

# Prom Season: What LGBTQ Youth *Need to Know*

This prom season, millions of young people around the country are renting tuxedos or buying dresses, worrying about whom to ask as their date (or who will ask them) and making plans for their school's biggest party of the year. Every year, among those millions, a growing number of courageous lesbian, gay, bisexual, transgender and questioning (LGBTQ) students, who refuse to be excluded from the festivities, are exercising their right to bring a same-sex date to the prom. If you're in public school and thinking of bringing a same-sex date to the prom this year, here are some important issues to consider. Please note that this is not legal advice. If you think you've been kept from attending your prom or discriminated against once you arrived, contact Lambda Legal or a local attorney.

## **EIGHT QUESTIONS AND ANSWERS ABOUT YOUR RIGHTS AT PROM**

### **1. AM I ALLOWED TO TAKE A SAME-SEX DATE TO THE PROM?**

Yes. You are allowed to bring your same-sex date to prom.

Your attendance with your same-sex date is considered an "expressive activity" — you are expressing your identity and communicating that you and your date have the same right as any other couple to attend and enjoy the event. More than 20 years ago, a federal court recognized that the First Amendment protects this expression, when it ruled that high school senior Aaron Fricke had the right to bring his male date to the prom. The school's concern that other students might react negatively to Aaron and his date did not justify banning Aaron. The school was required to take appropriate security measures to ensure the safety of all students at the event.

You also have the right to equal treatment from your school. Some state education laws prohibit discrimination on the basis of sex or sexual orientation; some state antidiscrimination laws apply to schools; and Title IX, a federal law, prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance. Equal protection guarantees of the state and federal constitutions also prohibit irrational discrimination based on sex or sexual orientation.

### **2. WHAT SHOULD I DO IF MY SCHOOL TELLS ME I CAN'T TAKE A SAME-SEX DATE TO THE PROM AND WON'T SELL ME TICKETS?**

First, try to get the support of your parent(s) or legal guardian(s). Ask them to contact the school principal on your behalf and ask that the school provide the reasons for its denial to you in writing. If the school continues to object, contact Lambda Legal or a local attorney.

### **3. WHAT IF THE PRINCIPAL SAYS THE SCHOOL WILL LET ME BRING MY DATE BUT FIRST WE BOTH MUST GET OUR PARENTS' PERMISSION?**

Schools should not single out same-sex couples for different treatment. There is no legal justification for demanding permission for some couples because of their sex or sexual orientation. Unless a school requires parental permission for all couples, it should not demand that from you. And because a school might later argue that your parents' special permission somehow relieved them of any duty to ensure your safety at the event, your parents should get a full explanation from the school.

### **4. HOW CAN WE BE SURE THAT WE'LL BE SAFE AT THE PROM?**

Schools cannot refuse to provide you with the same protection that they provide to all other couples. If you are

concerned about your safety, you need to talk with your school principal or district superintendent before the prom. Provide them with as much detail as you can about what's happened or who's been threatened. In Aaron Fricke's case, the court found that "meaningful security measures are possible, and the First Amendment requires that such steps be taken to protect rather than to stifle free expression." You cannot be heckled or harassed out of attending your prom.

#### **5. WHAT IF WE'RE TWO LESBIANS AND WE BOTH WANT TO WEAR TUXEDOS? CAN THE SCHOOL SET ANY DRESS CODE BASED ON GENDER STEREOTYPES?**

While schools can set general dress standards for prom — like requiring formal attire — they shouldn't force you to wear clothes based on your gender. Barring a female student from wearing a tuxedo because only male students wear tuxes is sex stereotyping and may subject the school to a sex-discrimination claim under state education laws, antidiscrimination laws, Title IX or the U.S. Constitution. The right to express your gender identity through appropriate clothing should also be also protected by the First Amendment or a similar state law. But despite these arguments, courts sometimes have found that a school's concern about safety, distraction or disruption is valid and have upheld sex-specific dress codes. So you should advocate for the right to wear the clothes that you want — the clothes that make you feel most comfortable and express your identity — but you also should consider alternatives. (For example, if you don't win your battle to wear what you want, you still can protest the dress code by wearing a paper cutout tux as your corsage or an armband.)

#### **6. EVEN IF THE SCHOOL DOES TAKE MEASURES TO ENSURE OUR SAFETY, WHAT CAN WE DO IF WE'RE HARASSED BY OTHER STUDENTS (OR ANYONE) AT THE PROM?**

You need to report any incidents to officials, security personnel or other monitors/chaperones at the dance. If you think there might be problems, enlist friends and allies who will get on the dance floor with you during the first dance to break the ice. This can set a fun, enjoyable, supportive and safe environment for the evening.

#### **7. IF WE GET TO THE PROM AND THE SCHOOL OFFICIALS OR MONITORS DON'T LET US IN, WHAT CAN WE DO?**

Ask to speak with the person in charge of the event and advocate with them. Let them know that you have a right to attend, that you will not cause any disruption

and will abide by the same conduct rules (no fighting, no drinking) as all other couples. If you know before the actual night of prom that there might be problems, you can take steps that might prevent you from being turned away at the door. You could tell your school principal in advance that you're bringing a same-sex date. If the principal objects, then you can advocate for your right to be there and address any issues the school may have beforehand. Once the principal's on your side, ask for a short note from the principal stating that you are allowed to attend with your date. Bring it with you, and hopefully you'll never need it.

#### **8. ONCE INSIDE, WHAT IF SOMEONE TRIES TO STOP US FROM DANCING TOGETHER?**

You have the right to participate in prom the same way that any other couple does. While the school can have rules of conduct that apply to everyone, it cannot create a special "no dancing" rule for you and your date. The same legal principles that allow you to attend with your date also allow you to participate fully and equally in the evening's activities and fun. If someone tries to stop you, ask to speak with the person in charge and inform them of your rights. If you can, take along a copy of this Q&A for backup.

Visit [www.lambdalegal.org](http://www.lambdalegal.org) to download a copy of Lambda Legal's "Out, Safe & Respected" tool kit, designed to help young people learn their rights in school and make sure they're respected. Or see the Gay, Lesbian and Straight Education Network website ([www.glsen.org](http://www.glsen.org)), which contains numerous resources for youth.



[www.lambdalegal.org](http://www.lambdalegal.org)

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**Lambda Legal** is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.