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Via Electronic Mail

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Dear Mr. Neaves and Dr. Niehoff:

The NAACP Legal Defense and Educational Fund, (Inc.) (LDF)¹ writes to 1) express our concern regarding grooming policies that disproportionately target and penalize Black children for wearing their hair in culturally significant hairstyles, and 2) address an incident that occurred earlier this month at a high school powerlifting competition in Jackson, Mississippi.

¹ 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 discriminatory school policies and practices, including racially discriminatory grooming policies.

On April 1, 2022, moments before a young Black female athlete was set to compete, meet officials informed her that she must remove beads from her braided hair or be disqualified.² Officials cited to a rule in the Mississippi High School Activities Association (MHSAA) Powerlifting handbook that prohibits hair adornments, including hair beads.³ There does not appear to be any legitimate justification for this rule in general or its specific application on April 1. Powerlifting is an individual non-contact sport and persons donning hair beads routinely engage in all manners of unrestricted physical activity with no danger posed to themselves or others.

Regrettably, there are countless stories similar to the discriminatory incident in Jackson, Mississippi. When Black students in the United States wear their hair in culturally significant hairstyles — including braided hair adorned with beads—they are disproportionately singled out and disciplined for violating various regulations and policies. This discriminatory treatment results in lost educational and extracurricular opportunities and, in certain instances, violates state and federal law.

LDF urges the National Federation of State High School Associations (NFHS) and the Mississippi High School Activities Association (MHSAA) to reassess their rules to ensure that all grooming policies serve legitimate safety concerns and are applied in a manner that does not target Black students with culturally significant hairstyles.

History of Black Hair and Culturally Significant Hairstyles

A Black person’s decision to wear their hair in a culturally significant hairstyle, adorned with hair beads, is not simply a matter of personal preference or style. Black women have worn their hair in braids adorned with beads for centuries.⁴ Dating back to the fifteenth century, “hair

² *Black student-athlete forced to remove hair beads to remain in competition*, Revolt, April 8, 2022, https://www.revolt.tv/article/2022-04-08/161840/black-student-athlete-forced-to-remove-hair-beads-to-remain-in-co,1_competition/.

³ The 2022 MHSS Powerlifting Rule Book states in part: “No handkerchiefs, bandanas, hats, beads or other head decorations will be allowed on the platform or weigh-in areas. Rubberbands and bobby pins may be worn to hold hair.” 2022 MHSAA Powerlifting Rulebook, III- Costume and Personal Equipment 5. Headbands, available at <https://www.misshsaa.com/2021/08/01/2021-22-powerlifting-rule-book/>.

⁴ Tracey Owens Patton, *Hey Girl, Am I More than My Hair?: African American Women and Their Struggles with Beauty, Body Image, and Hair*, 18:2 NAT’L WOMEN’S STUDIES ASS’N JOURNAL 24, 27 (Summer 2006) (noting that, dating back to the fifteenth century, “The complicated and time-consuming task of hair grooming included washing, combing, oiling, braiding, twisting, and/or decorating the hair with any number of adornments including cloth, beads, and shells. The process could last several hours, sometimes several days”), <https://www.jstor.org/stable/4317206>; Yolanda Chapman, *I Am Not My Hair! Or Am I?:*

was not only a cosmetic concern [for Black people], but ‘its social, aesthetic, and spiritual significance has been intrinsic to their sense of self for thousands of years.’”⁵ For many Black people, the unique curliness of their hair—specifically, the hair shaft’s “tightly coiled, kinked structure” — means that “combing and brushing can be a mildly painful procedure” and often time-consuming.⁶ In order “[t]o save time and reduce discomfort, styles are selected that can be left in for several days.”⁷ For Black children, this means that their hair is often “intricately sectioned, braided, and twisted” and “secured with bright plastic beads and barrettes.”⁸ Removing the beads can easily take 20 minutes, depending on how many braids the individual is wearing. Removing them hastily can damage the hair. Today, wearing your hair in braids adorned with beads continues to be a culturally significant custom for Black people that also assists in the care and maintenance of Black hair.

