



Juvenile and Children's Advocacy
Project of Texas

June 29, 2020

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Board of Trustees
Barbers Hill Independent School District
9600 Eagle Drive
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C/o Hans P. Graff, Attorney for BHISD
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Sent Via E-mail

Re: Level Three Grievance on Behalf of Cindy Bradford and Kaden Bradford

Dear Trustees of Barbers Hill Independent School District:

Our world has utterly changed since January 27, when the Juvenile and Children's Advocacy Project of Texas ("JCAP") and the American Civil Liberties Union of Texas ("ACLU") filed this grievance on behalf of Ms. Cindy Bradford and her son, Kaden Bradford. In the days and weeks that followed, Barber's Hill Independent School District ("BHISD") became infamous across the country as the discriminatory policies and practices giving rise to this complaint were prominently featured in the media, on the internet, and at the Oscars. Within weeks, a novel coronavirus swept the planet, forcing BHISD and every other school district in the country to shutter its doors, stealing the lives of more than 120,000 Americans, and disproportionately harming the Black community.¹

¹ See, e.g., Aaron Barker, *Data Shows African Americans Make Up Most of Houston's Coronavirus Deaths*, Click 2 Houston, (Apr. 10, 2020), <https://www.click2houston.com/health/2020/04/10/data-shows-african-americans-make-up-most-of-houstons-coronavirus-deaths/>; John Haltiwanger, *Surgeon General Says People of Color Are Getting Hit Harder by Coronavirus Because of Social Issues, Not Genetics or Biology*, Business Insider, (Apr. 10, 2020), <https://www.businessinsider.com/surgeon-general-people-of-color-vulnerable-coronavirus-social-issues-2020-4>; Hannah Hageman, *New Survey Highlights Racial Disparities in the Coronavirus Pandemic*, NPR (Apr. 14, 2020, 5:48 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/14/834466606/new-survey-highlights-racial-disparities-in-the-coronavirus-pandemic>; J. Edward Moreno, *Black, Latino Communities Suffering*

On May 25, our world changed yet again when George Floyd, a Houston native, was brutally murdered by police officers on the streets of Minneapolis. His death and the police killings of Breonna Taylor, Tony McDade, Michael Ramos, and countless others have sparked global protests and a renewed outcry against the virulent racism that plagues our society. In Mount Belvieu and across the country, officials at all levels of government are responding to centuries of racism by reexamining, questioning, and *changing* policies that systemically hurt, disadvantage, and oppress Black Americans.

Through this grievance, you have a chance today to revise your district's policies that harm Black students and to allow students like Kaden to attend BHISD schools while wearing their natural Black hair. You can decide right now to empower Kaden to return to school and to change the BHISD grooming code so that other Black students are not similarly discriminated against in the future. By granting this grievance, you can immediately make BHISD a more welcoming and accepting environment for students of every race and gender while committing yourselves to the difficult but necessary work of dismantling white supremacy.

This is not only fair and just for Kaden and the entire Barber's Hill community, but is also what is required by the Constitution and federal laws, including very recent case law from the United States Supreme Court. Instead of being embroiled in litigation for months or years to come and spending potentially hundreds of thousands of dollars in attorneys' fees,² BHISD has an opportunity *today* to change its discriminatory policies and to take a critical step to resolve this dispute.

I. Factual Background

Kaden Bradford has attended BHISD schools since pre-kindergarten and was enrolled as a sophomore at Barbers Hill High School when this grievance was filed. Kaden has been attending BHISD schools for the past twelve years, and almost all of his friends attend Barbers Hill High School. Because of the discriminatory treatment he experienced while at BHISD, Kaden was forced to withdraw from Barbers Hill High School *after* he filed this Level One Grievance.³ Although he finished the semester at a nearby school district, Kaden urgently seeks to return to BHISD so that he can start his second half of high school with all of his friends.

