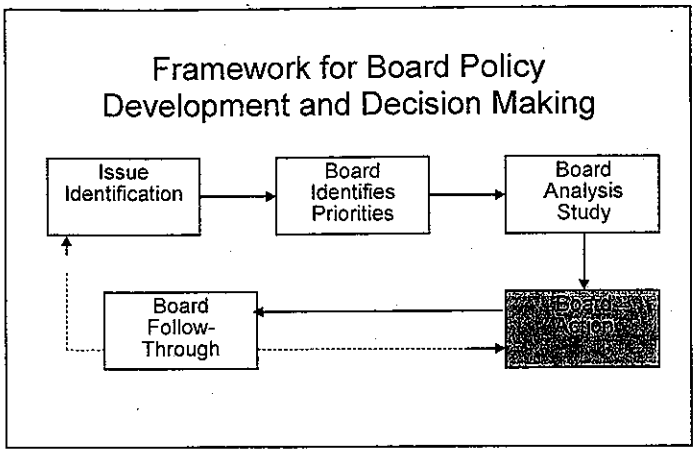
Iowa State Board of Education

Executive Summary

January 27, 2011



Agenda Item: *In re Mandatory Dress Code*

Iowa Goal: All K-12 students will achieve at a high level.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta, Administrative Law Judge

Attachments: 6

- Proposed Decision
- Appellee's (district's) Notice of Appeal of Proposed Decision
- Appellee's (district's) Brief and Argument re Proposed Decision
- Appellants' (parents') Brief re Proposed Decision
- Appellee's (district's) Brief and Argument (request to dismiss the appeal)
- Appellants' (parents') Closing Argument Brief

Recommendation: It is recommended that the State Board approve the proposed decision reversing the decision of the local board of directors of the Waterloo Community School District to adopt a district-wide standardized dress code.

Background: On May 24, 2010, the board of directors of the Waterloo Community School District adopted a district-wide standardized dress code, mandating that students wear solid color navy, black, or khaki/tan slacks, knee-length shorts, skorts, skirts, or skirted jumpers with a solid color collared shirt of acceptable color to each student's

attendance center. The policy also prohibited the wearing of certain items of apparel such as baggy pants and flip-flops.

The District's current regulations, as well as case law, provide it with authority to prohibit the wearing of unsafe clothing (such as flip-flops and overly baggy pants). Iowa Code § 279.58 authorizes school districts to prohibit the wearing of gang-related and other apparel when related to health, safety, or positive educational environment of students and staff. *But § 279.58 provides no authority for a district to go beyond a "what not to wear" policy to impose a list of acceptable clothing items.*

The decision makes no judgment as to the wisdom of a uniform dress code policy. The decision merely states that it is up to the Legislature whether to expand the authority in § 279.58. Because the Legislature has decided to regulate school dress codes, neither the State Board nor any local public school board may go beyond the current parameters of § 279.58.

The District has exercised its right under administrative rule 281—6.17 to request oral argument before the full State Board. Accordingly, the attachments include all briefs filed by both parties. The District has ten minutes of oral argument, followed by the Peters with ten minutes, and ending with rebuttal by the District of five minutes. State Board members may ask questions of either party during the oral argument.

In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has one or more questions for the Attorney General's office, let us know several days in advance of the January 27th meeting so we can arrange for an assistant Attorney General to be present either in person or via telephone.

IOWA DEPARTMENT OF EDUCATION

[26 D.o.E. App. Dec. 56]

In re Mandatory Dress Code

Ricki and Teesha Peters, Appellants,	:	
	:	PROPOSED DECISION
vs.	:	[Admin. Doc. 4715]
Waterloo Community School District, Appellee.	:	

The above-captioned matter was heard on September 1, 2010, before designated administrative law judge Carol J. Greta, J.D. The Appellants, Ricki and Teesha Peters [the Peters], were personally present on behalf of their minor children. The Appellee, the Waterloo Community School District ["the District"], was represented by its attorney, Steve Weidner.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2009). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

The Peters are the parents of four minor children enrolled in the District. On behalf of their children, the Peters seek review of the May 24, 2010 decision of the local board of directors of the Waterloo Community School District to adopt what the District has termed a "standardized dress code policy" for students. The Peters contend that the District lacks authority to promulgate a prescriptive dress code policy.

FINDINGS OF FACT

Prior to May 24, 2010, the District was not without a dress code. Local school board regulation 504.3-R, which is still in effect, prohibits the wearing of gang colors and apparel, and "any clothing which presents a safety concern or detracts from the educational process."

The issue of a more restrictive District dress code has been discussed by local school administrators in Waterloo for at least the past eight years, according to a background statement provided to the local school board on May 10, 2010 (Exhibit 3). On that date, the local board held the first reading of the new standardized dress code policy. Much of the pertinent history is captured in the April 22, 2008 minutes of the District's School Improvement Advisory Committee (SIAC). Those minutes (Exhibit 1) state as follows:

> **Uniforms**
> Dr. [Dewitt] Jones [District superintendent, 2002 – 2008] reported on the status of the school uniform study. The School Community Network, made up of school principals and representatives from school site councils or parent-

teacher organizations, have met regarding the idea of requiring uniforms for all Waterloo Community Schools students. Members heard a presentation from Principal Liz Crowley from Dr. Walter Cunningham School, whose building requires uniforms. A subcommittee has been formed to study this further. ...

There was discussion within the group that uniforms might be easier than trying to shop and adhere to a list of "what not to wear". Kathi Latta, lead teacher at Cunningham School, stated that since the uniform requirements have been in effect at Cunningham, the focus is more on who a student is and not what they are wearing. The class issue is gone.

The SIAC met again on January 12, 2010. Excerpts from the minutes of that meeting (Exhibit 2) are as follows:

Uniforms

Clothing can be a distraction to students. How students appear is very critical. The use of uniforms in schools has shown to improve discipline and help resist peer pressure that is associated with what clothes a student is or isn't wearing. Wearing uniforms also can help school officials recognize intruders in a building or on campus. Students tend to act the way they are dressed.

Kathi Latta started the discussion on uniforms and how it was implemented at Cunningham and how it has worked. Cunningham is in its eighth year using uniforms. It started when the new school was built and was suggested by the parents. ... In the beginning the clothes were purchased from a uniform company, but it became difficult to always purchase from one company. Now, local vendors supply the necessary items. ...The uniform policy creates a feeling of belonging for students and staff.

Brad Schweppe [principal at Carver] commented on Carver's uniform policy. They have adopted something similar to Cunningham's policy. ... The uniforms have helped promote confidence and outsiders have been very impressed with the school climate when they are in the building. Having the uniforms has taken clothes out of the mix of conversations. ...

On April 12, 2010, according to Exhibit 3, the background page for the May 10 meeting, the local board "held a work session on uniforms. A parent survey is being planned for mid-May, with a report back to the Board prior to its May 24, 2010 regular meeting, at which time this policy could be presented for second reading."

The parent survey authorized by the District was conducted by the Center for Social and Behavioral Research of the University of Northern Iowa. The survey instrument, protocols, and results were entered herein as Exhibit 10. This Board accepts that the survey was conducted using scientifically sound methodologies, including sample size and integrity of questions asked. This Board also accepts that the survey found a very high (89%) awareness of the issue among parents, as well as fairly broad support (over 70%) of the dress code policy. Respondents were read a summary of the dress code – see page 22 of Exhibit 10 – before being asked to respond. Respondents were not given a choice of responses to the question; they were merely asked, "What do you think the most positive impacts of implementing such a dress code policy would be?" Table 14, below, is the report of how respondents replied when asked what benefits they associate with a dress code policy.

Table 14. Positive impacts of the dress code policy

Positive Impacts of Dress Code Policy	Percent
Reduce competitiveness about clothing	44
Help students stay focused on academics	14
No positive impacts	13
Reduce peer pressure	09
Other	09
Enhance the school's image	07
Prevent gang color affiliation	07
Cheaper / Will save money	07
Will increase appropriateness of student dress	07
Boost morale among students	05
Reduce disciplinary problems	04
Increase student achievement / Academic performance	04
Increase safety in the schools	02
Improve attendance	01

A parent group, of which Mr. Peters was a member, was convened by the District and led by Mary Meier, the District's executive director of career and high school programs. The group met on or about May 20, 2010 after the local board had its first reading of the new policy on May 10. Ms. Meier, who was formerly an East High principal, is a proponent of the new policy. Her testimony as to the reasons for the administration's advocacy for a more restrictive policy provides a good summary of the reasons expressed by Superintendent Gary Norris, other administrators, and the local board members who testified herein.[1] Those reasons can generally be put into one of the following three categories:

1. Problems with enforcement of the former policy (the "what not to wear" policy)
    a. Staff are reluctant to discuss manner of dress with students of the opposite gender than the staff member when the issue is skimpy or too tight clothing.
    b. Some students "push the envelope" to see what they can wear.
    c. Staff does not feel empowered to enforce the policy because they view the policy as subjective.

2. Advantages of requiring uniformity of dress
    a. School safety is enhanced because uniformity of dress makes it easier for staff and students to discern students from non-students (intruders).
    b. Students are more focused on learning and less distracted by apparel.
    c. Students have decreased awareness of socioeconomic status issues.

[1] Local board president Bernice Richard and board vice president Michael Young testified, as did District administrators Sharon Miller (executive director of school and community relations), Dr. Willie Barney (East High principal), Brad Schweppe (Carver Academy principal), and Stephanie Mohorne (Lincoln Elementary principal). Any omission or error regarding correct titles of the foregoing persons is inadvertent.

3. Advantages of prohibiting overly loose clothing and footwear
    a. Baggy, loose clothing poses a danger to students and staff because the wearer can easily conceal weapons in baggy clothing.
    b. Pants with sagging waistlines are a hazard to the wearer if the wearer needs to evacuate school quickly.
    c. Flip-flop footwear is a hazard to the wearer if the wearer needs to evacuate school quickly and because such footwear exposes skin to hazardous materials in some science and industrial arts classes.

District administrators, local board members, and members of the parent group convened by the District studied several published articles regarding the pros and cons of dress codes. Most of the articles espoused the benefits of uniform dress codes, that is, policies that give students a list of apparel from which to make choices about what to wear to school.[2]

On May 24, 2010 the local school board passed the standardized dress code policy (Exhibit 7), for students of all of the approximately 20 attendance centers of the District, to be implemented no later than the 2011-2012 school year, with each attendance center having the option to implement the policy for the 2010-2011 school year. Opting to use the policy this school year are the following attendance centers: East High School, West High School, the District's three alternative secondary school settings, Kittrell Elementary, and Lincoln Elementary. As already noted, uniform dress codes have been in place at the Dr. Walter Cunningham School for Excellence since the 2002-2003 school year, and at the George Washington Carver Academy[3] since the 2009-2010 school year, and continue to be utilized at those attendance centers.

Because of the nature of this appeal, we find it pertinent to reproduce much of the policy, as follows:

> **Dress Code Benefits**
> The Waterloo Community School District has a mandatory (standardized) dress code for all elementary, middle, and high school students to reinforce the District's mission that each and every student graduate prepared for college, career, and citizenship. A standardized dress code helps to prepare students for their futures through:
> - Professional/career dress
> - Modesty/decency
> - A focus on instruction
> - School security
> - Personal safety
> - Businesslike image
> - A sense of school pride and belonging
>
> **Standardized Dress Code**
> The dress code does not allow for clothing with colored trim, stripes, checks or plaids, embroidery, decoration, etc. It also does not provide for jeans, overalls (overalls with

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[2] No less than 24 articles were submitted into evidence herein by the District alone. (Exhibits 11 – 15 and 17 – 19.)

[3] Cunningham is an elementary attendance center; Carver is a middle school.

pants or shorts), sweat pants, knit pants/skirts, leggings, etc. A very small logo is acceptable on otherwise approved clothing items.

List of Acceptable Clothing
Bottoms: Navy, Black or Khaki/Tan (solid)

- Knee-length shorts, slacks, skorts, skirts, skirted jumpers
- Must be plain, solid-color twill, corduroy or denim fabric (not blue jeans)
- No cargo or carpenter style, patterns, rivets, large brand tags, or strings

Tops: solid colors with collar

- Must have long or short sleeves; no sleeveless shirts allowed
- Must have a collar except on designated days
- Knit polo-type, Oxford or woven dress shirts, blouses, turtlenecks
- School t-shirts are allowed on designated days
- Every school may specify acceptable colors. Call schools for school colors.
- No hoods

Other dress code rules:

- A belt may be required...
- Shirts must be tucked in.
- Shoes must be closed toe, safe, and appropriate...
- Clothes must be appropriate size, with waist of garment worn at student's waist.
- Clothing that is too tight or too loose is not appropriate for school.
- Undergarments must not be visible.
- **School administrators will determine if clothing is appropriate for school and complies with District rules.** ...[Emphasis is in original.]

Two of the Peters children attend West High School, and two attend Hoover Middle School. The Peters' challenge to the local board's action is based on their contention the standardized dress code policy exceeds statutory authority.

CONCLUSIONS OF LAW

Jurisdiction

Iowa Code section 290.1 provides for appeal from decisions by local school boards when such appeals are brought by an "affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact."

The District, in its post-hearing brief, asserts that the local school board's adoption of the dress code policy was neither a "decision" nor an "order" as those terms are used in section 290.1. Also in its brief, the District points out that the Peters are not challenging the policy as applied specifically to their children.

This case presents the first appeal of its nature, but it is analogous to the following appeals, which have not been specific to any one student: termination of a football cooperative sharing program (*In re Shared Football Program*, 25 D.o.E. App. Dec. 35); building closings (*In re Closing of Moore Elementary, Etc.*, 24 D.o.E. App. Dec. 21); grade realignments (*In re Grade Realignment*, 24 D.o.E. App. Dec. 284); removal of a book from the sixth grade curriculum (*In re Removal of Book from Curriculum*, 23 D.o.E. App. Dec. 188); and sale of a district's bus fleet to a private student transportation

company (*In re Transportation Services*, 23 D.o.E. App. Dec. 237). In all of these cases, the State Board has routinely allowed appeals from any parent or guardian of a student with a showing of a minimal nexus between the student and the local board's decision.

The case cited by the District to support its assertion is *Gabrilson v. Flynn*, 554 N.W.2d 267 (Iowa 1996). *Gabrilson* involved a dispute between a school board member (Ms. Gabrilson) and her fellow board members and the superintendent over Ms. Gabrilson's request for access to the student assessment test used in her school district. She did not file an appeal with the State Board of Education to contest her board's adoption of a policy giving the superintendent discretion to review requests from board members for student assessment test information, but instead filed an original action in Scott County district court.

The District's reliance on *Gabrilson* is misplaced. The Court in *Gabrilson* merely stated that Ms. Gabrilson did not have to exhaust an administrative remedy before bringing her action in district court:

> It is a general principle of law that the courts will give broad deference to discretionary decisions of school boards and that persons aggrieved by decisions of a board must normally appeal to the state board of education for relief. [Citations omitted.] But...this presents a case where the plaintiff has expressly challenged the power of the school board to adopt a policy that delegates the discretionary authority granted to it by statute to its agency....thus, <u>this court has proper jurisdiction over this question even though no appeal was made to the state board</u>. [Emphasis added.]

554 N.W.2d at 275-276. The question presented to the Court in *Gabrilson* was not whether the State Board would have had jurisdiction; the Court appears to assume that this Board would have had jurisdiction.[4]

The Peters' children are students enrolled in schools of the District, and thus are impacted by the district-wide dress code policy. The enactment of the policy clearly was a decision made by the local school board. This Board has personal and subject matter jurisdiction over this appeal.

