

August 26, 2020

Dear Principal or Superintendent:

You're being given this letter because your school or a school in your district may be enforcing a policy that prohibits students from wearing clothes that don't conform to gender stereotypes. On behalf of the American Civil Liberties Union Foundation (ACLU), I'm writing to inform you that policies that impose disparate requirements for students on the basis of sex violate students' federal constitutional and statutory rights and must be rescinded immediately.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. Copleah 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 the regular school day or for school events, provided it doesn't create an undue financial burden for students. But schools can't rely on sex stereotypes when creating dress codes, such as requiring only girls to wear skirts or only boys to have short hair. *See Hayden ex rel. A.H. v. Greensburg Community School Corporation*, 743 F.3d 569, 583 (7th Cir. 2014) (requiring male athletes to have short hair discriminated on the basis of sex in violation of the Equal Protection Clause and Title IX). *Bonnie Peltier, et al. v. Charter Day School, Inc., et al.*, No. 7:16-CV-30-H, Dkt. 216 at *31 (E.D.N.C. Mar. 28, 2019) (requiring girls to wear skirts was an impermissible sex classification based on outdated stereotypes).

Policies that impose dress or grooming standards based on sex stereotypes are also especially harmful to lesbian, gay, bisexual, transgender, queer, and questioning ("LGBTQ") students. Legal 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 Zalewska 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.

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 wish to discuss it further. We can be reached at 212-549-2673.

Sincerely,



James D. Esseks

Director

ACLU Lesbian Gay Bisexual Transgender & HIV Project



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