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St. Tammany Parish School Board
Attn. Superintendent Sloan
P.O. Box 940
Covington, LA 70434-0940

Dear Ms. Sloan:

We are in receipt of your recent decision denying Curtis Harjo an exemption to the school dress code requirement requiring boys to wear short hair. We were very disappointed by your decision. As you are aware, five-year-old Curtis Harjo is being threatened with expulsion from Florida Avenue Elementary due to his having long hair. Curtis is a Native American child, and, as such, has always worn his hair in a single braid down his back. The front of Curtis' hair was cut by his mother as a sign of mourning over the death of his grandfather. The braid he wears in the back of his hair is central to his religious beliefs and his cultural heritage.

Your attorneys have informed us that if we are dissatisfied with your decision, the next step is to file an appeal with the entire school board, which we do through you. Therefore, we write to formally lodge such an appeal, so that we may ask the school board to allow Curtis to continue to attend St. Tammany Parish Schools. Although we have submitted this letter to you multiple times throughout this process, we are reiterating our points here, assuming that this letter will be forwarded to the school board members for consideration.

Ms. Harjo submitted the following request to Ms. Motte, principal of Florida Elementary:

> This letter is regarding my son Curtis Harjo and our Native American religion. Our family comes from along line of Seminole and Creek Native American Tribes. Curtis and I are enrolled members of the Seminole tribe. We came from Wewoka, Oklahoma, where there are numerous Native American Tribes. Many, many kids Curtis' age and older wear their hair long, in keeping with our traditional beliefs and ways. Coming to Louisiana has been an adventure for us in a lot of ways. So St. Tammany school policies are very different from others that we were used to in Oklahoma in the tribal community where we lived. In no way do I mean to be disrespectful or rebel in any way nor does Curtis. I just want St. Tammany School District to understand or try to recognize our religion and way of life. I'm just asking for my son to go to school without hiding his Native American culture. As being Native American my father has taught me that our hair is part of Spirit. Our hair and our bodies are a gift from the Great Spirit and we respect and honor the Great Spirit when we wear our hair long. This is why it violates my religious beliefs for cutting Curtis hair to attend school. As for me I have short hair. My father Passed away and he was very dear to Curtis and I. I'm still in mourning of my beloved father. I cut my hair and part of Curtis' hair out of mourning for my father. What he taught me in the short time he was here that we are from very proud people, and no way should I be ashamed of who I am. And as I'm teaching my son Curtis. Native American is what we are and nothing can change who our Creator made us. Curtis is a very good kid and he loves school very much. He enjoys his teacher Mrs. Folse. Curtis truly doesn't understand why the school wants to cut his hair. Please accept my sincere request for an exemption from the district hair policy. Thank you.

Unfortunately, on Friday, September 26, Ms. Motte denied Ms. Harjo's request for an exemption, stating simply, "I am unable to grant your request. You may submit a request to the Administration to review my decision, if you wish." Ms. Motte did not grant Ms. Harjo a hearing, and Ms. Harjo has no idea as to the basis of the denial of her request. However, we filed an appeal, and appeared at the School Board office for a hearing before Superintendent Sloan.

Ms. Sloan has now denied the requested exemption as well. She stated that she would allow Curtis to attend school if he will wear his hair pinned in a bun-like fashion at his neck. This solution is unworkable, as Ms. Harjo articulated at the hearing. It would be uncomfortable and distracting to Curtis, who is a five year old male child. It would require constant monitoring and maintenance by his teacher, to ensure it stays in place, unlike the single braid he wears down his back. Most importantly, it does not accommodate Curtis' religious beliefs and expression; it is not part of the Seminole tradition to pin hair up. Therefore we are again writing to ask the Florida Elementary administrators and St. Tammany Parish School Board to allow Curtis to continue to attend school. We ask that this decision be made because it is the morally correct thing, and because it is legally the correct course of action.