Standard of review

Iowa Code section 279.58 expressly vests the boards of directors of our public schools with authority to impose a limited dress code upon students. Section 279.58 states as follows:

> 1. The general assembly finds and declares that the students and the administrative and instructional staffs of Iowa's public schools have the right to be safe and secure at school. Gang-related apparel worn at school draws attention away from the school's learning environment and directs it toward thoughts or expressions of violence, bigotry, hate, and abuse.

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[4] At the time that *Gabrilson* was decided, Iowa Code section 290.1 authorized a "person aggrieved" by a local school board's decision or order to appeal to the State Board of Education. The statute was amended in 2002 to limit appeals from local board decisions or orders to students and parents of minor students.

> 2. The board of directors of a school district may adopt, for the district or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school. Adoption and enforcement of a dress code policy is not a violation of section 280.22. [Emphasis added.]

Because a school district has discretion regarding whether to have a dress code and because section 290.1 gives the State Board authority to review local board actions, our review is for abuse of discretion. *See Sioux City Comm. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 569 (Iowa 2003) (where district has discretion regarding provision of transportation and the Department of Education has authority to review such decisions, review is necessarily limited to the abuse of discretion standard). In describing the abuse of discretion standard, the Iowa Supreme Court stated, "[W]e will find a decision was unreasonable if it ... was based upon an erroneous application of the law." [Citation omitted.] 659 N.W.2d at 569.

Under this standard of review, we must be deferential to a local board's decision because the Legislature decided that the local board's "expertise justifies vesting primary jurisdiction over this matter in the discretion" of the local boards. *Berger v. Iowa Dep't of Transp.*, 679 N.W.2d 636, 640 (Iowa 2004). Such deference, however, does not pose an insurmountable obstacle for those who lawfully challenge discretionary decisions. In *Auen v. Alcoholic Beverages Division, Iowa Department of Commerce*, 679 N.W.2d 586 (Iowa 2004), the Iowa Supreme Court reversed an agency action that it found to be based on "an irrational, illogical, or wholly unjustifiable interpretation" of Iowa Code section 123.45. 679 N.W.2d at 590. That statute prohibited *any* ownership interest, no matter how remote, by a person in the chain of alcohol beverage distribution in the retailing of such beverages. The agency unlawfully permitted persons to have an indirect ownership interest, contrary to the plain language of the statute.

Was adopting the standardized dress code policy contrary to statutory authority?

Dress codes fall into two categories: those that *prescribe* what must be worn (uniform policies) or those that *proscribe* what may not be worn. 3 Rapp *Education Law* 9.04[8][c][iii]. Section 279.58 unambiguously confers authority on public school boards to adopt proscriptive dress codes only.

The District submits that section 279.58 does not restrict a school district's broad general authority under section 279.8 ("The board shall make rules for its own government and that of the directors, officers, employees, teachers and pupils, ... and shall aid in the enforcement of the rules, and require the performance of duties imposed by law and the rules.") to adopt a content-neutral dress code. In the alternative, however, the District argues that its policy is not a prescriptive uniform policy.[5]

We disagree with the District on both points.

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[5] We agree that the policy is not solely a prescriptive uniform policy. There are proscriptive aspects of the policy, which we address on page 65 of this Decision.

First, we find no support for the District's contention that school districts are no longer subject to "Dillon's Rule." The rule takes its name from a former chief justice of the Iowa Supreme Court, John F. Dillon, who authored the decision of that Court, *Merriam v. Moody's Ex'r,* 25 Iowa 163 (1868), establishing the doctrine that public entities possess and may exercise only those powers granted in express words, those necessarily implied or necessarily incident to the powers expressly granted, and those absolutely essential to the declared objects and purposes of the public entity. 25 Iowa at 170. By constitutional amendments in 1968 and 1978, first cities and then counties were removed from Dillon's Rule and have "home rule." Iowa public educational agencies are still governed by Dillon's Rule, as are those in Kentucky, Florida, Illinois, Michigan, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and Washington. This is not an exhaustive list, but merely represents those states in which an appellate court has supported application of Dillon's Rule. 1 Rapp *Education Law* 3.05[3][b]. Thus, while the rule originated in Iowa, it is not limited in application to public educational institutions in Iowa.

Because school districts are subject to Dillon's Rule and because section 279.58 is a specific grant of authority, the District cannot rely on section 279.8. The specific or substantive statute supersedes the general statute. *Albright v. Oliver*, 114 S.Ct. 807, 813 (1994). In addition, the express mention of one thing in statute implies the exclusion of other things not specifically mentioned. *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001). The Legislature may regulate by omission as well as by inclusion. *Bob Zimmerman Ford, Inc. v. Midwest Auto. BMW*, 679 N.W.2d 606, 610 (Iowa 2004). We are left to examine the District's contention that its standardized dress code policy is not prescriptive.

In support of its assertion that its policy is not unlawfully prescriptive, the District urges that the policy merely gives families and students helpful examples of acceptable attire "to better define and explain apparel that is prohibited." (District's brief, page 18.) The District also argues that the required articles of clothing could be worn by a student in settings outside of school, and therefore, the clothes cannot be called a "uniform." One witness for the District both testified herein and stated at a local board meeting that school uniforms refer only to clothing that is "the exact same outfit" specific to a private school or worn by all members of an organization such as law enforcement. Finally, the District points out that because students in the District have a choice of at least 360 different combinations of styles and types and colors of acceptable clothing, we must conclude that the policy cannot be prescriptive.

Despite the District's efforts at hearing to deny that the policy is a prescriptive uniform policy, the District's own characterizations and actions are to the contrary, as evidenced by the following. In listing the items below this Board understands that people may have used the word "uniforms" for convenience, and not as a term of art. However, the cumulative evidence clearly and overwhelmingly shows that the policy in question is indeed a prescriptive uniform school dress code policy:

- District administrators repeatedly used the term "uniforms" when discussing the policies in place at Carver and Cunningham schools, and when discussing the proposed dress code policy. *See* Exhibits 1 – 5 and 20 – 22.

- Local board members, in debating the policy, understood that the standardized dress code policy did more than proscribe the wearing of certain apparel and frequently used the term "uniforms." (Exhibit S)

- The application and process created for clothing assistance (Exhibit J) would not be necessary if the policy were solely proscriptive.

- The list of retailers that provide acceptable student attire (available on the District's Website) would not be necessary if the policy was solely proscriptive. Superintendent Norris stated at the May 10 local school board meeting that the list was developed with the cooperation of local retailers because when the District first required the use of uniforms at Cunningham School, the District ordered acceptable student attire from a uniform company and found that to be "very expensive." (Exhibit S)

- Dress Code "Frequently Asked Questions" from the District's Website (Exhibit D), specifically # 6 ("[A]ssistance will be available for families including clothes closets where uniforms can be exchanged.") and #7 ("Carver and Cunningham [Schools] will continue with their current uniforms.") assume that the policy is prescriptive.

- The District heavily relies on a "School Uniform & Dress Code" used by the Polk County (Florida) Public Schools, which in turn mirrors that of the Louisville schools in *Long v. Board of Education of Jefferson County*, 121 F.Supp.2d 621 (W.D. Ky. 2000) (granting summary judgment to school district in face of claim that the policy violates the First Amendment).[6] We understand not wanting to reinvent the wheel, and thus the attraction of copying a policy that has passed muster with a court of competent jurisdiction in another state. However, the legal question in *Long* was not whether the policy violated a Kentucky state law that is similar to Iowa's section 279.58. There is no such state law in Kentucky. The question before the court in *Long* was purely a First Amendment question. No such challenge is raised here because the sole issue is statutory.

Section 279.58 unambiguously confers authority on public school boards to adopt proscriptive dress codes only. This law was enacted in 1995 as part of an omnibus juvenile justice act[7] whose preamble sets forth the following:

> An act relating to criminal and juvenile justice, including authorizing the suspension of the juvenile's motor vehicle license, authorizing a criminal justice agency to retain a copy of a juvenile's fingerprint card, providing that certain identifying information regarding juveniles involved in delinquent acts is a public record, exempting certain offenses from the jurisdiction of the juvenile court, placing a juvenile in short-term secure custody as a dispositional alternative, waiving a juvenile to adult court, the release or detention of certain criminal defendants pending sentencing or appeal following conviction, limiting the circumstances under which a juvenile may consume alcoholic beverages, providing for notice to parents when a juvenile is taken into custody for alcohol

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[6] The Polk County (FL) school board's policy was introduced in this matter as Exhibit 8 by the District. Much of the Florida district's policy appears verbatim in the District policy at issue herein.

[7] 1995 Iowa Acts, ch. 191 (House File 528).

offenses, authorizing school districts to adopt a dress code policy, adding custody and adjudication information regarding juveniles to state criminal history files, establishing a juvenile justice task force, and enhancing or establishing penalties.

The tenor of the above preamble bespeaks a toughened stance by the Legislature regarding misconduct of juveniles. The act consistently enhances the authority of law enforcement, other juvenile justice authorities, and school districts regarding such misconduct. We repeat the preamble above to make the point that the Legislature had an opportunity and the ability within the Act to give local school boards authority to adopt prescriptive uniform policies. It did not do so.

Because *prohibiting* certain apparel was not the focus of this appeal, no evidence was offered as to why the policy banned "colored trim, stripes, checks or plaids, embroidery, decoration, etc." A reasonable implication from the evidence as a whole is that these prohibitions are wholly due to the prescriptive nature of the standardized dress code policy. That is, we believe that the District has no need to and would not prohibit colored trim, stripes, checks, and plaids outside of the uniform requirements of the policy. Accordingly, inasmuch as the integration of unlawful prescriptive elements dominates the District's policy to the extent that the few allowable proscriptions can be seen to stand on their own, we void the entire standardized dress code policy.[8]

This appeal and our decision are limited to the District's new standardized dress code policy. Current District regulation # 504.3-R is left intact and is available to District administrators to use to regulate many of the issues the District's witnesses testified about at length. Those issues included overly baggy clothing, pants with sagging waistlines, and flip-flops and other open-toed footwear. The Peters do not dispute that prohibiting the same can be a matter of health and safety. Even in the absence of a regulation such as # 504.3-R, school districts may regulate clothing or other apparel pursuant to such case law as *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733 (1969) (permitting schools to regulate speech and conduct that impinges on the rights of others or has the likelihood of a substantial and material disruption at school); *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159 (1986) (permitting school officials to regulate lewd, indecent, objectively offensive speech and conduct); and *Morse v. Frederick,* 127 S.Ct. 2618 (2007) (permitting school officials to regulate speech and conduct that appears to promote illegal or harmful activity).

This is a case of first impression. Neither this Board nor any reviewing body of competent jurisdiction in Iowa has had previous occasion to review a challenge to a school dress code since the enactment of section 279.58. We are not unsympathetic to the District's position that a dress code that goes beyond "what not to wear" may have several desirable outcomes for students, staff, and families of the District. This Decision does not mean that a prescriptive uniform dress code policy is wise or unwise.

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[8] The bullet points under "Other dress code rules" may all be regulated by the District via its current regulation, # 504.3-R. As an example, we do not disagree with the statement of one District witness that gang activity is a "viable concern within any metropolitan area of Iowa." However, no evidence about gang activity was offered that is specific to the District and the Waterloo area. We also note that the local regulation # 504.3-R can be used to regulate the wearing of jewelry and other gang-related paraphernalia, as well as clothing. The District's standardized dress code is silent about jewelry.

However, whether section 279.58 should be expanded to give authority to public school boards to enact prescriptive uniform policies must be left to the Legislature to decide, not the local school boards and not the State Board of Education.

DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Waterloo Community School District made on May 24, 2010, imposing mandatory district-wide dress code policy be REVERSED. The effect of this Decision is that the Waterloo Community School District standardized dress code policy is void. This Decision does not void local regulation # 504.3-R. There are no costs of this appeal to be assigned.

10/21/10
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Rosie Hussey, President
State Board of Education

BEFORE THE IOWA DEPARTMENT OF EDUCATION
CAROL GRETA, ADMINISTRATIVE LAW JUDGE

In re: Waterloo Community School District Mandatory Standardized Dress Code	)	ADMINISTRATIVE DOCKET NO. 4715
Ricki and Teesha Peters	)	
Appellants,	)	
vs.	)	NOTICE OF APPEAL
Waterloo Community School District,	)	
Appellee.	)	

COMES NOW Appellee Waterloo Community School District and for Notice of Appeal pursuant to 281 I.A.C. 6.17(5) states:

a. The names and addresses of the parties initiating the appeal:

1. Waterloo Community School District (herein "the District")
   1516 Washington Street
   Waterloo, Iowa 50702

b. The proposed decision to be appealed:

1. Proposed Decision issued in this docket on October 21, 2010 by Administrative Law Judge Carol J. Greta, J.D.

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision:

1. The conclusion at pages 56 and 61 of the Proposed Decision that the Board has jurisdiction over this appeal.
2. The conclusion at page 62 of the Proposed Decision that Iowa Code §279.58 restricts a school district's broad general authority under §279.8 to adopt a viewpoint and content-neutral dress code.

3. The conclusion at pages 62, 63, and 64 of the Proposed Decision that the District's dress code policy is a prescriptive uniform policy.
4. The conclusion at page 63 of the Proposed Decision that Iowa school districts are subject to "Dillon's Rule."
5. The conclusion at page 63 of the Proposed Decision that Iowa Code §279.58 is a specific grant of authority that supersedes Iowa Code §279.8.
6. The conclusion at page 64 of the Proposed Decision that Iowa Code §279.8 confers authority on public school boards to adopt proscriptive dress codes only.
7. The conclusion at page 65 of the Proposed Decision that the District's dress code policy contains unlawful prescriptive elements.
8. The conclusion at page 65 of the Proposed Decision that the District's entire standardized dress code policy is void.
9. The conclusion at page 65 of the Proposed Decision that Iowa school districts have the power to regulate clothing or other apparel only pursuant to such case law as *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503, 89 S.Ct.733 (1969) (permitting schools to regulate speech and conduct that impinges on the rights of others or has the likelihood of a substantial and material disruption of school); *Bethel School District No. 403 v. Fraser,* 478 U.S. 675, 106 S.Ct.3159 (1986) (permitting school officials to regulate lewd, indecent, objectively offensive speech and conduct); and *Morse v. Frederick,* 127 S.Ct.2618 (2007) (permitting school officials to regulate speech and conduct that appears to promote illegal or harmful activity).

10. The conclusion at page 65 of the Proposed Decision that Iowa school districts do not have the authority to impose viewpoint and content-neutral regulations on clothing or other apparel, as recognized by authorities including, but not limited to, *Palmer v. Waxahachie Independent School District*, 579 F.3d 502, 507 (Fifth Cir. 2009).

11. The conclusion at page 65 of the Proposed Decision that the District has no need to and would not prohibit colored trim, stripes, checks, and plaids as part of a legal dress code policy.

12. The finding at page 65, note 8 of the Proposed Decision that no evidence about gang activity was offered that is specific to the District and the Waterloo area.

d. The relief sought:

1. That the Proposed Decision be vacated.
2. That the appeal of Appellants Ricki and Teesha Peters be dismissed.

e. The grounds for relief.

1. That, under applicable statutory and case law, the District has the authority and discretion to enact and enforce a viewpoint and content-neutral dress code in the form of Policy No. 504.2.
2. The grounds for relief will be set forth in further detail in the District's brief to be filed pursuant to the Board's scheduling order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above case by service on each of the attorneys of record herein at their respective addresses disclosed on the pleadings by:

☒ U.S. Mail ☐ Other: _____
☐ Hand Delivered ☐ FAX
on Nov. 5, 2010.

