IN THE

United States District Court

FOR THE DISTRICT OF NEW JERSEY

C.H. a minor, by and through her next friend, Ronald Hudak, *Plaintiff,* v. **BRIDGETON BOARD OF EDUCATION; DR. H. VICTOR GILSON**, Superintendent, in his individual and official capacities; **LYNN WILLIAMS**, Principal of Bridgeton High School, in her individual and official capacities; and **STEPHEN LYNCH**, Assistant Principal of Bridgeton High School, in his individual and official capacities, *Defendants.*	:	Docket No. 09 Civ. 5815 (RBK-JS) **BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY IN SUPPORT OF PLAINTIFF'S MOTION FOR PERMANENT INJUNCTION**

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INTRODUCTION

Amicus Curiae American Civil Liberties Union of New Jersey ("ACLU-NJ") respectfully submits this brief in support of Plaintiff C.H.'s motion for permanent injunction in the above captioned matter.

ACLU-NJ's particular interest in this case is two-fold. First, this case presents the often misunderstood and misapplied distinction between government-sponsored religious speech, which the ACLU is well-known fervently to oppose, and individual student speech, whether religious or otherwise, protection of which the ACLU-NJ advocates with equal fervor. Based on the record adduced thus far before the Court, Defendants, perhaps in a mistaken attempt to avoid the former constitutional prohibition, appear to have intruded upon the latter fundamental guarantee of free expression that the First Amendment protects.

Second, the school policies at issue permit school officials to exercise uncabined discretion, unlimited by any knowable criteria, and unsupported by any affirmative evidence that the expressive activity at issue here would detract from the safety of the school community or interfere with its education program. Absent such evidence, and in the face of a school policy that appears facially overbroad, ACLU-NJ believes that Plaintiff has made a prima facie showing of entitlement to the relief she seeks.

STATEMENT OF FACTS

Many of the salient facts are undisputed on the pleadings. Plaintiff C.H. is a student attending Bridgeton High School, a public secondary school located in Bridgeton, where C.H. resides. (Compl. ¶15; Answer ¶15.) Co-Defendant Bridgeton School Board of Education ("Board") is responsible for the administration, operation, and supervision of Bridgeton High School (Compl. ¶¶ 23-24; Ans. ¶¶ 23-24), and formulates, adopts, implements and enforces all of its policies. (Compl. ¶¶ 25, 34; Answer ¶¶ 25, 34.) It has granted authority to its faculty and staff, including co-Defendants, the superintendant, principal, and assistant principal, to execute its policies. (Compl. ¶¶ 26-27; Answer ¶¶ 26-27.)

The challenged actions of Defendants are also not in dispute. C.H. states, and Defendants certainly do not contest, that she is a "Bible-believing Christian," who desires to share her faith and beliefs with other students, particularly regarding abortion. (Compl. ¶¶ 18, 61-62.) She wishes to express her religious views with her classmates in two ways: (1) by wearing a red arm band with the word "Life" on it in recognition of Pro-Life Day of Silent Solidarity, and (2) by distributing pro-life pamphlets during non-instructional times. (Compl. ¶¶ 37, 63-64.) But despite giving more than two weeks advance notice and providing a copy of the flyer she wished to

distribute, Defendants admit that they prohibited C.H. from engaging in both activities. (Compl. ¶¶ 3, 38; Answer ¶¶ 3, 38.)

The explanation given for Defendants' decision is more difficult to determine. In her verified complaint and declaration, C.H. swears that she was informed by school officials that permission was denied because nothing "religious" is allowed in public schools. (Compl. ¶4.) Defendants deny that allegation (Answer ¶4), and this issue may therefore require further factual exploration at hearing.[1]

Defendants apparently will rely on application of school policies to defend their actions. There are two Board policies

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[1] It is curious, however, that later in the pleadings, when Plaintiff alleges that she "was told by school officials that her request was denied because nothing 'religious' was allowed in public school," and when it was also specifically alleged that her father was rebuffed when he followed up with Defendant Lynch in particular to secure permission for his daughter "to engage in her religious speech at school," Defendants then responded that they have insufficient knowledge to clearly admit or deny those allegations, even though the allegations concerned their very own conduct, which they would presumably be in the best position to admit or deny outright. (Answer ¶¶ 41-42.) But see, Mesirow v. Duggan, 240 F.2d 751, 756 (8th Cir. 1957) (party's assertion that he lacks sufficient knowledge to admit or deny will not constitute a denial if the information is in that party's control and "peculiarly within his knowledge"), cert. denied sub nom. Duggan v. Green, 355 U.S. 864 (1957); David v. Crompton & Knowles Corp., 58 F.R.D. 444, 446 (E.D. Pa. 1973) (averment will be deemed admitted when the matter is obviously one as to which defendant has knowledge or information).

that are arguably at issue in this case.[2] First, Policy 1140, "Distribution of Materials By Pupils and Staff," provides in pertinent part:

> Pupils, employees, and district facilities shall not be used for advertising or promoting the interests of any person, nonschool sponsored agency or organization, public or private, without the approval of the Superintendent or designee; and such approval granted for whatever cause or group shall not be construed as an endorsement of said cause or group by the board. . . .
>
> . . . .
>
> Pupils shall not be used to distribute partisan materials or partisan information pertaining to a school or general election, budget or bond issue, or negotiations. Pupils shall not be exploited for the benefit of any individual, group, or profit-making organization.

(Compl. ¶54; Answer ¶54; R. Hudak Decl., Ex. 2.) (emphasis added). This policy is the source of the apparent authority by

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[2] A third policy, Policy 6145.3, entitled "Publications," governs school-sponsored "pupil publications as important elements of the instructional program." (Compl. ¶ 57; Answer ¶ 57; R. Hudak Decl., Ex. 3.) It therefore is inapposite to the current matter, where the expression at issue is obviously not part of a school-sponsored publication. Moreover, as will be discussed in the Argument section of this brief, the concern of Policy 6145.3 is that a "viewpoint . . . may associate the school district with a position other than neutrality on matters of political controversy" (Compl. ¶ 59; Answer ¶ 59) does not exist when an individual student clearly intends to express her own personal beliefs.

which Defendants' denied C.H. permission to distribute flyers expressing her pro-life beliefs to other students.

