



Legal Suggestions for Prom Time

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It takes courage to go against the grain at high school prom. By this, I mean wearing something that may attract a stare or two based on its unconventionality, bringing a date of the same sex, not going with a date, or running for prom king (when one is perceived as a female) or prom queen (when one is perceived as a male). Prom time poses interesting questions for students, administrators, parents, and community members.

Despite the fact that high school prom has usually been portrayed as a solely heterosexual and "conventional" event in mass media (think *Pretty in Pink* and many movies from the 80s), the right to bring a same-sex date to prom was established in federal court back in 1980. Incidentally, this was the year Michael Jackson's single "Rock With You" was huge, Ronald Reagan was elected, and the US hockey team beat Russia during the Olympics.

So you see, there is a relatively long history of protected free speech under the First Amendment of the US Constitution for all students. And every year there are new issues at prom time that raise the question: is this protected as free expression under the California and/or federal Constitution?

Question

One question that has been raised recently is whether there are any laws that would prevent a girl from running for Prom King or a boy from running for Prom Queen.

Again, this is largely a question of students' right to free expression, but could also be framed as a student's right to receive an education free from discrimination on the basis of sex, gender, gender expression, and/or sexual orientation.

While there's not a clearly settled legal answer, there was a situation in Fresno, California recently whereby a transgender student was allowed to run for prom king, despite the fact that the school district initially only allowed "male" students to run for king. This was a significant victory for students' right to free expression, as the school district decided to allow the transgender student to run on the ballot with other male candidates instead of forcing the student to run for prom queen. This story can be found at http://www.mercurynews.com/news/ci_5714908.

Discrimination

In California, AB 537 disallows discrimination and harassment on the basis of gender identity, sexual orientation, and sex (among other categories). Arguably, expression of gender identity through the clothing of one's choosing, etc., is protected in California for students.



Expression

In 1993, the California Legislature enacted section 48950 of the Education Code, securing public high school students' rights to free expression. This measure was intended to make clear that students have the same rights to exercise free speech at school as they enjoy away from school.

One strong argument to make, if students feel their free expression rights are being suppressed, is to argue that their actions are not "materially disruptive," and cannot therefore be suppressed at school. This means that the act and speech of expressing one's gender identity or presentation and/or one's sexual orientation is not creating a disruptive or dangerous situation.

Furthermore, if the school attempts to justify denying students the ability to dress in a gender non-conforming fashion by stating it will be disruptive or dangerous to these students, these are strong arguments to make:

- Under the California Education Code, a school may not silence LGBT students as a means of protecting them. As long as LGBT and ally students' behavior does not urge violence or any harassing behavior, then school administrators cannot restrict their expression in reaction to other students who may strongly, and even violently, disagree with the LGBT students' expression.
- Courts throughout the country have also repeatedly held that constitutional protections apply to expression by openly gay, lesbian, bisexual, and transgender high school students. In *Fricke v. Lynch*, for example, the court held that the expressive right of a gay student to bring a same-sex date to the prom outweighed the legitimate interest in school discipline. This is because the school should have addressed the discipline concern by providing the gay student with security escorts instead of disallowing him the ability to express himself in a non-disruptive manner.

No matter where a student is located throughout the country, he/she/ze can likely find allies at school who would support the decision to run for prom queen or king. Sometimes having this support and encouragement is enough to help persuade school administrators to change their policies to allow boys to run for queen or girls to run for king.

And if a public high school student identifies as a male, in California he should certainly be allowed to participate in a school activity in the way that corresponds with his gender identity, even if not stereotypically associated with his assigned sex at birth.

Have fun and be safe at this year's prom and remember that you have the right to be yourself! If you feel that you are being treated unfairly at prom or any of the surrounding activities, please contact GSA Network and see what we can do to assist you!
<http://www.gsanetwork.org/>