Hair Policies in NFHS and MHSAA Sports

Policies that forbid hair adornments (like the MHSAA Powerlifting rule) can disproportionality target and penalize Black youth. LDF is aware of several other instances where young Black student-athletes were subjected to discriminatory treatment because of a culturally significant hairstyle that included hair adornments. In March 2021, a Black high school student-

Black Women’s Transformative Experience In Their Self Perceptions Of Abroad And At Home, Thesis, Georgia State Univ. (2007) (explaining that, in the early fifteenth century in West African societies, “hairstyles were often ‘elaborate works of art, showcasing braids, plaits, patterns shaved into the scalp, any combination of shells, flowers, beads, or strips of material woven into the hair.’”), https://scholarworks.gsu.edu/anthro_theses/23; Barbara J. Heath, *Buttons, Beads, and Buckles: Contextualizing Adornment Within the Bounds of Slavery*, in HISTORICAL ARCHAEOLOGY, IDENTITY FORMATION, AND THE INTERPRETATION OF ETHNICITY 56 (Maria Franklin & Garrett Fesler 1999) (“Travellers’ accounts from the sixteenth through nineteenth centuries describe African women using beads in this way [tied or woven into their hair]”), http://www.roadtriptravelogues.com/uploads/1/1/6/9/116921398/historical_archaeology_identity_formatio.pdf.

⁵ Owens Patton, *supra* note 4.

⁶ Ingrid E. Roseborough, MD, & Amy J. McMichael, MD, *Hair Care Practices in African-American Patients*, 28 SEMINARS IN CUTANEOUS MEDICINE & SURGERY 103, 107 (2009), https://cdn.mdedge.com/files/s3fs-public/issues/articles/Vol28_i2_Hair_Care_Practices.pdf.

⁷ *Id.*

⁸ *Id.*

athlete in Oregon was told she had to remove her hair beads to play in a volleyball match.⁹ The student went into the bathroom and cut her hair to remove the beads. Afterward, she expressed that she “didn’t feel like herself anymore.”¹⁰ In April 2021, a Black female student in North Carolina was participating in a high school softball game when during the second inning, the umpire informed her that if she wanted to finish playing in the game, she had to remove her hair beads.¹¹ And relatedly, this past September, a Black six-year-old child was told that she could not play in a recreational soccer game because of her hair clips and bows. The child’s mother recounted how her daughter left the soccer field “crying” and “confused.”¹²

Commendably, in the past year, NFHS has amended several rules in an attempt to be more culturally inclusive. In July 2021, it removed language in its softball rules that prohibited student-athletes from wearing “hard items to control the hair.”¹³ In February 2022, NFHS amended its soccer rules and it now permits hair adornments (including beads) provided that they are “secured in a bun and do not present a safety hazard to the player”¹⁴ Similarly, in March 2022, NFHS revised its volleyball rules to permit “hair adornments provided they are securely fastened and do not present a safety hazard.”¹⁵ NFHS explained that the new rule “[c]reates inclusivity of hair styles while maintaining that the risk of injury to the athlete, teammates and opponents should not be compromised.”¹⁶

⁹ KATU Staff, *Parkrose Volleyball Player Forced to Remove Beads from Hair in Order to Play in Game*, KATU 2, Mar. 5, 2021, <https://katu.com/news/local/parkrose-volleyball-player-forced-to-remove-beads->.

¹⁰ *Id.*

¹¹ Briana Stewart, *North Carolina Teen Athlete Speaks Out After Being Forced to Cut Hair*, Good Morning America, May 15, 2021, <https://www.goodmorningamerica.com/culture/story/north-carolina-teen-athlete-speaks-forced-cut-hair-77708466>.

¹² Anthony Wilson, *6-year-old told she couldn’t play in Hope Mills soccer game because of hair clips and bow*, ABC 11, Sept. 21, 2021, <https://abc11.com/hope-mills-soccer-game-parks-and-recreation-hair-rules-youth/11035155/>.

¹³ *Player Equipment Changes Highlight Rule Revisions in High School Softball*, NFHS, <https://www.nfhs.org/articles/hair-adornments-permitted-in-high-school-soccer/>.

¹⁴ *Hair Adornments Permitted in High School Soccer*, NFHS, Mar. 3, 2022, <https://www.nfhs.org/articles/hair-adornments-permitted-in-high-school-soccer/>.

¹⁵ *Relaxed Hair Adornment, Uniform Rule Changes for High School Volleyball in 2022- 23*, NFHS, Feb. 10, 2022, <https://www.nfhs.org/sports-resource-content/volleyball-rules-changes-2022-23/>.

