MILLER v. GILLIS

315 F. Supp. 94 (1969) | Cited 0 times | N.D. Illinois | September 25, 1969

MEMORANDUM OPINION AND ORDER

The question presented by this case is whether a publicallysupported school district operating under state law that givesit authority to discipline pupils who attend its schools canrefuse re-admission to or expel from its high school a malepupil who wears his hair shoulder length without violating someright guaranteed to him by the Constitution of the UnitedStates.

It must be made clear from the outset that this is not a caseinvolving a revolutionary type young man, who by bizarreattire, filth of body and clothes, obscene language andsubversive-like organizational activity, seeks to wage waragainst the established institutions of the community ornation. It is not a case involving youth commonly referred toas "beatniks" or "hippies" or "yippies". It is simply a case ofa seventeen year old boy wearing hair substantially longer thanthat permitted by the school's regulations.

Under Illinois law, there is compulsory school attendanceuntil the child reaches sixteen years of age, and, if he isabove sixteen years of age and is enrolled in any grade throughthe fourth year of high school, he is compelled to attendschool during the regular school term. Ill.Rev.Stat., Chap.122, Sections 26-1 and 26-2. School Boards have the duty "toadopt and enforce all necessary rules for the management andgovernment of public schools of their district", and themaintenance of discipline among the pupils in them, and indoing so are empowered to expel or suspend students guilty ofgross disobedience; and teachers and other certificatededucational employees are directed to maintain discipline inthe schools. Ill.Rev.Stat. Chap. 122, Sections 10-20.5,10-22.6(a) and 24-24.

A careful examination of the Chapter on Schools of theIllinois Revised Statutes (Chap. 122), and particularly ofthose sections relating to the powers and duties of schoolboards, reveals no express or implied authority in the exerciseof which a school board may deny admission to a child whootherwise is authorized by Illinois law to attend school.

In this case, the plaintiffs, David Miller, a minor, and hisparents and next friends, Ben F. Miller III and Alice Miller,brought action against the Board of Education of SchoolDistrict #224 in Lake County, Illinois, defendants, asking foran injunctive order compelling the school board and its membersto admit David Miller to the Barrington Consolidated HighSchool, and preventing them from suspending or expelling himfrom that school subsequent to his admission.

Jurisdiction is asserted under 28 U.S.C. §§ 1343,2201, 2202 and 42 U.S.C. § 1983. The Court

hasjurisdiction over the parties and the subject matter of thissuit. My findings of fact and conclusions of law appear in thisopinion.

For the past six years, Barrington Consolidated High School,located in Barrington, Illinois, a suburban community locatednorthwest of Chicago, has had a dress code regulating the typeand manner of students' clothing and appearance. In the schoolyear of 1968-1969, the enforcement of this code was relaxed,and, along with other disciplinary matters, was turned over tothe students. During that period, there was an increase ofcomplaints by teachers and parents to the School Boardconcerning an apparent lack of discipline among students. Inaddition, the Board noticed a higher rate of truancy during theperiod of relaxation.

During 1968-1969, David Miller allowed his hair to grow untilat the end of the school year it was one-inch or less shorterthan the shoulder length it was at the time of the hearing inthis case. Although the length of the plaintiff's hair duringthe last school term exceeded the standards set out in thedress code, David was allowed to remain in school until the endof the term at his mother's request, because it was thought byher that dismissal or suspension would have an adversepsychological effect on the boy.

Two weeks before the day set for this year's enrollment, theSchool Board circulated to every prospective student a documententitled, "1969-70 Student Handbook, Barrington ConsolidatedHigh School", which sets out information, maps, school songsand organizations, a list of faculty members, and a number ofregulations to be in effect this school year. Among theregulations, there is a section concerning dress of students,which reads as follows:

DRESS

The appropriateness of dress is a subject on which opinions can and do vary. We wish there were no need for a dress code but it is believed a minority of students would take advantage of this privilege. For this reason, it is asked that students assume responsibility for the way they dress and do not wear extreme style or fit. Dressing the way we please is a privilege. Please do not take advantage of these few requirements.

