



AN OPEN LETTER TO LOUISIANA SCHOOL SUPERINTENDENTS
CONCERNING SCHOOL DANCES

March 11, 2014

By email or fax

Dear Superintendent:

You may recall that 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, recently a student here in Louisiana sought ACLU assistance when her school initially refused to allow her to attend her prom wearing a tuxedo.

Because of the upcoming season of proms, I write to 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.

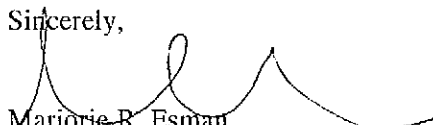
Students have the right under the First Amendment to bring same-sex dates to the prom. This was the conclusion of a federal court in *Fricke v. Lynch*, a 1980 case in which a gay high school senior successfully challenged the school's ban on same-sex couples at a school dance. *Fricke v. Lynch*, 491 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 principal testified that the school's 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, and that includes 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 school year and that all students will have the right to enjoy their dances and other school functions.

Sincerely,


Marjorie R. Esmán
Executive Director