Disproportionately From Coronavirus, Statistics Show, The Hill (Apr. 7, 2020, 10:07 AM), <https://thehill.com/homenews/state-watch/491518-black-latino-communities-suffering-disproportionately-from-coronavirus>.

² A school district in Central Texas that engaged in a legal dispute with the ACLU of Texas recently spent nearly \$100,000 in attorney's fees for a matter that did not go to court. These costs were incurred at the detriment of the district's students, parents, and taxpayers, and would have been far higher if the district had decided to engage in litigation rather than agreeing to change its unconstitutional conduct during a Level 3 grievance hearing. *See* Christian Flores, *Wimberley ISD spent nearly \$100,000 in fight over rainbow-altered logo*, CBS Austin (June 8, 2020), <https://cbsaustin.com/news/local/wimberley-isd-spent-nearly-100000-in-fight-over-rainbow-altered-logo#>.

³ BHISD's Level Two decision erroneously states that Kaden withdrew before his Level One hearing. Kaden was forced to withdraw *after* the Level One hearing when his principal, Rick Kana, told him that Kaden would remain in ISS for the duration of the grievance process. Long-term suspension,

For the past year and a half, Kaden has also been active in marching band, where he plays trombone. He is currently missing out on summer band opportunities that he would normally participate in, and he seeks immediate enrollment in BHISD so that he can return to summer band at the end of July.

Kaden has worn locs since sixth grade without any incident as a way of expressing his Black identity and culture. Locs are ropelike strands of hair that form naturally and/or are styled in afro-textured hair.⁴ Locs have been traced to just about every civilization in history, starting in 2500 B.C.⁵ However, locs are directly related to the culture of members of the African diaspora. Black hair differs from all other races in its basic shape and composition.⁶ Black hair grows outwardly, in thick and tight coils. It is groomed and shaped into locs or can be groomed into other natural hairstyles and formations.⁷ In other words, locs are a product of natural hair growth. Grooming Black hair into locs can be critical to preserve hair health.⁸ This style is one of the primary ways in which Black people are able to maintain natural, long, and healthy hair.

Throughout middle school and his first year of high school, Kaden had no problems wearing his natural Black hair in school. BHISD's grooming code for middle and high school students required that "[b]oy's hair will not extend below the eyebrows, below the ear lobes, or

whether in school or out of school, has severe impacts on a student's achievement; Ms. Bradford had no choice but to withdraw Kaden after the Level One hearing because Rick Kana notified her that Kaden would be held in ISS indefinitely. *See, e.g.,* Cara H. Drinan, *The War on Kids* 49-52 (2018); Daniel J. Losen & Amir Whitaker, *Lost Instruction: The Disparate Impact of the School Discipline Gap in California* 3-5 (2017); Emily Boudreau, *School Discipline Linked to Later Consequences*, Usable Knowledge (Sep. 16, 2019), <https://www.gse.harvard.edu/news/uk/19/09/school-discipline-linked-later-consequences>.

⁴ This letter uses the term "locs" instead of "dreadlocks" because of the negative and derogatory implications of the word "dread." *See* Letter from ACLU of Florida and NAACP Legal Defense Fund, p. 2 (Nov. 29, 2018) available at, <https://www.aclu.org/legal-document/clinton-stanley-v-books-christian-academy-complaint> citing Shauntae White, *Releasing the Pursuit of Bouncin' and Behavin' Hair: Natural Hair as an Afrocentric Feminist Aesthetic for Beauty by Brown White*, *International Journal of Media and Cultural Politics* (December 2005), available at https://www.researchgate.net/publication/249919127_Releasing_the_pursuit_of_bouncin'_and_behavin'_hair_natural_hair_as_an_Afrocentric_feminist_aesthetic_for_beauty).

⁵ The long history of locs can be traced back to The Vedas, where Egyptian pharaohs also wore locs. *See* Princess Gabbara, "The History of Dreadlocks," *EBONY* (Oct. 18, 2016), available at <https://www.ebony.com/style/history-dreadlocks/> (citing Bert Ashe, *Twisted: My Dreadlock Chronicles* (June 2015)).

