

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ROBERT P.

vs.

WESTERLY SCHOOL COMMITTEE

DECISION

Held: Student's exclusion from school on two occasions for wearing a rock t-shirt with "666" on the back was invalid.

Date: July 5, 2000

Introduction

This is the appeal of Robert P., by his mother, which alleges that Robert was unlawfully suspended from Westerly High School on two occasions for wearing a particular t-shirt.¹

For the reasons set forth below, we find that Robert's exclusion from school on the two dates in question was invalid.

Background

Robert is a recent graduate of Westerly High School. As of the time of the incidents at issue, he was regarded as a polite, well-mannered, friendly, cooperative student. He did not have a disciplinary record.

Robert likes rock and roll music. He particularly likes a band by the name of White Zombie, a "heavy metal rock band" in his words. [12/21/98 transcript, p. 40]. Several years ago, Robert's mother brought home a White Zombie t-shirt and gave it to Robert's younger brother. Robert began to wear the t-shirt to Westerly High School during the 1996-97 school year.² On the front of the black t-shirt is the upper half of a devilish figure (with horns), in white, with the eye sockets colored reddish orange. Below the 15-inch figure, printed in red, is "White Zombie." On the back of the shirt, near the top, in red, is the number "666," about 5 inches tall.

White Zombie has sold millions of albums and been nominated for a Grammy award. In 1992 it released an album entitled "La Sexorcisto: Devil Music Volume One." The graphics on the back of the album include a highway sign for "Route 666." Below the listing of the song titles is the word "Satanophonic." In 1995, White Zombie released "Astro-Creep: 2000 -- Songs of Love, Destruction and other Synthetic Delusions of the Electric Head." Both albums contain parental advisory stickers for explicit content.

Robert testified that White Zombie songs "usually talk about the devil," but the "666" on the back of the t-shirt is "just three numbers." [12/21/98, p. 58]. Robert's mother testified that she is not familiar with White Zombie's music. She stated, however, that she is very protective of her children.

¹ The appeal was filed on November 12, 1998. The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. Hearings were conducted on 17 dates between December 21, 1998 and April 3, 2000. The record in the case closed on May 30, 2000 with the parties' submission of briefs.

² Robert attended the Chariho Area Career and Technical Center for part of the 1997-98 school year.

In 1997, Father Paul Desmarais, Providence diocesan director of the office for cult and occult awareness, visited Westerly High School to give a lecture on the occult and satanism. Members of the school staff attended the lecture, which was open to the public. Father Desmarais distributed printed materials at the lecture. The materials included information on occult signs and symbols, and heavy metal music.³ Both contained references to “666.”

One day in the spring of 1998, Robert was wearing the White Zombie t-shirt while eating lunch with several other students at a table in the school cafeteria. There was no disorder at the table. Assistant principal Paula Dinoto noticed the 666 on the back of the shirt and advised Robert that the t-shirt was inappropriate for school. She told him that he should turn the shirt inside-out. Later that spring, assistant principal Dinoto again observed Robert peacefully wearing the t-shirt in the cafeteria and mentioned the shirt to the school’s other assistant principal, James Spellman.⁴

On the morning of June 5, 1998, Robert wore the t-shirt to his special-education, self-contained classroom. The School Committee presented four witnesses at the hearing to testify about the events of that date. According to a teacher assistant, she was in room 302 when a problem regarding the t-shirt arose at the beginning of class. Some of the other six students in the class expressed their anger at Robert’s wearing of the t-shirt. The students would not settle down to do their work. Shortly into the class, the teacher left the room to take a phone call. She was gone five to seven minutes. During this time, the teacher assistant sent Robert to the assistant principal’s office after he refused to turn the shirt inside-out. The teacher assistant remembered that “prior to this incident Bobby had been asked by an administrator to turn the t-shirt inside-out . . .” [1/26/99, p. 75]. She also testified that two of the more vocal students “were more upset with the fact that [Robert] wasn’t following the rules and that he had been told he couldn’t wear it, it was inappropriate and sort of why are you doing this and, you know, you’re not supposed to wear this shirt . . . you’re going to get in trouble . . .” [1/26/99, p. 71]. As for the volume level of the students’ remarks, the teacher assistant testified “They weren’t really loud.

