

April 30, 2018

**VIA ELECTRONIC MAIL**

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Sharon Scarbrough  
Principal  
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**Re: Discriminatory Enforcement of the Manatee County  
Dress Code**

Dear Dr. Diana Greene, Mr. Willie Clark, and Ms. Sharon Scarbrough:

The ACLU Women's Rights Project and the ACLU of Florida (collectively "ACLU") write to express serious concerns regarding the discriminatory enforcement of the Manatee County dress code against Lizzy Martinez and other female students. Based on our investigation of Ms. Martinez's reports regarding her recent experiences, it appears that school officials within the District are enforcing the dress code selectively against female students, and doing so in a manner that reinforces invidious sex stereotypes in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, Title IX of the Education Amendments of 1972, Article I § 2 of the Florida Constitution, and the Florida Educational Equity Act. Moreover, the school's punitive announcements in advance of the planned protest that took place on April 16 raise additional concerns regarding violation of the First Amendment to the U.S. Constitution and Article I § 4 of the Florida Constitution.

**I. Statement of Facts**

Lizzy Martinez is a 17-year-old student in her junior year at Braden River High School in Manatee County, Florida. On Monday, April 2, Ms. Martinez wore a loose, long-sleeve gray t-shirt to school without a bra underneath. The School Dean, Violeta Velazquez, called Ms. Martinez into her office and told her to put an undershirt under her long-sleeve t-shirt because she was "distracting" other students. Dean Velazquez alleged that male students were looking and laughing at Ms. Martinez.



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When Ms. Martinez became upset and began to cry, Dean Velazquez called her mother, Kari Knop, stating that she needed to discuss a “sensitive matter.” Dean Velazquez assured Ms. Knop that Ms. Martinez was not in any trouble, but that she wanted Ms. Martinez to put an undershirt on because she was not wearing a bra. Dean Velazquez stated that Ms. Martinez wanted to go home. Ms. Knop asked to speak to her daughter and said that she was too busy to leave work to pick her up, and advised her daughter to put on the undershirt and return to class.

Following the call, and after Ms. Martinez put on the undershirt, Dean Velazquez asked Ms. Martinez to “stand up and move around” as she looked at Ms. Martinez’s breasts (presumably to see if she could see Ms. Martinez’s nipples or if her breasts moved around). Apparently dissatisfied, Dean Velazquez said “Band-Aids” and walked across the hall to the nurse’s office. After speaking to the nurse, Dean Velazquez told an administrator to get Ms. Martinez. Ms. Martinez went to the nurse’s office and the nurse gave her four Band-Aids – two to place over each nipple in an X.

Ms. Martinez was mortified by this experience. She also felt pain and discomfort from the Band-Aids rubbing on a sensitive area. After she started crying in class, she went to the bathroom and texted her mother saying she felt “sexualized and humiliated.” Ms. Knop came to pick Ms. Martinez up from school.

That day, Ms. Martinez tweeted “Stop sexualizing my body @piratenationhs” tagging the Twitter account of the school.<sup>1</sup> The school responded by blocking Ms. Martinez on Twitter, as captured in screenshots that Ms. Martinez shared with the tweet “\*school has student put bandaids over her nipples because it is a ‘distraction’ then blocks them for calling them out on sexualizing her\* :/”<sup>2</sup>

That evening, Ms. Knop contacted the school board and principal, Sharon Scarbrough, to express her concerns. The following morning, Tuesday, April 3, Ms. Knop spoke to Principal Scarbrough, Dean Velazquez, and the school nurse via phone, while Ms. Martinez was in the room. Ms. Knop expressed that she was appalled by the school’s treatment of Ms. Martinez. Principal Scarbrough defended the school’s actions by claiming that even though Ms. Martinez was not in violation of the dress code, they were only trying to save her from embarrassment because male students were talking about her and laughing at her. Ms. Knop enquired why the school chose to call Ms. Martinez into the office instead of addressing the students who were subjecting her to that treatment, given the school district’s zero-tolerance bullying policy. Ms. Martinez left this meeting in tears and once again left school early.