⁶ *See* Audrey Davis-Sivasothy, *The Science of Black Hair: A Comprehensive Guide to Textured Hair* (2011).

⁷ Discrimination against Black hairstyles is not an isolated event. There have been documented incidents all over the country that ban locs from being sported in schools and places of employment. *See supra* note 1.

⁸ Locs and braided hairstyles are a means to protect the hair and create an easier way to style Black hair. *See* Maiysha Kai, "Non-Compliant: The War Against Black Students' Hairstyles Continues," *THE ROOT* (Aug. 21, 2018), available at <https://theglowup.theroot.com/non-compliant-the-war-against-black-students-hairstyle-1828489233>

below the top of a t-shirt collar. Corn rows and/or dread locks are permitted if they meet the aforementioned lengths.”

In compliance with this policy, Kaden wore his hair up and away from his eyebrows, ear lobes, and the top of his collar during the school day. Kaden participated in marching band and was pictured in yearbook photos for multiple school years while wearing locs that were kept up and away from his eyebrows, ear lobes, and collar. Along with his cousin, De’Andre Arnold, Kaden was one of only three students at Barbers Hill High School who wore locs, out of approximately 1,500 students at the school.

During Kaden’s freshman year, Barbers Hill High School Principal Rick Kana mentioned that Kaden’s hair was “getting a little long, length-wise.” However, the Principal explicitly told him that he could wear his hair up in a ponytail or otherwise keep it away from his eyebrows, ear lobes, and the top of his collar.

On December 16, 2019, the BHISD Board of Trustees voted to revise its dress and grooming policy in the middle of the school year without any notice or warning to parents or students. The Board changed the hair policy to the following:

Male students’ hair will not extend, *at any time*, below the eyebrows, or below the ear lobes. Male students’ hair must not extend below the top of a t-shirt collar *or be gathered or worn in a style* that would allow the hair to extend below the top of a t-shirt collar, below the eyebrows, or below the ear lobes *when let down*.

After this policy change was enacted, Ms. Bradford received a phone call from Principal Kana. He said, “Ms. Bradford, we need to decide what the boys will do with their hair . . . If it was up to me, I would say I would cut it off and get a haircut.”

When Kaden returned to school in January, Principal Kana and other school administrators repeatedly confronted him and Ms. Bradford about the need to cut Kaden’s hair. Even though he continued to wear his locs up and away from his eyebrows, ear lobes, and the top of his collar—as he had done for multiple years—school officials insisted that he was now out of compliance with District policies.

In an effort to placate school administrators’ requests, Ms. Bradford asked Principal Kana on January 6 if Kaden could put his hair in cornrows that were tightly braided against his head in order to keep them off of his eyebrows, ear lobes, and the top of his collar.⁹ Principal Kana told her that this would be okay and would comply with District policy. But after Kaden’s mother paid \$80 to get his hair braided so that he could return to school on January 14, the Principal said that he was still out of dress code and would have to get it cut after all. Mr. Kana told Ms. Bradford on January 14 that if Kaden did not cut his locs, he would have to go to ISS for a day or two and then would be sent to BHISD’s District Alternative Education Program (DAEP).

⁹ Cornrows, like locs and braids, are another protective style that members of the African diaspora use to style their natural hair or allow their hair to “rest.” See Princess Gabbara, “Cornrows and Sisterlocks and their Long History,” EBONY (Jan. 20, 2017), available at <https://www.ebony.com/style/everything-you-need-know-about-cornrows/>

Ms. Bradford filed a Level One grievance on behalf of her son on January 27, and Kaden was sent by school officials to ISS on January 29. Kaden then spent a week and a half in ISS, where he was treated as a troublemaker, even though he had never before been disciplined at school. Forced to sit in silence for the majority of the school day, Kaden was cut off from his friends and no longer allowed to participate in school activities like band, which made him feel depressed and isolated. Kaden also fell behind academically because he was denied the same classroom instruction as all of his peers.