³ The list of occult signs and symbols included a five-pointed star, the Star of David, the peace sign, and a triangle. It also included the “horned hand,” with the comment that the hand “may also innocently be used by those who identify with Heavy Metal Music,” and the symbol for anarchy, with the note that “[i]nitially, those into ‘punk’ music used this symbol, but it is now widely used by Heavy Metal followers.” [School Committee Exhibit 4].

⁴ Other message t-shirts, including rock t-shirts, were allowed to be worn at Westerly High School.

They weren't hollering and screaming at each other. They were just matter of factly stated [sic] that they didn't like it." [1/26/99, p. 72].

According to a student in the class, some of the students were offended by Robert's t-shirt when he took his jacket off at the beginning of class. Students spoke out against the t-shirt almost to the end of class. The teacher left the classroom to take a phone call and the teacher assistant came into the room. The teacher assistant eventually told Robert to go to the assistant principal's office. The teacher came back to the classroom with about ten minutes left in the class, after Robert had left.

According to assistant principal Spellman, he received a phone call from a secretary in the main office stating that he was needed in room 302. He rushed to that room and looked through the open door where he could see that, although there was no fighting or rowdiness, the students were angry and uncomfortable. The teacher came out to the hallway and told him that the students were afraid of and angry about the t-shirt. Mr. Spellman then took Robert to the office.

The secretary testified that she received a call on the intercom from room 304 and, upon answering, heard an unidentified female voice request an assistant principal in room 304. The secretary did not recognize the voice on the intercom. She testified that Robert's teacher and teacher assistant worked in room 304 on the date in question.

The classroom teacher did not testify at the hearing. In a memorandum dated December 4, 1998, she stated that Robert entered the classroom wearing the t-shirt. The students were upset by the shirt and they questioned Robert as to why he had to wear the shirt when he had previously been told it was inappropriate. The teacher and the teacher assistant spoke to Robert about the effect of the shirt on the other students. During this discussion the teacher was summoned to the classroom next door to take a phone call. When she returned, Robert was no longer in the classroom.

In his office, assistant principal Spellman told Robert that he could not wear the t-shirt in school with the "666" exposed. There were no other concerns about Robert's behavior in class that day. Robert asked to call his mother. After the assistant principal explained the situation to her, she came to the school and took Robert home.⁵

⁵ No students in Robert's class were disciplined for their behavior that day.

The school dress code for the 1997-98 school year prohibited the wearing of apparel “that causes a distraction/disruption in the classroom or school building . . .” It further stated that students wearing prohibited apparel “will be excluded from school until such time as the clothing in question is changed.” [Appellant’s Exhibit 15].

During the summer of 1998, the school dress code was amended to state, in part, that “[a]ny item of clothing that implies or is cult or gang related will also not be tolerated.” [Appellant’s Exhibit 16].

On September 11, 1998, Robert wore the t-shirt to school. Assistant principal Spellman testified that he heard a student in the office say “I can’t believe that that kid is wearing that 666 t-shirt again, some kids are going to get him and rip it off him.” [5/11/99, p. 76]. Mr. Spellman asked the student if he really heard that. When the student said yes, Mr. Spellman checked Robert’s schedule, went to his classroom, and brought him to the office.⁶ Upon being told that Robert could not wear the shirt in school, his mother took him home.

The student who commented on Robert’s t-shirt in the office testified that he did not say anything other than to report his observation of Robert wearing the t-shirt. He specifically denied overhearing anyone threatening to punch Robert.

Assistant principal Spellman did not initiate the school’s suspension process with regard to either t-shirt incident.

The School Committee presented extensive testimony regarding its interpretation of the message conveyed by the number 666 on the back of Robert’s t-shirt. The testimony was provided by Edmund Pierce, a ritual crime investigator, the previously-mentioned Father Desmarais, Dr. Timothy Rivinus, a child and adolescent and addiction psychiatrist with a specialty in cults and the occult, school administrators and school staff. According to the testimony, the number 666 is a biblical reference to the beast, the devil, or evil. The number is commonly found in satanic cult activity.⁷ Satanism is a destructive belief system that can be harmful to youth. Certain types of individuals found in the high school population are vulnerable to cult influences. Satanic cults operate in secrecy and have been linked to violent criminal

⁶ The assistant principal did not investigate the source of the alleged threat against Robert.

