

**MOCK TRIAL COMPETITION
CASE MATERIALS
2004-2005**

TABLE OF CONTENTS

	Page
Overview.....	1
Verified Petition.....	2
Answer.....	5
Stipulated Facts.....	6
Statement of Pat Smith	7
Statement of Sam Houston	9
Statement of Terry Proctor	10
Statement of Chris Snyder	11
Statement of Kerry Brady	13
Statement of Leslie Brown	14
Old Man of the Mountain Student Handbook	15
First Amendment Primer	19

OVERVIEW

This year's Mock Trial Competition involves Pat Smith v. Old Man of the Mountain School System. Pat Smith is a senior at Old Man of the Mountain High School who has been found in violation of the school dress code. As a result, Pat is not allowed to participate in an upcoming championship soccer game. Pat Smith hoped that based on this game, college scouts would recommend that Pat receive a scholarship.

Pat Smith has brought a suit in state court in New Hampshire seeking an injunction. This suit requests that the Court agree that the school violated Pat Smith's constitutional rights by not allowing Pat to wear the t-shirt. In addition, Pat's lawsuit asks that the Court order the school to allow Pat to play in the championship game because the reason that Pat is not being allowed to play is because of a violation of a dress code which is unconstitutional.

The witnesses for this case are:

1. Pat Smith
2. Sam Houston
3. Terry Proctor
4. Principal Chris Snyder
5. Dr. Kerry Brady
6. Dr. Leslie Brown

In addition, selected portions of the Student Handbook have been provided.

STATE OF NEW HAMPSHIRE

ROCKVILLE COUNTY

SUPERIOR COURT

PAT SMITH

v.

OLD MAN OF THE MOUNTAIN SCHOOL SYSTEM

VERIFIED PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION

The Petitioner Pat Smith respectfully moves that this Court enter a preliminary injunction against the Respondent Old Man of the Mountain School System (the “School”). In support of this Petition, Petitioner states as follows:

I. The Parties

1. Pat Smith is an individual at least 18 years of age who resides at 111 Penny Lane, Rockville, NH.
2. Old Man of the Mountain School System is a school system organized under the laws of the State of New Hampshire with a place of business at 1234 Pine Street, Rockville, New Hampshire.

II. Jurisdiction and Venue

3. This Court has jurisdiction over the matter pursuant to RSA 498:1 and 491:7.
4. Venue is proper in this Court because Pat Smith is a resident in Rockville County. RSA 507:9.

III. Facts

5. Pat Smith is a senior at Old Man of the Mountain High School, which is a part of the Old Man of the Mountain School System.
6. Pat Smith is an honor student and is the star center of the School’s soccer team.
7. Pat Smith has no history of academic or disciplinary issues at the School.
8. The School provides students with an Old Man of the Mountain Student Handbook each academic year which outlines the rules and disciplinary procedures at the School.
9. Prior to this year, the School did not have a dress code.
10. The addition of the dress code to the student handbook was not announced to the student population at the start of the academic year.

11. For the past few months, Pat's political science class has been studying the presidential election. As a part of that class, students have debated a variety of political issues.
12. In addition, students attended a school sanctioned field trip to a John Kerry and John Edwards political rally. Several students wore items in support of Kerry and Edwards to the rally including hats and buttons. In addition, students obtained hats and buttons at the rally and wore them back to the School.
13. During this time, at least one member of the faculty of the School, Sam Houston, was aware that students were wearing these items.
14. At no time did Sam Houston instruct the students to remove the items or state that the items were against the School's dress code.
15. On another occasion a student wore a t-shirt with a picture of a toilet and the phrase "FLUSH THE JOHNS" on it to class. At no time was this student told to remove the shirt nor did the student face any disciplinary consequences for wearing the shirt.
16. At least one member of the School's faculty was aware of the contents of this student's shirt and took no action.
17. As part of Pat's political science class' on-going debate, Pat wore a t-shirt to School which said "Bush Sucks."
18. Several members of the faculty observed Pat's shirt and took no action.
19. Terry Proctor, a math teacher at the School, believed that Pat's shirt was a violation of the dress code and reported Pat to Principal Chris Snyder.
20. Principal Snyder apparently agreed that the t-shirt violated the dress code but never explained to Pat what section of the dress code Pat's t-shirt violated.
21. Principal Snyder instructed Pat to go home as a result of the apparent violation of the dress code but told Pat that there would not be any further consequences for Pat's actions.
22. Pat relied on the statement by Principal Snyder that there would not be any other disciplinary action taken when Pat agreed to go home.
23. Pat's absence from school was treated as an unexcused absence, bringing the total number of absences to four (4). As a result of the School's unexcused absences policy, Pat cannot participate in after school activities, including playing soccer.
24. Principal Snyder never explained that Pat's absence from school would be treated in this way.
25. Several college scouts have informed Pat Smith that they will be attending the championship soccer game to evaluate Pat's potential and to decide whether to recommend that Pat receive a scholarship.