Freedom of Religion and Freedom of Expression

Many Native Americans, including the Harjos, have a sincerely held religious belief that prevents them from cutting their hair except at certain prescribed times. This belief has been recognized by the

courts. One court, after considering the extensive testimony of expert witnesses on Native American religious beliefs, explained,

> * * * The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. * * * The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. * * * While also a matter of tradition, the wearing of long hair for religious reasons is a practice protected from government regulation by the Free Exercise Clause.[1]

Religion is central to American Indian society and pervades every aspect of Indian life. To continue tribal culture, American Indians must be free to practice their religion and to teach religious practices to their children. While the free exercise clause of the first amendment protects American Indian religious freedom, courts have often failed to recognize the fundamental differences between tribal religions and monotheistic Western religions. In an attempt to accommodate and clearly recognize these differences, Congress passed the American Indian Religious Freedom Act (AIRFA), which protects American Indians' freedom 'to believe, express, and exercise' their traditional religions.[2]

Like the plaintiff in Teterud, the Harjo family will be able to prove- by expert witnesses if necessary- that Curtis' hair length is a sincerely held religious belief of the family, and of the tribes with which they share heritage and lineage. It is also a method of self-expression, because it communicates to others an important fact about Curtis: that he is a Native American for whom traditional religious practices are important to him and his family.

Because St. Tammany Parish is restricting the fundamental rights of a child in the school district, and is infringing upon Curtis' right to exercise his religion and to self-expression, and the right of parental control and determination, it is what the courts have referred to as a "hybrid claim," meaning that it involves religion and another fundamental right. This brings it under a heightened standard that has been applied by the district courts in the Fifth Circuit.[3] Essentially, St. Tammany Parish will have to prove that the policy furthers an important government interest, and that the restriction is no more than necessary to further that interest.[4] Because Curtis' teachers have given him an "E" for "Excellent" in conduct every day he has attended school, and have noted no disruption that his hair has caused, we do not understand how the school board could justify this restriction.

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[1] Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975) (internal citation omitted).
[2] Brazen Gould, Diana, The First Amendment and the American Indian Religious Freedom Act: An Approach to Protecting Native American Religion, Iowa Law Review (1986).
[3] Chalifoux v. New Caney Indep. Sch. Dist., 976 F.Supp. 659, 671 (S.D. Tex. 1997); Alabama & Coushatta Tribes v. Trustees of Big Sandy Indep. Sch. Dist., 817 F.Supp. 1319 (E.D. Tex. 1993).
[4] United States v. O'Brien, 391 U.S. 367 (1968).

If the school requires Curtis to cut his hair, the District will not only violate his rights, but also his mother's firmly established right to direct his religious upbringing.[5] We hope that the St. Tammany Parish School Board supports the rights of parents to instill their children with religious beliefs as they see fit, and that St. Tammany Parish would not want to interfere with the religious upbringing of a child unless absolutely necessary. As discussed above, the interests the school hopes to advance through its hair-length policy do not justify the significant burden that application of the policy to Curtis would impose upon his parents.

We are additionally concerned that Curtis is being discriminated against on the basis of religion and race because he is Native American. We have obtained pictures that clearly show that there are multiple students of other racial groups attending schools in St. Tammany Parish who have hair that exceeds the limits set forth in the St. Tammany Parish District Handbook for Students and Parents (2008-2009)("Handbook"). The Handbook expressly directs administration and staff to implement the Handbook consistently and fairly across the student population, which is simply not being done in this instance. If Curtis' hair is to be cut, a consistent application of the Handbook grooming policy would dictate that ALL students in the district with hair touching the base of a collared shirt also have their hair cut. The gathering of long hair, including dreadlocks, in a pony-tail fashion would also not be permitted under the express terms of the Handbook.[6] To be clear, however, that extreme result is not our intent here, for such a result would still violate Curtis' rights.

We believe that Curtis' religiously based reasons for wearing long hair, as well as the other hairstyles currently being accommodated by the District, can be reasonably accommodated while meeting the District's stated goal of "providing an effective learning environment for all students" and permitting all students "to actively participate in school" without "distract[ing] the education process." Handbook at p.7. To date neither we nor the Harjo family have been told either verbally or in writing how Curtis' hair length frustrates these objectives. We are attaching two pictures of Curtis to this letter for your review, so that you may evaluate for yourself the non-disruptive nature of his hair. Because female students wear long hair without causing a disruption, we are unable to discern any rational basis for not allowing Curtis to do the same.

