant that some of the guarantees contained in the Bill of Rights were to be considered constraints on the state legislatures and executives, as well as the Congress. The constraints applied to all states and their agencies, school districts included. This application was not immediate, nor consistent, despite the definite wording of the Fourteenth Amendment that holds:

No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . .¹

The Courts first viewed the Amendment as applying to former slaves and only very gradually was the Amendment seen as a protection against states for all citizens. Two of the major cases in which the Fourteenth Amendment applied the Bill of Rights to the states are, Gitlow v. New York (1925) which held that First Amendment freedoms are protected by the Due Process Clause of the Fourteenth Amendment against impairment by states; and Powell v. Alabama (1932) which applied Sixth Amendment rights to state criminal cases. These cases were truly significant for the federal judiciary would now be accessible to persons whose national rights had been violated by state laws or state agents and officials. State constitutions had always been the guarantors of liberty for citizens accused by the states, but now the national constitution

¹U.S. Const. Amend. XIV, sec. 1.

overshadowed state constitutions as the guardian of civil rights and liberties.

I. FREE EXPRESSION IN THE HIGH SCHOOLS

Freedom Of Religion

An early case involving a state agency that was charged with violating the national First Amendment through the Fourteenth is Minersville School District v. Gobitis, 310 U.S. 586 (1939). This case also was an early case in the area of student rights. The contested regulation in the case required that all students of Minersville School District salute the flag of the United States. The regulation had been adopted by the School Board as an instrument to teach loyalty to America and foster patriotism in the children attending the district schools.²

The Gobitis family was of the Jehovah's Witnesses faith and believed that to salute the flag was to commit idolatry; therefore, the Gobitis children were given instructions by their parents to refrain from saluting the flag. Arguments given on behalf of Gobitis held that the First Amendment and Fourteenth Amendment to the United States Constitution granted persons, regardless of age, the right to practice religion according to the dictates of their consciences. By being forced to salute the flag the children were being forced to disobey their religious beliefs. Rather than disobey their beliefs, the Gobitis children, Lillian and William, had followed parental

²Minersville School District v. Gobitis, 310 U.S. 588 (1939).

instructions and as a result were expelled from the public school.³

This action caused financial burden for Mr. Gobitis for he had to send his children to a private school to meet the compulsory attendance law of Pennsylvania. In an effort to relieve this burden, Mr. Gobitis brought suit in federal district court seeking to enjoin the school officials from requiring the flag salute as a condition for attending Minersville School. The United States District Court agreed with the contention that religious liberty was abridged by the mandatory flag salute and enjoined the district from its continued use.

Upon appeal to the Supreme Court, the decision was reversed. Speaking for the majority of the Court, Justice Frankfurter held that the primary issue before the Court is "whether school children, like the Gobitis children, must be excused from conduct required of all the children in the promotion of national cohesion",⁴ so that they may practice absolute freedom of religion. No rights of free expression are absolute, especially when the right of free expression is in conflict with national unity and national security.⁵ Justice Frankfurter held that the flag salute was mandatory so that loyalty to America would be developed in school children. The ultimate goal of this loyalty building is the preservation of the American nation as a land of freedom. Some sacri-

³Ibid., 588.

⁴Ibid., 595.

⁵Ibid., 595.

fices must be made to achieve this goal. The freedom that enables Jehovah's Witnesses to practice their faith is guaranteed by the nation symbolized by the flag. Saluting the flag is a small price to pay in order to enjoy the freedoms guaranteed Americans.⁶

In order to preserve itself, a society may use its educational system to inculcate patriotic feelings that bind a nation together and that is what the Minersville School District is doing. As long as this practice does not infringe upon "men's right to believe as they please, to win others to their way of belief, and their right to assemble in their chosen places of worship for the devotional ceremonies of their faith" it shall be allowed.⁷

Justice Frankfurter also held that the Supreme Court could become a national school board if it settled matters of conflict that arose in school districts, rather than letting them be resolved by the democratic process in the various localities. Judicial review should be used only as a last resort in settling political conflicts.⁸

As a result of Minersville v. Gebitis, students that were of the Jehovah's Witnesses belief had to salute the American flag if they wanted to remain in the public schools of Minersville, Pennsylvania. As a result of this Supreme Court decision, school districts in other parts of the United States adopted similar

⁶ Ibid., 597.

⁷ Ibid., 600.

⁸ Ibid., 600.

regulations requiring all children to salute the American flag.

The State of West Virginia adopted a statute requiring that all public, private, and parochial schools within the state offer the following:

. . . courses of instruction in history of the United States, in civics, and in the constitutions of the United States and of the State of West Virginia, for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia.⁹

The statute also gave the power to prescribe the courses to the State Board of Education, and the duty to implement the courses was given to the local boards.

In prescribing the course of study the State Board of Education required that all public school children salute the flag of the United States of America or face the consequences of committing an act of insubordination. The penalty for insubordination was expulsion until compliance.¹⁰

As a result of the previously explained policies adopted in West Virginia, children of the Jehovah's Witnesses faith were expelled for failing to salute the flag. Once the children were out of the school, their parents were threatened with prosecution for causing delinquency. Once again a group of Jehovah's Witnesses

⁹ West Virginia State Board of Education v. Barnette, 319 U.S. 624, 526 footnote, (1943).

¹⁰ Ibid.

found it necessary to challenge the school policy in court. They first filed suit in United States District Court of West Virginia. The District Court in Barnette v. West Virginia State Board of Education enjoined the enforcement of the flag salute regulation. Because the District Court had sat as a three judge panel, the State Board of Education was able to appeal directly to the United States Supreme Court.

The Board of Education of West Virginia had based it's regulation upon the Gobitis case and also based it's arguments upon the Supreme Court's decision in Gobitis. The Jehovah's Witnesses in West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), based their arguments upon the free speech and freedom of religion clauses of the First Amendment as applied to the states through the Fourteenth Amendment. The issues were basically the same as those in the Gobitis case: School age Jehovah's Witnesses were required to salute the flag in order to stay in school. If they refused to salute, they were expelled until compliance.

In Barnette, the Court ruled for the Jehovah's Witnesses' right to be free from government coercion since their actions were not threats to national security or unity. In the decision, Justice Robert Jackson wrote:

The Fourteenth Amendment, as now applied to the states, protects the citizens against the state itself and all of its creatures - Boards of Education not excepted. These have of course important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the

individual, if we are not to strangle the free mind at its source and teach youth to discount important principles as more platitudes.

Such boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account. The action of Congress in making flag observance voluntary and respecting the conscience of the objector in a matter so vital as raising the army contrasts sharply with these local regulations in matters trivial to the welfare of the nation. There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond the reach of the Constitution.¹¹

The Supreme Court had thus applied the Bill of Rights to the actions of school boards and at the same time had declared that the free exercise of religion was of such great importance that a citizen, even one in school, could not be coerced to speak words which were against personal beliefs. Justice Jackson addressed the Court to this as follows:

To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individuals' rights to speak his own mind, left it open to public authority to compel him to utter what is not in his mind.¹²

In this manner Justice Jackson tied free speech and the free exercise of religion together as being inseparable in this case. Children of the Jehovah's Witnesses faith did not have to say something which they did not believe. The Gobitis case was overruled.

In Gobitis, Justice Frankfurter saw the flag salute as a part of national unity, as did the majority of the Court. National unity

¹¹ Ibid., 637.

¹² Ibid., 634.

is an important concern of the state and a persons expression could be restricted to guarantee unity. This view was not accepted by the majority in Barnette. In Barnette, the flag salute was seen as a trivial part of American unity and could not be considered more important than free expression. Primarily, because of these different attitudes towards national unity, the Barnette case resulted in a different decision.

Regardless of the reasoning behind Barnette, the case has proved to be a landmark case in rights of students at public schools. West Virginia v. Barnette serves as a precedent for the legal battles that occur in the 1960's involving student rights. Perhaps it was more important as a case that applied to the rights of students in the public schools than it was a victory for religious freedom, for the seed had been planted and students would be allowed to exercise more freedom and use more of their rights in the public schools of America.

True religious freedom in public schools was not guaranteed until the early sixties when the United States Supreme Court effectively disestablished state sanctioned religious exercises in all levels of public schools. The cases were highly controversial and were seen as a further move by the Warren Court to change the status quo in America.

The three cases that dealt with established religious exercises are Engel v. Vitale, 82 S. Ct. 1261 (1962), that involved a daily classroom prayer; School District of Abington Township, Pennsylvania v. Schemp, which involved a daily prayer and bible

reading; and Murray v. Curlett that also dealt with daily prayer and bible reading.

Engel v. Vitale resulted in the established New York Board of Regents prayer being labeled as an unconstitutional exercise. The prayer was originally established in 1951 by the New York Board of Regents to be used as part of daily classroom routine. The nondenominational prayer read as follows: "Almighty God, we acknowledge our dependence upon thee, and beg Thy blessings upon us, our parents, our teachers, and our Country."¹³ According to the Board of Regents, the daily prayer was a part of the students "Spiritual and Moral Training" and would be "subscribed to by all men and women of good will".¹⁴

In 1958, the New Hyde Park Board of Education instructed all teachers to have daily prayer recitals employing the Regent's prayer. It was to be recited aloud by each class at the beginning of the school day. Children who chose not to participate could remain silent or leave the room. Shortly after this policy was adopted, parents of ten students filed suit in a New York State Court. The lower court and the State Court of Appeals sustained the daily prayer and the United States Supreme Court then granted certiorari to review the decision of the state courts on the grounds that the case involved rights guaranteed by the First and Fourteenth Amendments.

¹³Engel v. Vitale, 82 S. Ct. 1261, 1262 (1962).

¹⁴Ibid., 1263.

In writing the majority opinion, Justice Hugo Black stated that the daily prayer was "wholly inconsistent with the Establishment Clause"¹⁵ of the First Amendment, since it was a religious practice prescribed by the Board of Regents, an agency of the State of New York. One of the reasons the Establishment Clause was included in the Bill of Rights was to abolish all government interference in the areas of religious expression. Justice Black explained that:

The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support, or influence the kind of prayers the American people can say - That the American people's religion must not be subjected to the pressures of government for change each time a new political administration is elected to office. Under the Amendments prohibition against government establishment of religion, as reinforced by the prohibitions of the Fourteenth Amendment, government in this country, be it state or federal is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.¹⁶

Proponents of the Regent's prayer had failed to fully understand the implication of the First Amendment for they felt by making the prayer nondenominational and voluntary, those students who chose not to participate could remain silent or leave the room thus satisfying the prohibitions of the First Amendment. By allowing objecting students to be silent or leave, the New Hyde Park School Board was satisfying the Free Exercise Clause of the First Amendment, however

¹⁵ Ibid., 1263.

¹⁶ Ibid., 1266.

the prayer still was in violation of the Establishment Clause. According to Justice Black, to violate the Establishment Clause the government need not employ any compulsion but merely enact laws establishing any religious practices. By adopting the prayer the Board of Regents and the New Hyde Park School Board had violated the Establishment Clause, thus the official school prayer was deemed unconstitutional.

Together the cases of Barnette and Engel appeared to be further guarantees of freedom of religious opinion in America's public school system, with both clauses of the First Amendment that guarantee religious freedom being employed. However, the United States Supreme Court was called upon to decide on the same issue again in 1963 in a joint case, known as School District of Abington Township, Pennsylvania v. Schemp; Murray v. Curlett, 83 S. Ct. 1560 (1963). This joint case involved the listening to Bible verse reading over the public address system, and the daily recitation of the Lord's Prayer by students at the beginning of each school day. In these two cases, again the highest court in America upheld the right of individuals to be free from government influence in their religious affairs and said the two school districts involved must stop prescribing religious practices for school children. Speaking for the majority of the Court in the case, Mr. Justice Clark emphasized that Bible reading and recitation of the Lord's Prayer are religious exercises. The lower courts also recognized this, therefore the two exercises and the laws in both the State of Pennsylvania and

the City of Baltimore, Maryland requiring the exercises are in direct violation of the Establishment Clause of the First Amendment and the Fourteenth Amendment.¹⁷

In both Engel and Abington the Court stressed that the position taken by the Court was not one of hostility towards religion but instead one of neutrality. In both decisions, the religious history of early America was briefly summarized to give examples of why the First Amendment was adopted. The founding fathers distrusted an established church and sought to prevent the development of one by including prohibitions in the First Amendment. The majority of Americans may attend churches that are Christian, but still the government can not show any preference towards Christianity, for the First Amendment took religion out of the area of political controversy and left all decisions concerning religious beliefs up to individual citizens regardless of their age.

Critics of the decisions of the Supreme Court in the two school prayer cases drew attention to what they termed hypocrisy on the part of the Supreme Court, for the Court spoke of separation of church and state in the case of schools and when it came to Court practices, allowed the Court sessions to be opened with an official prayer. In replying to this charge, Justice Black, writing in Engel, said that the "power, prestige and influence of government on young persons is great" and even if these forces be indirect, the desire of the young person is to conform rather than stand as a true in-

¹⁷School District of Abington Township, Pennsylvania v. Schemp; Murray v. Curlett, 33 S. Ct. 1560, 1572 (1963).

dividual. A Senator or Justice is not as likely to conform to majority practices because of prayers in Congress or in Court, therefore, there is a distinction.

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Despite statements made in the Court decisions defining the results, many Americans viewed the two prayer cases as being "un-American" and regarded the decisions as against the great religious heritage of the United States and its citizens. However, as a result of the two cases, the vast majority of school districts abandoned classroom prayers in compliance with the Supreme Court rulings. Most school children today are not asked to pray during class as a result of these judicial decisions. In Engel and Abington the Court stressed the separation of church and state and relied upon the Establishment Clause to strike down the religious practices in public schools. At the same time, though, the students across America were given a greater opportunity to practice freedom of religion.

Other sections of the First Amendment have not been dealt with as extensively by the Supreme Court as has religious freedom. To examine court interpretations of student rights in the areas of free speech, free press, peaceable assembly and petition, it is necessary to refer to lesser federal courts and even some state courts. Most court decisions dealing with student rights have been issued during the 1960's, thus indicating freedoms and rights of American citizenship had not been very well defined when applied

¹⁸Engel v. Vitale, 1267.

to students in public schools.

Freedom Of Speech

The Free Speech Clause of the First Amendment has been held to apply to state governments for nearly fifty years, yet school boards and school administrators have failed to clearly understand the universal guarantee of individual rights. As a result, the courts have had to intervene on numerous occasions. School boards are charged by state law with the maintenance of order and discipline in schools. Their efforts to meet this obligation have included practices not willingly accepted by all concerned parties, especially some students and parents. These individuals have felt that the school officials' actions abridge free speech and elect to challenge questionable policies in court. The courts have then had to decide how much order and discipline, and what type, is consistent with American freedom of speech.

Two important cases (Burnside v. Byars and Blackwell v. Issaquena County Board of Education) involving free speech in the high school were decided simultaneously by the Fifth Circuit Court of Appeals in 1966. The cases of Burnside v. Byars, 363 F.2d 744 (1966), and Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (1966), both dealt with symbolic speech, symbolic speech being the expression of one's ideas not by spoken words but by the use of a symbol such as a button, an armband, or a placard. Both pure speech and symbolic speech have been held by court decisions to be protected by the First Amendment and the Fourteenth Amendment.

One of the first Supreme Court cases to deal with symbolic speech is Thornhill v. Alabama, 60 S. Ct. 736 (1940), in which the majority upheld the right to picket peacefully with placards protesting employment practices of a wood products company. The use of picket signs to express ideas was held to be protected by the free speech guarantees of the First Amendment. In Edwards v. South Carolina, 83 S. Ct. 680 (1963), the Supreme Court took a similar stand in reversing a lower court decision that found 187 black students guilty of breach of peace for marching around the South Carolina Capital building to express their views about discriminatory practices employed against blacks. They were also carrying placards with slogans that were controversial. The United States Supreme Court reversed the decision because the type of assembly and expression employed was protected by the First Amendment as a type of speech. Ideas expressed on signs or placards are protected by the First Amendment provided they are expressed peacefully. This is the essence of symbolic speech.

Burnside v. Byars involved the case of several black students at Booker T. Washington High School in Philadelphia, Mississippi in September, 1964. These students were suspended for wearing "freedom buttons" to school despite school regulations banning such buttons. The buttons had the letters "SNCC" in the center, with the phrase "one man, one vote" around the perimeter. Mr. Moore, the principal, had announced to the student body that the wearing of such buttons would not be permitted at school. Disregarding his order, several students wore such buttons to school on September 21,

and were asked to remove the buttons or return home. Three chose to go home. On September 24, thirty or forty students wore the freedom buttons to school. Given the same alternative, the majority of the students chose to go home rather than remove the buttons, Mr. Moore thereby suspended them for one week. Several parents chose not to cooperate with the school and sought an injunction against the suspensions. The United States District Court of Southern Mississippi denied the requested injunction and the plaintiffs then appealed.

