

March 18, 2013

via first class mail and e-mail

Principal Donna Ullrich
Spring High School
19428 I – 45 North
Spring, TX 77373
DUllrich@springisd.org

Dear Principal Ullrich:

We represent George “Tony” Zamazal, a senior at your high school. We understand that Tony has sought permission through an informal conference with you to wear a dress, pump-style shoes, makeup and a wig to the school prom as an expression of her gender identity.¹ We write to make sure you are aware that Tony has a legal right to wear a feminine outfit to the prom, and to seek written confirmation that she will be allowed to do so.

We understand that Tony first approached Assistant Principal Shawne Smith last month to ask if she would be allowed to wear a dress to prom, and that Mr. Smith informed Tony this would be unacceptable. We also understand that Tony later posed the same question to you, as the appropriate administrator of the high school, and was told that you did not personally object to Tony’s wearing feminine clothes and accessories to the prom but would need to consult with the Spring Independent School District’s Board because this was a “community decision.”

As you arrive at a decision, you should know that Tony has the right under both federal statutes and the U.S. Constitution to peacefully express her gender identity. As you may know, Title IX prohibits public schools from discriminating on the basis of sex, which numerous courts have held includes discrimination on the basis of sex stereotypes against people who are transgender or gender non-conforming. *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”); *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004) (“Sex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as ‘transsexual,’ is not fatal to a sex

¹ Tony identifies as transgender. Assigned the male sex at birth, Tony has recently begun wearing feminine clothes to school and using female pronouns.

discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity.”)

Prohibiting an assigned-male student from wearing a dress to the school prom (or conversely, an assigned-female student from wearing a tuxedo to the prom), would violate laws against sex discrimination and also the First Amendment guarantee of free expression. *See, e.g., McMillen v. Itawamba County Sch. Dist.*, 702 F. Supp. 2d 699, 704-5 (N.D. Miss. 2010) (student demonstrated likelihood of success on the merits of First Amendment claim where school denied her permission to wear tuxedo or other masculine attire to the prom); *Logan v. Gary Cmty. Sch. Corp.*, 2008 WL 4411518 (N.D. Ind. Sept. 25, 2008) (transgender student assigned male at birth stated a claim under Title IX and the First Amendment where school prohibited her from wearing a dress to the prom); *Doe ex rel. Doe v. Yunits*, No. 001060A, 2000 WL 33162199, at *5 (Mass. Super. Ct. Oct. 11, 2000) (transgender students have the right under state sex discrimination law to dress in clothes that comport with their gender identity).

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You should also be aware that Tony’s prom attire plans should not be treated as a “community decision” subject to the approval of the School Board. Surely other students at Spring High School are not expected to obtain the Board’s consent to wear dresses to prom. Requiring Board approval would single out Tony’s protected speech for special burdens based on the content of her speech in a manner that would violate Tony’s First Amendment rights. *See e.g. U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 826-27 (2000) (holding the government violated the First Amendment by burdening protected speech based on its content).

We ask you to acknowledge in writing by March 22, 2013 that Tony may attend the prom in feminine attire. We specifically seek a written response on or before March 22 so that if permission is withheld, Tony may consider all of her available options, including filing a formal complaint through the Spring Independent School District’s grievance process, in advance of the prom on May 11. If you fail to respond within the requested timeframe, we will construe that as a rejection of our client’s request.

Please do not hesitate to contact Adriana Piñon at (713) 942 – 8146, ext. 111, or Amanda Goad at (212) 549-2661 if you have any questions. Thank you in advance for your attention to this matter and we look forward to your reply.

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Sincerely,



Amanda C. Goad
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ACLU Lesbian Gay Bisexual & Transgender Project



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*Licensed in New York State only
Practice limited to federal constitutional and statutory matters