

FEBRUARY 2023

HAIR, HEADDRESS, AND NOW

**CREATING A CULTURE
OF BELONGING IN
NEBRASKA SCHOOLS**

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Nebraska Indian
Education Association





Introduction to Author Organizations

American Civil Liberties Union of Nebraska:

For over 50 years in Nebraska, the ACLU of Nebraska has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.



The ACLU works with teachers, parents, students, community stakeholders, and policymakers to ensure equality and dignity for all students in Nebraska schools, regardless of their race, national origin, disability, religious affiliation, immigration status, gender, gender identity, or sexual orientation. The ACLU is committed to challenging the school-to-prison pipeline, a well-established and disturbing trend wherein children are funneled out of public schools and into the juvenile justice and criminal justice systems with lasting and sometimes lifetime negative collateral consequences.

Professor D. Wendy Greene and #FreeTheHair:

Professor D. Wendy Greene is an internationally recognized civil rights scholar and advocate whose authoritative body of legal publications and public advocacy combating race-based hair discrimination have informed every key legal reform in the U.S. that affirms natural hair discrimination African descendants encounter constitutes racial discrimination and have also culminated in the #FreeTheHair Movement. The #FreeTheHair Movement increases public awareness around the racial discrimination African descendants (as well as other people of color) experience on the basis of their hairstyles and hair texture and its harms alongside advancing legal, policy, and personal reform aimed to dismantle this systemic, global form of discrimination, which infringes upon one's human right to freedom of expression. Accordingly, the #FreeTheHair movement is dedicated to fostering and protecting African descendants' freedom to express a fundamental part of their racial, cultural, and religious personhood in workplaces, schools, and other spaces.



I Be Black Girl:

I Be Black Girl (IBBG) is a reproductive justice organization that serves as a collective for Black women, femmes, and girls to actualize their full potential to authentically be, through autonomy, abundance and liberation. We know that we are the energy and essence and deserve a world where Black, femmes and girls live wholly.



“Black girls are also directly impacted by criminalizing policies and practices that render them vulnerable to abuse, exploitation, dehumanization, and, under the worst circumstances, death.”¹ If we center those that are pushed to the margins, Black girls and femmes, we can create a learning environment where all students thrive.

Nebraska Indian Education Association:

The Nebraska Indian Education Association (NeIEA) advocates for over 4,400 American Indian and Alaska Native students attending public schools in Nebraska. Our Board of Directors is composed of Native American educators from the four tribal nations and Native urban areas in Nebraska. NeIEA endeavors to honor our beloved ancestors by: sharing and gaining acknowledgment of Indigenous peoples’ contributions to this country; sharing relevant research and best practices with school staff in preparing Indian students for academic success; supporting communities and families in reclaiming their heritage and rebuilding the remnants of our culture.



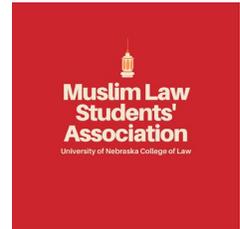
Nebraska Indian
Education Association

NeIEA collaborates with public and private agencies to positively impact educational systems by providing materials about Native Americans — by Native Americans. NeIEA believes everyone is a partner in Native American education. We work to increase Nebraskans’ acceptance of Native American philosophies and cultures. By promoting diversity and acceptance, rather than discrimination and exclusion, Nebraska’s leaders better serve all students. Institutions of learning must lead the way in preparing students for an ever-increasing global society.



University of Nebraska-Lincoln College of Law Muslim Law Students Association:

Muslim Law Student Association (MLSA) is dedicated to helping Muslim students feel welcomed and empowered to build the narrative of Muslims in the legal field together. MLSA aims to be a safe space for Muslim students and allies to discuss the multi-faceted experiences of Muslim law students. MLSA also provides educational programming to all law students about legal issues of consequence for Muslims in America including civil rights, discrimination, hate crimes, travel bans and immigration, international conflicts, and more. MLSA additionally shares observances like Ramadan, Eid, and more with the larger law student community.