¹⁶ *Id.*

Nevertheless, there are outstanding policies that must be reviewed to ensure that they both properly address legitimate safety concerns and do not target Black students with culturally significant hairstyles. For example, powerlifting is a non-contact individual sport. It is not necessary that MHSAA Powerlifting Rules prohibit hair adornments to ensure safety.¹⁷ Moreover, MHSAA’s powerlifting rule concerning hair does not categorically ban all hard hair items. While the rule forbids “handkerchiefs, bandanas, hats, beads or other head decorations,” it permits athletes to use “[r]ubber bands and bobby pins” to hold their hair.¹⁸ There is even less justification for a rule that forbids hair beads, a hair item commonly associated with Black people, but allows athletes to wear bobby pins. MHSAA recently noted that it plans to revise the current rule that bans hair beads.¹⁹ MHSAA should implement a rule that permits hair adornments, provided that the hair does not pose a safety threat. This addresses any safety concerns and does not disproportionately impact Black students with culturally significant hairstyles.

NFHS must also review its rules to ensure that they are uniformly instituted across similar sports. For instance, basketball, wrestling, and soccer are all contact sports.²⁰ NFHS soccer rules permit hair adornments; however, they are not allowed in wrestling²¹ and basketball.²²

¹⁷ Note, MHSAA states: “The MHSAA is a member in good standing of the National Federation of State High School Associations (NFHS). Member schools must abide by the rules of the NFHS and/or the MHSAA.” *About Us*, THE MISSISSIPPI HIGH SCHOOL ACTIVITIES ASSOCIATION, <https://learn.misshsaa.com/about/> (last visited Apr. 13, 2022). NFHS, however, has not issued rules for powerlifting.

¹⁸ *Supra* note 2.

¹⁹ Stephen Pimpo, *Powerlifters rally to help girl at state championship who faced disqualification over hair beads*, WCBI, Apr. 19, 2022, <https://www.wcbi.com/powerlifter-hair-beads/>.

²⁰ *Sport Contact Levels*, Family Practice Notebook, <https://fpnotebook.com/legacy/Sports/Exam/SprtsCntctLvls.htm> (last visited Apr. 13, 2022).

²¹ Denis Tallini, *2020-201 NFHS Wrestling Powerpoint*, Wrestling Hair Rule 4-2-1, https://gisaschools.org/wp-content/uploads/2020/11/2020-21_NFHS_Wrestling_Rules.pptx (“Physical hair treatment items that are hard and/ or abrasive such as (beads, bobby pins, barrettes, pins, hair clips, et. or any other hair-control device) shall not be permitted”).

²² NFHS Basketball Rule 3-5-4(d) (prohibiting “hard items” including beads).

Finally, the amended NFHS soccer rules indicate that hair adornments must be secured in a bun.²³ Wearing one's hair to be in a bun, however, may not be possible for some Black children because of their hair length or hair texture. Similarly, if hair is cornrowed, it may not be possible to put the beaded ends in a bun. Instead, the rule should permit hair adornments, provided that they do not pose a safety threat.

Harms Imposed When Athletic Rules and Actions Disproportionately Target Black Youth

The discrimination that Black youth experience because of culturally significant hairstyles is particularly problematic because of the positive correlation between extracurricular activities and development. As explained below, research confirms that student participation in athletics increases the likelihood of positive educational outcomes, contributes to improved psychological and mental development, and creates an enhanced sense of belonging.

A 2008-2009 study of approximately 140,000 high school students found that student-athletes have higher graduation rates and perform better on state assessments, compared to non-athletes.²⁴ Other studies confirm that there is a positive correlation between high school extracurricular activities and academic performance.²⁵ Participating in sports also allows students to establish social networks with their peers, create a community-based identity,²⁶ and build social skills.²⁷ A study from the National Longitudinal Study of Adolescent Health demonstrated that school extracurricular activities were positively associated with the development and maintenance

²³ *Supra* note 14.

²⁴ 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).

²⁵ Matthew J. Mitten & Timothy Davis, Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities, 8 VA. SPORTS & ENT. L.J. 71, 112, 187 (2008); 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).

²⁶ Matthew J. Mitten & Timothy Davis, Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities, 8 VA. SPORTS & ENT. L.J. 71, 112, 187 (2008).

