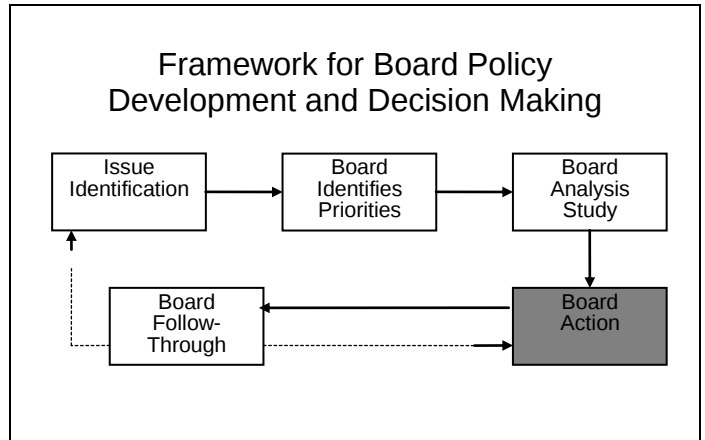


Iowa State Board of Education

Executive Summary

September 15, 2011



Agenda Item: *In re Mandatory Dress Code*

Iowa Goal: All K-12 students will achieve at a high level.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta, Administrative Law Judge

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Waterloo Community School District to adopt a district-wide standardized dress code.

Background: This is the second time that the Peters have appealed to the State Board from adoption by the Waterloo board of a dress code. In the first appeal, the State Board agreed with the Peters that the dress code adopted by the Waterloo board exceeded the board's statutory authority by dictating to students what they must wear to school with no adequate justification under the language of Iowa Code section 279.58.

The Waterloo board adopted a new dress code policy on December 13, 2010. The policy has the effect of again dictating to students what they must wear. However, the new policy is written in proscriptive terms and – more importantly – the prohibitions of apparel in the new dress code are justified under the totality of Iowa Code section 279.58.

The proposed decision thus concludes that the new dress code policy is within the statutory authority of section 279.58. Thus, the Waterloo board's decision is recommended for affirmation.

IOWA DEPARTMENT OF EDUCATION
[26 D.o.E. App. Dec. 110]

In re Mandatory Dress Code

Ricki and Teesha Peters,	:	
Appellants,	:	
	:	PROPOSED DECISION
vs.	:	
	:	[Admin. Doc. 4725]
Waterloo Community School District,	:	
Appellee.	:	

The Appellants, Ricki and Teesha Peters [the Peters], appeal to the State Board from their local public school district board's adoption of a district-wide dress code.

The above-captioned matter was heard on June 20, 2011, before designated administrative law judge Carol J. Greta, J.D. The Peters, acting *pro se*, were personally present on behalf of their minor children. The Appellee, the Waterloo Community School District [the District], was represented by its attorney, Steve Weidner. Various District administrators and the local board president were also present on behalf of the District.

JURISDICTION

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2009). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them. We affirm the decision of the Waterloo board.

PROCEDURAL HISTORY

This is the second time that the Peters have appealed to the State Board from adoption by the Waterloo board of a dress code. The first appeal [*"Peters I"*] sought review of the May 24, 2010 decision of the Waterloo board to adopt a prescriptive dress code.¹ On or about August 9, 2010, the undersigned administrative law judge gave notice to the parties in *Peters I* (who are identical to the parties herein) of the proposed decision to be submitted to the State Board for its discussion and decision. The proposed decision concluded that the dress code policy adopted by the Waterloo school board was void in that it exceeded the authority given to local school boards in Iowa Code section 279.58. That statute, which authorizes only proscriptive dress codes,² states as follows:

¹ A prescriptive dress code is one that mandates what students must wear.

² A proscriptive dress code is one that informs students of prohibited items of apparel.