26. As a result of the School's action, Pat's First Amendment rights guaranteed to Pat under the United States and New Hampshire Constitutions have been violated.

27. In addition, as a result of the School's actions, if Pat Smith is denied the opportunity to participate in the championship soccer game, Pat will lose the ability to obtain an athletic scholarship and will likely not be able to attend college.

WHEREFORE, the Petitioner, Pat Smith, respectfully requests this Court:

- A. Grant the motion for preliminary injunction;
- B. Order the School to allow Pat to play in the championship soccer game;
- C. Prohibit the School from enforcing the dress code in a way that infringes on a student's Constitutional Rights; and
- D. Grant such further relief as may be just and reasonable.

Respectfully submitted,
Pat Smith, by, BIG LAW FIRM LLP

Date: October 2, 2004

/s/John Johnson¹
John Johnson, Esq.
889 Elm Street
Rockville, New Hampshire

October 2, 2004

By: /s/ Pat Smith
Pat Smith

Before me on this 2 day of October, 2004, Pat Smith, known to me appeared and gave oath to the facts appearing above.

/s/ Isabel Harris
Justice of the Peace/Notary

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Preliminary Injunction was served by hand on the attorney for the Old Man of the Mountain School System.

/s/John Johnson
John Johnson

¹ For purposes of the Mock Trial Program, all signatures appearing as, "/s/" following by the typed name of the individual should be treated as an actual signature.

STATE OF NEW HAMPSHIRE

ROCKVILLE COUNTY

SUPERIOR COURT

PAT SMITH

v.

OLD MAN OF THE MOUNTAIN SCHOOL SYSTEM

ANSWER

The Respondent, Old Man of the Mountain School System (the "School") answers Petitioner Pat Smith's Verified Petition as follows:

- 1-2. Admit.
- 3-4. These statements are legal conclusions. The School does not have to answer these statements.
- 5-12. Admit.
13. The School denies that Sam Houston was aware that students were wearing political items.
14. Because Sam Houston did not know that students were wearing these items, it was impossible to tell the students to remove them.
- 15-21. Admit.
22. The School does not know what Pat Smith relied upon in deciding to go home.
23. Admit.
24. The School denies this statement because Principal Snyder was not aware that Pat Smith's absence would be treated as an unexcused absence until the next day.
25. Admit.
- 26-27. Deny.

Respectfully submitted,
Old Man of the Mountain School System,
by and through its attorneys, SMALL LAW FIRM LLP

Date: October 22, 2004

/s/Skylar Fitzgerald
Skylar Fitzgerald, Esq.
101 Main Street
Rockville, New Hampshire

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer was served by hand on the attorney for Pat Smith.

/s/Skylar Fitzgerald
Skylar Fitzgerald, Esq.

STATE OF NEW HAMPSHIRE

ROCKVILLE COUNTY

SUPERIOR COURT

PAT SMITH

v.

OLD MAN OF THE MOUNTAIN SCHOOL SYSTEM

STIPULATED FACTS

For the purpose of this lawsuit, the parties agree to the following stipulated facts:

1. All witnesses' statements are authentic and have been sworn to by the witness.
2. The excerpts of the Old Man of the Mountain High School Student Handbook are stipulated to be an accurate copy of these sections of the Handbook.
3. Dr. Brady is qualified as an expert in adolescent development.
4. Dr. Brown is qualified as an expert on the impact of mandatory uniform policies on schools.

/s/John Johnson
Attorney for Pat Smith

/s/Skylar Fitzgerald
Attorney for Old Man of the Mountain
School System

Statement of Pat Smith

My name is Pat Smith. I am a senior at Old Man of the Mountain High School. I am a good student and usually get all A's. I am on the yearbook staff and am captain of the soccer team where I play center. We are undefeated this year and have a great shot at the title. A couple of college scouts are going to be at the championship game – if I play and do well, they may offer me scholarships. My family can't afford to send me to college so if I don't get a scholarship I don't know how I am going to go to college.

