

# SHOULD YOUR SCHOOL'S DRESS CODE ADDRESS TRANSGENDER STUDENTS?

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Teenagers who push the limits of school dress codes are nothing new. Experimenting with clothing, hairstyles, and even make-up is a way for teens to explore their identities and test the limits of socially-acceptable behavior. Although school officials might find dress code enforcement challenging, dress code violations in the past tended to be fairly routine and usually revolved around prohibiting overtly sexually suggestive clothing or outward signs of gang affiliation.

But a new wrinkle in the dress code debate has developed, with some students demanding to express their gender or sexual identities by cross-gender dressing. Although cross-gender dressing is not particularly widespread in schools, a growing number of students throughout the country have begun dressing according to the gender identity they have chosen, which may not necessarily reflect their biological gender.

Whether the student is gay, lesbian, transgender\*, or just testing the limits of a school dress code, the issue has emerged as a dress-code challenge for many school officials, and schools must face competing demands and evolving ideas of acceptable dress.

## RECENT CHALLENGES

Recent news reports provide examples of how different schools deal with the issue. A gay male high school student was recently elected prom queen at a Los Angeles high

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school. Last fall in Arizona, a freshman female who identifies as male was nominated for homecoming prince. Both students apparently enjoyed the support of their schools.

Other schools have been less supportive of blurring traditional gender expectations for dress, citing the potential for distraction for other students and worries of violence toward the cross-dressing student as reasons to prohibit cross-gender dressing. Schools have reportedly sent male students home for wearing wigs or make-up, and prohibited students from cross dressing for their yearbook photographs.

And cross-gender dressing is not only limited to high-school students. In 2006, a six-year old student entered kindergarten in Miami as a girl, despite the fact that the child is genetically male. The student, who was diagnosed with gender dysphoria, has the school system's support as she navigates the uncertain waters of elementary school as a transgender student.

Although such circumstances are not common, recent data suggests that student requests for exceptions to dress codes to accommodate cross-gender dressing are on the rise. With over 4,000 gay-straight alliance clubs currently in place at high schools throughout the country, we can only expect that student requests for exceptions to school dress codes will increase as students become more aware of these issues.

## **LEGAL OBLIGATIONS**

There are no federal laws requiring that a school permit cross-gender dressing. However, there is case law holding that a public school's failure to protect students from harassment and discrimination based on that student's sexual orientation, which may be expressed through cross-gender dress, is a violation of the Equal Protection Clause. Additionally, some state laws and local ordinances may require that transgender students and students who do not conform to traditional ideas of gender-appropriate dress be protected from discrimination and harassment while in the school environment.

In California, for example, the state legislature passed the California Student Safety and Violence Prevention Act of 2000, which prohibits discrimination or harassment in public

schools against transgender and “gender non-conforming” students. This law protects such students from being expelled from school, kicked out of class, held after school, treated differently or punished in any way because of their gender expression.

Although California’s law is perhaps the broadest in coverage, many other municipalities and a few states have ordinances or laws in place prohibiting discrimination based on gender identity. Most of these laws apply to places of “public accommodation,” and typically are interpreted to mean that the school must consider a “reasonable accommodation” based on a person’s gender identity. Depending on how the law is drafted, it may apply to both public and private schools.

## **STEPS TO CONSIDER**

What does this mean for your school? In addition to your school’s obligations under the Equal Protection Clause (if your school is a public school), be aware of any state laws or local ordinances that might address gender identity issues. If your school has a dress code, it is important that the dress code policies are enforced in a fair and consistent manner. Any dress code policies should be developed, and revised if necessary, with the needs of all students in mind, taking into account the mental and physical health of all students, community standards, and the legal implications of a discriminatory dress code. All students must be held to the same dress-code standards. Rules against sexually provocative clothing, for example, must be equally enforced for transgendered student as well as for the straight, gender conforming students. Permitting a straight female student to wear a shorter skirt than a transgendered student is impermissible.

Finally, regardless of whether your school permits students to cross-dress, it is important that you take all necessary steps to prevent harassment, discrimination, and violence against gay, lesbian, or transgendered students by fellow students, teachers, and administrators.

According to a 2001 National School Climate Survey by the Gay Lesbian Straight Education Network, 89.5% of transgender students report feeling unsafe in their schools, and statistics indicate that transgender students are at a higher risk for dropping out of school and committing

suicide. Gay, lesbian and transgendered students report feeling particularly unsafe in restrooms, locker rooms, and lunchrooms. Any discussions regarding school dress code policies should take all of these issues into account, and, at a minimum, ensure that all forms of discrimination and harassment are prohibited.

*\*"Transgender" is an umbrella term often used to describe individuals who are biologically one gender, but believe themselves to be another gender ("gender dysphoric"). The term "transgender" also includes individuals whose appearance and gender identity is "non-conforming" to traditional social expectations of either gender; that is, individuals who believe themselves to be both male and female or neither male nor female. A gender non-conforming individual may or may not identify as lesbian, gay, bisexual. A "transsexual" is an individual who transitions from one gender to another.*