In writing the opinion for the Fifth Circuit Court, Judge Gewin stressed that the wearing of the "freedom buttons" was a way of "silently communicating an idea and to encourage the members of their community to exercise their civil rights". This method of communication is guaranteed by the First Amendment right of free speech.¹⁹ Judge Gewin recognized the necessity of maintaining order in schools and stated that in some cases free speech can be abridged if order and discipline are threatened. However, this action on the part of Mr. Moore was arbitrary and unreasonable since the wearing of buttons in no way hampered order in the high school. There was no disruption or disorder as a result of the button-wearing; therefore, there was no reason to prohibit the "freedom buttons". If the students instead chose to distribute leaflets or carry banners, the possibility of disorder could be seen, but not so with the wearing of "freedom buttons". The actions of the principal

¹⁹Burnside v. Byars, 363 F.2d 744, 747 (1966).

were declared unconstitutional and further enforcement of the regulation was prohibited.

In the case of Blackwell v. Issaquena the same issue was raised. Again the Fifth Circuit Court of Appeals had to decide a case involving free speech and school discipline. This case involved the wearing of the "freedom buttons" at all black, Henry Weathers High School in Issaquena County, Mississippi. The wearing of the buttons in January and February, 1965 resulted in considerable disturbance at the school. Students who chose not to wear the buttons were threatened and in some cases forced to wear the buttons against their will. Several classes were disrupted by the button wearers during the two months. Students that wore the buttons were asked to remove the buttons or go home until they complied. After a period of twenty days about 300 students from schools throughout the district were suspended for the remainder of the school year. Parents petitioned an injunction to compel the school officials to re-admit the students that were suspended. The United States District Court denied their petition and the parents appealed to the Circuit Court of Appeals.

In deciding the case, the Court had to determine whether or not the regulation in question was reasonable. Judge Gewin described a reasonable regulation with the same definition given in Burnside.

A reasonable regulation is one which is essential in maintaining order and discipline on school property and which measurably contributes to the maintenance of order and decorum within the educational system.²⁰

²⁰Blackwell v. Issaquena, 363 F.2d 749, 753 (1966).

It was pointed out that much disturbance resulted from the wearing of the buttons and the school officials were obligated to act accordingly if they sought the re-establishment of order.

The reasoning of the Court in the case is as follows:

It is always within the province of school authorities to provide by regulation the prohibition and punishment of acts calculated to undermine the school routine. This is not only proper in our opinion but is necessary.

Cases of this nature, which involve regulations limiting freedom of expression and communication of an idea which is protected by the First Amendment, present serious constitutional questions. A valuable constitutional right is involved and decisions must be made on a case by case basis. Keeping in mind always the fundamental constitutional rights of those being affected. Courts are required to "weigh the circumstances" and appraise the substantiality of the reasons advanced" which are asserted to have given rise to the regulations in the first instance. Thornhill v. State of Alabama, 310 U.S. 88, 60 (1940). The constitutional guarantee of freedom of speech "does not confer an absolute right to speak" and the law recognizes that there can be an abuse of such freedom. The Constitution does not confer "unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom". Whitney v. People of State of California, 274 U.S. 357 (1927).²¹

The Court in applying this reasoning found in favor of the School Board, thus affirming the decision of the lower Court. Using the same reasoning as was used in Burnside, the Court found that in this case discipline was threatened and therefore free speech was justifiably abridged.

These two cases better illustrate the difficulty of balancing school order against free speech. The courts have ruled that if there

²¹ Ibid., 753.

is a threat to the order, school officials are justified in abridging the freedom of speech. Whether or not an abridgement is justifiable must be determined on a case by case evaluation of circumstances. School officials are placed in a precarious position by being in the role of balancer of these two values. They must use their judgment in each situation in determining whether or not the expression of an idea will disrupt order. An administrator can never predict what will happen as a result of any student expression of opinion. The fear of disruption of order quite often leads to what Judge Gewin called an "arbitrary and unreasonable and unnecessary infringement" on student rights. In order to avoid this infringement, school authorities must carefully examine all the factors present to determine how imminent is disruption as a result of free expression by the students.

In 1969, the United States Supreme Court ruled on a case quite similar to Burnside and Blackwell. Again the actions of school authorities were challenged. Tinker v. Des Moines Independent Community School District, 89 S. Ct. 733 (1969), involved students that wore black armbands to protest American involvement in the Vietnam War. The students involved were John Tinker, Christopher Eckhardt, both high school students, and Mary Beth Tinker, a junior high student. Their wearing of black armbands to protest the Vietnam War took place in December, 1965 and was part of a concerted group effort to publicize objections to the war. The principals of Des Moines schools were aware of the plan and adopted rules banning armbands. Students refusing to comply would be suspend-

ed. The administrative policy was adopted on December 14 and on December 16 Mary and Christopher wore armbands, with John wearing one the next day. All three were suspended until they would return without the armbands. The three stayed out of school until after New Years' Day, when they had originally planned to stop wearing the armbands.

The fathers of the children filed a complaint in U.S. District Court on behalf of the children. The District Court referred to the decision of Burnside v. Byars but did not follow the criteria set up in that case, which held that symbolic speech could not be prohibited unless it was clearly disruptive. The District Court held the rule to be reasonable in preventing disruptions in the schools. The Eighth Circuit Court of Appeals affirmed the decision. The U.S. Supreme Court granted certiorari in 1968.

In delivering the decision of the Court, Justice Abe Fortas recognized that the rights of individual students must be balanced against the maintenance of order and discipline in a school. However, school officials must not abuse student rights by being overzealous in their desire to maintain order. The right of free speech is guaranteed to all citizens and whether the speech is pure or symbolic it is protected by the First Amendment.²² Justice Fortas explained that:

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that

²²Tinker v. Des Moines Independent Community School District, 89 S. Ct. 733, 736 (1969).

either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate.²³

The United States District Court had held the expulsion of the students was reasonable because school officials feared a disturbance or outbreak of violence as a result of the wearing of the armbands. According to Justice Fortas, fear of an outbreak of violence is not a substantial reason for infringing on the rights of any citizen.

Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken in class, in the lunch room, or on campus, that deviates from the views of another person may start an argument or cause a disturbance. But our constitution says we must take this risk, Terminiello v. Chicago, 337 U.S. 1 (1949); and our history says it is this sort of hazardous freedom - this kind of openness - that is the basis of our national strength and of the independence and vigor of Americans who grow up in this relatively permissive, often disputatious society.²⁴

After elaborating on the ways in which a disturbance could be set off on a high school campus, and showing it would be extremely difficult for school officials to be everywhere that a disturbance provoking word might be spoken, Justice Fortas turns to the reasons which would justify a school board policy abridging student rights of free expression. The school officials must be able to prove that allowing the expression of a certain idea would result in disorder, disruption or a breakdown of discipline. The burden of

²³Ibid., 736.

²⁴Ibid., 737.

justification is placed upon the school officials.²⁵ If these officials show that a disruption of students is imminent, then an abridgement of rights would be in order in that one case. However, in the case of Tinker, the school records showed that the school authorities had no reason to anticipate any outbreak of violence.

Even an official memorandum prepared after the suspension, that listed the reason for the ban on wearing armbands made no reference to the anticipation of such disruption.

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam.²⁶

This conclusion is also based upon the fact that school officials called the meeting, at which the contested regulation was adopted, to deal with a student that wanted to write an anti-Vietnam article in the school paper. Also, school officials allowed students to express their opinions on other political matters such as campaigns for governmental office. The prohibition on free expression only existed in the case of controversial anti-war sentiment. To allow the students to express themselves on most political issues but not on one specific issue, without proof or substantial justification that discipline would be threatened, was held to be an unconstitutional regulatory policy.²⁷

²⁵Ibid., 738.

²⁶Ibid., 738.

²⁷Ibid., 739.

Justice Fortas also emphasized that public schools are not "enclaves of totalitarianism" and officials do not maintain absolute authority over the actions of students. Students in school as well as out are guaranteed the rights and privileges given all citizens by the Constitution of the United States.

Apparently, to dispel fears that the Court's decision in Tinker v. Des Moines was not a manifesto for student disobedience, Justice Fortas emphasized that individual student rights are limited; students enjoy the exercise of these rights only as long as they do not collide with the rights of others. Students are not immune from disciplinary authority because of their rights. If the free exercise of one's rights overextends itself and disorder is imminent, the school officials are justified in abridging or infringing individual rights. Constitutional guarantees of liberty are not a license for disruptive or non-peaceful behavior.²⁸

The decision of the Supreme Court in Tinker could well have been the beginning of a new era for student rights in the free speech area, and surely many lower courts would take Tinker as a precedent to expand student rights in different areas of the Bill of Rights. This is what Justice Black feared and he emphasized this in a strong dissent in which he criticized his fellow justices for interfering with the actions of the local school district of Des Moines, Iowa. Usually Justice Black holds that the First Amendment provisions are nearly absolute in protecting free expression from

²⁸Ibid., 740.

government interference, but he saw this case in a different light. He stated the School Board was justified in suspending the students, for the officials did give examples of disruption and a breakdown in classroom discipline due to the wearing of the black armbands; evidence that Mr. Black felt the majority of the Court had overlooked. Mr. Black in concluding his argumentative criticism wrote:

One does not need to be a prophet to know that after the Court's ruling today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders.²⁹

He then referred to the current state of affairs on many college campuses that were experiencing violent demonstrations. The senior Justice was not ready to surrender the nations 23,399 public schools to the students in the name of free speech.

Whether or not Justice Black's fear was justified, court records will show that the total number of court cases that deal with student rights of free expression increased rapidly in the late 1960's, especially cases challenging appearance codes and prohibitions on "revolutionary" statements whether in spoken or printed form. Actually, Tinker came late in the onslaught of student rights cases and perhaps helped to reduce the number of suits filed involving the rights of students.

Tinker v. Des Moines was a landmark Supreme Court decision for it was the first time that the Court specifically dealt with the rights of expression of juveniles in public schools. In its

²⁹Ibid., 746.

decision, the Court took a rather broad position and emphasized that students were not excluded from protections of the Bill of Rights. School officials should allow students the opportunity to exercise their constitutional rights as long as order is not disturbed; this is the basic guideline set forth by the Court in this case.

Freedom Of the Press

Freedom of speech in the high school, thanks to the Supreme Court ruling in Tinker v. Des Moines, has had a great deal more clarification than freedom of the press in public high schools, even though the two freedoms are directly related. In many high schools today there are two types of newspapers, the regular or official school paper and the so called underground press which does not have official school approval. The school newspaper has traditionally been a publication that attempts to avoid controversial subjects and out of school subjects. Generally the school paper serves as a method of communicating within the school community and outside stories or issues are not dealt with frequently or thoroughly, therefore many persons contend that high school papers are of little substance. This belief has brought about the establishment of underground publications that are designed to fill the void by dealing with more controversial issues and outside stories. Several important cases dealing with both types of high school publications have been heard in the lower federal judiciary, but none have been heard in the United States Supreme Court.

Schwartz v. Schuker, 298 F. Supp. 238 (1969), and Zucker v. Panitz, 299 F. Supp. 102 (1969), shall be dealt with in this section as being representative of free press cases involving high school papers.

Schwartz v. Schuker involves the distribution of an underground paper, The High School Free Press, at Jamaica High School in New York City. The student involved, Jeffrey Schwartz, would not obey the principal's orders to cease the distribution of the Free Press. Schwartz was quite active in anti-establishment propaganda and was encouraged heartily by his parents to be active in this manner. On January 20, 1969, Principal Schuker advised Schwartz that under no conditions would he be allowed to distribute Issue #5 of the Free Press. He based his order on Issue #4 which had contained many four letter words, filth, and critical remarks about school officials. Despite this warning, Schwartz proceeded to handout the publication. Schwartz was not charged with distribution, but instead with defying the dean who, in executing the principal's orders, had demanded that Schwartz surrender the undistributed newspaper. Four days after the incident, Schwartz was suspended for defiance of authority.

Schwartz, acting through his mother, sought an injunction reinstating him in school, based on the grounds that the school had not granted him a hearing and that his First Amendment rights had been abridged. On the due process question the Court ruled that the school officials had followed the proper procedures and that

the suspension was more a result of defiance of orders than a result of his distribution of papers critical of school officials.

Jeffrey Schwartz' charge that the school officials had infringed on his freedom of speech was considered by the judge, Judge Bartels, to be the more serious charge and he dealt with it in more depth and detail. Judge Bartels emphasized that the First Amendment guarantees of free speech, as exemplified by our free press, did apply to high school students; however, these rights are not "absolutes and are subject to constitutional restrictions for the protection of the social interests in government, order and morality". These rights, though highly treasured, "must be balanced against the duty and obligation of the state to educate students in an orderly and decent manner to protect the rights, not of a few, but of all the students in the school system".³⁰ Schwartz had a right to criticize the school and its officials but the manner in which he proceeded was in open defiance of school authority, and his actions were intended to encourage other students to defy authority. This open defiance for the sake of encouraging defiance of authority by other students outweighed his right of free speech and the school district was justified in suspending Jeffrey Schwartz.

This case helps to clarify what limits there are on free expression of ideas by high school students. For had Schwartz been not quite so defiant and outspoken, the Court may have enjoined the school district officials from enforcing their decrees. The students

³⁰ Schwartz v. Schuker, 298 F. Supp. 238, 242 (1969).

in Tinker and Burnside had violated regulations issued by the proper authorities, however, they only did so once, and then complied with the designated penalty. Jeffrey Schwartz, however, continued to defy officials, thus accumulating a series of offenses. Schwartz had the right to speak his beliefs and distribute literature critical of school officials, but his behavior in conjunction with this expression was of such a disruptive nature that the administrators had the authority to abridge his right of free expression. When a threat to order becomes so great that it appears disturbances are imminent, the school officials are justified in silencing the dissidents.

Another school press case shows that this pattern tends to hold true. The case of Zucker v. Panitz, 299 F. Supp. 102 (1969), was decided in United States District Court of the southern district of New York, Judge Metzner presiding. The regular high school paper, the Huguenot Herald of New Rochelle High School was the paper involved in the hearing. Laura Zucker was the head of the editorial staff that had allowed an advertisement opposing the war in Vietnam to appear in the paper. School policy prohibited any political advertisements or articles of political nature from appearing in the school paper. Even articles and advertisements pertaining to candidates for student body office were not permitted. The purpose of this policy was to maintain the Herald as an educational publication and not a platform from which to disseminate ideas and news not related to the high school.³¹

³¹Zucker v. Panitz, 299 F. Supp. 102, 103 (1969)

This policy was not strictly followed and numerous articles on outside school activities were included in the paper. Several of these articles dealt with draft board procedures and student attitudes towards the war. In regard to the constitutionality of the challenged policy governing the newspaper, Judge Metzner explained that:

The presence of articles concerning the draft and student opinion of United States participation in the war shows that war is considered to be a school related subject. This being the case, there is no logical reason to permit news stories on the subject and preclude student advertising.³²

To allow the students to express themselves in news articles and letters to the editors but not in advertisements is an unfair practice and therefore the Court found in favor of the plaintiff, Laura Zucker. There was no threat to order by the student advertisement, therefore, the First Amendment right of free speech-free press came out on top; the principal's regulation was arbitrary and could not be justified, thus, it was stricken down as unconstitutional.

Once again the balancing of free expression against school authority was the source of conflict, and again the Court emphasized that the threat to order must be so imminent that disorder is just about to occur before the authorities can abridge free expression.

Right To Peaceably Assemble

The next clause of the First Amendment to be considered is

³²Ibid., 104.

that "of the people to peaceably assemble". The application of this clause at the high school level has not been dealt with by the courts to any great extent, therefore two college cases shall be briefly covered to develop an insight into what practice would be applicable at the high school level. College students are dealt with by the courts in a manner similar to high school students because the two learning environments are somewhat alike. The difference in age and maturity accounts for a slightly different view towards the college students, but this distinction is nothing great. The public college officials in these cases are charged with the duty to maintain order and discipline at the college, while at the same time allowing students to exercise their constitutionally guaranteed rights as individuals. This is the same duty high school officials are charged with.

The case of Barker v. Hardway, 283 F. Supp. 228 (1968), was decided in United States District Court for West Virginia by Judge Christie. It involved ten students at Bluefield State College who had been expelled for taking part in demonstrations against the college administration and sought a court order reinstating them. The demonstrations began on October 14, 1967 during halftime at a homecoming football game. The students carried placards and chanted critical remarks about Doctor Hardway, the college president, while marching about the playing field. This demonstration was peaceful and non-violent. Following halftime the students proceeded to the viewing stands where they held placards in front

of Dr. Hardway and other officials so that they could not see the game. They continued to harass the officials until the police had to disperse the demonstrators and escort Dr. Hardway from the viewing stands.³³

Two days later the students held a "sing in" on Dr. Hardway's lawn, but since his lawn was a portion of the college campus and therefore public property the demonstration may have been legal according to the First Amendment. Because of this, the second demonstration was not involved in the case.

