March 20, 2023

Sent via E-Mail

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Dear Chairman Spencer and Board of Trustees Members:

The ACLU Women's Rights Project, the ACLU Program on Freedom of Religion and Belief, the ACLU Racial Justice Program, and the ACLU of North Carolina write on behalf of Logan [redacted], a Native American first grader attending Classical Charter Schools of Leland (the "School" or "CCSL"). We are gravely concerned that school officials have demanded that Logan cut his hair in violation of his religious and cultural beliefs. Based on our investigation, it appears that a CCSL rule that boys (and only boys) wear their hair short violates Logan's rights under the North Carolina Constitution, the U.S. Constitution, Title IX of the Education Amendments of 1972, and Title VI of the Civil Rights Act of 1964.

We understand that the Board has scheduled a meeting to consider application of the short-hair rule to Logan. We strongly urge you to immediately grant him an accommodation that allows him to wear his hair down his back in a long braid, as his tribal and religious customs dictate.

I. Factual Background

Logan is a member of the Waccamaw Siouan Tribe of North Carolina, one of eight tribes recognized by the state. He wears his hair long in accordance with his Tribe's religious and cultural traditions.

a. Classical Charter Schools of America's Short Hair Rule for Boys

Classical Charter Schools of America ("CCSA") maintains a common uniform policy across all its affiliated schools, including CCSL. This policy imposes one set of grooming and dress regulations for boys, and another for girls. Regarding hair for boys, the uniform policy states:

- "Hair must be neatly trimmed and off the collar, above the eyebrows, not below the tops of the ears or eyebrows, and not an excessive height[.]"

- "Distracting, extreme, radical, or faddish haircuts, hair styles, and colors are not allowed."[1]

There is no requirement that girls cut their hair to a certain length.

The School's uniform policy is part of its code of student discipline. If a student violates the discipline code, including the uniform policy, escalating disciplinary action will be taken. Depending on the persistence of a violation, the Headmaster "will determine appropriate disciplinary action which may include on-campus community services, after-school detention, limits on free play, exclusion from off-campus activities, parental attendance in class, suspension, expulsion, or dismissal from the School."[2]

b. Logan Follows His Tribe's Traditions by Wearing Long Hair

The Waccamaw Siouan Tribe believes, as do many generations of Native Americans, that the hair is part of the spirit of the person. Like many other members of his Tribe, Logan wears his hair long as a spiritual and cultural practice. He performs as a Chicken Dancer (a kind of grass dancer) at Native American Pow Wows across the country, and his hair plays an integral role in his observance of this religious practice and others. His hair is part of the traditional way to wear his regalia. Logan's hair is a central part of his identity, culture, and religion as a member of the Tribe. Those who follow this tradition cut their hair for ceremonial purposes, including, for instance, to grieve and honor a deceased family member.

c. The School Suddenly Demands that Logan Cut His Hair to Stay in School

Logan's religious and cultural practices call for him to wear his hair in a long braid down his back. Nevertheless, he has abided by CCSA's written hair rules for boys by wearing a bun since starting kindergarten, burdening his religious exercise. Cutting his hair, as the school has demanded, would further exacerbate that burden, and make it intolerable because he would be unable to wear his hair long and in a braid outside of school, including for religious rituals and practices.

As we understand, on Monday, February 20, 2023, Logan's father was approached by CCSL Headmaster Laurie Benton and told that he needed to cut Logan's hair to comply with the School's hair rules for boys. Logan's mother, Ashley Lomboy, immediately followed up with Headmaster Benton to question how Logan's hair, which had never been an issue previously, now

[1] Classical Charter Schools of America, *Classical Charter Schools of America Uniform Policy*, 2 (last revised June 29, 2022), https://ccsam.net/wp-content/uploads/2022/06/Classical-Charter-Schools-of-America-Uniform-Policy-0220629.pdf.

[2] Classical Charter Schools of America, *2022-2023 Parent and Student Handbook*, 22-23 (last revised Aug. 30, 2022), https://ccsam.net/wp-content/uploads/2022/09/CCS-America-Parent-Student-Handbook-2022-23-0220830.pdf.

violated the hair rules. Headmaster Benton directed Ms. Lomboy to contact Lead Administrator Steve Smith.