Second, although Plaintiff and her father state that they were never told that the reason for denial of permission to wear the armband was due to any school uniform policy (C.H. Decl. ¶17; R. Hudak Decl. ¶12), it appears that Defendants now rely on that policy as an additional ostensible reason for denying permission to wear the armband. Bridgeton School Superintendent Victor Gilson, in commenting on this case to the press, has stated that the school has a "very strict dress code." (R. Hudak Decl., Exs. 4-6.) Because it is important to understand the complete context of the Board's official statements on student attire, Policy 5132, "Pupil Dress Code," as it appears on the Bridgeton Board of Education website, is laid out in full in Attachment A of this brief.[3] The initial paragraph of the Policy begins as follows:

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[3] http://www.bridgeton.k12.nj.us/index.php?option=com_content&task=view&id=55&Itemid=231

Although Policy 5132 is not yet part of the formal record, Amicus ACLU-NJ assumes that Defendants will introduce it with their submissions, and at any rate the Court may take judicial notice of an official enactment of a governmental body publicly posted on its website. Fed. R. Evid. 201; see Denius v. Dunlap, 330 F.3d 919, 926 (7th Cir. 2003) (under Fed. R. Evid. 201(c), a federal court can take judicial notice of information on an official government website); Jeffrey M. Goldberg & Assocs., Ltd. v. Holstein (In re Holstein), 299 B.R. 211, 233 n.26

(footnote continued on next page)

> The Board of Education recognizes the right of students and parents or guardians to exercise personal judgment within certain boundaries in matters of dress. It is our belief that neatly attired students take pride in themselves; therefore, they are more likely to practice habits of self-discipline and display a positive attitude and demeanor in the school setting. School uniforms shall be worn in schools where it has been requested by the principal, staff and parents.

(emphasis added). Policy 5132 thus announces a general policy that recognizes "the right of students and parents or guardians to exercise personal judgment within certain boundaries in matters of dress," but then somewhat casually provides that "[s]chool uniforms shall be worn in schools where it has been requested by the principal, staff and parents." It closes, however, with the admonition: "Students who choose not to comply with these guideline [sic] shall be subject to disciplinary action in accordance with the current district discipline policy."

Policy 5132 does not provide any indication of how it is determined whether these three very disparate constituencies collectively intend to make such a request, nor does it provide any criteria by which these decision-makers, at least two of which are acting under color of state law, exercise their

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(Bankr. N.D. Ill. 2003) (same), aff'd, 2004 U.S. Dist. LEXIS 17637 (N.D. Ill. 2004).

apparently uncabined discretion to alter the general Board policy respecting individual student and parental choice. At any rate, Policy 5132 contains two addenda, one for pre-kindergarten to 8th grade and one for Bridgeton High School, apparently indicating that school uniform programs have come into existence.

It should be noted, however, that C.H. has never objected to wearing the school uniform (a maroon colored polo shirt) per se. (C.H. Decl. ¶¶18, 20; R. Hudak Decl. ¶11.) She will willingly wear the uniform in compliance with Policy 5132, as apparently amended by the principal, staff and parents of Bridgeton High School, and merely seeks to supplement it with a red armband. Moreover, in the declarations of C.H. and her father, they swear to numerous examples within their personal knowledge in which either the school uniform policy was not enforced, or else it was interpreted to permit various accessories such as jewelry, bracelets, or buttons. (C.H. Decl. ¶¶ 11-15; R. Hudak Decl. ¶11.)

While Defendants have not yet submitted their sworn responses and therefore it cannot yet be said that those contentions are undisputed, it certainly can be said to be within common knowledge that, with the possible exception of a military school environment, consistent or non-selective enforcement on a teenage student population of a draconian

policy that not only requires wearing a school uniform, but which also forbids any and all supplemental personal adornments, would be, as a practical matter, daunting to the point of overwhelming. Indeed, inspection of the pictures of students that the Board itself publishes on its website[4] clearly demonstrates those types of variations in leg wear, hair jewelry, and other accessories that are typical of an adolescent population.

Because, as described in the Argument section of this brief, Amicus ACLU-NJ believes that the school policies at issue are overbroad and thus subject to a facial challenge, any factual disagreements that exist between the parties may be unnecessary to resolve, and thus this case may be decided based on facts that are either uncontested on the pleadings, or uncontestable as a matter of common knowledge.

SUMMARY OF ARGUMENT

The expression in which C.H. seeks to engage is at the very core of the type of speech protected by the First Amendment. (Part I.) As emphasized by Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969), and its progeny, the school officials bear a heavy evidentiary burden in showing that

[4] http://www.bridgeton.k12.nj.us (changing pictures when page refreshed).

restrictions on student speech are necessary to avoid disruption of the school environment. (Part I.A.) The prior restraint that Defendants have imposed is not justified by either a desire to avoid an Establishment Clause violation (Part I.B.), or by an inconsistently articulated and inconsistently enforced policy of uniformity in student dress. (Part I.C.)

Moreover, the school policies at issue in this case grant completely unbridled discretion to school officials to decide whether to permit expressive activity or not (Part II), both in terms of distribution of literature (Part II.A.), and in terms of whether to enact, and then whether to enforce, a school uniform policy (Part II.B.). Those policies are therefore facially invalid.

ARGUMENT

I. C.H.'S SPEECH IS THE ESSENCE OF PROTECTED POLITICAL SPEECH THAT IS PROTECTED IN THE SCHOOL ENVIRONMENT AGAINST PRIOR RESTRAINTS.

C.H.'s desired expression, i.e. distributing leaflets advocating against abortion and wearing an armband symbolizing silent solidarity with the unborn, is the essence of political speech. While it is no doubt motivated by her sincerely held religious beliefs, the source of that motivation does not in any way detract from the fact that she wishes to engage in "political speech warranting the highest constitutional

protection." FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 260 (1986).

The legal paradigms that govern student speech in public schools are well established. First, a public high school is at the least a designated or limited public forum. See Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 44-46 (1983); Good News Club v. Milford Cent. Sch., 533 U.S. 98, 107 (2001); Child Evangelism Fellowship of New Jersey, Inc. v. Stafford Twp. Sch., 233 F. Supp. 2d 647, 656-57 (D.N.J. 2002), aff'd, 386 F.3d 514 (3d Cir. 2004). Although "[t]he State may be justified in reserving [its forum] for certain groups or for the discussion of certain topics," such "restriction must not discriminate against speech on the basis of viewpoint, and the restriction must be 'reasonable in light of the purpose served by the forum.'" Good News Club, 533 U.S. at 106-07 (quoting Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 806 (1985), internal citation omitted). The determination of whether Defendant's justifications for denying access are "reasonable," however, is not even possible until the Board first discharges its burden of articulating what those reasons are -- an articulation that has not yet occurred on the present record.

