



# Dressed and Ready to Learn:

A Resource for Students, Parents and Educators to Identify, Challenge and Change Gendered Dress Codes in K-12 Schools

**LEGALMOMENTUM®**

The Women's Legal Defense and Education Fund™



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## A Resource for Students, Parents and Educators to Identify, Challenge and Change Gendered Dress Codes in K-12 Schools

According to recent national data, approximately 62% of public middle schools and 56% of public high schools enforce a “strict” dress code.<sup>1</sup> Dress codes and appearance standards are nothing new and most of us have probably at one time been, or currently are, subject to one. Taking a close look at the sort of clothing and grooming standards these policies focus on, and who is being disciplined for violating these policies, show that most are rooted in and perpetuate biases and stereotypes about gender and race. Gendered dress codes and disproportionate discipline for dress code violations deprive students — in particular girls, students of color and LGBTQ+ students — of classroom instruction and harm their social and emotional development, setting them on a course with negative consequences potentially for their lifetime.

While they arguably do little to enhance or protect the learning environment, dress codes often cause harm. Schools can do better to rid dress codes of explicit and implicit biases and have a responsibility to ensure that dress code violations are addressed with the least restrictive means and do not target specific populations of students. Students and their families should not have to continue to try to conform to sexist and racist dress codes. This resource aims to help students, caregivers and schools identify biased dress codes and biased enforcement of dress codes and offers recommendations for abandoning these harmful policies for ones that promote equity and individuality.



## HOW ARE DRESS CODES GENDERED?

Dress codes can be gendered in the types of restrictions they put on clothing and appearance, the intent and purpose of the appearance restriction and/or in the way dress codes are enforced. Gendered dress codes disproportionately impact female students, especially Black girls, transgender and nonbinary students.

### **Types of restrictions**

Some dress code provisions are gendered on their face by prohibiting (or requiring) specific clothing items based on a student's sex, relying on the binary "male" and "female". For example, "female students must wear skirts and male students must wear pants". A 2019 comprehensive review of 481 school dress codes by The Pudding revealed that 15% of schools prohibited particular clothing items specifically for male or female students.<sup>2</sup> In addition to being unnecessary to fostering a productive educational environment, these attire distinctions inherently rely on outdated stereotypes of gender roles and expectations. These sex-based distinctions likely violate the U.S. Constitution, under its guarantee of equal protection, and federal law under Title IX of the Education Amendments Act of 1972. These explicitly sex-based restrictions make transgender and nonbinary students more vulnerable to discipline, harassment and emotional harm.

Other dress code provisions might appear gender-neutral, but disproportionately target clothing items most typically marketed towards and worn by female students. For example, banning "spaghetti strap" tops or requiring shorts to be "fingertip length" or reach the knee. For many teen girls it's nearly impossible to find clothes that are dress code compliant. Aside from the fact these clothing item restrictions often have little or no legitimate justification, many teens and parents have realized it can be nearly impossible to find clothing in today's "girls" sections that meet some of these antiquated and sexist dress code restrictions — prompting some parents to publicly raise this at school board hearings and on social media.<sup>3</sup>

Some dress codes identify specific body parts which must be covered by clothing, which might at first glance seemingly achieve an understandable goal. But the choices in which body parts are included show that the root of these policies is the objectification and sexualization of young girls.

***Only 1% of school dress codes actually ban exposed genitals and only 11% ban exposed buttocks. Yet 71% ban exposed midsections and close to a quarter ban cleavage.<sup>4</sup> And many ban "tight" clothing.<sup>5</sup>***

Many of these dress code restrictions ignore body diversity — particularly at the ages surrounding puberty — and assume all students will meet the same unrealistic body types portrayed in fashion ads and media.<sup>6</sup>

Many of the grooming standards in dress codes are infused with race and cultural biases. In particular, dress code standards regarding hairstyles often target Black students or other culturally-specific student groups. For example, some dress codes ban hair extensions, locks, braids, or long hairstyles worn by male students while imposing no restrictions on the sorts of natural hairstyles typically associated with white students.<sup>7</sup>

## EXAMPLES OF GENDERED DRESS CODE LANGUAGE:

- Requiring girls to wear skirts, boys to wear pants
- Prohibiting clothing that bares certain body parts, e.g., stomach, buttocks, chest
- Prohibiting skirts/shorts which fall above the knee or above fingertip length
- Prohibiting tank tops, spaghetti straps, etc.
- Prohibiting boys from wearing long hairstyles

### Rationale

The rationale behind dress codes reveal that they are deeply rooted in gender bias and intersecting race and cultural biases. The most common justification for dress codes and appearance standards is that the prohibited clothing/appearance is a *distraction* to other students, a *disruption* to the learning environment.

