

September 3, 2024

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requirements for students based on sex violate students' federal constitutional and statutory rights and must be rescinded immediately.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 Peltier v. Charter Day School, Inc.*, 37 F.4th 104, 131 (4th Cir. 2022); *Sturgis v. Copiah Cty. 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.*, *Peltier v. Charter Day Sch., Inc.*, 8 F. 4th 251, 259 (4th Cir. 2021) (requiring girls to wear skirts was an impermissible sex classification based on outdated stereotypes); *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 126 (4th Cir. 2022) (the skirt requirement for girls blatantly perpetuates harmful gender stereotypes as part of public education and violated the Equal Protection Clause); *A.C. v. Magnolia Indep. Sch. Dist.*, CV H-21-3466, 2021 WL 5142764 at 1 (S.D. Tex. Nov. 4, 2021) (preliminary injunction issued for school to suspend enforcement of the gender-specific provisions of its dress and grooming code as to all students in the District); *Doe through Doe v. Rocky Mountain Classical Academy*, 99 F.4th. 1256 (10th Cir. 2024) (school policy only allowing girls to wear earrings raised plausible Title IX and equal protections claims). 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, e.g., Bostock v. Clayton County, Ga.*, 590 U.S. 644, 660 (2020) ("[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex").

In addition, under the First Amendment students have a right to express their gender nonconformity or gender identity through their dress and appearance. *See Zaleska v. Cty. 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 Cty. 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 contact the ACLU if you have any questions about this letter or wish to discuss it further. We can be reached at [help-lgbtq@aclu.org](mailto:help-lgbtq@aclu.org).

Sincerely,



James D. Esseks  
Director  
ACLU LGBTQ & HIV Project



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