

December 7, 2015

Dear Principal or Superintendent:

You have been presented with this letter because at least one of your schools may be enforcing a policy that prohibits students from wearing clothes that do not conform to gender stereotypes. On behalf of the American Civil Liberties Union Foundation (ACLU), I'm writing to inform you that such rules violate federal constitutional and statutory rights of students and must be rescinded immediately.

It is well established that under both Title IX and the Equal Protection Clause, school officials cannot force students to conform to sex stereotypes. *See Glenn v. Brumby*, 663 F.3d 1312, 1913-20 (11th Cir. 2011); *Sturgis v. Copiah Cnty. Sch. Dist.*, No. 3:10-CV-455-DPJ-FKB, 2011 WL 4351355, at \*4-5 (S.D. Miss. Sept. 15, 2011); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 150-52 (N.D.N.Y. 2011). Schools may impose a gender-neutral requirement of proper, even formal, attire for school events (provided it doesn't create an undue financial burden for students). But schools cannot rely on sex stereotypes that require that boys wear tuxedos or suits and that girls wear dresses. Protections against sex stereotyping also protect transgender and gender nonconforming students who seek to act and dress in accordance with their gender identity. *See Glenn*, 663 F.3d at 1913-20; *Sturgis*, 2011 WL 4351355, at \*4-5 (declining to dismiss sex stereotyping claim where gender nonconforming female student was required to wear a drape for yearbook photograph instead of a tuxedo).

In addition, under the First Amendment students have a right to express their gender nonconformity or gender identity through their dress and appearance. *See Zaleska v. Cnty. of Sullivan*, 316 F.3d 314, 320 (2d Cir. 2003); *Doe v. Yunits*, No. 001060A, 2000 WL 33162199 (Mass. Super. 2000) (preliminarily enjoining school officials from disciplining transgender student for wearing girls' clothes or accessories), *aff'd Doe v. Brockton Sch. Comm.*, 2000 WL 33342399 (Mass. App. Ct. Nov. 30, 2000); *McMillen v. Itawamba Cnty. Sch. Dist.*, 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.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
LESBIAN GAY BISEXUAL  
TRANSGENDER &  
HIV PROJECT

PLEASE RESPOND TO:  
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To comply with the law, you must change any policy at your schools that prohibits students from wearing particular types of clothing based on their gender. 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 at 212-549-2673.

Sincerely,

A handwritten signature in black ink that reads "James D. Esseks". The signature is written in a cursive style with a large initial "J".

James D. Esseks  
Director  
ACLU Lesbian Gay Bisexual Transgender & HIV Project

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Students and parents: Feel free to use this letter as an advocacy tool in your own school.