In Mr./Ms. Houston's political science class we have been spending a lot of time talking about the presidential election, the two candidates and the two political parties. Until this year I wasn't really interested in politics but Mr./Ms. Houston has made me realize how important it is to be involved in the process.

Mr./Ms. Houston arranged for the class to attend a Kerry-Edwards rally. I don't think that Mr./Ms. Houston picked a democratic rally because he/she is a democrat, I think it was just the only rally that was happening that day. The rally was really interesting. Some of the students were wearing political buttons supporting Kerry before going to the rally and others of us got hats at the rally that we put on during the rally.

The next day Dakota was wearing a t-shirt under his sweatshirt that had a picture of a toilet and "FLUSH THE JOHNS" on it. I admit, it was funny but it also was a bit disgusting. Dakota kept unzipping the sweatshirt to show other students the shirt which would then make them laugh. The teachers couldn't figure out what was going on because Dakota would zip the sweatshirt back up. All of us knew what was going on but no one wanted to tell.

In Mr./Ms. Houston's class, Dakota took off the sweatshirt and we started to debate whether Kerry would make a good president. I actually think that Kerry would make a good president or at least a better president than Bush. Mr./Ms. Houston said that that would be the topic of the debate for the next class. When I went home I asked my brother if I could borrow his t-shirt to wear to class the next day. It said "Bush sucks." I figured if Dakota could wear a t-shirt with a toilet on it, mine was fine.

The next day at school a bunch of students and teachers smiled when they saw my shirt. I had already been to three classes before getting to Mr./Ms. Proctor's math class. Mr./Ms. Proctor asked me if I had anything else to wear and I said no, all I had was a leather jacket in my locker. She/he said that I was violating the dress code and that I was going to have to go to the principal's office. I couldn't believe it – I have never been in trouble before.

When we got to the principal's office, Mr./Ms. Proctor told the principal that in his/her opinion my t-shirt violated the school's dress code. Principal Snyder said that it would be taken care of.

Mr./Ms. Proctor left and Principal Snyder took me into the office and pulled out the student handbook. The principal said that he/she didn't think what I was wearing was a problem but he/she couldn't really remember what the dress code prohibited. While he/she was looking for the dress code part of the handbook we talked about the upcoming soccer game. When he/she found the dress code he/she said that he/she guessed that my t-shirt was prohibited. He/she never told me what part of the dress code my t-shirt violated. He/she said that it wasn't a big deal. He/she asked if I had anything else to wear and I said no. The principal told me to go home. He /she said he knew that I lived kind of

far away from school so he/she said not to worry about trying to race home to change and then race back to school.

I was embarrassed but figured it wasn't that big a deal. I went home, did my homework and made dinner for my family. I told my Mom what happened. She was worried that this would show up on my record and ruin my chances for college. I told her that there was nothing to worry about and that nothing like that was going to happen.

The next day, Principal Snyder came to see me during homeroom. He/she looked really upset. He/she said that he/she was really sorry but that I wasn't going to be able to play soccer for the next month – which meant missing the championship game. He/she said that he/she had to treat my time out of school as an unexcused absence and that because I already had three, this made my fourth. I guess when you have four unexcused absences you can't participate in after-school activities. I asked Principal Snyder if I could do detention instead or anything else. He/she said he/she couldn't do anything about it.

I got the first three unexcused absences in the first week of school. My dad is in the New Hampshire National Guard and he had been called to duty in Iraq. I didn't go to school the day he shipped out nor the next two days because my little sister Chris was really upset. I stayed home because my mom couldn't and I didn't want her to miss work or have to pay for a babysitter. I guess I should have had her call and tell the school but I just didn't want to bother her given everything else she was going through.

/s/Pat Smith
Pat Smith

Statement of Sam Houston

My name is Sam Houston and I have been a teacher at Old Man of the Mountain High School for five years. I teach political science and history 101. Both Dakota and Pat are in my political science class.

Because there is a presidential election this year, my political science class has been spending a large amount of time talking about the differences between the two political parties and the candidates running for President. The students are pretty evenly split between democrats and republicans so we have had very lively debates in the classroom. I think it is great that students have taken such an interest in the political process. It is important to get students involved in the political process as early as possible.