Boys

I. Pants

A. Dress pants, slacks, pressed khakis, or levis shall be worn.

1. Pants shall be worn at the waist, not low on the hips.

2. Belts should be worn at all times except in the case of pants without belt loops. Built-in belts are

acceptable (such as continental style).

II. Shirts

A. Shirt tails must be tucked in and shirts properly buttoned. Sport shirts, if square cut, may be worn in or out.

1. White T-shirts are considered underwear and therefore are not acceptable unless covered by a shirt.

2. Sweatshirts or other shirts displaying the name or emblem of a non-campus club, group, or business, are not acceptable.

III. Shoes

A. Feet should be properly covered. Boots are not to be worn during the school day because of health reasons and floor damage.

1. Socks are to be worn at all times for health reasons.

2. Taps that create a noise or property damage are not to be worn (unless required by a physician for corrective purposes).

IV. Hair

A. Hair should always appear clean and neat, tapered up the back of the neck, and not protruding over the ears or the eyebrows.

1. Students must be clean-shaven and sideburns should not extend lower than the earlobes.

V. Jewelry

A. Beads, medallions, Maltese crosses, etc., will not be worn during school hours.

Girls

I. Clothing

A. Blouses/skirts, sweaters/skirts, or sport type dresses shall be worn.

1. Blouses, dresses, and sweaters must have armholes high enough to cover undergarments.

2. Extremely tight fitting clothing shall not be worn.

3. Skirts shall not be more than four inches (4") above the knee.

4. Midriffs, backless, shoulderless dresses are not acceptable. Spaghetti straps or tie straps are not to be worn. Blouses should be worn under low necked sweaters.

5. Blouses must be worn tucked in unless the blouse is designed to be worn outside the skirt as an over-blouse.

6. Play clothes, such as slacks, pedal pushers, shorts, Bermudas, leotards without a skirt, etc., are not acceptable wear unless specifically designated for special occasions.

II. Hair

A. Hair styles shall be neat, properly combed, appropriately arranged, and extreme styles avoided. Bangs are to be neat and short enough to show the eyebrows.

1. Pincurls, clippies, rollers, or glitter may not be worn during school hours. Head scarves are not to be worn in classrooms.

III. Make-up

A. Make-up shall be applied sparingly and not to the point of attracting undue attention.

1. Excessive jewelry is not appropriate for school wear.

IV. Shoes

A. Shoes should be appropriate for school wear. Roman type sandals or boots are not acceptable. Hosiery, anklets, or peds are to be worn for good health practices.

Public display of affection, in school, is considered to be in very bad taste and is strongly discouraged.

Students, as well as their parents, should assume the responsibility of following the established dress code.

On August 26, 1969, when David Miller presented himself forenrollment, he was told that he would not be allowed to enrolluntil he cut his hair in compliance with the dress code.

Subsequently, on September 8, 1969, David, by his parents andnext friend, filed this suit alleging that

the dress code wasa violation of his rights under the First, Fourth, Ninth andFourteenth Amendments to the Constitution of the United States.They alleged that the School Board, under the authority grantedto it by Illinois law, has the power only to suspend or expeland could not deny admission to any qualified student. Theyasked this Court to hold the "dress code" unconstitutional, andthereby theaction of the Board barring David's enrollmentunconstitutional. They further asked this Court to enjoin thedefendants from enforcing the dress code and from barring DavidMiller's attendance, and for a judgment in the sum of $300.00actual damages and $1,000.00 punitive.

On September 11, 1969, the plaintiffs moved this Court fortemporary injunctive relief to enjoin the defendants frombarring David Miller's enrollment, and once he was enrolledfrom suspending or expelling or otherwise punishing him becauseof his violation of the dress code.

