

November 15, 2010

Dear Superintendent or Principal:

There may be in effect a policy at one or all of your schools prohibiting girls from wearing tuxedos to the prom. On behalf of the American Civil Liberties Union Foundation (ACLU), I'm writing to inform you that such a rule violates federal constitutional and statutory rights of students and must be rescinded immediately.

A requirement that all girls wear traditionally female attire to school dances, first of all, constitutes gender discrimination, prohibited by federal statutes. This is not just the opinion of the ACLU. Federal courts have consistently ruled that acting against a person for not conforming to traditional gender norms amounts to illegal sex stereotyping, prohibited by civil rights laws. [See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989) (denying promotion for female associate of accounting firm because she didn't walk, talk, and dress femininely was illegal sex stereotyping); *Montgomery v. Independent School District No. 709*, F.Supp.2d 1081 (D. Minn. 2000) (failing to protect gay student from harassment because he didn't meet male stereotypes triggered liability for school district); *Rosa v. Park West Bank*, 214 F.3d 213 (1st Cir. 2000) (denying a cross-dressing man a loan application until he went home to change constitutes sex discrimination).]

The equality provisions of the 14th Amendment also prohibit a public school from engaging in this type of gender discrimination. You may impose a requirement of proper, even formal, attire for the prom (provided it doesn't create an undue financial burden for students). To mandate dress requirements, however, based on outdated notions that only boys can wear tuxedos and only girls can wear dresses is illegal. [See *Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001) (prohibitions on sex stereotyping also apply under constitutional law).] Different treatment based on sex is constitutional only if supported by a significant governmental interest, and there is certainly no significant governmental interest in barring girls from wearing tuxedos or forcing them to wear dresses.

A policy prohibiting girls from wearing tuxedos to the prom, moreover, violates important First Amendment rights. The freedom to select what to wear to one's prom (and whom to bring as a date) is protected by the First Amendment's guarantee of free expression and association. [See *Doe v. Yunits*, No. 001060A, 2000 WL 33162199 (Mass. Super. 2000) (preliminarily enjoining school officials from disciplining physiologically male transgender student for wearing girls' clothes or accessories), aff'd *Doe v. Brockton School*

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Committee, 2000 WL 33342399 (Mass.Appl.Ct. Nov. 30, 2000); *Fricke v. Lynch*, 491 F.Supp. 381 (D.R.I. 1980); *McMillen v. Itawamba County School District*, 702 F.Supp.2d 699 (N.D. Miss. 2010) [holding that school's prohibition of a female student from wearing a tuxedo and bringing a same-sex date to prom violated her First Amendment rights].] In *McMillen*, judgment was entered against the school and the student was awarded over \$116,000 in damages and attorneys' fees.

We are writing now in an effort to resolve this situation short of litigation. To comply with the law, you must change your policy to allow female students the option of wearing the appropriate formal attire of their choice.

Please do not hesitate to contact the ACLU if you have any questions about this letter or if we can be of any assistance to you. We can be reached via email at getequal@aclu.org.

Sincerely,



James D. Esseks
Director
ACLU LGBT & AIDS Project