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Via Fax and Postal Mail

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State of the New Jersey Office of the Attorney General
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Re: Hair Policies Targeting Black Students' Natural Hair Constitutes Discrimination on the Basis of Race and Violates Federal and State Law.

Dear Ms. Apter,

The NAACP Legal Defense and Educational Fund, Inc. (LDF) has been actively following the disturbing incident involving New Jersey high school student Andrew Johnson during his wrestling meet at Buena Regional High School on Wednesday, December 19, 2018. LDF has deep concerns about the discriminatory actions of referee Alan Maloney and the resulting harms inflicted upon Mr. Johnson. As the investigations by the New Jersey Division on Civil Rights and the New Jersey State Interscholastic Athletic Association's (NJSIAA) move forward, we (a) share our general concerns with conduct targeting natural textures and styles; (b) stress the importance of uninterrupted education and extracurricular opportunity for students; and (c) welcome opportunities to speak with you further concerning rectifying racial discrimination in school activities. Together, we can work to ensure that all students, regardless of racial identity, have equal access to educational and extracurricular opportunities.

LDF is the nation's oldest civil and human rights law organization. LDF was founded in 1940 by Thurgood Marshall, who later became the first Black Supreme Court Justice. Since its inception we have worked to defend and advance racial equality and civil rights for Black Americans, including in education. We litigated the landmark case *Brown v. Board of Education*, which ended de jure segregation in public schools. Today, we continue to challenge racially discriminatory school policies and practices, including racially discriminatory dress and grooming codes, disciplinary policies, and codes of conduct.

Targeting students with natural Black hair styles, like locs,¹ constitutes discrimination on the basis of race in violation of federal and state law. Such illegal discrimination fundamentally disrupts students' educational experiences, including preventing them from participating fairly in extracurricular activities.

Background on Mr. Maloney's Conduct

During the incident in question, Alan Maloney first told Andrew Johnson that he needed to shave his facial hair, making no reference to the hair on his head. Later, Mr. Maloney told Mr. Johnson's brother that Mr. Johnson needed to wear a hair covering. Then, just minutes before Mr. Johnson was scheduled to compete, and despite the fact that he had covered his hair, Mr. Maloney demanded that Mr. Johnson either immediately cut his hair or forfeit the match. Mr. Maloney told Mr. Johnson's coaches that the student-athlete's hair as "unnatural."

Mr. Johnson had wrestled in several matches prior to the December 19th incident with the same hairstyle. Moreover, this is not the first time Mr. Maloney has engaged in racially discriminatory conduct at scholastic events. At a 2012 youth tournament, Mr. Maloney allegedly attempted to bar a six-year-old wrestler with locs from competing because "hair doesn't naturally look like that."² In 2014, Mr. Maloney is accused of kicking a wrestler of color at a tournament.³ And in 2016, Mr. Maloney was suspended for calling his Black colleague the n-word.⁴ Despite this pattern of racist conduct, Mr. Maloney was permitted to referee the meet at Buena Regional High School on December 19, 2018, and target a 15-year-old Black student.

Hair Policies Targeting Black Students' Natural Hair Constitutes Discrimination on the Basis of Race and Violates Federal and State Law.

While racial discrimination may take many forms, targeting students with natural hair for disfavored treatment is prohibited by Title VI of the Civil Rights Act of 1964, which forbids discrimination on the basis of race, color, or national origin.⁵ It also violates the New Jersey Law

¹ Throughout this letter, LDF uses the term "locs" rather than "dreadlocks" because the "dread" in "dreadlocks" comes from the term "dreadful" used by English slave traders to refer to Africans' hair, which had probably loc'd naturally on its own during the Middle Passage. See Shauntae Brown White, *Releasing the Pursuit of Bouncin' and Behavin' Hair: Natural Hair as an Afrocentric Feminist Aesthetic for Beauty*, 1 INT'L J. MEDIA & CULTURAL POL. 295, 965 n.3 (2005).

² Melanie Burney, *New racial allegations surface about referee embroiled in wrestling dreadlocks controversy*, PHILLY.COM, Jan 22, 2019, <http://www.philly.com/news/new-jersey/andrew-johnson-alan-maloney-dreadlocks-cut-buena-wrestling-racial-incident-20190122.html>.