_____

BEFORE THE IOWA DEPARTMENT OF EDUCATION

In re: Waterloo Community School District Mandatory Standardized Dress Code	)	ADMINISTRATIVE DOCKET NO. 4715
Ricki and Teesha Peters	)	
Appellants,	)	
vs.	)	APPELLEE'S BRIEF AND ARGUMENT RE: PROPOSED DECISION
Waterloo Community School District,	)	
Appellee.	)	

I
INTRODUCTION

In this case, Ricki and Teesha Peters are claiming that the Board of Directors of the Waterloo Community School District exceeded its statutory authority by enacting a standardized dress code that had both proscriptive and prescriptive elements. In her proposed decision, the administrative law judge found that the enactment of the dress code was beyond the District's statutory authority and recommended that the State Board rule that the dress code policy is void. The District has exercised its statutory right to appeal the proposed decision to the State Board, and, for the reasons set forth below, urges the State Board to vacate the ALJ's proposed decision and find that the District's standardized dress code policy is valid and enforceable.

II
STATEMENT OF FACTS

Prior to May 24, 2010, the Board of Education of the Waterloo Community School District had not taken formal action to establish a restrictive dress code on a District-wide basis. (Norris, Miller) The Dr. Walter Cunningham School for Excellence ("Cunningham"), an elementary school, had adopted its own uniform requirements from the time that it was

established in 2002. (Miller; Ex. 21) The George Washington Carver Academy ("Carver"), a middle school, had adopted uniform standards at its inception as a new school building in 2009. (Miller, Schweppe; Ex. 20) Lincoln Elementary School had earlier instituted a Revised Dress Code but did not continue to implement it in full prior to May 24, 2010. (Miller, Mohorne; Ex. 22) All other school buildings in the District had, on their own, enacted dress codes for the individual buildings which were contained and published for parents and students in the respective building publications to students and parents. (Miller, Barney, Schweppe, Mohorne, Meier)

Administrators and teachers in the District had long been aware of the effect of student attire upon the safety and health of students and the adverse effect upon a positive educational environment in the school. With regard to footwear, flip-flops and other similar footwear contribute to student injuries when students slip or trip going up or down stairways or in any location where another student accidentally steps on the heel of such a shoe, causing the student to fall. Also, flip-flops and other similar footwear inhibit or impede students in the event that rapid evacuation from a building would be necessary. Any footwear that exposes portions of the foot, especially toes, can be a safety factor if anything is dropped upon the foot of the student. Female students were also wearing shoes that prohibited them from participating in gym/P.E. class, and they would use this as an excuse to avoid the class. (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Richard, Young)

Baggy clothing, usually on male students, provides real opportunity for hiding articles such as weapons within the baggy clothing. A police officer had provided a learning experience for staff members by disclosing the presence of 26 weapons within the baggy clothing that he had worn at the presentation. A graphic example of this was an expulsion incident in 2009

where a student at West High School took a wooden rod from the woodworking shop, was able to hide it in his baggy pants, and then moved undetected to the second floor where he beat a student with the rod. Additionally, baggy pants fashionably worn at various levels of the legs of students inhibit or impede walking or running in normal student traffic and more noticeably during a rapid evacuation of the building. (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Richard, Young)

Gang activity in the District is a reality with evidence thereof in the school setting in elementary, middle, and high schools. Gang related events that occur on a weekend find their way into the buildings on Monday, and gang related activities that occur during the night make their way into the buildings the next day. Students with gang connections "fly their colors" at every opportunity. In fact, students at East High School were going so far as to sew colors into the back pockets of their blue jeans to prevent the administration from following its policy of confiscating colored bandanas and other means of "flying colors." When a display of colors or other indicia of gang activity appears in a school building in a concentrated fashion, it is evidence that a gang related event is going to occur. When other students notice such indication, it is at best distracting, and at the worst frightening, to other students. This distraction or fright occurs whether or not a gang related event actually occurs in the school building. (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Young)

Style of student dress interferes with the learning environment in several ways. Competition among students to wear certain fashions is distracting to the learning environment and may emphasize differences between socioeconomic levels of different students. Clothing that discloses cleavage and other portions of the body are distractions away from an appropriate learning environment. Any student attire, such as baggy pants worn around the legs of male

students, or such as inappropriate attire on female students, that discloses undergarments is a distraction to an appropriate learning environment. (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Richard, Young)

Building administrators felt the need to educate students on proper dress so that they would be prepared to move into society and be able to obtain meaningful employment. Trying to tell students only what they could not wear without giving them good examples of what they should wear inhibited the administrators in this effort and adversely affected the learning environment in that regard. (Barney, Schweppe)

With the exception of Cunningham and Carver, the implementation and enforcement of the previous building dress codes was frustrating for administrators and teachers and not effective for several reasons. Each of these building dress codes attempted to describe apparel and dress practices which would not be allowed. For every prohibited dress habit identified, students and parents would find deviations and adjustments which would fall just outside of the described prohibition and yet still present the student in objectionable attire. It became obvious to all administrators that there were not enough words in the dictionary to effectively describe all forms of attire that were prohibited. Consistency in enforcement because of the myriad of deviations in student dress was virtually impossible. Also, administrators and teachers of both sexes, but more prevalent among male employees, experienced a serious reluctance to criticize or suggest changes in the attire of students of the opposite sex, or even of the same sex, because of the current sexual harassment attention in our society. Teachers and administrators, especially among the male employees, would receive criticism from students and parents suggesting that the administrator or teacher "was looking at the wrong things." (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Richard, Young)

Because building administrators were having the foregoing difficulties in enforcement and believed that a broader dress code policy for the District was necessary for the health and safety of the students and for an appropriate learning environment for those students, building administrators implored central administration to seek the assistance of the Board of Directors in finding and adopting such a policy. (Norris, Miller) The School Improvement Advisory Committee discussed student dress and the desirability of a District-wide code on numerous occasions. At its meeting of April 22, 2008, the then Superintendent, Dr. Dewitt Jones, reported on the status of the school uniform study. A presentation from the principal of Cunningham and its uniform policy was made to those present. Input from administrators and parents and all Committee members was heard. The positive effect on lessening attention to socioeconomic status was noted. (Ex. 1; Norris, Miller)

Another such meeting was held by the School Improvement Advisory Committee on January 12, 2010. The favorable impact of a dress code upon the learning environment and regarding peer pressure was discussed. Also discussed was the positive effect of the existing uniform policies on students at Cunningham and at Carver. Reference was made to the high schools' effort to begin the process of exploring the concept of a restrictive dress code for students. It was reported that the majority of the staff at West High School supported a more restrictive dress code and would feel more comfortable enforcing same. The consensus of the Committee members present seemed to be very supportive of a new uniform or dress code. There was a feeling that such a policy should be District-wide and start as soon as possible. (Ex. 2; Norris, Miller)

Site Council meetings at a number of schools explored the nature and advisability of restrictive dress code policies with a consensus that the District should move forward with such a policy. (Norris, Miller)

Mary Meier, an administrator in the Educational Services office, was given the responsibility to coordinate resources and provide input to the Board of Directors to help them further understand the expressions of need from building administrators and with examples of possible solutions for those needs.. Administrators who traveled to observe model programs noted dress policies in existence in an out-of-state school district. Ms. Meier researched numerous published articles and other resource material exploring the pros and cons of dress code and uniform policies in schools (Exs. 11-15) and presented the accumulated information to the Board of Directors at a work session held on April 12, 2010. (Meier, Miller) As a result of that work session, Dr. Norris and his staff were directed to proceed to develop a dress code and to bring the proposal to the Board in a timely fashion so that it could be implemented for all schools for the 2010-2011 school year. (Meier, Norris, Young, Richard)

Dr. Norris researched examples of policies from schools in other states, and, in that research, obtained a copy of a policy developed by the Polk County School Board in Florida, from which he fashioned the proposed policy for the Board of Directors. (Norris; Ex. 8)

Dr. Norris and his staff engaged Dr. Mary E. Losch and the Center for Social and Behavioral Research at the University of Northern Iowa to conduct a scientific survey to determine the attitude of District parents toward a dress code. Dr. Losch was made aware of other surveys that were to be conducted by the District through the use of internet, means which were unscientific because of the absence of control over participation and the absence of a scientifically obtained sample to provide reliable results. Dr. Losch was provided with initial

drafts of the policy for her information in conducting the survey, so that these elements could be shared with surveyed parents in an appropriate fashion. Dr. Losch conducted the requested survey according to the scientific protocols used in her profession and provided the finished product to the District in May of 2010. The survey disclosed a remarkable percentage of surveyed parents in favor of such a dress code policy, that being approximately 72%. This survey was available for the Board's review prior to their formal action in May of 2010. (Losch, Miller; Ex. 10)

The Board of Education met on May 10, 2010, to review the proposed policy and provide the first reading of same that is required prior to adoption. (Exs. 3, 4) The Board next met on May 24, 2010, for the second reading and to consider action on the proposed dress code policy. The final standardized dress code, Policy 504.2, was formally adopted by the Board. (Exs. 5, 6, 7)

Pursuant to Board instructions, Dr. Norris and his staff developed the regulations which interpret the policy. (Norris; Ex. 7)

At no time has the Board of Education taken any specific action of any kind that involved the specific application of the Policy to any of Appellants' children. (R. Peters)

The new policy, which is titled "Standardized Dress Code," as contained in Board Policy 504.2 and Administrative Regulation 504.2-R1 describes the following dress code benefits in the opening section:

> The Waterloo Community School District has a mandatory (standardized) dress code for all elementary, middle, and high school students to enforce the District's mission that each and every student graduate prepared for college, career, and citizenship. A standardized dress code helps to prepare students for their futures through:
>
> - Professional/career dress
> - Modesty/decency
> - A focus on instruction

- School security
- Personal safety
- Business-like image
- A sense of school pride and belonging

The text of the dress code goes on to specify clothing that is not allowed, which includes clothing with stripes, checks, or plaids, embroidery or decoration, jeans and sweatpants, and allows only "a very small logo" on otherwise approved items. The code then goes on to provide a listing of acceptable clothing, and allows exceptions "for students with Individualized Education Plans, religious beliefs, JROTC uniform requirements, or health conditions that require accommodations."

Administrative Regulation 504.2-R1 is titled "District Dress Code for Students" and states that the District's goal is "to provide a safe learning environment where students and staff focus on student achievement without distractions." The regulation further provides that the code also applies to any off-campus visits, such as field trips or to students taking classes at Hawkeye Community College, and that "each school site may develop additional guidelines which are stricter than the District Dress Code policy and these regulations, but shall not permit items prohibited herein." The regulation then goes on to list both approved school clothing and articles of non-compliance. There is a provision for families and students to apply for assistance with dress code items, and the exemptions listed in the policy are re-listed and made subject to a request submitted in writing to the building administrator with appeal to the Executive Director of Student and At-Risk Services. The regulation also provides consequences for violations of the policy up to and including suspension out-of-school for up to eight days. The District's grievance procedure, Board Policy 503.3, is made applicable to "provide students and parents a means of questioning the interpretation, application, or possible violation of policies and/or regulations of the District."

Central administration and building administrators believed and have found that the new Policy and Regulation, as interpreted by the Reference Chart developed by the administration (Ex. 16) successfully prohibit objectionable forms of dress by giving an extensive list of things that may not be worn and by giving a wide variety of examples of dress that are acceptable. Virtually all of the shortcomings of previous efforts at eliminating objectionable and unsafe attire and the enforcement thereof have been eliminated by the new Policy and Regulations. Flip-flops and other unsafe footwear have been eliminated. Gang attire, including the flying of colors, has more effectively been eliminated. Baggy clothing and low-slung pants have been eliminated with the corresponding contribution to student safety. The prohibition against showing undergarments and the description of acceptable tops and pants or shorts or skirts have been effective in eliminating attire that was previously a distraction to the learning environment and provide examples of proper attire as will be expected of them after they graduate and seek employment. The absence of displayed undergarments and the description of acceptable attire as just mentioned also provides administrators and teachers with a clear standard for enforcement without having to describe a violation in a manner that previously raised the sexual harassment concern. Building principals have found that the learning environment has been noticeably improved and that they are better able to identify visitors to the buildings as a result of the dress code. Yet, the students in their buildings have been afforded a wide variety of options within the possibilities expressed by the Reference Chart. (Exs. 16, 23) The changes caused by the new Policy and Regulation have effectively eliminated the distractions and reduced the competitive stress that previously affected the learning environment and, together with the contributions to student safety caused by these changes have, as a necessary result, enhanced the health of the students. (Barney, Schweppe, Mohorne, Miller)

III
PROCEDURAL BACKGROUND

On May 24, 2010, the District, through its Board of Directors, adopted a District-wide standardized dress code policy. On June 10, 2010, Ricki and Teesha Peters, the parents of four children enrolled in the District, appealed the District's adoption of the dress code policy on the grounds that it was not legal under state law.

The Peters' Appeal came on for hearing before Administrative Law Judge Carol J. Greta, J.D., on September 1, 2010. On October 21, 2010, the ALJ filed her Proposed Decision in which she recommended that the State Board conclude that the District had exceeded its statutory authority by enacting the dress code policy and therefore rule that the policy is void.

IV
THE LOCAL BOARD'S AUTHORITY

The Iowa Legislature has given broad and extensive powers to local school districts. Under Iowa Code §274.1, each school district is a body politic with "exclusive jurisdiction in all school matters over the territory therein contained." Further, §279.8 of the Iowa Code empowers each local school board to "make rules for its own government and that of the ...pupils ...of the school corporation." Under these broad statutes, the governing bodies of Iowa school districts "are permitted to formulate rules for their own government and for that of all pupils," and "the conduct of pupils which directly relates to and affects management of the school and its efficiency as a matter within the sphere of regulations by school authorities." *Board of Directors of the Independent School District of Waterloo v. Green*, 259 Iowa 1260, 147 N.W.2d 854, 858 (1967).

In addition to the broad powers granted by §§274.1 and 279.8, the legislature enacted a statute in 1995 authorizing local school districts to prohibit students from wearing gang-related or other specific apparel under certain circumstances. Iowa Code §279.58 provides:

279.58. School dress code policies

> 1. The general assembly finds and declares that the students and the administrative and instructional staffs of Iowa's public schools have the right to be safe and secure at school. Gang-related apparel worn at school draws attention away from the school's learning environment and directs it toward thoughts or expressions of violence, bigotry, hate and abuse.
>
> 2. The board of directors of a school district may adopt, for the district, or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school. Adoption and enforcement of a dress code policy is not a violation of section 280.22.[1]

V
THE STATE BOARD'S AUTHORITY

The State Board of Education is given the authority by Iowa Code §§256.7(6) and 290.1 to hear appeals of persons aggrieved by decisions of boards of directors of school corporations. The proper nature of the State Board's review of a school district's decision is for abuse of discretion. *Wallace v. Iowa State Board of Education*, 770 N.W.2d 344, 349 (Iowa 2009).

Under §§256.7(6) and 290.5, the state board may delegate the actual hearing of the appeal to an administrative law judge, who shall then issue a proposed decision which any adversely affected party may appeal to the state board under the provisions of 281 IAC 6.17. The proposed decision does not become final until it is approved by the State Board. 281 IAC 6.18.

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[1] Iowa Code §280.22, referenced in the last sentence of section 279.58, addresses student exercise of free expression and provides that, "students of the public schools have the right to exercise freedom of speech" except as specifically limited by that section, which provides that students shall not express, publish, or distribute materials which are obscene, which are libelous or slanderous, or which encourage students to commit unlawful acts, violate lawful school regulations, or cause the material and substantial disruption of the orderly operation of the school.

