

May 4, 2012

via electronic mail and facsimile

Jerome King
JROTC
Davidson High School
3900 Pleasant Valley Road
Mobile, AL 36609
251-221-3087

Mobile County Public Schools Board of Education
c/o Superintendent Martha Peek
1 Magnum Pass
Mobile, AL 36618
251-221-4399

Dear Mr. King and Mrs. Peek:

We write on behalf of Kiera Willis, a senior at Davidson High School. She has informed us that Mr. King has forbidden her from attending the school's JROTC military ball with her same-sex date because her date desires to wear a tuxedo instead of a dress. The reason provided for this rule was that the school doesn't want other students and parents to be uncomfortable with the sight of a girl in a tuxedo or the sight of an openly gay couple at the ball. We write to inform you that such a policy is unconstitutional and must be rescinded immediately.

The school's actions violate the First Amendment. *See McMillen v. Itawamba County Sch. Dist.*, 702 F.Supp.2d 699 (N.D. Miss. 2010); *Fricke v. Lynch*, 491 F.Supp.381 (D.R.I. 1980). In *McMillen*, a high-school senior, Constance McMillen, sought permission to bring a same-sex date to the senior prom and to wear a tuxedo. 702 F.Supp.2d at 701. The school initially informed her that the two girls could not attend prom together as a couple or slow dance together, because it could "push people's buttons." *Id.* The school also told her that all girls must wear dresses. After she filed a lawsuit, the court held that Constance's effort to "communicate a message by wearing a tuxedo and to express her identity through attending prom with a same-sex date" was "the type of speech that falls squarely within the purview of the First Amendment," *id.* at 705, and concluded that the district had violated her First Amendment rights under "the clearly established case law." *Id.* at 704. Ultimately,

because of its unlawful actions, the school paid Constance \$35,000 in damages and another \$81,000 to Constance's attorneys.

The decision in *Fricke v. Lynch* also affirms the First Amendment right of students to openly bring a same-sex date to a school dance. In that case, the principal of the school testified that the school's policy against same-sex dates was based on concern about the potential for disruption and violence at the prom by objecting students. While the court noted that the principal had apparently acted out of a sincere belief that prohibiting the plaintiff from attending prom with another boy was necessary to protect the plaintiff's safety, it nonetheless held that the school could not attempt to protect him by "stifl[ing his] free expression." 491 F.Supp at 388. To permit such actions, even in the name of safety or good order, "would completely subvert free speech in the schools by granting other students a 'heckler's veto'." *Id.* at 387.

Finally, the military's repeal of "Don't Ask, Don't Tell" removes any possible justification that you may have for denying Kiera and her girlfriend their First Amendment rights to express their sexual orientation and the view that it is appropriate for girls to wear clothing that is traditionally associated with the male gender.

Because the actions in this matter violate clearly established law, we respectfully demand that you immediately inform Kiera that she may bring her girlfriend to the ball and that her girlfriend is permitted to wear a tuxedo to the ball. We further request that you make clear to all District staff that it is unlawful and a violation of the First Amendment for schools to censor student expression of their sexual orientation, gender identity, or support for lesbian, gay, bisexual, and transgender (LGBT) rights.

If we do not receive an acceptable response by 6 pm today, we will have no choice but to consider all of Kiera's legal options, including but not limited to a federal lawsuit for damages and attorneys' fees and costs. Please call me at 334.956.8200 to discuss this matter.

Very Truly Yours,

A handwritten signature in cursive script that reads "Maria Morris".

Maria Morris, Esq.