On February 6, Kaden and Ms. Bradford attended a Level One grievance hearing with Principal Kana. During that hearing, the Bradford family asked that Kaden be allowed to return to regular classes so that he could receive classroom instruction while this grievance was pending. Ms. Bradford and her son also asked the District to reverse its discriminatory policy change that caused Kaden to be sent to ISS after several years of wearing his hair in locs without any problems at BHISD schools.

During this hearing, the attorney for JCAP showed Principal Kana a binder with approximately 200 photographs of non-Black male students in BHISD schools who wear long hair that violates the District dress code while participating in school activities. Several of these students were featured with hair that violates the District dress code on multiple occasions and during multiple years. Many of these students currently attend Barbers Hill High School, and photographs of them wearing long hair that is clearly out of compliance with the grooming code continue to be prominently displayed on the District's website as of the filing of this appeal.¹⁰

Despite all of this evidence, Principal Kana told Ms. Bradford that Kaden would be forced to return to ISS only 20 minutes after the Level One hearing. "I'm sorry, but Kaden will have to remain in ISS until further notice," he said. Because Kaden had already been in ISS for seven instructional days at this point and was not receiving classroom instruction, Ms. Bradford felt like she had no other option but to enroll him in another school. She took Kaden home that day and spent the next two weeks transferring him to another school. This was a stressful and difficult process, and it took the new school district several days to decide whether to admit her son as a mid-semester transfer. The new school eventually approved this request and said that Kaden would be allowed to enroll without being forced to cut his hair and lose part of his cultural identity. However, this new high school is much farther away from the Bradford family's home than Barbers Hill and has forced Ms. Bradford to completely change her work schedule to spend more time taking Kaden to school.

Importantly, Kaden also knows no one at his new school while his entire friend group from pre-K through sophomore year remains at Barbers Hill. Kaden therefore seeks to return to BHISD immediately, as long as he is permitted to receive regular classroom instruction and participate in extracurricular activities without being forced to cut his natural Black hair.

Notably, the Bradford family has been impacted by the COVID-19 pandemic, which exacerbates Kaden's situation. Ms. Bradford works as a school bus driver, and her hours at work

¹⁰ See, e.g., "Athlete of the Week," Barbers Hill High School (accessed Feb. 27, 2020), available at <https://www.bhisd.net/high-school-home>.

have been drastically cut, which has affected the family's finances. In addition to the financial strain, Kaden does not even know where he will start school in the fall because of BHISD's continued refusal to allow him to reenroll in BHISD and receive regular classroom instruction without being forced to cut his locs. He also seeks immediate reenrollment in the District so that he can participate in summer marching band, which he has participated in for the past two years.

As Kaden embarks on his second half of high school during a global pandemic, he wants to return to school in the District where he has forged lifelong friendships for the past twelve years. And even though he was previously permitted to wear his locs without incident, Kaden is now being denied an education at Barber's Hill High School because of BHISD's discriminatory policies and practices.

II. Legal Concerns

A. School District Administrators Are Enforcing the Grooming Code in Racially Discriminatory Ways

By disciplining Kaden Bradford for wearing his natural Black hair while similarly situated white students are not disciplined, the school district is subjecting him to disparate treatment on the basis of race.¹¹ Such conduct violates the Equal Protection Clause and Title VI, which prohibits discrimination based on race, color, or national origin in educational programs receiving federal funding.¹² Title VI forbids school districts from treating Black students differently than similarly situated students who are not members of the protected class.¹³ Yet abundant documentary evidence indicates this is exactly what the District is doing. As provided at the Level One hearing, there are dozens of pictures culled from yearbooks of non-Black male students at BHISD who wear long hair while engaging in school activities like playing on the basketball team. Numerous photos show non-Black male students wearing long hair over consecutive years of yearbook photos and even participating in graduation. Kaden, on the other hand, has not been given this latitude. This presents powerful evidence of *prima facie* race discrimination.¹⁴ And in the Fifth Circuit, treating students differently based on "ethnic hair