³ *Id.*

⁴ Erik Ortiz, *N.J. wrestler forced to cut dreadlocks still targeted over hair, lawyer says*, NBC News, Jan. 10, 2019 <https://www.nbcnews.com/news/us-news/referees-forcing-wrestler-cut-dreadlocks-match-sparks-n-j-civil-n95142>.

⁵ The NJSIAA is subject to Title VI as an indirect recipient of federal funds because it was created by state law, its functions are determined by the New Jersey Board of Education, and it receives dues from member schools who received federal funds. See *Horner v. Kentucky High School Athletic Ass'n*, 43 F.3d 265 (6th

Against Discrimination (LAD), which prohibits differential treatment based on race, creed, color, or national origin.⁶

Discrimination within the meaning of Title VI and LAD includes discrimination based on characteristics and stereotypes associated with a protected class.⁷ African-Americans are most closely identified with locs. Generally, Black hair grows outward in thick, tight coils and naturally forms or can be groomed into locs, an Afro, or other natural hairstyles and formations.⁸ In other words, Black hair naturally forms into locs. Moreover, African Americans have long battled the prevalent stereotype that these natural styles and formations are unsanitary, unkempt, and unsuitable for the workplace.⁹ Policies and practices that target natural texture and styles of students are discriminatory because they are intimately connected to a protected class of individuals and are often derived from invidious stereotypes.

Students cannot be barred from participating in extracurricular activities, like sports, simply because of their natural hairstyle. Mr. Maloney's characterization of Mr. Johnson's hair as "unnatural" is sorely misinformed and based off an inaccurate and dangerous portrayal of Black hair.

Cir. 1994); *see also Smith v. Nat'l Collegiate Athletic Ass'n*, 266 F.3d 152, 161 (3d Cir. 2001) (stating that Title IX obligations are imposed on an athletic association which receives financial assistance indirectly).

⁶ N.J. Stat. Ann. § 10:5-1.

⁷ *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-56 (1989) (plurality opinion) (explaining that "discrimination" within Title VII—another provision of the Civil Rights Act of 1964—encompasses discrimination on the basis of stereotypes, including "mutable" traits of a female employee's demeanor, dress, and hairstyle); *see also Prowel v. Wise Bus. Forms, Inc.*, 579 F.3d 285, 290 (3d Cir. 2009) (recognizing that unlawful discrimination encompasses discrimination for failure to conform to stereotypes, including traditional forms of demeanor and appearance); *Grande v. Saint Clare's Health Sys.*, 230 N.J. 1, 43, (2017) (stating that discrimination based on generalities, stereotypes, and assumptions can be as invidious as discrimination based on malice); *George v. Bd. of Educ. of the Twp. of Millburn*, 34 F. Supp. 3d 442, 456 (D.N.J. 2014) (*quoting L.W. v. Toms River Reg'l Schs. Bd. of Educ.*, 189 N.J. 381, 402-03) (2007) (noting that for a student to establish a race-based harassment claim under LAD, the student must first prove that the "discriminatory conduct would not have occurred 'but for' the student's protected characteristic.").

⁸ D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit's Take on Workplace Bans Against Black Women's Natural Hair in EEOC v. Catastrophe Management Solutions*, 71 U. MIAMI L. REV. 987, 999-1000 (2017).

⁹ A 2017 study found that white women, on average, believe that "[B]lack women's textured hair," is "less professional than smooth hair. Alexis m. Johnson, et al., *The "Good Hair" Study: Explicit And Implicit Attitudes Toward Black Women's Hair* 6, Perception Institute (Feb. 2017), <https://perception.org/wp-content/uploads/2017/01/TheGood-HairStudyFindingsReport.pdf> ; *see* Dawn D. Bennett-Alexander & Linda F. Harrison, *My Hair Is Not Like Yours: Workplace Hair Grooming Policies for African American Women As Racial Stereotyping in Violation of Title VII*, 22 CARDOZO J.L. & GENDER 437, 446 (2016); *see also* White, *supra* nt. 1; David S. Joachim, *Military to Ease Hairstyle Rules After Outcry from Black Recruits*, N.Y. TIMES (Aug. 14, 2014), <https://www.nytimes.com/2014/08/15/us/military-hairstyle-rules-dreadlocks-cornrows.html>; Maya Rodan, *U.S. Military Rolls Back Restrictions on Black Hairstyles*, TIME, Aug. 13, 2014, <http://time.com/3107647/military-black-hairstyles/>.

