



August 24, 2015

Via Email

Norm Anderson, Clovis Unified School District Associate Superintendent
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Robyn Castillo, Clovis Unified School District Associate Superintendent
robyncastillo@cusd.com

Ricci Ulrich, Buchanan High School Principal
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Re: Male Haircut Provision in Clovis Unified School District's Regulation on Student Dress and Grooming

Dear Mr. Anderson, Dr. Castillo and Ms. Ulrich:

I am writing on behalf of the American Civil Liberties Union of Northern California (ACLU-NC) and Kellie Gasink. First, I would like to thank you for meeting with us on August 20 to resolve our concerns about the male haircut provision in Clovis Unified School District's student dress and grooming regulation.¹ We are pleased that the District has granted Ms. Gasink's son, William Pleasant, an exemption from the male haircut provision for the 2015-16 school year. We are also encouraged that the District has committed to revising its dress code to make it gender equal and that you expect those revisions to be effective by the early part of the second semester. In addition to the changes agreed upon during the August 20 meeting, we ask that the District expunge the prior grooming-related disciplinary actions from William's student file.

"California public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity." Cal. Educ. Code § 201(b). Section 220 of the California Education Code specifically prohibits "discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code." "Gender expression"

¹ The male haircut provision states, "Male haircuts may not fall below the mid-point of a standard stand up shirt collar and earlobes must be visible. All aspects of the grooming standards for hair length must be met without artificial means. This includes placing or tucking hair behind the ears." District Administrative Regulation No. 2105, subd. B.

means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." *Id.* at § 210.7. In 2011 the state legislature amended § 220 to explicitly identify gender expression as a protected category in order to "make clear that discrimination based on failure to conform to narrow gender stereotypes is against the law." Assem. Floor Analysis of Assem. Bill No. 887 (2011-2012 Reg. Sess.) Aug. 31, 2001, p. 3. This is consistent with the "broad protection" California law affords "against unreasonable, arbitrary, or invidious discrimination based on irrelevant differences between men and women." *Id.* at p. 2.

This change in the law supersedes any prior court ruling upholding the validity of gender-based distinctions in the District's dress code. The male haircut and other provisions in the District dress code that make gender-based rules for student dress and grooming therefore violate the law. We appreciate that the District has acknowledged that the change in the law requires eliminating the gender-based rules in the dress code.

While you clearly stated that the revisions to the dress code will only focus on achieving gender equality in student dress and grooming rules, we also appreciate that the decision to grant William an exemption to the male haircut provision will allow him to engage in expressive conduct protected by §§ 48950 and 48907 of the California Education Code. As William explained during the August 20 meeting, being able to wear his hair long and in an afro is an expression of his identity. As a biracial person with black heritage, William places cultural significance in being able to wear an afro. It is a manner of identifying with his black culture and a way to express pride in his racial identity.

Section 48950(a) of the Education Code prohibits the District from "mak[ing] or enforce[ing] a rule subject[ing] a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution." William wearing his hair long and in an afro as a means of expressing his racial identity is expressive conduct protected by the First Amendment to the United States Constitution and Article I, Section 2(a) of the California Constitution. *Jacobs v. Clark Cnty. Sch. Dist.*, 526 F.3d 419, 430 (9th Cir. 2008) (citing with approval cases recognizing student hair style as expressive conduct). The prior instances in which the District disciplined William for violating the male hair cut provision – imposing a lunch detention, afterschool detention, Thursday school, and requiring him to sit in an administrative office for three days – were in violation of § 48950(a).

In addition, California Education Code § 48907(a) provides for students' right to freedom of expression "including, but not limited to . . . the wearing of buttons, badges, and other insignia" unless that expression "is obscene, libelous, or slanderous," or "create[s] a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school." Because none of the enumerated exceptions apply,² the broad and inclusive language of this provision

² There is no plausible contention that William's hairstyle is obscene, libelous, or slanderous. And his hairstyle does not incite disruption because it neither "specifically call[s] for a disturbance" nor is it a "manner of expression" that "is so inflammatory that the speech itself provokes the disturbance." *Smith v. Novato Unified Sch. Dist.*, 150 Cal. App. 4th 1439, 1457 (2007). And although § 48907(b) authorizes school districts to create reasonable time, place

also protects William's expressive conduct of wearing his hair long and in an afro as an expression of his cultural pride and racial identity.

In William's instance, enforcing the male haircut provision against him was especially troubling given the District staff's statement that blacks cannot express cultural decisions. However, we are hopeful that, as Mr. Anderson stated during the August 20 meeting, training to address this misconception will be part of process for revising the dress code to eliminate its gender based rules.

Because the District unlawfully punished William for violating the dress code, we request that the District expunge these suspensions from his student file. In your reply, please confirm your agreement that William is not required to disclose these dress code related violations to colleges and other entities.

Thank you for your time and attention to this matter. If you have questions or would like to discuss further, you may contact me at ncoleman@aclunc.org or (559) 554 2994 x1.

Sincerely,



Novella Coleman
Staff Attorney
ACLU Foundation of Northern California

cc: Sloan R. Simmons, Partner at Lozano Smith, ssimmons@lozanosmith.com

and manner restrictions, the male haircut provision is not that because it is not content neutral since it treats speakers differently based on the content of their speech. *See Prigmore*, 211 Cal. App. at 1341; *Best Friends Animal Soc'y v. Macerich Westside Pavilion Property LLC*, 193 Cal. App. 4th 168, 174-75 (2011); *see also Frudden v. Pilling*, 742 F.3d 1199 (9th Cir. 2014) (enforcing a school dress code in an unequal manner could violate the First Amendment based on discriminatory content-specific regulations); *McMillen v. Itawamba County Sch. Dist.*, 702 F.Supp. 2d 699, 704 (N.D. Miss. 2010) (holding the school's regulations violated the First Amendment right to gender expression in part because "clothing may also symbolize ethnic heritage religious beliefs, and political and social views" and "the choice to wear clothing as a symbol of an opinion or cause is undoubtedly protected under the First Amendment if the message is likely to be understood by those intended to view it").