The next day, Wednesday, April 4, Ms. Martinez was too upset to return to school. That day, Ms. Knop met with Dean Velazquez, Principal Scarbrough, the school nurse, and Willie Clark,

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<sup>1</sup> Lizzy Martinez (@lizzymartineez), TWITTER (Apr. 2, 2018, 10:28 AM), <https://twitter.com/lizzymartineez/status/980859513568972803>

<sup>2</sup> Lizzy Martinez (@lizzymartineez), TWITTER (Apr. 3, 2018, 3:22 PM), <https://twitter.com/lizzymartineez/status/981295946439983104>

the Director of Student Services for Manatee County. Principal Scarbrough conceded that it was inappropriate to require Lizzy to cover her nipples with Band-Aids. The nurse stated that Dean Velazquez had told her to give the Band-Aids to Ms. Martinez. Throughout the meeting, Dean Velazquez and Principal Scarbrough repeated that Ms. Martinez had not been in violation of the dress code, but that they were just trying to protect her from embarrassment. Ms. Knop responded that they had body shamed her daughter, not protected her.

After the meeting, Ms. Knop contacted the Superintendent, Dr. Diana Greene, to express her concerns. Dr. Greene told Ms. Knop that then Ms. Martinez *was* in violation of the dress code because the dress code states students cannot be a “distraction” to others and cannot be “indecent.”<sup>3</sup> Dr. Greene further told Ms. Knop that she would amend the district dress code next year to state that girls must wear undergarments. When Ms. Knop inquired whether boys with extra breast tissue would be forced to wear bras under the amended dress code, Dr. Greene said no because there is not a “societal expectation” that boys should wear bras.

Ms. Martinez did not feel comfortable returning to school until Thursday, April 5. After her first period class, a number of students told Ms. Martinez that teachers had told their classes that Ms. Martienz was lying. Ms. Martinez felt humiliated that teachers were talking about her to her peers. She began to cry and left school early yet again that day. Ms. Martinez did not go back to school the next day, Friday, April 6, because of her emotional distress. She also left school early on April 9, April 11, April 12, and April 13 due to reports from peers that teachers were spreading rumors about her. In all, Ms. Martinez has missed an A.P. Art History exam, a U.S. History exam, a math exam, and a chemistry lab. She has also fallen behind on her homework due to her emotional distress. Although she will strive to make up these assignments and exams, she worries that her grades will suffer as a result of falling behind in her work.

Ms. Martinez and other students planned to protest the school’s treatment of Ms. Martinez and to “show support for the destigmatization of natural bodies” on Monday, April 16.<sup>4</sup> They encouraged classmates to attend school without wearing a bra, while wearing Band-Aids over their shirts, or while wearing clothing with a supportive message.<sup>5</sup> The students did not plan to walk out of class or otherwise disrupt the typical operation of the school day.

On Friday, April 13, Principal Scarbrough made an announcement over the loudspeaker that the school would enforce the code of conduct in the event of planned demonstrations the

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<sup>3</sup> School District of Manatee County, *Code of Student Conduct: 2017-2018*, at 28, [https://www.manateeschools.net/cms/lib/FL02202357/Centricity/domain/1115/documents/2017-2018\\_Student\\_Code\\_of\\_Conduct.pdf](https://www.manateeschools.net/cms/lib/FL02202357/Centricity/domain/1115/documents/2017-2018_Student_Code_of_Conduct.pdf) (“If your personal attire or grooming distracts the attention of other students or teachers from their school work . . . you will be required to make the necessary alterations to such attire or grooming before entering the classroom or you may be assigned to In-School Suspension (ISS) . . . . You are additionally prohibited from wearing clothes that expose underwear or body parts in an indecent or vulgar manner or attire that disrupts the orderly learning environment”).

<sup>4</sup> Lizzy Martinez (@lizzymartineez), TWITTER (Apr. 11, 2018, 6:27 PM), <https://twitter.com/lizzymartineez/status/984241448647348224>.