In the decision the Court ruled that the demonstration on the football field was protected by the First Amendment guarantees of free speech and assembly. However, the demonstration in the stands was not peaceful and non-disruptive and therefore was not protected by the First Amendment as applied to the states by the Fourteenth Amendment. The school officials were justified in disciplining the participating students. The right of free speech and assembly does not carry "with it the right to verbally abuse another or to threaten him with physical harm or to deprive him of his rights to enjoy his lawful pursuits". Once the students began to infringe on others rights the college was justified in disciplining the offenders.³⁴

This judicial definition of student rights of freedom of assembly also applies at the high school level, as long as students

³³ Barker v. Hardway, 283 F. Supp. 228, 231 (1968).

³⁴ Ibid., 238.

do not disrupt any organized school activities. As long as student actions during a demonstration do not interfere with the rights of others, the demonstrations are within the guidelines defined by the Court in Barker. However, if an assembly that is planned to draw attention to a controversial issue threatens the peaceful and orderly operation of the high school, the administrators are justified in disbanding the assembly by appropriate means.

The Eighth Circuit Court case of Esteban v. Central Missouri State College, 415 F.2d 1077 (1969), expressed the same opinion towards peaceful student assemblies. The decision in the case was written by Judge Harry Blackmun. The appellants, Afredo Esteban and Steve Robards, had taken part in a demonstration on the college campus that resulted in \$600 damage to the school facilities. Both students were on probation for participating in earlier demonstrations and had been warned of the consequences of any new participation. As a result of their actions, both students were suspended; they then filed suit in United States District Court where the suspension was upheld. They then appealed.

Judge Blackmun, in writing the majority opinion, stated that students did not give up their First Amendment rights when entering college; however, the conduct of the students at the demonstrations were "aggressive and violent" and not protected by the First and Fourteenth Amendments guarantees of free speech and peaceful assembly.³⁵ The right to assemble does not include trespasses on rights

³⁵ Esteban v. Central Missouri State College, 415 F.2d 1077, 1087 (1969).

of other citizens. Judge Blackmun held that "a school has inherent authority to maintain order and to discipline students".³⁶

Every case dealt with thus far that involves student rights involves the power of school officials to formulate rules and regulations for the maintenance of order and the educational process. This duty of school officials was considered in religion, speech, and press cases at the high school level and in the assembly cases at the college level. The same duties and rights are involved in both high school and college cases, therefore the guidelines for peaceful assembly at colleges would be applicable at high schools. That is, courts have indicated that high school officials should provide for or allow students to peacefully assemble, to express their ideas on issues of concern even if those issues involve school officials. The students at Bluefield College were within their rights in criticizing the college president, but once they began to harass and threaten him, their actions could no longer be considered peaceable and therefore were not protected by the First Amendment. Once an assembly becomes destructive, the guarantees of expression through assembly no longer apply. Therefore, high school students can include the right of peaceable assembly on their list of constitutionally guaranteed rights.

Freedom Of Petition

The last enumerated right in the First Amendment is that of

³⁶Ibid., 1088.

the people to "petition their government for a redress of grievances". There have been no actual court cases in the area of freedom for high school students to petition their school officials. By examining all cases previously mentioned, it can be seen that the First Amendment does apply to high school age citizens and therefore the right of petition which is a part of the First Amendment would also apply. If students can speak against school officials, print and distribute literature critical of them, and hold assemblies demonstrating their grievances with school officials, they also should be allowed to petition those officials for a redress of grievances.

Expression Through Appearance

One more area of conflict in the schools that shall be dealt with here is that of appearance codes. Numerous hair length and bizarre dress cases have appeared in courts, and generally the students cling to the First Amendment as their guarantor of the right to appear as they please. In the area of appearance, styles went through a major change in the 1960's. Leather jackets, bobby sox, and ducktail haircuts of the early rock and roll era gave way to long free flowing hair for both males and females, and very casual clothes. To some older persons standards, the young men of the late sixties looked rather feminine and not in the true image of the virile American male. Outside of school, young men were allowed to wear their hair long and young women were allowed to dress in Levis or other current styles. Inside the schools, however, the infamous codes clung to the styles of the late fifties

and early sixties.

In the latter sixties young persons began to challenge the authority of the school officials to establish appearance codes and the results obtained are not too conclusive. Cases have to be decided individually and there is no blanket rule that can be applied in all cases. At present, more courts have found in favor of the power of officials to regulate appearance than in favor of the right of students to appear as they please. Many opponents of dress codes emphasize that appearance does not influence or affect how well an individual will learn. However, some school officials feel differently and as a result of these two views, the American judicial system became involved in the "great hair hassle".

The case of Ferrell v. Dallas Independent School District, 392 F.2d 697 (1968), involved three high school students that grew long hair so they would be able to play in a musical group called Sounds Unlimited. Contained in their contract was an agreement to keep their hair long while they were playing in the group. The boys' hair was in violation of school policy regulating hair length and they were therefore suspended. They filed suit in United States District Court seeking an injunction against the school district. The request was denied. The plaintiffs then appealed to the United States Fifth Circuit Court of Appeals.

In the decision of the Court, Judge Gewin held that Principal Lanham had substantial evidence that the long hair styles were disruptive; therefore, the regulation governing hair lengths was not

violative of the guarantees of free expression.³⁷ Hair length and appearance were held by the Court to be forms of free expression and therefore were protected by the First and Fourteenth Amendments; however, free expression is not an absolute. In explaining this, Judge Gewin wrote:

The Constitution does not establish an absolute right to free expression of ideas, though some might disagree. The constitutional right to free exercise of speech, press, assembly and religion may be infringed by the state if there are compelling reasons to do so.

The compelling reason for the state infringement with which we deal is obvious. The interests of the state in maintaining an effective and efficient school system is of paramount importance. That which so interferes or hinders the state in providing the best education possible for its people, must be eliminated or circumscribed as needed. This is true even when that which is condemned is the exercise of a constitutionally protected right.³⁸

Thus the students had to cut their hair to get back in school; the duty to maintain order was seen by the Court as being of greater value to the community. From this decision it appears that the same type of balancing test will be applicable to appearance codes that was applicable to other forms of expression. If the expression of any individual threatens the order in a high school, the officials have a duty to abridge that individual's rights.

Another hair case is Breen v. Kahl, 419 F.2d 1034 (1969). This case was decided by the Seventh Circuit Court of Appeals.

³⁷Ferrell v. Dallas Independent School District, 392 F.2d 697, 702 (1968).

³⁸Ibid., 702, 703.

Involved were two male students, Thomas Breen and James Anton, at Williams Bay High School in the State of Wisconsin. The two boys had refused to comply with the school hair regulations adopted by the School Board the previous year.

The regulation reads as follows:

Hair should be washed, combed, and worn so it does not hang below the collar line in the back, over the ears on the side, and must be above the eyebrows. Boys should be clean shaven; long sideburns are out.³⁹

Both young men were expelled for having hair that was too long. Anton cut his hair and was re-admitted, but grew it long again and was threatened with expulsion. Breen was never re-admitted for he refused to comply. The boys filed suit against the state superintendent of instruction, William Kahl; the principal, William Howley; and other officials of the school district on the grounds that their constitutional rights of free expression had been violated. The United States District Court of the Western District of Wisconsin found in the plaintiffs favor and the defendants appealed.

In the Circuit Court decision, Judge Kerner stated that:

The right to wear one's hair at any length or in any desired manner is an ingredient of personal freedom protected by the United States Constitution . . . Whether this right is designated as within the "penumbras" of the First Amendment freedom of speech, . . . or as encompassed within the Ninth Amendment as an "additional fundamental right which exists alongside those fundamental rights specifically mentioned in the first eight constitutional amendments," Griswold v. Connecticut, 381 U.S. at 488, it clearly exists and is applicable to the states through the due process clause of the Fourteenth Amendment.⁴⁰

³⁹Breen v. Kahl, 419 F.2d 1034, 1035 (1969).

⁴⁰Ibid., 1036.

The decision also dealt with the constitutionality of the hair regulation. It was held that school officials carry the burden of justification of regulations that infringe on citizens rights and in this case they were unable to do so. As a result of this, the appearance regulation was declared to be arbitrary and unreasonable and thereby prohibited by the Constitution. The School Board had held that long hair on males was distracting and a hinderance to performance in class. The Board could not prove this assumption, therefore the court ruled that there was no reason for imposing such an infringement on personal rights.⁴¹

The appellants also argued that the Court's interference with this regulation would diminish the authority of the School Board to discipline students. In response to this charge, Judge Kerner wrote that:

To uphold arbitrary school rules which "sharply implicate basic Constitutional values" for the sake of some nebulous concept of school discipline is contrary to the principle that we are a government of laws which are passed pursuant to the United States Constitution.⁴²

The Court also mentioned that the Board invoking in loco parentis does not help their case, for in certain personal matters such as appearance, the parents and children should be allowed to come to their own agreements. It would be impossible for a child whose parents let him wear long hair to comply with short hair rules

⁴¹Ibid., 1036.

⁴²Ibid., 1037.

during school.

In this one decision, the Court dealt with several important issues affecting students rights and found in favor of the students on all counts. Again, though, a manifesto of student rights was not issued. The duty of school officials to maintain order was recognized; however, the Court saw no threat to order resulting from long hair on males and therefore ordered the students reinstated in school. Had the school officials been able to justify to the Court the necessity for the restrictive regulation, the regulation would have been upheld. The burden of justification of rules and regulations lies with the school officials.

Richards v. Thurston, 424 F.2d 1281 (1970), involved the same issue and was decided by the First Circuit Court of Appeals on April 28, 1970. In this case there was not even a written code concerning dress and grooming, only an understanding that boys would not wear long hair. Despite the lack of a written regulation concerning dress and grooming, Robert Richards was suspended for having hair hanging to his shoulders.

This court found in favor of the student, however different reasoning was employed. In writing the decision of the Court, Judge Coffin stressed the need for the school officials to justify their regulations whether written or unwritten. There had been some question about the legality of an unwritten rule, but Judge Coffin clarified that issue by stating that a rule need not be written; oral notice is enough. If all regulations had to be written, officials would be unable to take appropriate action in

the face of some problems of discipline just because there was no written regulation. If order is to be maintained, the officials need some areas in which they can use their own discretion.⁴³

As was mentioned earlier, the Court did not use the same reasoning as was used in Breen, instead the following reasoning was employed:

We think the Founding Fathers understood themselves to have limited the government's power to intrude into this sphere of personal liberty, by reserving some powers to the people. The debate concerning the First Amendment is illuminating. The specification of the right of assembly was deemed mere surplusage by some, on the grounds that the government had no more power to restrict assembly than it did to tell a man what to wear or when to get up in the morning. The response by Page of Virginia pointed out that even those "trivial" rights had been known to have been impaired - to the Colonists Consternation - but that the right of assembly ought to be specified since it was so basic to other rights. The Founding Fathers wrote an amendment for speech and assembly; even they did not deem it necessary to write an amendment for personal appearance. We conclude that within the commodius concept of liberty, embracing freedoms great and small, is the right to wear one's hair as he wishes.⁴⁴

With the right to wear hair as one wishes established, the Court then continued by stressing the importance of justifying an infringement on that right. Since the school officials could not justify their belief that a bizarre hair style was disruptive, the Court held that they could not abridge the right of Richards to appear as he desired.⁴⁵

⁴³Richards v. Thurston, 424 F.2d 1282 (1970).

⁴⁴Ibid., 1285.

⁴⁵Ibid., 1286.

A 1973 case involving a hair length regulation resulted in a similar decision without involving the constitutional concept of individual rights. The Oregon Court of Appeals decision in Neuhaus v. Federico held that the regulation of hair length was beyond the statutory authority of Oregon school boards. Cascade Union High School in Turner, Oregon was the school involved, and the regulation at issue was "Hair must be kept off the ears and collar" Four students were suspended by Cascade High officials for violation of the rule. They thereby challenged the constitutionality of the regulation in Circuit Court for Marion County. Circuit Court upheld the decision and the students then appealed to the Oregon Court of Appeals.⁴⁶

The Oregon Court of Appeals held that under Oregon state law "a school board's authority to enact rules governing student conduct is limited to enacting rules that have some reasonable connection with the educational process".⁴⁷ For a rule to reasonably relate to the educational process, it must regulate only in-school activities; for when students are out of school, the authority for rules on student behavior generally reverts to the parents. The Court then had to decide into which category of regulatory authority hair length rules belong, being as a student having long hair involves in-school conduct as well as out of school conduct. Because students are out of school more than they are in school, the Court

⁴⁶ Neuhaus v. Federico, Advance Sheets, Vol. 96, No. 8 (Salem, Oregon: State Court Administrator, Feb. 23, 1973) p. 666.

⁴⁷ Ibid., p. 669.

held that having long hair was more of an out of school activity; this would tend to nullify the legitimacy of a hair length rule.⁴⁸

The Court then had to consider whether the long hair was so disruptive that the Board or the school officials were justified in banning it from school, a ban which would also affect out of school activity. The Court found no substantiating evidence in the testimony that would justify such a ban on long hair. Because no examples of disruption of school by long hair were given and because such a hair code regulated out of school activity more than in-school activity, the Circuit Court decision was reversed. The Oregon Court of Appeals found Cascade Union High School officials to have exceeded their statutory authority.⁴⁹

The Oregon decision also discussed constitutional rights guaranteeing self control of personal appearance as a basis for nullifying scholastic regulations such as hair codes. However, the Oregon Court of Appeals found this type of constitutional reasoning as being unnecessary in this particular case since the school officials had exceeded their legal authority.⁵⁰

Two different judicial avenues were employed in the three decisions that invalidated hair codes. Both avenues followed the principle that there must be disruption of the educational process before hair codes would be justified. Without this disruption,

⁴⁸ Ibid., pp. 672-676.

⁴⁹ Ibid., pp. 679-680.

⁵⁰ Ibid., p. 680.

rights cannot be abridged nor can statutory authority be invoked.

Most court decisions involving hair regulations have found the long hair to be disruptive and therefore have upheld the hair codes. However, as the wearing of long hair by males has become more widespread in society, the courts have increasingly nullified the hair codes challenged. Apparently, as new styles spread and are accepted, they cease to be as controversial or as disruptive, thus allowing for the abolition of appearance codes.

It appears that a basic result of the hair cases, if not of all cases dealing with student rights, is that the only universal rule that can be applied is that school officials are charged with the duty to maintain order and discipline in the school they administer. In regulating student conduct, speech, and styles, they must respect the rights and privileges of the First Amendment and the Fourteenth Amendment so that they do not unreasonably or arbitrarily abridge the rights of the students. Unless there is substantial justification that free expression by the students will result in nonpeaceful or disruptive behavior, they must allow the students the freedom to express their personal views.

After examining the various court cases that involve student rights under the First Amendment, it can be seen that in all the cases the judges recognized the fact that students as American citizens have the rights guaranteed in the First Amendment. However, those rights can be abridged if school officials can justify their restrictive actions by showing that a disruption had occurred or was imminent. Each case involving the rights of expression of high

school students must be decided individually according to evidence submitted in that case. High school students have the rights guaranteed by the First and Fourteenth Amendments but these rights are not absolute and are subject to reasonable controls, just as are the rights of citizens out of school.

II. FAIR PROCEDURES FOR HIGH SCHOOL STUDENTS

The second major area of the Bill of Rights that has been increasingly defined by the courts as being applicable in high school is fair procedures or preceudural due process. Because of the traditional position that school stood in loco parentis, school administrators have not felt obligated to follow or implement due process in high school discipline cases. Instead, many school administrators and teachers disregarded the privileges of American citizenship and used their own discretion in investigating, hearing, and sentencing persons accused of violating school rules. The latter sixties were crucial years for students fair procedures as on numerous occasions high school students or their parents challenged arbitrary actions by school officials in the judicial system of the United States.

Search And Seizure

One of the areas of fair procedures that is at issue is search and seizure. American citizens are protected against unreasonable searches and seizures by the Fourth Amendment which reads as follows:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches

and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.⁵¹

This Amendment was applied to the states by the Fourteenth Amendment and therefore also applies to the agencies created by the states.

