

July 30, 2021

**VIA ELECTRONIC MAIL**

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Dear Board Chair Canan, Vice Chair Mignon, Ms. Slough, Mr. Coleman, Ms. Barrera, Superintendent Forson, and Mr. Abbatinozzi:

The ACLU Women's Rights Project and the ACLU of Florida (collectively, "ACLU") write on behalf of the ACLU of Florida Northeast Florida Chapter to express serious and ongoing concerns regarding the dress code policy in the St. Johns County School District ("School District"). We commend the School District's recent announcement that it will adopt a gender-neutral dress code policy, and urge the School District to do so without delay. However, the abandonment of the gender-specific terms within the dress code itself will not fully resolve the issues with the policy.

According to news reports and reports from affected students and families, it appears that school officials within the School District have been selectively enforcing the dress code against girls in a manner that reinforces invidious sex stereotypes in violation of the Fourteenth Amendment to the U.S. Constitution, Title IX of the Education Amendments of 1972, Article I § 2 of the Florida Constitution, and the Florida Educational Equity Act. The School District's "Dress For Success" program similarly contains sex-specific rules and has been enforced in a discriminatory manner against girl students. Such biased enforcement harms all students, regardless of gender, but has particularly harmful impacts on girls and transgender, non-binary, and gender-nonconforming students. In addition, the proposed revised code



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continues to contain terms, such as unrealistic limits on lengths of bottoms, that will have a discriminatory impact on girl students.

We therefore urge you not only to revise the dress code policy to immediately remove all sex-specific terms, but also to root out provisions that reflect and reinforce gender stereotypes, revise or abandon the “Dress For Success” program, take steps to solicit additional feedback and comments from students and parents regarding their experiences with the dress code, and implement longer-term measures such as providing guidance and training for school staff and administrators to guard against further discriminatory enforcement.

## **I. St. Johns County School District’s Dress Code and Discriminatory Enforcement**

### **a. St. Johns County School District’s Sex-Specific Dress Code**

The School District has maintained a dress code (“Student Dress Code”) that applies to all students in pre-kindergarten through grade 12.<sup>1</sup> The Student Dress Code currently sets forth three sections for dress and grooming standards for “All Students,” “Boys,” and “Girls.”<sup>2</sup> The “All Students” section sets forth several requirements that apply broadly to all students, before imposing additional sex-specific regulations for girls and boys.<sup>3</sup> Under the Student Dress Code’s “Boys” section, the School District sets forth three requirements, including that: (1) “[b]oy’s pants/slacks must be worn at the waist” without showing boxer shorts or underwear, (2) facial hair shall be “neatly trimmed,” and (3) boys may not wear “[r]evealing clothing and pajamas.”<sup>4</sup>

The Student Dress Code’s “Girls” section similarly: (1) requires female students to wear their pants or slacks “at the waist” without exposing underwear, and (2) prohibits female students from wearing “[r]evealing clothing [and] pajamas,” but unlike the boys’ section, it also prohibits “*lingerie*.”<sup>5</sup> Moreover, the “Girls” section goes even further by setting out additional limitations on girls’ clothing, including that: (3) girls’ tops and shirts “must cover the entire shoulder and they must be *modest and not revealing or distracting*,” (4) girls may not wear “[m]idriff or ‘cut-out’ dresses and ‘cut out’ tops,” (5) girls may not wear “[e]xtremely short skirts,” (6) girls’ skirts “must be no shorter than four inches [] above the top of the knee,” and (7) girls may not wear hair curlers or excessive make-up.<sup>6</sup> None of these additional provisions apply to boys. Accordingly, the School Dress Code makes a facially sex-based classification that reflects and reinforces sex stereotypes about girls—namely, that girls’ bodies are distracting to other students,

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<sup>1</sup> St. Johns County School District Student Code of Conduct 2020-2021, at 13–15, <https://www.stjohns.k12.fl.us/schoolservices/wp-content/uploads/sites/23/2020/07/2020-21-Code-of-Conduct-Final-Changes.pdf> (last visited June 29, 2021).