<sup>5</sup> *Id.*

following Monday. That same day, teachers and administrators informed students they would face out-of-school suspensions and be barred from attending prom if they attended school without a bra the following Monday. However, there is no requirement in the dress code that students wear bras, as Dr. Greene conceded by stating that she would amend the dress code next year to introduce that requirement. Even if the school found students in violation of the dress code's vague prohibition on "distract[ing]" other students or "wearing clothes that expose underwear or body parts in an indecent or vulgar manner," according to the District Code of Student Conduct, the appropriate consequence for a first violation of the dress code is a verbal warning and a call to a guardian, not an out-of-school suspension or a prohibition on attending prom.<sup>6</sup> Under the terms of the District Code of Conduct, out-of-school suspensions are also not appropriate in the case of minor disruptive conduct or inappropriate behavior.<sup>7</sup>

That same evening, parents and students in the School District of Manatee County received an email that stated:

[O]ur Schools and School District will strictly abide by our Code of Student Conduct when it comes to student demonstrations and the Dress Code . . . . In the interest of preserving instructional time, we are emphatically stating that additional disruptions to instructional time or the normal operations of our schools are in violation of the Code of Student Conduct.

Many of Ms. Martinez's peers who had originally planned to join the protest decided they were too scared to participate in light of the threats of disciplinary action. Some friends told Ms. Martinez that they supported her but did not want to miss out on prom. Other friends told her they were scared of receiving an out-of-school suspension because it would go on their transcript and could affect their college admissions process.

Ms. Martinez's experience of discriminatory enforcement of the dress code is not an isolated incident. Other students and parents have described an environment in which female students are disproportionately targeted for violations of the dress code. Further, according to these accounts, the dress code is not evenly enforced *among* female students: female students with a larger chest or body type are more frequently dress coded. For example, one student, who wishes to remain anonymous at this time, described an incident in which Dean Velazquez told her she should dress differently because she is a "big girl" and she should keep the size of her chest area in mind when getting dressed. Dean Velazquez made these comments in front of a male dean with the door shut, which made the student uncomfortable and embarrassed. At the time, the student was wearing a 2XL long-sleeve crew neck shirt and leggings. The student has struggled with self-confidence since elementary school and the incident heightened her feelings of insecurity about

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<sup>6</sup> School District of Manatee County, *Code of Student Conduct: 2017-2018*, at 20, 28, [https://www.manateeschools.net/cms/lib/FL02202357/Centricity/domain/1115/documents/2017-2018\\_Student\\_Code\\_of\\_Conduct.pdf](https://www.manateeschools.net/cms/lib/FL02202357/Centricity/domain/1115/documents/2017-2018_Student_Code_of_Conduct.pdf).

<sup>7</sup> *Id.* at 20.

her body. According to the student, female students with smaller body types routinely wear leggings without a fingertip-length shirt but do not face any consequences for violating the dress code.

## I. Legal Concerns

Braden River High School and the Manatee County School District's discriminatory enforcement of the dress code against Ms. Martinez and other female students raises concerns under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, Title IX of the Education Amendments of 1972 ("Title IX"), Article I § 2 of the Florida Constitution, and the Florida Educational Equity Act.

Under the Equal Protection Clause, government actors must not treat male and female students differently because of "overbroad generalizations about the different talents, capacities, or preferences of males and females."<sup>8</sup> Instead, any differential treatment between male and female students must be substantially related to an "exceedingly persuasive justification" for the treatment.<sup>9</sup> Courts analyze claims of sex discrimination under the same standard under the U.S. Constitution and the Florida Constitution.<sup>10</sup>

In addition, as recipients of federal funds, Braden River High School and the Manatee County School District must comply with Title IX, which prohibits sex discrimination in education programs that receive federal funds.<sup>11</sup> They must also comply with the Florida Educational Equity Act, a state law that contains similar prohibitions on sex discrimination in education programs that receive federal or state funds.<sup>12</sup> Finally, they must comply with the U.S. Department of Education's Title IX implementing regulations, including the prohibition on "Subject[ing] any person to separate or different rules of behavior, sanctions, or other treatment."<sup>13</sup> Federal courts across the country have held that schools that force students to conform to sex stereotypes through the enforcement of dress or grooming requirements may violate both the Equal Protection Clause and Title IX.<sup>14</sup>

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<sup>8</sup> *U.S. v. Virginia*, 518 U.S. 515, 533 (1996).

<sup>9</sup> *Id.* at 531–33.

<sup>10</sup> *See, e.g., Purvis v. State*, 377 So. 2d 674, 676 (Fla. 1979) ("The equal protection clause of the fourteenth amendment to the United States Constitution and article I, section 2 of the Florida Constitution require that a law creating a gender-based classification must be substantially related to the achievement of an important governmental objective.").