**"Distraction" or "disruption" is put forward as a justification in 76% of school dress codes as recently as 2019.<sup>8</sup> 31% of dress codes point to prohibited dress as an *interference with learning*.<sup>9</sup>**

This is rooted in the patriarchal notions that girls' bodies are their worth; girls' educations are less important than boys'; and boys cannot be expected to control their behavior thus it is girls' responsibility to ensure boys are not "distracted." This is an extension of the same blaming attitudes regarding sexual assault and sexual harassment that have long led to victims being met with an initial question, "Well what were you wearing?". In other words, this is *your* fault.

Justifications for hair and grooming standards, like the ones that target Black students, often purport to promote the dress codes' stated goals of requiring *neatness*, *cleanliness*, or *tidiness*. These are manifestations of racism and cultural biases, often intersecting with gender bias, and it perpetuates harmful stereotypes about the lack of purity or cleanliness of Black girls.

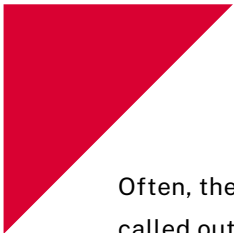
### Disproportionate application

Not only are many dress codes rooted in gendered stereotypes but they are often disproportionately enforced. Girls are overwhelmingly the subjects of dress code violations and disciplinary action as a result.<sup>10</sup> Even instances of male students purposely violating their school dress codes have gone overlooked and unaddressed while female students at the same school are dress-coded.<sup>11</sup>

## EXAMPLE OF DISPROPORTIONATE DRESS CODE APPLICATION:

At one Florida high school, a protest by a group of students against their school's gendered dress code demonstrated their point that the dress code was discriminately applied. After observing dozens of female classmates being "dress coded" a group of male students wore clothing to school that violated the school dress code (e.g., a tight speedo over shorts; a flannel shirt tied like a bra) and yet they were not disciplined in any way.

Source: Leora Tanenbaum, *The One Good Thing About School Dress Codes*, Ms. Magazine (Jan. 18, 2022), <https://msmagazine.com/2022/01/18/school-dress-codes-riley-okeefe-florida-high-school-yearbook-photos/>



Often, the tactic taken in response to a perceived dress code violation is public shaming. For example, being called out in front of the classroom of peers and forced to demonstrate whether a skirt or shorts meets a length requirement or forcing a student to leave a full classroom for displaying cleavage thereby drawing attention to that student's breasts. These actions have measurable negative consequences — emotional harm, engraining feelings of shame of one's body, reluctance to return to school, etc.

Dress codes are used to police girls, students of color and LGBTQ+ students and push these students out of their education. Looking at where dress codes are more often enforced demonstrates the deeply rooted biases that influence dress code enforcement. During the 2017-2018 school year 64% of public schools with more than 75% minority student enrollment enforced a dress code while only 36% of public schools with 0-25% minority student enrollment enforced a dress code.<sup>12</sup>

A New York Times 2020 analysis of national school discipline data revealed that Black girls are 5.5 times more likely to be suspended at least once from school than white girls.<sup>13</sup> And a 2018 report by the National Women's Law Center found that

***in Washington, D.C. schools, Black girls were 20.8 times more likely to be disciplined for a dress code violation as compared to white girls.***<sup>14</sup>

This is not because Black girls violate school policies or “misbehave” more often, rather this is the result of biased thinking about Black girls and girls of color.

The *adultification* of Black girls means that Black girls are collectively viewed as more adult — including the perception that they are more sexually knowledgeable or promiscuous — than white girls. Black girls are deprived of their innocence and immaturity.<sup>15</sup> This thinking results in disciplinary decision-makers viewing Black girls behavior as “more [intentionally] harmful than [similar behavior exhibited by] other girls”.<sup>16</sup> One small study found Black girls were twice as likely as white girls to be disciplined for minor subjective infractions, including dress code violations (more than the differential between Black boys and white boys).<sup>17</sup>

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## WHAT IS THE IMPACT OF GENDERED DRESS CODES?

**Effect on access to education:** When any student is removed from the classroom for any period of time they are losing valuable access to their education. Often when a student is dress-coded they are sent to the school office where they are required to change their clothes from a school stockpile, are required to wait for a caregiver to bring them a change of clothes or are sent to their homes to change clothes. These, even incremental, deprivations of classroom time can set students back and impact their overall success. Further, some suspensions will appear on permanent student records having a lasting impact on their educational trajectory. It also sends the harmful message to girls that their education is worth less than the students who they are “distracting” who bear no responsibility for controlling themselves.