¹¹ As the New York City Commission on Human Rights recently articulated, "[a]nti-Black bias . . . includes discrimination based on characteristics and cultural practices associated with being Black, including prohibitions on natural hair or hairstyles most closely associated with Black people. Bans or restrictions on natural hair or hairstyles associated with Black people are often rooted in white standards of appearance and perpetuate racist stereotypes that Black hairstyles are unprofessional. Such policies exacerbate anti-Black bias in employment, at school, while playing sports, and in other areas of daily living." See Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, *NYC Commission on Human Rights* (February 2019), available at <https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf>.

¹² 42 U.S.C. § 2000d.

¹³ See *Bell v. Ohio State Univ.*, 351 F.3d 240, 253 (6th Cir. 2003); see also *Washington v. Jackson State Univ.*, 532 F. Supp. 2d 804, 810 (S.D. Miss. 2006).

¹⁴ See *Ihegword v. Harris Cty. Hosp. Dist.*, 929 F. Supp. 2d 635, 645 (S.D. Tex. 2013). If a case like this goes to court, it would be expensive and involve extensive discovery into every racial comment that school administrators have made to the media, to students, and to each other. Such discovery would e-mails, text messages, documents, and remarks during and after the school day to exemplify race-based motives for actions taken against these students, as well as other students of color in BHISD's history.

styles” has been recognized as a form of racial discrimination in violation of the Equal Protection Clause and Title VI.¹⁵

The District’s unannounced mid-year policy change—a change which targets only a handful of Black students—suggests the policy change could have been racially motivated, which has long been illegal in this country.¹⁶ But even if the District did not intend to racially discriminate against Kaden, the documentary evidence shows significant implicit bias by school administrators in the manner in which the grooming code is enforced. This is not only illegal under federal nondiscrimination law but also compounds the epidemic across the country of Black male students being disciplined more harshly and disproportionately than non-Black students, an epidemic engulfing Texas and Barbers Hill.¹⁷ BHISD now has a chance to remedy such discrimination and ensure that students like Kaden are not denied educational opportunities that have been afforded to their non-Black peers.

B. The Dress and Grooming Code at BHISD Fails to Comport with Supreme Court Precedent

As currently written, BHISD’s dress and grooming code imposes disparate requirements for students on the basis of sex, which is clearly out of step with modern Supreme Court jurisprudence and intrinsically leads to disparate impacts based on race.

The Constitution prohibits government entities from drawing gender classifications based on “overbroad generalizations about the different talents, capacities, or preferences of males and females.”¹⁸ When a government entity imposes a rule based on gender, that rule must be “substantially related to an important government objective” and must have a justification that is “exceedingly persuasive.”¹⁹ Such justifications may not be based on “archaic” and “overbroad stereotypes” about different genders.²⁰

¹⁵ See *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 415 (5th Cir. 2015).

¹⁶ A court could examine such a policy change under the framework of *Arlington Heights* and find it to violate the Equal Protection Clause. See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

¹⁷ *Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline*, NAACP Legal Defense Fund (2017); Diane Ewing, *Suspensions & Expulsions in Early Grades: A Problem Texans Can Fix With Strategies to Support Teachers and Students*, TEXANS CARE FOR CHILDREN (April 2017). Even when school districts do not perceive their actions as overtly racist, “implicit bias can subconsciously influence how a teacher or administrator responds” to different situations. According to the NAACP Legal Defense Fund, “[w]hile the biases themselves may never be eliminated, their effects in schools can be limited through a variety of interventions.” Among these interventions is “empathic discipline,” in which educators examine situations from the student’s perspective, thereby allowing them to “limit the effects of implicit bias” and unintentional racial discrimination. This is exactly what Ms. Bradford asks you to do here. By examining this situation from Kaden’s perspective, who wore his locs without incident for years, it becomes obvious that he is being wrongfully denied an education by the District through no fault of his own.