⁷ It also is used in gang parlance to signify extreme violence. Testimony was presented regarding the presence and activities of gangs in the Westerly area.

behavior.⁸ Heavy metal music can play a role in satanic cult activity, and it can be used as an advertisement to youth to become involved in satanism. White Zombie music has many disturbing themes, and it can be seen as an exhortation to violent action, against one's self and others. The wearing of the t-shirt with 666 on its back is a provocative act that invites a response from others. As Dr. Rivinus testified, "it's my opinion that you don't let a symbol like that go unquestioned . . ." [3/13/00, p. 79].⁹

As for White Zombie in particular, the band's website provides material regarding its albums, including the following excerpt about the recording of "Astro-Creep: 2000":

The result is an album seething with uninhibited imagery of dark obsessions with sex, death and other bizarre landscapes of the human conditions. As always, these nightmarish visions drip with a black humor that suck listeners deeper into the belly of The Beast. [School Committee Exhibit 13].

The same article states that White Zombie has long established itself as "a band that linked art with insanity . . ." It also includes a comment from vocalist Rob Zombie regarding the band's former drummer: "[Phil] never really fit into what White Zombie was about, but we never wanted to stop touring long enough to find the right guy. After the final show of the tour we placed Phil in the escape pod and jettisoned him into outer space."

Also introduced into evidence was a "Facts for Families" document from the American Academy of Child and Adolescent Psychiatry entitled "The Influence of Music and Rock Videos." It states that music

is often a major part of a teenager's separate world. It is quite common for teenagers to get pleasure from keeping adults out and causing adults some distress.

A concern to many interested in the development and growth of teenagers is a serious deterioration in the message of some rock music, including best-selling albums promoted by major record companies. The following troublesome themes are prominent:

⁸ School principal James Murano testified as to his understanding of the involvement of satanic activity in fatal shootings at a high school in Pearl, Mississippi.

⁹ The three named witnesses listed above never interviewed Robert, reviewed his educational or medical records, or spoke with any students or faculty at Westerly High School regarding this matter. The School Committee filed a motion at the outset of this proceeding for an order requiring Robert to be examined by Dr. Rivinus. The motion was denied. Dr. Rivinus later testified that, in the absence of an examination, he was unable to render opinions about Robert to a reasonable degree of medical certainty, but that he could provide professional opinions in the form of generalizations based on his experience with youngsters in similar situations. [3/13/00, pp. 43-44].

- Advocating and glamorizing abuse of drugs and alcohol.
- Pictures and explicit lyrics presenting suicide as an “alternative” or “solution.”
- Graphic violence.
- Preoccupation with the occult; songs about satanism and human sacrifice, and the apparent enactment of these rituals in concerts.
- Sex which focuses on controlling sadism, masochism, incest, devaluing women, and violence toward women.

Parents can help their teenagers by paying attention to their teenager’s purchasing, listening and viewing patterns, and by helping them identify music that can be destructive.

Music is not usually a danger for a teenager whose life is happy and healthy. But if a teenager is persistently preoccupied with music that has seriously destructive themes, and there are changes in behavior such as isolation, depression, alcohol or other drug abuse, a psychiatric evaluation should be considered. [School Committee Exhibit 20, emphasis in original].

There was general agreement among the witnesses regarding the last two paragraphs of the “Facts” sheet. Mr. Pierce testified that “where I zero in on is an obsession with that kind of music, in other words, they listen to that music to the exclusion of all other music.” [3/20/00, p. 137]. Father Desmarais testified that “I have not encountered a young person who said that they’ve become a witch or a satanist because of listening to a band.” [5/11/99, p. 125]. In relating the example of a young person who was angry at God after a series of deaths in his life, Father Desmarais stated that “the music that he listened to all the time was a reflection of something else that was taking place or going on in his own life.” [5/11/99, p. 126]. In assessing White Zombie song lyrics, Dr. Rivinus stated “this is not material that young people can’t be exposed to, but . . . if taken without editorial help by the adult world . . . [and] without accompanying dialogue to our young people about what the alternatives are and what these lyrics may mean and whether or not young people really should accept them at face value or as a philosophy of life I think is a question or questions . . . that disturb me greatly.” [5/25/99, p. 14].