1. The general assembly finds and declares that the students and the administrative and instructional staffs of Iowa's public schools have the right to be safe and secure at school. Gang-related apparel worn at school draws attention away from the school's learning environment and directs it toward thoughts or expressions of violence, bigotry, hate, and abuse.
2. The board of directors of a school district may adopt, for the district or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school. ... [Emphasis added.]

Before the State Board met to consider the proposed decision in *Peters I*, the Waterloo board adopted a new dress code policy on December 13, 2010. The District then filed a motion to dismiss the appeal in *Peters I*. That motion was denied on the grounds that the subject matter is of considerable interest to the public and to public school officials, and is quite likely to recur. At its meeting of January 27, 2011,³ the State Board agreed with the proposed decision, voiding the dress code policy of May 24, 2010.

The Peters filed an appeal from the December 13, 2010 decision of the Waterloo board to adopt a new dress code policy. In the 2011 legislative session, proposed legislation was introduced in the Iowa Legislature that would have expanded the authority of local school boards in section 279.58. By agreement of the parties, the evidentiary hearing herein was not scheduled until it became clear that such legislation would not succeed. The 2011 session ended with no changes made to section 279.58 by the Iowa Legislature.

Iowa Code section 290.1 provides for appeal to the State Board from decisions by local school boards when such appeals are brought by an “affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact.” As in *Peters I*, the District argues initially that the Waterloo board’s adoption of the dress code policy was neither a “decision” nor an “order” as those terms are used in Iowa Code section 290.1. For the reasons recited in *Peters I*, the State Board rejects the District’s reliance on *Gabrilson v. Flynn*, 554 N.W.2d 267 (Iowa 1996) to argue that the adoption of the dress code was not a “decision” or “order” of the local school board.⁴ In *Peters I*, we also recited precedent in which this Board has allowed appeals from parents of students with a showing of a minimal nexus between the student and the local board’s decision.⁵

³ 281---Iowa Administrative Code rule 6.17 provides a party with an intermediate appeal and opportunity to brief and directly address the State Board. Because the District exercised its options under this rule, the matter could not be heard by the State Board – which does not meet each month – until several months after the proposed decision was sent to the parties.

⁴ See *Peters I* Decision at 26 D.o.E. App. Dec. 56, 60-61.

⁵ See, e.g., *In re Shared Football Program*, 25 D.o.E. App. Dec. 35 (2008) (upholding local board’s termination of a football cooperative sharing program); *In re Closing of Moore Elementary, Etc.*, 24 D.o.E. App. Dec. 21 (2006) (upholding decision to close certain attendance centers); *In re Grade Realignment*, 24 D.o.E. App. Dec. 284 (2007) (reversing and remanding grade realignment decisions); *In re Removal of Book from Curriculum*, 23 D.o.E. App. Dec. 188 (2005) (upholding removal of a book from the sixth grade

The District also protests that the Peters are not challenging the policy as applied specifically to their children. The Peters are the parents of children enrolled in two different attendance centers of the District. The Peters children are impacted by the district-wide dress code policy. The Peters have standing, on behalf of their children, to seek review of the December 13, 2010 decision of the local board of directors of the Waterloo board to adopt a new dress code policy for students.

The enactment of the policy clearly was a decision made by the local school board. That decision affects the children of the Peters. As stated earlier, this Board has personal and subject matter jurisdiction over this appeal.

FINDINGS OF FACT

As in *Peters I*, the heart of the issue here is the District's legal authority to mandate that its students wear a uniform. Under the dress code at issue in *Peters I*, students were required to wear knee-length or longer shorts, slacks, skorts, skirts, or skirted jumpers of solid navy, black, or khaki/tan color with a non-sleeveless, collared top of a solid color specified by the school of attendance. These requirements were written in prescriptive ("a student must wear ...") terms.

Under the new dress code at issue here, students are prohibited from wearing anything but knee-length or longer shorts, slacks, skorts, skirts, or skirted jumpers of solid navy, black, gray, brown, or khaki/tan color with a non-sleeveless, collared top of a solid color specified by the school of attendance. The present dress code is written in proscriptive ("a student may not wear...") language to comply with section 279.58.

