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Principal Tom Worlton
5445 New Bingham Highway (7800 S.)
West Jordan, Utah 84088

Via U.S. Post

Dear Principal Worlton,

Several concerned Copper Hills High School students and parents have contacted us about the administration's policy requiring same-sex couples to get parental permission before attending school dances. We write on behalf of those concerned about the policy, and to outline the law in this area as we understand it.

First, we appreciate reports in the press that you were not only willing to discuss this issue with students, but that you are also willing to consider changing the policy before the next dance. Such willingness and openness is vital to resolution of issues such as the one at hand. We hope that you will consider the following in your deliberations.

As you are aware, school policy may not prohibit the participation of students in school activities based on their sexual orientation, nor may a policy allow an educator to engage in conduct that would encourage a student to develop prejudice based on sexual orientation. This is outlined in the Utah Administrative Code, which states:

An educator shall: . . . (e) not exclude a student from participating in any program, deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social, or cultural background, or sexual orientation, and may not engage in a course of conduct that would encourage a student to develop a prejudice on these grounds or any others.

(Professional Practices and Conduct for Utah Educators, section R686-103-6.) Requiring parental permission for same-sex couples to attend dances, but not for co-ed couples, may be a course of conduct that encourages students to develop or maintain prejudice against other students, based on the students' sexual orientation. Accordingly, the policy should be revised.

Although the Copper Hills High School policy does not prohibit same-sex couples from attending dances, you may want to be aware that schools may not do so. In 1980, a gay high school senior successfully challenged the school's ban on same-sex couples at prom. See *Fricke v. Lynch*, 491 F. Supp. 381 (D. R.I. 1980). The court concluded that unless the school had a solid basis to believe that a same-sex couple would cause "severe disruption" to the school environment, it had to permit everyone to attend with their chosen dates. The court even required the school to provide security in case the couple was harassed. Additionally, under Title IX, schools are prohibited from discriminating on the basis of sex in its invitations to the prom.

It is our understanding that the Copper Hills policy was implemented, in part, based on concerns about harassment of same-sex couples. When schools are aware of, or concerned about, harassment based on sexual orientation, they have the responsibility to take steps designed to prevent further harassment. Indeed, federal courts have held schools liable when they fail to stop anti-gay harassment. In April 2003, a federal appeals court took this precedent a step further and said that teachers and administrators must take action to eliminate harassment when they learn that gay and lesbian students are being abused at school. See *Flores v. Morgan Hill Unified School District*, 324 F.3d 1130 (9th Cir. 2003). A school with well-enforced nondiscrimination and anti-harassment policies can help protect itself against these kinds of costly lawsuits—and more importantly, make sure everyone has an equal opportunity to learn in a positive, respectful environment.

Finally, policies that prohibit or regulate same-sex couples' participation in school dances, or from enjoying the same access as co-ed couples to attend dances, as well as any policy adopted as a pretext for such discrimination, violate the rights to free expression and association guaranteed by the First Amendment to the United States Constitution. Additionally, the United States Supreme Court has held that policies based on nothing more than animosity or prejudice toward gays and lesbians violate the equal protection clause of the Fourteenth Amendment. See *Romer v. Evans*, 517 U.S. 620 (1996).

To resolve this matter, we suggest that the policy be revised so that all couples may attend all school dances under the same rules. Further, to address your concerns about harassment, the school may want to consider taking steps to ensure everyone in the school community understands that harassment and discrimination—including harassment and discrimination based on actual or perceived sexual orientation—are not allowed. If you have any questions or concerns about the issues addressed in this letter, please do not hesitate to contact us.

Thank you for your time and consideration,

Margaret Plane
Staff Attorney

cc: Superintendent Barry Newbold