

Client Alert

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Education Law

Whether it is reviewing your discrimination and Title IX policies, handling an OCR complaint, providing training for teachers and staff, or providing legal advice as issues arise, Osborn Maledon's Education Law team is here to help. For more information, please contact:

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Skirting the Issue: Adopting a Defensible Dress Code

Does your school have a dress code or a uniform policy? Does the dress code distinguish between what boys and girls can wear? If so, you may want to change your dress code for the upcoming school year.

A recent challenge to charter school dress codes. The ACLU recently filed a lawsuit against a North Carolina charter school alleging that the school's dress code violates Title IX and equal protection. The dress code at issue requires girls to wear skirts, skorts or jumpers, while boys can wear pants or shorts. That distinction resulted in a policy that discriminates based on gender, the ACLU contends. Although girls might not mind wearing skirts or dresses, the issue in the lawsuit is whether *requiring* them to do so results in unfair or unequal treatment based on sex.

The North Carolina charter school defended its dress code by stating that traditional dress for boys and girls reinforces traditional values, mutual respect and chivalry. It also noted that the parents agreed to the dress code when they enrolled their children in the school.

The parents who sued the school claim that their daughters are not able to be as physically active or move as freely as boys because of their concerns about having their underwear or legs show. The parents contend that the "traditional values" that are reflected in the dress code are actually values that reinforce gender stereotypes, particularly of what it means to be "feminine."

What this lawsuit means to you. How this lawsuit will be decided is uncertain, but legal pundits have suggested that the charter school has potential liability here under Title IX and the Equal Protection Clauses of the U.S. and North Carolina Constitutions. Just as important as a potential lawsuit against your school, however, is the fact that lawsuits filed by the ACLU are often harbingers of issues that will be or are on OCR's radar, and a complaint by the OCR is often more problematic and expensive than a civil lawsuit.

The bottom line. Having a dress code for your students is legal and defensible, as long as the code treats boys and girls the same. Girls should be allowed to wear pants just like boys, and similarly, they should not be required to wear "feminine" shirts if boys are allowed to wear polo shirts. Giving girls and boys the same options and allowing them to select from a menu of appropriate clothing choices will help you to avoid legal challenges to your policy.