



October 13, 2015

The Chesterfield County School Board
School Board Administration Building
9900 Krause Road
Chesterfield, Virginia 23832

Dear School Board Members:

I write on behalf of the American Civil Liberties Union of Virginia Foundation, Inc. and our client, Ms. Lydia Cleveland, who is currently a senior at James River High School in Midlothian, Virginia ("JRHS"). We have received reports from Ms. Cleveland and other JRHS students that school administrators are enforcing the JRHS dress code in a discriminatory manner that disproportionately affects female students. We reviewed the dress code and found many concerning provisions that warrant immediate revision or deletion.

To begin with, the policy is unconstitutionally vague. To be constitutional, a policy must give clear notice of what conduct is prohibited, and must provide clear standards to the officials charged with enforcing the policy. This policy does neither. It is replete with vague directives and prohibitions that depend on administrators' personal tastes and opinions.

For example, JRHS students are prohibited from wearing "attire or apparel that the administration deems as inappropriate, disruptive, and/or unsafe to the school environment" and "any other clothing items which are revealing." An administrator may punish a student for wearing an article of clothing that complies with every aspect of the dress code *except* that particular administrator's personal opinion of what clothing is "disruptive" or "revealing." A student may encounter several administrators throughout the school day without incident, but be disciplined later in the day when he or she encounters another administrator with a different opinion of that student's outfit. The punishments for perceived dress code violations are cumulative and include detention, in-school suspension, and between one and three days of out of school suspension. Students are pulled from their classes for perceived dress code violations, and kept from their education until they obtain a change of clothes or agree to wear a sweat suit with 'DRESS CODE' emblazoned on it. Reportedly, these punishments are almost exclusively imposed on female students while male students found in violation of the dress code generally escape with verbal reprimands.

The vagueness of this policy makes it unclear to female students, in particular, what clothing is forbidden. The vast majority of prohibited clothing is typically worn by female students, and those wishing to wear shorts, skirts, or skorts are instructed to ensure they are "in good taste." Given these subjective parameters, female students are constantly at risk for discipline. According to reports we received from Ms. Cleveland

and other students, JRHS administrators are visiting classrooms throughout the day and ‘spot checking’ female students for dress code violations, and routinely pulling female students out of the crowd entering the school each morning to discipline them for perceived dress code violations. Further, during an assembly at the beginning of the school year, administrators subjected students to a lengthy presentation explaining that innocuous female body parts such as shoulders, navels, and thighs are “distracting” to other students and must be hidden. A power point presentation from that assembly clearly reveals the administration’s intention to enforce the dress code more stringently against female students.

The Fourteenth Amendment to the United States Constitution prohibits a public school from engaging in this type of arbitrary gender discrimination. Schools may impose a requirement of proper attire, but to enforce a dress code more strictly against female students based on administrators stereotyped opinions about how much of the female body must be hidden from view is impermissible. *See Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001) (classifications that reinforce stereotyped ideas about the roles and capabilities of women are invalid). The Equal Rights Amendment to the Virginia Constitution similarly prohibits such discriminatory actions by a public school.

Additionally, if evidence supports the complaints we received about the JRHS administration’s enforcement methods, the policy and the school’s actions likely violate Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, which prohibits discrimination on the basis of sex in educational institutions that receive federal funding. The JRHS administration is reportedly using the dress code to single out female students, remove them from class, and impose disciplinary measures against them. If JRHS is indeed disproportionately enforcing its dress code policy against female students to shame them into covering innocuous parts of their bodies, it is impermissibly interfering with female students’ right to equal educational opportunities under Title IX. Moreover, if JRHS administrators are using the dress code to disproportionately discipline female students of color, the school may also be in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which prohibits schools receiving federal funding from discriminating against students on the basis of race, color, or national origin.

For these reasons, this policy is a virtual invitation to litigation. To remedy these problems, the ACLU of Virginia requests that (1) all ambiguous, vague language be removed from the JRHS dress code (in particular, the provision prohibiting “any other attire or apparel that the administration deems as inappropriate, disruptive, and/or unsafe to the school environment”); (2) JRHS administrators replace the “dress code” sweat suits with plain sweat suits; and (3) ensure JRHS administrators stop disproportionate targeting female students for dress code violations and pulling them from their classes during the time it takes to remedy said violations. We also encourage the school board and JRHS administrators to consider the message they are sending to female students by telling them their bodies, when clad in typical teenage clothing such as yoga pants, leggings, and tank tops, are “distracting” to their fellow students. To paraphrase Golda Mier, if female students’ bodies are causing other students to be disruptive, the school should punish the disruptive behavior, not stigmatize female students by using an overly restrictive dress code to shame them into hiding their bodies.

If we do not receive written confirmation on or before November 12, 2015 that the dress code has been revised to meet constitutional standards, the schools involved

have replaced the “dress code” shame sweat suits with plain or school logo attire, and that administrators have been counseled about discriminatory application of the policies resulting in disparate discipline of female students and/or female students of color, the ACLU of Virginia will take appropriate action to investigate this matter further and to evaluate all of Ms. Cleveland’s legal options to seek redress. If you feel that the ACLU of Virginia can be of any further assistance to you as you consider the steps needed to ensure that the school administrators are applying constitutionally defensible dress code policies to Chesterfield County students, please contact me.

Very truly yours,



Gail M. Deady, Esq.
The Secular Society Women’s Rights Legal Fellow
ACLU of Virginia

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
VIRGINIA
701 E. FRANKLIN ST.
SUITE 1412
RICHMOND, VA 23219
T/804.644.8022
WWW.ACLUVA.ORG