Whether the prohibition against unreasonable searches and seizures applies to public schools and school districts is determined by examining a couple of state court cases dealing with this issue. The case of People v. Overton, 229 N.E. 2d 596, dealt with a locker search that resulted in the seizure of marijuana. The student involved had not been consulted prior to the search, however the vice principal of the school consented to the search after evidence was presented to him. In the opinion of the New York Court of Appeals, the search did not violate the Fourth Amendment for the following reasons:

The power of Dr. Panitz to give his consent to this search arises out of the district relationship between school authorities and students. The school authorities have an obligation to maintain discipline over the students. It is recognized that when large numbers of teenagers are gathered together in such an environment, their experience and lack of mature judgment can often create hazards to each other. Parents who surrender their children to this type of environment in order that they may continue developing both intellectually and socially, have a right to expect certain safeguards.⁵²

It was also emphasized that school officials would not be

⁵¹ U.S. Const. Amend. IV.

⁵² People v. Overton, 229 N.E. 2d 597 (1969).

properly carrying out their duties if they failed to maintain control of the lockers. It was held that school officials actually had a "right" and a "duty" to inspect lockers when suspicion arose that a locker is being used illegally.

The same reasoning also came forth in Stein v. Kansas, Kan 456 P.2d 1, when the Kansas Supreme Court held that school officials are obligated to search lockers if the school officials have reasonable suspicion to believe that the lockers are being used illegally.

The locker search involved in this case resulted in the seizure of the key to a locker at the Kansas City Union Station in which law enforcement officials found over \$200 and some silver dollars identified as being stolen from Butler's Music Store. The defendant held that the search was unreasonable in that a warrant had not been issued, nor had his permission been given to search the locker.

Mr. Justice Fontron, writing for the Court, held that school lockers, unlike houses, automobiles, or even private lockers, are nonexclusive in that the principal or custodian has access to the locker. A school locker is intended to serve as a storage area for student belongings, and also to protect those belongings against theft. The principal allows the students to use the lockers for only those purposes, and has the duty to insure the lockers are not used for any illegal activities. Students are not issued lockers so that they can be used for any activity the student chooses. If this was the case, it would become impossible for a school official to maintain order. If the educational function of a school is to be maintained and the welfare of the students preserved, the Court

saw it was necessary that school authorities maintain the officials' right of locker inspection.⁵³

Out of these two cases arises the concept of partial privacy or protection. Student's possessions are protected from intrusion from students but not from school officials if those officials have probable cause to believe the locker is being used illegally. The reasoning behind this is that school lockers were never intended to be exclusive. Schools could become centers from which juvenile delinquents based their operations if the lockers were exclusive. Parents and taxpayers have a right to expect that the welfare of the young of their community will be protected by school authorities that have been entrusted with that duty. School lockers are issued to students for specific school related purposes and school officials are obligated to guarantee that they are not used in a manner detrimental to the safety and security of all students. For these reasons, the Fourth Amendment does not apply.

Due Process In Disciplinary Hearings

In applying other areas of the Bill of Rights to high school students, a technicality arises that somewhat limits their applicability. The technicality is that Amendments Five and Six both specifically deal with criminal cases. Therefore, application in school disciplinary procedures is very limited, if not non-existent.

A landmark case in juvenile law was the case of In Re Gault,

⁵³Stein v. Kansas, Kan 456 P.2d 3 (1969).

387 U.S. 1 (1967), which recognized the following juvenile rights: notification of charges, right to confront persons who accused the juvenile, privilege against self-incrimination, and notification of right to assistance by counsel. These rights were applied to juveniles that were accused of committing delinquent acts; delinquent acts being acts that would be criminal if committed by an adult. Gault, therefore, had little impact on the fair procedures in the high school.

There have been several cases that dealt with fair procedures in the high school. One of these is Madera v. Board of Education of New York, 386 F.2d 778 (1967). This case was decided in the United States Second Circuit Court of Appeals with Judge Moore writing the decision of the Court. The case involved Victor Madera, a 14 year old student in Junior High School No. 22 in New York City. Victor had been suspended on February 2 by the school authorities after more than a year of behavioral difficulties. Miss Theresa Rakon, the district superintendent, notified Victor's parents of a hearing concerning the action that would be held on February 17, 1967. Victor's parents sought the aid of an attorney, however, Miss Rakow's office advised the attorney that he could not attend the conference.

The Maderas sought and received a permanent injunction from the United States District Court prohibiting the School District from holding any hearing at which an attorney was not present. The School Board appealed the decision.

In writing the opinion of the Circuit Court, Judge Moore held

that the "Guidance conference is not a criminal proceeding; thus, the counsel provision of the Sixth Amendment and the cases thereunder are inapplicable". It was also pointed out that "there is no showing that any attempt is ever made to use any statement at the conference in any subsequent criminal proceeding . . . ,"

Therefore, there is no need for counsel to protect the child in his Fifth Amendment privilege against self-incrimination.⁵⁴

Thus the Circuit Judge immediately cast aside two protections of the Bill of Rights because they were applicable only in a criminal case. Judge Moore did deal extensively with the effects of the Fourteenth Amendment in guaranteeing an individual due process of law. He emphasized that a state could not deprive a person of life, liberty or property without due process of law. This is a guarantee against arbitrary action by the government that would be affecting private interests; therefore, the individual is protected against such infringements by a state agency by the due process clause of the Fourteenth Amendment. In the case of Victor Madera, the guarantees of due process are not applicable, for the school officials did not intend to deprive Victor of his education, but instead they sought to help him return to school in the most effective surroundings for his particular case. The suspension was a temporary type designed to give school officials time to study Victor's case in order to place him in a learning environment that would be more productive for Victor.⁵⁵

⁵⁴Madera v. Board of Education of New York, 386 F.2d 780 (1967).

⁵⁵Ibid., 782.

Because the Madera case did not involve a permanent or semester expulsion a hearing was not required. If Victor was to be expelled, a formal hearing prior to the final school district action would be mandatory. However, a school disciplinary hearing that results in expulsion does not need to include assistance of counsel because the hearing is not a criminal hearing. In an expulsion case, the person whose liberty will be affected should be given a notice of charges and grounds which if proven, would justify expulsion. The nature of the hearing would vary depending on the circumstances. A "full-dress judicial hearing, with the right to cross examine witnesses" is not required, but the rudiments of an adversary system should be preserved. Written statements by witnesses against the student should be made available so that the student would be able to answer the charges. The student should be allowed to defend himself and produce statements from witnesses for his side. The results of the hearing should be made available to the student for his examination if he is not present at the time of the decision.⁵⁶ Thus, the guidelines for an expulsion hearing are set down, and the major difference with a criminal hearing is that the right to assistance of counsel does not apply because of the constitutional stipulation that guarantee of counsel applies only in criminal cases.

Another case involving a high school student that believed he was deprived of due process of law by the school officials is

⁵⁶Ibid., 785.

Vought v. Van Buren Public Schools, 306 F. Supp. 1388 (1969). It was heard in United States District Court of Michigan. The case involved David Vought, a student at Belleville High School, who had been expelled for bringing print material to school that was considered to be obscene. Vought had been warned several times about bringing obscene material to school, however he persisted in doing so and as a result of his disobedience, he was expelled. The piece of literature he had in his possession at the time of initial suspension was a publication he was taking home having discovered it in his locker. This fact was considered of no significance.

On April 1, 1969, Vought's mother received a letter recommending expulsion and notifying her that she would receive notice of the date and time of the expulsion hearing. The next day Mrs. Vought received notice that the Board of Education had decided to expel David. The Board of Education failed to give notice as the first letter had stated.

In filing suit, the plaintiff also charged that his right of free speech had been violated. The Court decision held this was not so; in addition, the Court held the school obscenity rule was substantially justified. The plaintiff also charged that his rights under the Fourteenth Amendment had been violated, and he had been deprived of liberty and property without due process of law.

In ruling on this charge, the Court decision stated:

Whether or not the requirements of due process are met in any situation depends upon the circumstances attendant upon that situation. What we say here has application to these facts in this particular situation. We do not attempt, or pretend to establish or set down

any due process guidelines for schools, school boards, principals, boards of education, or any other educational personnel as such. What we say here deals with the plaintiff and these defendants as they appear in this matter in this posture of this case.⁵⁷

In the preceding statement the judge, Judge Thornton, has made a statement that is like numerous statements involving student rights. Courts are reluctant to hamper the proceedings set forth by school officials for dealing with discipline problems and therefore deal with student rights on a case by case basis. However, general guidelines are given. In this particular case, the Court suggests that school boards adopt guidelines for disciplinary hearings. The proposed guidelines are: notification of specific charges and grounds for expulsion, a hearing which provides for a presentation of both sides of the story, a list of witnesses against the student, and an opportunity for the student to defend himself. As in other cases, no mention of assistance of counsel is made.

III. CONCLUSION

In concluding, after examining various court cases that clarified and defined student rights, it can be stated that high school students do have specific rights that are guaranteed by the United States Constitution. These rights are not absolutes, just as the rights of citizens out of school are not absolutes. Order in society, whether the whole American society or an individual school society, must be maintained. In American society the various governments

⁵⁷ Vought v. Van Buren Public Schools, 306 F. Supp. 1388, 1392 (1969).

are charged with the duty of maintaining order; in schools the responsibility to maintain order lies with school officials. The officials of the various governments as well as school officials must not unreasonably abridge the rights of the citizens in their respective jurisdictions in their efforts to maintain order.

School officials can abridge the rights of students to express themselves freely if the restrictive regulations are not unreasonable or arbitrary.

In the area of fair procedures, students are guaranteed due process as was outlined; however, this does not include all the provisions guaranteed a person accused of criminal acts as outlined in the Fifth and Sixth Amendments. The due process applied in student rights cases is taken from the "due process" clause of the Fourteenth Amendment that applies to any government action that deprives a citizen of his liberty or privileges.

CHAPTER III

RIGHTS AND RESPONSIBILITIES CODES IN OREGON HIGH SCHOOLS

Under Oregon law, school district boards of education and school administrators are charged with the maintenance of order and discipline in their respective districts and schools. The 1971 Oregon Legislature revised the existing Oregon law that dealt with student discipline giving the Oregon Board of Education more supervisory power over local school boards in insuring the adoption of conduct and discipline codes at the local district level. The new Oregon law reads as follows:

339.240 Rules of pupil conduct and discipline; duties of state board and district school boards. (1) The State Board of Education in accordance with ORS chapter 183 shall prepare and promulgate to all school districts minimum standards for pupil conduct and discipline and for rights and procedures pertaining thereto that are consistent with orderly operation of the educational processes and with fair hearing requirements.

(2) Every district school board shall adopt and attempt to give the widest possible distribution of copies of reasonable written rules regarding pupil conduct, discipline and rights and procedures pertaining thereto. Such rules must comply with minimum standards promulgated by the State Board of Education under subsection (1) of this section.⁵⁸

According to Mr. Dave Curry, Student Activity Specialist for the Oregon Board of Education,⁵⁹ the major reason for the

⁵⁸ Oregon, Revised Statutes, 339.240, Section 1, Section 2.

⁵⁹ Dave Curry, interview at Oregon Board of Education, Salem, Oregon, March 21, 1972.

Legislative Assembly enacting the preceding statute was to provide for the establishment of uniform and specific codes of student rights and responsibilities in public schools throughout the state. Vague and arbitrary school rules governing student conduct had been facing increasing numbers of challenges in and out of court; the Legislature sought to alleviate this situation by delegating the supervisory duties regarding minimum standards of pupil conduct to the Oregon Board of Education.

Beginning in September, 1971 the Oregon Board of Education scheduled and held public hearings on a proposed code outlining Minimum Standards for Student Conduct and Discipline. The finalized code was adopted by the Oregon Board of Education on May 12, 1972.

The foreword to the Minimum Standards for Student Conduct and Discipline, written by Dale Parnell, Superintendent of Public Instruction, states the same philosophical base for the code as Mr. Curry had stated for the Oregon Revised Statute authorizing the code. The foreword in its entirety reads:

After much legal research and many public hearings, the Oregon State Board of Education has adopted "Minimum Standards for Student Conduct and Discipline". In addition to the standards, which are in official form of Oregon Administrative Rules, nonmandatory guidelines and model codes have been included in this publication as an aid to local districts.

The standards are a means of strengthening the position of teachers and administrators in times of legal and social confusion and challenges on all sides to administrative and staff authority.

Increasingly, courts are evaluating the schools decisions, their written rules, and the methods by which these rules were made. These standards lay

the groundwork for enforceable local rules of student conduct and discipline which also must "pass muster" if challenged in court.

It is our purpose to deal realistically and constructively with problems of student conduct, while at the same time insuring fair treatment for all concerned.⁶⁰

The Minimum Standards for Student Conduct and Discipline

set down basic guidelines for local boards of education to follow when drafting their written regulations governing student conduct and discipline. In section 21-050 of the Minimum Standards, eleven topics are listed in areas to be included in local codes in order to "provide students a learning climate in which rights and responsibilities are equally protected and emphasized". The eleven topics are: (a) assembly of students; (b) dress and grooming; (c) motorized and nonmotorized vehicles; (d) search and seizure; (e) attendance; (f) freedom of expression; (g) nonstudent loitering; (h) alcohol, drugs, and tobacco; (i) physical discipline; (j) student records; (k) discipline, suspension and expulsion. According to the Minimum Standards, which are written as Oregon Administrative Rules, the previously listed subjects must be included in the local district conduct and discipline codes; also the local district rules "shall include statements on student rights, responsibilities, and conditions which create a need for these rules".⁶¹

⁶⁰Dale Parnell, "Foreword". Oregon Board of Education, Minimum Standards for Student Conduct and Discipline (1972), p. iii.

⁶¹Oregon, State Board of Education, Minimum Standards for Student Conduct and Discipline (1972) p. 1, section 21-050.

After listing the topics to be included in school district rules, the State Board of Education outlined examples of justified reasons for discipline, suspension, or expulsion of students. Examples listed include: theft, disruption of the school, damage or destruction of school property, damage or destruction of private property on school premises or during a school activity, assault or threats of harm, unauthorized use of weapons or dangerous instruments, unlawful use of drugs, narcotics, or alcoholic beverages, and persistent failure to comply with rules or lawful direction of teachers or school officials.⁶²

In dealing with the actions that can be carried out against the student who violated the school rules, the Minimum Standards outlines the procedures to be followed in suspending or expelling the violator. In outlining the process to be followed in suspensions, the state code states the following:

Students may be suspended when such suspension contains within procedures the elements of prior notice, specification of charges, and an opportunity for the student to present his view of the alleged misconduct. The suspending official shall notify the students parents or guardian of the suspension, the conditions for reinstatement, and appeal procedures, where applicable.⁶³

In addition, the guidelines provide that in emergency situations, suspension procedures may be postponed until after the emergency condition has passed, otherwise a suspension may not last more than seven calendar days.⁶⁴

⁶²Ibid.

⁶³Ibid., p. 1, Sec. 21-065.

⁶⁴Ibid.

As can be seen, the State Board of Education requires that limited due process be available to students that face possible suspension. The due process outlined for students facing possible expulsion is more extensive, due to the fact that under Oregon law an expulsion can last for a whole semester.⁶⁵

The expulsion guidelines set down by the Oregon Board of Education to be followed by local school boards are as follows:

A school district board or hearings officer shall not expel a student without a hearing, unless he and his parents or guardian waive, in writing, the right to a hearing. By waiving the right to a hearing, the student and his parents agree to abide by the lawful findings of the hearing or review officer.⁶⁶

The expulsion hearings shall include the following provisions:

1. Written notification of charges, when and where the hearing shall take place, and right to have a representative.
2. A notice sent by mail to the parents or guardian, citing the charge and the acts that support the charge. This notice shall be sent at least seven days prior to the hearing.
3. The executive officer of the school district or his designated representative shall act as the hearing or review officer.
4. The student is permitted to have a representative present at the hearing. The representative may be an attorney, parent, or guardian.
5. The student shall be allowed to present his version with the assistance of exhibits, oral testimony, or guardian.

⁶⁵Oregon, Revised Statutes, 339.250, section 4.

⁶⁶Minimum Standards, p. 2, section 21-070.

6. The student is permitted to hear the evidence against him.

7. The hearing officer shall determine the facts of each case based on the evidence presented.

8. Strict rules of evidence shall not apply.

9. The hearing officer or the accused may make a recording of the proceedings.

10. The local board shall review the decision and may affirm, modify, or reverse his decision.

11. The expulsion shall not extend beyond the end of the current semester.⁶⁷

The codes of student conduct are to include suspension and expulsion proceedings that incorporate the preceding elements of due process. The Oregon Revised Statutes state that these codes must be distributed widely in the local districts. The distribution is again emphasized in Minimum Standards.⁶⁸ In Minimum Standards, the State Board also sets the local district implementation date on September 1, 1972. Compliance with this implementation shall be evaluated by the State Board of Education as a part of the regular standardization visitations.

Thus, the Oregon Board of Education established some basic standards for conduct and discipline codes in Oregon public schools. At the heart of many of the areas to be covered with local conduct codes are the rights and freedoms guaranteed by the Bill of Rights and the Fourteenth Amendment. Of the eleven areas

⁶⁷ Ibid.

