



NYCLU

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VIA FACSIMILE, ELECTRONIC AND U.S. MAIL

Members of the School Board
Central Islip Union Free Public School District
50 Wheeler Road
Central Islip, NY 11722

Dear Members of the Central Islip School Board:

We, the undersigned, are Long Island and New York State based legal and advocacy organizations writing to urge the Central Islip Union Free Public School District (the "District") School Board to oppose a recently proposed policy that would require nominees for Homecoming King to be male and nominees for Homecoming Queen to be female. As explained below, such a policy is in clear violation of state and federal law: it is discriminatory, it breeds hostility, and it infringes upon students' rights.

The proposed policy comes as a response to the election by the students of Central Islip High School of Faith Shepherd as the "Homecoming King" for the 2013-2014 school year. Ms. Shepherd ran for Homecoming *King* specifically in order to convey a symbolic message of opposition to sexual stereotyping and to the reinforcement of gender roles. Her message was one in support of gender equality and in solidarity with transgender students. The community of students and faculty well understood and supported these messages as they voted overwhelmingly in support of Ms. Shepherd's candidacy.

So understood, the proposed gender-specific policy is calculated to prevent others, in the future, from communicating the same message conveyed by Ms. Shepherd in the same way. For this reason, the proposed policy deeply implicates the First Amendment right of students, in the future, to express their opposition to gender stereotyping and their support for gender equality.

But this policy is wrong-minded not merely because it would intrude upon First Amendment freedoms. It should also be rejected because it will unnecessarily and unjustifiably classify students on the basis of gender and will discriminate against transgender students and others who might not conform to traditional notions of gender. In these respects, the proposed policy raises concerns under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. and New York Constitutions,

and the New York State Dignity for All Students Act. Each of these matters will be addressed, in turn.

The proposed policy raises free speech concerns under the First Amendment and the New York State Constitution

Ms. Shepherd's campaign for Homecoming King was clearly an act of political expression protected by the First Amendment to the U.S. Constitution and the New York State Constitution. As Ms. Shepherd stated in news reports, she ran for Homecoming King in order to make a statement for gender equality and in support of free expression for transgender individuals. Symbolic speech on public and political issues, such as Ms. Shepherd's campaign for Homecoming King as a statement for gender equality, and also her fellow students' vocal support of her candidacy, deserves the utmost protection under the First Amendment. See *Tinker v. Des Moines School District*, 393 U.S. 503, 506 (1969); see also *Fricke v. Lynch*, 491 F. Supp. 381, 384 (D.R.I. 1980) (a gay student's decision to bring a same-sex date to prom was "a statement for equal rights and human rights," and, as such, the school's decision to require male students to bring female dates violated the First Amendment).

If the District implements a sex-specific Homecoming policy, it would prevent students from making such political statements in the future, infringing upon their free expression rights without good reason. In this regard, the proposed sex-specific policy would violate both the First Amendment and the parallel free speech provisions of the New York State Constitution, N.Y. Const., art I, § 8.

The proposed policy raises concerns under Title IX of the Education Amendments of 1972 and the Equal Protection Clauses of the U.S. and New York Constitutions

Title IX specifically prohibits discrimination or exclusion from participation in an activity on the basis of gender in any educational program or activity at a school receiving federal financial assistance. See 20 U.S.C. § 1681. Indeed, Title IX was enacted precisely to combat discrimination resulting from preconceived, stereotypical notions of what should constitute one gender's interests and abilities. See *McCormick ex rel McCormick v. School Dist. Of Mamaroneck*, 370 F.3d 275, 295 (2d Cir. 2004) (quoting *Cohen v. Brown University*, 101 F.3d 155, 178-179 (1st Cir. 1996)). Similarly, the Equal Protection Clauses of the U.S. and New York Constitutions specifically prohibit educational institutions from classifying individuals on the basis of gender when such classification is unjustified. See *United States v. Virginia*, 518 U.S. 515, 555 (1996); see also N.Y. Const., art. I, § 11.

The proposed policy appears to bar those who identify as female from running for Homecoming King and those who identify as male from running for Homecoming Queen, and it leaves no clear option for those whose gender identities do not fall into either category. In contrast to the inclusive, affirming decision that allowed Ms. Shepherd to choose to run for Homecoming King, the proposed policy discriminates based on stereotypes about the roles of young men and women without any legitimate educational

purpose, and therefore violates Title IX and the Equal Protection Clause, leaving the District vulnerable to the loss of funding and liability for constitutional violations.

The proposed policy raises concerns under the Dignity for All Students Act

The New York State Dignity for All Students Act (the “Dignity Act”) not only prohibits discrimination in schools on the basis of actual or perceived gender, gender identity, gender expression, and sexual orientation, it also affirmatively requires schools to put into place preventive policies and practices designed to create a school environment free of discrimination and harassment. Each school has a duty to combat bias based on gender, gender expression, gender identity, and sexual orientation. The purpose of the law is to ensure that every student has a school experience that is safe and free from hostility. The proposed sex-specific Homecoming policy would violate both the letter and the spirit of the Dignity Act by codifying discrimination into District policy.

The proposed policy would disproportionately affect gender nonconforming and transgender individuals—those students whose gender identity differs from their sex assigned at birth, and the very population that Ms. Shepherd chose to champion when she ran for Homecoming King. Students whose gender identities do not conform to the limited and stereotyped notions of gender in the proposed policy would not be able to run for the Homecoming title of their choosing, and the discrimination that these students already face in their daily lives would be compounded by the very District whose responsibility it is to protect them. Such a discriminatory policy would clearly violate the nondiscrimination provisions of the Dignity Act, and it would also contribute to a hostile school environment for some of the most vulnerable students in the District.

Conclusion

Currently, there is no District policy regarding the gender of Homecoming court nominees. To implement a sex-specific policy would be regressive, discriminatory, and a violation of state and federal laws. Therefore, we strongly urge the school board to reject the proposed sex-specific policy for Homecoming court. Furthermore, in order to promote gender equality and support students, and in order to avoid liability for violations of state and federal law, we urge the school board to implement a gender-neutral policy regarding Homecoming King and Queen and other extracurricular activities, one that encourages all students to meaningfully participate in the school community without regard to gender identity or expression. The New York Civil Liberties Union, Pride for Youth, and other undersigned organizations would be eager to work with the District and the school board to craft such a policy to ensure that all students are treated with the respect and dignity they deserve.

Sincerely,

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