

Hayden v. Greensburg Community School Corporation 2014 WL 6985529 (7th Circuit Court of Appeals – Indiana)

February 24, 2014

Background

The school board of Greensburg Community School Corporation (“the School”) established an athletic code of conduct that prohibited hair styles that created problems of health and sanitation, obstructed vision or called undue attention to the athlete and allowed each varsity head coach to determine the acceptable length of hair for a particular sport. The head varsity basketball coach established an unwritten hair-length policy for the boys’ basketball teams under which the hair was to be above the ears, eyebrows and collar to promote team unity and projected a “clean cut” image. Although the boys’ baseball teams had a similar policy, the boys’ track and football teams did not have the hair style policy. More importantly, the girls’ teams had no hair length policy.

Student, a male 17 year old, maintained his hair longer than what was allowed under the basketball hair policy. Although he successfully made the basketball team, he was not allowed to play and was eventually removed from the team based on his refusal to cut his hair.

Student’s parents filed suit against the school alleging that the policy violated Student’s substantive due process and equal protection rights and violated Title IX which prohibits exclusion from participation in any education program or activity on the basis of sex.

The trial court found for the school and rejected all three bases (substantive due process, equal protection and Title IX) for the parents’ contention that the school violated Student’s right.

Holding

The Due Process Clause of the 14th Amendment provides heightened protection against government interference with certain fundamental rights and liberty interests. Although the Appellate Court’s own case history supported the notion that hairstyle choice was a fundamental right, subsequent U.S. Supreme Court overturned such notions. As a consequence, non-fundamental liberties or rights (or “harmless liberties”), such as hairstyle, can be regulated only if the government demonstrates that the intrusion upon the liberty is rationally related to a legitimate government interest.

In this case, the Appellate Court rejected the Student’s due process challenge to the hair-length policy. The court found that it was the burden of the Student to demonstrate the hair-length

policy lacked a rational relationship to a legitimate governmental interest and that the government did not have to prove a rational relationship. Moreover, the Student's burden of proof is very heavy given that any conceivable statement of facts that supports the policy will pass muster under the due process clause. Thus, the Appellate Court found the parents did not prove the hair-length policy violated the substantive due process rights of the Student.

The Equal Protection Clause of the 14th Amendment protects individuals against intentional, arbitrary discrimination by governmental officials. Gender is a quasi-suspect class. As a consequence, the justification for a gender-based policy must be exceedingly persuasive. Student argued that the hair-length policy was sex-based discrimination because it did not apply to the girls' athletic teams. The School argued that since the hair-length policy only applied to two of the boys' athletic teams and did not categorically apply to all boys, there was no sexual discrimination.

The Appellate Court categorically rejected the School's argument finding that the Equal Protection clause protects the individual and not the group so the fact the policy is not universally applied is irrelevant. More importantly, the fact that it is not universally applied to boys does not negate the fact that application of the hair-length policy is based on sex: the boys' basketball team has a requirement to keep the hair short; the girls have no such policy. The School also attempted to argue that it did not violate the Equal Protection Clause because there was no intent to discriminate on the basis of sex. The Appellate Court rejected this argument as well finding that because the policy only applied to the boys' teams and not the girls, the School intentionally treated boys differently given the one-sided nature of the policy. Thus, the Appellate Court ruled in favor of the Student and found the School violated the Student's equal protection rights.

For similar reasons, the Student prevailed on his Title IX claim. Since the hair-length policy applied to the boys' teams with no evidence concerning the content of any comparable grooming standard applied to the girls' team, the Appellate Court found disparate treatment between girls and boys which is a clear violation of Title IX.

The School further attempted to deny Title IX liability by claiming that the "intent" requirement was not satisfied because it did not act deliberately indifferently to the Student's concerns. The Appellate Court rejected this argument because the enforcement of the policy, denial of the Student's request to rescind the policy through the school district chain of command, demonstrated the intent necessary to establish liability.



Learning Point:

This case makes clear that even an apparently benign policy can result in liability. Schools must take the opportunity to review their guidelines to determine whether they are truly gender-neutral.

Schools must also take the additional steps to see how facially neutral policies are being applied by the individual coaches, administrators and teachers. In this matter, the Appellate Court addressed the “disparate treatment” of the policy: it only impacted boys and, therefore, the treatment was facially discriminatory. However, schools should also consider how facially neutral policies are actually impacting the student body to make sure there is no “disparate impact” discrimination.

Finally, this case is unusual because the School and the Student agreed to stand on the record prior to the appeal of this case and that the judgment of the Appellate Court would be the final judgment. Notably, the Appellate Court repeatedly claimed that “there was no evidence concerning the content of any comparable grooming standard applied to the girls’ team” so the School would likely have been given the opportunity to produce such evidence (and provide a defense to Student’s claim) if the School had not agreed to be bound by the judgment. Thus, schools should always try to maintain flexibility in litigation to allow for the defense to be presented.