Ms. Lomboy relayed to us that in a meeting on Wednesday, February 22, 2023, Mr. Smith explained that Baker Mitchell, the School's founder, had recently visited the CCSA campuses and complained to the Board of Trustees about seeing boy students with their hair in buns. As a result, "Man Buns" were reinterpreted as a prohibited "faddish" hairstyle for boys. When Ms. Lomboy asked if this change was going to be put into the written uniform policy and whether buns were considered "faddish" for girls, Mr. Smith said no. Ms. Lomboy expressed her concern that allowing girls, but not boys, to wear buns was discriminatory and asked why all boys were being required to have short hair to attend school. In response, Mr. Smith said, "We want them all [i.e., boy students] to look the same." Ms. Lomboy also explained that Logan could not be asked to cut his hair because of its religious and cultural significance. In response, Mr. Smith advised her to submit a grievance letter per the School's grievance policy.

On February 23, 2023, Ms. Lomboy submitted her grievance letter—a powerful account of Logan's personal commitment to the longstanding religious and cultural tradition of Native Americans wearing long hair. Mr. Smith confirmed that he had received her grievance on Thursday, February 23, 2023.

On Friday, March 10, 2023, Ms. Lomboy received a two-sentence email from Mr. Smith, with Headmaster Benton copied, denying her grievance because "we must apply the policy equally to all [boys] and we cannot make an exception." When Ms. Lomboy begged him to reconsider and at least let Logan complete the school year without the significant disruption of moving schools, Mr. Smith refused. And when Ms. Lomboy asked him to state, in writing, the exact policy that Logan's hair violated, he responded on March 16, 2023 by reciting the School's written hair rules for boys, adding that "Man Buns and Ponytails are not approved."

Notably, Ms. Lomboy's grievance letter requested that Logan be able to wear his hair in a *braid.* Neither the text of the handbook policy nor Mr. Smith's email mention any prohibition on braids.

Under Mr. Smith's directive, there is no way for Logan to attend school without cutting off his hair, which will deprive him of his cultural heritage and religious practice outside of school and cause him and his family immeasurable distress and spiritual harm.

Although the school is currently on Spring Break through March 29, 2023, Mr. Smith notified Ms. Lomboy on March 16 that Logan must cut his hair before returning. As a result, Ms. Lomboy and Logan fear he will be disciplined harshly and unfairly once he returns to school because of his cultural and religious beliefs.

II. Legal Concerns

CCSA's discriminatory hair rules for boys appear to violate the Free Exercise Clause of the First Amendment and freedom of religion under the North Carolina Constitution, the Fourteenth Amendment to the U.S. Constitution, Title IX of the Education Amendments of 1972

("Title IX"), Title VI of the Civil Rights Act of 1964 ("Title VI"), and the right to education guaranteed by the North Carolina Constitution.

a. The School's Requirement that Logan Cut His Hair Appears to Violate Logan's Free Exercise Rights

Under the Free Exercise Clause of the First Amendment, a government policy is subject to strict scrutiny if it treats religiously motivated conduct or exercise less favorably than comparable secular conduct. *See, e.g.*, *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). The School's policy appears to do just that by allowing girls to wear their hair long or in buns or braids but prohibiting Logan from doing the same for religious reasons.[3] It is of no moment that other boys must keep their hair short. Here, because a significant portion of the student body is permitted to wear long hair in accordance with secular justifications, while Logan's identical religious conduct is subject to punishment, the School's policy appears to be unconstitutional. *See, e.g.*, *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist*., 611 F.3d 248, 271 (5th Cir. 2010) (holding that public school's refusal to accommodate Native American student's religious practice of keeping his hair long failed strict scrutiny). None of the reasons offered by the School for its policy are compelling. *See id.* Quite the contrary—they appear to be, in and of themselves, unlawful and cannot support any defense under any legal test.

Strict scrutiny also applies to regulations that infringe an individual's free-exercise rights under the North Carolina Constitution. *See In re Browning*, 124 N.C. App. 190, 476 S.E.2d 465, 467 (N.C. Ct. App. 1996) ("One may not be compelled by governmental action to do that which is contrary to his religious belief in the absence of a 'compelling state interest.'"). Article I, Section 13 of the North Carolina Constitution guarantees to all persons "the right to worship according to the dictates of their own conscience and provides that 'no human authority shall, in any case whatever, control or interfere with the rights of conscience.'" *Heritage Vill. Church & Missionary Fellowship, Inc. v. State*, 299 N.C. 399, 405–06, 263 S.E.2d 726 (1980) (quoting N.C. Const. Art. I, sec. 13). In addition, Article I, Section 19 of the North Carolina Constitution "proscribes 'discrimination by the State because of . . . religion . . . .'" *Id.* at 406, 263 S.E.2d at 730 (quoting N.C. Const. Art. I, Sec. 19). Given that CCSA allows girls to wear their hair long and in buns and has previously permitted boy students to wear their hair in buns, forcing Logan to violate his religious principles cannot be justified.

