

1 THE O'MARA LAW FIRM, P.C.
2 DAVID C. O'MARA (Nevada Bar No. 8599)
3 311 East Liberty Street
4 Reno, NV 89501
5 Telephone: (775) 323-1321
6 Facsimile: (775) 323-4082
7 david@omaralaw.net

8 BENBROOK LAW GROUP, PC
9 BRADLEY A. BENBROOK*
10 STEPHEN M. DUVERNAY*
11 400 Capitol Mall, Suite 2530
12 Sacramento, CA 95814
13 Telephone: (916) 447-4900
14 brad@benbrooklawgroup.com
15 steve@benbrooklawgroup.com

16 EUGENE VOLOKH*
17 UCLA School of Law
18 405 Hilgard Ave.
19 Los Angeles, CA 90095
20 Telephone: (310) 206-3926
21 eugene.volokh@gmail.com

22 *Pro hac vice applications to be submitted

23 Attorneys for Plaintiff

24 UNITED STATES DISTRICT COURT
25 DISTRICT OF NEVADA

26 G.M., a minor, by and through AUDREY
27 GUARDANAPO and SHAUN
28 GUARDANAPO,

Plaintiff,

v.

WASHOE COUNTY SCHOOL DISTRICT;
KENDYL DEPOALI MIDDLE SCHOOL; and
JOYE ANCINA, in her official capacity as
Principal, Kendyl Depoali Middle School,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, OR OTHER RELIEF**

1 Plaintiff G.M., by and through Audrey Guardanapo and Shaun Guardanapo¹ as his next
2 friends, complains of Defendants and alleges:

3 **INTRODUCTION**

4 1. This is a First Amendment challenge to Kendyl Depoali Middle School's
5 suppression of a student's political speech based on school officials' disagreement with the
6 student's message—or at least their interpretation of it.

7 2. Plaintiff G.M. engaged in a respectful, silent, and peaceful expression of his
8 political views by wearing a Firearms Policy Coalition ("FPC") t-shirt to school. FPC is a non-
9 profit public-policy organization that supports constitutional rights, including the right to keep and
10 bear arms and the First Amendment right to speak out in favor of Second Amendment rights. The
11 shirt's imagery and text invoke the constitution and themes dating back to the American
12 Revolution. Specifically, the shirt includes the words "Don't Tread On Me" and a coiled
13 rattlesnake (familiar elements of the Gadsden flag), flanked by references to the United States of
14 America ("USA") and the Second Amendment ("2A"). The shirt also includes the words
15 "Firearms Policy Coalition." There are no depictions of firearms or weapons of any kind on the
16 shirt. In short, G.M. was expressing his support for FPC and the defense of constitutional rights,
17 including the Second Amendment.

18 3. G.M.'s teacher directed him to remove the shirt because, based on her subjective
19 interpretation of the message being conveyed, she believed it violated the school's dress code. She
20 told G.M. he would be subject to further discipline if he wore it again. When G.M. told his teacher
21 that it was his "right to express [himself] through how [he] dress[ed]," the teacher told G.M. that
22 he could have his "Second Amendment rights when [he] turn[s] eighteen."

23 4. This was unconstitutional. As any social studies teacher should know, the First
24 Amendment protects students' right to speak on political or social issues—including the right to
25 express what school officials may consider unpopular or controversial opinions. G.M.'s shirt did
26

27 ¹ Because Audrey and Shaun have the same last name, the Complaint refers to them by their
28 first names for clarity.

1 not substantially disrupt or materially interfere with the work of the school or the rights of his
2 fellow students. The shirt did not promote or advocate illegal activity; it contained no violent or
3 offensive imagery; nothing on it was obscene, vulgar, or profane. Through his shirt, G.M. sought
4 to convey his views on a national debate about a serious issue, and to voice support of
5 constitutional rights. It was pure political speech, which, “of course, is ‘at the core of what the
6 First Amendment is designed to protect.’” *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (quoting
7 *Virginia v. Black*, 538 U.S. 343, 365 (2003)). And yet G.M. was prevented from wearing his shirt
8 based on school officials’ disagreement with the message they believed it conveyed.

9 5. For nearly half a century, it has been the “unmistakable holding” of the Supreme
10 Court that students do not “shed their constitutional rights to freedom of speech or expression at
11 the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).
12 In *Tinker*, the Court made clear that school officials may not suppress student speech based on the
13 “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular
14 viewpoint” or “an urgent wish to avoid the controversy which might result from the expression.”
15 *Id.* at 509, 510. Accordingly, “student expression may not be suppressed unless school officials
16 reasonably conclude” that the expression “will materially and substantially disrupt the work and
17 discipline of the school.” *Morse*, 551 U.S. at 403 (citing *Tinker*, 393 U.S. at 513).