Dr. James Greer, a child and adult psychiatrist testifying on behalf of Appellant, expressed his complete agreement with the last paragraph of the fact sheet. Dr. Greer further testified that he has been unable to find any scientific proof of a causal relationship between listening to particular types of rock and roll music and negative behavior. Dr. Greer strongly dis-

agreed with the opinion of Dr. Rivinus that the t-shirt was “a walking advertisement for satanism.” [3/31/00, p. 151].

Positions of the Parties

Appellant contends that the dress code is void for vagueness, on its face and as applied, on constitutional grounds; that Rhode Island statutory and case law go beyond minimum federal constitutional standards in providing protections to students regarding their dress;¹⁰ that R.I.G.L. 16-2-17 does not unconstitutionally limit the School Committee’s authority in this area; that Robert’s rights cannot be subject to a heckler’s veto; that the Committee violated the establishment clause and engaged in viewpoint discrimination in the manner it applied the dress code; that the Committee’s expert witness evidence is irrelevant and inadmissible; and that the action taken against Robert for wearing the t-shirt qualifies as suspensions under R.I.G.L. 16-2-17.

The School Committee contends that the appeal is without jurisdiction under R.I.G.L. 16-2-17 because Robert was never suspended from school. As for the merits of the case, it argues that its actions constitute a reasonable and lawful enforcement of the school dress code in light of the actual disruption of the educational process that occurred, the threatened disruption and/or perceived danger to students that the t-shirt represents, and the shirt’s relationship to cults or gangs.¹¹ According to the Committee, the evidence in this matter establishes a connection between the number 666 and violence, and the presence of 666 in the school brings the potential of violence. The Committee points to the “extensive testimony respecting the potential adverse effect on the health and safety of the students” of the number 666 on Robert’s t-shirt, thereby justifying its action. [Brief, p. 31].¹² Finally, it argues that to the extent R.I.G.L. 16-2-17 and

¹⁰ Appellant cites a decision of the Commissioner of Education, Gardner vs. Cumberland School Committee, March 24, 1971, as establishing the dress code standard for Rhode Island schools.

¹¹ The materials distributed by Father Desmarais at his 1997 lecture at Westerly High School included a statement by the Catholic Bishops of Connecticut about the “growing phenomenon of satanic cults.” [School Committee Exhibit 4]. According to the School Committee’s brief, this statement was included “to attempt to penetrate the general societal ignorance and disbelief . . . about the reality of this dangerous threat to Connecticut residents and their Westerly neighbors, and to alert Westerly residents of the geographical bordering Connecticut danger from satanic cults in Connecticut . . .” [Brief, p. 47].

¹² Citing Bethel School District v. Fraser, 478 U.S. 675 (1986), the Committee argues that “[i]f a school is empowered to prohibit merely lewd, indecent, or offensive speech as being beyond the boundary of socially appropriate behavior, certainly, a school is empowered to prohibit speech, which is offensive and/or may lead to school violence or adverse health to some students or others. Violence, even the threat of violence is beyond the boundary of socially appropriate school behavior as well.” [Brief, p. 35].

Rhode Island cases restrict the Committee's right under federal law to promote student safety and prevent disruptions of the educational process, they are unconstitutional.

Discussion

The parties differ as to the characterization of the action taken against Robert for his insistence upon wearing the White Zombie t-shirt with the "666" exposed. Appellant views the discipline as suspensions, and bases this action on the right of appeal expressly provided in R.I.G.L. 16-2-17. The School Committee maintains that Robert never received a suspension from school for the shirt and therefore denies that jurisdiction for this appeal exists under R.I.G.L. 16-2-17.