⁶⁸ Ibid., p. 2, section 21-075.

that the State Board of Education requires be in local codes; assembly of students, dress and grooming, search and seizure, freedom of expression, discipline, suspension, and expulsion are closely correlated to the Bill of Rights of the United States and the guarantees of due process in the Fourteenth Amendment.

The Oregon Administrative Rules, as printed in Minimum Standards for Student Conduct and Discipline, go into detail only when dealing with procedures to be followed when suspending or expelling a student. These procedures are directly related to the fair procedures or due process section of the Fourteenth Amendment. The State Board has included in Minimum Standards some model codes to be used by local districts as they deem necessary. These model codes deal with the eleven topics to be included in all local district codes. In comparing these model codes to the actual codes, the only topics that will be dealt with in this paper are those that are directly related to the Bill of Rights, the Fourteenth Amendment, or the court cases dealt with in Chapter II.

I. FREEDOM OF EXPRESSION

The state model codes divide the rights of the First Amendment into two different topics: Freedom of expression and assembly of students.

The model code for freedom of expression includes the fol-

lowing:⁶⁹

Condition Description

(1) One of the basic purposes of schooling is to prepare students for responsible self-expression in a democratic society. Citizens in our democracy are permitted free expression under the First and Fourteenth Amendments of the United States Constitution and under Article I, Section 8, of the Oregon Constitution. Students as citizens, have the right of free expression and must bear the responsibility for the consequences of such expression.

(2) Since schooling is a learning experience, the matter of free expression must also be viewed as a part of the learning process. Therefore, when school officials, or their representatives have reason to believe that a student is unaware of the possible consequences of his expressions, they may find it necessary to review publications and speeches to be given to students and to advise on matters of libel, slander, journalistic ethics, and the probable effect of statements or writings on the orderly operation of the school.

Guidelines

(1) Rights:

- a. Students are entitled to express their personal opinions under reasonable circumstances.
- b. Students are encouraged to express personal opinions in writing in school publications. The publishing and editorial policies governing school publications will be in written form.
- c. Under certain conditions, which should be spelled out locally, students may obtain school authorization to sell materials or engage in activities which solicit students financial contributions.
- d. Students may refuse to participate in patriotic exercises as long as the manner of such nonparticipation does not disrupt the educational process.
- e. Students may wear certain distinctive insignias so long as they do not trespass on the rights of others

⁶⁹ The model codes included in this paper are taken verbatim from the Minimum Standards for Student Conduct and Discipline; grammatical errors contained in that document have not been corrected. The material quoted from local district codes is also verbatim.

or interfere with the orderly operation of the school program.

(2) Responsibilities

a. Symbolic and actual freedom of expression shall not interfere with the freedom of others to express themselves. The use of profane or obscene language and threats of harm to persons or property are prohibited.

b. Willful disobedience, open defiance of a teacher's or school officials lawful authority, shall be sufficient course for discipline.

c. Any publication sponsored or in any way funded by the school shall be known as a school publication as opposed to a student publication.⁷⁰

As can be seen, the model code goes into rather specific applications of the First and Fourteenth Amendments, and in doing so, coincides with guidelines set forth in federal court cases dealing with free expression in the public high school. As in those court cases, the basic guideline that comes out of the model code is that students are allowed to express themselves freely as long as there is no disruption of the educational process. This model applies this principle to speech and press freedoms for students. It is noted that one section of the model deals with patriotic exercises and follows the same guiding philosophy as stated by the United States Supreme Court in West Virginia State Board of Education v. Barnette.

The courts and the Oregon State Board of Education are close in their definitions of student rights of free expression; both the courts and the State Board recognize that student expression must not be allowed to interfere with the orderly operation of

⁷⁰ Minimum Standards, pp. 10-11.

schools. The courts' guidelines have been incorporated in the State Board's model code for free expression. Next, the local district codes will be examined to see if the local boards of education follow the guidelines set down by the courts and the State Board.

In examining local district rules on student discipline and conduct, this paper will deal with rules that were in effect in the 1971-72 school year and the rules on conduct that went into effect in the 1972-73 school year. Of the eighteen student conduct codes for 1971-72⁷¹ from school districts in all regions of Oregon, only four dealt specifically with the students rights of free expression. Several other student conduct codes dealt with expression by including a section that referred to a state statute outlawing obscene or profane language in school. The eighteen schools that did not deal specifically with the rights of free expression published their rules on student conduct in traditional student handbooks, or, in the case of very small schools, a mimeographed handout was utilized. Three of the four schools that included regulations on free expression did so in pamphlets dealing specifically with student rights and responsibilities. The fourth school has "understood policies" that are adhered to by the board of education but have not been published for distribution.

⁷¹In January, 1972 conduct codes were requested from forty-five Oregon high schools, of these, eighteen cooperated by sending copies of their codes.

In summarizing the four school district policies on student rights of free expression, all four state that students have the right to express themselves on any issue as long as they do not disrupt the educational atmosphere.

One of the published codes in part states:

School officials may review publications and speeches to be given to students to make sure they are free of libel and slander, are in good taste, and will not cause disruption of the school.

Verbal abuse of District personnel by others is not permitted and shall be subject to appropriate action.⁷²

In the first paragraph of this quotation, it is stated that "publications and speeches to be given to students" shall be reviewed. The rule does not state whether this review policy applies to expression "by" students. Also, what constitutes "verbal abuse of District personnel" is unclear, does this refer to slander, profanity or any form of criticism.

The David Douglas code, in part, states the following:

1. Freedom of Speech and Assembly
 - a. Students may verbally express their personal opinions but these opinions shall not be allowed to interfere with the rights of others to express themselves.
2. Freedom to Publish
 - a. Students are entitled to express their personal opinions in writing. These opinions shall not interfere with or disrupt the educational process or infringe upon the rights of others. Such written expressions must be signed by the author. The time and place for the distribution of such material is subject to individual building rules.
 - b. Libel, obscenity, and personal attacks are prohibited in all publications.

⁷² duct Salem School District No. 24J, Guidelines for Student Con-
(October, 1970), p.7.

c. Commercial advertising or solicitations will be permitted on school property only if they are related to school functions or have the approval of the Superintendent.

d. School-sponsored publications must have all items approved by the principal or his designated representative.

This code also includes a specific provision guaranteeing freedom of petition. It reads: "Students have the freedom to petition for a change in school policies and regulations; circulation of petition is subject to individual building rules".⁷³

These policies, though adopted prior to the mandatory adoption date, coincide with the state model codes as far as basic principles of rights and responsibilities are concerned. With the possible exception of vague wording in the Salem code, the codes also are compatible with the guidelines stated in the various court decisions dealing with student rights of free expression. Some of Oregon's school districts were moving in the direction set by court decisions before the Legislature and the State Board of Education adopted respectively, a statute and an administrative rule.

In examining school district policies published and presented to students since September of 1972, the percentages of schools with and without conduct and discipline codes nearly reversed. Of twenty-two district codes received⁷⁴ three did not list guide-

⁷³David Douglas School District No. 40, Student Rights and Responsibilities (October 25, 1971).

⁷⁴In January 1973, requests for conduct codes were mailed to forty-five Oregon high schools, twenty-two high schools sent copies of their codes.

lines for student rights of free expression. Of the nineteen that included freedom of expression, twelve districts either adopted for distribution the state model codes as written, or with deletions. The sections of the model codes most often left out by the local districts were the rights allowing students not to participate in patriotic activities and to wear insignias on clothes as long as they were not offensive or disruptive.

The districts that had drawn up discrete freedom of expression codes incorporated the basics of the First Amendment rights in their codes just as the state models have.

One such code reads:

Students may verbally or symbolically express their personal opinions but expression of these opinions shall not be allowed to interfere with the rights of others including the rights to express themselves. The use of obscenity, obscene gestures, personal attacks, or threats of harm to persons, property or personal reputation are prohibited.⁷⁵

Another district adopted the following:

Freedom of expression, as a Constitutional right, is guaranteed in the schools.

This freedom, however, carries with it responsibility. Students shall bear this responsibility in the exercise of their rights of expression.

A. Students shall not distribute or display materials which are libelous, obscene, or which create danger of physical disruption, and/or violation of the law.

B. The student, in his written or oral expressions, shall not advocate or encourage the commissions of crime.

⁷⁵ Reynolds School District No. 7, Pupil Personnel Policy (July, 1972), p. 4.

C. Students shall obtain the authorization of school authorities prior to selling materials or engaging in activities which solicit student financial contributions.

School authorities may authorize the time and place for distribution of literature or related materials so that they will not interfere with the school program.⁷⁶

These two local district standards are representative samples of the six codes that varied most from the state model codes. These codes and those patterned directly after the state models all contained the philosophy that was expressed in recent court decisions involving student rights. Briefly stated, students have the right to express themselves orally or in writing as long as they do not cause disruption of the educational process. The one category of speech categorically ruled out in all school districts is profane speech or articles. This policy is based upon Oregon law which specifically bans profanity and obscenity at school.⁷⁷ Whether this type of speech is disruptive is questionable; however, many persons do find it offensive. As long as numbers of people find such speech offensive, it will probably be banned in the public schools.

By examining the codes, it can be concluded that most of Oregon's school districts now have written student conduct codes. In the school year 1971-72, most of the school districts did not have codes specifying student rights of free expression. In the

⁷⁶ Springfield School District No. 19, Student Rights and Responsibilities (March, 1972), p. 12.

⁷⁷ Oregon, Revised Statutes, 339.250, section 3.

1972-73 school year, this situation was reversed. This change came about primarily because the State Board of Education drew up rules in accordance with the Oregon Revised Statutes requiring local districts to have such codes.

Another area of the First Amendment covered by the local guidelines is student rights to assembly. Yet, the codes for the school year 1971-72, almost without exception, had no mention of assembly. Of the eighteen codes, only three dealt specifically with assembly. These codes were in line with those dealing with other forms of expression. The major limitation cited in the three codes was that the assembly must not be disruptive of school or dangerous to persons or property.

One school district stated that "Students should be permitted to hold meetings on school property but such meetings should be scheduled in advance, should not disrupt classes, and should cause no hazard to person or property."⁷⁸

Another district titled this area of the code "Student Demonstrations" and stated that "Demonstrations or protests which are not disruptive and which do not interfere with the school program or other peoples rights are permissible."⁷⁹ This second code then proceeds to state what actions the school district will take if the demonstrations become violent or disruptive.

⁷⁸ Salem Public School District No. 24J, Guidelines for Student Conduct, p. 4.

⁷⁹ Portland Public Schools, Student Rights and Responsibilities, p. 5.

These codes allow students their rights except when they step over the boundaries set by the local school board. The boundaries being imminent or actual disruption of order in the schools.

The two codes from 1971-72 conform to the Minimum Standards and the state model code for assembly of students which reads as follows:

Assembly of Students

Condition Description

(1) It is important to the orderly use of school facilities that the use of all space should be planned in advance whenever possible.

(2) Students, faculty, and administration are all in some measure responsible for the activities that are conducted in a school. Indeed, school personnel are held accountable to a public, a school board, a legislature that gives fiscal support; accountable for the image of the institution. Also, all members of the school community are accountable to each other.

Guidelines:

(1) Right: Student shall be permitted to hold meetings on school property.

Right: Students shall have the right to gather informally.

(2) Responsibility: Student Meeting

(a) The meeting should be scheduled in advance.

(b) Normal classes shall not be disrupted.

(c) The meeting shall not be such as may be likely to incite hazard to person or property.

(d) The meeting shall be sponsored by school officials or an official school club or organization.

(e) No speaker who openly or knowingly advocated breaking the law shall be invited to speak. Invitations to speakers shall be approved by the principal or his designated representatives.

(f) If a crowd is anticipated, a crowd control plan shall be filed in the appropriate office well in advance of the meeting. Attempts shall

be made to present a balance of viewpoints.⁸⁰
 Responsibility: Informal Student Gathering
 (a) Students gathered informally shall not disrupt
 the orderly operation of the educational process.
 (b) Students gathered informally shall not infringe⁸¹
 upon the rights of others to pursue their activities.

This model was the basis for the assembly code in thirteen
 of the twenty-two student conduct codes for the 1972-73 school
 year. These thirteen school districts altered the code slightly,
 most noticeably several (5) deleted the section guaranteeing
 students the right to gather informally.

The six school districts that drew up their own district
 codes maintained the same premises, but usually achieved the writing
 of the code with fewer words.

One of these codes deals with assembly by simply stating
 that "Students shall be permitted to hold meetings on school proper-
 ty, but such meetings shall be scheduled in advance, shall not dis-
 rupt classes, and shall not cause no hazard to person or property"⁸²
 This district chose not to include a ban on assemblies that might
 become disorderly or pose a threat to the educational atmosphere.

⁸⁰ Sections C. and E. of this model prohibit assembly of
 students that might become disruptive. This suggested regulation
 is in contradiction to judicial guidelines developed in Tinker v.
 Des Moines School District. Those guidelines held that school of-
 ficials could not ban expression because of what the officials
 felt might happen, this involves prejudgment of a possible situation.

⁸¹ Minimum Standards, pp. 7-8.

⁸² North Clackamas School District No. 12, Student Conduct
 and Discipline Code (June, 1972), p. 5-12.

The rules adopted by Reynolds School District stated that "All student meetings shall function as part of the normal educational process or as authorized by the principal . . ."⁸³ In another section of the code, this district stated some other rules governing the assembly of students by stating that:

Any student of Reynolds School District No. 7 who participates in a strike, walk-out, sit-in, or mass demonstration against the duly constituted authority of the Reynolds School District shall be automatically suspended from all extra curricular activities for a period of not less than one calendar year.⁸⁴

This possible year long suspension might be excessive in light of the state regulation limiting disciplinary suspensions to seven days and expulsions to the remainder of the semester or term. Punishment for this type of situation is not discussed in the Minimum Standards. Since extra-curricular activities are not mandatory under law, the Oregon Board of Education did not deal with them, thus leaving their regulation to the discretion of the local districts. In light of Oregon law and State Board regulations, the possible suspension period from extra-curricular activities is excessive.

Also, in regards to Reynolds' suspension policies, due process is cast aside if mass demonstrations are involved. The policy states that students "shall be automatically suspended"; this implies that stipulated suspension proceedings shall not be followed. In a court contest these regulations would be categorized

⁸³ Reynolds School District No. 7, Pupil Personnel Policy, p. 5.

⁸⁴ Ibid., p. 4.

as arbitrary and unreasonable based on the guidelines developed in Chapter II.

Except for this vague Reynolds' rule on strikes and mass demonstrations, most of the codes were clear. In general, the codes on assembly allow for student assemblies as long as the assemblies do not disrupt the order of the school. These assemblies must be scheduled in advance (in 5 out of 6 codes) so as not to interfere with the orderly operation of the school. Again, the local codes and the state model concur with court decisions affecting student rights of assembly.

II. GROOMING AND ATTIRE

School dress codes and appearance codes virtually disappeared as a result of the Minimum Standards for Conduct and Discipline. In the school year 1971-72 twelve schools out of eighteen included definitive dress codes. In 1972-73 only three schools out of twenty-two listed regulations that could be labeled as definitive or restrictive dress codes. Most of the local districts have rules stating that students can wear what they choose as long as they are clean and their appearance does not distract from the orderly operation of the school.

The model code offered by the Oregon Board of Education is also rather liberal, it reads as follows:

Dress and Grooming - Model Code Condition Description

- (1) Dress and grooming while in school is basically an

individual responsibility of the student and his parent. When dress and grooming disrupts the learning process while in school, for the individual student, other students, or the learning climate of the school, it becomes a matter of counseling with the student and/or parent.

(2) The total learning climate of a school is important to the satisfactory progress of students. This system places major emphasis upon developing an environment where the teaching-learning process will flourish with as few constraints as possible.

Guidelines:

(1) Right: The district school board shall reduce any rules and regulations on dress and grooming to writing and make such rules widely available to parents and students. Any such rules and regulations must be clear and go beyond some undefined sense of individual sartorial or tonsorial good taste.

(2) Right: Student dress and grooming is the responsibility of the individual and his parents under the following guidelines:

(3) Responsibilities:

(a) Dress and grooming shall be clean and in keeping with health, sanitary and safety practices.

(b) When a student is participating in special activities his dress and grooming shall not disrupt the performance or constitute a threat to the individual or other students.

(c) Provisions for dress and grooming in special activities should arise directly out of the needs of the activity and not from some undefined sense of individual sartorial or tonsorial good taste.

(d) Dress and grooming shall not be as such as to disrupt the teaching-learning process.⁸⁵

The conduct codes of the 1971-72 school year repeatedly contained regulations that exhibited the administrations personal preference or the personal preference of the local board or whatever group drew up the guidelines. Regardless of which group drew up the guidelines, it meant that the students had to groom and

⁸⁵Minimum Standards, pp. 8-9.

dress according to what some other individuals thought appropriate.