The wearing of hair for Curtis is akin to the wearing of a religious icon by a student. We would object if St. Tammany Parish were to tell a Christian child that she could not wear her cross, or if the Parish were to permit the wearing of religious icons of one faith and prohibited those of another faith. In discriminating against Curtis' religious beliefs, St. Tammany is expressing a preference for certain religions, which is unacceptable. Moreover, St. Tammany appears to be burdening a religion that the Louisiana Constitution contemplates explicitly as protected. The Louisiana State Constitution of 1974 in

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[5] Tribes, 817 F.Supp. at 1334 (citing Wisconsin v. Yoder, 406 U.S. 205 (1972); Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925)). The Fifth Circuit has recognized that Yoder requires a "stricter standard than rational basis review" where "parental interests [are] combined with free exercise interests." Littlefield v. Forney Indep. Sch. Dist, 268 F.3d 275, 290 (5th Cir. 2001) (applying rational basis review where school uniform policy contained religious exception); see also Yoder, 406 U.S. at 233, 92 S.Ct. 1526 ("[W]hen the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a reasonable relation to some purpose within the competency of the State is required to sustain the validity of the State's requirement under the First Amendment.").

[6] We have obtained pictures of other students in the district who wear hair violating the terms of the Handbook. Messrs. Pittman and Pastuszek have asked us to provide the pictures, and we will do so in the near future, once we can do so and protect the identity of the students. It is not our responsibility, or that of our client, to identify these students, but merely to use this as evidence of selective enforcement of the Handbook.

Article XII § 4 states, "[t]he right of the people to preserve, foster, and promote their respective historic linguistic and cultural origins is recognized." St. Tammany's actions in the immediate case violate this state constitutional provision, in addition to the U.S. Constitution.

Due Process Concerns

We also have due process concerns about how this expulsion process has unfolded. First, we were told that Ms. Harjo had to apply for an exemption, when no such process is set forth in the Student Handbook. Then when we asked for any criteria that would be used in determining whether to grant the exemption, we were advised that there are no such criteria, thus meaning that the decision could be based upon any reason Ms. Motte wished to use. Third, we were told that Ms. Motte would provide Ms. Harjo with an opportunity to be heard in person, only to have Ms. Motte issue a decision without affording that opportunity. Fourth, Ms. Motte issued a one sentence decision, with absolutely no explanation of her reasoning, and with no explanation of the any appeal process. Fifth, Ms. Motte informed Ms. Harjo that she was "unable" to grant an exemption, which indicates that Ms. Motte lacks the authority we were told she possessed to grant an exemption. Sixth, we still have no idea upon what basis Curtis is being denied an exemption by Ms. Sloan.

We are trying to help Ms. Harjo comply with the process as best as we can understand it, but it has been difficult due to the lack of a written procedure and the lack of objective criteria to guide the decision-maker. Our ability to file a meaningful, effective appeal has been stymied by the consistent failure of every decision-maker to tell us exactly why they are denying Curtis an exemption to the dress code. Should this matter proceed beyond this stage, we seek to preserve our rights to raise a due process challenge.

Conclusion

We believe that allowing Curtis to wear his hair consistent with his religious belief is in keeping with the letter and spirit of the St. Tammany Parish Student Handbook, and the law. Your Handbook clearly contemplates religious diversity within the student body, by providing that students shall be afforded excused absences for recognized religious holidays of the student's own faith. Curtis' hair is worn in a single braid. It is neatly kept such that there are no grooming or hygiene concerns implicated. The school district's rationale regarding religious holiday observance should logically be extended to include an accommodation of a sincerely held religious objection to the dress code.

We hope that this letter will help to clarify the Harjo's religious beliefs for the school district. Curtis' hair is truly a matter of sincere religious conviction and self-expression. We hope that St. Tammany Parish School district respects religious freedom and diversity, and will therefore allow this kindergartener to attend school.

It is our understanding that Ms. Harjo will be granted a hearing before the school board. Please notify us should you schedule such a hearing, as we intend to accompany her to the hearing. We sincerely hope that this matter will be resolved expeditiously and amicably, so that everyone can devote their energies where needed the most: providing an education to Curtis, and to every other student in the Parish.

Sincerely,

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Legal Director
ACLU Foundation of Louisiana

Steven C. Moore
Senior Staff Attorney
Native American Right's Fund

cc: Harjo Family
Stephen Pevar, Esq.
Ms. Motte
Mr. Pittman
Mr. Pastuszek