I set a hearing on this matter for September 17, 1969, and Istated that in my opinion the Board was without statutoryauthority to prevent David's enrollment. Between the time themotion was made and the hearing, the school acquiesced in myopinion and readmitted David and allowed him to enroll.Immediately thereafter, he would not be permitted to attendclasses until such time as he trimmed his hair to a lengthsuitable to the Superintendent within the meaning of the dresscode. The school's action rendered moot the first part ofplaintiffs' request for injunctive relief.

At the hearing on the 17th, the Court, having received thetestimony of witnesses and arguments of counsel for both sides,took the matter under advisement, but entered, upon its ownmotion, a temporary restraining order allowing David Miller toattend classes while the matter was pending the Court'sdetermination. My theory was that it would be best that I seeto it that the child could continue his education while Ideliberated than to leave him out of school for a period oftime made necessary only by the Court's schedule.

The Court notes that the plaintiff's appearance in court wasorderly. He was respectful both to the lawyers and to theCourt. His dress was comparatively conservative and notimproper for the occasion. His hair, which still was ofshoulder length, was clean and groomed. David testified that hehas two older brothers, both of whom have long hair, and thathis family, apparently substantial and educated people, supporthis right of choice with relation to the length of his hair.

The Superintendent of the school testified that the dresscode had been amended as to the length of the girls' dressesbecause many mothers complained that they were unable topurchase dresses long enough to satisfy the code'srequirements. He also testified that "extreme styles" inclothing and personal appearance would be disruptive of classesby causing students to ridicule persons having such extremestyles or appearance. But he admitted that it was the studentswho did the ridiculing who should be disciplined, whereas thestudent ridiculed should be counselled. When asked for examplesof disturbances attributable to extreme dress, he could mentiononly one. It was related to an argument in the school cafeteriaover the possible outcome of this case.

The Administrative Assistant to the Superintendent couldremember no disruptive incidents over clothing other than theone in the cafeteria. He admitted that several of the largerneighboring schools operated without dress codes. He wasunaware of any incidences of disturbance. He did state that onesuch neighboring high school had some trouble with smoking.Then he testified that there were a number of teacherspresently on the Barrington High School Faculty who have eitherlong hair or beards, which, were they students, would causethem to be in violation of the dress code. They, however, heexplained, are not subject to disciplinary action.

A Member of the School Board testified that the dress codewas part of the general discipline of the students, thatviolations of the code would be disruptive of the educationalprocess, and that he had heard of an alleged incident whereina student created a disturbance by wearing a string of beadsinto a room where a test was about to be conducted. He admittedthat he was unaware of anydisruptive incidents attributable to David's long hair.

I find that the dress and personal styles of the students atBarrington Consolidated High School are conservative comparedto those allowed students of schools both in the City ofChicago and in a number of suburbs close to Chicago and toBarrington. I could adduce no opinion evidence as to whetherother Barrington students, if allowed, would adopt a hair stylesimilar to that of David Miller.

This issue has now been presented to a District Court in eachof the three states of this Circuit, the Seventh JudicialCircuit of the United States. Judge James E. Doyle in Madison,Wisconsin, found on February 20, 1969, that provisions of asimilar code were violative of the student's rights under theConstitution. Judge James E. Noland in Indianapolis, Indiana,found on September 17, 1969, that the wearing of long hair didnot constitute a right protected by the Constitution. I am atthis time unaware of whether Judge Noland's case involved adress code, or if it did what that code contained.

I agree wholeheartedly with Judge Doyle of Wisconsin. I amimpelled by the language in his ruling in the case of Breen v.Kahl, 296 F. Supp. 702 (W.D.Wis. 1969), wherein the facts aresubstantially akin to those here, when he stated:

"I find that to deny a * * * 17 year old twelfth-grade male access to a public high school * * * is to inflict * * * irreparable injury for which no remedy at law is adequate."