This basis for dress and grooming regulations is no longer recommended. Three examples of the now superceded, but very definitive, dress codes are as follows:

Students are expected to be neat and clean and come to school in a presentable manner. Girls are permitted to wear dress slacks.⁸⁶

The students, faculty, and administration believe that certain dress and grooming standards are appropriate for school, thus the following recommended guidelines have been developed to inform parents and students how they should appear for school.

1. Clean - including hair, body, and clothing.
2. Shoes or sandals must be worn. Thongs or other beach wear are not considered appropriate.
3. Hair should be cut for boys so that it does not extend over the collar in the back and does not hang over their eyes in front. Sideburns, mustaches and beards, if worn, must be clean and neatly trimmed.
4. Clothing should not be ragged or tattered. All clothes should be properly hemmed.
5. Girls should wear skirts, or dresses of such length, which in course of normal school activity, portions of their undergarments will not be exposed.
6. Girls should not wear boys' or girls' "blue jeans" to school. If slacks are worn, they should be of the dressy type.
7. Girls should wear clothing which is appropriate to their individual figure. All girls should avoid wearing "skin tight" slacks, dresses, or skirts.
8. Bermuda shorts, or hemmed cut-offs for both boys and girls are acceptable when weather conditions warrant. Shorts (shorter than mid-thigh length) are not considered appropriate.
9. Dress that denies the rights of our teachers and students, to teach and learn in an atmosphere of discipline, personal pride, and self respect should not be worn.⁸⁷

⁸⁶ Union High School District No.1, Guidelines for Jordan Valley High School, p. 2.

⁸⁷ Oregon City Senior High School, Pioneers' Guide, p. 13.

"No regulations on dress except that it be neat, clean and proper. No shorts or cutoffs may be worn".⁸⁸

These codes are examples of what the State Board of Education desires to terminate. They force students to dress or groom according to someone else's standards. In 1973 the Oregon Court of Appeals, in Neuhaus v. Federico, ruled regulations of this sort to be beyond the legal authority of school districts. The school board and administration is abridging individual rights when it attempts to dictate how an individual can choose to appear.

In the local codes for the school year 1972-73, most dress code regulations avoid the trivial details included in the codes quoted from 1971-72. As mentioned earlier, only three of the twenty-two codes for the school year 1972-73 were more restrictive than the model drafted by the State Board of Education. The majority tended to be open on dress and grooming standards as long as the students appearance did not disrupt the educational process or atmosphere of the school.

The Josephine County code, more restrictive than the state model, reads in part:

Suggested types of clothing acceptable in Josephine County Schools are slacks, dresses, pant suits, skirts and sweaters for girls. Clean, neat trousers with shirts or sweaters is considered suitable for boys. Examples of clothing unacceptable for girls are shorts (above mid-thigh) hot pants, bathing suits, halters, and other revealing clothing. Sleeveless shirts, shorts (above mid-thigh), shoes or boots with nails or cleats, are not suitable for boys.

⁸⁸ Burnt River High School, Burnt River Guide, p. 5.

(These suggestions are not meant to be all inclusive, but only to provide guidelines for students and parents.)⁸⁹

The guidelines in this code are not mandatory but suggestions on how students of Josephine County public schools should appear while at school. The 1971-72 codes quoted contained mandatory grooming and dress standards. Whether or not a school district can suggest student appearance is not dealt with in the Minimum Standards. As with Reynolds School policies on student demonstrations, here is another area of conduct codes that the State Board should clarify, otherwise a court contest could materialize if the suggestions were treated as mandatory rules.

Another school held that "Unshaven appearance for boys is not acceptable" and "Hair must not be excessive in length and must be groomed". This code for Jefferson High School also stated that "Violations of the appearance code will be handled by the administration or student council".⁹⁰

Not only was the preceding code vague in using terms such as "unshaven" and "excessive in length" but it failed to mention whether the "excessive in length" was meant for male or female students. Codes such as the preceding one are the types that were ruled arbitrary or unconstitutional by court decisions, and are the type the Oregon Board of Education sought to eliminate by requiring local school boards to adopt student discipline codes

⁸⁹ Josephine County School District, Minimum Standards for Student Conduct (August, 1972), pp. 3-4.

⁹⁰ Jefferson High School, Jefferson Oregon, Personal Appearance Code.

that were more in line with the State Board models. However, since the models were just that, it can be seen that not all districts chose to be as specific or open as the state implied.

Most appearance codes for the school year 1972-73 were more in line with state suggested models as can be seen by reading through several examples.

One of these codes in it's entirety follows:

Dress and Grooming:
Rationale:

An adequate learning climate in the schools is important to the satisfactory progress of students. This fact places major emphasis upon developing an environment where the teaching-learning process will flourish with as few hinderances as possible.

Dress or grooming whether in school or out is basically the responsibility of the students and his parents. When dress and grooming disrupts or interferes with the learning process for the individual student and/or other students, or endangers the health and safety of members of the school community, it becomes a disciplinary matter.

Regulations:

1. Dress and grooming shall be in keeping with health, sanitary, and safety practices.
2. When a student is participating in school activities, his dress and grooming shall not disrupt the performance or constitute a health threat to the individual or other students.
3. Dress and grooming standards may be established by school authorities as a requirement for participation in the school activity programs.
4. Any attire which has as it's intent the advertisement or promotion of anything illegal or immoral or shows disrespect towards the flag or law will not be tolerated.
5. Dress and grooming that disrupts the teaching-learning process shall not be permitted.⁹¹

⁹¹Scappoose School District No. 1J, Student Conduct Code (December, 1972), page 3.

This code could be said to be non-restrictive and in keeping with the spirit of court decisions related to appearance codes, yet at the same time the section of the code prohibiting specific types of attire is restrictive of the rights of free expression through symbolic speech. The burden of proof lies with the school district when a form of expression is abridged. No reasons are included in the code that would indicate this type of attire would be any disruptive of the educational atmosphere than other types. Other than that rule, the overall appearance code allows for student freedom in choosing how they wish to dress and groom.

Another school district chose to adopt the state model word for word except for the last two responsibility statements. In rephrasing state model paragraph number 3(c), Forest Grove Public Schools stated that "Bizarre or immodest dress and grooming shall not disrupt the teaching-learning process". Section 3(d) of the state model was changed completely to "The student shall comply with the written rules and regulations applying to his or her school", thus leaving it open for variations at a more localized level than the school district.⁹² Again, here is a point on which the State Board guidelines are weak. If individual schools can draft their own conduct codes what purpose is served by the district code? The State Board of Education would have to examine each school code to make sure all students were covered by codes in line with the state guidelines.

⁹² Forest Grove Public Schools, Student Conduct and Discipline (January, 1972), section 5002.

The following code from Gaston Public Schools closely resembles the state model in the conditions description but is altered in the state guidelines as follows:

B. Guidelines

- (1) Right: Student dress and grooming is the responsibility of the individual and his parents under the following guidelines:
- (2) Responsibilities:
 - (a) Dress and grooming shall be clean and in keeping with health, sanitary, and safety practices.
 - (b) When a student is participating in special activities, his dress and grooming shall not disrupt the performance or constitute a health threat to the individual or other students.
 - (c) Provisions for dress and grooming should arise directly out of the needs of the activity.
 - (d) Dress and grooming shall not be such as to disrupt the teaching-learning process.⁹³

This code and the preceding were patterned on the state models with major noticeable changes being the rewording of statements so that students receiving copies of the codes could understand what rules applied to them.

Larger school districts show the most variation from the state models. Take for example Portland School District:

Student Dress and Grooming

The responsibility for the dress and grooming of a student rests primarily with the student and his or her parents or guardians. Ordinarily, a student's dress or grooming shall not affect his or her participation in school classes or programs or in school related activities. If, however, the dress or grooming of a

⁹³ School District No. 511J, Standards for Student Conduct, Discipline, and Attendance (1972), pp. 2-3.

student disrupts the educational climate or process or is unclean or a threat to the health or safety of the student or any other person, the school has a legitimate concern and may require the student to change his or her dress or grooming.⁹⁴

Or the following from North Clackamas School District:

Dress and Grooming

Dress and grooming of the student rests primarily with the student and his parents. Participation in class or class related activities shall not be affected by a student's appearance except when his appearance does, in fact, disrupt the educational process or constitute a threat to health or safety. Students participating in voluntary extra-curricular activities shall conform with the regulations governing the various activities.⁹⁵

These two codes maintain the same intent as the model or the three codes patterned directly on the model, but they have done so without any substantive change from the court cases cited in Chapter II. The majority of appearance codes for the school year 1972-73 appear to allow the students to attend school in any garb they choose. However, a few school districts have held to codes more characteristic of the past and have faced challenges by students and parents as well as court decisions invalidating their codes.

For the last several years, the courts of Oregon and the United States have been ruling on dress and grooming codes. The number of these cases should diminish in Oregon as more school districts comply with the State Board of Education standards.

⁹⁴Portland Public Schools, Student Rights and Responsibilities, p. 8.

⁹⁵North Clackamas School District No. 12, Student Conduct and Discipline Code, pp. 5-12.

Until the time that all schools allow students to groom as they choose, the courts will be called upon to settle the differences. For the most part, it appears as though the "great hair hassle" has subsided.

III. SEARCH AND SEIZURE

American citizens are protected against unreasonable searches and seizures by the Fourth Amendment to the United States Constitution. Also, according to that amendment, a search or seizure must be authorized by a magistrate following sworn testimony stating probable cause to believe that illegal material or activities are at the location to be searched. As shown in Chapter II, these protections do not apply to public school lockers.⁹⁶

The State Board's model reflects this same philosophy.

The model reads as follows:

Search and Seizure -- Model Code

Condition Description

The Board seeks to create a climate in the schools which assures the safety and welfare of all. Equipment, such as lockers belongs to the school district, and "students" are allowed to use this equipment as a convenience. The schools may insist that lockers are to be properly cared for and not used for the storage of illegal items.

Guidelines:

- (1) Right: At the time of locker assignment or registration, students will be informed of the conditions of use governing the locker.

⁹⁶ Courts and school district define school lockers as being the property of the school, thus allowing them to be searched by the principal or his designate as they desire.

(2) Students may be assured that the rights of the individual shall always be balanced with the needs of the school. In a search and seizure situation, the following procedures shall be followed:

- a. A search of a student's person should be limited to a situation where there is probable cause that the student is secreting evidence of an illegal act or school violation.
- b. Illegal items (firearms, weapons etc.) or other possessions reasonably determined by the proper school authorities to be a threat to the safety or security of the possessor or others may be seized by school officials.
- c. Items which may be used to disrupt or interfere with the educational process may be temporarily removed from the students possession.
- d. A general inspection of school properties including, but not limited to lockers or desks may be conducted on as regular basis. Items belonging to the school may be seized.
- e. All items seized shall be returned to the proper authorities or the true owner.
- f. The student shall be given the opportunity to be present when a search of personal possession is conducted, if he is in attendance and if there is no reason to believe that his presence would endanger his health and safety.⁹⁷

As can be seen by comparison, this model conforms to the judicial decisions discussed earlier (see Chapter II). The State Board of Education chose to go no further than the courts have required them to go in applying the Bill of Rights to public school students. The Fourth Amendment, which makes no reference to criminal proceedings, has been held to protect citizens from government searches as ordinary as health and safety inspections⁹⁸ but it is held not to apply to the lockers used by public school

⁹⁷Minimum Standards, p. 9.

⁹⁸Camara v. Municipal Court of City and County of San Francisco, 87 S. Ct. 1727 (1967).

students. The courts have continued to define the Fourth Amendment as not protecting school lockers, even though school locker searches frequently result in a student being charged with a crime or delinquent act.

Before the state guidelines were drafted, the local districts appeared to have been more in line with the court decisions regarding search and seizure than they were with those decisions regarding free speech. Of eighteen codes for the school year 1971-72, eight school districts had search and seizure policies stating that the locker was the property of the school and could be searched by authorities regularly or if it be suspected that illegal material is being concealed.

One school, after informing the students of rental fees and the necessity of keeping combinations to oneself, explained:

Students are reminded that lockers remain the property of the school district and may be opened by school authorities at any time when there is sufficient reason to suspect stolen property or when the safety and welfare of other students may be involved.⁹⁹

Another school took a similar position in its rule regulating the use of lockers:

Lockers are available to students and are assigned at the beginning of the school year. The school assumes no responsibility for the safeguards of articles left in lockers. The lockers are not designed for maximum security. In the past some lockers have been entered illegally. Students are urged not to place valuable items in lockers for safekeeping.

Lockers are the property of the school district

⁹⁹Oregon City Senior High School, Pioneer's Guide, p. 7.

and under the direct control and supervision of the administration of the district. Students are allowed the use of the lockers under certain conditions which include:

A. The administration of the district may inspect lockers at any time for the following reasons:

1. To look for lost and stolen library and text books or school equipment and supplies.
2. To remove health hazards.
3. To check for necessary repairs.
4. To confiscate illegal items.

B. No person shall place in a locker any of the following:

1. Stolen property.
2. Intoxicants or tobacco.
3. Any item threatening the health or welfare of occupants of the building.
4. Any item the possession of which is unlawful.¹⁰⁰

Still another school district held that "No student lockers in or on district property shall be considered to be private lockers", thus allowing for the school officials to search the lockers and their contents whenever deemed necessary. This district held that the lockers, though used by students to protect belongings from classmates, were at all times "subject to control of the district and inspection at any time by any agents of the district".¹⁰¹

These three 1971-72 school locker codes were influenced by court decisions regarding high school lockers for they all state clearly that the school never relinquishes it's control over the locker. The manner in which school locker cases have been dealt with has resulted in codes that do not employ such phrases of constitutional law as "probable cause" or "reasonable seizure".

¹⁰⁰Burnt River High School, Burnt River Guide, pp. 6-7.

¹⁰¹Medford School District No. 549, Medford High Handbook, pp. 10-11.

The philosophy represented in the previous phrases has been ruled as unnecessary when dealing with school lockers because they remain under control of the school. Thus, none of the search and seizure codes from 1971-72 allowed for the types of protections stipulated in the Fourth Amendment.

In turning to the search and seizure codes for the 1972-73 school year, eighteen of twenty-two had search and seizure regulations. Of these, only one was significantly different from the state model code. The one school district that varied, stated that "school lockers are provided for the convenience of students and shall be under the control of the school administration". It also held that "Lockers may be opened at the discretion of the building administrator in a prudent way, at appropriate time, and in a reasonable manner".¹⁰² This code, though brief, informs the students of the conditions of locker usage so that they cannot plead ignorance of the regulation when the victim of a search. The code meets the State Board's requirements; however, in doing so, it employs vague terms such as "prudent". The person who wrote the code would be the only person sure of what was meant by that term.

The other seventeen codes containing search and seizure regulations either adopted the model entirely or made slight alterations to fit their particular situation. For example, one district changed section (2) (e) of the state model to "All items seized

¹⁰² Salem School District No. 24J, Guidelines for Student Conduct (October, 1970), p. 6.

may or may not be returned to the true owner, their parent or guardian, or be placed with the proper authorities".¹⁰³ The way this code was rewritten, the officials of Sweet Home Schools could keep whatever they took from student lockers. Unclear statements such as the above quotation make it nearly impossible to determine what will be done as a result of the search. The "may or may not be returned" statement, unless clarified, could result in a court test of the custodial powers over seized material.

The Clatsop and Tillamook County School District changed that same section to "All items seized shall be delivered to the proper authorities or the true owners".¹⁰⁴ This code revision resulted in a clear statement and not the uncertainties of the Sweet Home code.

The Gold Beach School District did not specify what would be done with the seized material, but stated clearly that "The building principal shall be the custodian of all seized property".¹⁰⁵

Section 2 (f) of the state model, which stated that "students shall be given the opportunity to be present when a search of personal possessions is conducted", was deleted from five districts'

¹⁰³Sweet Home School District No. 55, Student Conduct Code, p. 3.

¹⁰⁴Clatsop County and Tillamook County Schools, Student Rights and Responsibilities (1972), p. 7.

¹⁰⁵Gold Beach High School, Student Conduct Code (August, 1972), p. 8.

student conduct codes.¹⁰⁶ No reason is evident other than officials seek to conduct searches under a cloak of secrecy without any hindrances from the students.

