



MEMORANDUM

TO: Idaho public school superintendents
FROM: Richard Eppink, Legal Director, ACLU of Idaho
DATE: May 12, 2015
RE: Gender discriminatory school activity dress standards

For over forty years, stretching back at least into the 1970s, courts in Idaho have struck down school dress and grooming standards that set out different requirements for girls and boys. These standards are unconstitutional, they violate federal law including Title IX, and they violate the Idaho Human Rights Act.

In 1973, the Idaho Supreme Court permanently enjoined a Bingham County School District dress code that said that “Girls are expected to wear dresses,” finding that the enactment and enforcement of such a dress code had no relation to the educational process and was “unreasonable, capricious and arbitrary.” *Johnson v. Joint School District No. 60, Bingham County*, 95 Idaho 317, 317–318 (1973). That decision followed another Idaho Supreme Court decision in 1971 where the court struck down a Pocatello School District policy that prohibited boys from wearing long hair, holding that the policy violated the Ninth and Fourteenth amendments to the United States Constitution and Article I, sections 1 and 21, of the Idaho Constitution. *Murphy v. Pocatello School District No. 25*, 94 Idaho 32, 38 (1971). The federal courts have likewise held that these kinds of dress standards are unconstitutional. In 1971, the U.S. District Court for the District of Idaho held that a Meridian High School standard that forced boys to trim their hair according to conventional gender stereotypes was unreasonable, arbitrary, and unconstitutional. *Berryman v. Hein*, 329 F. Supp. 616, 620 (D. Idaho 1971).

Requiring boys and girls to dress differently or according to government-imposed gender norms—such as requiring girls to wear dresses and boys to wear pants—is also unlawful gender discrimination under Title IX of the Education Amendments of 1972. 20 U.S.C. § 1681. The First and Fourteenth Amendments to the U.S. Constitution, and their counterparts in the Idaho Constitution, similarly prohibit public schools from mandating attire based on outdated notions that girls are supposed to wear dresses and skirts and that only boys can wear pants. *See, e.g., McMillen v. Itawamba County School District*, 702 F. Supp. 2d 699, 704–705 (N.D. Miss. 2010); *Sturgis v. Copiah County School District*, No. 3:-10-CV-455-DPJ-FKB, 2011 WL 4351355, *4–5 (S.D. Miss. Sept. 15, 2011); *Johnson*, 95 Idaho at 318. Distinguishing between what female and male students may wear is gender-based classification, and thus cannot survive constitutional scrutiny unless the government can meet the very high burden of proving an “exceedingly persuasive justification” for applying different rules to women and men, supported by a significant government interest. *U.S. v. Virginia*, 518 U.S. 515, 531 (1996). There is certainly no significant governmental interest in forcing girls to wear dresses or skirts. For the same reasons, these kinds of discriminatory dress standards violate Idaho’s Human Rights Act, which prohibits discrimination on the basis of sex by educational institutions. I.C. § 67-5909(7).

The Legal Department at the ACLU of Idaho has opened investigations into several school districts in Idaho with apparently discriminatory dress standards. We will be actively monitoring this prom and graduation season for student and parent complaints.