National Landscape

The United States Constitution and federal civil rights laws protect students from discrimination on the basis of sex, race, national origin, and religion as well as other protected characteristics.² Yet, across the country, Black, Indigenous, and other students of color have been required to straighten, cover, or cut their hair as well as remove their religious or cultural headdress to meet school grooming or dress codes. Some school administrators have gone as far as cutting students' hair or banning students from a school-sponsored activity if they refused to cut or straighten their hair or remove their religious or cultural headdress.³ This is unacceptable.

The United States has a long history of racial, national origin, and religious discrimination against Black, Indigenous, and other communities of color on the basis of physical, observable characteristics, like hair length, hair texture, hairstyle, clothing, or headdress. By enacting policies that compel students to conform to a uniform style of grooming and appearance shaped by racial, ethnic, and religious bias, schools perpetuate harmful, discriminatory outcomes. These policies actively devalue students of color by preventing them from presenting as their full selves with natural and protective hairstyles like long hair, cornrows, locs, and braids or wearing a hijab, scarf, or other head covering. While some grooming policies may not be explicitly discriminatory on the basis of race, ethnicity or religion, these policies may be enforced in a discriminatory manner by disproportionately affecting students of color and students who are members of minority religious groups. Additionally, these policies may advance appearance standards that privilege Western, white, and/or dominant cultural norms.

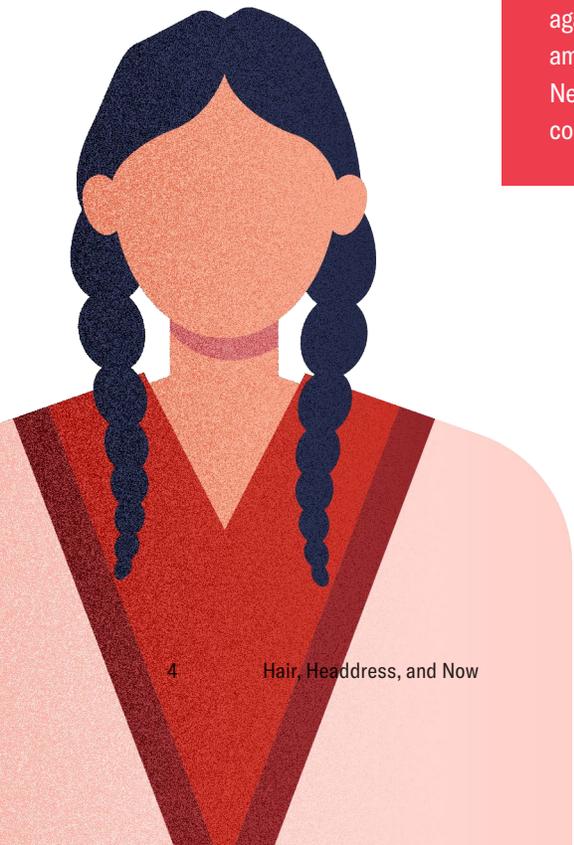
Nebraska Landscape

Like a growing number of states, Nebraska protects employees from being discriminated against for wearing their natural or protective hairstyles while at work.⁴ Nebraska state law defines race as characteristics associated with race inclusive of but not limited to natural and protective hairstyles.⁵ Therefore, in Nebraska, discrimination in hiring, firing, or other employment actions on the basis of an employee's natural or protective hairstyle is an unlawful form of racial discrimination⁶ for employers with 15 or more employees.⁷ While similar anti-discrimination laws recently enacted in other states may govern both employment and educational settings, Nebraska's protections only apply to workers and not students in Nebraska schools.

Robust civil rights protections against racial, national origin, and religious discrimination in Nebraska schools is more important than ever with Nebraska's public school student population increasing in racial, religious, ethnic, and cultural diversity. As of the 2021-2022 school year, of the 363,473 students enrolled in K-12 schools:

- 23,299 identify as Black;
- 70,139 identify as Hispanic/Latinx;
- 10,542 identify as Asian;
- 15,646 identify with two or more racial groups;
- 4,591 identify as American Indian/Alaska Native;
- 635 identify as Native Hawaiian or Pacific Islander; and
- 238,621 identify as white.⁸

In 2021, Senator Terrell McKinney championed LB 451, which protects workers against race-based discrimination to include natural and protective hairstyles among other characteristics. The legislation passed with a large majority vote in the Nebraska legislature with support from a diverse coalition of nonprofit organizations, community leaders, businesses, and most importantly, Nebraskans of color.