<sup>2</sup> *Id.* at 14.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

that the school must exert greater control over girls' clothing and appearance than it does over that of boys, and that girls should be treated differently than boys.

Notably, the Student Dress Code also prohibits students from wearing “[h]ead coverings” on campus “unless required by a physician or authorized by school administration,”<sup>7</sup> and requires students to keep their hair “clean and well combed or brushed” while providing that “[e]xtreme hairstyles will not be acceptable.”<sup>8</sup> The Student Dress Code, however, currently fails to guarantee any exceptions for religious or cultural reasons. Such restrictions against head coverings and certain grooming styles have strong racial, religious, and cultural implications.<sup>9</sup> Bans on head coverings and other hair accessories may disproportionately burden Muslim, Sikh, and Jewish students,<sup>10</sup> as well as Black students and other students of color who wear hair wraps or scarves.<sup>11</sup> Moreover, these grooming policies—including bans on “extreme hairstyles” and requirements of “well combed or brushed” hair—are rooted in Eurocentric standards of professionalism and respectability, and often lead to discrimination against Black students who wear natural and protective hairstyles, such as locs, braids, or afros.<sup>12</sup>

The School District also has maintained a sex-specific dress code for its Dress For Success program, which aims to educate students in the academies on how to dress for professional business events.<sup>13</sup> Compliance with the Dress For Success guidelines is mandatory for all academy students and results in a letter grade each month.<sup>14</sup> Under these guidelines, girls are permitted to wear dress pants, “Business Style” dresses, “Business Style” skirts with “Business Style” shirts, and dress shoes.<sup>15</sup> The guidelines specifically prohibit girls from wearing dresses or skirts that “cling to [her] body and show [her] shape,” and require that dresses be an “appropriate length—in the vicinity of

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., Veronica Craig, “Does My Sassiness Upset You?” *An Analysis Challenging Workplace and School Regulation of Hair and its Connection to Racial Discrimination*, 64 *How. L.J.* 239, 254–61 (2020); Ria Tabacco Mar, *Why Are Black People Still Punished for Their Hair?*, *N.Y. Times*, Aug. 29, 2018, <https://www.nytimes.com/2018/08/29/opinion/black-hair-girls-shaming.html>.

<sup>10</sup> See, e.g., ACLU, *Discrimination Against Muslim Women – Fact Sheet*, <https://www.aclu.org/other/discrimination-against-muslim-women-fact-sheet>; Kelly A. Harrison, *Hiding Under the Veil of “Dress Policy”: Muslim Women, Hijab, and Employment Discrimination in the United States*, 17 *Geo. J. Gender & L.* 831, 832–837 (2016).

<sup>11</sup> See Nat’l Women’s Law Ctr., *Dress Coded: Black girls, bodies, and bias in D.C. schools*, at 3, 10–11, [https://nwl.org/wp-content/uploads/2018/04/5.1web\\_Final\\_nwlc\\_DressCodeReport.pdf](https://nwl.org/wp-content/uploads/2018/04/5.1web_Final_nwlc_DressCodeReport.pdf).

<sup>12</sup> See *id.* at 10–11; see also Clinton Stanley, *My Black Son Was Sent Home From First Grade Because of His Natural Hair*, *ACLU News & Commentary*, Nov. 29, 2018, <https://www.aclu.org/blog/racial-justice/race-and-inequality-education/my-black-son-was-sent-home-first-grade-because-his>; Frederick Reese, *Natural Hair Bias Is the Latest Tool Being Used to Criminalize Black Girls, Marginalize Black Women*, *Atlanta Black Star*, June 1, 2007, <https://atlantablackstar.com/2017/06/01/natural-hair-bias-is-the-latest-tool-being-used-to-criminalize-black-girls-marginalize-black-women/>; Vanessa King, *Race, Stigma, and the Politics of Black Girls Hair* (2018), <https://cornerstone.lib.mnsu.edu/cgi/viewcontent.cgi?article=1762&context=etds>.