Because the Peters attack the current dress code on its face, rather than as applied, it is appropriate that the entirety of the dress code be reproduced herein:

STANDARDIZED DRESS CODE

Dress Code Rationale, Beliefs and Benefits

Iowa law provides that the students, the instructional staff and the administrative staff of Iowa's public schools have the right to be safe and secure at school. The law allows boards of directors of a school district to adopt, a dress code policy for the district that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school.

The Waterloo Community School District Board of Directors has determined that a mandatory (standardized) dress code is necessary for all elementary, middle, and high school students to ensure that they attend school in a very positive and safe educational environment and to reinforce the District's mission that *each and every student graduate prepared for college, career, and citizenship*. The board believes that any apparel worn at school that draws attention away from the school's learning environment should be prohibited.

curriculum); and *In re Transportation Services*, 23 D.o.E. App. Dec. 237 (2005)(upholding sale of a district's bus fleet to a private student transportation company).

The board believes that the health and safety of the students and staff are of paramount concern and that any apparel that might jeopardize student or staff health and safety should be prohibited.

The board also believes that gang-related apparel worn at school draws attention away from the school's learning environment, directs it toward thoughts or expressions of violence, bigotry, hate, and abuse, and should be prohibited.

Finally the board believes that a standardized dress code helps to prepare students for their futures through:

- Learning about professional/career dress by establishing a businesslike image
- Going to school in an environment of modesty/decency
- Focusing on instruction
- Keeping them personally safe by providing a high level of school security
- Developing a sense of school pride and belonging

Pants/Skirts/Dresses/Bottoms

The following pants/skirts/dresses/bottoms may not be worn in the Waterloo Community Schools:

Any type of cargo or carpenter bottoms with large pockets attached to the exterior	Gang, Safety
Any type of sweat pants/athletic uniform bottoms/shorts or similar	Gang, Positive Educational Environment
Bottoms of any type of material, i.e.: knit, flannel, denim, nylon, spandex, or similar, that is form-fitting to the body	Positive Educational Environment
Skateboard pants, stirrup pants, or jeggings, or similar	Positive Educational Environment
Leggings worn as pants without additional bottom/top at knee length in PK-grade 5	Positive Educational Environment
Leggings in grades 6-12	Positive Educational Environment
Any type of jeans or overalls	Positive Educational Environment
Any bottoms with prints, patterns, embroidery, colored trim, words, symbols, decoration or similar	Gang, Positive Educational Environment
Bottoms with excess/non functional buttons	Safety
Bottoms with beads, extra zippers, things hanging off the clothing, chains, large brand tags, or similar	Safety
Bottoms whose length is above the knee	Positive Educational Environment
Pajamas or other clothing meant to be worn as sleepwear	Safety, Positive Educational Environment, Appropriate Discipline
Bottoms in any shade of green, yellow, light blue, medium blue, red, orange, purple, or white	Gang, Positive Educational Environment
Bottoms with holes, rips, or voids	Safety, Positive Educational Environment
Bottoms that permit undergarments to be visible	Positive Educational Environment, Appropriate Discipline
Bottoms that are revealing or undersized (too tight)	Positive Educational Environment, Appropriate Discipline
Bottoms that are more than one size too large (too loose)	Safety, Gang