As was found in the court decisions dealing with the search of lockers, the Fourth Amendment to the United States Constitution does not apply. In fulfilling their legislated duties to maintain order, the public school districts need not follow the provisions of the Fourth Amendment even though criminal prosecution may follow the regular searches and seizures. In the flag salute case Barnette, Justice Jackson held that the Bill of Rights was designed to protect citizens against "creatures" of the state, including public school districts. In In Re Gault, Justice Fortas held that the Bill of Rights was not meant to apply to "adults alone". In Tinker v. Des Moines, the majority of the Court held that "neither students nor teachers shed their constitutional rights at the schoolhouse gate". If in these related cases the amendments known as the Bill of Rights extend inside the school, why is the Fourth Amendment excluded? Is the threat of disruption so severe that school authorities should be excluded from having to follow the constitutional procedures law enforcement officials follow when dealing with citizens out of

¹⁰⁶North Clackamas School District No. 12, Student Conduct and Discipline Code.

Reynolds School District No. 7, Pupil Personnel Policy.

Gaston School District No. 511J, Standards for Student Conduct, Discipline and Attendance.

Scappoose School District No. 1J, Student Conduct Code.

(1972). Lake Oswego School District No. 7, Pupil Personnel Policy,

school? Perhaps these questions will receive answers more in line with the scholastic application of the First Amendment in the years ahead but as of now, the court decisions and the Minimum Standards for Student Conduct and Discipline have set the definition of the Fourth Amendment so as not to cover school locker searches.

IV. DUE PROCESS

Due process, or as labeled in the Minimum Standards for Student Conduct and Discipline, "Procedures" is the area of student rights in which the State Board of Education specifically listed the procedures to be followed by the local boards. In examining the conduct codes for the school year 1971-72, ten of eighteen made reference to the procedures and purposes of suspension and expulsions. Some of these were very brief in length and sketchy in detail.

One of these brief statements reads:

Repeated violations of rules and violations of serious nature can result in suspension from school. Suspension is dictated by the administration only after serious consideration. Should a student be suspended two times during the school year, the School Board will be asked to expel the student for any following violation. The real purpose of suspension is to create a background for expulsion and for protection of the other students and the rules governing this school.¹⁰⁷

The previous code states no procedures, no privileges of the

¹⁰⁷ Pine-Eagle School District No. 61, Pine-Eagle Student-Parent Handbook (1971), p. 31.

student, nor the specific roles of the school officials in the suspending actions. This code, from Pine-Eagle High School, would not meet the requirements of the Minimum Standards as enacted by the State Board of Education. This same pattern, penalties but no procedures, was found in four other handbooks from the 1971-72 school year.

The other five districts explained suspension and/or expulsion and the procedures that lead to the application of the penalties. Two districts, Salem Public Schools and Eugene Public Schools, briefly stated the procedures a student scheduled for a suspension is guaranteed. These procedures included: Notice of infractions, format of the hearing, and method used to notify the student and the parents of the decision of the hearing officer.¹⁰⁸

The other districts were very specific about the procedures to be followed for both suspensions and expulsions. The three, Portland, David Douglas, and North Clackamas, were basically the same. The following is the suspension procedure for one of the districts:

Suspension - Suspension temporarily removes from a student the privilege of attending school, school activities, or being on school premises. Absences due to suspension are unexcused. Ordinarily a suspension will not exceed five school days, but in special circumstances, a suspension may be extended until some specific pending action occurs such as a court hearing, an expulsion hearing, or a review by a probation officer. Suspensions are made by the principal, or vice-principal

¹⁰⁸ Salem School District No. 24J, Guidelines for Student Conduct, p. 3.

Eugene School District No. 4J, Pupil Personnel Policies (1968), section 8.42.

with the approval of the principal.

- a. The student is informed he is suspended, given the reason (or reasons) for the action, the time the suspension will start and the length of the suspension.
- b. The parents are notified by telephone (if possible) of the suspension and the reasons for the action.
- c. A letter is mailed to the parents stating the specific reasons for, and the length of, the suspension. The letter will also request the parents to contact the school for an appointment for a re-admission conference with the administrator and the student.
- d. During the conference the student's records will be reviewed in efforts to determine steps that need to be taken by the school, the student, and the parents to insure success.¹⁰⁹

Portland and North Clackamas varied in wording and certain details, but the same philosophy guided the policy. These three districts, in fact, adopted these codes in conjunction with the state guidelines that were being considered for adoption the following school year, and are the same suspension codes as were in effect in 1972-73.

The same reason was behind the expulsion proceedings adopted in these three local districts. The procedures for expulsion in North Clackamas are:

Expulsion is the termination of the student's right to attend school and school activities for a substantial period of time not to exceed the current semester. The student shall be suspended by the principal pending possible expulsion to protect the welfare of the students, the faculty, and to protect school property.

When serious discipline of a student (expulsion or suspension for more than ten days) is contemplated, he should be permitted to have a hearing as described

¹⁰⁹ David Douglas School District No. 40, Student Rights and Responsibilities.

below unless he and his parents or guardian waive this right.

The procedures below shall be followed in the hearing. If the hearing right is waived by the student, only steps A, B, G, H, and I shall be followed.

A. A written statement of charges and date, time and place of the hearing shall be furnished the student and his parents or guardian by certified mail, return receipt requested, at least five days prior to the date of the hearing.

B. The superintendent or his designated authority shall act as the hearing or review officer and shall maintain control over and conduct the hearing or review.

C. The student shall be permitted to inspect in advance of such hearing any affidavits or exhibits which the school intends to submit at the hearing.

D. The student shall be permitted to have counsel present at the hearing to advise him. The counsel may be an attorney, parent or guardian.

E. The student shall be afforded the right to present his version as to charges and to make such showing by way of affidavits, exhibits and witnesses. The school shall have the right to question any witnesses presented by the student and shall assist the student in obtaining requested witnesses.

F. The student shall be permitted to hear the evidence presented against him and he or his counsel may question at the hearing any witness who gives evidence against him. However, this does not mean that the same formalities as a criminal hearing need be observed.

G. The hearing officer shall determine the facts of each case solely on the evidence presented at the hearing. He shall submit to the district board his findings, as to the facts and whether or not the student charged is guilty of the conduct alleged and his decision of disciplinary action, if any, including the duration of any expulsion. The above decision shall be made within five days of the hearing and copies thereof shall be made available in identical form and at the same time to the school board, the student and his parents.

H. The school shall make a complete tape recording of the hearing.

I. The school board may review the decision of the hearing officer and may affirm, modify, or reverse his

decision.¹¹⁰

In comparing this code and the Portland and David Douglas codes to the suggestions made by judges in Madera v. Board of Education, Vought v. VanBuren Public Schools as to how disciplinary hearings should be conducted, it is discovered that all the judicial suggestions are incorporated plus more. For example, the courts held that counsel need not be present since expulsion proceedings do not result in a criminal type of punishment. Breaking of school rules is generally not considered a crime. Thus, these school districts went further than required in allowing for assistance of counsel. In meeting the forthcoming requirements of the Oregon Board of Education, David Douglas, North Clackamas and Portland schools were more than fulfilling the definitions developed by courts across the nation.

The three suspension and expulsion codes from 1971-72 not only meet the requirements of the Minimum Standards for Student Conduct and Discipline, they correspond procedurally quite accurately to the state models. For 1972-73, nineteen of twenty-two codes went through detailed suspension and expulsion procedures quite similar to those codes previously listed. These nineteen codes all satisfy the standards proscribed by the Oregon State Board of Education. The manner in which the codes is published for distribution varies from school to school; quite often the format employed by the local

¹¹⁰North Clackamas School District No. 12, Student Discipline (September, 1971).

district is much briefer than the state model. The apparent reason for this is the excessive wordiness of the state model.

Also, the grouping of suspension and expulsion procedures into one model code is different than the organization followed by the local districts which generally chose to print separate codes for the two disciplinary actions.

The state model code for "Discipline-Suspension-Expulsion-Serious Student Misconduct" is as follows:

Condition Description

(1) All students in our schools deserve reasonable safeguards in the consideration of all matters affecting their school life. Careful attention must be given to procedures and methods whereby fairness and consistency in discipline shall be assured each student.

(2) Special problems confront administrators and teachers in conducting schooling programs free from disruption and free from kinds of distracting behavior which impede the learning of any student. School officials may find it necessary occasionally to discipline a student or even to remove the student from the formal learning environment for a period of time.

(3) Teachers and administrators need discretionary powers in invoking disciplinary actions and procedures, and in maintaining a climate conducive to learning and protection of life and property.

(4) School disciplinary actions are civil, not criminal matters. Schools must clarify rights and procedures that assure fair treatment for each student in a learning environment.

Guidelines

(1) Rights:

(a) Fair treatment for each student shall be such as to protect them from arbitrary and unreasonable decisions.

(b) All decisions affecting students shall be based on careful and reasoned investigation of the facts and the consistent application of rules and regulations.

(c) All students shall be apprised of the school rules and procedures by which schools are governed and the processes by which discipline may be involved.

(2) Responsibilities:

(a) Students shall comply with the rules for government of schools, pursue the prescribed course of study, and shall submit to the lawful authority of teachers or school officials.

(b) The following type of conduct shall make the student liable for discipline, suspension, expulsion:

1. Disruption of school - Any conduct that substantially disrupts a school function or is likely to be forbidden.

2. Damage or Destruction of School Property - A student shall not cause or attempt to cause damage to school property or steal or attempt to steal school property.

3. Damage or Destruction of Private Property - A student shall not cause or attempt to cause damage to private property or steal or attempt to steal private property either on the school grounds, or during a school activity, function, or school event off school grounds.

4. Threats or assault on a school employee, another student, or other person not employed by the school - weapons and dangerous instruments - A student shall not intentionally do bodily injury to any person, or threaten any person, or knowingly possess, handle, or transmit any object that can reasonably be considered a weapon:

a. On the school grounds during and immediately before or immediately after school hours,

b. On the school grounds at any other time when the school is being used by a school group, or

c. Off the school grounds at any school activity, function, or event.

5. Narcotics, Alcoholic Beverages, and Drugs - A student shall not knowingly possess, use, transmit, or be under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind:

a. On the school grounds,

b. Off the school grounds at a school activity, function, or event.

Use of a drug authorized by a medical prescription from a registered physician for use during school hours shall not be considered a violation of this rule.

6. Other Violations - A student shall not repeatedly fail to comply with directions of teachers, or other authorized school personnel during any period of time when he or she is properly under the authority of the school. Students who do not respond to guidance or minor discipline, or are consistently at odds with school discipline, must accept the consequences of such action. Willful disobedience, open defiance of a teacher's authority, or the repeated use of profane or obscene language or gestures is also sufficient cause for discipline, suspension, or expulsion from school.

(3) Rights:

(a) Definitions:

1. Summary Discipline Procedures - Discipline for a minor infraction may be handled without going through all the steps of formal procedure. In all cases, a written record shall be maintained in the student's record.
2. Out-of-School Suspension - is defined as one of the following.
 - a. A temporary exclusion from school for a period not to exceed seven days.
 - b. Exclusion in cases being investigated pending expulsion.
 - c. In special circumstances a suspension may be continued until some specific pending action occurs such as a physical or mental examination or incarceration by court action.
 - d. After investigation and recommended expulsion by the administration until the Board of Directors has taken official action.
3. In-School Suspension - is defined as suspension of refractory students from class attendance (not to exceed one day) in which the student may choose to perform work in and around school as a penalty.
4. Expulsion - is defined as release of a student from school attendance for no longer than the current term or semester.

(b) Hearing the Accuser:

1. Staff Complaints - students should hear directly from the teacher or the staff member the specific complaints or descriptions of unacceptable behavior where the student so desires.
2. Student Complaints - it is recognized that a school official as a public officer shall not be examined as to communications made to him in official confidence, when the public interest

would suffer by such disclosures. For this reason, in recognition of the special jeopardy in which the student witnesses may be placed, and the possible traumatic effects of adversary proceedings conducted by attorneys, police officers, or court officials, the complaining student may not be required to face the accused, nor have his identity revealed. However, the administrator or other official conducting an investigation is under special obligation to assure careful and cautious investigation of all relevant facts and testimony. When it is determined that the student ought not face the accused, the school officials then becomes the official complainant.

(c) Suspension Procedures - The student should have notice of charge(s) in such terms as will permit him to change his course of conduct, or afford him an opportunity to defend his right to engage in the conduct, or show that he is innocent of the conduct charge.

In suspending students:

1. The student is informed of the charge, including the specific acts that support the charge, and that he is suspended. In out-of-school suspensions, the students may be sent home for no longer than a seven day period.
2. The parents or guardians are notified by telephone whenever possible of the suspension, and the reasons for the action. When parents cannot be contacted, the decision to send the student home, to allow him to remain on school premises, or refer him to the proper authorities must be made with consideration of that student's age, maturity, and the nature of the misconduct that caused the suspension.
3. A letter is mailed to the parents or guardians with a copy to the appropriate superintendent, stating the time, date, the charge, and the specific acts that support the charge(s), for the suspension, with procedures to be followed by the student and his parents or guardians for reinstatement.
4. The parents or guardians may request and be given a conference with the building principal.
5. School district board shall provide students suspended under emergency conditions with the same suspension procedures as soon as the emergency condition has passed. These procedures

may be postponed in emergency situations relating to health and safety. Emergency situations shall be limited to those instances where there is a serious risk that substantial harm will occur if suspension does not take place immediately.

(d) Expulsion Procedures

1. A school district board or hearings officer shall not expel a student without a hearing, unless he and his parents or guardian waive, in writing, the right to a hearing. By waiving the right to a hearing, the student and his parent agree to abide by the lawful findings of the hearing or review officer. Expulsion hearings shall contain provision for the following:
 - a. The student is notified in writing of the specific charge or charges, when and where the hearing will take place, and his right to a representative.
 - b. A notice shall also be sent to the parent or guardian by certified mail and also by regular mail, citing the charge or charges, and the specific acts that support the charge or charges. The notice shall state a recommendation of either expulsion or suspension pending investigation for possible expulsion, when a hearing will take place, and his (or their) right to representation. This notice shall be mailed at least seven (7) days prior to the hearing.
 - c. Unless otherwise provided by the district school board, the executive officer of the school district, or his designated representative, shall act as the hearing or review officer and shall maintain control over and conduct the hearing or review. In case of foreign language differences, or other serious communication handicaps, the hearing officer shall provide a translator.
 - d. The student shall be permitted to have a representative present at the hearing to advise him. The representative may be an attorney, parent, or guardian.
 - e. The student shall be afforded the right to present his version as to charges and to make such showing by way of oral testimony, affidavits, or exhibits.
 - f. The student shall be permitted to hear the evidence presented against him.
 - g. The hearing officer shall determine the facts of each case on the evidence presented at the

hearing. This may include the relevant past history and records of the student. He shall submit to the Board his findings as to the facts and whether or not the pupil charged is guilty of the conduct alleged, and his decision of disciplinary action, if any, including the duration of any expulsion. The above decision shall be made available in identical form and at the same time to the Board and the student and his parents.

h. Strict rules of evidence shall not apply to the proceedings. However, this provision shall not limit the hearing officer's control of the hearing.

i. The hearing officer or the accused may make a record of the hearing.

j. The local district board shall review the decision of the hearing officer and may affirm, modify, or reverse his decision.

k. Expulsions shall not extend beyond the end of the current term or semester.¹¹¹

As can be seen, the state model is very long; as mentioned previously, many school districts chose not to be so lengthy in explaining the rights of due process guaranteed students. In being briefer, most still maintained explanation of procedures to be adhered to in disciplinary actions.

However, not all codes for 1972-73 meet these standards; take for example the code from Hillsboro High School District which reads as follows:

Suspension: This is a temporary denial of the privilege of attending school. This action may be taken by any building administrator as a result of an infraction of school policy or misbehavior. Students will normally be suspended for a specified period of time and re-admitted only after a parent conference. Students are not to be on or around the campus of any school during the period of time they are under suspension.¹¹²

¹¹¹ Minimum Standards, pp. 13-17.

¹¹² Hillsboro High School District No. 3J, Student Conduct Code (September, 1971), p. 3.

This suspension code fails to specify that the student must be notified of charges, allowed to defend his or her actions, and be informed of the maximum length of the suspension. Also, the statement that the student may not "be on or around the campus of any school" is vague and could be interpreted as anything from a nearby college to a high school in the next county. Vague codes such as this would hopefully have disappeared after implementation of the State Board's Standards, but it appears that they have not.

The same district had the following rules for expulsion proceedings:

Expulsion: This means the permanent removal of a student from attendance at a school or school activities for the remainder of the current school semester, with loss of graduation credit for that semester. This action will be taken only in the case of an extremely serious offense, or an accumulation of problems over a period of time. When expulsion of a student is recommended by the administration, that student will be suspended from attendance. The Superintendent will review the circumstances of the expulsion and receive any pertinent information. A hearing before the board of education will be scheduled if either the parents or Superintendent so request. The circumstances resulting in the recommended expulsion will be reviewed by the board at the hearing and a disposition made. The student involved and his parents will be notified in writing of the time and place and the circumstances which have resulted in the recommended expulsion, and will have the opportunity to appear or be represented.¹¹³

Again, Hillsboro school officials have been lax in incorporating the disciplinary procedures as recommended by the State Board of Education. In the expulsion code, they made no mention

¹¹³Ibid.

of the student's right for presentation of his version, student hearing of evidence against him, access to recordings of the hearing, and who the student's representative could be. Philosophically, the Hillsboro code is in line with the state standards. However, when examination of the code is careful, the specific variations are clear.