¹⁸ *United States v. Virginia*, 518 U.S. 515, 533 (1996).

¹⁹ *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 137 (1994); and *Virginia*, 518 U.S. at 533.

²⁰ *J.E.B.*, 511 U.S. at 131.

Under this binding Supreme Court precedent, any government entity that treats people differently based on sex must put forward an “exceedingly persuasive” the gender-based difference—not just for the underlying policy in general. So even though BHISD claims that its grooming code is designed to “teach grooming and hygiene, instill discipline, maintain a safe and positive learning environment, prevent disruption, avoid safety hazards, and teach respect for authority”—none of these reasons provides any basis for treating students differently based on sex. Kaden wearing his natural Black hair in locs does not affect any of these District goals, just as a female student who wears long hair does not cause any problems with hygiene, safety, or discipline. BHISD’s only possible justifications for its gender-based policy are the “archaic” and “overbroad stereotypes” about the preferences, habits, and appearances of male and female students, which are not enough to withstand the standards established by the Supreme Court.

The Seventh Circuit Court of Appeals recently declared unconstitutional a school grooming code similar to BHISD’s sex-separated grooming policy.²¹ Other courts have similarly found that imposing sex-specific grooming codes violates the Equal Protection Clause.²²

BHISD explicitly justifies its grooming code on two cases from the Texas Supreme Court.²³ Decided more than two decades ago, these cases only concerned matters of *state* law and did not address or consider binding Supreme Court precedent in subsequent cases where explicit sex classifications have been found unconstitutional.²⁴ These cases were also based on the premise that sex discrimination does not occur when there are “comparable burdens” placed on male and female students, but this legal doctrine has never been endorsed by the U.S. Supreme Court and was entirely undermined in a landmark decision on sex discrimination on June 15, 2020.

Two weeks ago, the U.S. Supreme Court emphasized that sex discrimination occurs when any *individual* is treated worse because of sex, regardless of whether men or women as a group are disfavored. In *Bostock v. Clayton County, Georgia*, the Supreme Court held that private employers “discriminate” against someone “because of sex” when an employer “intentionally treats a person worse because of sex.” No. 17-1618, 2020 WL 3146686, at *5 (U.S. June 15, 2020). This holding completely upends the rationale of the cases that the District relies on and cites in its FNCA (Legal), because sex discrimination is based on an *individual* and not “comparable burdens” between men and women. The parties in *Bostock* that argued for a

²¹ *Hayden ex rel. A.H. v. Greensburg Community School Corporation*, 743 F.3d 569, 571 (7th Cir. 2014).

²² *See, e.g., Sturgis v. Copiah County School District*, No. 3:10-CV-455-DPJ-FKB, 2011 WL 4351355, at *1 (S.D. Miss. Sept. 15, 2011) (requiring boys to wear tuxedos and girls to wear drapes violated the Equal Protection Clause); *Bonnie Peltier, et al. v. Charter Day School, Inc., et al.*, No. 7:16-CV-30-H, Dkt. 216 at *31 (E.D.N.C. Mar. 28, 2019) (requiring girls to wear skirts was an impermissible sex classification based on outdated stereotypes).

²³ *See* FNCA (Legal), BHISD (July 1, 2002) (“Hair-length regulations that apply to boys but not to girls do not manifest such an affront to students’ constitutional rights to merit judicial intervention. *Barber v. Colorado Indep. Sch. Dist.*, 901 S.W.2d 447 (Tex. 1995); *Bastrop Indep. Sch. Dist. v. Toungate*, 958 S.W.2d 365 (Tex. 1997)).