The second paradigm at issue here is the law of prior restraints. A regulation that requires an individual to obtain

permission from a government entity before distributing literature constitutes a prior restraint on speech. Shuttlesworth v. City of Birmingham, 394 U.S. 147, 150-51 (1969). Prior restraints are the "most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976). Therefore, while prior restraints are not per se unconstitutional, courts have imposed a strong presumption against their constitutionality. Id. at 558; Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963) (state system of prior administrative restraints was capable of suppressing constitutionally protected publications). Prior restraints are only constitutionally permissible when they contain procedural safeguards to guide the decision-making process. See Freedman v. Maryland, 380 U.S. 51, 59 (1965) (content-based regulations must contain procedural safeguards); M.B. v. Liverpool Cent. Sch. Dist., 487 F. Supp. 2d 117, 143 (N.D.N.Y. 2007) (school policy governing the distribution of "special interest materials" was held to be a prior restraint on speech because it conditioned a student's distribution of literature to other students on permission from the school district).

Since Policy 1140 expressly requires a student to obtain permission from the Superintendent prior to distributing any materials "advertising or promoting the interests of any person,

nonschool-sponsored agency or organization, public or private," it constitutes a prior restraint. Likewise, Policy 5132, at least as interpreted by Defendants, is also a prior restraint since it requires school approval before symbolic activity such as the wearing of an armband can take place. As such, those policies are presumptively unconstitutional, and this presumption can only be overcome if the Court finds the policy to contain narrowly defined guidelines to limit the discretionary authority of the superintendent and other school officials. Without those guidelines, the Supreme Court has held unconstitutional prior restraints that vest "unbridled discretion in a government official over whether to permit or deny expressive activity." City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 755 (1988).

A. The Evidentiary Burden Is On the School District to Establish that Curtailing C.H.'s Student Speech Is Necessary to Combat Disruptions That Will Inhibit the School's Operation

As emphasized in the seminal case on student speech, Tinker v. Des Moines Indep. Comty. Sch. Dist., a prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments. 393 U.S. at 509.

> In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained.

Id. (quoting Burnside v. Byars, 363 F.2d 744, 749 (5th Cir. 1966)). Thus, "Tinker requires a specific and significant fear of disruption, not just some remote apprehension of disturbance." Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 211 (3d Cir. 2001).

Courts after Tinker have strictly applied its admonition that the school district bears the burden of justifying its attempts to restrict student speech. [5] See, e.g., Bystrom v. Fridley High Sch., 822 F.2d 747, 755 (8th Cir. 1987) ("if the

[5] Similarly, in the commercial speech context where the Court, as in Tinker, has established a test of "reasonableness" between a government regulation's ends and means in order to justify curtailing speech, it has made clear that it is the government that bears the burden of establishing that reasonableness. See Cincinnati v. Discovery Network, 507 U.S. 410, 416 (1993)("It was the city's burden to establish a 'reasonable fit' between its legitimate interests in safety and esthetics and its choice of a limited and selective prohibition of newsracks as the means chosen to serve those interests."); cf. Ashcroft v. ACLU, 542 U.S. 656, 669 (2004) ("When plaintiffs challenge a content-based speech restriction, the burden is on the Government to prove that the proposed alternatives will not be as effective as the challenged statute.").

students challenge the right of the administrator to limit student speech, the burden is on the school administrators to justify their actions"). See also, Butts v Dallas Indep. Sch. Dist., 436 F.2d 728 (5th Cir. 1971) (school district could not prevent students from wearing black armbands in protest of the Vietnam war, since the wearing of such armbands was protected speech by the First Amendment, and they were not per se akin to "fighting words" simply because armbands, shirts, or hats of other colors had been); Aguirre v. Tahoka Indep. Sch. Dist., 311 F. Supp. 664 (N.D. Tex. 1970)(striking down a rule prohibiting students from wearing brown armbands worn in protest of school policies).

For example, as the Third Circuit stated:

> Where a school seeks to suppress a term merely related to an expression that has proven to be disruptive, it must do more than simply point to a general association. It must point to a particular and concrete basis for concluding that the association is strong enough to give rise to well-founded fear of genuine disruption in the form of substantially interfering with school operations or with the rights of others."

Sypniewski v. Warren Hills Reg'l Bd. of Educ., 307 F.3d 243, 257 (3d Cir. 2002) (despite prior history of racial incidents, school officials could not ban students from wearing a Jeff Foxworthy t-shirt referring to "rednecks" based on unsubstantiated prediction that it would cause disruption). Similarly, in Chalifoux v. New Caney Indep. Sch. Dist., 976 F.

Supp. 659 (S.D. Tex. 1997), a school banned the wearing of rosary beads because some gangs had started to wear a rosary as an identifying symbol. In rejecting that justification for curtailing school speech, the court stated:

> [A]lthough Plaintiffs wore their rosaries outside their shirts for several months, they were never misidentified as gang members nor approached by gang members. There also was no evidence that they attracted the attention of other students because of their rosaries. . . . Accordingly, the Court finds that there was insufficient evidence of actual disruption at New Caney High School, or that there was substantial reason for NCISD to anticipate a disruption, to justify the infringement on Plaintiffs' religiously-motivated speech.

Id. at 667.

Nor does the fact that speech is controversial or found objectionable by other students justify a finding that it is disruptive. In Saxe, then Circuit Judge (now Justice) Alito referred with approval to another federal decision whose facts are similar to those in this case.

> [I]n Clark v. Dallas Independent School District, the court held that a high school could not prohibit its students from distributing religious tracts on school grounds. Again citing Tinker, the court held that "Defendants have failed to establish that Plaintiffs' distribution of the religious tracts gave rise to a material or substantial disruption of the operation" of the school. Noting that the only evidence of disruption was the objection of several other students, the court observed that "if school officials were permitted to prohibit expression to which other students objected, absent any further justification, the officials would have a license to prohibit virtually every type of expression."

Saxe, 240 F.3d at 212 (citations omitted) (quoting Clark v. Dallas Independent School District, 806 F. Supp. 116, 120 (N.D. Tex. 1992)).

While it is true, as our Court of Appeals has recently explained, that "school authorities need not wait until a substantial disruption actually occurs in order to curb the offending speech," nevertheless they must still "demonstrate any facts which might reasonably have led [them] to forecast substantial disruption of or material interference with school activities." J.S. ex rel. Snyder v. Blue Mountain Sch. Dist., 593 F.3d 286, 298 (3d Cir. 2010) (majority holding that school could reasonably predict disruption of its functions when student posted a MySpace.com Internet profile of school principal that contained profanity-laced statements insinuating that principal was a sex addict and pedophile). Thus, "if a school can point to a well-founded expectation of disruption--especially one based on past incidents arising out of similar speech--the restriction may pass constitutional muster." Id.

