

## *Peltier v. Charter Day School: A Charter School's Regulation Requiring Female Students to Wear Skirts is Ruled Unconstitutional*

by [Richard Fossey](#) & [Todd A. DeMitchell](#) - May 22, 2019

*A federal judge ruled that a charter school's regulation requiring female students to wear skirts violates the Equal Protection Clause.*

In February 2016, Bonnie Peltier, Erika Booth, and Patricia Brown sued Charter Day School (CDS) on behalf of their daughters, who were students at the school. The students challenged the school's student-uniform policy, which required female students to wear "skirts, shorts, or jumpers" and male students to wear pants or knee-length shorts (*Peltier v. Charter Day School, Inc.*, 2019, p. 3). Peltier's daughter and two other female students argued that the school's skirts regulation treated boys differently from girls and burdened female students more than males. The student plaintiffs testified that skirts were less comfortable for them to wear than pants on a daily basis and less warm than pants during cold weather. Additionally:

The skirts requirement forces [the plaintiffs] to pay constant attention to the positioning of their legs during class, distracting them from learning, and has led them to avoid certain activities altogether, such as climbing or playing sports during recess, all for fear of exposing their undergarments and being reprimanded or teased by boys. (p. 10)

The plaintiffs also claimed that the skirts requirement sent "a message that their comfort and freedom to engage in physical activity are less important than those of their male classmates" (p. 10).

CDS defended its skirts requirement as an element of the school's "traditional values" approach to education. The skirts rule, the school argued, helped students to "act more appropriately" toward the opposite sex and was one of the "visual cues" that helped foster respect between the sexes (p. 32).

Nevertheless, the school's skirts requirement had several loopholes. On days students were scheduled for physical education (PE), both boys and girls were allowed to wear sweatpants or shorts. Students in different classes were scheduled for PE on different days, so some percentage of the student population was wearing PE uniforms rather than standard school uniforms on any given school day. In addition, the school suspended its uniform policy (including the skirts requirement) for special occasions like field trips, girls' sports, and days when students were recognized for meeting certain academic benchmarks or making charitable contributions.

### JUDGE MALCOLM HOWARD: CHARTER SCHOOL'S SKIRTS RULE VIOLATES EQUAL PROTECTION

Peltier and her fellow plaintiffs sued CDS under four different theories: a Title IX violation, breach of contract, violation of the North Carolina Constitution, and violation of the Equal Protection Clause of the Fourteenth Amendment. Judge Malcolm Howard ruled against them on their Title IX claim and declined to rule on their state constitutional claim and their breach-of-contract claim on the grounds that these theories had been inadequately briefed.

Regarding their Equal Protection claim, however, Judge Howard ruled for the plaintiffs. In doing so, the judge first had to address the fact that CDS was a private, non-profit corporation, and not a state agency. In most instances, private entities such as CDS cannot be sued for a constitutional violation because private actors are normally not subject to constitutional constraints.

In the case before it, however, Judge Howard ruled that CDS, as a charter school, was providing a free, public education to its students, a function that "is an historical, exclusive, and traditional state function" (p. 22, internal citation omitted). Moreover, by adopting a school-uniform policy in compliance with North Carolina law and subjecting its students to discipline if they violated the policy, CDS had acted "under color of state law." Although CDS might not be a state actor for all purposes, Judge Howard deemed it a state actor with regard to its actions in promulgating and enforcing the school's student-uniform policy.

Having determined that CDS was a state actor that had acted under color of state law, Judge Howard turned to the question of whether CDS had violated the Equal Protection Clause when it promulgated and enforced its skirts

regulation. CDS argued that its skirts regulation was constitutionally valid under a standard laid down in *Hayden v. Greensburg Community School Corporation* (2014), a decision by the Seventh Circuit Court of Appeals. “Sex-differentiated standards consistent with community norms may be permissible to the extent they are part of a comprehensive, evenly-enforced grooming code that imposes comparable burdens on both males and females alike,” the Seventh Circuit had ruled (p. 581).

But Judge Howard was not persuaded that the school’s skirts regulation could be justified under the standard laid down in the *Hayden* decision. Even under the *Hayden* standard, the judge said, CDS’s skirt regulation “does not pass constitutional muster” because it is not consistent with community norms (*Peltier*, p. 30). “Women (and girls) have, for at least several decades, routinely worn both pants and skirts in various settings, including professional settings and school settings,” Judge Howard wrote. Indeed, he pointed out, women have been permitted to wear trousered uniforms at West Point since they were first admitted to that military academy in 1976; and women began wearing pant suits on the floor of the U.S. Senate more than twenty-five years ago (p. 31).

Moreover, Judge Howard continued, CDS’s student-uniform code did not impose comparable burdens on male and female students. Although boys and girls were both required to conform to the CDS student-uniform policy, girls were more burdened than boys:

[P]laintiffs in this case have shown that the girls are subject to a specific clothing requirement that renders them unable to play as freely during recess, requires them to sit in an uncomfortable manner in the classroom, causes them to be overly focused on how they are sitting, distracts them from learning, and subjects them to cold temperatures on their legs and/or uncomfortable layers of leggings under their knee-length skirts in order to stay warm, especially moving outside between classrooms at the School. (p. 33)

In short, Judge Howard concluded, “the skirts requirement causes the girls to suffer a burden the boys do not, simply because they are female” (p. 33). Under the facts of the case before him, Judge Howard ruled “that the skirts requirement of the uniform policy of the School promulgated by CDS, Inc., as written and enforced, violates the Equal Protection Clause” (p. 33). Therefore, he entered summary judgement in favor of the plaintiffs.

#### CONCLUSION AND IMPLICATIONS

As Judge Howard noted in his opinion, most challenges to school dress codes and student-uniform codes have been brought under the First Amendment. In cases dating back more than forty years, students have argued that school restrictions on student clothing infringe on their constitutional right to free expression (Fossey & DeMitchell, 2014).

*Peltier v. Charter Day School, Inc.* is a rare case in that a group of students challenged a student-uniform policy under the Equal Protection Clause of the Fourteenth Amendment and not the Free Speech Clause of the First Amendment. A federal judge found their case quite compelling. Clearly, a charter school’s skirts regulation burdened female students and not male students and could not be justified as an expression of community norms.

The *Peltier* decision is important for its ruling that a charter school organized as a private, non-profit corporation is a state actor for purposes of analyzing the school’s student-uniform code and can be made to answer to an accusation that the school violated its students’ constitutional rights. Judge Howard’s analysis may have implications for charter schools all across the United States, many of which describe themselves as schools offering a so-called traditional learning environment.

In our view, Judge Howard rendered a good decision, and his analysis is sound. The days when school authorities can regulate female students’ clothing based on poorly articulated “traditional values” are over. When it comes to rules restricting what students may wear to school, female students are constitutionally entitled to equal protection of the laws.

#### References

Fossey, R. & DeMitchell, T.A. (2014). *Student Dress Codes and the First Amendment: Legal Challenges and Policy Issues*. Lanham, Maryland: Rowman & Littlefield.

Hayden ex rel. A.H. v. Greensburg Community School Corporation, 743 F.3d 569 (7th Cir. 2014).

Peltier v. Charter Day School, Inc., No. 7: 16-CV-30-H (E.D.N.C. March 28, 2019).

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