Students' Real-Life Hair Discrimination Experience

NEBRASKA STORIES



Lupita

Race: Black

Lupita resides in rural Nebraska, where protective styles are inaccessible due to a lack of stylists. She took her children to their father's home country, Kenya, and there she was able to find an affordable, accessible stylist who was able to execute a protective style on her daughter's hair. The hairstylist brought an array of colors as options to incorporate into her daughter's long, braided protective style. Lupita's first thought was, will this be acceptable to the school, due to their already strict dress code?

Once her family came back to Nebraska, and her children were back in school, she asked her daughter, "Did your teachers or administrators say anything about your hair?" The daughter responded no, they've all complimented her and seemed very enthusiastic about her new style. Later, her daughter's braids were taken out, the school year ended, and still, nothing was said.

At the beginning of the new school year, the school routinely dispersed the student handbook to parents and students. As she read the new handbook, everything was the same except for one little change in the dress code section. There was already existing language saying wigs are not allowed, and neither are "hair nets" which she understands meant durags. Further, it read that as of the new school year, attaching or weaving in unnatural-colored hair is unacceptable. She thought, "Bright hair bows are attached, sequined headbands are attached to the hair, they are only targeting styles that are woven in." She noticed that no one else in the school, that she saw, had woven in colors in their hair except for her daughter.

She attempted to speak to the administration, received empty answers, and was dismissed. She continued to advocate on behalf of her daughter and other Black kids in the school, raising the issue to not only the administration but the superintendent. Her concern, again, was dismissed. She was told this issue will not be reviewed until the beginning of the next school year, a year away. She believes there are issues that can be put off, but her daughter's expression of identity being criminalized is not one of those things. She expressed this issue is historic in this school district and is perpetuated through elementary and middle school.

NEBRASKA STORIES

Alice & Norma

Race: Native American, Rosebud Sioux



In the spring of 2020, Alice Johnson and Norma LeRoy sent their two children to school at Cody Kilgore Elementary School. When the children returned home, Alice and Norma noticed hair missing from both children. A school employee had cut their hair during lice checks — violating their traditional and religious Lakota beliefs.

After the family voiced concerns, their hair was cut again.

The school's written head lice policy includes no mention of cutting hair. The ACLU and Harvard Religious Freedom Clinic represent the family who have filed a lawsuit arguing this unwritten practice was applied only to Native American students and violates the family's First Amendment right to freely exercise their religion and Fourteenth Amendment of equal protection and to direct the religious upbringing of their children.

Their children's First and Fourteenth Amendments right to receive an education free of cultural and religious discrimination was violated, and the family is seeking to hold Cody Kilgore Unified School District and individuals involved accountable.



Alice, Norma, and their children walk together in Kilgore, Nebraska.

NEBRASKA STORIES

Harold

Race: Black



Prior to my son attending Jesuit Academy for 4th grade, we were told that he'll need to cut his locs prior to school starting. At the time, I believe it was listed in code of conduct that hair must be cut. He is now a senior in high school still attending a private school but didn't experience hair discrimination during all of his high school years.

Methodology

In 2021, the ACLU of Nebraska sent open record requests⁹ (**Appendix B**) to public school districts to collect information relating to student dress codes and grooming policies. The ACLU sent the requests to the public-school districts with the highest total enrollment of students in the twenty most diverse counties in Nebraska according to data from the 2010 U.S. Census and the Nebraska Department of Education.

The ACLU of Nebraska specifically requested:

- The school's dress code and grooming policy;
- A description of discipline or penalties students are subjected to if they are found to violate the dress code or grooming policy; and
- The number of related student discipline incidents.

