

# Expressions of Identity: A 21<sup>st</sup> Century Snapshot of Dress Code Issues

February 24, 2021

University of Texas School of Law

36<sup>th</sup> Annual School Law Conference



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## Presentation Overview

- Freedom of Expression
  - Legal Standard
  - Key Cases
- Equal Protection
  - Legal Standard
  - Key Cases
- Lessons Learned



## Fingernail policy remains, but Clyde CISD won't treat students 'in a discriminatory' way

Timothy Chipp Abilene Reporter-News

Published 9:55 p.m. CT Dec. 14, 2020 | Updated 1:16 p.m. CT Dec. 15, 2020

BLACK VOICES 06/25/2019 06:37 pm ET

## Ohio School Apologizes After Attempting To Ban 'Afro-Puffs' And 'Twisted Braids'

## Austin schools' dress codes 'sexist, racist,' group says

EDUCATION

### The Sexism of School Dress Codes

These policies can perpetuate discrimination against female students, as well as LGBT students.

LI ZHOU OCTOBER 20, 2015

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## Constitutional Basis for Protection

### ➤ *Freedom of Expression*

- First Amendment provides that "Congress shall make no law . . . abridging the **freedom of speech**[".]"

### ➤ *Equal Protection of the Laws*

- Fourteenth Amendment provides that "[n]o State shall make or enforce any law which . . . den[ies] to any person within its jurisdiction the **equal protection of the laws**."

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# Free Speech

- *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437 (5th Cir. 2001).
  - “[A]n individual’s choice of attire . . . may be endowed with sufficient levels of intentional expression to elicit First Amendment shelter.”
- Expressive Conduct
  - ❑ Intent to convey a particularized message; AND
  - ❑ High likelihood that message will be understood by those who viewed it
    - *Texas v. Johnson*, 491 U.S. 397 (1989).

# Free Speech

- Forms of intentional expression
  - Pure speech – shirts or jackets with written messages supporting political or social issues
  - Clothing/hairstyle when worn as
    - Symbol of ethnic heritage, religious beliefs, social/political views
    - Signal of membership in social group, participation in activities, general attitudes

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First appeared as part of the conference materials for the  
36<sup>th</sup> Annual School Law Conference session

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