<sup>11</sup> 20 U.S.C. § 1681(a).

<sup>12</sup> FLA. STATE § 1000.05(2)(a) ("No person in this state shall, on the basis of . . . gender . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any public K-20 education program or activity, or in any employment conditions or practices, conducted by a public educational institution that receives or benefits from federal or state financial assistance.").

<sup>13</sup> 34 C.F.R. §§ 106.31(a) and (b)(4).

<sup>14</sup> *See, e.g., Hayden v. Greensburg Cmty. School Corp.*, 743 F.3d 569 (7th Cir. 2014) (school district violated Title IX and Equal Protection Clause in requiring male basketball players to have a short haircut while there is not a similar requirement restricting female players); *Peltier v. Charter Day Sch., Inc.*, No. 7:16-CV-30-H, 2017 WL 1194460 (E.D.N.C. Mar. 30, 2017) (denying motion to dismiss where plaintiff raised a Title IX and Equal Protection

As described above, the justification proffered for the enforcement of the dress code against Ms. Martinez was rooted in sex stereotypes that male students were “distracted” by her nipples and a paternalistic desire to “protect” Ms. Martinez from the laughter and stares of her male classmates. The justification reflects overly broad and archaic generalizations about boys’ inability to control their sexual impulses and girls’ inability to make their own decisions about the clothing that makes them feel safe and comfortable. These stereotypes reinforce a culture of victim blaming in which schools convey the message to female students that they are at fault for experiencing sexual harassment if they make certain clothing choices. The Supreme Court has long struck down policies based on “‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage.”<sup>15</sup>

The biased enforcement of the dress code against Ms. Martinez and other female students jeopardizes their equal access to education by forcing them to miss important class time. As described above, Ms. Martinez missed multiple days of school, including three tests. It also prioritizes male students’ freedom from “distraction” over female students’ physical comfort.

Further, the discriminatory enforcement of the dress code against Ms. Martinez and other female students subjects them to humiliation and anxiety and negatively affects their confidence and psychological wellbeing. As described above, Ms. Martinez was mortified that school officials called her a “distraction,” told her to “move around” while they looked at her breasts, and told her to place Band-Aids on her nipples. She has left school early in tears on multiple occasions as a result of teachers’ and administrators’ statements about her, and on some days has felt too distressed to attend school at all. In addition, Ms. Martinez experienced pain and discomfort from the Band-Aids rubbing on a sensitive area of her skin. Another student shared similar feelings of embarrassment and insecurity when a school dean repeatedly commented on the size of her breasts when enforcing the dress code against her. All of these effects represent cognizable harms under the U.S. and Florida Constitutions, as well as concrete violations of Title IX’s and the Florida Educational Equity Act’s prohibition on discrimination and denial of educational opportunities on the basis of sex.

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Clause sex-discrimination claim regarding the requirement that girls wear skirts and are prohibited from wearing pants or shorts); *Sturgis v. Copiah Cnty. Sch. Dist.*, No. 3:10-CV-455-DPJ-FKB, 2011 WL 4351355, at \*3 (S.D. Miss. Sept. 15, 2011) (denying motion to dismiss where plaintiff raised a Title IX sex-discrimination claim regarding the requirement that girls, but not boys, wear robes for senior portraits).

<sup>15</sup> *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (invalidating statutory scheme presuming that spouses of male armed services members were dependents for purposes of obtaining benefits, with parallel provision requiring proof that spouses of female armed services were actually dependent on their wives); *see also Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1692 (2017) (“if a ‘statutory objective is to exclude or ‘protect’ members of one gender’ in reliance on ‘fixed notions concerning [that gender’s] roles and abilities,’ the ‘objective itself is illegitimate.’”) (quoting *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982)); *Orr v. Orr*, 440 U.S. 268, 283 (1979) (striking down a statutory scheme that provided that husbands, but not wives, may be required to pay alimony because of the “inherent risk of reinforcing the stereotypes about the proper place of women and their need for special protection”) (internal quotation marks omitted).