18 6. The constitutional violation here is all the more apparent given that the school
19 allows—even encourages and endorses—expression of different viewpoints on at least one of the
20 subjects G.M.’s shirt addressed, namely the exercise of Second Amendment rights. Shortly after
21 G.M. was disciplined, students at the school participated in the National School Walkout, a formal,
22 organized protest calling for expansive new gun control measures. The school likewise authorized
23 a second walkout on April 20, 2018. Such viewpoint-based discrimination violates the First
24 Amendment. *Tinker*, 393 U.S. at 511 (“[T]he prohibition of expression of one particular opinion .
25 . . is not constitutionally permissible.”). *See also Rosenberger v. Rector and Visitors of Univ. of*
26 *Va.*, 515 U.S. 819, 828–29 (1995) (regulating speech based on “the specific motivating ideology or
27 the opinion or perspective of the speaker” is a “blatant” and “egregious form of content
28 discrimination”).

1 relevant portions of the Parent-Student Handbook is attached as Exhibit 1.

2 15. The District's dress code provides the following general limitations on language
3 and illustrations on clothing:

- 4
- 5 • No obscene, vulgar, profane, or derogatory language or illustrations on clothing;
 - 6 • No sexual overtones, or anything that promotes weapons, alcohol, drugs, tobacco, gang membership, or violence; and
 - 7 • Nothing that may be deemed a safety issue.

8 *Id.* at 24.

9 16. To implement the District's dress code, Kendyl Depoali Middle School has adopted
10 a site-specific dress code as part of its progressive discipline plan, which provides the same
11 limitations on language and illustrations on clothing as the district's dress code. The school's
12 dress code also establishes a "sequential and progressive discipline plan" for dress code violations.
13 A true and correct copy of the school's dress code is attached as Exhibit 2.

14 17. In addition to the district's comprehensive dress code and school-specific dress
15 codes, Washoe County School District has adopted an administrative procedure to establish
16 guidelines for regulating student speech through clothing. Washoe Cty. Sch. Dist., *Admin. Proc.*
17 *5101, Guidelines for Regulating Student Speech Through Clothing* (Rev. 1.0, Oct. 6, 2014). These
18 guidelines explain that "[t]he District's dress requirements are in no way an attempt to silence free
19 expression but to create a productive, uninterrupted, and safe learning environment." *Id.* at 1. To
20 that end, the District provides six questions to guide school administrators' regulation of speech on
21 student apparel:

- 22 • Is the message verbally or visually lewd or obscene?
- 23 • Does the content contain defamatory remarks?
- 24 • Is an immediate danger created to students?
- 25 • Does the message encourage students towards illegal act?
- 26 • Is the speech a substantial disruption to the orderly operation of the school?
- 27 • Does the speech violate a specific school rule or policy?

28 A true and correct copy of the administrative procedure is attached as Exhibit 3.

1 **B. Defendants' Dress Code Enforcement Infringes G.M.'s First Amendment Right To**
2 **Express His Political Views.**

3 18. G.M. is currently an eighth-grade student at Kendyl Depoali Middle School. He
4 has been raised by Audrey and Shaun Guardanapo. G.M.'s mother, Audrey, is a police dispatcher.
5 Shaun is a veteran of the United States Marine Corps, and worked for over a decade as a law
6 enforcement officer. Through his upbringing, G.M. has come to appreciate the U.S. Constitution
7 and value public service. G.M. understands that the First Amendment protects his right to express
8 his opinions on political and social issues, and he tries to express his views in a respectful manner.

9 19. On November 20, 2017, G.M. was subject to discipline for wearing a t-shirt bearing
10 the logo from Sparks Black Rifle, a local firearms dealer. The front of the shirt features the
11 dealership's name, with the "r" in Sparks represented by a silhouette of a handgun, and the
12 silhouette of a sporting rifle. The back of the shirt has the letters "SBR," with the "R" represented
13 by a silhouette of a handgun. G.M. had worn the Sparks Black Rifle shirt to school multiple times
14 in the past. The shirt had never caused any disruption or disturbance, and G.M. had not been
15 subject to discipline. A picture of the shirt's logos is attached as Exhibit 4.

16 20. That day, G.M.'s teacher Brooke May told him that the shirt violated the school's
17 dress code because it contained a depiction of a weapon. Ms. May directed G.M. to correct the
18 dress code violation by covering the shirt. He complied by wearing a sweatshirt for the remainder
19 of the day.

20 21. On or soon after November 20, Audrey was contacted by Assistant Principal
21 Heather Curtis, who informed Audrey that G.M. had been disciplined for a dress code violation.
22 Shaun then contacted the school and spoke with Assistant Principal Curtis. Curtis explained that
23 the dress code prohibited images of weapons, and that the school enforced the policy against all
24 clothing depicting actual firearms. Curtis also explained that the policy would not prohibit, for
25 example, wearing a National Rifle Association shirt that does not have an image of an actual
26 firearm.

