



PACIFIC LEGAL FOUNDATION

August 28, 2017

Superintendent Greg Poole
gpoole@bhisd.net
Barber Hill Independent School District
P.O. Box 1108
Mont Belvieu, Texas 77580

Via Email and U.S. Mail

Re: Barber Hill Independent School District's Ban on Boys with Long Hair

Dr. Poole¹:

My name is Wencong Fa, and I am an attorney with the Pacific Legal Foundation. PLF is a national nonprofit that litigates to secure the constitutional freedoms of all Americans. As the Nation's most effective pro-liberty legal organization, PLF has litigated to advance property rights, equality under the law, and freedom of expression in courts all over the United States. PLF has a track record of success that includes nine victories in its last ten appearances at the Supreme Court of the United States.

I have spoken with Jessica Oates, a parent who resides in your district, and was astonished to hear her story. Jessica is the single mother of Jabez Oates, a four-year-old boy who was excited to start his first day of school. Jabez has had long hair his entire life. His family identifies as Native American, and believes that long hair is a sign of strength.

Your school district has refused to allow Jabez to attend school, because the district's policy forbids boys from having long hair and from wearing hair accessories that are not "in good taste." Jessica applied for a cultural/religious exemption, but was told that the school would grant no such exemption for her son. Jessica then tried to meet the district's requirements by pulling Jabez's hair back into a bun with a black hair tie. But school officials said the black hair tie was "inappropriate," and wouldn't let Jabez out of the car.

My colleague Joshua Thompson and I write this letter, on PLF's behalf, to inform the school district of the legal problems with its actions, and to urge the district to allow Jabez to attend school.

First, the school district's actions violate the Free Speech Clause of the First Amendment. The First Amendment protects not just words, but also conduct that's sufficiently communicative.² In one case, a Houston-based federal court held that a school district's policy that required a Native

¹ At the present time, PLF attorneys are not representing Ms. Oates or her son.

² *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

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American child to cover his braids violated the Free Speech Clause.³ The court found that the policy was unconstitutional because it burdened more speech than necessary to promote the school's stated interests of promoting order, discipline, and hygiene. The same can be said of Barber Hill Independent School District's policy here.

Second, the school district's actions violate the Texas Religious Freedom Restoration Act (TRFRA).⁴ The Act prevents the school district from substantially burdening a person's free exercise of religion unless it demonstrates that the burden is the least restrictive means of furthering a compelling governmental interest.⁵ The school district's policy here infringes on the free exercise of religion, because certain "Native American communities assign religious significance [to] hair length."⁶ As the federal appellate court covering your district has recognized, a policy that deprives children of their right to exercise their religion during the school day is a significant burden on religious conduct and expression.⁷ That court also held that boilerplate recitation of the school's interests in hygiene, safety, discipline, authority, and uniformity was insufficient to justify the substantial burdens that its policy has on religious exercise.⁸ That's especially true where, as here, the school district's concerns would be undercut by its decision to exempt girls from the same burdens.⁹

Third, the school district's actions violate the Equal Protection Clause of the Fourteenth Amendment and Title IX. The Equal Protection Clause requires the school district to show that its gender-based classification is substantially related to an important objective.¹⁰ A policy that applies only to male students constitutes a prima facie case of discrimination, and shifts the burden to the school district to justify the policy, which it ostensibly cannot do.¹¹ Title IX provides that, with exceptions not applicable here, no person shall be "subjected to discrimination under any educational program or activity receiving Federal financial assistance . . ."¹² If Barber Hill Independent School District receives federal funds, its actions violate Title IX for the reasons they violate the Equal Protection Clause.¹³

Fourth, the school district's actions violate the Due Process Clause of the Fourteenth Amendment. Parents have a fundamental interest in guiding the education of their children.¹⁴ When a parent's due process right to raise her child is combined with a free exercise claim, the school district must

³ See *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 701 F. Supp. 2d 863, 881-83 (S.D. Tex. 2009), *affirmed on other grounds*, 611 F.3d 248 (5th Cir. 2010).

⁴ Tex. Civ. Prac. & Rem. Code Ann. §§ 110.001-110.012 (West 2011).

⁵ See *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d at 258.

⁶ *Id.* at 263 (quoting district court findings).

⁷ See *id.* at 265-66.

⁸ See *id.* at 266-71.

⁹ *Id.* at 271.

¹⁰ *United States v. Virginia*, 518 U.S. 515, 533 (1996).

¹¹ See *Hayden ex rel. A.H. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 576-82 (7th Cir. 2014).

¹² 20 U.S.C. § 1681.

¹³ See *Hayden*, 743 F.3d at 583.

¹⁴ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

show that there is more than a reasonable relation between its policy and a legitimate interest.¹⁵ The district's policy is unlikely to survive this heightened level of scrutiny.¹⁶

In sum, the school district's actions violate the United States Constitution, federal law, and Texas law. We urge the school district to change its policy, and allow Jabez to attend school. If we do not hear back from you by September 6, we will assume that the school district plans to continue with its unconstitutional policy. If you have any questions or comments, please do not hesitate to call me at (916) 419-7111 or email me at wfa@pacificlegal.org.

We look forward to hearing from you.

Sincerely,



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¹⁵ See *A.A. ex rel. Betenbaugh*, 701 F. Supp. 2d at 884.

¹⁶ See *id.*