²⁴ *See Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1692 (2017) (“For close to a half century, as earlier observed, *see supra*, at 1689 – 1690, this Court has viewed with suspicion laws that rely on ‘overbroad generalizations about the different talents, capacities, or preferences of males and females.’”).

narrower version of sex discrimination explicitly raised the issue of dress codes during briefing and oral argument, but the Supreme Court rejected their claims. Instead, the Court held that sex discrimination occurs when an *individual* is treated worse than others, regardless of any comparable burdens on the group. Here, it is undisputed that Kaden would be permitted to wear his natural hair of any length if he were female, and he is therefore being treated worse than his similarly situated peers because of sex.²⁵

If BHISD abandons its dress and grooming code policy that discriminates against students on the basis of sex, the District will not only comport itself with the Constitution’s requirements but will also alleviate the numerous discriminatory impacts that a sex-separated dress code creates across religion, sex, race, and the gender spectrum.²⁶ For BHISD to force these students to fit a certain stereotype hurts their academic success and severely undermines the diversity inherent in the school district and the world at large.

C. BHISD May Also Be Violating These Students’ First Amendment Rights

The school district may also be unconstitutionally suppressing students’ freedom of expression. The Supreme Court has long held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”²⁷ The Fifth Circuit has also recognized that dress and grooming may “symbolize *ethnic heritage*, religious beliefs, and political and social views.”²⁸ This type of expression “is undoubtedly protected under the First Amendment if the message is likely to be understood by those intended to view it.”²⁹ Just like school districts cannot prohibit students from wearing long hair to express their religious beliefs,³⁰ so too can they not stop students from wearing natural Black hairstyles.

Beyond the schoolhouse, the District also cannot suppress students’ right to express their cultural heritage. In finding that school uniforms are constitutional in the face of a First Amendment challenge, the Fifth Circuit emphasized that “[a]lthough students are restricted from wearing clothing of their choice at school, students remain free to wear what they want after school hours.”³¹ But by changing its policies to prevent students from wearing long hair “when pulled down,” BHISD now violates this rule and inhibits student expression outside the classroom.

²⁵ Although *Bostock* concerned Title VII, the federal non-discrimination statute for employment, the Supreme Court and Fifth Circuit routinely use Title VII cases to interpret the meaning of “sex discrimination” in Title IX and the Equal Protection Clause—both of which apply to BHISD and prohibit the District from discriminating against students because of sex, which is the same language that the Supreme Court interpreted in *Bostock*.

²⁶ For example, many male students wear long hair as an essential element of who they are. Many students who are Jewish, Sikh, Rastafarian, or from various religious backgrounds may wear long hair as part of their sincerely held religious beliefs. Black and Native American students sometimes wear long hair as part of their culture and ethnic heritage. And transgender, non-binary, and gender diverse students sometimes wear long hair to express their gender identity

²⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

²⁸ *Canady v. Bossier Par. Sch. Bd.*, 240 F.3d 437, 440 (5th Cir. 2001).

²⁹ *Id.* at 441.

³⁰ *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 260 (5th Cir. 2010)

³¹ *Canady*, 240 F.3d at 443.

III. Conclusion

The school district has already done enormous harm to Kaden's life through its discriminatory policies and practices. Kaden was disciplined for weeks and missed out on invaluable educational opportunities. Kaden has been isolated from his peers and has felt anxious and depressed as a result. BHISD's treatment of Kaden is both deeply unfair and unconstitutional, and it exposes the District to significant legal liability.

Through this grievance, BHISD has a chance to repair the damage it has done and ensure that every student in Barbers Hill, including Kaden, is treated fairly and equally. BHISD should embrace this historical moment to consider how it can support its Black students by creating policies, including dress codes, that are actively antiracist and inclusive. The school district should take immediate action to ensure that Kaden can return to school as quickly as possible while also changing school board policies to ensure that no student will be forced to endure similar discrimination in the future.

Sincerely,



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