We find the actions at issue to be de facto suspensions. As with a suspension, Robert was excluded from school for violation of a school rule. Alternatively, we note that Robert's exclusion from school under the student disciplinary policy¹³ adversely affected his interest in attending the school in which he was enrolled pursuant to the compulsory attendance law. As such, it rendered him an aggrieved person in a dispute arising under a law related to education, and thereby authorizes an appeal to the Commissioner under R.I.G.L. 16-39-1 and 2.

The parties have further differences regarding R.I.G.L. 16-2-17 in terms of its effect on the legal standard to be applied to this case. The statute seeks to ensure "a school which is safe and secure, and which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student." It provides a detailed definition of a "disruptive student," including the type of conduct that is covered. It also states that school committees "may suspend all pupils found guilty of said conduct or of violation of those school regulations which relate to the rights set forth [above], or where a student represents a threat to those rights . . ."

While the "disruptive student" is addressed in great detail in R.I.G.L. 16-2-17, we do not interpret that portion of the statute as providing the exclusive legal authority for dealing with student disruption of the educational process. Prior to 1992, R.I.G.L. 16-2-17 stated in its entirety that "[t]he school committee may suspend during pleasure all pupils found guilty of incorrigibly bad conduct or of violation of the school regulations." In 1992, and again in 1998,

¹³ R.I.G.L. 16-21-21 requires each school committee to adopt a student discipline code.

the statute was amended to specifically address threats of physical harm by disruptive students. The amended statute retained the school committee's authority to suspend pupils for violation of school regulations, as long as those regulations relate to the rights described at the beginning of the statute. Those rights include a school that is safe and secure, and conducive to learning.

When we examine the language of the revised statute, what initially appears to be a limitation of school committee authority is not that at all. Given the expansive and fundamental nature of the rights to be safe and to be able to learn, it is hard to imagine many school regulations that would not in some way be related to them. Turning to the case at hand, although Robert does not meet the statutory definition of a "disruptive student," the school dress code at Westerly High School certainly relates to school safety and an appropriate learning environment. Consequently, despite the fact that this student discipline issue involving alleged disruption of the educational process does not present a "disruptive student" as defined in R.I.G.L. 16-2-17, the School Committee remains empowered to address the issue under the school dress code. R.I.G.L. 16-2-17 does not broaden Robert's rights in these circumstances, nor does it restrict the School Committee's authority.¹⁴

Both parties cite Tinker v. DesMoines School District, 393 U.S. 503 (1969), and its progeny in support of their respective positions. In Tinker, three students were suspended from school for wearing black armbands to protest the war in Vietnam. The United States Supreme Court found the suspensions to be invalid because the students' conduct did not materially disrupt classwork or involve substantial disorder or invade the rights of others, and because the record did not demonstrate "any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities . . ." Ibid. at 514. In the course of its opinion, the Court noted the importance of the need to prescribe and control conduct in the schools, but it also stated that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." Id. at 508.

As for the events of June 5, 1998, the evidence reveals numerous troubling inconsistencies as to what actually happened in Robert's classroom. The School Committee

¹⁴ We make the same observation about the Commissioner's decision in Gardner vs. Cumberland School Committee. That case involved the school committee's prohibition of the wearing of maxi-coats at elementary schools. The prohibition was based on a belief that the coats presented a safety hazard. The appeal did not raise, nor did the Commissioner's decision address, any issues regarding freedom of expression. For that reason, we do not consider ourselves bound by that decision's description of a school district's authority to determine the mode of dress of pupils.

asserts that the testimony of the teacher assistant and the student, taken with the statement of the classroom teacher, credibly establish that the t-shirt caused substantial disruption and material interference with class activities. Our review of this evidence indicates that the other six students in the special-education class did not react to the t-shirt in a loud or boisterous manner. There were students who were angry and upset at the sight of the 666 on the t-shirt. It appears that this reaction was due as much to Robert's "disobedience" in wearing the shirt as it was to the shirt itself.¹⁵ In assessing the impact of the shirt on the class, however, we are unable to reconcile one important fact established by the School Committee's evidence with its claim of substantial disruption and material interference with classwork: the fact that the teacher left the classroom during the activity in question.