<sup>13</sup> Bartram Trail High School, *Dress for Success*, <https://teachers.stjohns.k12.fl.us/dorst-j/dress-for-success/> (last visited July 6, 2021). Notably, the School District’s revised dress code policy does not currently address the Dress For Success program guidelines.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

[her] KNEE.”<sup>16</sup> The guidelines also provide that shirts “should NOT be tight, NOR show cleavage,” and require that girls “wear a color coordinated cardigan” if their dress or shirt is sleeveless.<sup>17</sup> Additionally, the guidelines set forth requirements regarding make-up, perfume, jewelry, hair accessories, and hats. Specifically, the guidelines state: “Your hair should look like you made an effort to do something with it,” while prohibiting “big hair accessories.”<sup>18</sup>

The Dress For Success guidelines for boys, by contrast, are short and simple.<sup>19</sup> Under these guidelines, boys are required to wear dress pants and a belt (with certain color limitations), a dress shirt and tie, and dress shoes.<sup>20</sup> Beyond these dress requirements, the guidelines simply require boys to wear their “[h]air neatly groomed” and “[l]imit the cologne.”<sup>21</sup> Notably, the guidelines for boys are devoid of any references to their bodies—or specifically, how tightly the clothing items fit their bodies, “show [their] shape,” cover their shoulders, or are otherwise “revealing.”<sup>22</sup> Nor do they impose expectations that boys make any special “effort” with respect to their grooming.

In addition to these sex-specific requirements, the Dress For Success guidelines set out facially—and radically—different standards on the severity of punishment for girls and boys for violation of the dress code. A girl’s failure to comply with these guidelines by wearing certain prohibited items (such as a maxi dress or skirt, shorts, leggings, jeans, or capris) will result in an automatic grade of “ZERO.”<sup>23</sup> Moreover, a school official’s finding that a girl wore “[c]lothes too tight” or inappropriate shoes will result in a “warning the first time,” followed by a grade of “ZERO” after the first warning.<sup>24</sup> In stark contrast, the lowest grade that a boy may get for violating the guidelines—specifically, for failing to wear a tie—is a letter grade of “B.”<sup>25</sup> In other words, the School District’s Dress For Success guidelines punish girls more severely than boys for dress code violations.

#### b. St. Johns County School District’s Discriminatory Enforcement

In addition to maintaining a discriminatory sex-specific dress code, school officials in the School District have disproportionately enforced its dress code against girl students. According to news reports, roughly 80 percent of dress code infractions over the past three years have been issued to female students.<sup>26</sup> As a result, female students in the

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Colleen Michele Johns, *Federal investigation initiated into St. Johns County Schools’ dress code policy*, St. Augustine Record, June 15, 2021, <https://www.staugustine.com/story/news/education/2021/06/15/st-johns-county-schools-under-federal-investigation-dress-code-gender-bias-title-ix-yearbook/7701651002/>. See also Joe McLean, *Dress code violations tripled over previous year in St. Johns County schools*,

School District disproportionately suffer the harmful consequences that arise from discriminatory dress code enforcement. In addition to missed class time, detention, suspension, and other disciplinary consequences, students may suffer negative impacts on grades and academic performance, humiliation, body image and self-confidence issues, anxiety, and other social and psychological concerns.<sup>27</sup>

The School District’s discriminatory enforcement against girls is further supported by reports from both students and parents. Most recently, on March 26, 2021, school officials at Bartram Trail High School (“BTHS”) conducted a dress code “sweep,” where they removed female students from class for dress code violations and sent them to the dean’s office to change their clothing or face suspension.<sup>28</sup> This dress code sweep resulted in citations against 31 students—all of whom were female. One female student reported that a male teacher pulled her from class, told her to unzip her sweatshirt while they stood in a main hallway in front of other staff and students, despite her repeated objections and explanation that she was only wearing a sports bra underneath.<sup>29</sup> According to news reports, school officials then confiscated the student’s bra and gave her detention.<sup>30</sup> Another female student shared that a school administrator verbally reprimanded her in front of a group of students and told her that she “look[ed] like a hooker” because of her outfit.<sup>31</sup>