[3] Courts have repeatedly recognized that some Native Americans keep their hair long and in braids as a tenet of their sincere religious beliefs. *See, e.g.*, *Gallahan v. Hollyfield*, 670 F.2d 1345, 1346 (4th Cir. 1982) (recognizing that the tenets of a Native American man's religion "require that he not cut his hair because hair is regarded as a sense organ, a manifestation of being, and a symbol of growth."); *see also A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.,* 611 F.3d 248, 262 (5th Cir. 2010) (holding that Native American kindergartener demonstrated a sincere religious belief in not cutting his hair and wearing it "uncovered—*visibly* long"); *Teterud v. Burns*, 522 F.2d 357, 359 (8th Cir. 1975) (finding that the "wearing of long braided hair" is "a tenet of the Indian religion" and "a practice protected from government regulation by the Free Exercise Clause"); *Alabama & Coushatta Tribes of Texas v. Trustees of Big Sandy Indep. Sch. Dist.*, 817 F. Supp. 1319, 1326 (E.D. Tex. 1993) (recognizing that "the minor members of the Tribe have a sincerely held religious belief in the spiritual properties of wearing the hair long").

b. The School's Requirement that Logan Cut His Hair Appears to Impermissibly Infringe on Personal Liberty

It is binding precedent in the Fourth Circuit that "the right to choose one's hairstyle is one aspect of the right to be secure in one's person guaranteed by the due process clause and the equal protection clauses of the Fourteenth Amendment." *Mick v. Sullivan*, 476 F.2d 973, 973 (4th Cir. 1973) (invalidating dress code regulating the style and length of male students' hair). Therefore, when imposing a hair rule for boys, the school must establish "the necessity of infringing upon [the boy's] freedom in order to carry out [its] educational mission." *Massie v. Henry*, 455 F.2d 779, 783 (4th Cir. 1972); *see also Long v. Zopp*, 476 F.2d 180, 181 (4th Cir. 1973) (holding football coach was not justified in denying a football "letter" to student athlete who allowed his hair to grow longer than proscribed by the "hair code" during the off-season). "Proof that jest, disgust and amusement were evoked" by some students having long hair was insufficient to justify a prohibition on male students from wearing their hair below their collars or below and covering their ears. *Massie*, 455 F.2d at 780, 783. Logan has attended CCSL for all of kindergarten and much of first grade while wearing his hair in a bun without impeding the school's provision of education.

c. The School's Prohibition on Boys, But Not Girls, Having Long Hair Appears to Constitute Invidious Sex Discrimination

It is well established that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits school officials from treating students differently based on gender stereotypes or "overbroad generalizations about the different talents, capacities, or preferences of males and females." *See United States v. Virginia*, 518 U.S. 515, 533 (1996); *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 124 (4th Cir. 2022) (en banc).[4] Nor may schools force students to conform to such stereotypes.

Schools may not impose different terms or requirements based on gender without an exceedingly persuasive justification, and they may not rely on gender stereotypes when creating and enforcing dress-code policies. *See*, *e.g.*, *Hayden ex rel. A.H. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 583 (7th Cir. 2014) (requiring male athletes to have short hair discriminated on the basis of sex in violation of the Equal Protection Clause and Title IX); *Peltier,* 37 F.4th at 125 (Charter Day School's requirement that girls wear a skirt, jumper, or skort, while allowing boys to wear shorts or pants, violated the Equal Protection Clause). That means CCSA "must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." *Peltier*, 37 F.4th at 125 (quoting *Virginia*, 518 U.S. at 533).