In response to the requests:

- Eleven school districts provided a single district-wide dress code policy that covered all schools within the district.¹⁰
- Seven school districts provided a district-wide dress codes in addition to dress codes for individual schools or applicable to only some grade levels (elementary, middle, and high school);¹¹ and
- Two districts provided a separate policy for each individual school or grade level.¹²

Senator Terrell McKinney's office additionally made similar inquiries to private school districts to the same counties. No private school district responded.

Jointly, the ACLU of Nebraska, I Be Black Girl, and Nebraska Indian Education Association, also conducted significant policy and legal research informing this analysis. I Be Black Girl conducted a story banking project

NOTE: Dress Code Policies as used in this report includes politics regarding grooming or hair.

to learn more about students’ and parents’ or guardians’ experiences with natural hair discrimination or discrimination based on religious or cultural headdress in Nebraska public schools.

The findings that follow represent a synthesis and analysis of all the policies sent by school districts that responded to our requests.

Standards for a School Culture of Belonging

To foster a culture of belonging for all students at school, dress code policies should first be gender-, religion-, and race-neutral to provide students with autonomy over their dress and appearance to the greatest extent possible.¹³ Creating a culture of belonging at school means policies must affirmatively declare differences be respected and welcomed — not met with punitive actions.¹⁴ As such, school dress codes must not cause harm to students or inhibit school attendance through punishment or missed class time.¹⁵ Further, a school district’s goals of inclusion are frustrated when dress codes include vague descriptions of impermissible clothing or hair such as banning hair or clothing considered to be a “distraction,” “extreme,” or “unconventional.”

Because neutral dress codes and those containing vague language are often disproportionately enforced against Black, Indigenous, and other students of color as well as women, girls and femmes,¹⁶ schools must continually evaluate vague and neutral language and its enforcement to ensure their language and actions are not rooted in stereotypes, bias or a culture of conformity but rather furthers legitimate educational goals. To ensure students are enjoying equal and full educational opportunities, schools must adopt dress code policies that explicitly prohibit discrimination on the basis of natural and protective hairstyles and cultural or religious headdress and affirm, rather than punish differences in appearance.

Language from other states that have enacted specific protections for natural and protective hairstyles and cultural or religious headdress for students can help guide Nebraska in establishing its own state-wide protections against hair discrimination for students. The following are examples of protections included in other states:

- The laws explicitly prohibit discrimination based on race by defining race as characteristics or traits that are associated with race inclusive of but not limited to natural and/or protective hairstyles like braids, locs, and twists¹⁷;
- Protections expanded to include cultural or religious headdress;¹⁸ and
- Prohibitions on punishment of students for their natural hair or hair style.¹⁹



Findings

1. Nebraska school dress codes frequently contain subjective or vague language that allows for wide discretion to school administrators and staff as it relates to grooming, headdress and hair policy enforcement. See Appendix C.

- In 20 of 20 (100%) school districts, at least one school within the district has a dress code containing subjective or vague language that provides school administrators and staff wide discretion in enforcement relating to students' grooming, headdress, and hair.

All the Nebraska school districts surveyed have adopted dress code policies that contain vague language as it relates to hair or headdress which leads to discriminatory and disproportionate enforcement against students of color who wear their hair in natural or protective styles or religious or cultural headdress. Examples of vague language permitting a wide range of subjectivity and discretion in the enforcement of dress codes governing hair, grooming, and headdress include:

- “Any clothing, hair, or grooming practices which **distract or interfere** with school purposes, will be dealt with by the Administration”
- “**Good** grooming and **cleanliness** are a **desirable facet** of the educational process;” and
- “**Decency** and **modesty** should **prevail**.”

2. Many dress codes contain language with more direct racial and religious implications on hair, headdress and grooming. See Appendix C.

- In 18 of 20 (90%) school districts, at least one school within the district has a dress code containing language with direct racial and religious implications on hair, headdress, and grooming.