Shortly after this incident, a BTHS school official digitally altered the yearbook photos of at least 80 female students to cover up their shoulders and chest areas, without their knowledge or consent.<sup>32</sup> No photos of male students were altered—including a photo of male students in swim briefs.<sup>33</sup> The school official imposed a black rectangle

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News4Jax, Apr. 23, 2021, <https://www.news4jax.com/news/local/2021/04/23/dress-code-violations-tripled-over-previous-year-in-st-johns-county-schools/>.

<sup>27</sup> See, e.g., Chloe Latham Sikes, *Racial and Gender Disparities in Dress Code Discipline Point to Need for New Approaches in Schools*, Intercultural Development Research Ass’n, Feb. 2020, <https://www.idra.org/resource-center/racial-and-gender-disparities-in-dress-code-discipline-point-to-need-for-new-approaches-in-schools/>; National Women’s Law Ctr., *Dress Coded*, *supra* note 11, at 10–11; Mimi Montgomery, *How DC Public Schools’ Dress Codes Are Hurting Black Girls’ Self-Esteem*, *Washingtonian*, May 1, 2018, <https://www.washingtonian.com/2018/05/01/why-dc-public-schools-dress-codes-are-hurting-black-girls-self-esteem/>.

<sup>27</sup> 20 U.S.C. § 1681(a).

<sup>28</sup> Zachery Lashway & Brie Isom, *Bartram Trail High students felt uncomfortable while being accused of dress code violations*, News4Jax, Mar. 29, 2021, <https://www.news4jax.com/news/local/2021/03/29/bartram-trail-high-students-felt-uncomfortable-while-being-accused-of-dress-code-violations/>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Joe McLean, *80 yearbook photos, all girls, edited by St. Johns County high school employee*, News4Jax, May 22, 2021, <https://www.news4jax.com/news/local/2021/05/21/80-yearbook-photos-all-females-edited-by-st-johns-county-high-school-employee/>; see also Maria Cramer & Michael Levenson, *Yearbook Photos of Girls Were Altered to Hide Their Chests*, *N.Y. Times*, May 23, 2021, <https://www.nytimes.com/2021/05/23/us/yearbook-photos-st-johns-girls-altering.html>.

<sup>33</sup> Cramer & Levenson, *supra* note 32. See also Sheldon Gardner, *Bartram Trail sparks outcry after female students’ yearbook photos are digitally altered*, *St. Augustine Record*, May 21, 2021, <https://www.staugustine.com/story/news/education/2021/05/21/st-johns-county-parents-angry-yearbook-photo-edits-girls-clothes-bartram-trail-high-school-florida/5199666001/>.

across the chest of one female student—digitally censoring her body—and clumsily distorted another female student’s photo to stretch her shirt across her chest.<sup>34</sup> The affected students had not been informed that their outfits were in violation of the School Dress Code prior to the alteration of their photos, and only discovered this censorship upon receiving their much-anticipated yearbooks. These humiliatingly altered photographs are now, irrevocably, in the possession of students and parents throughout St. Johns County. The School District’s discriminatory enforcement of its dress code has inflicted significant stress and pressure on all students, and especially on girls.

## II. Legal Concerns

The School District’s dress code runs afoul of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, Title IX of the Education Amendments of 1972 (“Title IX”), Article I § 2 of the Florida Constitution, and the Florida Educational Equity Act.