Upon such an appeal, the State Board may affirm, modify, or vacate the proposed decision, or may direct a rehearing before the director or the director's designee. Iowa Code §256.7(6); 281 IAC 6.17(7).

VI
THE PROPOSED DECISION

In her Proposed Decision filed October 21, 2010, the ALJ made the following conclusions of law:

(1) The State Board has personal and subject matter jurisdiction over this appeal (pp. 60-61);

(2) Review is for abuse of discretion (pp. 61-62);

(3) Iowa school districts remain subject to "Dillon's Rule," under which public entities possess and may exercise only those powers granted in express words, those necessarily implied or necessarily incident to the powers expressly granted, and those absolutely essential to the declared objects and purposes of the public entity (p. 63);

(4) Because school districts are subject to Dillon's Rule and because section 279.58 is a specific grant of authority, the District cannot rely on section 279.8 as authority for adopting its dress code policy (p. 63);

(5) Section 279.58 confers authority on public school boards to adopt proscriptive dress codes only (pp. 64-65); and

(6) The District's dress code policy is prescriptive and therefore unlawful under section 279.58 (pp. 63-65).

Based on these conclusions, the ALJ recommended that the decision of the District's Board of Directors made on May 24, 2010 imposing a mandatory District-wide dress code policy be reversed, and that the District's standardized dress code policy be held void.

VII
ARGUMENT

A. The State Board does not have jurisdiction of this case.

At pp. 60-61 of her Proposed Decision, the ALJ concludes that the State Board has personal and subject matter jurisdiction over this appeal. The Proposed Decision interprets *Gabrilson v. Flynn*, 554 N.W.2d 267 (Iowa 1996), in which an action was brought in district court to challenge the legality of a board policy, to "assume that this Board would have had jurisdiction" as well. This conclusion, however, is inconsistent with language in *Gabrilson* that "the courts of the state are the sole arbiters" where the power of a school board to adopt a policy is in question. *Gabrilson*, 554 N.W.2d at 275, citing *Green*, 147 N.W.2d at 857. Because the issue presented in this case is whether the District had the power to adopt its standardized dress code, the district court is the "sole arbiter," and there is no room under the language of *Gabrilson* and *Green* for the State Board to exercise jurisdiction.

B. Dillon's Rule does not apply to Iowa school districts.

At p. 63 of her Proposed Decision, the ALJ concludes that Dillon's Rule, under which public entities possess and may exercise only those powers granted in express words, those necessarily implied or necessarily incident to the powers expressly granted, and those absolutely essential to the declared objects and purposes of the public entity, continues to apply to Iowa school districts. The continuing application of Dillon's Rule will be determined by the Iowa Supreme Court in the case of *Hawkeye Foodservice Distribution Inc. v. Iowa Educators Corp.*, Docket No.: 08-2056, which was submitted to the court by oral argument on October 13, 2010. That case is before the Supreme Court on further review of a decision by the Iowa Court of Appeals that was filed on April 21, 2010 and included a determination that Dillon's Rule remains

applicable to Iowa's Area Education Agencies. Notably, in its most recent pronouncement on the subject, the Iowa Supreme Court referred to Dillon's Rule as "long-deceased" in *City of Davenport v. Seymour*, 755 N.W.2d 533, 543 (Iowa 2008). A particularly scathing rejection of the rule is found in *State v. Hutchinson*, 624 P.2d 1116 (Utah 1980), in which the court characterized the rule as "archaic, unrealistic, and unresponsive to the current needs of both state and local governments" (p. 1118) and "antithetical to effective and efficient local and state governments" (p. 1126). However, even where Dillon's Rule is still held to apply, it cannot be utilized to narrowly limit a general grant of power such as the legislature has given to school districts in Iowa Code §§274.1 and 279.8. *Southern Constructors Inc. v. Loudon County Board of Education*, 58 S.W.3d 706, 713 (Tenn. 2001).

C. The District has authority to enact a content- and viewpoint-neutral dress code.

The central issue in this appeal concerns the effect of Iowa Code §279.58 on the ability of Iowa school districts to regulate student attire. Specifically, the issue presented is whether that statute's enactment in 1995 (1) created for the first time authority to enact a dress code, (2) limited a previously existing authority to enact a dress code, or (3) enlarged a previously existing ability to enact a dress code. In her Proposed Decision, the ALJ appears to have concluded that §279.58 either created, or at least limited, a school district's ability to enact a dress code. For the reasons set forth below, the District submits that §279.58 is more properly read as an attempt[2] to enlarge the ability of Iowa school districts to govern student attire.

That Iowa school districts were able to govern student attire before the enactment of §279.58 is expressly recognized at page 65 of the Proposed Decision, where the ALJ concedes that "school districts may regulate clothing or other apparel pursuant to such case law as *Tinker*

[2] Under *Stephenson v. Davenport Community School District*, 110 F.3d 1303 (8th Cir. 1997), §279.58 might not pass constitutional muster. In that case, the court held that a district regulation attempting to prohibit "gang-related activities" was void for vagueness.

v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733 (1969) (permitting schools to regulate speech and conduct that impinges on the rights of others or has the likelihood of a substantial and material disruption of school); *Bethel School District No. 403 v. Fraser,* 478 U.S. 675, 106 S. Ct. 3159 (1986) (permitting school officials to regulate lewd, indecent, objectively offensive speech and conduct); and *Morse v. Frederick*, 127 S.Ct. 2618 (2007) (permitting school officials to regulate speech and conduct that appears to promote illegal or harmful activity)." Assuming that this observation is correct, which it surely is, it effectively rebuts the ALJ's conclusion at page 63 of the Proposed Decision that Dillon's Rule and §279.58 prevent the district from relying on §279.8's broad grant of power to regulate student attire.

If, as the ALJ concedes, the District has authority under §279.8 to govern student attire in accordance with *Tinker*, *Fraser*, and *Morse*, then it also must have the power to govern such attire in the other two manners that federal courts have held to be constitutionally permissible. One of these, the power to regulate school-sponsored speech recognized in *Hazelwood School District v. Kuhlmeier*, 4848 U.S. 260, 271-73, 108 S.Ct. 562, 98 L.Ed. 2d 592 (1988) is, like those referred to in the Proposed Decision and §279.58 itself, applicable to content- or viewpoint-based expression and thus has no application to the District's standardized dress code policy.

However, the fifth constitutional basis for regulating student expression, including student attire, is directly relevant, and dispositive, with respect to the issue before the State Board. Under this line of authority, courts have recognized that it is constitutionally permissible for schools to enact regulations governing student expression that are content- and viewpoint-neutral. Cases applying this theory to uphold the enactment and enforceability of school dress codes include *Palmer v. Waxahachie Independent School District*, 579 F.3d 502, (5th Cir. 2009),

cert. den. __ U.S. __, 130 S.Ct. 1055 (2010); *Jacobs v. Clark County School District*, 526 F.3d 419 (9th Cir. 2008); *Blau v. Fort Thomas Public School District*, 401 F.3d 381 (6th Cir. 2005); and *Lowry v. Watson Chapel School District*, 508 F.Supp. 2d 713 (E.D. Ark. 2007), *aff'd* 540 F.3d 752 (8th Cir. 2008).

Against this backdrop, it is readily apparent that the Iowa legislature enacted §279.58 to enhance or enlarge, rather than to limit, school districts' authority to govern student attire. As such, it represents an attempt either to create an additional basis for regulating content- and viewpoint-based expression in addition to those already recognized in *Fraser*, *Hazelwood*, and *Morse*, or to provide support to districts seeking to regulate speech and conduct under *Tinker* that impinges on the rights of others or has the likelihood of a substantial and material disruption at school. If §279.58 is held to limit a school district's authority to enact a content- and viewpoint-neutral dress code, then it necessarily must be held to also prevent a school from prohibiting student attire under *Tinker*, *Fraser*, *Hazelwood*, and *Morse*. Such a conclusion would be clearly untenable, and contrary to the ALJ's explicit recognition that such regulation remains permissible.

D. The District's standardized dress code policy is content- and viewpoint-neutral.

As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed, are content-based. In determining whether a regulation is content-based or content-neutral, courts look to the purpose behind the regulation; typically, government regulation of expressive activity is content-neutral so long as it is justified without reference to the content of the regulated speech. *Bartnicki v. Vopper,* 532 U.S. 514, 526, 121 S.Ct. 1753, 1760, 149 L.Ed. 2d 787 (2001). The principal inquiry in determining content-neutrality, is whether the government has adopted a regulation of speech because of

disagreement with the message it conveys. *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed. 2d 661 (1989).

In this case, there is no evidence that the District's standardized dress code policy was adopted to regulate the content of student speech. Neither the Peters nor the ALJ appears to contend otherwise, and the District submits that its policy must be deemed content- and viewpoint-neutral under *Bartnicki* and *Ward.*

E. The District's standardized dress code policy is constitutional.

Although the Peters questioned the constitutionality of the standardized dress code policy under the First and Fourteenth Amendments, the ALJ did not address that issue, presumably because it was unnecessary to do so after concluding that the enactment of the policy exceeded the District's statutory authority. However, if the State Board agrees that the District did have the statutory authority to enact its policy, it then becomes necessary to determine whether the policy is constitutional.

If a regulation is determined to be content-neutral, it will pass constitutional scrutiny if it furthers an important or substantial government interest; if the interest is unrelated to the suppression of student expression; and if the incidental restrictions on First Amendment activities are no more than is necessary to facilitate that interest. *United States v. O'Brien*, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed. 2d 672 (1968). The constitutionality of the policy is addressed at length at pp. 20-28 of the District's brief filed with the ALJ, and the ALJ recognizes at p. 64 of her Proposed Decision that a virtually identical policy has been held constitutional in *Long v. Board of Education of Jefferson County*, 121 F.Supp. 2d 621 (W.D. Ky. 2000).

In *Long*, the court applied the *O'Brien* standard to conclude that the dress code policy was constitutional:

> It is important that the Dress Code does not prohibit alternative and more specific student expression through badges, buttons or other means. The regulation of student dress in our case falls somewhere between the minimally disruptive symbolic speech in *Tinker* and the obscene, offensive speech in *Fraser* and *Boroff*. Since Plaintiffs seek to wear clothes that are neither obscene nor offensive, the link between the Dress Code and the school's educational environment is not as apparent as it was in *Fraser* or *Boroff*. On the other hand, the school's goal-maintaining a peaceful and focused educational atmosphere-is viewpoint neutral and is clearly within the school's educational mandate. The Court concludes that such a regulation does not offend the First Amendment where it furthers the school's educational mission and where the scope of the regulation is reasonably related to that goal.
>
> The Dress Code clearly aims to create a safe and peaceful environment where school officials perceive fewer threats to student safety and school order. Few would dispute that these interests bear a close relationship to the school's educational mission and that this goal is important. It is hardly surprising that some school officials, parents, and students dispute the severity of the perceived problems or the need for any dress code. Nor is it surprising that teachers, parents, and students disagree about whether the Dress Code is more important than the educational benefits associated with greater freedom of expression through dress. However, our courts have traditionally left these types of choices to the reasonable discretion of school officials. Clearly, Defendants have established an objective basis for adopting the Dress Code. The Court's role should be to determine whether a reasonable basis existed for school officials' judgment, not to second guess or micromanage it.
>
> The SBDM Council adopted the Dress Code after extended careful deliberation. The lengthy adoption process provides further evidence that the Dress Code is reasonably related to a legitimate educational objective. Consequently, it is unnecessary to require the school to show that the Dress Code was necessary to stop an actual disruption. Under such circumstances, this Court is careful not to replace the council's judgment of the Dress Code's reasonableness with its own. The Court concludes that Defendants' adoption of the Dress Code was reasonable and, therefore, does not violate Plaintiffs' rights under the First Amendment of the United States Constitution. [footnotes and internal citations omitted]

Long, 121 F.Supp. 2d at 626-627.

Having concluded that the dress code policy passed First Amendment scrutiny, the Court proceeded to reject Plaintiffs' substantive due process claim. First, the Court recognized that substantive due process is not to be used as a fallback constitutional provision when another provision or amendment directly addresses the subject, as the First Amendment does in this case,

and second that, in any event, choice of clothing is not a fundamental right entitled to substantive due process protection. *Long*, 121 F.Supp. 2d at 627-628.

As previously noted, the ALJ has recognized at p. 64 of her Proposed Decision that the dress code at issue in *Long* is materially identical to the one at issue here. The District submits that its policy, too, should be found constitutional for all the reasons set forth in *Long*, as well as all the reasons set forth in the District's previous brief.

F. The District's dress code policy is valid under Iowa Code §279.58.

At pp. 63-65 of her Proposed Decision, the ALJ concluded that the District's standardized dress code policy is invalid under §279.58 because it is "prescriptive" rather than "proscriptive," and that "inasmuch as the integration of unlawful prescriptive elements dominates the District's policy" the entire policy should be voided.

First, it should be noted, that the standardized dress code set forth in Board Policy 504.2 is phrased in terms of both proscription, in specifying clothing that it does not allow, and prescription, in listing acceptable clothing. As a matter of logic, the issue of "proscription" v. "prescription" in this context would seem to be a case of a distinction without a difference, as the result of prescribing certain acceptable clothing automatically results in the proscription of items that are not prescribed. The purpose and effect of speaking in terms of both proscription and prescription are to enhance clarity and avoid vagueness.

The absolute of "proscription" is a list of specific or general examples of student attire that may not be worn. Every statement of such a policy dictates items or types of clothing that may not be worn. The absolute of "prescription" is to define a limited number and types of clothing that may be worn as in the case of a uniform, where the students tend to look much alike in the manner of dress. It cannot be said that a proscriptive dress policy becomes prescriptive as

soon as you no longer only say, "thou shall not" and begin to give examples of acceptable attire to better define and explain apparel that is prohibited. The Policy and Regulation at issue here give a very energetic description of types of apparel that are prohibited and a similarly energetic list of examples of apparel which are acceptable. It is obvious that this is the best way to clarify things that may not be worn in a way that allows administrators and teachers to enforce the proscription because of the clearly defined lists of acceptable attire.

A close examination of the Policy, the Regulation, and the Reference Chart (Ex. 16) discloses a minimum of 360 different combinations of styles and types and colors of clothing acceptable for high school students. Please see attached Exhibit A to the District's previous brief. The use of acceptable imagination will probably produce even more variety. Reference to this Policy, the Regulation, and the Reference Chart with regard to elementary students shows a potential variety far in excess of that enjoyed by high school students. This variety is graphically displayed in the pictures of students contained in Exhibit 23, pictures which were taken at East High School and Kittrell Elementary School after the dress code policy had been implemented and was producing the desired results. (Miller) The obvious conclusion based upon the extensive variety of possible student attire under the Policy and the Regulation is that the proscription as to unacceptable attire remains in place without prescription as to a designated uniform. A truly proscriptive policy does not lose its character simply because it also describes a vast array of types of dress and colors of dress to enable students to successfully stay away from the prohibited attire. The testimony of all of the District witnesses made it abundantly clear that the health and safety of students and the quality of the learning environment in District schools was adversely affected by the status of building dress code efforts in all schools but Cunningham and Carver prior to the Board's adoption of the standardized dress code. The testimony of all of

the District witnesses is also unanimous in their findings of the contribution made by the standardized dress code to the health and safety of students and the enhancement of the learning environment in all District schools after its enactment. These witnesses are the experts as to the facts existing in Waterloo's schools. The "experts" who write and publish the articles contained in Exhibits 11-15 and in the Appellants' exhibits have never been in the Waterloo schools. (R. Peters) The observations of the outside "experts" is of interest, but it is the local experts that have the knowledge of facts that should be persuasive to this Administrative Law Judge.