The fundamental problem in this case is that the school officials have not proffered any explanation for their action at all, much less factually justified that proffered explanation. We are therefore left to imagine what disruption might be caused by C.H.'s distribution of pro-life literature during non-instructional time. The only understandable--albeit mistaken—-

motivation for their refusal was to avoid an Establishment Clause concern, but that motivation is one that apparently the school officials now disavow. Defendants have thus not established that their concerns are substantial and non-speculative.

It is difficult to see how the requisite showing under Tinker could ever be made in this case. C.H.'s proposed speech is nothing more or less than the principled expression of her individual viewpoint on one of the most vetted questions of modern public policy. This Court was faced with perhaps more troubling facts in DePinto v. Bayonne Bd. of Educ., 514 F. Supp. 2d 633 (D.N.J. 2007). In DePinto, fifth grade students objected to a school uniform policy itself by wearing buttons bearing the phrase "No School Uniforms" and a slashed red circle. Id. at 636. The writing overlaid a historical photograph that appears to portray the Hitler Youth. Id. Yet despite the objectively more provocative nature of the symbolic expression, and the more tender years of the relevant student population, then District Judge (now Circuit Judge) Greenaway found that the "substantial interference" test had not been met by the defendant school officials. Id. at 645. Judge Greenaway aptly noted that "as a general matter '[t]he passive expression of a viewpoint in the form of a button worn on one's clothing 'is certainly not in the class of those activities which inherently distract students and

break down the regimentation of the classroom.'" Id. (quoting Chandler v. McMinnville Sch. Dist., 978 F.2d 524, 531 (9th Cir. 1992) (record did not support the district court finding that wearing of the "scab" buttons by students who were children of striking teachers objecting to non-union replacements was inherently disruptive), and Burnside, 363 F.2d at 748 (5th Cir. 1966) (no substantial interference with school operations when students wore "freedom buttons" advocating one man one vote)).

If there is one thing that the cases make clear, it is that the evasive adage "rules are rules" is insufficient to justify restrictions on student speech by school officials. They must respond with an affirmative showing that a rule curtailing protected speech is necessary in this particular case to prevent a reasonable potential for disruption of the school environment. Since Defendants have not attempted to articulate, much less substantiate, such a justification, their actions do not pass constitutional muster.

B. A Misguided Desire to Avoid a Non-Existent Establishment Clause Concern Does Not Justify Restrictions on Free Speech.

C.H. and her father have also raised credible factual allegations that the actual reason for Defendants' action is a mistaken belief that religious speech by students is not permitted in public schools. Defendants may therefore argue

that their censorship of C.H. does not fall within the holding of Tinker, but is a permitted enforcement of "legitimate pedagogical concerns" under Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988), the alleged "legitimate pedagogical concern" presumably being avoidance of an Establishment Clause violation.

It is true that in "exercising editorial control over the style and content of student speech in school-sponsored activities," the Court in Hazelwood held that "educators do not offend the First Amendment . . . so long as their actions are reasonably related to legitimate pedagogical concerns." Id. at 273. The critical distinction between Hazelwood and this case, however, is that C.H.'s censored speech would not take place in the context of a school-sponsored activity.

As this Court and others have noted, "Hazelwood's 'legitimate pedagogical concern' test only applies when a student's school-sponsored speech could be viewed as the speech of the school itself." O.T. v. Frenchtown Elementary Sch. Dist. Bd. of Educ., 465 F. Supp. 2d 369, 376 (D.N.J. 2006) (Wolfson, J.) (school action in preventing elementary school child from choosing to sing hymn "Awesome God" in an after-hours school-wide talent show violated First Amendment). School-sponsored speech occurs when a public school, or other government entity, aims "to convey its own message." Id. (quoting Rosenberger v.

Rector & Visitors of Univ. of Virginia, 515 U.S. 819, 833 (1995)). "[W]hen a school or other government body facilitates the expression of 'a diversity of views from private speakers,' the resulting expression is not school sponsored speech." O.T., 465 F. Supp. at 376 (quoting Rosenberger, 515 U.S. at 834); see generally, Josie Brown, Representative Tension: Student Religious Speech and the Public School's Institutional Mission, 38 J.L. & Educ. 1 (2009).

Unlike the situation in Hazelwood, which involved the officially school-sponsored newspaper in which students participated for academic credit, no one could plausibly contend that C.H.'s proposed speech in handing out individual leaflets and wearing an armband would become, either in perception or reality, school-sponsored speech. Once this proposition is accepted, any constitutional justification for limiting C.H.'s speech based on a desire to avoid violating the Establishment Clause also fails, regardless of whether one characterizes C.H.'s speech as religious speech, political speech, or any other kind of speech.

Although it has adverted to the abstract possibility that avoiding an Establishment Clause violation might provide a compelling state interest to justify suppression of religious speech, in reality the Supreme Court has consistently rejected an "Establishment Clause defense" in bona fide free speech

cases. See e.g., Good News Club, 533 U.S. at 113; Lamb's Chapel v. Cent. Moriches Union Free Sch. Dist., 508 U.S. 384, 395 (1993); Widmar v. Vincent, 454 U.S. 263, 271-73 (1981); Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753, 762 (1995). The ability of students to discern whether the speech at issue is school-sponsored is the key in determining whether the censorship is justified as a "legitimate pedagogical concern." See Hazelwood, 484 U.S. at 271-72 ("A school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics"); Walz v. Egg Harbor Twp. Bd. of Educ., 342 F.3d 271, 276 (3d Cir. 2003) ("[T]he age of the students bears an important inverse relationship to the degree and kind of control a school may exercise: as a general matter, the younger the students, the more control a school may exercise.").

In a high school setting such as Bridgeton High School, however, courts have uniformly accepted the premise that "secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis." Bd. of Educ. v. Mergens, 496 U.S. 226, 250 (1990). Indeed, as Justice O'Connor wrote for the plurality in Mergens:

> [T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect. We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis. . . . The proposition that schools do not endorse everything they fail to censor is not complicated.

Id. (emphasis in original.) Therefore, high school students have the maturity to discern that speech by a student wearing a pro-life armband and handing out personal literature during non-instructional times can in no way be mistaken as school-sponsored speech as the school is not aiming "to convey its own message." Rosenberger, 515 U.S. at 833. Indeed, this Court in O.T. did not express concerns about the danger of second grade students misunderstanding an individual student's religious speech as school-sponsored speech, so it would seem a fortiori that this danger would not be present in a high school setting.

