

April 2, 2013

Dear Superintendent or Principal:

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I'm writing to inform you that such a rule violates students' federal constitutional and statutory rights and must be rescinded immediately.

A requirement that all boys wear traditionally male 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 employee of accounting firm because she didn't walk, talk, and dress femininely was illegal sex stereotyping). These protections apply in the context of public schools. *Logan v. Gary Cmty. Sch. Corp.*, 2008 WL 4411518 (N.D. Ind. Sept. 25, 2008) (transgender student whom school prohibited from wearing a dress to the prom stated a claim under Title IX and the First Amendment); *Montgomery v. Ind. Sch. Dist. No. 709*, 109 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).

The equality provisions of the Fourteenth Amendment also prohibit a public school from engaging in this type of gender discrimination. *See, e.g., Glenn v. Brumby*, 663 F.3d 1312, 1314-1321 (11th Cir. 2011) (holding that government employer violated U.S. Constitution by terminating transgender employee whose wearing of women's clothes the employer deemed "unnatural"). 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 To mandate dress requirements, however, based on outdated notions that only boys can wear tuxedos and only girls can wear dresses is illegal.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

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PLEASE RESPOND TO:
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2627
F/212.549.2650
WWW.ACLU.ORG/LGBT

SAN FRANCISCO OFFICE:
39 DRUMM STREET
SAN FRANCISCO, CA 94111

CHICAGO OFFICE:
180 NORTH MICHIGAN AVENUE
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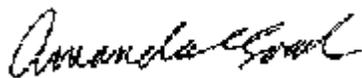
governmental interest, and there is certainly no significant governmental interest in barring boys from wearing traditionally feminine outfits or forcing them to wear tuxedos.

A policy prohibiting boys from wearing dresses 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 transgender student for wearing girls' clothes or accessories), *aff'd Doe v. Brockton Sch. Cmte.*, 2000 WL 33342399 (Mass. App. Ct. Nov. 30, 2000); *McMillen v. Itawamba County 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.

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 male 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 lgbthiv@aclu.org.

Sincerely,



Amanda C. Goad
Staff Attorney