Based on our investigation, the School's justification for its hair rules for boys, which prohibit hairstyles that are allowed for girls at the School—providing a "traditional learning

[4] As a public charter school, CCSL is "not insulated from the constitutional accountability borne by [North Carolina's] other public schools." *Peltier v. Charter Day School, Inc.*, 37 F.4th 104, 123 (4th Cir. 2022) (en banc); *see id.* at 130 ("[W]e hold that [CCSL], a public school under North Carolina law, is a state actor for purposes of Section 1983 and the Equal Protection Clause").

environment" with "high standards of decency, cleanliness, and conservative grooming"—does not come close to meeting the demanding requirements necessary to satisfy heightened scrutiny. On the contrary, this justification rests on the same harmful and archaic gender stereotypes that the U.S. Supreme Court has rejected time and again as *per se* unlawful.[5] The School unlawfully relies on gender stereotypes that boys must wear short hair to look "clean," "professional," or "masculine." *See Richards v. Thurston*, 424 F.2d 1281, 1286 (1st Cir. 1970) ("We see no inherent reason why decency, decorum, or good conduct requires a boy to wear his hair short."). But federal courts across the country have found that public schools cannot force students to conform to such gender stereotypes,[6] and hair rules that apply only to boys impose antiquated notions of masculinity and femininity. A uniform code based on gender stereotypes also sends a damaging message to boys that they cannot be feminine in any way, and this message harms all students by limiting their ability to express their gender and by promoting rigid views of gender norms and roles.

Furthermore, as recipients of federal funds, CCSL and Roger Bacon Academy, Inc. are entities covered by Title IX, which prohibits differential treatment of students based on gender.[7] *See Peltier*, 37 F.4th at 127-28. "Title IX unambiguously encompasses sex-based dress codes promulgated by covered entities." *Peltier*, 37 F.4th at 128. The U.S. Department of Education and the U.S. Department of Justice have also recently reiterated that Title IX prohibits discrimination in school dress and grooming policies.[8]

CCSA's hair rules for boys apply to Logan only because he is a boy. "[O]n the basis of sex," then, Logan is impermissibly "excluded from participation in, [] denied the benefits of, [and] subjected to discrimination by "education[al] program[s] . . . receiving Federal financial assistance," in violation of Title IX. 20 U.S.C. § 1681(a). He is treated "worse" than similarly situated female students because—while girls may have long hair, wear their long hair in a bun or braid, and attend school without discipline—Logan may not. The School's hair rules for boys force him either to be disciplined, and perhaps expelled, thus missing out on educational opportunities or to cut his long hair and abandon a deeply held part of his identity, culture, and religion.

d. <u>The School's Requirement that Logan Cut His Hair Appears to Constitute Invidious Race Discrimination</u>

Title VI of the Civil Rights Act of 1964[9] prohibits both intentional and disparate-impact discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Title VI prohibits discrimination against students of any religion when the discrimination involves "how a student looks, including skin color, physical features, or style

[5] *See*, *e.g.*, *Sessions v. Morales Santana*, 137 S. Ct. 1678 (2017); *United States v. Virginia*, 518 U.S. 515 (1996).
[6] *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020) (collecting cases); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017).
[7] 20 U.S.C. § 1681(a); *see also* 34 C.F.R. §§ 106.31(a) and (b)(4).
[8] United States' Statement of Interest, *Arnold v. Barbers Hill Sch. Dist.* (S.D. Tex. filed on July 23, 2021), https://www.justice.gov/crt/case-document/file/1419201/download.
[9] 42 U.S.C. § 2000d *et seq*.

of dress that reflects both ethnic and religious traditions."[10] Moreover, the Department of Education's Office for Civil Rights, which has enforcement power under Title VI, has made clear that it "does not tolerate," and will not hesitate to investigate, "race or national origin harassment commingled with aspects of religious discrimination[.]"[11]

As the Department of Justice has explained in its Title VI manual, "even benignly-motivated policies that appear neutral on their face may be traceable to the nation's long history of invidious race discrimination in employment, education, housing, and many other areas."[12] Policies and practices that have the effect of discriminating "must be eliminated unless they are shown to be necessary to the program's operation and there is no less discriminatory alternative."[13]

Neutral school policies that restrict Native American boys from wearing long hair can subject these students to significant adversity and harm. Native American boys like Logan are left with an untenable choice: face disciplinary action that causes him to miss school or cut his hair and lose his spirit. Native American students who ultimately comply with these restrictions under threat of punishment may suffer cultural, psychological, and spiritual harm.

The present-day harms that policies like CCSA's cause to Native American students like Logan cannot be fully understood unless they are placed into the historical context of the multifaceted efforts to separate Native American children from their families and tribes and to deny them their rights of cultural and religious expression. To provide just one example:

> Beginning with the Indian Civilization Act of 1819 and running through the 1960s, the United States enacted laws and implemented policies establishing and supporting Indian boarding schools across the Nation. During that time, the purpose of Indian boarding schools was to culturally assimilate Indigenous children by forcibly relocating them from their families and communities to distant residential facilities where their American Indian, Alaska Native, and Native Hawaiian identities, languages, and beliefs were to be forcibly suppressed.[14]

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[10] Office for Civil Rights, *Know Your Rights: Title VI and Religion*, U.S. Dep't of Education (2023), https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf.