We have had the opportunity to see the candidates as they campaign in New Hampshire. A couple of weeks ago, I arranged for the class to attend a rally for John Kerry and John Edwards in Nashua. I think some of the students wore t-shirts or buttons in support of Kerry-Edwards but I don't really remember. I was too busy trying to keep an eye on everyone and make sure that students didn't wander off. I am sure that no one was wearing anything against Kerry-Edwards or anything in support of Bush because that would have caused a disturbance with the crowd and I am sure that I would have heard about it. Because the rally was in the afternoon, when we returned to the school, the students went straight to their buses to go home and did not go back inside the school.

The next day when I had hallway duty, I saw Dakota wearing a sweatshirt. When Dakota walked by me, he/she unzipped the sweatshirt and underneath there was a t-shirt that had a picture of a toilet and the words "FLUSH THE JOHNS" on it. Dakota smiled and said that he/she was inspired by the rally the day before and that he/she was looking forward to today's class. I had to laugh, I mean, how do people come up with this stuff?

Later that day when Dakota came to class, he/she took off his sweatshirt so everyone could see the t-shirt. I thought most of the class really liked it – regardless of which political party they supported. We had a lively debate in class that day as to why Kerry would not make a good president. We decided that we would continue the debate the next day but instead we would talk about why President Bush should not be reelected.

When the students came to class the next day they were all excited about what had just happened in Terry Proctor's math class. When I asked what had happened they explained that Pat was wearing a t-shirt that said "Bush Sucks." Mr./Ms. Proctor brought Pat down to the principal's office for violating the school's dress code and the students were all talking about what was going to happen to Pat.

I have to say I was shocked. I know that the school has a dress code but I thought it was to make sure students wore clothes that covered them and didn't have obscenities on them. I couldn't believe that wearing a political t-shirt was in violation of the dress code. I went to school in the late 60s and 70s and we were always wearing black armbands to oppose the war in Vietnam or to show support for the civil rights movement. If we could wear those then, I do not see why students can't wear political t-shirts now. In my opinion, I think Terry Proctor got upset because his/her father Frank is on the New Hampshire Re-Elect Bush Committee.

/s/Sam Houston
Sam Houston

Statement of Terry Proctor

My name is Terry Proctor and I teach math at Old Man of the Mountain High School. I have taught here for about a year. Prior to that I taught for a year in Los Angeles. I wanted to move closer to home so I applied to work here.

Both Dakota and Pat are students of mine but take different math classes. Dakota is quite bright but does not apply himself/herself. Pat on the other hand is not only bright but also tries very hard and participates in class. Pat is a dream student which is why I am so troubled by what happened.

Earlier in the week, my math classes were cancelled because Mr./Ms. Houston took many of the students to attend a political rally. I have nothing against Mr./Ms. Houston, and I am sure he/she is smart, but how hard is it to teach political science? All Mr./Ms. Houston's classes ever do is watch television and go on field trips. It makes it very hard to get students interested in math because they see it as boring in comparison. It may be boring, but it is also very important – much more important than many other classes. Every time that they attend one of Mr./Ms. Houston's trips they don't settle down for a couple of days.

One day, all of the students who sat around Dakota seemed very distracted. I do not know why – Dakota was wearing what he/she normally does, a sweatshirt.

The next day Pat came to class wearing a t-shirt that said "Bush Sucks." I asked Pat if he/she had anything to put on over it but he/she said all he/she had was a leather jacket in his/her locker. I asked a teacher next door to keep an eye on the class while I took Pat down to the principal's office. I explained to Principal Snyder that in my opinion what Pat was wearing was in violation of the school dress code. The principal agreed and promised to take care of it.

I feel really bad that Pat is not going to be able to play in the soccer game as a result of all of this. I know that Pat is the captain of the team and is a really good player. I have even heard that Pat might be able to get a full scholarship to college because he/she is so good. I am not sure what I would have done if I had realized what the consequences were going to be to Pat by reporting him/her. I probably would have reported Pat anyway. I learned in LA that as silly as it may seem to others, enforcing dress codes actually does improve the education that students receive and keeps them safe. It may seem strange to people here, but in LA, students could get beat up or worse just because they were wearing certain things.

/s/Terry Proctor
Terry Proctor

Statement of Principal Chris Snyder

My name is Chris Snyder and I am the principal of Old Man of the Mountain High School. I have been the principal here for the last 25 years. There are approximately 350 students in this school. Overall, the students are really good. We have some trouble makers but in comparison to what other schools face we really don't have any problems.