27 22. G.M. has not worn the Sparks Black Rifle shirt to school since November 20, 2017.

28 23. On March 12, 2018, G.M. was subject to discipline for wearing a Firearms Policy
Coalition t-shirt. FPC is a non-profit public-policy organization that supports constitutional rights,

1 including the right to keep and bear arms and the First Amendment right to speak out in favor of
2 Second Amendment rights. The shirt's imagery and text invoke the constitution and themes dating
3 back to the American Revolution. Specifically, the shirt includes the words "Don't Tread On Me"
4 and a coiled rattlesnake (familiar elements of the Gadsden flag), flanked by references to the
5 United States of America ("USA") and the Second Amendment ("2A"). There are no depictions
6 of firearms or weapons of any kind of the shirt. A picture of the FPC shirt is attached as Exhibit 5.

7 24. Ms. May directed G.M. to remove the shirt, claiming that it violated the school's
8 dress code. She told him G.M. would be subject to further discipline, including a trip to the
9 principal's office, if he wore it again. In response, G.M. told Ms. May that it was his "right to
10 express [himself] through how [he] dress[ed]," to which Ms. May responded that he could have his
11 "Second Amendment rights when [he] turn[s] eighteen."

12 25. G.M. complied with Ms. May's direction by covering the FPC shirt with a
13 sweatshirt, and G.M. has not worn the shirt to school since March 12, 2018. G.M. wants to wear
14 the FPC shirt to school again, but has refrained from doing so because he is afraid that he will be
15 subject to further discipline from the school, including detention or suspension, based on the
16 administration's threat that he would be in violation of the school dress code.

17 26. Defendants' enforcement of the district and school dress codes against G.M.
18 violates his First Amendment rights. G.M. sought to engage in "a silent, passive expression"
19 commenting on a political and social issue, which was "unaccompanied by any disorder or
20 disturbance" by G.M. *Tinker*, 393 U.S. at 508. Such "pure speech . . . is entitled to comprehensive
21 protection under the First Amendment," even in the school environment. *Id.* at 505–06.

22 27. Preserving students' freedom of speech and expression is an essential component of
23 the broader public educational mission. "Public elementary and high school education is as much
24 about learning how to be a good citizen as it is about multiplication tables and United States
25 history." *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). "That [schools] are educating the
26 young for citizenship is reason for scrupulous protection of Constitutional freedoms of the
27 individual, if we are not to strangle the free mind at its source and teach youth to discount
28 important principles of our government as mere platitudes." *West Virginia State Bd. of Educ. v.*

1 *Barnette*, 319 U.S. 624, 637 (1943). To that end, “vigilant protection of constitutional freedoms is
2 nowhere more vital than in the community of American schools. . . . The Nation’s future depends
3 upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth
4 out of a multitude of tongues, rather than through any kind of authoritative selection.” *Tinker*, 393
5 U.S. at 512 (citations omitted).

6 28. *Tinker* leaves no doubt that this requires tolerance of “controversial” opinions or
7 “unpopular” viewpoints. School officials may not suppress student speech based on the “mere
8 desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint”
9 or “an urgent wish to avoid the controversy which might result from the expression.” 393 U.S. at
10 509, 510. “[S]uppressing the expression of unpopular or controversial opinions—even in the name
11 of avoiding potential in-school disturbances—[is] a violation of the First Amendment unless the
12 school could show that, absent such suppression, the school’s orderly operation would be
13 ‘materially and substantially’ compromised.” *Jacobs v. Clark Cty. Sch. Dist.*, 526 F.3d 419, 430
14 (9th Cir. 2008) (quoting *Tinker*). Accordingly, “student expression may not be suppressed unless
15 school officials reasonably conclude” that the expression “will materially and substantially disrupt
16 the work and discipline of the school.” *Morse*, 551 U.S. at 403 (citing *Tinker*).

17 29. Defendants’ suppression of G.M.’s speech offends these constitutional standards.
18 G.M.’s shirt did not substantially disrupt or materially interfere with the work of the school or the
19 rights of his fellow students. The shirt did not promote or advocate illegal activity; it contained no
20 violent or offensive imagery; nothing on it was obscene, vulgar, or profane. Through his shirt,
21 G.M. sought to comment on a national debate about a serious issue, and to voice support of
22 constitutional rights, including the right to bear arms under the Second Amendment.