Nor does this case bear any resemblance to Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 311-12 (2000), in which an ostensibly voluntary student prayer conducted before school-sponsored football games was struck down. The Court concluded that the objective student acquainted with all the circumstances surrounding the challenged practice would "perceive the inevitable pregame prayer as stamped with her school's seal of approval." Id. at 308. In this case, the speech of C.H. is not

funded by public resources, encouraged by the school, nor did it fall under the auspices of a school-sponsored activity or consume any instructional time. No reasonable observer acquainted with all the surrounding circumstances of C.H.'s proposed expression could reasonably conclude that the school has sponsored or endorsed C.H.'s speech.

C. The Board of Education's Student Dress Policy Does Not Cover C.H.'s Proposed Conduct by its Terms, and If It Did, It Would Unconstitutionally Infringe on Free Speech Rights.

Defendants will apparently cite its Pupil Dress Policy (Policy 5132), in defense of the decision to ban the armband proposed by C.H. As explained below, Policy 5132 does not by its terms prohibit C.H.'s proposed conduct, and the doctrine of constitutional avoidance counsels against interpreting it unreasonably to trigger a constitutional issue. For if the constitutional issue is addressed, Tinker stands clearly for the proposition that a rule that forbids C.H. from wearing a "LIFE" armband infringes on her right to engage in symbolic speech.

1. Policy 5132 By Its Terms Does Not Authorize a Ban of an Armband.

At the outset, it is important to note that this case presents neither the opportunity nor the necessity of passing upon the constitutionality of a general school uniform or dress

policy.[6] C.H. has worn the prescribed Bridgeton School uniform in the past, is completely willing to do so in the future, and is not challenging its constitutionality in this case. All she wishes to do is wear an adornment in addition to the prescribed uniform. Nothing in the text of Policy 5132 prohibits this.[7] Only if one engages in the strained interpretation that the policy requiring a student to wear a school uniform implicitly enacts a complete ban on anything other than that school uniform does a question arise as to whether Policy 5132 is implicated in this case at all.

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[6] Cf. Palmer v. Waxahachie Ind. Sch. Dist., 579 F.3d 502 (5th Cir. 2009) (upholding constitutionality of school uniform policy requiring that students wear solid color polo shirts without printed messages); Jacobs v. Clark County Sch. Dist., 526 F.3d 419 (9th Cir. 2008) (same). To the best of Amicus's knowledge, the Third Circuit has not yet had occasion to hear a First Amendment challenge to a general school uniform policy.

The school dress policy at issue in Palmer, it should be noted, allowed political pins, buttons, bumper stickers, or wrist bands, 579 F.3d at 506, and thus the issue presented in this case did not arise. Likewise, the challenge in Jacobs was being required to wear a designated school uniform rather than a T-shirt with a printed message. 526 F.3d at 423. It did not involve an attempt by a student who was complying with the school uniform policy to wear an additional adornment with a printed message. Id.

[7] Interestingly, the Addendum to Policy 5132, for Bridgeton students in pre-kindergarten to 8th grade requires that "[t]he total uniform must be visible at all times." This requirement, however, is not contained in the Addendum for Bridgeton High School. Nevertheless, C.H. has made it clear that the armband will not obscure any part of the prescribed maroon polo shirt.

Such an interpretation of Policy 5132 is labored at best. If the Board had intended to enact a comprehensive ban on all symbolic or expressive adornment on clothing, it could have, and presumably would have, said so in plain language. Instead, Policy 5132 begins by noting the general policy of the district that "recognizes the right of students and parents or guardians to exercise personal judgment within certain boundaries in matters of dress." Its further provisions are replete with references that assume that students may wear supplementary expressive adornments. For instance, Policy 5132 provides:

> Clothing and jewelry shall be free of writings, pictures, or any other insignia which contain sexually explicit ideas, profanity or vulgarity; advertise illegal substances or promote any activity the administration considers illegal or inappropriate; or advocates racial, ethnic, sexual or religious prejudice; or encourage the use of drugs or alcohol. Students shall not wear any type of clothing, apparel, or accessories that indicates the student is a member of or is affiliated with any gang.

This provision prescribing certain problematic writings or insignia would of course be rendered superfluous if the Board had intended to adopt a blanket policy prohibiting any and all expressive adornments. Moreover, the Board has now implemented a student uniform policy for all students in all grades in the district. Thus, in order to accept the contention that the Board intended, sub silentio, to exclude any and all additional expressive adornments, one would also have to engage in the

untenable inference that the school uniform policies (both labeled merely as "Addendum" in the Policy) have now repealed by implication the main body of Policy 5132 itself, including the general acknowledgment of the right to discretion in clothing contained in its opening sentence.

To conclude that the Board thus intended to render as utter surplusage the main text of the Policy that is still published and on the books--and thereby force a constitutional confrontation that Policy 5132 by its own text seeks to avoid--would violate a number of customary axioms of textual construction. Repealers by implication are of course disfavored. E.g., Rodriguez v. United States, 480 U.S. 522, 524 (1987); Reg'l Rail Reorganization Act Cases, 419 U.S. 102, 133 (1974); United States v. Borden Co., 308 U.S. 188, 198 (1939). Likewise, interpretations that "render superfluous other provisions in the same enactment are strongly disfavored." E.g., Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 609 (1998) (quoting Freytag v. Commissioner, 501 U.S. 868, 877 (1991)). Therefore, the only reasonable interpretation of Policy 5132 is that all of its provisions should be read in harmony with each other, with all of its language having operative effect.

Such a construction inevitably leads to the conclusion that the armband proposed by C.H. does not violate Policy 5132 on its

face. When presented with the reasonable opportunity to do so through textual interpretation, a court should avoid a constitutional issue whenever possible. E.g., Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1, 7 (1993); Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988); NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 500-01 (1979). Such an opportunity clearly exists here.[8]

2. If Construed to Cover C.H.'s Proposed Activity, Policy 5132 Violates Her Rights Under the First Amendment.

If the Court deems it necessary to confront the constitutional issue associated with banning the armband by Defendants pursuant to Policy 5132, then Amicus ACLU-NJ's position is straightforward: unless Defendants can demonstrate that C.H.'s proposed expression would "materially and

[8] Amicus recognizes that construction of a state school board enactment to determine whether school officials were acting within their lawful authority is a state law issue that is not normally the function of a federal district court. In the context of this case, however, the assertion by school officials of a post hoc justification for their action that was not proffered to C.H. or her father at the time of their decision, in conjunction with their contemporaneous denial of her right to distribute pro-life leaflets, is persuasive evidence indicating that their proffered justification is pretextual, and that their actual motive in taking these actions was to do precisely what Tinker forbids under the federal constitution: avoiding the discomfort and unpleasantness that accompany an unpopular or controversial viewpoint.

substantially interfere with the requirements of appropriate discipline in the operation of the school," then Tinker dictates the result. 399 U.S. at 505. Absent such an affirmative showing, limitations on pure student speech violate the First Amendment.