A couple of years ago it was really trendy for boys to wear really baggy pants that came down below their hips so you could see their underclothing. At the same time, some girls started wearing cutoff shirts and other really short clothing that was causing a distraction. We generally would tell the students not to wear that clothing again and maybe have them wear a jacket over their clothing until the end of the day but we wouldn't send them home. One of the students complained to his mother who turned out to be a lawyer. She wrote a letter to the School Board complaining that we were infringing on her son's First Amendment rights and threatened to sue us.

In response, the School Board decided that we needed to adopt a formal dress code. I think that they looked at dress codes from a bunch of different schools and sort of cut and pasted the parts that they liked to create our dress code. I vaguely remember a couple of meetings where the dress code was addressed but I honestly can't remember any details. This is the first year that the dress code has been in place.

We added the dress code to this year's student handbook. I usually mention the student handbook to teachers at the start of the year and ask them to read it and be familiar with it. I do not believe that I specifically mentioned the addition of the dress code.

When Terry Proctor came to see me I thought he/she was going to complain again about Mr./Ms. Houston's class. Terry has been upset that Sam Houston takes the students off campus to political events and encourages them to speak out in class whenever they have something to share. Terry thinks that it encourages the students to disobey the authority of other teachers. Terry is also one of our newer teachers and I think he/she may be having a hard time adjusting to New Hampshire from Los Angeles. Terry has a good educational background and everyone knows his/her dad Frank so I thought it made sense to hire him/her.

Anyway, Terry comes to my office with Pat Smith. Pat is one of the best students at the school and is an amazing soccer player. Pat is the reason that the team is undefeated this year. Terry Proctor tells me that Pat's shirt is against the dress code and asks me what am I going to do about it. To tell the truth, I had forgotten we had a dress code.

I told Terry that I would handle it. Pat came into my office and we talked about soccer for a while. I tracked down a copy of the dress code and read it. I guess what Pat was wearing was a violation of the dress code. To be honest I didn't think that much about it. Pat said that he/she didn't even know that we had a dress code and I believe him/her. Usually we have students sign something saying that they have read the handbook and agree to follow the rules laid out in it but just hadn't done it this year. I asked Pat if he/she had anything to change into and he/she didn't. I figured that I would just send Pat home and that would be the end of it.

After Pat left, I told my assistant Carol that Pat was going home for the rest of the day because there was an issue with the "Bush sucks" t-shirt violating the dress code. I didn't know it at the time

but Carol recorded the absence as an unexcused absence which I guess is what it was. The next day, Carol showed me that Pat now has 4 unexcused absences which mean that he/she can't participate in after school activities. I feel really bad about this but don't know what to do now. I don't think I can change the rules at this point.

Since this has happened, students and teachers are really upset. In fact, now almost everyday someone wears something that violates the dress code in protest of what happened. Almost everyday I am dealing with students wearing political shirts among other things. These students have been bringing something to change into so I haven't had to send anyone home.

/s/Chris Snyder
Chris Snyder

Statement of Dr. Kerry Brady

My name is Kerry Brady. I received an undergraduate degree in political science from Boston College. I also received a doctorate from Stanford University in adolescent development. I currently teach various education classes at Yale University. One of the areas that I study and publish articles in is the impact of dress codes on adolescent development.

Students, especially students in high school, are at a very critical time in their development as individuals. This is a time when students are discovering who they are. This means wearing clothing that their parents may not approve of or changing their hair color. In my opinion, dress codes interfere with an adolescent's ability to experiment with his/her identity.

The other danger of dress codes is that they reflect the standards of adults and usually the more conservative members of a community. Thus, dress codes usually impose traditional and conservative standards on students just at the time when they should be trying things that go against the norm.

I agree that schools need to be able to have some set of standards and that students should not be able to wear anything they want in school. The problem with the Old Man of the Mountain dress code is that in addition to prohibiting gang clothing or clothing encouraging drug use it infringes too much on a student's ability to express himself or herself. For example, look at Pat Smith. Pat's t-shirt was expressing an opinion of the current president. I think it is great. Studies consistently show that if young people do not become actively involved in politics early, they are less likely to vote. Instead of discouraging behavior like Pat's, schools should be encouraging it. Because of the dress code, students like Pat are taught not to speak out against authority. I am unaware of any disruptive behavior that occurred at the Old Man of the Mountain High School as a result of Pat wearing the t-shirt. In general I have never heard of any problems as a result of encouraging students to become active in the political process.