If a constitutional provision is violated by the Barringtoncode or its enforcement, equitable relief should be madeavailable to David Miller. The freedoms guaranteed under theConstitution and its Amendments are so basic and so essentialto our lives under our Government and to the protection of thesociety, as we know it now and as it will eventually become,that the charge of violation of a person's rights under theConstitution always must be seriously considered.

Students are persons under the Constitution; they have thesame rights and enjoy the same privileges as adults. Childrenare not second class citizens. The protections of theConstitution are as available

to the new born infant as to themost responsible and venerable adult in the nation.

The plaintiffs would have the Court consider whether theBoard has the power under the Illinois statutes to deny theadmission of David Miller. However, as stated above, that poweris not made available to the Board. The statutory power of theBoard to suspend is clear, provided the exercise of such poweris not in conflict with the Constitution of the United States.

Let us consider the question of the constitutionality of theBarrington High School dress code. The plaintiffs contend thatthe dress code as written violates the plaintiffs' rights underthe First, Fourth, Ninth and Fourteenth Amendments. I shalltake these contentions in order.

I cannot agree with the contention that the plaintiffs'rights under the First Amendment have been violated. Theplaintiffs have cited numerous cases which show that thefreedom of speech has been extended far beyond the use ofactual words and that acts themselves can, under certainsituations, constitute speech protected by this Amendment.Thus, in Tinker v. Des Moines Independent Community SchoolDistrict, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1968),the Supreme Court held that a school board did not have theright to proscribe the wearing of armbands worn as a symbol ofstudents' dislike for the war in Vietnam. Likewise, the wearingof freedom buttons was held to be an act of free speech andtherefore protected by the Constitution. Burnside v. Byars,363 F.2d 744 (5 Cir. 1966).

These are the only two cases cited by the plaintiffs whichpertain directly to the appearance of the student or tosomething worn by such students and which involved a violationof the First Amendment. It is clear that these cases may bedistinguished on the grounds that they pertain to objects whichare symbols of movements or ideas easily expressed and readilyidentifiable. David's wearing of his hair at shoulder lengthhas never been contended by him to be part of a movement ofhair growers, nor is it a symbol of some easily identifiableidea. It is a mere exercise of the wearer's choice of hairstyle.

Plaintiffs also have contended that David's rights under theFourth Amendment have been violated. I cannot agree with thiseither. Plaintiffs have cited the case of Griswold v.Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965)as a source for the doctrine of expansion of the protection ofthe First and Fourth Amendments of the Constitution on thegrounds that there is a vast "penumbra" of constitutionalprotection. While it is argued that a person in order to beguaranteed personal security against unreasonable seizure mustbe protected against unreasonable seizures of zones of conductby the state, I find that the law does not go that far.Besides, it is unnecessary to speculate on such protection inthis case. There is no logical relationship between the FourthAmendment protection and the facts of this case.

I do not agree with plaintiffs' contention that the dresscode violates rights under the Ninth Amendment. JusticeGoldberg's remarks as to this Amendment in theGriswold case were addressed

to a factual situation concerningthe delicate relationship between doctors and their patients inthe matter of certain birth control devices. The facts in thatcase bear no comparison to the one at bar. A similar argumentwas rejected in the case of Davis v. Firment, 269 F. Supp. 524(E.D.La. 1967) in a fact situation very similar to the onehere.

However, I fully agree with plaintiffs contention as to theFourteenth Amendment.

While agreeing with the opinion of Judge Doyle in theBreen case, supra, I do not consider this issue to be one ofdenial of due process. Rather, it involves a denial of equalprotection of the laws under the Fourteenth Amendment. Aregulation promulgated under the authority of a state violatesthe equal protection clause of the Fourteenth Amendment if itfalls within one of more of the following four categories:

(1) The regulation is not necessary to the exercise of the inherent police powers of the state to provide for the health, education and general welfare of the people of that state;

(2) The regulation once promulgated is incapable of meeting the need to which the regulation is directed;

(3) The regulation creates, by its enforcement, an evil greater than that evil sought to be corrected; and

(4) The regulation is arbitrary in defining a class of people to which it applies.