Student Involvement in Extracurricular Activities Is Critical to Positive Development

The discrimination that Mr. Johnson endured is especially troubling because of how important extracurricular activities are to students' development. Participating in extracurricular activities during school, like competing in athletics, provides a unique educational experience and positively shapes youth development.¹⁰ Student involvement in such activities have significant potential to better educational outcomes, contribute to improved psychological and mental development, and create an enhanced sense of belonging.

First, participation in extracurricular activities, including sports, may provide for better educational outcomes. A 2008-2009 study of nearly 140,000 high school students revealed that athletes have higher graduation rates, drop out less frequently, and perform better on state assessments than non-athletes.¹¹ Other studies have also found a correlation between students' participation in high school extracurricular activities and academic performance.¹² Second, student extracurricular participation contributes to improved psychological and mental development. Skills required to be successful in sport participation, like cooperation and working towards a collective goal, helps adolescents develop socially.¹³ Moreover, creating a community of students with similar interest, working towards complex goals, and peer acceptance may contribute to self-image, boosting a child's self-esteem.¹⁴ An analysis of data from the National Longitudinal Study of Adolescent Health demonstrated that school extracurricular activities were positively associated with the development and maintenance of adolescents' friendships.¹⁵ In-turn, students who participate in such activities may feel supported and have a better sense of belonging at school.¹⁶ Participation in interscholastic athletics allows students to establish social networks with their peers and create a community-based identity.¹⁷

¹⁰ Matthew J. Mitten & Timothy Davis, *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*, 8 VA. SPORTS & ENT. L.J. 71, 112 (2008).

¹¹ Angela Lumpkin & Judy Favor, *Comparing the academic performance of high school athletes and non-athletes in Kansas in 2008-2009*, 4 J. of SPORT ADMIN. & SUPV. 41 (2012).

¹² See *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities* at 187; Susan A. Dumais, *Cohort and Gender Differences In Extracurricular Participation: The Relationship Between Activities, Math Achievement, and College* 29 SOCIOLOGICAL SPECTRUM 72 (2009); Fox CK, et. al., *Physical activity and sports team participation: associations with academic outcomes in middle school and high school students*, 80 J. SCH HEALTH 31(2010).

¹³ Stephan Chan, *The Role of Sports on Minority Adolescents, Poverty & Prejudice: Our Schools Our Children*, Spring Quarter 1998-1999.

¹⁴ Kelly Brown, et al., *Participation in sports in relation to adolescent growth and development*, 6 J. TRANSNAT'L PEDIATRICS 150 (2017).

¹⁵ David Schaefer, et. al., *The contribution of extracurricular activities to adolescent friendships: new insights through social network analysis*, 47 J. DEVMENT'L PSYCHOL 1141 (2011).

¹⁶ Casey A. Knifsen & Sandra Graham, *Too much of a good thing? How breadth of extracurricular participation relates to school-related affect and academic outcomes during adolescence*, 41 J. Youth and Adolescence 379 (2012).

¹⁷ See *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities* at 187.

Both Policies and Practices Must Comport with All State and Federal Anti-Discrimination Laws

Sociocultural barriers, like discrimination and stereotyping, already negatively impact the development of children of color. In order to limit disruption during youth development it is imperative that athletic rules and the actions of authority figures comport with anti-discrimination provisions as required by federal and state law. These laws ensure that all students receive a quality education.

Given the nature of the aforementioned actions of Alan Maloney –including his ability to continue to referee despite a pattern of racial discriminatory behavior– and the serious harms similar actions may have on Black children participating in interscholastic activities, we will continue to monitor the investigations and responses from the NJSIAA and the Civil Rights Division. Adequately responding to inequality and unfair treatment in schools is vital to protect the civil rights of students, and to ensure that schools are safe and inclusive places for all students.

We request that you consider the information that we are sharing and that you reach out to us to discuss these issues further as your investigation progresses.

Sincerely,



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