Several policies ban scarves, bandanas, and/or durags that are more likely to be worn by Black, Indigenous, other students of color and Muslim students to protect natural hairstyles or honor their religion or culture. Specifically, a ban on scarves could be interpreted to ban traditional headdresses of specific cultures linked to a student's racial or religious identity. A ban on durags worn as protective headdresses for braids or a curly hair texture often disproportionately impact Black students.

3. Many dress codes give school administrators and staff explicit discretion to enforce policies. See Appendix C.

- In 17 of 20 (85%) school districts, at least one school within the district has a dress code giving explicit discretion to school administrators and/or staff.

Equitable enforcement of dress codes is even more difficult when dress codes frequently contain language giving explicit discretion to school administration or staff while providing a non-exhaustive list of banned items. Many of the dress codes analyzed provide a great deal of enforcement discretion to school administrators, officials, and in some instances, even individual coaches and teachers. Some examples of discretionary language include:

Nearly 98 percent of Nebraska school administrators and staff are white, non-Hispanic.

- “Any question concerning appropriate apparel shall be handled on an individual basis, by the immediate supervisor, teacher or building administrator.”
- “Coaches, sponsors or teachers may have additional requirements for students who are in special lab classes, students who are participants in performing groups or students who are representing the school as part of an extracurricular activity program.”

Moreover, dress codes that include terminology like “moral,” “clean,” and “good taste” in dress codes open the door for disproportionate enforcement against students of color with natural hairstyles including braids, locs, twists, other protective hairstyles, or headdress, particularly when nearly 98 percent of Nebraska school administrators and staff are white, non-Hispanic.²⁰ Disproportionate enforcement is further exacerbated when school administrators and staff members are not offered or choose not to participate in anti-bias or other cultural awareness training in order to challenge any unconscious or conscious bias that favors uniformity over individual expression.

4. In nearly all dress code policies analyzed, punishment for dress code violations can include missed class time up to suspension and expulsion. See Appendix C.

- In 17 of 20 (85%) school districts, at least one school within the district has a dress code allowing for punishment of violations including missed class time.

The majority of policies analyzed contain provisions in which violations can result in missed class time. Missing valuable instruction time leads to less engagement at school and lower graduation rates in the long-term.²¹ In contrast, few policies made clear that students would not be removed from the educational environment for dress code violations, or that missed class time would only be used as a last resort in addressing dress code violations.

5. The majority of school districts surveyed track the number of incidents in which a student was referred for discipline for a dress code violation, but do not track the students’ race, ethnicity, or gender. See Appendix C.

- In 14 of 20 (70%) school districts, at least one school within the district tracks the number of incidents in which students are referred for discipline for a dress code violation.



While the majority of school districts tracked the number of incidents students were referred for discipline for a dress code violation, no school district disaggregated the number by race or ethnicity or provided a description of the incident, making it difficult to identify potentially discriminatory trends.

Recommendations

The co-author organizations of this report urge Nebraska school districts to immediately review their dress code and grooming policies to ensure all students in Nebraska schools, regardless of their race or national origin including natural hair style and texture, and religious affiliation can fully participate in their learning environment without harm. In order to protect Black, Indigenous, and other students of color, dress codes must account for the reality that prohibiting certain hairstyles or coverings is a proxy for racial and religious discrimination and can directly funnel students into the school-to-prison pipeline.

Policymakers in Nebraska at the state and local levels should use this opportunity to explore and implement the following policy solutions:

1. Passing legislation that protects students against hair and cultural or religious headdress discrimination.

Prohibiting hair and cultural or religious headdress discrimination based on natural hair, hair style, hair texture, and headdress in schools should be made law in Nebraska. Fifteen other states, including our neighboring state of Colorado, have already passed similar legislation prohibiting hair discrimination in schools.²² This clarification in the law would follow similar legislation already passed with wide bipartisan support in May of 2021 introduced by Senator McKinney, which makes clear that workplace discrimination on the basis of characteristics associated with race like hair texture and hairstyles violates Nebraska's civil rights statute prohibiting racial discrimination in the employment context.²³ By passing complementary legislation governing parallel forms of discrimination in Nebraska's schools, we come closer to ensuring that all Nebraska students can access an education as their full selves.