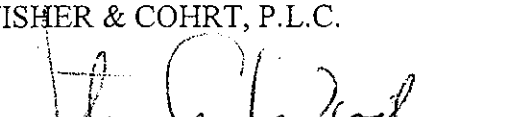
As a final point, the District takes exception to the statement in footnote 8 on p. 65 of the Proposed Decision that "no evidence about gang activity was offered that is specific to the District and the Waterloo area." To the contrary, every District witness specifically testified to the presence of gang activity in the city's neighborhoods, the direct effect of gang activity outside of school upon the learning environment in school, and the presence of gang elements displayed by students in the schools, at all building levels for all of the foregoing.

CONCLUSION

The District respectfully submits that the ALJ's Proposed Decision erroneously concludes that the District lacked authority to enact and enforce its standardized dress code policy. To the contrary, the dress code policy is authorized by Iowa law, is not unconstitutional, and should be upheld rather than voided. Therefore, the State Board should exercise its statutory power to vacate or modify the proposed decision accordingly.

Respectfully submitted,

SWISHER & COHRT, P.L.C.

By: 

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above case by service on each of the attorneys of record herein at their respective addresses disclosed on the pleadings by:

☒ U.S. Mail ☐ Other: _____
☐ Hand Delivered ☐ FAX
on Dec. 20, 2010.

Caressa J. Marcov

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DEPARTMENT OF EDUCATION

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BEFORE THE IOWA DEPARTMENT OF EDUCATION
CAROL GRETA, ADMINISTRATIVE LAW JUDGE

In re: Waterloo Community School District Mandatory Standardized Dress Code	)	ADMINISTRATIVE DOCKET NO. 4715
RICKI AND TEESHA PETERS	)	
Appellants,	)	
vs.	)	APPELLANT'S BRIEF RE: PROPOSED DECISION
Waterloo Community School District,	)	
Appellee,	)	

Introduction

The Waterloo Community School District (Appellee) has erroneously applied Iowa Code 279.58 to students in its district. The imposition of a prescriptive dress code policy (WCSD Policy 504.2) is against clear statutory language. The Appellee's erroneous actions do not ensure the health, safety, or positive educational environment of the students and staff and are difficult to manage and enforce at the building level in a consistent manner across all buildings (schools). The Appellee has the burden of proving its case by clear, convincing, and substantial evidence. It has failed to meet that burden on every count.

Summary of Argument

Iowa Code 279.58 states "the board of directors of a school district may adopt, for the district or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school." Iowa Code 279.58 clearly is proscriptive in nature; that is, it allows for the prohibition of certain specific

apparel when it can be demonstrated that the prohibition is necessary for the "health, safety of positive educational environment" within the schools. The WCSD dress code is clearly prescriptive in nature and is in violation of the Iowa Code that dictates school districts' rights and obligations.

Discussion of Appellee's Arguments

The Appellee contends that it did not exceed its authority in implementing Policy 504.2 and that the policy promotes the health, safety, and a positive educational environment of/for the students in the district. This argument is without merit. The Appellee was asked to come prepared to present evidence and data for their arguments. In large part, the Appellee failed to do so and instead provided anecdotal arguments and information based on personal experiences. Further, the Appellee spent most of its time focusing on how their prescriptive uniform policy satisfied the health, safety, and positive educational environment, largely ignoring the principle factor that their policy is in opposition to the Iowa Code that grants its authority in this matter. So while we contend that Appellee's discussions about how the policy supports the health, safety, and positive educational environment is in fact moot because the policy itself is in violation, we will address some of these arguments.

Choice makes the policy non-prescriptive. WCSD Policy 504.2 has a section on 'articles of non-compliance' that are in accordance with Iowa Code 279.58 in that they prohibit certain items of clothing (e.g., open toed shoes, t-shirts with offensive language, etc). However, it goes on to state what *must* be worn: solid color tops (colors specified by school), solid color bottoms in black, navy, or khaki, all shirts must have collars, among other specific, prescriptive items including types of fabric. To argue that because the list contains at least more than one

option does not make it a uniform policy is hair-splitting at the very least[1]. Choice does not mean the policy is not prescriptive.

The dress code policy is not a uniform; it is not prescriptive. In testimony, Board Vice President Mike Young stated under oath that the newly enacted 504.2 was "both proscriptive and prescriptive." Further, in Appellee's Exhibit 1 it states that "there was discussion within the group that uniforms might be easier than trying to shop and adhere to a list of 'what not to wear'." It would be relatively difficult for WCSD to argue that its policy isn't prescriptive when its Vice President, a practicing attorney within the State of Iowa, states under oath the contrary, their own exhibits indicate their awareness of this issue, and the policy itself dictates what must be worn. The policy is indeed prescriptive.

Prescribing particular colors ensures safety. Concern over gang activity and gang identification through various colors was mentioned several times. In testimony, Dr. Willie B. Barney, principal of East High School, stated under oath that gang colors include such colors as "red, pink, white and black." In other testimony throughout the day, other colors such as blue, orange, and white were mentioned. Some of these colors are part of the color choices at the building (school) level (e.g., orange, pink), others are part of the prescriptive portion of the policy (e.g., black). We further assert that if an orange shirt *is* conducive "for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school" at East High School, it is very difficult to argue the contrary at West High School where an orange shirt would be in violation of the dress

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[1] Common sense would dictate that the U.S. Army prescribes its uniforms and that it clearly has a uniform policy. According to www.army/asu/faq.html the United States Army allows for Class A or Class B in blue, Class A or Class B in green, Army Combat Uniform Garrison, Army Combat Uniform Utility Field, Dress Blue Mess Uniform and Dress White Mess Uniform are all allowable uniforms that may be worn by soldiers. To use the logic and arguments of the WCSD, the U. S. Army does not have uniforms because it also has choices. Clearly, common sense would argue the contrary.

code policy. The West High School shirt color options are white, black, gray, and 'the range of colors from pink to burgundy (no red).'

In Exhibit M, we provided documentation demonstrating that "identifying gang members would be difficult once uniform school attire is introduced, and that, contrary to belief, economic differences among students are hardly blurred by the wearing of uniforms. No evidence exists to support the view that school uniforms create a better academic school environment." Additional conclusions from this report are that implementing school uniforms to reduce violence is "dangerous" because "it provides communities with a false sense of security." Other than anecdotal testimony mainly dealing with gang colors, no evidence specific to Waterloo and the Waterloo School District about gang activity was offered, and even then only by a few of the Districts witnesses.

Further, it is not clear how the prohibition of plaids, prints, stripes, colored belts (other than plain black or brown), etc, contribute to a safe, healthy, and positive school environment. In fact, the Employee Dress Code (Exhibit F) *allows* any color/any pattern to be worn by teachers and staff further confusing the issue of how plaid (for example) could possibly disrupt the safety, health, and a positive school environment if it can be worn by teachers but not by students. Restricting colors and prescribing others does not ensure safety.

The new dress code policy is needed. Superintendent Norris testified that a new dress code policy was needed because the old one was not being enforced, the old one was difficult to enforce, that cross gender enforcement was difficult, that certain types of clothing were hazardous or caused distractions and that a stricter dress code would be easier to enforce, among other reasons. None of these arguments has merit or warrants a new dress code, especially one that is prescriptive and in violation of Iowa Code. Norris testified that the old dress code was not

enforced due to subjectivity of enforcement across the district, and it had gotten to the point where "no one would" enforce the dress code and thus they needed to start over. This seems to us to be more of a management of district personnel issue and administrative compliance with existing rules than a strong reason to abandon the old dress code for a new, problematic one.

Additionally, throughout testimony the Appellee's witnesses cited safety, health and positive educational environment concerns that the old dress code policy already addressed. Continued reference to baggy pants, open toed shoes, clothing exposing genitalia and cleavage were cited, yet these were already in violation of the previous, unenforced dress code. The new policy with its prescription for clothing fit, colors, and types of fabric (among other specifics) is not exempt from difficulties with enforcement (cross gender or otherwise).

Further, in Exhibit M, page 15, we have provided documentation that states "many public schools caught up in school uniform craze of 1990's are giving up on it, finding that requiring students to wear uniforms caused too many problems; teachers say they are forced to spend ten minutes of class time each day trying to figure out who had waivers and who was breaking rules on wearing uniform…one of the number one objectives proponents argue this policy will achieve is to reduce distractions in the classroom." It in fact does not. The rationale for implementing a new dress code policy is unsubstantiated.

Conclusion

Some clothing (e.g., open toed shoes, excessively baggy pants, t-shirts with offensive or distracting language) *can* compromise "the health, safety, or positive educational environment of students and staff in the school environment." However policy 504.2 goes beyond the scope of the argument. 504.2, and the wearing of uniforms mandated by its' passage, goes beyond what is needed to maintain a healthy, safe environment for the students in the District. Rather than

restricting the items the District found to be objectionable, and enforcing its existing dress code policy, it overstepped its authority and went beyond the scope of the law. Clearly, its prescriptive policy is in violation of Iowa Code 279.58. The Appellee has enacted a policy that is at odds with the law, and does not serve the educational goals that students, teachers, families, and the community deserve from their public school system. We respectfully request that the State Board affirm the ALJ's Proposed Decision and determine that the Waterloo Community School Districts dress policy 504.2 is in violation of Iowa Code 279.58.

December 27, 2010

Respectfully Submitted,

Ricki Peters

Teesha Peters

Ricki and Teesha Peters

1201 Hammond Ave,

Waterloo, IA 50702

BEFORE THE IOWA DEPARTMENT OF EDUCATION
CAROL GRETA, ADMINISTRATIVE LAW JUDGE

In re: Waterloo Community School District Mandatory Standardized Dress Code	)	ADMINISTRATIVE DOCKET NO. 4715
Ricki and Teesha Peters	)	
Appellants,	)	
vs.	)	APPELLEE'S BRIEF AND ARGUMENT
Waterloo Community School District,	)	
Appellee.	)	

Appellee respectfully submits the following brief in support of its request that the Administrative Law Judge and the Department dismiss the appeal in this matter. All statements of fact in this brief will be attributed to exhibits or witness(es) or both.

I.

STATEMENT OF THE CASE

On May 24, 2010, the Board of Education of the Waterloo Community School District approved on the second reading Policy No. 504.2 Standardized Dress Code (Ex. 6, 7). The Policy applied to all elementary, middle and high school students and is to be implemented District-wide beginning with the 2011-2012 school year. However, any school in the District was allowed to begin the policy in August of 2010.

On June 10, 2010, Ricki and Teesha Peters appealed the May 24 adoption of said Policy by the Board of Education by filing an Affidavit with the Department of Education, requesting that the District be barred from implementing the dress code until a final decision is rendered. The Department filed the appeal but declined the request to bar implementation.

Following a pre-hearing telephonic conference between Administrative Law Judge Carol Greta and representatives of the Appellants and Appellee on August 2, 2010, a hearing was held on the appeal before Judge Greta on September 1, 2010. Witnesses were sequestered. The parties were afforded the opportunity to file written briefs to be postmarked on or before September 24, 2010.

II.

STATEMENT OF FACTS

Prior to May 24, 2010, the Board of Education of the Waterloo Community School District had not taken formal action to establish a restrictive dress code on a District-wide basis. (Norris, Miller) The Dr. Walter Cunningham School for Excellence ("Cunningham"), an elementary school, had adopted its own uniform requirements from the time that it was established in 2002. (Miller; Ex. 21) The George Washington Carver Academy ("Carver"), a middle school, had adopted uniform standards at its inception as a new school building in 2009. (Miller, Schweppe; Ex. 20) Lincoln Elementary School had earlier instituted a Revised Dress Code but did not continue to implement it in full prior to May 24, 2010. (Miller, Mohorne; Ex. 22) All other school buildings in the District had, on their own, enacted dress codes for the individual buildings which were contained and published for parents and students in the respective building publications to students and parents. (Miller, Barney, Schweppe, Mohorne, Meier)

Administrators and teachers in the District had long been aware of the effect of student attire upon the safety and health of students and the adverse effect upon a positive educational environment in the school. With regard to footwear, flip-flops and other similar footwear contribute to student injuries when students slip or trip going up or down stairways or in any

location where another student accidentally steps on the heel of such a shoe, causing the student to fall. Also, flip-flops and other similar footwear inhibit or impede students in the event that rapid evacuation from a building would be necessary. Any footwear that exposes portions of the foot, especially toes, can be a safety factor if anything is dropped upon the foot of the student. Female students were also wearing shoes that prohibited them from participating in gym/P.E. class, and they would use this as an excuse to avoid the class. (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Richard, Young)

Baggy clothing, usually on male students, provides real opportunity for hiding articles such as weapons within the baggy clothing. A police officer had provided a learning experience for staff members by disclosing the presence of 26 weapons within the baggy clothing that he had worn at the presentation. A graphic example of this was an expulsion incident in 2009 where a student at West High School took a wooden rod from the woodworking shop, was able to hide it in his baggy pants, and then moved undetected to the second floor where he beat a student with the rod. Additionally, baggy pants fashionably worn at various levels of the legs of students inhibit or impede walking or running in normal student traffic and more noticeably during a rapid evacuation of the building. (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Richard, Young)

Gang activity in the District is a reality with evidence thereof in the school setting in elementary, middle, and high schools. Gang related events that occur on a weekend find their way into the buildings on Monday, and gang related activities that occur during the night make their way into the buildings the next day. Students with gang connections "fly their colors" at every opportunity. In fact, students at East High School were going so far as to sew colors into the back pockets of their blue jeans to prevent the administration from following its policy of

confiscating colored bandanas and other means of "flying colors." When a display of colors or other indicia of gang activity appears in a school building in a concentrated fashion, it is evidence that a gang related event is going to occur. When other students notice such indication, it is at best distracting, and at the worst frightening, to other students. This distraction or fright occurs whether or not a gang related event actually occurs in the school building. (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Young)

Style of student dress interferes with the learning environment in several ways. Competition among students to wear certain fashions is distracting to the learning environment and may emphasize differences between socioeconomic levels of different students. Clothing that discloses cleavage and other portions of the body are distractions away from an appropriate learning environment. Any student attire, such as baggy pants worn around the legs of male students, or such as inappropriate attire on female students, that discloses undergarments is a distraction to an appropriate learning environment. (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Richard, Young)

Building administrators felt the need to educate students on proper dress so that they would be prepared to move into society and be able to obtain meaningful employment. Trying to tell students only what they could not wear without giving them good examples of what they should wear inhibited the administrators in this effort and adversely affected the learning environment in that regard. (Barney, Schweppe)

With the exception of Cunningham and Carver, the implementation and enforcement of the building dress codes was frustrating for administrators and teachers and not effective for several reasons. Each of these building dress codes attempted to describe apparel and dress practices which would not be allowed. For every prohibited dress habit identified, students and

parents would find deviations and adjustments which would fall just outside of the described prohibition and yet still present the student in objectionable attire. It became obvious to all administrators that there were not enough words in the dictionary to effectively describe all forms of attire that were prohibited. Consistency in enforcement because of the myriad of deviations in student dress was virtually impossible. Also, administrators and teachers of both sexes, but more prevalent among male employees, experienced a serious reluctance to criticize or suggest changes in the attire of students of the opposite sex, or even of the same sex, because of the current sexual harassment attention in our society. Teachers and administrators, especially among the male employees, would receive criticism from students and parents suggesting that the administrator or teacher "was looking at the wrong things." (Norris, Miller, Barney, Schweppe, Mohorne, Meier, Richard, Young)

