AMERICAN CIVIL LIBERTIES UNION of LOUISIANA
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March 15, 2011

Livingston Parish School Board
Juban Parc Junior High
Attn. Principal Frizell
Via facsimile to (225) 664-5000

Dear Principal Frizell:

As you are aware, Seth Chaisson is being suspended from Juban Parc Junior High School due to his having long hair. He received a suspension notice today, and we understand that he will receive one every day until he cuts his hair. Seth is a Native American student, and, as such, wearing his hair long is central to his religious beliefs and his cultural heritage. We write to ask that you allow Seth to continue to attend Livingston Parish Schools. We ask that this decision be made because it is the morally correct thing, and because it is legally the correct course of action.

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,

> * * * 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. * * * United States v. Ballard, 322 U.S. 78, 87, 64 S.Ct. 882, 886, 88 L.Ed. 1148 (1944). 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). Like the plaintiff in Teterud, the Chaisson family will be able to prove- by expert witnesses if necessary- that Seth's hair length is a sincerely held religious belief, and 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 term, 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 in addition to the free exercise religion right, 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 out of the "rational basis" constitutional review of Employment Division v. Smith, 494 U.S. 872 (1990), and under a heightened standard that has been applied by the district courts in the Fifth Circuit. 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). Essentially, Livingston 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. 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).

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. 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.").

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. Moreover, the school appears to be burdening a religion that the Louisiana Constitution contemplates explicitly as protected. The Louisiana State Constitution of 1974 in Article XII § 4 states, "[t]he right of the people to preserve, foster, and promote their respective historic linguistic and cultural origins is recognized." The school's actions in the immediate case violate this state constitutional provision, in addition to the U.S. Constitution.

We are writing in hopes that this matter will be resolved expeditiously and amicably, so that everyone can devote their energies where needed the most: providing an education to Seth, and to every other student in your school. We hope that this letter clarifies Seth's rights, and that you will immediately allow him back to school, without the need for formal litigation.

Sincerely,

Katie Schwartzmann
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