All of the codes examined for the 1972-73 school year included information on procedures to be followed in suspension or expulsion hearings or actions, unfortunately not all were as complete as the state model implied. Still though, most of Oregon's high school students are given the opportunity to know the rights and privileges they can employ while at school, or as a result of going to school. Fair procedures in school disciplinary matters are more pronounced in 1972-73 than they were in 1971-72. If this trend continues under the auspices of the Oregon Board of Education or the state and national courts, specifically detailed procedures for disciplinary hearings shall be a fact in all of Oregon's public school districts.

V. CONCLUSION

In the years since 1971, most of Oregon's school districts have adopted codes clarifying the rights and privileges that students are guaranteed but have not always been aware of having. Most of the court decisions involving student rights were argued after 1966. From that year until 1972, most school districts in Oregon had no specific regulations on student conduct. As a

result of those court decisions and the revising of the Oregon state law covering school districts' disciplinary powers, the State Board of Education took action through the Oregon Administrative Rules (as published in Minimum Standards) that altered this situation. Today high school students, in fact public school students at all grade levels, are allowed to exercise and employ their rights of American citizenship while at school. This was not always the case in the past, when due to a lack of written policy, administrative decisions were often quite arbitrary. There is still the question of whether the students know and understand the policies presented them; but this remains a function to be considered by the local districts or schools. Oregon public school students now, more than ever before, are guaranteed treatment similar a citizen outside of school. The Bill of Rights, being applied in the high school, is near total realization. The only major exception to total realization is the scholastic distortion of the Fourth Amendment. Hopefully, in the near future, the Fourth Amendment protections against unreasonable searches and seizures shall also apply in public schools. When that is realized, high school students, middle school students, and elementary school students shall be allowed to utilize all the guarantees of civil liberty expressed in the Bill of Rights of the United States.

CHAPTER IV

STUDENT AND ADMINISTRATOR ATTITUDES ON STUDENT RIGHTS

Court decisions of recent years have defined the Bill of Rights as guaranteeing the rights of young Americans while they are in school. Oregon state law and Oregon Board of Education rules require school districts to adopt and distribute student rights and responsibilities codes that specifically list the rights which students are guaranteed while at school. However, these developments may not be as meaningful as they appear, unless the spirit of these rights is accepted by the individuals affected. If the students who are guaranteed their rights and privileges do not believe in them or have no knowledge of them, it may be possible for the schools to overlook the use of those rights. If administrators that make and enforce school rules do not have knowledge or understanding of the rights and privileges of their students, or more important, believe in those rights, young citizens will be denied the use of privileges of citizenship.

To determine how persons in Oregon public high schools interpreted students rights, questionnaires were distributed to high

school students and principals throughout the state.¹¹⁴

The questions included on the questionnaire were primarily modeled after the court cases dealt with in Chapter II. Following are the questions and the cases after which they were patterned:

1 - Several students wore buttons to protest the trial of a student activist who was accused of helping a convicted criminal escape. The majority of the students and faculty at the high school were not sympathetic to the cause of the activists and school officials, in an effort to avoid possible disturbances, ordered the protestors to remove their buttons or be suspended. Did the students have the right to wear the buttons?

A yes answer would agree with the Circuit Court decision in a similar case, Burnside v. Byars. In Burnside, the judge ruled that the wearing of freedom buttons was protected by the free speech clause of the First Amendment.

2 - An editor of the school newspaper allowed an anti-war group to place an anti-war ad in the school paper, even though school policy forbade all types of political advertisements. The paper had earlier allowed an article on the draft and modern army life to appear without opposition from the officials of the school. However, the school officials refused to allow the issue with the anti-war ad to be distributed. Did the school officials have the authority¹¹⁵ to censor the school newspaper?

¹¹⁴ Student questionnaires were sent to thirty-two high schools in January, 1972; of these, ten high schools returned completed questionnaires. The student questionnaires circulated in February, 1973 were filled out by high school students in North Clackamas School District No. 12. In April, 1972 and April, 1973 questionnaires were sent to forty high school principals; of the forty in 1972, eighteen replied; of the forty in 1973, twenty replied.

¹¹⁵ The word authority raised several definitional problems in the minds of persons answering the question. The resulting vagueness may invalidate the responses.

A no answer on this question agrees with the Court decision in Zucker v. Panitz. In Zucker, the judge held that school officials would have to had banned all political articles if they wished to ban the anti-war ad.

3 - At the public high school, there was a daily practice of non-denominational student prayer and classroom bible reading. This exercise was led by a student over the public address system. It was a voluntary practice and those who chose not to participate could remain seated during the exercise. By having students participate, are the school officials infringing upon student rights?

This case was modeled after Abington v. Schemp, in which the majority ruled that the school district was abridging individual rights by establishing this daily religious exercise. A yes answer would agree with the Court opinion.

4 - Jack was arrested for possession of stolen materials that were found in a locker at a bus depot. The key to the bus depot locker was found in his high school locker. The police had cause to believe Jack was involved in a crime and received permission to search Jack's locker from the Principal. The police searched the schoollocker while Jack and the Principal were present but without a warrant or Jack's permission. Did the police have the authority to search the school locker under these circumstances?

A yes answer would be in accordance with the Kansas Supreme Court decision in Stein v. Kansas. In Stein, the Court upheld the search since lockers are viewed as school property, not student property.

5 - A popular student was suspended for behavioral reasons. At the basketball game the following evening, several dozen students staged a demonstration with the purpose of having the student reinstated. The demonstrators wore tennis shoes so as not to damage the playing floor. They staged their demonstration during half-time, because there was no half-time activity.

The following day those demonstrators identified were suspended. Were the student rights to peaceably assemble violated?

This question is patterned after the case of Barker v. Hardway in which the Court held that a student demonstration on the football field at half-time was within constitutional limitations. A yes answer is in accordance with the Court decision.

6 - Ben was suspended for repeatedly distributing obscene literature at school. He had been suspended twice previously for the same reason and was warned that if he continued to violate school regulations governing obscene literature, he would be expelled. On a Monday his mother received notice of the expulsion hearing before the school board, to be held next week. Ben was not allowed an attorney or to confront witnesses, but he was allowed to give his side. As a result, he was expelled from school. Were Ben's rights to a fair hearing infringed upon?

A yes answer is in agreement with the Court decision in Vought v. VanBuren Public Schools, in which the judge wrote that students facing possible expulsion must be guaranteed basic elements of due process, including confrontation of witnesses.

7 - Following spring break three girls returned to school wearing levis, despite the school dress code that stated girls could only wear dresses, skirts, or dress slacks.. They were told to return home and not come back to school until they met the standards established by the dress code. Is the dress code an infringement on the girls rights of free expression?

A yes answer is in accordance with the decision in Richards v. Thurston, which held that an individual's right to appear as desired is guaranteed by the Bill of Rights.

8 - During a pep assembly approximately seventy-five students began chanting "Less money for sports, more for academic subjects." The pep assembly had to be cut short and all students were sent back to

class. The students involved in the demonstration were suspended or restricted from participating in school events, depending upon their past behavior. Did they have a right to demonstrate?

Applying the guidelines delineated by the Court in Barker v. Hardway, the correct answer to the question is no. The judicial guidelines limit demonstrations to non-disruptive activities.

9 - Raphael was a member of the Brown Berets and would distribute the Beret's Newspaper every week in the school cafeteria during lunch. Issue #15 had an article that was critical of the local school system. School officials, being fearful of the consequences of the distribution of Issue #15, would not allow Raphael to distribute it, and threatened to suspend him if he did not comply with their directive. Had the school officials violated Raphael's rights?

A yes answer is in accord with the judge's remarks in Schwartz v. Shuker. The judge stated that students could not be prevented from criticizing school officials verbally or on paper as long as school was not disrupted.

10 - Leroy was suspended for smoking in the rest room. He received previous warning that he would be suspended if caught smoking. The assistant principal did not allow Leroy to present evidence in his favor, nor did the assistant principal tell Leroy who reported him. He was suspended for three days, as was standard penalty for students caught smoking two times. Were his guarantees of a fair hearing infringed upon?

A yes answer agrees with the decision of the Court in Vought v. VanBuren Public Schools. In disciplinary hearings, the basics of a fair hearing must be included. In a suspension hearing, this includes confrontation of witnesses and self defense of the accused student.

The instructions on each questionnaire asked that each person

answer the questions according to their interpretations of the rights of high school students. The results of the questionnaire are as shown in Table 1. The numerical identification of the questions has been retained. However, to make it easier to compare questions involving similar rights, the questions have been placed according to categories of rights involved in the questions.

In examining the responses of the students, it is seen that they were in disagreement with the courts on the classroom prayer, the search of a locker, and the student protest at the pep assembly. In an effort to determine why students interpreted these three applications of student rights differently than the courts, discussions were held on May 10, 1973 with rights and responsibilities classes at Clackamas High School in Milwaukie, Oregon.

On the issue of classroom prayer, several of the students who were not in accord with the Court ruling explained their reasoning. Patty Hay felt that because the prayer was voluntary it was not in violation of student rights. Matt Larson interpreted the scholastic application of freedom of religion similarly.

Of those students that believed the locker search was a violation of student rights, several expressed that they thought only the principal or librarian had the authority to conduct such a search. None of the students participating interpreted the Fourth Amendment as protecting student lockers against arbitrary searches.

On the question of the disruption of the pep assembly, the main reason for answers not in accordance with the Court was no

TABLE I

RESPONSES TO STUDENT RIGHTS QUESTIONNAIRES

NUMBER	ISSUES IN QUESTION	STUDENT RESPONSES						ADMINISTRATOR RESPONSES					
		<u>1972</u>			<u>1973</u>			<u>1972</u>			<u>1973</u>		
		IN ACCORD WITH COURT	NOT IN ACCORD WITH COURT	IN ACCORD WITH COURT	NOT IN ACCORD WITH COURT	IN ACCORD WITH COURT	NOT IN ACCORD WITH COURT	IN ACCORD WITH COURT	NOT IN ACCORD WITH COURT	IN ACCORD WITH COURT	NOT IN ACCORD WITH COURT	IN ACCORD WITH COURT	NOT IN ACCORD WITH COURT
1)	PROTEST BUTTONS	246	25	196	15	15	3	15	3	16	4		
2)	ANTI-WAR AD	145	129	120	86	4	14	4	14	4	16		
9)	NON-SCHOOL PAPER	194	57	171	28	6	12	8	10				
3)	CLASSROOM PRAYER	100	160	88	99	13	5	15	5				
5)	HALF-TIME DEMONSTRATION	222	42	164	42	4	14	2	17				
8)	PEP ASSEMBLY DEMONSTRATION	120	142	76	124	14	4	14	4	14	4		
7)	DRESS CODE	164	94	144	57	7	11	14	5				
4)	LOCKER SEARCH	114	130	87	116	11	7	17	3				
6)	EXPULSION HEARING	177	89	150	54	14	4	18	1				
10)	SUSPENSION HEARING	152	96	116	83	8	10	8	11				

knowledge of the judicial guidelines. This position was expressed by Ron Schmid and Judy Stangel who saw no significant difference between this demonstration and the one at half time.

Students that were in accordance with the court rulings on all the questions were fairly close to the courts in the type of reasoning employed. Apparently, the various citizenship courses have been successful in inculcating American governmental philosophy.

Upon examination of Table I, it can be seen that the principals were in accordance with the courts less than the students were. Out of ten questions, the principals differed from the courts five times in 1972 and four times in 1973, whereas the students differed only three times. The question on which they reversed their position dealt with appearance codes. Since 1972 the Oregon Board of Education has adopted Minimum Standards with its model codes. This document has had an influence on changing the attitudes of administrators towards appearance regulations. Another significant development since 1972 was the Oregon Court of Appeals decision in Neuhaus v. Federico (see Chapter II) which held that adopting hair length regulations was beyond the statutory authority of local school districts. These two occurrences were most influential in changing the attitudes and policies of school district officials.

The questions on which the administrators differed with the court decisions in both 1972 and 1973 are the questions involving the anti-war advertisement, the half-time demonstration, the non-school newspaper, and the suspension hearing.

From comments written on various questionnaires, it can be

concluded that some principals had varying definitions of the word "authority" as used in question #3. Many indicated that under all circumstances, they had the authority to censor the school paper. These individuals failed to apply the term in relation to that one instance described. The other explanation could be they defined authority without considering their obligation to allow for the free expression of ideas by the students.

On the questions about the half-time demonstration and the non-school paper, it was found, upon checking the student conduct codes of several of the school districts, that such forms of expression must take place only upon approval by the administration. For example, North Clackamas schools require that any distribution of non-school material requires approval by the school principal. The North Clackamas code also requires that assemblies of students be scheduled in advance.¹¹⁶ This regulation was cited by two administrators of North Clackamas schools as influencing their interpretations of the rights of students. In a discussion with Robert Newton, assistant principal of Clackamas High School,¹¹⁷ Mr. Newton emphasized that the basic reasons for a change in his interpretations of student rights are recent court decisions and new state and local student conduct standards. He also stated that he personally preferred the former conduct and discipline

¹¹⁶North Clackamas School District No. 12., Student Conduct and Discipline Code, p. 5-12.

¹¹⁷Robert Newton, interview at Clackamas High School, April 19, 1973.

codes over the new, more permissive codes. The primary reason for a change in Mr. Newton's interpretations is pressure from other governmental institutions.

The differences in student and administrator attitudes regarding student rights, as shown in Table I and subsequent discussions, have been the factors behind court contests and adoption of new state rules clarifying the definitions of student rights. Generally, students have a better knowledge of their rights than do their principals; thus, students acting on their own or through their parents have sued school districts and school officials in an effort to be able to exercise their rights of citizenship while in attendance at public schools.

The result of this student activity, is that pressure for a change in the application of Bill of Rights guarantees came from below and above the principals. Certainly some principals were operating in accordance with the Bill of Rights. However, the majority of those principals polled interpreted the Bill of Rights differently than the courts. Until that situation changes, the courts shall continue to serve as a guarantor of student rights.

CHAPTER V

CONCLUSION

[As has been shown in the preceding chapters, public school students are guaranteed the rights of American citizenship. Court decisions have defined these rights as being those of freedom of speech, freedom of the press, the right to peaceable assembly, freedom of religion, and due process in any disciplinary hearing. These rights are from the First and Fourteenth Amendments and are the only constitutional rights currently held by the courts as being applicable.

Another right guaranteed high school students, but one that does not have such an easily identifiable constitutional base, is the right of the students to dress and groom as they desire. Some students based this right on the First Amendment; judges, however, were more likely to agree that it comes under the "due process" clause of the Fourteenth Amendment.

The Fourteenth Amendment, as of now, does not protect students from unreasonable searches of their personal belongings. However, based upon the trends that changed judicial definitions of students' rights of free expression, it is probable that in the near future this definition will also change. This change will result in students' belongings and personal effects being free from the arbitrary searches now permissible in the public

schools. The guideline used in student free expression cases could also apply here. Freedom of expression is guaranteed as long as it does not disrupt the educational atmosphere. Search and seizure guidelines could allow for standard search procedures to be followed except under extreme conditions of possible danger; for example, a bomb threat received over the telephone. This would be workable and still allow the school officials to provide a safe environment for the students.

The definitions developed by the courts are traceable to the Oregon Revised Statutes and the Minimum Standards for Student Conduct and Discipline as adopted by the Oregon Board of Education. This Board of Education policy insures that Oregon public school students will be allowed to exercise their constitutional rights. The Oregon Legislative Assembly and the Oregon Board of Education found this approach to be necessary because of the numerous legal contests involving public schools. Had the Oregon State Board of Education acted before the Courts, it is highly probable the local district would have sued to test the legality of such regulation.

As a result of the attitude questionnaires, it can be seen that student interpretations of their rights are more in accordance with judicial definition than are the interpretations of student rights by administrators. The inaccurate interpretation of the Bill of Rights and the legal authority of school officials is what led to so many court contests involving student rights.

As long as public school administrators wrongly define student rights, court contests will follow. Students, either as a result of civics classes or out of school activities, are more informed as to the current definitions of rights of American citizenship than are their principals.

The Courts of America have defined the Bill of Rights as being applicable to all Americans, including those attending public schools. The State of Oregon has taken legislative and administrative action to insure public school students the exercise of their rights. These rights, as defined by courts and the state of Oregon, must now be accepted by all public school administrators. When this takes place, all Oregon's public school students will truly be able to exercise their rights of citizenship.

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