There is no question about the fact that the Board has thepower to promulgate regulations which prevent lewd or obscenebehavior and which promote the orderly conduct of the educativeprocess. However, I cannot believe that regulations whichstrictly, and admittedly conservatively, lay out severe andunduly restrictive limits of dress and personal appearance bearany rational relationship to the orderly conduct of theeducative process.

It must be shown, and clearly so, that the particular styleof dress and appearance complained of would in fact be actuallydisruptive. The evidence in this case clearly is to thecontrary. The only examples of student misbehavior over dressseems to be a single incident in the cafeteria this year notpersonally involving David Miller and one last year when oneindividual wore beads to a classroom. If these are the onlyincidences of alleged disturbance because ofviolations of the dress code over the past two years in aschool of 2,500 students, the point sought to be made isabsurd.

The School Board and its lawyers, having exhaustively arguedand extensively briefed this point, have failed to show thatthe dress code, in its present form, is necessary to preventdisruptive incidents in the school. Apparently, the purpose ofits promulgation and enforcement was to thwart ahead of timewhat the Board feared might eventually become a problem ofstudent restlessness in Barrington.

There is no evidence thatthe "dress code" would bring about this goal, or thatrestlessness in Barrington High School is an eventuality to beanticipated or precluded. It is a well-known principle ofeducational administration that schools do not automaticallyobtain good student behavior by inaugurating uniformity ofdress. Conformity of this type is antithetical to education'swide aims. And it may well be that uniformity of dress islikely to create a greater evil than would a broad spectrum ofappearance.

There is no question about the fact that the regulation ofdress and appearance creates an arbitrary class of those fewpeople who wish to wear their hair in a manner differing fromthe masses — arbitrary in that the regulation makes theacquisition of all education depend upon the length of one'shair.

Finally, it is a clear stroke of arbitrariness to operate onthe basis that the appearance of a student with long hair wouldbe substantially disruptive, when in the same school teacherswho stand before these 2,500 students wearing hair equally longor longer are not disciplined or suspended or made to conformto the school code. How is it possible to hold that thestudent's presence is disruptive and therefore within thepurview of the Board's power to discipline when the same Boardallows its teachers to breach the same standards? When thedress code applies a standard to students which cannot beapplied to teachers, students arbitrarily are discriminatedagainst in violation of the Equal Protection Clause of theConstitution.

In final analysis, I find that the code of dress ofBarrington High School, as applied to both boys and girls, inregard to both hair and attire, is so minutely detailed andrestrictive that its compliance would violate that highlyprotected freedom of people to present themselves physically tothe world in the manner of their own individual choice and istherefore in violation of a basic value "implicit in theconcept of ordered liberty." Palko v. Connecticut,302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937).

Upon the facts as presented to me, and after long and carefulconsideration of the arguments presented by counsel and thecases cited in their briefs, for the reasons stated above,

It is ordered, adjudged, and decreed:

(1) That the regulation of the Barrington Consolidated HighSchool, commonly known as the dress code, pertaining to thelength and style of hair to be worn by male students attendingthat school, violates the Equal Protection Clause of theFourteenth Amendment to the Constitution of the United States,and is null and void;

(2) That the Board of Education of School District #224 ofLake County, Illinois, is enjoined from continuing to enforcesaid section of the dress code, and from initiating theexpulsion or suspension or other disciplining of the plaintiffDavid Miller, solely by reason of a violation of that sectionof that dress code;

(3) That there shall be expunged from the records of theBarrington Consolidated High School any records or mentionrevealing any disciplinary action taken this school yearagainst the plaintiff by reason of the violation of the dresscode; and

(4) That plaintiffs' prayer for $300.00 actual damages and$1000.00 punitive damages be and the same hereby is denied.