My hourly rate for being an expert witness is \$250.

/s/Kerry Brady
Kerry Brady

Statement of Dr. Leslie Brown

My name is Dr. Leslie Brown. I have a doctorate (Ph.D) in behavioral psychology and a master's degree in school administration. I attended Boston University for my undergraduate degree and Harvard for both of my graduate degrees. For the past ten years I have written numerous papers on the impact of student dress codes and mandatory uniform policies on student behavior. I have also conducted many studies on the impact of school dress codes and mandatory uniform policies and have given numerous speeches on the topic. Most of the work I have done focuses on schools that have adopted mandatory uniform policies.

In my opinion, school dress codes consistently make schools safer. For example, many schools throughout our country suffer from the influence of gangs. By limiting what students can wear as well as how they can wear certain clothing, students cannot show an affiliation for a particular gang. This reduces the pressure that students feel to become members of a particular gang and also provides the students who choose not to become members of a gang protection as they cannot be identified easily. As students are prohibited from wearing gang colors or clothing associated with gangs, all students benefit.

In addition, mandatory uniform policies mean that parents face less pressure to make sure that their children have the latest styles. Not only does it save them money but it also improves the self-esteem of students whose families can't afford the latest styles.

Studies also show that students are very influenced by their peers. Outfits that show alcohol or drugs as being cool encourage students to try alcohol and drugs at early ages. The earlier students try drugs and alcohol, the earlier they become hooked on them.

I reviewed the Old Man of the Mountain School dress code prior to its enactment by the school board. I was not hired to officially review the policy or to develop it. I am friends with one of the school board members and she asked me to take a look at it. I find it to be similar to policies adopted by other schools. In my opinion, the policy will help to ensure that students will be focused on learning and not be distracted by outside influences.

My hourly rate to review a school's policy or to help a school implement the policy is \$200 an hour. My hourly rate increases if I testify at trial or have my deposition taken to \$250.

/s/Leslie Brown
Leslie Brown



OLD MAN OF THE MOUNTAIN STUDENT HANDBOOK
2004-2005 ACADEMIC YEAR

OLD MAN OF THE MOUNTAIN STUDENT DRESS CODE

This regulation specifies standards that promote a positive and safe learning environment for students. A copy of this regulation will be provided to students in the Old Man of the Mountain High School Student Handbook. This code will be enforced on school property and at any school sponsored activity or trip. Appropriate attire for school dances, graduation and other special activities will be communicated separately.

A. General

1. The requirements for student dress and grooming include:
 - a. Decency;
 - b. Neatness;
 - c. Cleanliness;
 - d. Safety; and
 - e. Suitability for school.
2. In the absence of the necessary written documentation, exceptions will not be granted and any violations of the dress code may lead to disciplinary action.
3. Student dress and/or grooming which poses a health or safety issue for the individual student, or for other students, or for staff, is strictly prohibited.
4. Strictly prohibited is student dress and/or grooming which is or has the potential to be disruptive to the educational process.
5. Students may not wear clothing that has words, expressions, slogans, symbols, or graphics that are:
 - Profane;
 - Obscene or vulgar;
 - Suggestive;
 - Defamatory;
 - Demeaning; or which references
 - Alcohol;
 - Drugs;
 - Tobacco;
 - Sex; or
 - Promote hate and/or violence and/or a gang image.
6. Adherence to the student dress code is mandatory unless the principal designates a special day or occasion to promote school spirit and/or improve school climate (e.g., “spirit day”, a school dance, a special ceremony, etc.).
7. Enforcement of the student dress code by the staff is to be consistent and as objective as possible.
8. Repeated (more than one time) violations of the student dress code will be considered to be insubordination and subject to disciplinary action.
9. The principal shall be ultimately responsible for determining whether a student’s dress meets the requirements in this regulation and may need to make exceptions for special circumstances (e.g., orthopedically handicapped students).