23 30. No reasonable school official would conclude that the message conveyed on the
24 FPC shirt “[would] materially and substantially disrupt the work and discipline of the school.”
25 *Morse*, 551 U.S. at 403 (citing *Tinker*). The shirt conveys a plainly political message. It identifies
26 the Firearms Policy Coalition, a public-policy organization that advocates for the protection of
27 constitutional rights. The phrase “Don’t Tread On Me” and coiled rattlesnake of the Gadsden Flag
28 date back to the Revolutionary War, where the flag was flown by the Continental Marines. More

1 recently, the Gadsden Flag has come to be associated with libertarianism and the promotion of
2 individual liberty, and by some with the Tea Party movement. In addition, the shirt references the
3 United States of America and the Second Amendment to the United States Constitution.

4 31. Ms. May directed G.M. to remove his shirt based on her subjective interpretation of
5 its message. Her admonition to G.M.—that he could have his “Second Amendment rights when
6 [he] turn[s] eighteen”—makes clear that she disagreed with the content of the shirt’s message, and
7 censored it because it expressed support for Second Amendment rights. Even though Ms. May
8 might believe this opinion is controversial or unpopular, G.M. has a constitutional right under the
9 First Amendment to express it. Public school students “may not be confined to the expression of
10 those sentiments that are officially approved,” and the First Amendment prohibits school officials
11 from tilting the debate by censoring “feelings with which they do not wish to contend.” *Tinker*,
12 393 U.S. at 511.

13 32. The school’s enforcement of the dress code against G.M. demonstrates that it is
14 unconstitutionally overbroad. Although Ms. May did not cite the provision of the dress code that
15 the FPC shirt violated, she presumably was relying on the prohibition against dress that “promotes
16 weapons.” Applying this prohibition to a shirt that conveys a lawful, nonviolent, and
17 nonthreatening message—indeed, one that supports constitutional rights—violates the First
18 Amendment. *Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.*, 354 F.3d 249, 259–60 (4th Cir.
19 2003) (holding that middle school dress code prohibiting “messages relating to weapons” is
20 unconstitutionally overbroad).

21 33. The unconstitutionality of the school’s actions is strongly confirmed by the fact that
22 the school allows—even encourages and endorses—expression of different viewpoints on at least
23 one of the subjects G.M.’s shirt addressed, namely the exercise of Second Amendment rights.
24 Shortly after G.M. was disciplined, students at the school participated in the National School
25 Walkout, a formal, organized protest calling for new gun control measures. The school likewise
26 authorized a second walkout on April 20, 2018. Such viewpoint-based discrimination violates the
27 First Amendment. Public school authorities are not permitted to suppress speech on political and
28 social issues because they disagree with the viewpoint expressed. *Tinker*, 393 U.S. at 511 (“[T]he

1 prohibition of expression of one particular opinion . . . is not constitutionally permissible.”). *See*
2 *also Rosenberger*, 515 U.S. at 828-29 (regulating speech based on “the specific motivating
3 ideology or the opinion or perspective of the speaker” is a “blatant” and “egregious form of
4 content discrimination”). When a government actor’s “suppression of speech suggests an attempt
5 to give one side of a debatable public question an advantage in expressing its views to the people,
6 the First Amendment is plainly offended.” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765,
7 785–86 (1978).

8 34. For the reasons set forth above, Defendants’ enforcement of the Washoe County
9 School District dress code and the Kendyl Depoali Middle School dress code against G.M. has
10 violated his First Amendment rights, and the threat of further discipline against him continues to
11 impose a substantial burden on his freedom of speech and expression.

12 **CLAIM FOR RELIEF**

13 **VIOLATION OF 42 U.S.C. § 1983 (FIRST AMENDMENT)**

14 35. Plaintiff incorporates here by reference paragraphs 1 through 34, *supra*, as if fully
15 set forth herein.

16 36. Defendants, acting under color of state law, have acted to deprive Plaintiff of rights
17 secured by the First Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

18 37. As a direct and proximate result of Defendants’ violation of the First Amendment,
19 Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him
20 to declaratory and injunctive relief, and nominal damages.

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiff G.M. prays for judgment as follows:

23 1. Plaintiff respectfully requests that this Court enter a declaratory judgment stating
24 that Defendants have violated the First Amendment to the United States Constitution.

25 2. Plaintiff respectfully requests that this Court enter a preliminary and permanent
26 injunction enjoining Defendants from enforcing the Washoe County School District dress code and
27 the Kendyl Depoali Middle School dress code in a manner inconsistent with the First Amendment
28 to the United States Constitution, including an order providing that G.M. is allowed to wear his

1 Firearms Policy Coalition t-shirt to Kendyl Depoali Middle School.

2 3. Plaintiff respectfully requests an award of nominal damages against Defendants for
3 violating his constitutional rights pursuant to 42 U.S.C. § 1983 and any other applicable law.