Because building administrators were having the foregoing difficulties in enforcement and believed that a broader dress code policy for the District was necessary for the health and safety of the students and for an appropriate learning environment for those students, building administrators implored central administration to seek the assistance of the Board of Directors in finding and adopting such a policy. (Norris, Miller) The School Improvement Advisory Committee discussed student dress and the desirability of a District-wide code on numerous occasions. At its meeting of April 22, 2008, the then Superintendent, Dr. Dewitt Jones, reported on the status of the school uniform study. A presentation from the principal of Cunningham and its uniform policy was made to those present. Input from administrators and parents and all Committee members was heard. The positive effect on lessening attention to socioeconomic status was noted. (Ex. 1; Norris, Miller)

Another such meeting was held by the School Improvement Advisory Committee on January 12, 2010. The favorable impact of a dress code upon the learning environment and regarding peer pressure was discussed. Also discussed was the positive effect of the existing uniform policies on students at Cunningham and at Carver. Reference was made to the high schools' effort to begin the process of exploring the concept of a restrictive dress code for students. It was reported that the majority of the staff at West High School supported a more restrictive dress code and would feel more comfortable enforcing same. The consensus of the Committee members present seemed to be very supportive of a new uniform or dress code. There was a feeling that such a policy should be District-wide and start as soon as possible. (Ex. 2; Norris, Miller)

Site Counsel meetings at a number of schools explored the nature and advisability of restrictive dress code policies with a consensus that the District should move forward with such a policy. (Norris, Miller)

Mary Meier, an administrator in the Educational Services office, was given the responsibility to coordinate resources and provide input to the Board of Directors to help them further understand the expressions of need from building administrators and with examples of possible solutions for those needs. Administrators who traveled to observe model programs noted dress policies in existence in an out-of-state school district. Ms. Meier researched numerous published articles and other resource material exploring the pros and cons of dress code and uniform policies in schools (Exs. 11-15) and presented the accumulated information to the Board of Directors at a work session held on April 12, 2010. (Meier, Miller) As a result of that work session, Dr. Norris and his staff were directed to proceed to develop a dress code and

to bring the proposal to the Board in a timely fashion so that it could be implemented for all schools for the 2010-2011 school year. (Meier, Norris, Young, Richard)

Dr. Norris researched examples of policies from schools in other states, and, in that research, obtained a copy of a policy developed by the Polk County School Board in Florida, from which he fashioned the proposed policy for the Board of Directors. (Norris; Ex. 8)

Dr. Norris and his staff engaged Dr. Mary E. Losch and the Center for Social and Behavioral Research at the University of Northern Iowa to conduct a scientific survey to determine the attitude of District parents toward a dress code. Dr. Losch was made aware of other surveys that were to be conducted by the District through the use of internet, means which were unscientific because of the absence of control over participation and the absence of a scientifically obtained sample to provide reliable results. Dr. Losch was provided with initial drafts of the policy for her information in conducting the survey, so that these elements could be shared with surveyed parents in an appropriate fashion. Dr. Losch conducted the requested survey according to the scientific protocols used in her profession and provided the finished product to the District in May of 2010. The survey disclosed a remarkable percentage of surveyed parents in favor of such a dress code policy, that being approximately 72%. This survey was available for the Board's review prior to their formal action in May of 2010. (Losch, Miller; Ex. 10)

The Board of Education met on May 10, 2010, to review the proposed policy and provide the first reading of same that is required prior to adoption. (Exs. 3, 4) The Board next met on May 24, 2010, for the second reading and to consider action on the proposed dress code policy. The final standardized dress code, Policy 504.2, was formally adopted by the Board. (Exs. 5, 6, 7)

Pursuant to Board instructions, Dr. Norris and his staff developed the regulations which interpret the policy. (Norris; Ex. 7)

At no time has the Board of Education taken any specific action of any kind that involved the specific application of the Policy to any of Appellants' children. (R. Peters)

The new policy, which is titled "Standardized Dress Code," as contained in Board Policy 504.2 and Administrative Regulation 504.2-R1 describes the following dress code benefits in the opening section:

> The Waterloo Community School District has a mandatory (standardized) dress code for all elementary, middle, and high school students to enforce the District's mission that each and every student graduate prepared for college, career, and citizenship. A standardized dress code helps to prepare students for their futures through:
>
> - Professional/career dress
> - Modesty/decency
> - A focus on instruction
> - School security
> - Personal safety
> - Business-like image
> - A sense of school pride and belonging

The text of the dress code goes on to specify clothing that is not allowed, which includes clothing with stripes, checks, or plaids, embroidery or decoration, jeans and sweatpants, and allows only "a very small logo" on otherwise approved items. The code then goes on to provide a listing of acceptable clothing, and allows exceptions "for students with Individualized Education Plans, religious beliefs, JROTC uniform requirements, or health conditions that require accommodations."

Administrative Regulation 504.2-R1 is titled "District Dress Code for Students" and states that the District's goal is "to provide a safe learning environment where students and staff focus on student achievement without distractions." The regulation further provides that the code also applies to any off-campus visits, such as field trips or to students taking classes at

Hawkeye Community College, and that "each school site may develop additional guidelines which are stricter than the District Dress Code policy and these regulations, but shall not permit items prohibited herein." The regulation then goes on to list both approved school clothing and articles of non-compliance. There is a provision for families and students to apply for assistance with dress code items, and the exemptions listed in the policy are re-listed and made subject to a request submitted in writing to the building administrator with appeal to the Executive Director of Student and At-Risk Services. The regulation also provides consequences for violations of the policy up to and including suspension out-of-school for up to eight days. The District's grievance procedure, Board Policy 503.3, is made applicable to "provide students and parents a means of questioning the interpretation, application, or possible violation of policies and/or regulations of the District."

Central administration and building administrators believed and have found that the new Policy and Regulation, as interpreted by the Reference Chart developed by the administration (Ex. 16) successfully prohibit objectionable forms of dress by giving an extensive list of things that may not be worn and by giving a wide variety of examples of dress that are acceptable. Virtually all of the shortcomings of previous efforts at eliminating objectionable and unsafe attire and the enforcement thereof have been eliminated by the new Policy and Regulations. Flip-flops and other unsafe footwear have been eliminated. Gang attire, including the flying of colors, has more effectively been eliminated. Baggy clothing and low-slung pants have been eliminated with the corresponding contribution to student safety. The prohibition against showing undergarments and the description of acceptable tops and pants or shorts or skirts have been effective in eliminating attire that was previously a distraction to the learning environment and provide examples of proper attire as will be expected of them after they graduate and seek

employment. The absence of displayed undergarments and the description of acceptable attire as just mentioned also provides administrators and teachers with a clear standard for enforcement without having to describe a violation in a manner that previously raised the sexual harassment concern. Building principals have found that the learning environment has been noticeably improved and that they are better able to identify visitors to the buildings as a result of the dress code. Yet, the students in their buildings have been afforded a wide variety of options within the possibilities expressed by the Reference Chart. (Exs. 16, 23) The changes caused by the new Policy and Regulation have effectively eliminated the distractions and reduced the competitive stress that previously affected the learning environment and, together with the contributions to student safety caused by these changes have, as a necessary result, enhanced the health of the students. (Barney, Schweppe, Mohorne, Miller)

III.

THE APPEAL

On June 10, 2010, Ricki and Teesha Peters of Waterloo presented a document titled "Memorandum Re: Waterloo Community School District, 504.2 Mandatory Standardized Dress Code" to the Iowa Department of Education. The memorandum states, in full:

> You will find enclosed our appeal of the Waterloo Community School Districts passage of 504.2 (Mandatory Standardized Dress Code). We do not feel that this is legal under Iowa State Law. Specifically, our state limits district boards ability to mandate the wearing of uniforms. State law says simply that district boards may ban gang-related or other specified apparel if the board determines that the code is necessary for the health and safety of students and staff or for the appropriate discipline and operation of the school.
>
> We would argue that our district had an appropriate dress code prior to passage of this new Mandatory Uniform Dress Code. The district admits that enforcement of the dress code in the schools has been lax at best. The district also admitted in passing 504.2 that they have no proof that this dress code policy will have any effect on the issues they raised as reasons for passage, but stated they were going to pass it anyway. We do not

> believe that the district has any data justifying the passage of such a restrictive policy as to limit the freedoms of choice that we enjoy here in Iowa.
>
> Judge Robert M. Parker, Fifth U.S. Circuit Court of Appeals has stated in Canady v. Bossier Parish School Board that students have a constitutional right to free expression under the First and Fourteenth Amendments, and a person's choice of clothing can be a constitutionally protected form of expression.
>
> We feel that the district's policy is not justified, in that, it goes far beyond banning clothing due to safety or gang-related problems. It goes so far, as to limit the ability to wear even a simple pattern on a shirt.
>
> In conclusion, we respectfully ask that the Waterloo School District be barred from implementation of 504.2 as passed on 5/24/10 until such time as a final decision on our appeal has been determined. [*all sic*]

The Peters' memorandum is notarized and accompanied by their affidavits indicating that they are "appealing the passage of 504.2, Mandatory Standardized Dress Code, as passed by the Waterloo Community School District (School Board) on 5/24/10," and that they have four children who will attend district schools in grade levels 6, 7, 9 and 10 during the 2010-11 school year. The Peters' memorandum was forwarded to the District by the Administrative Law Judge's letter of June 11, 2010.

IV.

JURISDICTION AND SCOPE OF REVIEW

The ALJ's letter to the district characterizes the Peters' Memorandum as an "appeal of a decision" made by the district's board which is governed by Iowa Code Ch. 290. Iowa Code §290.1 provides:

> 290.1 Appeal to state board
>
> An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, or decision or order of a board of directors under section 282.18, subsection 5, may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education; the basis of the

> proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner.

Here, there is no question the purported appeal was filed by affidavit with the state board within the prescribed time. The issues are thus whether the school board's adoption of the standardized dress code was a "decision or order" within the meaning of §290.1, and whether the legality of the dress code in general, without specific Board action as to a particular student's violation of the policy, is within the state board's jurisdiction.

As an initial matter, the District submits that its adoption of the standardized dress code was neither a "decision" nor an "order." Appellants are not challenging the dress code as applied specifically to them or to their children in any particular instance or instances, but instead are questioning the District's power to adopt the policy and making a facial challenge to the policy's constitutionality. Appellants have admitted that the Board has taken no specific action with regard to their children as to a violation of the policy. (R. Peters)

It is a general principle of law that the courts will give broad deference to discretionary decisions of school boards and that persons aggrieved by decisions of the board must normally appeal to the state board of education for relief. However, in cases where the power of a school board to adopt a policy has been expressly challenged, the courts of the state are the sole arbiters, and the court has proper jurisdiction over such a question even though no appeal was made to the state board. *Gabrilson v. Flynn*, 554 N.W. 2d 267, 275 (Iowa 1996).

Where the state board does have jurisdiction to review a discretionary decision of a school district, its review is limited to determining whether the school district abused its discretion. Neither a court nor the state board may substitute its judgment for that of the school district, but will look only to whether a reasonable person could have found sufficient evidence

to come to the same conclusion as reached by the school district. A decision by the school district is unreasonable only if it was not based upon substantial evidence or was based upon an erroneous application of the law. *Sioux City Community School District v. Iowa Department of Education*, 659 N.W. 2d 563, 568-569 (Iowa 2003).

V.

THE DISTRICT'S DRESS CODE POLICY IS VALID UNDER IOWA LAW

A. Applicable Statutes

The following statutes are applicable to the issues in this case:

> **274.1 Powers and jurisdiction.**
> Each school district shall continue a body politic as a school corporation, unless changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained.
>
> **279.8 General rules – bonds of employees.**
> The board shall make rules for its own government and that of the directors, officers, employees, teachers and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and shall aid in the enforcement of the rules, and require the performance of duties imposed by law and their rules. ...
>
> **279.58. School dress code policies**
>
> 1. The general assembly finds and declares that the students and the administrative and instructional staffs of Iowa's public schools have the right to be safe and secure at school. Gang-related apparel worn at school draws attention away from the school's learning environment and directs it toward thoughts or expressions of violence, bigotry, hate, and abuse.
>
> 2. The board of directors of a school district may adopt, for the district, or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school. Adoption and enforcement of a dress code policy is not a violation of section 280.22.[1]

[1] Iowa Code §280.22, referenced in the last sentence of section 279.58, addresses student exercise of free expression and provides that, "students of the public schools have the right to exercise freedom of speech" except as

B. Dillon's Rule

In their Appeal Memorandum, the Peters contend that the District's dress code is not legal under Iowa law, which "limits district board's ability to mandate the wearing of uniforms." Although not explicitly stated, this argument appears to rely upon the limitations placed upon governmental powers by the common law Dillon's Rule.

In 2001, a division of the Iowa Department of Education published a booklet titled *Uniform Administrative Procedures for Iowa AEA Officials*, which states, in chapter 11:

> Iowa school districts and AEAs operate under Dillon's Rule, by state constitution, which states that school districts and AEAs possess and can exercise the following powers and no others: Those granted in express words, those necessarily implied or necessarily incident to the powers expressly granted, and those absolutely essential to the declared objects and purposes of the school corporation – not simply convenient or desired, but indispensible.

Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp., 784 N.W. 2d 203 (Table), 2010 WL 1577875 p. 4 (Iowa App.).

Dillon's Rule, so-called because it originated in an opinion authored by Justice Dillon, was enunciated in *Merriam v. Moody's Executors*, 25 Iowa 163, 170 (1868). Although defendants in *Hawkeye Foodservice* contended that Dillon's Rule is an archaic rule of law that is not mandated by statute and should no longer be followed, the court in that case concluded that the rule applies to AEAs. However, on June 25, 2010, the Iowa Supreme Court granted defendant's application for further review of the Court of Appeals' decision in *Hawkeye Foodservice* and oral argument has been scheduled for October 13, 2010.

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specifically limited by that section, which provides that students shall not express, publish, or distribute materials which are obscene, which are libelous or slanderous, or which encourage students to commit unlawful acts, violate lawful school regulations, or cause the material and substantial disruption of the orderly operation of the school.

In applying Dillon's Rule to AEAs in *Hawkeye Foodservice*, the Court of Appeals relied on Iowa Code §256.9(16), providing that the Department of Education shall "interpret the school laws and rules relating to the school laws." Dillon's Rule, however, is not a "law" or "rule," but a common law pronouncement of Iowa Supreme Court, the continuing validity of which it is free to reject without deference to an informal agency interpretation. Even under the principle of *stare decisis*, the court should not look away from decisions that are analytically unsound and inconsistent with subsequent case law. *State v. Feregrino*, 756 N.W. 2d 700, 708 (Iowa 2008).

The continuing application of Dillon's Rule to school corporations is called into question on several levels. First, statutes enacted since the Rule's enunciation in 1868 have conferred broad powers upon school districts. Specifically, Iowa Code §274.1 provides that "each school district shall ...exercise all powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained," and §279.8 provides that "the board shall make rules for its own government and that of directors, officers, employees, teachers and pupils."[2] A similar provision of Mississippi law has been interpreted by that state's Attorney General to be a "home rule" statute[3] under which "a school district may establish and enforce a mandatory dress code." Office of the Attorney General, State of Mississippi Opinion No. 2007-00432 (August 3, 2007), 2007 WL 2744736 (Miss. A.G.).

The Iowa Supreme Court has acknowledged that the governing bodies of Iowa school districts "are permitted to formulate rules for their own government and that of all pupils," and that "the conduct of pupils which directly relates to and affects management of the school and its efficiency is a matter within the sphere of regulations by school authorities." *Board of Directors*

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[2] The statue governing the AEAs at issue in *Hawkeye Foodservice* is less broad. Iowa Code §273.2(2) provides only that "an area education agency established under this chapter is a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and may sue and be sued."

