



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
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Mr. Dennis L. Judd
461 West 200 South
Vernal, Utah 84078

December 8, 2005

Dear Mr. Judd:

Based on correspondence between you and Principal Robert Stearmer, it appears that you represent him. Therefore, I am directing this correspondence to you, and request that you forward it to your client. However, if you are not representing him in this matter, or if we may communicate directly with him, please inform me. Additionally, because it does not appear that you are representing the Uintah School District, I am copying Superintendent Wayne Gurney on this letter.

The American Civil Liberties Union of Utah (ACLU of Utah) recently received a complaint from -----, whose daughter, ----- is a senior at Uintah High School. ----- and ----- are concerned about a new dress code policy enacted by Uintah High School, which has been enforced to require female students to wear skirts or dresses to semi-formal dances. On or around October 1, 2005, ----- was forbidden from attending the Homecoming dance because she arrived in a three-piece suit. Although she wore the same suit to the Prom last year without incident or disruption, school employees informed her that she would not be allowed into the Homecoming dance unless she changed into a dress. ----- chose not to change her clothing and as a result, was unable to attend the final Homecoming dance of her high school career.

After ----- contacted the ACLU, we requested and received a copy of the Policy, which we reviewed. The Policy contains no language requiring female students to wear dresses or skirts to semi-formal or formal functions. Instead, the language is permissive, and states “[G]irls *may* wear dresses that may be strapless or feature spaghetti straps....” (emphasis added). However, a posted schedule setting forth the itinerary for the Homecoming week goes beyond the language of the dress code policy and explicitly requires female students to wear dresses or skirts to the semi-formal dance. Principal Stearmer informed us that students received notice of the dress requirement, and that it was applied uniformly to all Uintah High School students.

Uintah High School may impose a requirement of proper, appropriate, or even formal attire for formal dances, provided it does not create an undue financial burden for students. However, to mandate different dress codes for males and females based on outdated notions of how girls and boys are supposed to dress is impermissible. See *Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001) (holding classifications that reinforce stereotyped ideas about gender roles are invalid). Accordingly, the decision to require female students to wear dresses or skirts to

semi-formal dances constitutes such impermissible gender discrimination and violates their First Amendment rights.

Selecting what to wear to prom (or other formal school functions) and who to bring as a date is protected by the rights to free expression and association guaranteed by the First Amendment to the United States Constitution. *See Fricke v. Lynch*, 491 F.Supp. 381 (1980) (holding ban on same-sex couples at prom violated First Amendment). Recently, the Massachusetts Supreme Court granted a preliminary injunction enjoining school officials who punished a male transgender student who wore girls' clothing and accessories to school. *Doe v. Yunis*, No. 001060A, 2000 WL 33162199 (Mass. Super. 2000); *aff'd Doe v. Brockton School Committee*, 2000 WL 33342399 (Mass. App. Ct. Nov. 30. 2000). The court held that forbidding the student to attend school unless he wore "gender appropriate" clothing violated, among other things, a provision in the state constitution prohibiting sex discrimination in the public schools.

Similarly, the Utah Administrative Code, which governs the Professional Practices and Conduct for Utah Educators, also provides protections for students. It 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. R686-103-6.

Requiring all female students to wear "dresses or skirts" constitutes impermissible gender discrimination. Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681, prohibits discrimination on the basis of sex in educational institutions that receive federal financial assistance, and a student may sue as an individual when rights under this statute are violated. *See Cannon v. University of Chicago*, 441 U.S. 677 (1979). Federal courts have repeatedly recognized in other contexts that discriminating against a person for failure to conform to the norms of his or her gender is illegal sex stereotyping. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989) (denying promotion for female associate of accounting firm because she failed to walk, talk, and dress femininely was illegal sex stereotyping). The Fourteenth Amendment to the Constitution also prohibits this sort of arbitrary gender and sexual orientation discrimination.

It is our understanding that the Uintah High School administration believes the Policy is justified in order to provide a safe and orderly environment for school dances and to "promote the high school's positive image." However, forcing female students to wear dresses does not increase safety or order at school functions. To the contrary, we believe that when school officials condone discriminatory practices, they send a dangerous message that it is appropriate to treat certain students differently. Such treatment can cause individual students to be singled out for harassment or violence from their peers. Thus, for some students, such a policy could actually result in an environment that is less safe and orderly. Further, while promoting the high school's positive image is a reasonable governmental interest, doing so at the expense of students' constitutional rights is impermissible.

Based on the foregoing, we respectfully request written assurance that the school's semi-formal dress policy will not be enforced to require girls to wear dresses or skirts. We also request that any teachers or other school officials who work at school dances be informed that girls may be admitted in suits, so long as their dress complies with the more general, gender neutral standard, for semi-formal dances. We request your response before the upcoming Winter Formal, scheduled to be held on December 22, 2005. If you have any questions, or would like to discuss this matter, please call me at 801.521.9862, extension 103.

Sincerely,

Margaret Plane
Staff Attorney

cc: Superintendent Wayne Gurney