4 4. Plaintiff respectfully requests costs of suit, including reasonable attorneys' fees
5 under 42 U.S.C. § 1988 and any other applicable law, and all further relief to which Plaintiff may
6 be justly entitled.

7

8 Dated: April 23, 2018

THE O'MARA LAW FIRM, P.C.

9

By /s DAVID C. O'MARA

10

DAVID C. O'MARA

11

Attorneys for Plaintiff

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



Washoe County School District

Every Child, By Name And Face, To Graduation

Administrative Manual 5904

Parent- Student Handbook

www.washoeschools.net
775.348.0200
425 East Ninth Street
Reno, NV 89512

EX. 1

school days from the date the form was received in the District office until a resolution is proposed.

To obtain a public complaint form, a full version of the complaint resolution procedures, or to address any questions, please contact your school administrator, the WCSD Central Administration Building, or the District's website at <http://washoeschools.net/domain/209>.

Conduct / Behavior

The District believes that every student has the right to learn in a respectful, safe and inviting learning environment and that every teacher has the right to teach in an environment that is free from distractions and disruptions that impede learning. A positive school climate that holds high expectations for student behavior and growth will result in the academic, social, and emotional growth of all of students.

Consequences

Consequences for prohibited behaviors shall follow the District's and individual school's sequential and progressive discipline plan and behavioral matrix. Questions related to specific consequences should be directed to the school principal.

Dress Code

The primary responsibility for dress and grooming rests with our students and their parents/legal guardians. However, the District does reserve the right to establish a comprehensive dress code with limitations for students which addresses what clothing they may wear and how they may wear that clothing. School authorities have the professional responsibility and legal sanction to enforce student dress requirements, and within this authority, the right to request that students change their attire to conform to the District's Dress Code. The following requirements are not intended to silence expressive conduct, but instead, constitute an attempt to maintain a productive, safe, learning environment.

As specified in Washoe County School District procedures, "the dress or grooming of all students must not present potential health or safety problems or cause distractions." Specific prohibitions or limitations include, but are not limited to, the following:

Condition and Wear of Clothing

- Nothing that distracts or poses a safety hazard, to include holes, rips, or tears that reveal the body; and tight-fitting or revealing clothing.

Safety

- No clothing that can pose a potential health or safety problem;

- No gloves inside the building; no single glove at any time;
- No jewelry or chains that can cause injury, to include hanging chains and metal spiked or metal studded accessories.

Tops/Skirts/Dresses

- Tops must cover the upper and middle torso at all times;
- Skirts must cover the lower torso with no skin showing between top and skirt;
- Skirts and dresses must be at least mid-thigh in length; no mini-skirts;
- No exposed undergarments;
- No halter, tank or tube tops; no transparent, half, or muscle shirts;
- No exposed shoulders;
- No low cut necklines, exposed cleavage, or spaghetti straps;
- No pajamas, lounge wear, or bath robes; and
- Inappropriate tops may not be covered with sheer shirts, sweatshirts, or jackets.

Pants/Shorts

- Must cover lower torso with no skin showing between top and pants/shorts;
- No exposed undergarments;
- No sagging pants or shorts;
- No single rolled up pant leg;
- No exposed buttocks;
- Belt buckle monograms must be appropriate;
- No hanging or extended belt lengths;
- No unfastened overalls;
- No cut-offs;
- Shorts must be hemmed and at least mid-thigh in length; and
- No mini-shorts.

Head Coverings

- No head coverings or sunglasses worn in the building during school hours;
- Exceptions are made for religious or medical reasons; and

- No bandanas (all colors), do-rags (all colors), hairnets, surgical/shower caps, or hair picks at any time on campus or at any school-sponsored event.

Footwear

- Proper footwear at all times; and
- No house slippers.

Language / Illustrations on Clothing

- No obscene, vulgar, profane, or derogatory language or illustrations on clothing;
- No sexual overtones, or anything that promotes weapons, alcohol, drugs, tobacco, gang membership, or violence; and
- Nothing that may be deemed a safety issue.

Gang Attire

All items that have been identified as gang-related by local law enforcement agencies and WCSD school police are prohibited. The District shall consult with law enforcement agencies and other agencies to determine changes in gang appearance, dress and activities and shall inform principals or their designees about these changes as needed. Prohibited items may include but are not limited to:

- dangling belts;
- chains;
- unfastened overalls;
- sagging pants/shorts;
- single rolled up pant leg;
- hairnets, bandanas, or do-rags (all colors);
- blue or red shoelaces on footwear at any time; other colors may be deemed inappropriate as necessary to protect student safety on campus;
- altered insignias or graffiti;
- jewelry or belt buckles symbolizing any gangs; and
- Graffiti in or on personal belongings symbolizing any identified.

