



OPEN LETTER TO LOUISIANA SCHOOL SUPERINTENDENTS  
CONCERNING SCHOOL DANCES

April 13, 2016

By email or fax

Dear Superintendent:

You may already know that school officials may not deny students 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. This office has sent letters to that effect for several years, and we hope that you have committed to ensure that all students in your district students are given the legal rights they are entitled to under the law. This letter is 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.

Any policy excluding same-sex couples from proms, homecoming, or other school dances violates the right to free expression guaranteed by the First Amendment. This is not just the opinion of the ACLU. It was the conclusion of at least two federal courts in cases in which a gay high school student successfully challenged his or her school's ban on same-sex couples at prom. *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980); *McMillen v. Itawamba County School District*, 702 F.Supp.2d 699 (N.D. Miss. 2010).

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."

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). In that case, a federal court determined once again that school policies that ban same-sex dates at the prom violate the right to free expression guaranteed by the First Amendment. 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.

Moreover, 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 because "the principal purpose is to impose inequality, not for other reasons like governmental efficiency." *Windsor*, 133 S. Ct. 2675 (2013).

In the recent Supreme Court decision *Obergefell v. Hodges* the Court said "'They [same-sex couples] ask for equal dignity in the eyes of the law. The Constitution grants them that right.'" In short, schools may not discriminate against same-sex couples, who are entitled to be treated no differently from their opposite-sex peers. *Obergefell*, 135 S. Ct. 2584 (2015).

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

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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 ultimately to marry who they choose - and to wear attire typical of either gender, I trust that students in your district will have a safe and happy school year free from unlawful discrimination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marjorie R. Esman".

Marjorie R. Esman  
Executive Director

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