²⁷ Stephan Chan, The Role of Sports on Minority Adolescents, Poverty & Prejudice: Our Schools Our Children, Spring Quarter 1998-1999.

of adolescents' friendships.²⁸ Conversely, discrimination against Black youth because of culturally significant hairstyles imposes social and psychological harm. In order to provide opportunities to all students on an equal basis, it is imperative that athletic rules and the actions of authority figures do not disproportionately target and punish Black youth.

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

Targeting students with culturally significant hairstyles constitutes discrimination based on race in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title VI of the Civil Rights Act of 1964 ("Title VI"), and Mississippi Code § 25-9-149. Such practices also violate students' rights to freely express their heritage and ethnicity as protected by the First Amendment to the United States Constitution.

Title VI of the Civil Rights Act of 1964 forbids programs receiving federal funding from discrimination on the basis of race, color, or national origin.²⁹ It also prohibits discrimination based on characteristics and stereotypes associated with a protected class.³⁰ Thus, policies that target culturally significant hairstyles are discriminatory if they are intimately connected to a protected class and derived from invidious stereotypes. Miss. Code Ann. § 25-9-149 similarly prohibits various forms of discrimination based on a person's race, color, or national origin.³¹

Policies that discriminate against culturally significant hairstyles also infringe on student-athletes' rights to express themselves freely without repercussions from the government. Expression that is not verbal or written is protected under the First Amendment when it is

²⁸ 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).

²⁹ MHSAA 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 Mississippi Board of Education, and it receives dues from member schools that receive federal funds. See *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 408 (5th Cir. 2015) (noting a school district that receives federal funds can be found liable under Title VI).

³⁰ 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 *E.E.O.C. v. Boh Bros. Const. Co.*, 731 F.3d 444 (5th Cir. 2013) (finding plaintiff could rely on gender-stereotyping evidence, such as coworkers taunting plaintiff with "sex-based epithets" "directed at [his] masculinity," to show sex discrimination in violation of Title VII).

³¹ Miss. Code Ann. § 25-9-149.

intended to communicate a message that is received by others.³² For example, it is well established that a person is “capable of communicating” their heritage by “[v]isibly wearing [their] hair in a particular manner.”³³ MHSAA and NFHS must reevaluate their policies to ensure they comply with state and federal law.

Across the country, legislatures at the federal, state, and local level are working to address discrimination against people of color based on their hair through legislation known as the CROWN (“Creating a Respectful and Open World for Natural Hair”) Act.³⁴ The CROWN Act prohibits discrimination in employment and educational opportunities based on hair texture or protective hairstyles historically linked to ethnicity, such as locs, cornrows, twists, braids, Bantu knots, or Afros.³⁵ In March 2022, the United States House of Representatives voted 235-189 to pass The CROWN Act and the bill is now before the Senate.³⁶ 14 states and dozens of major municipalities across the country have also passed their version of The CROWN Act.³⁷

Solutions

Students should not be barred from participating in extracurricular activities because of hairstyles or hair formations that pay homage to their racial and cultural heritage. Given the nature of the recent actions against the young Black student-athlete and the serious harm that similar actions have on Black student-athletes, LDF urges NFHS and MHSAA to modify their rules. Adequately responding to inequality and unfair treatment in schools is vital to protect the civil rights of students and to ensure school safety and inclusivity for all.

LDF requests the opportunity to speak with NFHS and MHSAA about how to rectify policies that disproportionately harm Black students. Together, we can work to ensure all students,

³² *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 283 (5th Cir. 2001).

³³ *Gonzales v. Mathis Indep. Sch. Dist.*, No. 2:18-CV-43, 2018 U.S. Dist. LEXIS 216577, at *20 (S.D. Tex. Dec. 27, 2018); *see also A.A. v. Needville Indep. Sch. Dist.*, 701 F. Supp. 2d 863, 883 (S.D. Tex. 2009).

³⁴ The CROWN Act, <https://www.thecrownact.com/about> (last visited April 22, 2022).

³⁵ *Id.*

³⁶ CROWN Act of 2022, H.R. 2116, 117th Cong. (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/2116/>.

³⁷ The CROWN Act, <https://www.thecrownact.com/about> (last visited April 11, 2022). Unfortunately, in 2020, the CROWN Act Bill did not pass in the Mississippi Senate.



regardless of race or ethnicity, have equal access to educational and extracurricular opportunities. We look forward to your response.

Respectfully,

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