B. The Dress Code

1. Acceptable clothing for students to wear is as follows:
 - a. Shirts with collars, polo shirts, t-shirts, turtlenecks, sweaters, sweatshirts (including hooded sweatshirts provided the hood is not worn during the normal school day), vests, pants, denim jeans, shorts, Capri pants (or similar), skirts, skorts, culottes, jumpers, dresses; *

*Shirts, tops, blouses and dresses must either have sleeves, or must cover the area from neckline to shoulder, or must have shoulder straps that are wider than what are commonly referred to as “spaghetti straps”. All shirts, tops, and blouses must either overlap the bottom garment (i.e., pants, shorts, skirts, skorts, and culottes) or be tucked inside the bottom garment. Pants that are made to be worn at the waist are to be worn at the waist (i.e., no “sagging”). The length of the shorts, skirts, skorts, culottes, jumpers, and dresses must extend to, at least, mid-thigh.
2. The following are examples of clothing and/or accessories that are not acceptable for students to wear: (The list is not intended to be exclusive.)
 - a. Torn or cut-off clothing
 - b. Mesh, fishnet, or see-through clothing
 - c. “Biker”/spandex pants or shorts
 - d. Underwear worn as outerwear
 - e. Bathing/swimsuits
 - f. Open-toed footwear without straps at the back of the foot (e.g., “flip flops”), jellies, slippers, platform shoes.
 - g. Pants with one pant leg rolled up or worn at a different length than the other
 - h. Wind pants, jogging suits, and sweatpants
 - i. Any clothing that is not the prescribed length and/or is not worn at the waist
 - j. Any head coverings including hoods, hats, caps, sweatbands, bandanas, and “do-rags”
 - k. Combs/hair picks/curlers
 - l. Accessories that may cause a safety problem and/or be disruptive of the learning process
3. Outerwear. Students may not wear coats and outerwear garments (including hats, knitted and other kinds of caps and hoods) during the normal student day. These are to be secured in the classrooms, where available, or the student’s locker at the beginning of the school day. Headgear is to be removed upon entering the school.
4. Book bags. Students may not wear, carry, or wheel book bags during the normal student day. These are either to be secured in classrooms, where available, or in the student’s locker.

DISCIPLINE PROCEDURES

The following procedures and consequences shall be followed when there has been a violation of the Student Dress Code.

FIRST OFFENSE

The student shall be brought to the school office and a parent/guardian shall be contacted. The student will be issued a warning and will be reminded of the dress code by the principal or vice-principal. The student will be required to remove the offending item or change out of the offending item. If necessary, the student will be sent home to do this. Any time the student misses from school in order to comply with the dress code will be considered an unexcused absence.

SECOND OFFENSE

The student shall be brought to the school office and a parent/guardian shall be contacted. The student will be issued a warning and will be reminded of the dress code by the principal or vice-principal. The student will be required to remove the offending item or change out of the offending item. If necessary, the student will be sent home to do this. Any time the student misses from school in order to comply with the student dress code will be considered an unexcused absence.

The student will also receive 1 day's detention.

THIRD OFFENSE

The student shall be brought to the school office and a parent/guardian shall be contacted. The student will be issued a warning and will be reminded of the dress code by the principal or vice-principal. The student will be required to remove the offending item or change out of the offending item. If necessary, the student will be sent home to do this. Any time the student misses from school in order to comply with the student dress code will be considered an unexcused absence.

The student will be suspended from school for a period of time to be determined by the school board.

UNEXCUSED ABSENCE POLICY

An unexcused absence is defined as an absence from school, however brief, for which the student does not have permission from a parent/guardian to be absent. An unexcused absence can also occur when the student is sent home from school for violating a school policy or rule.

A student is allowed three (3) unexcused absences each year. If a student receives more than three (3) unexcused absences, the student will lose privileges for the next month. Privileges include the ability to attend after school events such as dances, sporting events, and clubs or organizations that meet after school. Privileges also include the ability to participate in any organized athletic event.ⁱ

PRIMER ON THE FIRST AMENDMENT

Both the New Hampshire and United States Constitutions protect freedom of speech.

NH CONSTITUTION PART I, ARTICLE 3

When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.

NH CONSTITUTION PART I, ARTICLE 4

Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.

NH CONSTITUTION PART 1, ARTICLE 22

Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved.

UNITED STATES CONSTITUTION, FIRST AMENDMENT

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

Balancing the right of free speech with the right of others.

Even though both constitutions protect speech, this does not mean that you have the right to say whatever you want, whenever you want. For example, you cannot yell “Fire” in a crowded movie theater. The trick is to balance an individual’s right to speak with the safety and rights of others.

Similarly, courts have struggled with how to balance the right of schools to control how students dress with students’ right to express themselves. Below are the facts of several cases where students have challenged their schools’ dress code – sometimes successfully and sometimes unsuccessfully.

***Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)².**

Fifteen year-old John Tinker, his sister Mary Beth, 13, and Christopher Eckhardt, 16, wore black armbands to their Iowa public schools in December 1965 to protest the Vietnam conflict. They wore the armbands after a group of parents and students in Des Moines, Iowa, met at the Eckhardt home and decided to protest U.S. involvement in Vietnam. The group agreed that one way to protest would be to have the students wear black armbands to public schools.

School officials learned of this planned protest and enacted a no-armband policy. The school then enforced its no-armband rule while still allowing the wearing of other symbols, including the Iron Cross.

² If teachers/coaches would like full copies of the cases described below, please contact the New Hampshire Bar Association.

The students sued. The trial court sided with the school officials' argument that they had enacted the policy out of a reasonable fear that the wearing of the armbands would create disturbances at school.

The U.S. Supreme Court overturned the trial court and instead ruled in favor of the students. In doing so the Court said that in order for school officials to stop students from wearing armbands they needed to show that the armbands would lead to either

- (a) a substantial disruption of the school environment, or
- (b) an invasion of the rights of others.

The Court wrote: "the record does not demonstrate any facts which might reasonably lead school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred."

The Supreme Court also said "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech and expression at the schoolhouse gate."

Barber v. Dearborn Pub. School, 286 F. Supp. 2d 842 (E.D. Mich. 2003).

Bretton Barber was a student at Dearborn High School. Barber wore a t-shirt to school, the front of which displayed a photograph of President George W. Bush with the caption "International Terrorist." Barber said he wore the t-shirt to express his feelings about President Bush's foreign policies and the imminent war in Iraq. About half-way through the day a teacher asked Barber to either remove the t-shirt (he was wearing another one underneath) or go home. Barber went home. He sued the school for infringing upon his First Amendment rights. The School argued that because there were a large number of Arab students at Dearborn High, they were afraid that the students would be offended by the t-shirt and that a disruption would occur. A few years earlier, at a different school in Michigan, some students had carried pictures of Saddam Hussein to show their support for him during the first Gulf War, which caused fights at the school.

The Court decided that the school's actions violated Barber's constitutional rights under the First Amendment. The Court found that the t-shirt was meant to be a symbolic act which is protected by the First Amendment. The Court found that the School did not demonstrate that Barber's t-shirt would cause any disturbance at the school. The Court stated: "Clearly the tension between students who support and those who oppose President Bush's decision to invade Iraq is no greater than the tension that existed during the United States' involvement in Vietnam between supporters of the war and war-protestors." "Students benefit when school officials provide an environment where they can openly express their diverging viewpoints and when they learn to tolerate the opinions of others."

Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986).

Matthew Fraser nominated classmate Jeff Kuhlman for a student government office during a speech in front of a student assembly. The speech contained numerous sexual references. The school disciplined Fraser based upon what he had said. Fraser sued the school. In court, Fraser argued that a speech nominating another classmate for a student elective office was entitled to as much protection as the black armbands in *Tinker*.

The Supreme Court disagreed. The Court said that vulgar speech was not the same as political speech, "The constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." Instead, the Supreme Court set up a balancing test: "the freedom to

advocate unpopular and controversial views in schools and classrooms must be balanced against society's countervailing interest in teaching students the boundaries of socially appropriate behavior."

The Supreme Court added: "Surely, it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse."

***Broussard v. School Bd. of Norfolk*, 801 F. Supp. 1526 (D. Va. 1992).**

A junior high school student wore a t-shirt to class bearing the words "Drugs Suck!" The school's principal showed the student and her stepfather a school rule that prohibited students from engaging in conduct that caused disruption, disturbed, or interrupted any school activity and told him that the student's wearing of the shirt violated that rule. The principal also told the student and her stepfather that, if the student refused to change her shirt, she would be suspended. When the student refused, she was suspended for one day. The student sued arguing that her First Amendment rights had been violated. The student argued that the shirt conveyed an important, "anti-drug message" and did not cause a disruption of the school environment. The school responded that the shirt was inappropriate for the school environment because the word *sucks* has a vulgar connotation. The court agreed with the school. The court found that the student's First Amendment right to free speech had not been violated because the school board had an interest in protecting its students from vulgar and offensive language and it was permitted to restrict the student's expression to achieve that goal.

The court wrote:

Teachers and administrators must have the authority to do what they reasonably believe is in the best interest of their educational responsibilities, as we cannot abandon our schools to the whims or proclivities of children. The Court finds that . . . School Officials had an interest in protecting their young students from exposure to vulgar and offensive language.

i