School Uniforms / Standard Student Attire

The Board of Trustees, through Board Policy 5105, Student Uniforms – Adoption of a Site-Based Policy, has authorized schools within the District to establish a site-based policy that requires students to wear school uniforms. Schools that choose to adopt a site-based student uniform policy shall follow a collaborative, inclusive process that gives parents/guardians, students, and faculty and staff a voice. The implementation of school uniforms at a specific school site must adhere to the parameters set forth in the policy and associated administrative regulation.

WASHOE COUNTY SCHOOL DISTRICT MIDDLE SCHOOL DRESS CODE

The United States Supreme Court rendered a decision in 2000 that school administrators can establish policies prohibiting conduct which materially and substantially interferes with the educational process. This includes, but is not limited to, inappropriate clothing or attire. The Court noted that it is a highly appropriate function of public school education to prohibit offensive language or clothing in public discourse. The First Amendment does not prevent schools from establishing guidelines to prevent the undermining of their basic educational mission.

The primary responsibility for dress and grooming rests solely with our students and their parents and/or legal guardians. However, the school district does reserve the right to establish a comprehensive dress code with limitations for students which addresses what clothing they may wear and how they may wear that clothing. School authorities have the professional responsibility and legal sanction to enforce student dress requirements, and within this authority, the right to request that students change their attire to conform to the Washoe County School District Middle School Dress Code. The following requirements are not intended to silence expressive conduct, but instead, constitute an attempt to maintain a productive, safe, learning environment.

As specified in Washoe County School District administrative regulations (5132), "the dress or grooming of all students must not present potential health or safety problems or cause distractions." Specific prohibitions or limitations include, but are not limited to, the following:

Condition and Wear of Clothing

Nothing that distracts or poses a safety hazard
No holes, rips, or tears that reveal the body
No tight-fitting or revealing clothing

Safety

No clothing that can pose a potential health or safety problem
No gloves inside the building; no single glove at any time
No jewelry or chains that can cause injury
No hanging chains
No metal spiked or metal studded accessories

Tops/Skirts/Dresses

Tops must cover the upper and middle torso at all times
Skirts must cover the lower torso with no skin showing between top and skirt
Skirts and dresses must be at least mid-thigh in length, no mini-skirts
No exposed undergarments
No halter, tank or tube tops; no transparent, half, or muscle shirts
No exposed shoulders
No low cut necklines, exposed cleavage, or spaghetti straps
No pajamas, lounge wear, or bath robes
Inappropriate tops may not be covered with sheer shirts, sweatshirts or jackets

Pants/Shorts

Must cover lower torso with no skin showing between top and pants/shorts
No exposed undergarments
No sagging pants or shorts
No single rolled up pant leg
No exposed buttocks
Belt buckle monograms must be appropriate
No hanging or extended belt lengths
No unfastened overalls
No cut-offs
Shorts must be hemmed and at least mid-thigh in length
No mini-shorts, no spandex shorts

Head Coverings

No head coverings or sunglasses worn in the building during school hours
Exceptions are made for religious or medical reasons
No bandanas (all colors), do-rags (all colors), hairnets, surgical/shower caps, or hair picks at any time on campus or at any school-sponsored event

Footwear

Proper footwear at all times
No house slippers

Language / Illustrations on Clothing

No obscene, vulgar, profane, or derogatory language or illustrations on clothing
No sexual overtones, or anything that promotes weapons, alcohol, drugs, tobacco, gang membership, or violence
Nothing that may be deemed a safety issue

Gang Attire

All items that have been identified as gang-related by local law enforcement agencies and WUSD school police are prohibited. These may include but are not limited to:
No dangling belts
No chains
No unfastened overalls
No sagging pants/shorts
No single rolled up pant leg
No hairnets, bandanas, or do-rags (all colors)
No blue or red shoelaces on footwear at any time, other colors may be deemed inappropriate as necessary to protect student safety on campus
No altered insignias or graffiti
No jewelry or belt buckles symbolizing any gangs
No graffiti in or on personal belongings symbolizing any identified gang

Consequences

At the beginning of the 2005-2006 school year if a student violates the dress code s/he will be given a warning by school staff. School staff will notify school administrators with the student's name. School administrators will notify parent/legal guardian of the warning. The student must correct the clothing violation at that time, prior to returning to his/her class schedule. Refusal to change clothes will constitute insubordination. After the first five school days of the 2005-2006 school year, the warning system will be terminated and the following sequential and progressive discipline plan will be followed:

First Offense

- 1 Parent notified
- 2 Student must change clothing violation
- 3 Student assigned detention
- 4 Student warned of consequences for second violation
- 5 Consequence/conference entered in student discipline documentation

Second Offense

- 1 Parent notified
- 2 Student must change clothing violation
- 3 In-school suspension, Saturday school, work crew, or multiple detentions assigned, depending on the consequence available at school site
- 4 Student warned of consequence for third offense
- 5 Consequence/conference entered in student discipline documentation

Third Offense

- 1 Parent notified
- 2 Student must change clothing violation
- 3 Out-of-school suspension assigned
- 4 Warned that any further violations will result in multiple days of suspension
- 5 Consequence/conference entered in student discipline documentation

NOTE: Students will NOT be allowed to carry backpacks during the school day at Kendyl Depnuli Middle School. Students will unload their backpacks in the morning and leave their backpack in their locker until they are ready to leave at the end of the school day. This policy is in place to ensure student safety and to allow students to move about the building without causing unnecessary accidents.