Bottoms whose waist is worn more than one inch below the natural waistline	Positive Educational Environment, Gang, Safety
Bottoms that have belt loops that are worn without a belt in grades 3-12	Safety, Positive Educational Environment
Bottoms that are sheer or see-through	Positive Educational Environment
Bottoms that drag on the floor	Safety
<u>Shirts/Tops/Dresses</u> The following shirts/tops (tops) may not be worn in the Waterloo Community Schools:	
Tops that have plaids, checks, stripes, embroidery, prints, words, symbols, or decorations, or similar	Gang, Positive Educational Environment
Tops that have excess buttons, extra zippers, things hanging off the clothing, colored trim, or similar	Gang, Safety
Tops that are without collars	Positive Educational Environment, Gang
Tops that are sleeveless or capped-sleeved	Positive Educational Environment
Tops that are t-shirts, except school t-shirts on designated days	Gang, Positive Educational Environment
Tops that are school athletic or activity apparel (except by members of recognized school groups on designated days)	Positive Educational Environment; Gang ⁶
Tops that are halters, tanks, tubes, bare midriff, spaghetti strapped, backless, and/or off-the shoulder tops, or similar	Positive Educational Environment
Tops that are revealing	Positive Educational Environment
Tops that are hooded	Safety, Positive Educational Environment, Gang
Tops that have holes, rips, or voids	Safety, Positive Educational Environment
Tops that allow undergarments to be visible	Positive Educational Environment
Tops that are worn un-tucked	Safety, Positive Educational Environment
Tops that are tight or too loose (Plus or minus more than one size)	Gang, Safety, Positive Educational Environment
Tops that have a logo larger than 1" (whose height or width is more than 1") except for Waterloo school-specific logos	Gang, Positive Educational Environment
Tops that are sheer or see-through	Positive Educational Environment
Tops that are frayed	Safety, Positive Educational Environment

⁶ "Gang" was added to this row at the evidentiary hearing during the testimony of Cora Turner, the District's executive director of student and support services.

Footwear

It is not permissible to go without shoes except while participating in a school activity such as swimming or gymnastics where shoes are not appropriate. The following footwear may not be worn in the Waterloo Community Schools:

Sandals or similar	Safety
Crocs or similar	Safety
Flip Flops or similar	Safety
Open-Toed shoes	Safety
Shoes with heels above two inches	Safety
Slippers or house shoes/house boots, or similar	Safety
Shoes with fabric soles	Safety
Any shoe not meant for outdoor wear	Safety
Wheelie/Heely shoes (shoes with skates in the bottom) or similar	Safety
Any shoe with a spiked heel	Safety

Head Wear

The following head wear may not be worn in the Waterloo Community Schools:

Hats, visors, caps, bandanas, do-rags/wraps, hairnets, scarves or similar	Gang, Safety
Sunglasses – unless prescribed by a physician for indoor use	Gang, Safety

Belts

The following belts may not be worn in the Waterloo Community Schools:

Belts with buckles whose height is more than the approximate height of the belt	Safety, Positive Educational Environment, Gang
Belts with excessive metal (more metal than is necessary for the functioning of the belt)	Gang, Safety
Chains or chain belts	Gang, Safety
Belts with studs (i.e. metal or rhinestones or similar)	Safety, Gang, Positive Educational Environment
Belts with any type of protruding object	Gang, Safety, Positive Educational Environment
Belts with words or graphics that are disruptive, distracting, or offensive, in language or symbols in grades PK-5	Gang, Safety, Positive Educational Environment
Belts with words or graphics in grades 6-12	Gang, Safety, Positive Educational Environment
Belts with excess buttons, extra zippers, things extra hanging off the belt, or similar objects(s)	Safety

Jackets/Sweaters/Vests/Sweatshirts/Outdoor Weight Scarves/Gloves

Any outer-wear apparel is not permitted in classrooms, hallways, or common areas other than passage to and from the student's locker or coat room upon arrival to or departure from the main building. The following lighter weight jackets, fleeces, sweaters, vests, and sweatshirts may not be worn in the Waterloo Community School District classrooms, hallways, or common areas during the school day

Those with plaid, checks, stripes, pattern, embroidery, decoration, words, graphics, colored trim, printed design, or similar	Gang, Positive Educational Environment
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Those with excess buttons, extra zippers, things hanging off the clothing, or similar extras	Safety
Hooded garments	Gang, Safety
Garments with holes, rips, or voids	Safety, Positive Educational Environment
Garments that are fringed	Safety
Jackets/sweaters/sweatshirts/fleeces without a collared shirt underneath	Gang, Positive Educational Environment
Items with logos larger than 1" in width or length, except Waterloo school-specific logo apparel	Gang, Positive Educational Environment