**Effect on social and emotional development:** Punishment for gendered dress code violations stigmatizes girls and sends a loud message that that they are worth no more than their bodies, which are inappropriate, shameful

and subject to the scrutiny of others.<sup>18</sup> According to the American Psychological Association, sexualization occurs when:

***“a person’s value comes only from his or her sexual appeal or behavior, to the exclusion of other characteristics; a person is held to a standard that equates physical attractiveness with being sexy; a person is sexually objectified — that is, made into a thing for others’ sexual use, rather than seen as a person with the capacity for independent action and decision making; and/or sexuality is inappropriately imposed upon a person.”***<sup>19</sup>

Gendered dress codes, by reinforcing longstanding stereotypes about women’s bodies and sexiness and the manner in which they are enforced, *impose* sexuality on young girls.

**Sexualization of young girls has demonstrable long-term negative effects to their cognitive and emotional development, mental and physical health and social development, including:**

- affecting one’s ability to concentrate and focus attention — including performing math and logical reasoning — as a result of the self-objectification
- an association with eating disorders, low self-esteem, depression or depressed moods
- negatively impacting girls’ ability to develop health sexuality and diminishing sexual health

Sexualization of young girls also impacts other groups, including young boys, who become influenced by these biased and stereotyped notions of attractiveness and sexuality.

Source: *Report of the APA Task Force on the Sexualization of Girls*, American Psychological Association, Task Force on the Sexualization of Girls (2007), <https://www.apa.org/pi/women/programs/girls/report-full.pdf>

**Perpetuation of rape culture:** Gendered dress codes that enforce the notion that girls’ bodies are distracting and boys cannot be expected to control their own actions perpetuate rape culture. It solidifies for another generation that girls do not have full control over their own bodies and that the way someone dresses gives someone else permission to violate them. Our boys deserve more credit than permitting this assumption to persist and, instead, schools should be fostering a culture of mutual respect and consent and personal responsibility for one’s own actions. This cannot be achieved with enforcement of a gendered dress code.

**Impact on LGBTQ+ students:** Transgender and nonbinary students are uniquely harmed by gendered dress codes. Policies creating distinctive male and female appearance requirements invalidate transgender and nonbinary students’ identities. The pressure to comply with gendered dress codes can be anxiety provoking and leave these students vulnerable to discipline for failing to conform to the gender stereotypes and the gender binary.

**Impact on students of color:** Gendered dress codes and those with implicit race biases single out students of color invalidating their identities and exacerbating harm. Dress codes become a mechanism for policing Black students, disproportionately subjecting them to discipline and pushing them out of school.



## HOW DOES THE LAW PROTECT AGAINST ENFORCEMENT OF GENDERED DRESS CODES?

It is not illegal for schools to have a dress code. But dress codes that treat male and female students differently or that require dress that enforces sex stereotypes or that preclude cultural expression very likely do violate the law.

**Title IX** is a civil rights law that protects against sex discrimination in federally-funded schools. E.g., any dress code that creates a distinction in attire based on sex likely cannot provide a sufficient justification without relying on sex-based stereotypes.

**Title VI** is a civil rights law that protects against race, color or national origin discrimination in federally-funded schools. E.g., a public school district was prevented from enforcing their dress and appearance code policy that banned, and disciplined Black students for, wearing their hair in locks.<sup>20</sup>

**The U.S. Constitution's 14th Amendment** requires state actors, including public schools, to afford equal protection to individuals and not treat individuals differently based on their belonging to a protected class, such as their sex and race. E.g., a public school's dress code mandating that girls wear skirts but permitting boys to wear pants was held unconstitutional where the justification was purely based on sex-based stereotypes and did not serve an important governmental objective.<sup>21</sup>

**The U.S. Constitution's 1st Amendment** ensures a right to freedom of speech and expression, though not without some permissible regulation in schools. E.g., the Supreme Court's foundational decision in *Tinker v. Des Moines Independent Community School District* held that it was a violation of students' 1st Amendment rights to prohibit wearing black armbands to protest the Vietnam War unless it materially and substantially interfered with the operation of the school.<sup>22</sup>

Some states have laws addressing some of the problems commonly presented by dress codes. For example, an Illinois law that took effect in 2022 specifically precludes schools from creating hairstyle-based dress codes.<sup>23</sup>


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## RECOMMENDATIONS

### Recommendations for students and their families:

In recent years student and parent advocates have brought attention to problematic dress codes and discriminatory enforcement of dress codes resulting in meaningful change.