[3] Mississippi Code §37-7-301.1 provides in material part that "the school board of a school district may adopt any orders, resolutions or ordinances with respect to school district affairs."

of the Independent School District of Waterloo v. Green, 259 Iowa 1260, 147 N.W. 2d 854, 858 (1967). The character of the school, its discipline, and the conduct of its pupils as affecting the efficiency of the work done in the schoolroom are matters to be taken into consideration by the school board in making rules for the government of the school. *Valentine v. Independent School District of Casey*, 191 Iowa 1100, 183 N.W. 434, 436 (1921). Where a school board has acted pursuant to law, the action taken must be regarded at least as prima facie correct, and will be considered as lawful and valid until the contrary is shown. Where matters are by law left to the discretion of such bodies, the exercise of that discretion, in good faith, absent fraud, will not be disturbed. *Green*, 147 N.W. 2d at 857.

Second, the rule has been constitutionally abrogated with respect to both municipal corporations and counties by the adoption in 1968 of the Municipal Home Rule and Counties Home Rule amendments to the Iowa Constitution (Article III, Sections 38A and 39A), which extend to municipal corporations and counties the power to "determine their local affairs and government" and specifically provide that the rule or proposition of law that a municipal corporation or county "possesses and can exercise only those powers granted in express words is not a part of the law of the state." This home rule power was intended to renounce the common law Dillon Rule, under which cities were powerless to act in the absence of an express legislative grant of authority. *City of Asbury v. Iowa City Development Board*, 723 N.W. 2d 188, 198 (Iowa 2006). Initially, the District submits that Amendment 38A renouncing Dillon's Rule with regard to municipal corporations directly resolves the issue. While limited to that chapter, Iowa Code §670.1(2) defines a "municipality" to include a school district, and the Iowa Supreme Court has recognized that a school district "is, in fact, a municipal corporation in carrying out the purposes, generally limited, for which it was formed, or with which it may later be endowed," and "may

exercise legislative functions." *Wapello County v. Ward*, 257 Iowa 1231, 136 N.W. 2d 249, 252 (1965).

Finally, recent decisions of the Iowa Supreme Court have failed to endorse Dillon's Rule, noting that "the effect of the Dillon Rule was to render cities and counties incapacitated in numberless matters of vital importance to local governments." *Polk County Board of Supervisors v. Polk Commonwealth Charter Commission*, 522 N.W. 2d 783, 791 (Iowa 1994). Then, in *Gannon v. Board of Regents*, 692 N.W. 2d 31, 40 (Iowa 2005), the court rejected "such a narrow and archaic interpretation" with respect to the function of a university and held instead that "an activity need not be listed in the statute books to be a function of a university. To qualify, the activity at issue need only advance the statutory objects of the institution." The same reasoning should apply to Iowa school corporations.

However, regardless of whether or not Dillon's Rule should be a factor in the decision here, the District firmly believes that the Board's standardized dress code policy is valid because the following arguments make it clear that the District has been granted this authority in express words or constitute powers necessarily implied or necessarily incident to powers expressly granted.

C. Proscription v. Prescription

Appellants may argue that, even if the district had broad authority to adopt a dress code before the adoption of §279.58 in 1995, its authority has been limited by that statute, which speaks only in terms of prohibiting students from wearing gang-related or other specific apparel. The question is whether the statute limits school dress codes to proscribing, rather than prescribing, certain apparel.

First, it should be noted, that the standardized dress code set forth in Board Policy 504.2 is phrased in terms of both proscription, in specifying clothing that it does not allow, and prescription, in listing acceptable clothing. As a matter of logic, the issue of "proscription" v. "prescription" in this context would seem to be a case of a distinction without a difference, as the result of prescribing certain acceptable clothing automatically results in the proscription of items that are not prescribed. The purpose and effect of speaking in terms of both proscription and prescription are to enhance clarity and avoid vagueness.

The District also submits that the provisions of §279.58 do not act as a restriction on a school district's authority to adopt a content-neutral dress code under its broad power to make rules for the government of its pupils under §279.8. Rather, §279.58 is more properly read as a specific grant of authority to school districts to limit certain specific forms of expression, an interpretation which is supported by the reference in the last sentence of §279.58(2) providing that the restrictions allowable under §279.58 are specific exceptions to the student exercise of free expression under §280.22. Otherwise, Iowa school districts have the power to enact content-neutral dress regulations under §279.8, but cannot enact content-based dress regulations except in accordance with §279.58.

The absolute of "proscription" is a list of specific or general examples of student attire that may not be worn. Every statement of such a policy dictates items or types of clothing that may not be worn. The absolute of "prescription" is to define a limited number and types of clothing that may be worn as in the case of a uniform, where the students tend to look much alike in the manner of dress. It cannot be said that a proscriptive dress policy becomes prescriptive as soon as you no longer only say, "thou shall not" and begin to give examples of acceptable attire to better define and explain apparel that is prohibited. The Policy and Regulation at issue here

give a very energetic description of types of apparel that are prohibited and a similarly energetic list of examples of apparel which are acceptable. It is obvious that this is the best way to clarify things that may not be worn in a way that allows administrators and teachers to enforce the proscription because of the clearly defined lists of acceptable attire.

A close examination of the Policy, the Regulation, and the Reference Chart (Ex. 16) discloses a minimum of 360 different combinations of styles and types and colors of clothing acceptable for high school students. Please see attached Exhibit A to this brief. The use of acceptable imagination will probably produce even more variety. Reference to this Policy, the Regulation, and the Reference Chart with regard to elementary students shows a potential variety far in excess of that enjoyed by high school students. This variety is graphically displayed in the pictures of students contained in Exhibit 23, pictures which were taken at East High School and Kittrell Elementary School after the dress code policy had been implemented and was producing the desired results. (Miller) The obvious conclusion based upon the extensive variety of possible student attire under the Policy and the Regulation is that the proscription as to unacceptable attire remains in place without prescription as to a designated uniform. A truly proscriptive policy does not lose its character simply because it also describes a vast array of types of dress and colors of dress to enable students to successfully stay away from the prohibited attire. The testimony of all of the District witnesses made it abundantly clear that the health and safety of students and the quality of the learning environment in District schools was adversely affected by the status of dress code efforts in all schools but Cunningham and Carver prior to the Board's adoption of the standardized dress code. The testimony of all of the District witnesses is also unanimous in their findings of the contribution made by the standardized dress code to the health and safety of students and the enhancement of the learning environment in all

District schools after its enactment. These witnesses are the experts as to the facts existing in Waterloo's schools. The "experts" who write and publish the articles contained in Exhibits 11-15 and in the Appellants' exhibits have never been in the Waterloo schools. (R. Peters) The observations of the outside "experts" is of interest, but it is the local experts that have the knowledge of facts that should be persuasive to this Administrative Law Judge.

VI.

THE DISTRICT'S DRESS CODE POLICY IS CONSTITUTIONALLY VALID

The Peters' memorandum also challenges the dress code's validity on the grounds that "students have a constitutional right to free expression under the First and Fourteenth Amendments, and a person's choice of clothing can be a constitutionally protected form of expression." While the District does not believe that neither the Department nor this Administrative Law Judge feels compelled to pass on the constitutionality of this policy, the District feels that it must address this issue because it has been raised by the Appellants.

While the United States Supreme Court has yet to decide a case involving a school dress code or uniform policy, it has decided four cases involving student expression which have framed the lower courts' resolution of dress code and uniform policy issues. The following synopsis of those four holdings is taken from *Palmer v. Waxahachie Independent School District*, 579 F. 3d 502, 507 (5th Cir. 2009):

> The Supreme Court has issued four major opinions on public school regulation and student speech. First, in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed. 2d 731 (1969), a public school punished students who wore black arm bands to school to protest the Vietnam War. The Court confirmed that "students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate, and "in the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. Schools can restrict student speech only if it materially interferes with or disrupts

> the school's operation, and cannot "suppress expressions of feelings which they do not wish to contend." [all internal citations omitted]
>
> Since *Tinker,* every Supreme Court decision looking at student speech has expanded the kinds of speech schools can regulate. In *Bethel School District No. 403 v. Fraser,* 478 U.S. 675, 687, 106 S. Ct. 3159, 92 L.Ed. 2d 549 (1986), Court ruled that schools can prohibit "sexually explicit, indecent, or lewd speech." The Court held in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 271-73, 108 S. Ct. 562, 98 L.Ed. 2d 592 (1988), that schools can also regulate school-sponsored speech. Finally, in *Morse v. Frederick*, 551 U.S. 393, 127 S. Ct. 2618, 168 L.Ed. 2d 290 (2007), the Court determined that schools can prohibit "speech advocating illegal drug use."

In *Palmer*, the plaintiffs argued that the above-cited Supreme Court decisions established a bright-line rule that schools cannot restrict speech that is not disruptive, lewd, school-sponsored, or drug-related. The court rejected this argument, stating that "Palmer's proposed categorical rule, however, is flawed, because it fails to include another type of student speech restriction that schools can institute: content-neutral regulations." *Palmer,* 579 F.3d at 507.

As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content-based. By contrast, laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content-neutral. The principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech because of agreement or disagreement with the message it conveys. *State v. Musser,* 721 N.W. 2d 734, 743 (Iowa 2006). A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speech or messages but not others. *Christian Legal Society Chapter of the University of California, Hastings College of Law v. Martinez,* ___ U.S. ___, 130 S.Ct. 2971, 2994, 177 L.Ed 2d 838 (2010).

The validity of content-neutral governmental regulation of expressive conduct should be analyzed under the intermediate scrutiny test of *United States v. O'Brien*, 391 U.S. 367, 88 S. Ct.

1673, 20 L.Ed 2d 672 (1968), under which a dress code or uniform policy will pass constitutional scrutiny if it furthers an important or substantial government interest; if the interest is unrelated to the suppression of student expression; and if the incidental restrictions on First Amendment activities are no more than is necessary to facilitate that interest. *Palmer*, 579 F.3d 502, 507-508.

In *Palmer,* Paul Palmer, a student at Waxahachie High School, went to school wearing a shirt with "San Diego" written on it. When told his shirt violated the district's dress code, which did not allow t-shirts with printed messages, Palmer replaced it with a "John Edwards for President '08" t-shirt, which was also in violation of the dress code. When he was made to remove that shirt as well, Palmer unsuccessfully appealed the decision to the school principal and then to the district superintendent. He then sued the district under 42 U.S.C §1983, alleging that the dress code violated his freedom of speech under the First Amendment. The school district answered that Palmer's shirt violated the dress code, even though it did not pose a concrete threat of substantial disruption, was not sexually explicit, was not school-sponsored speech, and did not promote illegal drug use.

After summarizing applicable Supreme Court precedent as discussed above, the court found that the dress code was valid and enforceable. In doing so, the court rejected Palmer's argument that the code's exemption for small logos and school-sponsored shirts violated content-neutrality because the District was in no way attempting to suppress any student's expression through its dress code," and that the code's "allowance for school logos and school-sponsored shirts does not suppress unpopular viewpoints but provides students with more clothing options than they would have had under a complete ban on message." The court went on to find that the dress code furthered an important or substantial governmental interest because it was adopted to

"maintain an orderly and safe learning environment, increase the focus on instruction, promote safety and life-learning and encourage professional and responsible dress for all students," all of which the court deemed sufficient to show such an interest.

In terms of evidence necessary to support the interests articulated by the school district, the court recognized that, while a statistical showing that the code has improved test scores or lowered disciplinary actions, or evidence of improvements in other districts that have adopted the same or a similar dress code, can support the district's decision, such evidence is not necessary to uphold a dress code. Because improvements in discipline or morale cannot always be quantified, the sworn testimony of teachers or administrators would also suffice. The court then found that testimony of the district's assistant superintendent that the board had examined other dress codes to see which would be the best fit for the district, had taken trips to see dress code enforcement in action, and had reviewed data regarding the impact of codes on other schools was "more than enough to show that the District justified its important governmental interest with factual support." Finally, the court found that the district had shown that its dress code was no more strict than necessary to achieve its goals because students remained free to wear what they want after school hours and may still express their views through other mediums during the school day.

The court in *Palmer* relied heavily on two previous Fifth Circuit decisions, one of which was cited by the Peters in their appeal memorandum. In *Littlefield v. Forney Independent School District*, 268 F. 3d 275 (5th Cir. 2001), a Texas statute provided that a school district could require school uniforms "if the board determines that the requirement would improve the learning environment at the school." After conducting research, seeking input from parents, and conducting two "town hall" meetings on the subject, the Forney school district made factual

findings that school uniforms would improve the learning environment and adopted the uniform policy at issue.

Plaintiffs brought three separate substantive constitutional challenges to the uniform policy. First, the student plaintiffs subject to the policy asserted that the compulsory wearing of uniforms violated the First Amendment because it was "both a form of coerced speech, in that it compels them to express ideas with which they may not agree, and, at the same time, it is an infringement on free expression, in that it prevents them from freely expressing particular messages they do not wish to convey." Second, the parent plaintiffs claimed that the uniform policy "violates their fundamental right to control the upbringing and education of their children in violation of the Fourteenth Amendment." Finally, those plaintiffs who sought exemption from the policy on religious grounds alleged that the policy's opt-out procedures impermissibly delved into the substance of their religious beliefs and thus restricted their free exercise of those beliefs.

With respect to the First Amendment challenge, the court assumed, without deciding, that the First Amendment applies to the expressive conduct implicated in the mandatory uniform policy, but, applying the *O'Brien* test, held that the policy did not violate the First Amendment. As in *Palmer,* supra, the court found first that the district had the power to pass a mandatory uniform policy under state law; second, that the uniform policy had the necessary connection with the district's goals of improving the educational process; and third, that the policy's incidental restrictions on First Amendment activities were no more than necessary to facilitate the district's interest, because "the restrictions pertain only to student attire during school hours and do not affect other means of communication."

Next, the court rejected the argument that the uniform policy violated parental rights under the Fourteenth Amendment. After observing that "it has long been recognized that

parental rights are not absolute in the public school context and can be subject to reasonable regulation," the court applied a rational-basis test to conclude that the uniform policy was "rationally related to the state's interest in fostering the education of its children and furthering the legitimate goals of improving student safety, decreasing socioeconomic tension, increasing attendance, and reducing drop-out rate." (For reasons not material here, the court also rejected the families' free exercise and establishment clause claims).

In *Canady v. Bossier Parish School Board*, 240 F. 3d 437 (5th Cir. 2001) defendant School Board adopted a mandatory uniform policy and supported it in court by affidavits of school teachers and principals who concluded that the uniform policy reduced behavior problems and increased test scores. The plaintiff parents claimed that the dress code violated their children's First Amendment rights to free speech, failed to account for religious preferences, and denied their children's liberty interest to wear clothing of their choice in violation of the Fourteenth Amendment.

In their appeal memorandum, the Peters cite this case for the proposition that "students have a constitutional right to free expression under the First and Fourteenth Amendments, and a person's choice of clothing can be a constitutionally protected form of expression." While the *Canady* case does contain such language, it goes on to find that the dress code in question did not violate the student's rights under either the First or Fourteenth Amendments. With respect to the First Amendment claim, the court applied essentially the same analysis as was subsequently followed in *Littlefield* and *Palmer*. Because it considered that the First Amendment provided an adequate source of constitutional protection, the court declined to address a "general substantive due process claim" under the Fourteenth Amendment.

Cases in other circuits have also upheld mandatory uniform and dress code policies. In *Jacobs v. Clark County School District*, 526 F. 3d 419 (9th Cir. 2008), the school district adopted a standard dress code pursuant to a Nevada statute authorizing school boards, in consultation with the schools within the district and parents and legal guardians of pupils who are enrolled in the district, to establish a policy that requires pupils to wear school uniforms. After being suspended for repeated violations of her school's dress code, plaintiff brought suit for violation of her First Amendment rights to free expression and free exercise of religion.

