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MARJORIE R. ESMAN
EXECUTIVE DIRECTOR

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AN OPEN LETTER TO LOUISIANA SCHOOL SUPERINTENDENTS CONCERNING
SCHOOL DANCES

By email

Dear Superintendent:

You may have heard of the litigation in Itawamba County, Mississippi over the high school prom that was canceled because a girl wanted to bring another girl as her date and wear a tuxedo. Because prom season is upon us and your students are now planning these events, I write 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.

Students have the right under the First Amendment to bring same-sex dates to the prom. This was the conclusion of a federal court in *Fricke v. Lynch*, a 1980 case in which a gay high school senior successfully challenged the school's ban on same-sex couples at a school dance. *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980). 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).

In *Fricke v. Lynch*, the school principal testified that the school's 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."

With respect to attire to be worn at school dances, Title IX prohibits schools from discriminating on the basis of sex, and that includes discrimination based on gender stereotypes. *E.g. Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004). Prohibiting a female student from 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 to wear attire typical of either gender, I trust that students in your district will have a safe and happy prom season and that all students will have the right to enjoy the experience.

Sincerely,

Marjorie R. Esman