While it is true that there is some doctrinal foment in other circuits as to whether the Tinker "substantial interference" standard applies to general school regulations that are not overtly content or viewpoint-based,[9] both the Third

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[9] The Fifth and Ninth Circuits have employed the "intermediate scrutiny" test of United States v. O'Brien, 391 U.S. 367 (1968), to determine the constitutionality of facially content neutral school regulations that indirectly limit student speech. Palmer, 579 F.3d at 508 (upholding constitutionality of school uniform policy requiring that students wear solid color polo shirts without printed messages);[9] Jacobs, 526 F.3d at 419, 429 n.23 (same). "Thus, the School Board's 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 at 508.

Amicus ACLU-NJ has not found any Third Circuit case in which the O'Brien intermediate scrutiny analysis was employed in a student speech case, and as described below, the Third Circuit has followed Tinker as the general rule subject to specified "exceptions." See, Pounds v. Katy Indep. Sch. Dist., 517 F. Supp. 2d 901, 912-13 (S.D. Tex. 2007) (noting that the Third Circuit in Saxe and this Court in DePinto used the Tinker analytical framework rather than the intermediate scrutiny test of the Fifth Circuit).

Even if intermediate scrutiny were the proper test, however, the record in this case casts significant doubt as to whether

(footnote continued on next page)

Circuit and this Court[10] have as a general rule adopted Tinker's approach with regard to all school regulations that impinge upon student speech. J.S. v. Blue Mountain Sch. Dist., 593 F.3d 286, 296 (3d Cir. 2010) (majority applying Tinker and finding "substantial interference" justifying school discipline against student who posted fake profanity-laced MySpace.com page suggesting principal was sex addict and pedophile); Layshock v. Hermitage Sch. Dist., 593 F.3d 249, 256 (3d Cir. 2010)(applying Tinker and finding "substantial interference" not proved that justified discipline against student for creating fake profile of principal on personal computer); Saxe, 240 F.3d at 213 (applying Tinker and finding "substantial interference" not established that justified overbroad anti-harassment policy); Sypniewski v. Warren Hills Reg'l Bd. of Educ., 307 F.3d at 257-58 (despite prior history of racial incidents, school officials could not ban students from wearing a Jeff Foxworthy t-shirt referring to "rednecks" because they had an unsubstantiated prediction that it would cause disruption).

Defendants' actions are unrelated to the suppression of student expression, also whether the incidental restrictions on First Amendment activities are no more than is necessary to facilitate that interest, given the effective total ban on C.H.'s pro-life expression that defendants' actions have imposed.

[10] Depinto v. Bayonne Bd. of Educ., 514 F. Supp. 2d 633, 645 (D.N.J. 2007) (applying Tinker with exceptions analysis).

The situations in which the Third Circuit has found that it is unnecessary for the Tinker "substantial interference" standard to be satisfied are limited to three specific exceptions created by subsequent Supreme Court decisions: (1) student speech in an organized school function that contained "pervasive sexual innuendo;"[11] (2) situations where speech appears to be school-sponsored, such as in a school newspaper;[12] and (3) student speech in an organized school function that could reasonably be construed as advocating the use of illegal drugs.[13] Saxe, 240 F.3d at 212-14 (noting Supreme Court cases subsequent to Tinker creating specific exceptions to "substantial interference" standard); J.S., 593 F.3d at 296-97 (same); Layshock, 593 F.3d at 257-58 (same).

Needless to say, none of these three "exceptions" to Tinker are even colorably involved here. C.H.'s proposed speech is obviously not "pervasive sexual innuendo," nor, as demonstrated above, could it be perceived as school-sponsored speech, and it obviously does not advocate the use of illegal drugs. Thus, under Tinker unless Defendants can articulate and then prove the actual and non-speculative potential for substantial

[11] Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986).

[12] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 272-73 (1988).

[13] Morse v. Frederick, 551 U.S. 393, 396-97 (2007).

interference with the operation of the school, their actions violate the First Amendment.

If the facts at issue in Saxe, Layshock, Sypniewski and DePinto did not satisfy the Tinker "substantial interference" standard, it is difficult to see how C.H. wearing an armband proclaiming her support of "LIFE" could ever be found to do so. Absent a remarkable evidentiary showing by Defendants that Amicus ACLU-NJ cannot presently articulate or even imagine, there is only one possible conclusion: Defendants banning of her expression violates the First Amendment.

II. POLICY 1140 AND POLICY 3132 VEST UNBRIDLED DISCRETION IN THE HANDS OF SCHOOL OFFICIALS AND THEREBY ALLOW FOR THE RESTRAINT OF EXPRESSIVE ACTIVITY BASED ON CONTENT.

It is axiomatic in First Amendment jurisprudence that a state regulation that:

> makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official -- as by requiring a permit or license which may be granted or withheld in the discretion of such official -- is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms. . . .

Shuttlesworth, 394 U.S. at 151 (quoting Staub v. City of Baxley, 355 U.S. 313, 322 (1958)). Thus:

> In the area of freedom of expression it is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a

> properly drawn statute, and whether or not he applied for a license.

Freedman v. Maryland, 380 U.S. 51, 56 (1965) (emphasis added).

Indeed, the aversion to granting unbridled discretion to a government official to allow or disallow speech is so strong that a statute bestowing such unbridled discretion is "void on its face." Lovell v. Griffin, 303 U.S. 444, 452 (1938); accord, Lakewood, 486 U.S. at 755 (where regulation "allegedly vests unbridled discretion in a government official over whether to permit or deny expressive activity, one who is subject to the law may challenge it facially . . . .").

The doctrine forbidding unbridled discretion also disallows the presumption that the government official "will act in good faith and adhere to standards absent from the ordinance's face." Lakewood, 486 U.S. at 770. Thus, "'a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license' must contain 'narrow, objective, and definite standards to guide the licensing authority.'" Forsyth County v. Nationalist Movement, 505 U.S. 123, 131 (1992) (quoting Shuttlesworth, 394 U.S. at 150-51).

Against this backdrop, both Bridgeton School District policies at issue here:

- Policy 1140, granting the Superintendent the discretion to permit leafleting (or not), and

- Policy 5132, granting the principal and staff of Bridgeton High School the discretion to curtail individual expression through clothing (or not),

suffer from the same constitutional defect. The very fact, standing alone, that school officials exercise uncabined discretion "creates an impermissible risk of suppression of ideas . . ." Forsyth County, 505 U.S. at 129. As shown below, both Policies 1140 and 5132 vest such unbridled discretion.