Layered Clothing

The following clothing, usually worn as a layer under other clothing, may not be worn in the Waterloo Community Schools:

Any t-shirts, camies, or tanks, unless underneath approved tops (the combination may not be collarless)	Positive Educational Environment
Those with any shade of plaid, checks, stripes, printed design, words, or symbols	Gang, Positive Educational Environment
Any tights, pantyhose, or nylons that are not neutral-colored or that are of one of the prohibited bottom colors: any shade of medium or light blue, green, yellow, red, orange, purple, or white, in grades 6-12	Gang, Positive Educational Environment
Tights of fishnet fabric	Safety, Positive Educational Environment
Tights with any patterns, stripes, plaids, designs, words, or symbols in grades 6-12	Gang, Positive Educational Environment
Leggings or footless tights in grades 6-12	Positive Educational Environment

Accessories

The following accessories may not be worn in the Waterloo Schools:

Bandanas or visible handkerchiefs	Gang, Positive Educational Environment
Jewelry that could be used as a weapon	Gang, Safety, Positive Educational Environment
Excessive jewelry (jewelry that is distracting or poses a safety hazard)	Gang, Safety, Positive Educational Environment

Other

It is not permissible to wear any item that may be used as a weapon, including, but not limited to, steel-toed shoes/boots, chains, items with spikes or studs, and other items deemed inappropriate by the principal. It is not permissible to wear any item that indicates affiliation with a gang.

[The clauses regarding implementation, additional school-specific rules, exceptions, regulations, and the savings clause are omitted as not pertinent to this Decision.]

At the evidentiary hearing, the Peters agreed with the District that the latter has authority to regulate many of the listed items in the dress code above. The items with which the Peters take exception are those items that are in bold type.

The District presented extensive testimony of gang activity in Waterloo, including the fluidity of gang colors, symbols, and signs, the number of active gangs in the immediate area (12 – 15), and the impact in the schools of the District of gang activity. Specifically, Cora Turner, the District's executive director of student and support services, testified at length about the evidence of gang activity in the District's schools and about the death in the fall of 2008 of a Waterloo youth related to gang activity, discussed in detail *infra*. She also spoke of how the dress code keeps students from "flagging," that is, from showing their gang affiliation in the school environment.

The District also called upon Waterloo Police Department officer Michael Girsch, a member of that department's new violent crime apprehension team, a team created specifically to address the rise of gang activity in Waterloo and Black Hawk County. Officer Girsch verified that gang colors change frequently and that plaids and trim on clothing are commonly utilized by gangs to show their colors. He also testified that athletic team apparel is often worn by gang members as a means of showing their gang affiliation.

On behalf of the District's board of directors, President Mike Young stated that he and his fellow board members have frequent discussions about gang-related violence in the District's schools. As a matter of course, the Waterloo board is now informed at all expulsion hearings whether the misconduct in question was gang-related.

Dr. Willie Barney is the principal of East High School, one of two traditional or comprehensive high schools of the District. Dr. Barney testified extensively about how gang incidents, including the murder of East High student Kevin Garcia, infiltrate the education environment of the District.⁷ When asked about the positive effects of the dress code, Dr. Barney stated that the junior class Iowa Test of Educational Development aggregate score was improved, student and staff morale was better, the number of fights at school had decreased, daily classroom attendance was improved, the number of students participating in extracurricular activities was on the rise, and attendance at school events had increased. Dr. Barney qualified his statement by stating that he cannot be sure that all of the positive effects are solely due to the dress code.