- Students and caregivers can consider raising concerns over dress code language or the way dress codes are being enforced with school administrators or at public school board meetings. School district administrators tasked with civil rights compliance should be alerted to issues with biased dress codes and enforcement, including the district's Title IX and/or Title VI Coordinator.
- Students can form a group to coordinate and deliver their concerns and recommendations to school officials.

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- Utilize social media to reach students and/or student groups in other locations who have challenged and brought about change in their schools to gather any lessons learned.
  - Reach out to local media to raise awareness.
  - Consider seeking legal advice for formally challenging discriminatory dress codes. Contact Legal Momentum's Helpline at **1-800-649-0297**, **Help@LMHelpline.org**, or <https://www.legalmomentum.org/get-help-form> to get help today.

**The hashtag #IAMNOTADISTRACTION began in 2014 as a movement to challenge biased dress codes and share individual and collective experiences.**

**Since then students in schools throughout the country have organized and advocated and some have achieved a policy change as a result.**

**Example:** A female student in the San Jose Unified School District in California was removed from class and forced to change out of her shorts that failed to pass the "fingertip test". She and her mother educated school officials about the way the district's dress code harmed girls and provided officials with the Oregon NOW model policy. Based on their advocacy the district rewrote the dress code guidelines to a bias-free policy.

Source: Nadra Nittle, *Students are waging war on sexist and racist school dress codes - and they're winning*, Vox (September 13, 2018), <https://www.vox.com/the-goods/2018/9/13/17847542/students-waging-war-sexist-racist-school-dress-codes>

#### **Recommendations for educators and schools:**

- Proactively review any dress code or appearance standard policies for explicit or implicit biases. Ensure that clothing and appearance restrictions are gender-neutral and that students of any gender are permitted to dress in any acceptable form of clothing under the policy. For any policies maintaining non-gender-neutral restrictions ensure, at a minimum, that students are permitted to dress in accordance with their gender identities.
- When considering dress code policies, meaningfully engage a diverse representation of the student body. Consider assembling a dress code task force to develop recommendations for a bias-free dress code. Ensure that such a group includes diverse student representation in addition to faculty and staff members.
- Carefully review the manner in which dress/appearance codes are enforced. Ensure that policies make clear, and that staff are clearly and regularly trained, that students should not be removed from the classroom unnecessarily for perceived dress code violations and that publicly shaming any student for a perceived violation of dress code policy is absolutely not tolerated. Regularly review dress code violations for patterns in enforcement among particular groups of students.
- Mandate faculty and staff participation in annual implicit bias training.



## EXAMPLES OF BIAS FREE DRESS CODES:

- Evanston Township High School, Illinois
  - Includes a statement about the school’s “dress code philosophy” specifically recognizing the propensity for dress codes to reinforce marginalization and oppression and mandating that staff not apply the school’s dress code in a manner that does so.
  - Its only requirement for dress is coverage of “genitals, buttocks, breasts and nipples” and wearing of a “shirt, pants/jeans or the equivalent, and shoes”.
  - It limits banned clothing to a few categories which mostly aim at prohibiting clothing that is dangerous or interferes with other students’ civil rights.
  - Includes clear enforcement guidelines specific to dress code violations aimed at thwarting discriminatory enforcement, reducing classroom exclusion and precluding enforcement in a shaming manner.

Evanston Township’s policy can be read here: <https://www.eths.k12.il.us/Page/453>

- Oregon NOW developed a model dress code policy that can be adapted and is available here: <https://noworegon.org/issues/model-student-dress-code/>

## IF YOU BELIEVE YOU HAVE BEEN SUBJECTED TO DISCRIMINATION YOU HAVE OPTIONS:

- Speak with an attorney
- File a complaint with the U.S. Department of Education, Office for Civil Rights
- File a complaint with your state’s department of education or human rights agency

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## SYMS LEGAL MOMENTUM GENDER EQUALITY HELPLINE

For more information and assistance, contact Legal Momentum’s Helpline at **1-800-649-0297**, [Help@LMHelpline.org](mailto:Help@LMHelpline.org), or <https://www.legalmomentum.org/get-help-form> to get help today.

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## Acknowledgements

Legal Momentum, the Women’s Legal Defense and Education Fund — originally founded as the NOW Legal Defense and Education Fund — is the nation’s first and longest-serving legal advocacy organization advancing women’s rights and gender equality. For the past five decades Legal Momentum has employed strategic litigation, legislative advocacy, and education initiatives to promote gender equality under the law and in our society.

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The statements, findings and conclusions of this report are that of Legal Momentum and the authors alone.

**Disclaimer:** This report does not constitute legal advice and should not be relied upon as such. Individuals and organizations considering legal action should consult their own legal counsel.

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