It is well established that the Equal Protection Clause prohibits school officials from treating students differently based on, or forcing students to conform to, sex stereotypes. *See U.S. v. Virginia*, 518 U.S. 515, 533 (1996); *Glenn v. Brumby*, 663 F.3d 1312, 1313–20 (11th Cir. 2011); *Sturgis v. Copiah Cnty. Sch. Dist.*, No. 3:10-CV-455-DPJ-FKB, 2011 WL 4351355, at \*4–5 (S.D. Miss. Sept. 15, 2011); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 150–52 (N.D.N.Y. 2011). If it is within their statutorily granted authority, public schools may establish a dress code for the regular school day or for school events. However, schools cannot establish different requirements based on sex without an exceedingly persuasive justification, or rely on sex stereotypes when creating and enforcing dress code and grooming standards. *See, e.g., Hayden ex rel. A.H. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 583 (7th Cir. 2014 (requiring male athletes to have short hair discriminated on the basis of sex in violation of the Equal Protection Clause and Title IX); *Peltier v. Charter Day Sch., Inc.*, No. 7:16-CV-30-H, at \*31 (E.D.N.C. Mar. 28, 2019) (requiring girls to wear skirts was an impermissible sex classification).<sup>35</sup>

As a recipient of federal funding, the School District must also comply with Title IX and the U.S. Department of Education’s Title IX implementing regulations, which prohibits differential treatment of students based on sex.<sup>36</sup> In particular, Title IX regulations prohibit the School District from “[s]ubject[ing] any person to separate or different rules of behavior, sanctions, or other treatment.”<sup>37</sup> The U.S. Department of Education and the U.S. Department of Justice have recently reiterated that Title IX prohibits discrimination in dress and grooming codes.<sup>38</sup> Additionally, the School District must comply with the Florida Educational Equity Act, which contains similar

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<sup>34</sup> *See* Cramer & Levenson, *supra* note 32.

<sup>35</sup> *See also* United States’ Statement of Interest, *Arnold v. Barbers Hill Sch. Dist.* (S.D. Tex. filed on July 23, 2021), <http://cdn.cnn.com/cnn/2021/images/07/26/usabarbershill.pdf>.

<sup>36</sup> 20 U.S.C. § 1681(a); *see also* 34 C.F.R. §§ 106.31(a), 106.31(b)(4).

<sup>37</sup> 34 C.F.R. §§ 106.31(a), 106.31(b)(4).

<sup>38</sup> *See* United States’ Statement of Interest, *supra* note 35.

prohibitions on sex discrimination in education programs that receive federal or state financial assistance.<sup>39</sup>

Here, the School District’s dress code imposes specific terms on girl students solely because they are girls, has subjected them to differential treatment based on blatant stereotypes, and has resulted in exclusion from and denial of participation in school activities.

The sex-specific terms and disproportionate enforcement of the School District’s dress code against girl students are rooted in sex stereotypes about both boys and girls—including that girls’ bodies are shameful or vulgar, that students are “distracted” by girls’ bodies and appearance, and that girls’ dress and appearance require more regulation than that of boys. These stereotypes reflect broad and archaic generalizations about boys’ inability to control their sexual impulses and girls’ inability to make their own decisions about the clothing that make them safe and comfortable. It also prioritizes students’ freedom from hypothetical “distraction” over female students’ physical comfort, causing many female students to wear heavy layers of clothing despite the hot Florida weather to avoid scrutiny and disciplinary action. Finally, such stereotypes reinforce a culture of victim-blaming, conveying the message to girls that they are at fault for experiencing sexual harassment if they make certain clothing choices. Such attitudes smack of the very sort of “romantic paternalism” that the Supreme Court has recognized puts women “in practical effect . . . not on a pedestal, but in a cage.” *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

Critically, the additional regulation and biased enforcement of the dress code against female students jeopardizes their equal access to education by forcing them to miss important class time and subjecting them to discriminatory discipline, including detention and threats of suspension. As detailed above, girls have been pulled out of class or lunch period, reprimanded in front of their peers, and issued disciplinary citations for violating the existing dress code. The Dress For Success program guidelines also expressly contains discriminatory terms—subjecting girls to more stringent clothing restrictions and harsher penalties for non-compliance, while directly impacting their grades and potentially their overall academic records.