Reviewed by Executive Cabinet 4/05



ADMINISTRATIVE PROCEDURE 5101 Guidelines for Regulating Student Speech Through Clothing

Responsible: Office of the General Counsel

PURPOSE

This administrative procedure shall establish guidelines for regulating student speech through clothing in the Washoe County School District.

PROCEDURE

1. The District recognizes all cultures and ethnic groups as being important to our society and is committed to creating and fostering an educational environment that respects the cultural diversity of the various communities within the District. Every student is entitled to develop a sense of personal and cultural identity that is significant and individual, but also respectful towards the identities of others.
2. The District's dress requirements are in no way an attempt to silence free expression but to create a productive, uninterrupted, and safe learning environment.
3. The District does not seek to restrict or ban a student's wearing of religious clothing, with the exception of unprotected speech. Parents having religious-based concerns regarding the dress code or a site-based uniform policy are encouraged to discuss them with the principal.
 - a. Unprotected speech may include, but is not necessarily limited to, the following: obscenity, fighting words, defamation (includes libel, slander), child pornography, perjury, blackmail, incitement to imminent lawless action, true threats, solicitations to commit crimes, and speech which is vulgar or profane. Unprotected speech includes any article or apparel which displays obscene words, pictures, or designs; speech which is sexually suggestive, or has a pro-alcohol, tobacco and/or controlled or illegal substances message; clothing or items that symbolize gang-related behavior; speech which is derogatory in nature, does not comply with the District's policies and regulations, interferes with the educational process and/or poses a threat to the safety of students or other individuals.
4. The following are guidelines to be used by site administrators in regulating student speech through clothing:
 - a. Is the message verbally or visually lewd or obscene?
 - i. The United States Supreme Court has defined obscene speech by stating, "(1) the proscribed material must depict or describe sexual conduct in a patently offensive way, (2) the conduct must be

specifically described in the law, and (3) the work must, taken as a whole, lack serious value and must appeal to a prurient interest in sex.

- ii. Obscenity is defined by Nevada Revised Statutes (NRS 201.235(4)) as "any item, material or performance which:
 1. An average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest;
 2. Taken as a whole lacks serious literary, artistic, political or scientific value; and
 3. Does one of the following:
 - a. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated.
 - b. Depicts or describes in a patently offensive way masturbation, excretory functions, sadism or masochism.
 - c. Lewdly exhibits the genitals."
- b. Does the content contain defamatory remarks?
 - i. Black's Law defines Defamation as, "A false written or oral statement that damages another's reputation."
- c. Is an immediate danger created to students?
 - i. The "clear and present danger" test for restricting freedom of expression or association is met when expression is directed to "inciting or producing imminent lawless action and is likely to incite or produce such action." (Brandenburg v. Ohio, 395 U.S. 444, 447, 89 S.Ct. 1827, 1829, 23 L.Ed.2d 430 (1969).)
- d. Does the message encourage students towards illegal act?
 - i. Messages which promote underage drinking, illegal drug use, violence, etc., are prohibited.
- e. Is the speech a substantial disruption to the orderly operation of the school?
 - i. Conduct by the student, in class or out of it, which for any reason whether it stems from time, place, or type of behavior materially disrupts classwork or involves substantial disorder or invasion of the

rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. (*Tinker v. Des Moines School District*, 393 U.S. 503, 513, 89 S.Ct. 733, 740, 21 L.Ed.2d 731 (1969))

- f. Does the speech violate a specific school rule or policy?
 - i. This could include any Board Policy, Administrative Regulation, or school rule as reflected in the Parent/Student Handbook.
5. Any appeal of the principal's decision to prohibit a particular item of clothing or accessory shall follow the District's public complaint process.

