

How Transgender and Gender-Nonconforming Students May Challenge Philadelphia Charter Schools' Gendered Dress Codes

By Lizzy Wingfield

INTRODUCTION

Recently, the School District of Philadelphia adopted a policy “to ensure safety, equity, and justice for all students regardless of gender identity or gender expression.”¹ As part of that policy, the District declared that “[t]ransgender and gender nonconforming students have the right to dress in a manner consistent with their gender identity or gender expression” and that “[s]chools may not adopt dress codes that restrict students’ clothing or appearance on the basis of gender.”² However, Philadelphia’s charter schools have not been as progressive as the School District in ensuring that their dress code policies are considerate of transgender and gender nonconforming (GNC) students.³ For example, Southwest Leadership Academy only permits girls to wear earrings and prescribes different shirts, ties, and socks for boy and girl students.⁴

In Pennsylvania, a charter school is defined as “an independent public school established and operated under a charter from the local board of school directors and in which students are enrolled or attend.”⁵ Philadelphia has eighty-five such charter schools.⁶ While these schools are, nominally, public institutions, they are not subject to all of the policies and regulations that govern



traditional public schools.⁷ Thus, the District’s policy does not compel charter schools to adopt dress codes that are inclusive of transgender and GNC students.⁸ This paper will first provide background information: describing Philadelphia’s charter schools’ dress codes, and explaining why those dress codes are problematic as applied to transgender and GNC students.⁹ Then, this paper will analyze potential legal remedies for transgender and GNC students facing an unfriendly dress code policy.¹⁰ Finally, this paper will conclude that the Equal Protection Clause presents the strongest claim under which a transgender or GNC student could challenge their school’s dress code.¹¹ ■

Justice
Ruth Bader Ginsburg
Pursuit of Justice
Legal Writing
Competition
Winner

Lizzy Wingfield (lwingfield@elc-pa.org) is a Temple University Beasley School of Law recent graduate. For the complete essay, go to www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/ginsburgessay17.pdf.

¹ See Phila., Pa., School District Policy No. 252 (June 16, 2016).

² *Id.* “Transgender” is “[a]n umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth.” GLAAD, GLAAD MEDIA REFERENCE GUIDE – TRANSGENDER, <http://www.glaad.org/reference/transgender> (last visited Mar. 12, 2017). Throughout this paper, “gender non-conforming” or “GNC” will be used to refer both to students that do not identify as a boy or girl and those students that identify as either a boy or girl but use clothing that is nontraditional for their gender to express their identity. “Gender [n]on-[c]onforming” is “[a] term used to describe some people whose gender expression is different from conventional expectations of masculinity and femininity. Please note that not all gender non-conforming people identify as transgender; nor are all transgender people gender non-conforming. Many people have gender expressions that are not entirely conventional – that fact alone does not make them transgender. Many transgender men and women have gender expressions that are conventionally masculine or feminine. Simply being transgender does not make someone gender non-conforming.” *Id.*

³ See *infra* Section II.A.1. for a more in-depth discussion of Philadelphia’s charter schools’ dress codes.

⁴ SOUTHWEST LEADERSHIP ACADEMY CHARTER SCHOOL, PARENT & STUDENT HANDBOOK 33–39 (2014–2015).

⁵ 24 Pa. Stat. Ann. § 17-1703-A (West).

⁶ THE SCHOOL DISTRICT OF PHILADELPHIA, CHARTER SCHOOL PROFILES, http://webgui.phila.k12.pa.us/offices/c/charter_schools/profiles (last visited Apr. 13, 2017).

⁷ See Preston C. Green, III, et al., *The Legal Status of Charter Schools in State Statutory Law*, 10 U. Mass. L. Rev. 240, 243 (2015) (“[C]harter schools are ‘exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education, school districts and political subdivisions, including those relating to school personnel and students, except as specifically provided in the school’s charter’”) (quoting N.Y. EDUC. LAW § 2853(1)(c) (McKinney 2014)) (discussing charter schools generally).

⁸ *Cf. infra* Section II.A.1. (describing Philadelphia’s charter schools’ dress codes).

⁹ See *infra* Section II.A.

¹⁰ See *infra* Section II.B.

¹¹ See *infra* Part III.