The Peters did not offer or elicit any direct testimony during the evidentiary hearing, but they did introduce a number of exhibits. As in their first appeal, the Peters argue that the dress code adopted by the Waterloo board mirrors the former dress code and therefore, still exceeds statutory authority.

CONCLUSIONS OF LAW

Standard of review.

The State Board again concludes that the relevant statute is Iowa Code section 279.58, *supra*, which expressly vests the boards of directors of our public schools with authority to impose a limited dress code upon students. Further, the appropriate standard of review is for abuse of discretion, wherein this Board gives deference to a

⁷ Garcia was stabbed to death on April 28, 2009. Local media (TV station KWWL and newspaper *The Waterloo Courier*) both characterize what occurred as a gang fight between rival groups.

local board's decision unless the decision was "not based upon substantial evidence or was based upon an erroneous application of the law." *Sioux City Comm. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 569 (Iowa 2003). That is, this Board must determine whether a reasonable person could have found sufficient evidence to come to the same conclusion as that reached by the local board. *Id.*

In their post-hearing brief, the Peters invoke *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733 (1969) (permitting schools to regulate speech that impinges on the rights of others or has the likelihood of a substantial and material disruption at school), as well as lower federal court cases addressing attempts by school districts to regulate personal grooming and length of a student's hair. None of those cases help the Peters' cause. The issue of regulating what students wear to public school does not invoke any fundamental rights. 3 Rapp *Education Law* 9.04[8][c][iii]. Accordingly, our analysis does not rise to strict scrutiny of the dress code. We review to ensure that the dress code is rationally related to the District's legislatively approved goals of providing for the "health, safety, or positive educational environment of students and staff in the school environment." Iowa Code § 279.58(2).

Because this appeal and its predecessor, *Peters I*, are the first appeals to the State Board of a dress code, we remind all readers that the challenge brought forth in this appeal is to the face of the local dress code policy, and not as the local dress code is "applied" to any specific student. We appropriately limit our review to the question of statutory authority.

Did the District exceed its statutory authority?

Section 279.58 unambiguously confers authority on public school boards to adopt proscriptive dress codes only. For the reasons stated in our Decision in *Peters I*, we disagree with the District's arguments that school districts are no longer subject to the "Dillon Rule," and that Iowa Code section 279.8 broadens the authority specifically addressed in section 279.58.⁸

Many of the exhibits from the Peters (those regarding clothing drives, availability of acceptable apparel from local vendors, application for clothing assistance) make the point that the new dress code is still an attempt to put students into uniforms. This is admittedly so. The District makes no pretense that its goal was to resurrect the dress code voided in *Peters I*. Its administrators and board feel strongly about the role that a restrictive dress code plays in meeting the goals of improving student achievement and providing a safer environment for students. Thus, the end result of both the voided dress code policy and the current one is that students of the District must wear something akin to a uniform to attend school. Uniforms are not prohibited by section 279.58 if, as here, the dress code requiring them conforms to the proscriptions section 279.58 contains.

To achieve this result of imposing a uniform or standardized dress code on its students while coming into compliance with section 279.58, the District revised its dress code policy from prescriptive to proscriptive. The Peters note that the District also added a "savings clause" to the new dress code policy. They argue that the rationale for this clause was that the District knew that its dress code was beyond statutory authority. We

⁸ See 26 D.o.E. App. Dec. 56, 62-63.

reject that argument. A savings clause is a precautionary provision found in many documents. It is routine to the point of being boilerplate. Its presence in the policy under appeal is irrelevant.⁹

Conversion by the District of its former prescriptive policy to one that is proscriptive was a necessary step for the District to take. However, it is much more important that the District in doing so deliberately and affirmatively used section 279.58 as its touchstone. This appeal is no longer about telling students what they must wear. The focus of this appeal is whether the proscriptive language of the new dress code falls within the authority granted to districts regarding such matters by section 279.58.