DESIRED OUTCOMES

1. This Administrative Procedure is designed to recognize that every student is entitled to develop a sense of personal and cultural identity that is significant and individual, but also respectful towards the identities of others.
2. This Administrative Procedure established guidelines designed to create a productive, uninterrupted, and safe learning environment

IMPLEMENTATION GUIDELINES & ASSOCIATED DOCUMENTS

1. This administrative procedure reflects the goals of the District's Strategic Plan.
2. This Administrative Regulation aligns with the following WCSD governing documents:
 - a. Board Policy 5105, Student Uniforms – Adoption of a Site-Based Policy, and its associated administrative regulation.
 - b. Administrative Procedure OSP-P002, Student Dress
 - c. Board Policy 5039, Student Discipline
 - d. Board Policy 1312, Public Complaint Procedure
3. This administrative procedure complies with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC).
4. This administrative procedure complies with federal laws and regulations.

REVIEW AND REPORTING

1. This procedure and any accompanying documents will be reviewed bi-annually, in the year opposite the regular session of the Nevada State Legislature.

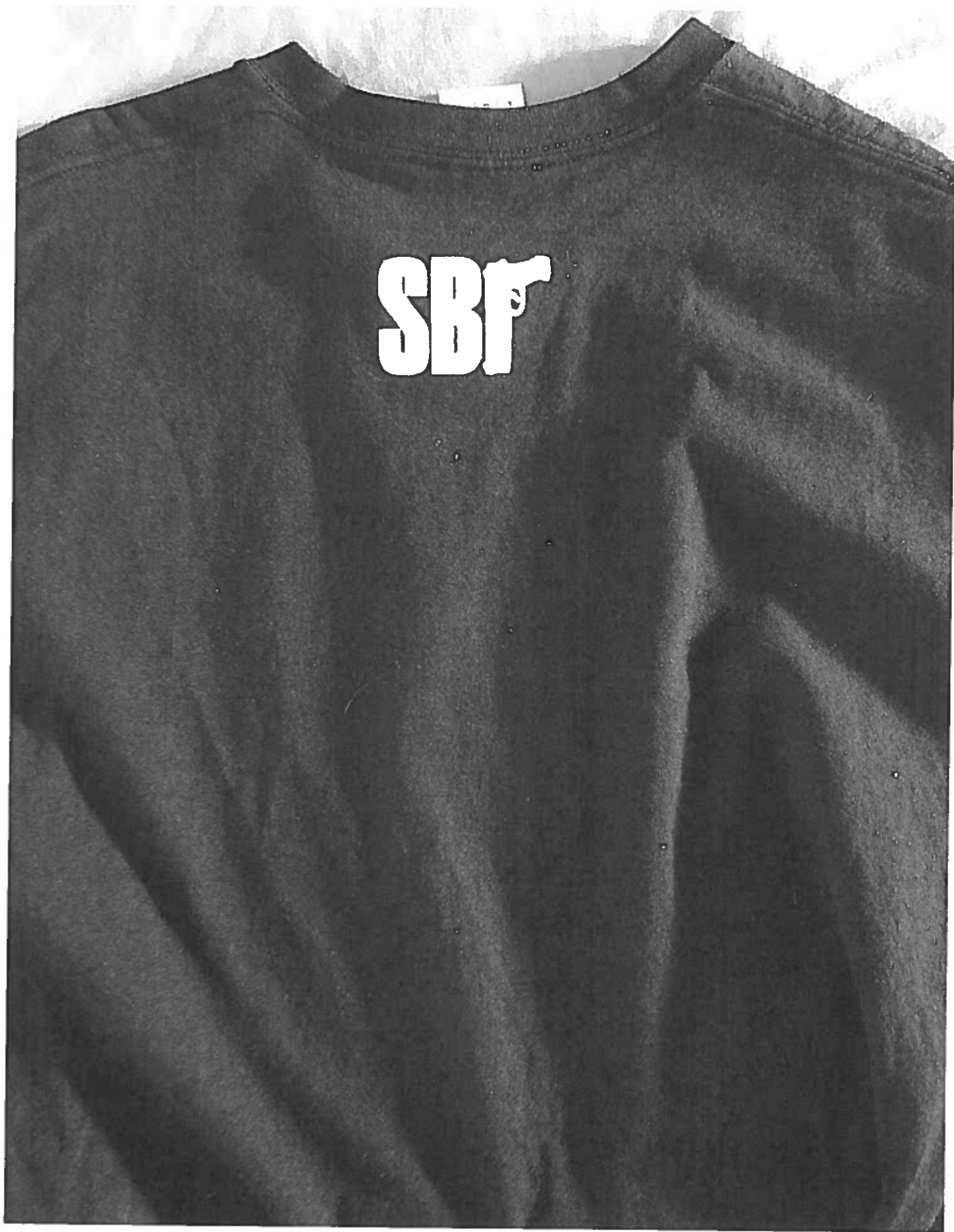
Administrative Procedure 5101
Guidelines for Regulating Student Speech Through Clothing
Page 4

REVISION HISTORY

Date	Revision	Modification
10/06/2014	1.0	Adopted



EX. 4



EX. 4