To us, this fact speaks volumes about the state of affairs in Robert's classroom on June 5th. If the classroom truly were in a state of substantial disruption on that date, we have difficulty understanding how the teacher could transfer control to a teacher assistant and leave the classroom to take a phone call in another room.¹⁶ Not only would the teacher be excusing herself from a volatile situation in which her training and experience were most needed, but she would be placing the safety and well-being of students in the hands of a noncertified staff member. We note that this was not a situation that suddenly erupted outside the presence of the classroom teacher. The alleged problem with the t-shirt appeared at the beginning of class in the teacher's presence and persisted. The teacher's belief that she could leave the classroom resolves any doubts in our mind as to the extent of the effect of the t-shirt on the class that day.¹⁷ Accordingly, we are unable to find under Tinker that the t-shirt actually disrupted or interfered with classwork in a substantial or material manner on June 5, 1998.

We are of the same view with regard to the September 11, 1998 incident. Given the student's testimony that he merely stated that he had observed Robert wearing the t-shirt again, we do not find any actual disruption on that date.

¹⁵ Robert's alleged misconduct consisted solely of wearing the t-shirt. There is no allegation that Robert, by word or deed, otherwise interfered with the rights of other students or staff.

¹⁶ No evidence was presented regarding the specific nature of the phone call.

¹⁷ We have additional concerns with the fact that the decision to have Robert removed from the classroom was made by the teacher assistant without any attempt to summon the teacher back to the room.

Our consideration of the remaining issues concerning the t-shirt, i.e, the reasonable forecast of substantial disruption of or material interference with school activities, the threat of violence, and the cult and gang-related prohibitions in the dress code, require further comment regarding the voluminous evidence presented regarding 666, satanic cults, gangs, and White Zombie.

Although it appears from the record that White Zombie no longer exists, it was a rock and roll band during the period of time relevant to this case. As a rock and roll band, White Zombie was in the entertainment business. It released albums, performed in concert, and licensed merchandise, all for a price. It engaged in promotion and marketing to enhance its sales.¹⁸

White Zombie was not an “underground” band. It was signed to a major record label, it sold millions of albums, and it toured extensively.

Webster’s International Dictionary defines “zombie” as “the supernatural power or essence that according to voodoo belief may enter into and reanimate a dead body.” Not surprisingly, White Zombie music deals in large part with the occult. Webster’s defines “occult” as that “of, relating to, or dealing in matters regarded as involving the action or influence of supernatural agencies or some secret knowledge of them.”

In 1992 White Zombie released an album entitled “La Sexorcisto: Devil Music Volume One.” Diabolical references abound in the album’s artwork and lyrics. The artwork on the back cover of the album includes a highway sign stating “Route 666,” and the word “satanophonic,” an apparent pun on “stereophonic.”

The shirt Robert began to wear at Westerly High School during the 1996-97 school year shows a devilish figure above the band’s name on the front, and the number 666 on the back -- more diabolical graphics consistent with the band’s name, image and product.

The evidence in this matter establishes that 666 is generally associated with evil. The number 666 is used in satanic cult activity, which can be violent and criminal. Young people, either alone or in cults, have fallen prey to satanic activity that has been harmful to themselves and/or others. Young people’s behavior can be influenced by music. White Zombie music deals with disturbing subjects, including themes deemed “troublesome” by the American Academy of

¹⁸ Including the White Zombie website, which, in our view, is a promotional/marketing tool for the band.

Child and Adolescent Psychiatry. The number 666 also is used by gang members to connote extreme violence.

To the extent the shirt at issue displays the number 666, it has something in common with satanism and gangs and perhaps, in some sense, is “related” to them. White Zombie is a rock and roll band, however, not a satanic cult or a gang. The shirt at issue promotes White Zombie and its music. The fact that the shirt borrows a symbol from the bible, which also appears on the back cover of the band’s album, does not necessarily mean that it represents all the activity that is associated with the symbol. To be sure, White Zombie music and graphics present demonic subjects and images. The devil is a frequent presence in White Zombie music. The title of the band’s 1992 album includes the words “devil music.” The shirt, in turn, shares the 666 symbol from the back of the album as part of a thematically consistent effort to promote the band’s music. In this context, a rock t-shirt’s display of 666 does not make it satanic or cult-related. Instead, we find it to be a t-shirt for a band whose songs often refer to the devil and the occult.

