

P.O. BOX 56157
NEW ORLEANS, LA 70156

KATIE SCHWARTZMANN
LEGAL DIRECTOR

March 17, 2011

Livingston Parish School Board
Attn. Hearing Officer
P.O. Box 1130
Livingston, LA 70754

Dear Hearing Officer:

Please be advised that we represent Seth Chaisson, who was suspended from Juban Parc Junior High School due to his having long hair. Seth is a Native American student, and wearing his hair long is central to his religious beliefs and his cultural heritage. Two days ago, we wrote to the principal of the school, as well as the LPSB Superintendent, advising that Seth's suspension was unconstitutional. We have not received any response. Accordingly, we are formally hereby appealing his suspension, and requesting a hearing with your office.

Background

Many Native Americans 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, "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." *Teterud v. Burns*, 522 F.2d 357 (8th Cir. 1975). The Chaisson family will be able to prove- by expert witnesses if necessary- that Seth's hair length is a sincerely held religious belief 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 Seth: that he is a Native American for whom traditional religious practices are important to him and his family. By suspending him from school, the Board is violating Seth's statutory and constitutional rights.

Statutory Analysis

As you may be aware, in 2010 Louisiana passed a version of the Religious Freedom and Restoration Act, or "RFRA." This legislation imposes "strict scrutiny" on any burden on religious liberty, which means that the school board must have a compelling interest that it is seeking to achieve, and the burden on religion must be narrowly tailored to achieve that interest. La. R.S. 13:5231 *et seq.* Just last year, the Fifth Circuit Court of Appeal examined the Texas RFRA's application to a Native American student's hair length. The court concluded that it is a violation of the student's rights to force him to cut his hair or hide his hair in violation of his religious belief. We strongly encourage you to read that opinion, which is controlling of this situation, and makes clear that you are violating Seth's rights by suspending him from school. *A.A. v. Needville Independent School District*, 611 F.3d 248 (5th Cir. 2010).

Constitutional Analysis

Further, as Seth's situation involves the right 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 in Chalifoux v. New Caney Indep. Sch. Dist., 976 F.Supp. 659 (S.D. Tex. 1997) and Alabama & Coushatta Tribes v. Trustees of Big Sandy Indep. Sch. Dist., 817 F.Supp. 1319 (E.D. Tex. 1993). If the school requires Seth to cut his hair, it will violate not only his rights, but also his mother's firmly established right to direct his religious upbringing, which similarly raises the level of scrutiny. To pass constitutional muster, Livingston Parish will have to prove that the policy furthers an important government interest, and that the restriction is no more restrictive than necessary to further that interest. United States v. O'Brien, 391 U.S. 367 (1968). We do not believe that the restriction can survive either O'Brien or the "disruption" analysis of Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 509 (1969).

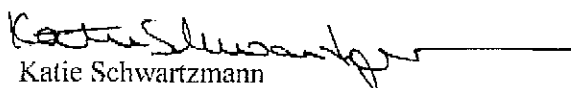
Conclusion

The wearing of hair for Seth is akin to the wearing of a religious icon by a student. We would object if the school were to tell a Christian child that she could not wear her cross, or if it were to permit the wearing of religious icons of one faith and prohibited those of another faith. In discriminating against Seth's religious beliefs, the school is expressing a preference for certain religions, which is unacceptable. The school's actions in the immediate case violate this state constitutional provision, in addition to the Louisiana and U.S. constitutions.

We are hereby requesting a formal hearing. We request reversal of Seth's suspension, reversal of any write-ups or disciplinary action taken against him, and that he be allowed to make up any work missed as a result of disciplinary action against him. It is our understanding that this controversy has adversely affected Seth personally, as well as his grades. We ask that the School Board immediately stop enforcing the dress code against him, and take all steps to remedy any harm he has suffered.

Please contact me at your earliest convenience to schedule the hearing.

Sincerely,



Katie Schwartzmenn
Legal Director
ACLU Foundation of Louisiana

cc: Chaisson family
Steven Moore, Native American Rights Fund
Superintendent Spear, via facsimile to (225) 686-3052
Tom Jones, attorney for LPSB, via facsimile to (225) 664-9477