Finally, school administrators' threats to impose disciplinary action against students for supporting Ms. Martinez by participating in the school protest were in violation of the First Amendment to the U.S. Constitution and Article I § 4 of the Florida Constitution. Courts have long recognized that students retain their First Amendment rights to protest on school grounds so long as their activities do not cause a "material and substantial interference with schoolwork or discipline" or "collid[e] with the rights of others."<sup>16</sup> The planned protest was entirely peaceful, involving students forgoing wearing a bra, wearing Band-Aids on their clothing, or wearing clothing with a message to "show support for the destigmatization of natural bodies."<sup>17</sup> The students' planned protest was intended to convey a message entitled to First Amendment protection and the means they chose to express it did not involve any interference with schoolwork or discipline.<sup>18</sup> Such non-violent forms of student protest and expression have been upheld against disciplinary action.<sup>19</sup> Moreover, the disproportionate consequences threatened (suspension and banning from prom) represent impermissible viewpoint discrimination, and retaliation for engaging in protected activity that amounts to a prior restraint on speech.<sup>20</sup>

## II. Conclusion

For the aforementioned reasons, the ACLU maintain serious concerns that the Manatee County School District and Braden River High School are violating the First and Fourteenth Amendments to the U.S. Constitution, Title IX, Article I § 2 and § 4 of the Florida Constitution, and the Florida Educational Equity Act by selectively enforcing the dress code against female students in a manner that reinforces sex stereotypes.

Accordingly, we urge the Manatee County School District to amend the dress code to remove the vague prohibition on "personal attire or grooming [that] distracts the attention of other students or teachers from their school work" as this provision leads to arbitrary and discriminatory enforcement in practice. Additionally, we urge the Manatee County School District to release written guidelines prohibiting school officials from enforcing the dress code in

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<sup>16</sup> *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503, 511, 513 (1969) (holding that school district denied students' First Amendment right to freedom of expression when it adopted a policy prohibiting students from wearing black armbands to school to protest the Vietnam War and suspended students who violated the policy); *see also Holloman v. Harland*, 370 F.3d 1252, 1271-72 (11th Cir. 2004) ("[S]tudent expression may not be suppressed simply because it gives rise to some slight, easily overlooked disruption, including but not limited to a showing of mild curiosity by other students, discussion and comment among students, or even some hostile remarks or discussion outside of the classrooms by other students.") (internal citations and quotation marks omitted).

<sup>17</sup> Lizzy Martinez (@lizzymartineez), TWITTER (Apr. 11, 2018, 6:27 PM), <https://twitter.com/lizzymartineez/status/984241448647348224>.

<sup>18</sup> *See Tinker*, 393 U.S. at 508 (holding that "silent, passive expression of opinion, unaccompanied by any disorder or disturbance" involves "direct, primary First Amendment rights akin to 'pure speech.'"); *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 320 (3d Cir. 2013) (upholding injunction of School District's ban on bracelets that stated "I ♥ boobies! (KEEP A BREAST)" because a reasonable observer would plausibly interpret the bracelets as part of a breast-cancer-awareness campaign, an important social issue).

<sup>19</sup> *See Tinker*, 393 U.S. at 509-11 (1969); *B.H. ex rel. Hawk*, 725 F.3d at 320.

<sup>20</sup> *See, e.g., Gillman ex rel. Gillman v. Sch. Bd. for Holmes Cty., Fla.*, 567 F. Supp. 2d 1359, 1376 (N.D. Fla. 2008) (holding school board had engaged in unconstitutional viewpoint discrimination by upholding ban on clothing that included symbols or phrases advocating equal treatment of gay students).

a discriminatory manner. These guidelines should explicitly prohibit disparate enforcement of the dress code policy, and caution against the humiliation or degradation of students through practices like those to which Ms. Martinez was subjected. The District should further conduct trainings of all District officials charged with enforcement of the dress code on the parameters of those guidelines in order to prevent future incidents of sex discrimination. Manatee County School District should further distribute written notice to all parents and students informing them of the amendments to the dress code and the new guidelines.

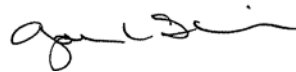
Finally, we strongly caution the Manatee County School District against the adoption of Dr. Greene's proposed amendment of the dress code to include a requirement that female students wear bras, as doing so would raise additional legal concerns under Title IX and the Constitution.

Thank you for your prompt attention to this matter. Please do not hesitate to contact us if you have any questions regarding this letter.

Sincerely,



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