A. Policy 1140 Grants Unbridled Discretion to the Superintendent to Permit or Prohibit Viewpoints, and Is Therefore Facially Unconstitutional.

Policy 1140 governing distribution of literature on school premises, is perhaps the paradigm of a regulation that vests unbridled, and thus unconstitutional, discretion, in the licensing official.

> Pupils, employees, and district facilities shall not be used for advertising or promoting the interests of any person, nonschool sponsored agency or organization, public or private, without the approval of the Superintendent or designee; and such approval granted for whatever cause or group shall not be construed as an endorsement of said cause or group by the board. . . .

The scope of this licensing scheme is breathtakingly broad. A regulation governing communications that promote "the interests of any person, nonschool sponsored agency or organization, public or private," essentially covers the entire universe of public discourse. It covers flyers promoting the Pro-Life Day of Silent Solidarity just as it would cover leaflets advocating

a pro-choice position. Nor does it only govern controverted topics. For example, it covers advocacy against childhood lead poisoning, which advocacy certainly promotes "the interests of any person," even though presumably there are no advocates who take the contrary position. Whether or not discussion of any or all of these topics is permitted in the designated public forum of a school setting is committed to the discretion of the school Superintendent or his designee, who is given absolutely no guidelines as to how to exercise that discretion.

In Child Evangelism Fellowship of Maryland, Inc. v. Montgomery County Pub. Schs., 457 F.3d 376 (4th Cir. 2006), the Fourth Circuit applied the unbridled discretion doctrine in the school setting and struck down a school policy that gave such discretion to school officials to decide whether to permit a religious organization to use take-home flyers to inform parents of elementary school children of its "Good News Club" meetings. The Court found "compelling" the argument that the policy gave the school district "unfettered discretion to deny access to the take-home flyer forum for any reason at all--including viewpoint discrimination." Id. at 386. "The danger of such boundless discretion, therefore, is that the government may succeed in unconstitutionally suppressing particular protected speech by hiding the suppression from public scrutiny." Id.

Likewise, in M.B. v. Liverpool Cent. Sch. Dist., 487 F. Supp. 2d 117 (N.D.N.Y. 2007), a fifth grade student was denied permission to distribute copies of a "personal statement" flyer containing her religious beliefs during non-instructional times at her school. The court ruled that the school policy failed to provide the necessary objective guidance to help district officials decide whether to permit or deny a student request to distribute materials, and therefore did not prevent district officials from "exercising their virtually unfettered discretion to suppress disfavored speech or disliked speakers." Id. at 145.

Bridgeton's Policy 1140 is the same. It is devoid of any limitations on the Superintendent's discretion, or guidance on how it should be exercised.[14] It tells the Superintendent to permit communication--or not. The Superintendent may therefore

[14] If one were empowered to edit the School Board's policies, one might alter the phrase "such approval granted for whatever cause or group shall not be construed as an endorsement of said cause or group by the board" to "such approval shall be granted if it will not be construed as an endorsement of said cause or group by the board." Alas, that is not the text that the Board enacted, and this phrase, as written, is clearly not a qualification on whether to grant such approval, but rather merely a disclaimer and an expression of the Board's aspiration as to how the Superintendent's approval would be construed. Even if this Court were to engage in radical judicial surgery and rewrite Policy 1140 for the Board, the result of this case would remain the same, since as demonstrated in Part I.B., it is not reasonable to contend that the Board would be construed as endorsing C.H.'s individual speech.

permit students such as C.H. to distribute literature on topics about which they have opinions--or not. In this case, he chose not, without any explanation or articulation of reasons by which a reviewing court could satisfy itself that the decision was not based on viewpoint discrimination. For this reason alone, the Policy is facially unconstitutional, and Plaintiff is entitled to relief.

B. Policy 5132 Grants Unbridled Discretion to the School Authorities to Permit or Prohibit Symbolic Expression, and Is Therefore Facially Unconstitutional.

Policy 5132, governing student attire, is similarly bereft of any standards by which to circumscribe the potential abuse of discretion by school officials. It begins admirably with recognition of "the right of students and parents or guardians to exercise personal judgment within certain boundaries in matters of dress." But it then inexplicably delegates to the principal, staff and parents of a particular school the power to contravene that policy by adopting a school uniform, without giving any criteria or guidance in deciding whether to engage in this startling turnabout of the Board's default policy. It then compounds the error by vesting in the school principal the discretion to grant "exceptions" to the school uniform policy:

Exceptions: (At the discretion of the Principal)

- Shorts – September, October, April, May and June only

- AFROTC mandatory uniform days, Thursdays and Fridays
- BHS team jerseys on game days – Jersey must be worn over the uniform shirt.
- BHS Spirit Week "theme" days.
- BHS Musical Advertisement Week – T-Shirts must be worn over the uniform shirt.
- Academy Spirit Days – must be goal oriented – one day each marking period.
- Academy clothing such as polos and sweatshirts may be worn.
- Academy emblems on polos are permitted as an incentive or reward.

(A-5, emphasis added). The principal is therefore empowered to alter the student dress code at will in order to promote certain chosen viewpoints ("goal oriented"), to communicate approval ("as an incentive or reward"), to promote certain groups (AFROTC), to advocate for school camaraderie ("BHS Spirit Week 'theme' days"), or advance certain school activities ("BHS Musical Advertisement Week").

To allow the principal the discretion to pick and choose from among various messages that are favored, and thus permissible to be communicated on clothing accessories, is a clear example of unbridled discretion. As this Court found in O.T., when school officials permitted some religiously themed songs in an afterschool concert but banned plaintiff's proposed performance because they judged it too "proselytizing" and thus controversial, such an exercise of discretion constituted

impermissible viewpoint based discrimination. O.T., 465 F. Supp. 2d at 379 (citing Church on the Rock v. City of Albuquerque, 84 F.3d 1273, 1279 (10th Cir. 1996)).

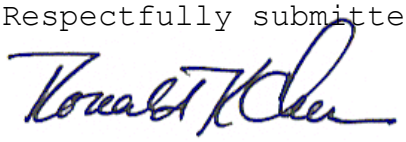
Any contention that the school uniform policy is necessary to advance cohesion or conformity is belied by the principal's freedom of choice on whether to relax or eliminate the policy, and by the unbridled discretion on whether to have a school uniform policy in the first place. Thus, an assertion that banning C.H.'s armband is necessary to prevent substantial disruption of school operations lacks credibility.

