

# **ACLU Wisconsin: Inadequate, unclear dress code guidelines in Kenosha Unified School District threatens rights of students across the district**

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## **ACLU Wisconsin: Inadequate, unclear dress code guidelines in Kenosha Unified School District threatens rights of students across the district**

*ACLU provides recommendations to KUSD's internal guidelines document on meeting constitutional requirements.*

FOR IMMEDIATE RELEASE

September 10, 2018

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MILWAUKEE—After months of reports from parents and students in Kenosha County that school administrators and teachers were embarrassing students in front of their peers, removing students from class, and threatening to send them home for dress code violations, the ACLU of Wisconsin sent a series of recommendations to the Kenosha Unified School District (“KUSD”). Based on nationwide best practices, today, the ACLU is suggesting the following ways to improve the District’s compliance with civil rights statutes and constitutional obligations when enforcing the new student dress code:

- Begin the code and the guidelines with an equity policy
- Create specific goals that protect against discrimination based on race,

national origin, sex, gender identity or expression, sexual orientation, religion, disability, or body type or size

- Include clear, written instructions to all staff, not just core staff, prohibiting body shaming and harassment of students while enforcing the dress code
- Do not allow a student to miss class time for an alleged dress code violation

“We urge KUSD to conduct training and modify its draft guidelines to ensure students are protected from discrimination, harassment, and degrading treatment. Without these changes, female students will continue to disproportionately miss out on classroom time because of minor dress code infractions in violation of their civil rights,” said Emma Roth, Equal Justice Works Fellow, with the national ACLU’s Women’s Rights Project.

Amidst public pressure from student activists and community coalition members, the KUSD school board voted to rescind a discriminatory dress code policy that banned yoga pants, leggings, and tank tops in March of this year. Despite the vote, the ACLU received reports that the dress code was still selectively enforced against female students in a manner that reinforced discriminatory sex stereotypes. In a letter sent to the Superintendent, Dr. Sue Savaglio-Jarvis, and KUSD Board President Dan Wade on July 3, 2018, the ACLU asked KUSD to provide assurances that the new dress code would be enforced in a non-discriminatory manner going forward and teachers would be trained on proper enforcement.

The ACLU received a letter from the Superintendent’s office indicating that KUSD had begun planning its efforts to communicate with staff, students, and parents regarding the new dress code but did not share what those efforts were. Upon request, KUSD provided draft guidelines to the ACLU, but indicated it was not a binding or formal document nor was it shared with parents or students. The guidelines contained no commitment to anti-discrimination principles, plans for training on enforcement, or prohibition on body shaming and harassment. Moreover, the guidelines and KUSD policy itself do not contain any requirement for data collection to properly monitor enforcement of the dress code policy.

“Altering a policy on paper with no actual method of proper enforcement is insufficient to foster positive change. Unequal enforcement of the student dress code in violation of the Constitution and various civil rights statutes will remain a problem unless teachers and administrators are given clear guidelines about what is expected of them,” said Asma Kadri Keeler, staff attorney at the ACLU of Wisconsin. “Having clear policies that will limit knee-jerk reactions or confusion about a dress code violation will help eliminate discriminatory enforcement and make students feel comfortable and safe at school and in their clothes.”

“This is KUSD’s opportunity after facing extreme scrutiny from the Ash Whitaker

case to be proactive and become a statewide and even a national leader in how public schools can commit to principles of equity and fairness for students,” said Chris Ott, executive director at ACLU of Wisconsin. “At its best, public education can foster diverse ideas and cultures, and we hope that KUSD chooses to use that platform rather than selectively try to suppress the way some people dress.” In the Ash Whitaker case, a transgender student filed a federal lawsuit against KUSD in 2016 for denying him the access to the boy’s restroom, making him room alone on school trips, and referring to him with female pronouns. Whitaker won his lawsuit on appeal with a landmark decision from Seventh Circuit ruling that KUSD had illegally singled Whitaker out for discrimination. This was the first time a federal appeals court ruled that transgender students are protected under the Constitution and Title XI from discrimination on the basis of sex. KUSD agreed to settle the case for \$800,000 and did not pursue an appeal to the United States Supreme Court.

“The ACLU of Wisconsin hopes that by sharing these recommendations, the KUSD will see the value in providing clarity to its staff on how to enforce existing policies to protect the rights of students,” said Kadri Keeler.