Furthermore, the discriminatory enforcement of the dress code subjects girls to significant public humiliation, stress, and anxiety, and damages their confidence, psychological wellbeing, and sense of belonging in school. Many students—including those subjected to dress code “sweeps” and some of those who had their yearbook photographs altered without their prior knowledge or consent—have reported experiencing feelings of shame and low self-esteem due to the constant heightened scrutiny regarding their clothing, bodies, and appearance. These negative effects

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<sup>39</sup> Fla. Stat. § 1000.05(2)(a) (“No person in this state shall, on the basis of . . . gender . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any public K-20 education program or activity, or in any employment conditions or practices, conducted by a public educational institution that receives or benefits from federal or state financial assistance.”).

constitute cognizable harms under the U.S. and Florida Constitutions, as well as concrete violations of Title IX and the Florida Educational Equity Act.

Dress codes like this one also invite biased enforcement against other marginalized groups.<sup>40</sup> Here, the dress code’s sex-specific terms also marginalize non-binary, transgender, and gender-nonconforming students, inviting unnecessary and excessive policing of their appearance by faculty and administrators, and ultimately sending the message that they do not belong. Studies further show that dress codes are often enforced disproportionately against Black girls and other students of color because of intersecting race and sex stereotypes regarding proper feminine appearance and behavior.<sup>41</sup> The School District must take immediate steps to ensure that its dress and grooming code policies comply with federal and state civil rights protections. *See Arnold v. Barbers Hill Indpt. Sch. Dist.*, 479 F. Supp. 3d 511, 518–29 (S.D. Tex. 2020); *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020).

As stated above, the School District’s restrictions on head coverings and certain hairstyles also may raise significant concerns regarding religious and racial discrimination. For example, students who are Jewish, Sikh, Muslim, or of other religious backgrounds may wear certain head coverings or longer hairstyles due to religious reasons. Moreover, the U.S. has a long history of using physical and cultural traits—particularly, hair texture and hairstyles—as a proxy for discrimination against Black people.<sup>42</sup> *See Arnold*, 479 F. Supp. 3d at 516–18. A vague prohibition against “extreme hairstyles,” as well as a requirement of “well combed or brushed” hair, raises significant concerns regarding potential discipline against Black students for wearing natural and protective hairstyles, such as cornrows, locs, afros, and braids. *Id.* at 520–29. Additionally, while the School District has indicated that it may maintain its overly broad restrictions on head coverings in its proposed dress code policy, Florida law specifically provides that “students may wear sunglasses, hats, or other sun-protective wear while outdoors during school hours, such as when students are at recess.”<sup>43</sup> This is not a matter that may be left to the discretion of administrators or the School Board.

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<sup>40</sup> *See, e.g.*, Nat’l Women’s Law Ctr., *Dress Coded*, *supra* note 11, at 3, 10–11; *see also* Rachel Anspach, *School dress codes unfairly target Black girls. But students are fighting back*, Mic, Oct. 30, 2019, <https://www.mic.com/p/school-dress-codes-unfairly-target-black-girls-but-students-are-fighting-back-19276290>; Erica Simon, *Transgender student says she’s banned from school until she follows female dress code*, ABC13, <https://abc13.com/sanay-martinez-transgender-teen-student-dress-code-louise-isd/6700252/>; ACLU, *Public Comment on School Climate and Discipline*, July 23, 2021, at 17–21, [https://www.aclu.org/sites/default/files/field\\_document/7\\_23\\_21\\_aclu\\_comment\\_re\\_discipline\\_and\\_climate.pdf](https://www.aclu.org/sites/default/files/field_document/7_23_21_aclu_comment_re_discipline_and_climate.pdf).

<sup>41</sup> Nat’l Women’s Law Ctr., *Dress Coded*, *supra* note 11, at 1.