Interpretations of White Zombie songs can vary. They have been examined at length by School Committee witnesses to explain the message conveyed by the 666 on the back of Robert’s shirt. The School Committee brief refers to 666’s “potential adverse effect on the health and safety of students.” [p. 31]. We emphasize the word “potential.” There is no probative evidence that White Zombie-type music causes negative behavior in high school students. Nor is there any evidence establishing any degree of probability that the t-shirt’s “potential” for harm will actually be realized in Robert’s case. What we find most persuasive with regard to the music behind the symbol in this case is the “Facts for Families” document from the American Academy of Child and Adolescent Psychiatry. The document identifies a “concern” about the messages of some rock music. It cautions that “if a teenager is persistently preoccupied with music that has seriously destructive themes, and there are changes in behavior such as isolation, depression, alcohol or other drug abuse, a psychiatric evaluation should be considered.” As previously noted, there was testimony from the School Committee witnesses that mirrored the viewpoint of the “Facts” sheet.¹⁹

¹⁹ The School Committee presented Mr. Pierce, Father Desmarais and Dr. Rivinus as experts in their respective fields. Because appeals to the Commissioner of Education do not include pre-hearing discovery procedures, the witnesses’ qualifications were first offered at the hearings. The hearing officer sought to ascertain whether the witnesses’ specialized knowledge would be helpful in determining the facts of this matter. On this basis, Mr. Pierce and Dr. Rivinus were qualified as experts while the hearing officer reserved ruling on Father Desmarais. All three were allowed to testify and render opinions on the condition that the relevancy, reliability and, ultimately, the

We can understand the School Committee's concern about Robert's interest in White Zombie. We believe that the parental advisory stickers on White Zombie albums are well-deserved. We are troubled by Robert's mother's testimony that her children are well-protected, yet she shows no apparent inclination to investigate the music that is at the root of a major problem regarding her son's ability to attend school. We do not disagree with Dr. Rivinus' opinion that the 666 symbol should not be ignored.

However, we do not know Robert's music-listening habits. There is no evidence of behavioral changes that accompanied Robert's exposure to White Zombie. To the contrary, the evidence regarding Robert's behavior is complimentary. He has been disciplined for no other reason than wearing the t-shirt in school with the 666 exposed. There is no evidence in the record that would move Robert's t-shirt beyond the "concern" stage as expressed in the "Facts" sheet.

The School Committee argues that the t-shirt is a threat to school order and a harbinger of violence. We do not find sufficient facts to establish a reasonable basis for predicting that the t-shirt would substantially disrupt or materially interfere with school activities. We find that the shirt is recognizable for what it is -- a t-shirt for a rock band that often sings about the devil and the occult.²⁰ Robert wore the shirt to school for an extended period. The initial reaction to the shirt came from school staff, not students. When students apparently did object to the shirt, it was directed as much to Robert's defiance of staff's orders as to the symbol on the shirt. Robert's subsequent wearing of the shirt to school did not disturb school operations. Furthermore, Robert displayed the t-shirt in an open and public manner, hardly the type of secret activity ascribed to satanic cults by the School Committee witnesses.

Nor do we find that the t-shirt was an impending danger to the students and staff at the school. As previously noted, we find no evidence beyond an undefined and speculative "potential" for harm. The little we know about Robert's behavior is favorable and totally at odds with the specter of violence. The School Committee's argument that the t-shirt poses an

weight, of their testimony would be determined at the conclusion of the case. We have considered the testimony of all three. Our findings regarding the shortcomings of the School Committee's evidence are discussed above.