As was noted in *Peters I*, school administrators do not need a standardized dress code to regulate many of the problems with which the District has grappled, including overly baggy clothing, pants with sagging waistlines, skimpy and/or form-fitting clothing, and flip-flops and other open-toed footwear. School districts may regulate clothing or other apparel pursuant to such case law as *Tinker, supra* (permitting schools to regulate speech that impinges on the rights of others or has the likelihood of a substantial and material disruption at school); *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159 (1986) (permitting school officials to regulate lewd, indecent, objectively offensive speech and conduct); and *Morse v. Frederick*, 551 U.S. 393, 127 S.Ct. 2618 (2007) (permitting school officials to regulate speech and conduct that appears to promote illegal or harmful activity).

Knowing this, and with the reasonable concessions made by the Peters as to many items in the new dress code policy, the District concentrated its evidence supportive of the new dress code on the areas of gang activity and improving the educational environment for its students.

The District offered evidence that gang activity in the Waterloo area is distracting at its most benign, and tragically destructive at its worst. We cannot accept the invitation of the Peters to be troubled by the District's lack of a definition of "gang." The specific guidelines in the Iowa Criminal Code (section 723A.1) cannot be used in this appeal. Courts have long held that school policies are not expected to be written "with the specificity of a criminal code." *Bethel School District No. 403 v. Fraser, supra*, cited in *In re Justin Anderson, et al.*, 14 D.o.E. App. Dec. 294, 299 (1997). The specific guidelines in the Iowa Criminal Code (Iowa Code section 723A.1) are not required for resolving this appeal.

It matters not whether the Peters or this Board believes that there are more effective means than the District's dress code by which to combat gang activity. Under the abuse of discretion standard, we do not substitute our judgment for that of the local school board unless the local board was clearly irrational or exceeded its statutory authority." *In re Jerry Eaton*, 7 D.o.E. App. Dec. 137, 141 (1987). Where reasonable minds can disagree about how to solve a problem, any reasonable solution must be upheld by this Board.

⁹ The savings clause added to the new dress code policy states, "In the event that any administrative or judicial body declares any portion of this policy or any attending regulation illegal, the remaining portion of this policy or attending regulation not declared illegal shall remain in full force and effect without further action by the District."

In *Peters I*, we took the District to task for not giving deference to section 279.58. Now that the District has based its new dress code policy on the provisions of that law, it is our turn to offer appropriate deference to the District. The evidence offered by the District regarding gang activity is more than sufficient to justify the District's regulation of colors (including trims, plaids, patterns, and embroidery), words and symbols, logos larger than one inch, hooded garments, and athletic tops and bottoms.

A closer question is the District's regulation prohibiting non-collared tops and sleeveless tops. Superintendent Norris and local board secretary Sharon Miller both testified that this regulation makes it easier for school personnel to control inappropriate cleavage. This is not an irrational response to the goal of reducing classroom distractions and increasing student achievement. President Young expounded on this pedagogical goal. He observed that the uniformity and simplicity of enforcing the new dress code no longer takes valuable time away from teaching. Strikingly, when asked by Mr. Peters why not just expel students who create distractions with inappropriate apparel, President Young responded that a standardized dress code is a better solution than dumping kids into alternative settings. This Board is hard pressed to disagree.

By purposefully paying heed to the Legislature's intention, the District created the necessary nexus between the needs of its students and the provisions of the dress code, converting what could have been a meaningless exercise in semantics into a meaningful, lawful policy. The lesson here for other local boards of education is not merely that dress codes need to be framed in proscriptive language. Apparel prohibited in a local dress code must be justified under the totality of Iowa Code section 279.58.

We reiterate that this decision – that the dress code policy is deemed to be valid under section 279.58 – is limited to the challenge by the Peters to the facial validity of this policy. It does not address how the policy is applied to any specific student.

DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Waterloo Community School District made on December 13, 2010, imposing a mandatory district-wide dress code policy is AFFIRMED. There are no costs of this appeal to be assigned.

Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Rosie Hussey, President
State Board of Education