[11] Kenneth Marcus, "*Dear Colleague" Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges*, U.S. Dep't of Education Office for Civil Rights (Sept. 13, 2004), http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html. *See also* Russlynn Ali, "*Dear Colleague" Letter,* U.S. Dep't of Education Office for Civil Rights (Oct. 26, 2010), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf ("While Title VI does not cover discrimination based solely on religion, groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith.").

[12] Title VI Legal Manual, *Section VII: Proving Discrimination—Disparate Impact*, Dep't of Justice, https://www.justice.gov/crt/fcs/T6Manual7 (last visited Mar. 16, 2023).

[13] *Id*.

[14] Deb Haaland, *Memo from the Sec. of the Interior Regarding Federal Indian Boarding School Initiative* (June 22, 2021), https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf ("Over the course of the Program, thousands of Indigenous children were removed from their homes and placed in Federal boarding schools across the country. Many who survived the ordeal returned home changed in unimaginable ways, and their experiences still resonate across the generations.").

Because of this history and because Native Americans have a special and specific cultural and religious belief and practice pertaining to long hair, the harms that they bear are often unfair or disproportionate compared to non-Native American students, who do not have the same cultural or religious obligations regarding their hair. Forcing Logan to cut his hair would cause him significant spiritual, cultural, and emotional trauma, as would denying him the opportunity to attend school merely because he is unable, as a religious and cultural matter, to cut his hair.

e. The School's Requirement that Logan Cut His Hair to Receive an Education Appears to Violate His Right to Education Guaranteed by the North Carolina Constitution

As the entity "with control over [CCSL]," the Board of Trustees has a constitutional obligation to "guard and maintain" the right of students under the North Carolina Constitution "to receive a sound basic education." *Deminski on behalf of C.E.D. v. State Bd. of Educ.*, 377 N.C. 406, 407, 414, 858 S.E.2d 788 (N.C. 2021); *see Leandro v. State*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (N.C. 1997) ("Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools."). As the Supreme Court of North Carolina recently and unanimously held, that right "rings hollow if the structural right exists but in a setting" where the students "lack a meaningful opportunity to learn." *Id.* at 414. A decision to endorse a policy that functionally denies Native American students access to the public schools under your control may well violate this obligation. *Id.*

"[E]qual access to participation in our public school system is a fundamental right, guaranteed by our state constitution." *Sneed v. Greensboro City Bd. of Ed.*, 299 N.C. 609, 618, 264 S.E.2d 106 (N.C. 1980). Because CCSA's interpretation and enforcement of the student code of conduct appears to "infringe[] on the ability of some persons to exercise a fundamental right," strict scrutiny applies under Article I, Section 19 of the North Carolina Constitution. *See Dep't of Transp. v. Rowe*, 353 N.C. 671, 675, 549 S.E.2d 203 (N.C. 2001). As shown above, the School's hair rules for boys are unlikely to meet this demanding test.

III. Conclusion

By enforcing hair rules for boys that prohibit hairstyles that are allowed for girls at the School, and by refusing to grant Logan an accommodation for his religious and cultural practice, the School appears to be violating the Free Exercise Clause of the First Amendment and freedom of religion under the North Carolina Constitution, the Fourteenth Amendment to the U.S. Constitution, Title IX, Title VI, and the right to education guaranteed by the North Carolina Constitution. We urge you to immediately grant Logan an accommodation allowing him to wear his hair in a long braid down his back, in accordance with his cultural and religious traditions. In the alternative, we ask the School to permit Logan to continue wearing his hair in a bun.

Please let us know by Thursday, March 23, 2023 whether you intend to comply with this request. This time frame is necessary because Mr. Smith informed Ms. Lomboy that Logan's hair must be cut short for him to return to school on March 29. If the Board agrees to suspend enforcement of the new rule pending its consideration of this appeal, we are amenable to providing the Board with more time to respond.

In the meantime, do not hesitate to reach out to Liza Davis and Jennesa Calvo-Friedman via email at ldavis@aclu.org and jcalvo-friedman@aclu.org if you have any questions or would like to discuss this matter further.

Sincerely,

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