²⁰ Given the promotional/marketing objective of the band's website material, we interpret the "belly of The Beast" claim as literally as the comment that the band's former drummer was placed in an escape pod and jettisoned into outer space.

unacceptable threat of violence in the school is based upon opinion testimony that the t-shirt may create or further some inclination toward violence. Yet there is no evidence that Robert or other students have displayed any signs of such tendencies. Unlike a firearm, knife or other type of weapon, the t-shirt is not dangerous in and of itself. It is claimed to represent a possible link to violence, but that possibility has been presented only in the most speculative terms.²¹

Finally, the School Committee relies on the summer 1998 revision of the dress code which added a prohibition against “[a]ny item of clothing that implies or is cult or gang related.” Appellant asserts that this portion of the code is void for vagueness on its face and as applied on constitutional grounds.²² We agree.

The words “cult” and “gang” are not defined in the dress code. In the Stephenson case, the school district adopted a regulation proscribing “gang related activities.” The regulation was applied against a female student who had a small cross tattoo between her thumb and index finger. The court, in considering a void-for-vagueness claim, observed that “gang activity is not relegated to signs and symbols otherwise indecipherable to the uninitiated. In fact, gang symbols include common, seemingly benign jewelry, words and clothing.” Id. at 1311. The court also stated that it could find “no federal case upholding a regulation, challenged as vague or overbroad, that prescribes ‘gang’ activity without defining that term.” Id. at 1309. The court invalidated the district regulation because of its failure to provide adequate notice regarding prohibited conduct or to offer clear guidance for those who enforce it.

The revised dress code here similarly suffers from a lack of definition. The concerns in Stephenson apply again to the word “gang.” Similar concerns apply to the word “cult.” As

²¹ We find support in our observations from the fact that the School Committee sought permission to have Robert evaluated after it had banned the t-shirt from school. Given Robert’s status as a special-education student, school officials had the opportunity to have him evaluated as part of an inquiry into any concerns they may have had regarding the possible influence of White Zombie music. Instead, it appears that school officials acted first and attempted to ask questions later. As for the Committee’s argument that under the Fraser decision the threat of violence should be found to exceed the boundary of socially appropriate school behavior, we note that Fraser involved a student’s use of lewd, indecent and sexually offensive language in a nomination speech delivered at a school-sponsored event. The Court found the pervasive sexual innuendo in the student’s speech at an official high school assembly to be “plainly offensive to both teachers and students -- indeed to any mature person.” Id. at 683. Robert’s t-shirt is not sexually explicit nor does it constitute school-sponsored speech. More importantly, the t-shirt does not have the connection to violent action that the comments in Fraser had to sexual vulgarity, and the evidence in this case fails to convince us that the t-shirt is “plainly offensive” to any mature person.

²² Appellant primarily relies on City of Chicago v. Morales, 119 S.Ct. 1849 (1999), Chalifoux v. New Caney Independent School District, 976 S.Fupp 659 (S.D. Tex. 1997), and Stephenson v. Davenport Community School District, 110 F.3d 1303 (8th Cir. 1997).

previously noted (see footnote 3), the list of “occult signs and symbols” in the handout relied upon by the School Committee herein included a five-pointed star, the Star of David, the peace sign, and a triangle. Again, seemingly common, benign symbols that, along with 666, apparently fall within the School Committee’s “cult” classification. The handout itself recognized a non-satanic use of the “horned hand” and anarchy symbols by heavy metal music fans. The resulting ambiguity, along with the open-ended nature of the dress code language,²³ cause us to find that the 1998 amendment provides inadequate notice to students and insufficient guidance to staff.²⁴

Conclusion

We conclude that Robert’s exclusion from school on June 5, 1998 and September 11, 1998 pursuant to the dress code was invalid. The appeal is therefore sustained. Any mention of these exclusions shall be expunged from Robert’s education records.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: July 5, 2000

²³ The code prohibits clothing that “implies” a cult or gang relationship.

²⁴ The appeal in this matter was filed on November 12, 1998. The School Committee did not raise the issue of mootness concerning to the June 5, 1998 incident, which occurred in a previous school year. We therefore do not address the applicability of laches to that incident. We deny Appellant’s request for costs and attorney’s fees pursuant to R.I.G.L. 42-92-1 because the School Committee’s action meets the “substantial justification” standard in the statute. In so finding, we particularly note the legitimate factual issue as to whether an actual disruption occurred in the classroom on June 5, 1998, and the ramifications of that incident with regard to Robert’s subsequent wearing of the t-shirt.