



OFFICIAL STATEMENT TO LOUISIANA SCHOOL SUPERINTENDENTS  
CONCERNING SCHOOL DANCES

April 6, 2015  
By email or fax

Dear Superintendent:

You may have heard that a student in Louisiana has recently been pressured not to attend her high school prom because her school refuses to allow her to go wearing a tux instead of a dress. You may also know that for several years this office has sent letters reminding school officials that students may not be denied the right to attend school dances simply because they choose to dress in a manner that officials deem appropriate only for students of another sex, or because they choose to bring a date of the same sex as themselves. We sent a letter similar to this one just last year, to ensure that all Louisiana students are given the legal rights they are entitled to under the law.

I write now to once again clarify the law and to advise you that schools may not discriminate against gay and lesbian students in the area of school dances or any other activities.

Several years ago a student in Mississippi successfully sued her school for denying her the right to bring another girl as her prom date and to wear a tuxedo. *McMillan v. Itawamba County*, 702 F.Supp.2d 699 (N.D. Miss. Eastern Div., 2010). Similarly, several years ago a student here in Louisiana sought ACLU assistance when her school initially refused to allow her to attend her prom wearing a tuxedo.

Since at least 1980, courts have ruled that students have the right under the First Amendment to bring same-sex dates to the prom. *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980). The U.S. Supreme Court has ruled that a policy based on nothing more than animosity or prejudice toward gays and lesbians violates the equal protection clause of the Fourteenth Amendment. *Romer v. Evans*, 517 U.S. 620 (1996); also *U.S. v Windsor*, striking down discrimination in marriage that because “the principal purpose is to impose in equality, not for other reasons like governmental efficiency.” \_\_\_ US \_\_\_ (2013).

In *Fricke v. Lynch*, the school policy against same-sex dates was based on a concern that others might be disruptive in response to the presence of a same-sex couple. The court ruled that the school has an obligation to protect the same-sex couple from any such disruption, because “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.”

With respect to attire to be worn at school dances, Title IX prohibits schools from discriminating on the basis of sex, including discrimination based on gender stereotypes. *E.g. Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004). Prohibiting a female student from wearing a tuxedo (or, conversely, prohibiting a male student from wearing a dress) violates not only the laws against sex discrimination but also the First Amendment’s right to free expression. See *Canady v. Bossier Parish School Board*, 240 F.3d 437 (5th Cir. 2001).

In light of the clear law protecting students’ rights to bring dates of their choosing and to wear attire typical of either gender, I trust that students in your district will have a safe and happy prom season free from unlawful discrimination.

Sincerely,

Marjorie R. Esman  
Executive Director