CONCLUSION

As the Third Circuit has aptly noted: "To exclude a group simply because it is controversial or divisive is viewpoint discrimination. A group is controversial or divisive because some take issue with its viewpoint." Child Evangelism Fellowship of N.J., 386 F.3d at 527. So too it is here. For the reasons stated herein, Amicus Curiae American Civil Liberties Union of New Jersey respectfully urges this Court to enter a permanent injunction in favor of Plaintiff C.H. in this matter.

March 24, 2010.

Respectfully submitted,



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ATTACHMENT A

PUPIL DRESS CODE 5132

The Board of Education recognizes the right of students and parents or guardians to exercise personal judgment within certain boundaries in matters of dress. It is our belief that neatly attired students take pride in themselves; therefore, they are more likely to practice habits of self-discipline and display a positive attitude and demeanor in the school setting. School uniforms shall be worn in schools where it has been requested by the principal, staff and parents. The school principal shall ensure that assistance is provided to economically disadvantaged students. The assistance may include, but not be limited to, providing information about how and where to obtain the uniform considering the parent's budget limitations. The specific uniform selected shall be determined by the principal, staff, and parents of the individual school.

This policy shall not preclude students who participate in a nationally recognized youth organization, which is approved by the board of education from wearing uniforms to school on days that the organization has scheduled a meeting. School regulations prohibit pupil dress or grooming practices which:

1. Present a hazard to the health or safety of the pupil or to others in the school.

2. Interfere with schoolwork by creating disorder or disruption in the educational process.

3. Prevent the pupil from achieving his/her own educational objectives because of blocked vision or restricted movement.

In addition:

1. Clothing and jewelry shall be free of writings, pictures, or any other insignia which contain sexually explicit ideas, profanity or vulgarity; advertise illegal substances or promote any activity the administration considers illegal or inappropriate; or advocates racial, ethnic, sexual or religious prejudice; or encourage the use of drugs or alcohol. Students shall not wear any type of clothing, apparel, or accessories that indicates the student is a member of or is affiliated with any gang.

Pupil Dress Code (Continued)

2. Clothes shall be sufficient to conceal undergarments at all times. See-through or fishnet fabrics, halter tops, off-the-shoulder or low-cut tops, midriff/half shirts, low-hanging pants, and skirts or shorts shorter than mid-thigh are prohibited.

3. Shoes or sneakers must be worn at all times. Bedroom slippers, flip-flops, or any footwear considered unsafe are not permitted.

4. Hats, caps, bandanas, or other head covering shall not be worn indoors. Curlers and combs in hair are not permitted.

Students who choose not to comply with these guideline shall be subject to disciplinary action in accordance with the current district discipline policy.

Legal References: N.J.S.A. 18A:37-1 Submission of pupils to authority
N.J.S.A. 18A:11-1 General mandatory powers and duties
N.J.A.C. 6:8-2.1(a) State Educational Goals
N.J.S.A. 18A:11-8

Adopted: December 8, 1998
Revised: March 8, 2005

Pupil Dress Code (Continued) **Addendum**

Bridgeton Public Schools PK-8
Uniform Program

Tops: Maroon polo shirts with collar – short & long sleeve.
All polo shirts must be long enough to be worn **tucked** in pants. Long sleeve plain white T-Shirt **can** be worn under the short-sleeved polo – sleeves down**. Hooded sweatshirts will not be permitted.**

Bottoms: Khaki colored, pants, skirts and shorts. All skirts and shorts must reach mid-thigh both in the front and back. Cargo pants with pockets along the side of the leg, spandex leggings, knot pants and jeans are not permitted.

Shoes and Sneakers: All shoes and sneakers must cover the entire foot.

Belts: Must be black with a *small* buckle (3" or less) and must be worn if pants have belt loops. Adornments like studs or fringes are inappropriate.

Jewelry: All necklaces must be worn under the polo shirts.

There are several local businesses that will provide the required uniform. You may purchase the uniforms at the following businesses of your choice:

- Enterprise Uniform Company
- Wal-Mart
- JC Penney
- Forman Mills

The total uniform must be visible at all times.

NOTE: Warm Weather Attire (shorts) during the months of September, May and June.

Adopted: September 12, 2006

Pupil Dress Code (Continued) **Addendum**

Bridgeton Public Schools
High School Uniform Program

Tops: Maroon or Gray polo-type shirts, short or long sleeve.
Shirts must not cover pant pockets and *must* be tucked***** if they do cover pockets.
Polo shirts must be worn at all times.

Camisoles and T-shirts (long or short sleeve): Can be worn under the uniform shirt but must be solid white, gray, maroon or black. Both *must* be tucked***** at all times.

Sweatshirt: Solid white, gray, maroon or black, crew or hooded. No lettering or design other than official BHS clothing is permitted. Hood *may not* be worn in school.

Sweaters: Solid white, gray, maroon or black with no lettering or design.

Bottoms: Black khakis up to 4 pockets at the waist, black capris, black skirts and black shorts. All skirts and shorts must reach mid-thigh both in the front and back. Spandex leggings, knit pants/shorts and jeans are not permitted. All bottoms must be worn at the waist and must fit properly. At no time are warm up pants permitted including sports teams.

Footwear: Black or white (combination of black and white is permitted) shoes, boots, or sneakers. Footwear with any other color, no matter haw small, is not permitted. All shoes must cover the entire foot. Socks that are visible must be solid white, gray, maroon or black. Panty hose and knee highs are permitted. Tights (with feet) worn under skirts must be solid black.

Belts: Must be black with a *small* buckle (3" or less). No adornments like studs or fringes are permitted.

Jewelry: All necklaces must be worn under the polo shirts.

Outerwear: Outerwear may not be worn during the school day.

***Safety and Security @ BHS**: Shirts may be "untucked" so long as the pockets are clearly visible with the pant waistband at the waist. This means that all pants must be pulled up to the waist at all times and the shirt short enough as to not cover the front and back pockets. Lowering the pants to accommodate this requirement will not be allowed. If the shirt is too long, it must be tucked into the pants. All shirt bottoms must be hemmed. T-shirts and camisoles MUST be tucked into pants AT ALL TIMES.

Pupil Dress Code (Continued) **Addendum**

Exceptions: (At the discretion of the Principal)

Shorts – September, October, April, May and June only.
AFROTC mandatory uniform days, Thursdays and Fridays.
BHS team jerseys on game days – Jersey must be worn over the uniform shirt.
BHS Spirit Week "theme" days.
BHS Musical Advertisement Week – T-Shirts must be worn over the uniform shirt.
Academy Spirit Days – must be goal oriented – one day each marking period.
Academy clothing such as polos and sweatshirts may be worn.
Academy emblems on polos are permitted as an incentive or reward.

Revised: August 14, 2007