Plaintiffs raised three speech-related claims. First, they contended that the uniform policy unconstitutionally restricted their rights to engage in "pure speech" while in school by refusing to allow t-shirts containing written messages. Second, plaintiffs claimed that the policy unconstitutionally restricted their rights to engage in "expressive conduct" by refusing to allow them to express their individuality by wearing clothing different from their classmates. Third, plaintiffs claimed that requiring them to wear a uniform amounted to unconstitutional "compelled speech" by being forced to convey a message of uniformity by wearing the same clothing as their classmates.

Like the Fifth Circuit, the court applied an intermediate level of scrutiny and considered the policy to be content-neutral, despite its allowance for clothing containing school-logos. The court then found that the uniform policy furthered the important government interests of increasing student achievement, promoting safety and enhancing a positive school environment, as supported by affidavits from school personnel concerning the effect of the uniform policies since their implementation. The court also held that the district's interests were unrelated to the suppression of free expression, and that the uniform policies did not restrict more speech than necessary, applying much the same reasoning as the Fifth Circuit in *Canady* and its progeny.

The court also rejected plaintiffs' claims that the uniform policy amounted to "compelled speech" because the uniform policy did not force them to communicate "any message whatsoever."

In *Blau v. Fort Thomas Public School District*, 401 F. 3d 381 (6th Cir. 2005), defendant School District enacted a dress code pursuant to a Kentucky statute giving it responsibility for setting school policy that is designed to "provide an environment to enhance the student's achievement and help the school meet its goals." Plaintiffs challenged the constitutionality of the regulation, claiming that it violated the student's First Amendment right to freedom of expression and her Fourteenth Amendment substantive due process right to wear the clothes of her choosing, and also violated the parents' substantive due process right to control the dress of their child.

Initially, the court stated that to bring a free-speech claim regarding actions rather than words, claimants must show that their conduct conveys a particularized message and the likelihood is great that the message will be understood by those who view it. The court found that plaintiff's "generalized and vague desire to express her middle-school individuality" was insufficient to invoke First Amendment protection. The court further found that the dress code was "viewpoint and essentially content neutral," that it furthered important governmental interests, including "bridging socioeconomic differences within a school district – which would always seem to be a sensible reason for a dress code and would invariably satisfy this modest requirement," and that the dress code did not suppress substantially more expressive conduct than necessary to further the district's interest, because students remained free to dress as they wished in the evenings and on weekends and had other outlets of expression during school hours. For the same reasons, the court concluded that plaintiffs "have not met their burden of showing

that they are entitled to the strong medicine of overbreadth invalidation." The court also cited the following principles:

> While children do not shed their constitutional rights at the schoolhouse gate, the nature of those rights is what is appropriate for children in school. It long has been the case that constitutional claims generally receive less rigorous review in the secondary and middle-school setting than they do in other settings. The Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. In the First Amendment arena and other arenas as well the Supreme Court thus has frequently emphasized that public schools have considerable latitude in fashioning rules that further their educational mission and in developing a reasonable fit between the ends and means of their policies.

Turning to plaintiff's substantive due process claim, the court found that the fundamental right to direct the educational upbringing of one's child did not have "much, if anything, in common with the right to wear blue jeans." As the court put it:

> The critical point is this: Although parents may have a fundamental right to decide *whether* to send their child to a public school, they do not have a fundamental right generally to direct *how* a public school teaches their child. Whether it is the school curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities offered at the school, or, as here, a dress code, these issues of public education are generally committed to the control of state and local authorities.

Finally, the court found that a dress code "assuredly falls well within" the school board's "broad authority" under the applicable statute to "provide an environment to enhance the student's achievement and help the school meet its goals."

CONCLUSION

The District urges the Administrative Law Judge to recognize that the Department does not have jurisdiction to hear and decide upon this appeal because the adoption of the Board's Policy and the creation of the Regulation are not a "decision or order" within the meaning of

§290.1, Code of Iowa. The Board has made no decision or order with regard to a particular student or students vis-à-vis the Policy and Regulation.

Even if jurisdiction were proper with the Department as to this appeal, the District's dress code policy is valid under §274.1, §279.8, and §279.58, Code of Iowa and with regard to constitutional standards. The appeal should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above case by service on each of the attorneys of record herein at their respective addresses disclosed on the pleadings by:

☒ U.S. Mail ☐ Other: _____
☐ Hand Delivered ☐ FAX
on Sept 24, 2010.

_____

EXHIBIT

A

Color Combinations

*using only 5 colors other than white, gray, black for each high school as elementary total would be infinite due to unlimited color of shirts

EAST HIGH							
Top Color	**Pant**	**Shorts**	**Skirts**	**Capris**	**Jumpers**		
White	Navy	Navy	Navy	Navy	Navy		
White	Black	Black	Black	Black	Black		
White	Khaki	Khaki	Khaki	Khaki	Khaki		
Gray	Navy	Navy	Navy	Navy	Navy		
Gray	Black	Black	Black	Black	Black		
Gray	Khaki	Khaki	Khaki	Khaki	Khaki		
Black	Navy	Navy	Navy	Navy	Navy		
Black	Black	Black	Black	Black	Black		
Black	Khaki	Khaki	Khaki	Khaki	Khaki		
Orange	Navy	Navy	Navy	Navy	Navy		
Orange	Black	Black	Black	Black	Black		
Orange	Khaki	Khaki	Khaki	Khaki	Khaki		
Peach	Navy	Navy	Navy	Navy	Navy		
Peach	Black	Black	Black	Black	Black		
Peach	Khaki	Khaki	Khaki	Khaki	Khaki		
Tangerine	Navy	Navy	Navy	Navy	Navy		
Tangerine	Black	Black	Black	Black	Black		
Tangerine	Khaki	Khaki	Khaki	Khaki	Khaki		
Burnt Orange	Navy	Navy	Navy	Navy	Navy		
Burnt Orange	Black	Black	Black	Black	Black		
Burnt Orange	Khaki	Khaki	Khaki	Khaki	Khaki		
Yellow Orange	Navy	Navy	Navy	Navy	Navy		
Yellow Orange	Black	Black	Black	Black	Black		
Yellow Orange	Khaki	Khaki	Khaki	Khaki	Khaki		
TOTAL	**24**	**24**	**24**	**24**	**24**	**120**	**

**possible color and bottom style combinations; if other top styles are added, multiply the 120 X 3 (polo, plain shirt, turtleneck) for 360 possible combinations.

Color Combinations

*using only 5 colors other than white, gray, black for each high school as elementary total would be infinite due to unlimited color of shirts

WEST HIGH

Top Color	Pant	Shorts	Skirts	Capris	Jumpers
White	Navy	Navy	Navy	Navy	Navy
White	Black	Black	Black	Black	Black
White	Khaki	Khaki	Khaki	Khaki	Khaki
Gray	Navy	Navy	Navy	Navy	Navy
Gray	Black	Black	Black	Black	Black
Gray	Khaki	Khaki	Khaki	Khaki	Khaki
Black	Navy	Navy	Navy	Navy	Navy
Black	Black	Black	Black	Black	Black
Black	Khaki	Khaki	Khaki	Khaki	Khaki
Pink	Navy	Navy	Navy	Navy	Navy
Pink	Black	Black	Black	Black	Black
Pink	Khaki	Khaki	Khaki	Khaki	Khaki
Old Rose	Navy	Navy	Navy	Navy	Navy
Old Rose	Black	Black	Black	Black	Black
Old Rose	Khaki	Khaki	Khaki	Khaki	Khaki
Fuschia	Navy	Navy	Navy	Navy	Navy
Fuschia	Black	Black	Black	Black	Black
Fuschia	Khaki	Khaki	Khaki	Khaki	Khaki
Cherry	Navy	Navy	Navy	Navy	Navy
Cherry	Black	Black	Black	Black	Black
Cherry	Khaki	Khaki	Khaki	Khaki	Khaki
Burgundy	Navy	Navy	Navy	Navy	Navy
Burgundy	Black	Black	Black	Black	Black
Burgundy	Khaki	Khaki	Khaki	Khaki	Khaki
TOTAL	**24**	**24**	**24**	**24**	**24**

IOWA DEPARTMENT OF EDUCATION

RICKI AND TEESHA PETERS

Appellants

v

APPELLANTS' CLOSING ARGUMENT BRIEF

WATERLOO COMMUNITY SCHOOL DISTRICT,

Appellee

Introduction

The Waterloo Community School District (Appellee) has erroneously applied Iowa Code 279.58 to students in its district. The imposition of a prescriptive dress code policy (WCSD Policy 504.2) is against clear statutory language. The Appellee's erroneous actions do not ensure the health, safety, or positive educational environment of the students and staff and are difficult to manage and enforce at the building level in a consistent manner across all buildings (schools). The Appellee has the burden of proving its case by clear, convincing, and substantial evidence. It has failed to meet that burden on every count.

Summary of Argument

Iowa Code 279.58 states "the board of directors of a school district may adopt, for the district or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school." Iowa Code

279.58 clearly is proscriptive in nature; that is, it allows for the prohibition of certain specific apparel when it can be demonstrated that the prohibition is necessary for the "health, safety of positive educational environment" within the schools. The WCSD dress code is clearly prescriptive in nature and is in violation of the Iowa Code that dictates school districts' rights and obligations.

Discussion of Appellee's Arguments

The Appellee contends that it did not exceed its authority in implementing Policy 504.2 and that the policy promotes the health, safety, and a positive educational environment of/for the students in the district. This argument is without merit. The Appellee was asked to come prepared to present evidence and data for their arguments. In large part, the Appellee failed to do so and instead provided anecdotal arguments and information based on personal experiences. Further, the Appellee spent most of its time focusing on how their prescriptive uniform policy satisfied the health, safety, and positive educational environment, largely ignoring the principle factor that their policy is in opposition to the Iowa Code that grants its authority in this matter. So while we contend that Appellee's discussions about how the policy supports the health, safety, and positive educational environment is in fact moot because the policy itself is in violation, we will address some of these arguments.

Choice makes the policy non-prescriptive. WCSD Policy 504.2 has a section on 'articles of non-compliance' that are in accordance with Iowa Code 279.58 in that they prohibit certain items of clothing (e.g., open toed shoes, t-shirts with offensive language, etc). However, it goes on to state what *must* be worn: solid color tops (colors specified by school), solid color bottoms in black, navy, or khaki, all shirts must have collars, among other specific, prescriptive items including types of fabric. To argue that because the list contains at least more than one

option does not make it a uniform policy is hair-splitting at the very least[1]. Choice does not mean the policy is not prescriptive.

The dress code policy is not a uniform; it is not prescriptive. In testimony, Board Vice President Mike Young stated under oath that the newly enacted 504.2 was "both proscriptive and prescriptive." Further, in Appellee's Exhibit 1 it states that "there was discussion within the group that uniforms might be easier than trying to shop and adhere to a list of 'what not to wear'." It would be relatively difficult for WCSD to argue that its policy isn't prescriptive when its Vice President, a practicing attorney within the State of Iowa, states under oath the contrary, their own exhibits indicate their awareness of this issue, and the policy itself dictates what must be worn. The policy is indeed prescriptive.

Prescribing particular colors ensures safety. Concern over gang activity and gang identification through various colors was mentioned several times. In testimony, Dr. Willie B. Barney, principal of East High School, stated under oath that gang colors include such colors as "red, pink, white and black." In other testimony throughout the day, other colors such as blue, orange, and white were mentioned. Some of these colors are part of the color choices at the building (school) level (e.g., orange, pink), others are part of the prescriptive portion of the policy (e.g., black). We further assert that if an orange shirt *is* conducive "for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school" at East High School, it is very difficult to argue the contrary at West High School where an orange shirt would be in violation of the dress

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[1] Common sense would dictate that the U.S. Army prescribes its uniforms and that it clearly has a uniform policy. According to www.army/asu/faq.html the United States Army allows for Class A or Class B in blue, Class A or Class B in green, Army Combat Uniform Garrison, Army Combat Uniform Utility Field, Dress Blue Mess Uniform and Dress White Mess Uniform are all allowable uniforms that may be worn by soldiers. To use the logic and arguments of the WCSD, the U. S. Army does not have uniforms because it also has choices. Clearly, common sense would argue the contrary.

code policy. The West High School shirt color options are white, black, gray, and 'the range of colors from pink to burgundy (no red).'

Additionally, in Exhibit M, we provided documentation demonstrating that "identifying gang members would be difficult once uniform school attire is introduced, and that, contrary to belief, economic differences among students are hardly blurred by the wearing of uniforms. No evidence exists to support the view that school uniforms create a better academic school environment." Additional conclusions from this report are that implementing school uniforms to reduce violence is "dangerous" because "it provides communities with a false sense of security."

Further, it is not clear how the prohibition of plaids, prints, stripes, colored belts (other than plain black or brown), etc, contribute to a safe, healthy, and positive school environment. In fact, the Employee Dress Code (Exhibit F) *allows* any color/any pattern to be worn by teachers and staff further confusing the issue of how plaid (for example) could possibly disrupt the safety, health, and a positive school environment if it can be worn by teachers but not by students. Restricting colors and prescribing others does not ensure safety.

The new dress code policy is needed. Superintendent Norris testified that a new dress code policy was needed because the old one was not being enforced, the old one was difficult to enforce, that cross gender enforcement was difficult, that certain types of clothing were hazardous or caused distractions and that a stricter dress code would be easier to enforce, among other reasons. None of these arguments has merit or warrants a new dress code, especially one that is prescriptive and in violation of Iowa Code. Norris testified that the old dress code was not enforced due to subjectivity of enforcement across the district, and it had gotten to the point where "no one would" enforce the dress code and thus they needed to start over. This seems to

us to be more of a management of district personnel issue and administrative compliance with existing rules than a strong reason to abandon the old dress code for a new, problematic one.

Additionally, throughout testimony the Appellee's witnesses cited safety, health and positive educational environment concerns that the old dress code policy already addressed. Continued reference to baggy pants, open toed shoes, clothing exposing genitalia and cleavage were cited, yet these were already in violation of the previous, unenforced dress code. The new policy with its prescription for clothing fit, colors, and types of fabric (among other specifics) is not exempt from difficulties with enforcement (cross gender or otherwise).

Further, in Exhibit M, page 15, we have provided documentation that states "many public schools caught up in school uniform craze of 1990's are giving up on it, finding that requiring students to wear uniforms caused too many problems; teachers say they are forced to spend ten minutes of class time each day trying to figure out who had waivers and who was breaking rules on wearing uniform...one of the number one objectives proponents argue this policy will achieve is to reduce distractions in the classroom." It in fact does not. The rationale for implementing a new dress code policy is unsubstantiated.

Conclusion

Some clothing (e.g., open toed shoes, excessively baggy pants, t-shirts with offensive or distracting language) *can* compromise "the health, safety, or positive educational environment of students and staff in the school environment." However policy 504.2 goes beyond the scope of the argument. Rather than restricting the items the District found to be objectionable, and enforcing its existing dress code policy, it overstepped its authority and went beyond the scope of the law. Clearly, its prescriptive policy is in violation of Iowa Code 279.58. The Appellee has enacted a policy that is at odds with the law, and does not serve the educational goals that

students, teachers, families, and the community deserve from their public school system. We respectfully request that the court find in our favor in determining that Waterloo Community School Districts dress policy 504.2 is in violation of Iowa Code 279.58 and that such a ruling be presented to the Iowa State Board of Education.

September 24, 2010

Respectfully Submitted,

Ricki and Teesha Peters

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