



LESBIAN GAY
BISEXUAL TRANSGENDER
& AIDS PROJECT

April 15, 2009

Dear Superintendent or Principal:

There may be in effect a policy at one or all of your schools prohibiting couples of the same sex from attending proms or school dances. On behalf of the American Civil Liberties Union Foundation (ACLU), I'm writing to inform you that such a rule violates the constitutional rights of gay and lesbian students and must be rescinded immediately.

Any policy excluding same-sex couples from proms or school dances violates the right to free expression guaranteed by the 1st Amendment to the U.S. Constitution. This is not just the opinion of the ACLU. It was the conclusion of a federal court in a case in which a gay high school student successfully challenged his school's ban on same-sex couples at prom. [*Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980)]

In addition, the U.S. Supreme Court ruled that a policy of a public entity (like a public school) that's based on animosity or prejudice towards gay people violates equality rights guaranteed to all Americans by the 14th Amendment. [*Romer v. Evans*, 517 U.S. 620 (1996)]

But whether based on prejudice or not, it is unconstitutional to exclude same-sex couples from school dances. In *Fricke v. Lynch* the principal being sued testified in court that the school's prom policy was based on concern about possible disruption and violence at the prom in reaction to the participation of a gay couple. The federal judge was convinced of the sincerity of the principal's concern but ruled that the Constitution required the school to take steps to protect the couple's free expression rather than to stifle it. "To rule otherwise would completely subvert free speech in the schools by granting other students a 'heckler's veto', allowing them to decide through prohibited and violent methods what speech will be heard," wrote the judge.

Please do not hesitate to contact the Project if you have any questions about the above or if we can be of any assistance to you. We can be reached via e-mail at getequal@aclu.org.

Very Truly Yours,

James D. Esseks
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