

Update the Clovis dress code

Public comment at Clovis Unified board meeting, February 24, 2016

By Abre' Conner

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Good evening,

My name is Abre' Conner, a Staff Attorney with the ACLU of Northern California in the Central Valley office. I am here to support the students and parents asking the board to change the current dress code. Right now, the dress code violates California law in a number of ways.

First, the dress code is currently designed to have different rules for boy and girl students. For example, the dress code provides that only girls can wear skirts, dresses, and culottes. The dress code also provides that boys cannot grow their hair past their ear lobes or wear earrings.

Yet this kind of requirement is plainly illegal. Five years ago, the California Legislature explicitly amended the Education Code to clarify that it prohibits discrimination based on both gender identity and *gender expression*. The legislature made this change in recognition that many California students, especially lesbian, gay and transgender students, do not have gender identities or expressions that conform to stereotypes about how girls and boys should dress or wear their hair. No student, no matter their identity, can be subject to discrimination based on how they express their gender.

Second, the dress code also violates student free expression and freedom of religion rights which are protected under the First Amendment and the U.S. and California constitutions.¹ Under the Education Code, students have a right to free expression unless it is "obscene, libelous, or slanderous."² In fact, the ACLU just settled a case last week against the Manteca Unified School District for refusing to allow a student to wear a t-shirt stating that she was a lesbian. As part of the settlement, Manteca Unified is paying the ACLU \$63,000 in attorneys' fees. Defending discrimination costs thousands of public dollars that should go to learning.

Students' rights to express themselves also extends to their cultural and religious identities.

That brings me to my final point about the District's waiver process. The District says that it has a waiver process for students to be exempted from the dress code for cultural and religious reasons. But just last summer, a Clovis school tried to prevent a Black biracial student, William Pleasant, from enrolling in classes because officials said his hair was too long and that being Black was not a cultural identity. That process has not respected student free expression and freedom of religion rights. The waiver process has instead just allowed the District to pick and choose which cultural and religious identities it will respect, and deny students their education based on stereotypes. This picking and choosing is not allowed under our law. What's more,

¹ See, e.g., *McMillen v. Itawamba County Sch. Dist.*, 702 F. Supp. 2d 699, 705 (N.D. Miss. 2010) (holding that bringing a same-sex date to the prom is "the type of speech that falls squarely within the purview of the First Amendment").

² Ed. Code Section 48907(a).

students shouldn't have to justify who they are or suffer an additional burden in seeking an exemption just to be able to learn.

As a public school, the District has an affirmative obligation to combat racism, sexism, and other forms of bias, and to provide an equal educational opportunity for all its students.³ We therefore strongly urge the District to do the right and lawful thing for students and revise the dress code.

³ Ed. Code Section 201(b).