<sup>42</sup> *See, e.g., id.* at 3, 10–11; Jameelah Nasheed, *A Brief History of Black Hair, Politics, and Discrimination*, Teen Vogue, Aug. 9, 2019, <https://www.teenvogue.com/story/a-brief-history-of-black-hair-politics-and-discrimination>; Jena McGregor, *More states are trying to protect black employees who want to wear natural hairstyles at work*, Wash. Post, Sept. 19, 2019, <https://www.washingtonpost.com/business/2019/09/19/more-states-are-trying-protect-black-employees-who-want-wear-natural-hairstyles-work/>.

<sup>43</sup> Fla. Stat. § 1001.43(b).



Moreover, the current and proposed dress codes fundamentally misstate Florida law regarding underwear in schools. Florida Statute § 1006.7 provides:

Each district school board shall adopt a dress code policy that prohibits a student, while on the grounds of a public school during the regular school day, from wearing clothing that exposes underwear or body parts *in an indecent or vulgar manner or that disrupts the orderly learning environment.*<sup>44</sup>

There is no absolute ban on exposing underwear. Nonetheless, girls are frequently shamed or disciplined by school employees in the School District when their bra straps are visible. Bra straps today are neither indecent nor vulgar, and are commonly exposed in ordinary dress for girls and women. This is particularly true when tank tops are worn. Under the School District's current and proposed dress codes, when a girl enters puberty, she will be effectively prohibited from wearing a tank top (although her other classmates are allowed to do so) because her bra straps will inevitably be visible. We urge the School District to expressly clarify that visible bra straps do not violate the dress code.

Finally, with respect to the Dress For Success guidelines, it is fundamental that sex discrimination in an employment market cannot justify sex discrimination in school's vocational (Career and Technical Education or CTE) programs.<sup>45</sup> Those programs must comply with Title IX's and the U.S. Constitution's prohibitions of discrimination. Indeed, sex discrimination in CTE programs was one of the major reasons Title IX was passed in 1972. Consequently, any dress codes in the CTE programs must be gender neutral, and enforcement may not disproportionately impact girls. Based on reports from parents and students, many girl students have dropped out of the programs that require compliance with Dress for Success guidelines out of fear of punishment or academic penalties. Accordingly, we urge the School District to revise or abandon the Dress For Success guidelines entirely.

### **III. Conclusion**

By maintaining a gendered dress code and by selectively enforcing its dress code against female students in a manner that reinforces sex stereotypes, the School District is violating the Fourteenth Amendment to the U.S. Constitution, Title IX, Article I § 2 of the Florida Constitution, and the Florida Educational Equity Act. While it eliminates the most blatantly discriminatory terms, the proposed policy still contains provisions, such as the ban on underwear and restrictions on bottom lengths, that will lead to discriminatory enforcement against girls.

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<sup>44</sup> Fla. Stat. § 1006.7(d). Compare this statutory language to the current and proposed dress code policies, which provide that "students are prohibited from wearing clothing that exposes underwear or that exposes body parts in an indecent or vulgar manner." Unlike in the School District's paraphrasing, "indecent" and "vulgar" in the statute clearly modify "underwear."

<sup>45</sup> 34 C.F.R. § 106.7.

The ACLU respectfully requests that, in addition to revising its dress code policies to remove all gender-based distinctions, the School District take immediate steps to remove all terms, such as unrealistic limits on bottom lengths and underwear, that have a discriminatory impact on girls; revise or abandon the Dress For Success program guidelines; take steps to solicit additional and ongoing feedback from students and parents regarding their experiences; and implement longer-term measures, such as providing guidance and training for school staff and administrators to guard against further biased enforcement. These steps are necessary for the School District to ensure that its dress code is non-discriminatory in effect and on its face, and to come into compliance with federal and state law.

Thank you for your prompt attention to this matter. Please contact Linda Morris, Staff Attorney with the ACLU Women's Rights Project, at [LindaM1@aclu.org](mailto:LindaM1@aclu.org) if you have any questions or concerns regarding the issues raised in this letter.

Sincerely,

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