2. Data collection and reporting.

School districts are not currently required to collect, report, and analyze data on dress code enforcement. Such data collection and reporting should include the student's race, ethnicity, gender, and a short description of the incident to recognize patterns or trends in student discipline for dress code violations. This information can help policymakers and school districts determine to

what extent school administrators and staff are disciplining students based on their natural hair, hair texture, or hairstyle or religious practices. Better data collection would allow school districts as well as the public to not only better understand, but also better address disparities in enforcement and implement policy reform.

3. Department of Education policy review and revision.

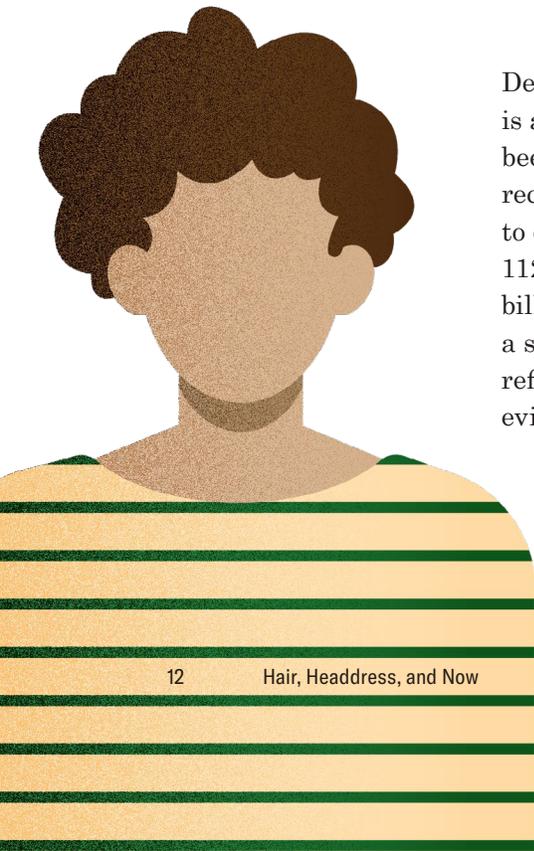
The Nebraska Department of Education (NDE) should develop a model district-wide dress code or grooming policy for all school districts to adopt, which ensures students feel welcome, respected, and affirmed as they matriculate throughout the Nebraska school system. Additionally, the NDE should provide mandatory, regular learning opportunities for school administrators and staff regarding equity, belonging, anti-bias, cultural competency, and religious diversity to prevent and/or mitigate discrimination based on hair, hair texture, hair style, and religious or cultural headdress.

4. Diversifying school administrators and staff.

Nebraska's teacher demographics do not currently align with our student demographics.²⁴ All while a growing body of research suggests that the demographics of teacher impacts students' test scores, attendance, and suspension rates.²⁵ Conversely, research shows that hiring teachers of color has numerous benefits for all students, including:

- Preparing all students to live in a diverse society;
- Eroding negative racial stereotypes among students;
- Providing advocates for students of color;
- Improving academic outcomes; and
- Improving creativity and innovation in addressing the challenges facing our public education system.²⁶

Despite the proven benefits for student success, lack of teachers' diversity is a problem for many if not all states. Nebraska senators have already been presented with legislation seeking to implement effective programs to recruit, train and retain more teachers of color. For example, LB 960 sought to eliminate certain requirements for teaching certificate eligibility²⁷ and LB 1128 sought to provide student loan repayment assistance to teachers.²⁸ These bills were introduced by Senator Vargas and Senator DeBoer respectively. As a state, we should strive for a diverse teacher and school leadership pool which reflects the growing racial and gender diversity of the state and country, as evidenced by historical trends and the most recent Census data.



Appendix A: History of Hair Discrimination in Communities of Color



Hair Discrimination and the Indigenous Community

Written by the Nebraska Indian Education Association

As our children arrived at the boarding schools on trains, separated from their families and alone, the first act of school administration was to chop off their hair.

Since 1879, America has abided by school policies in dealing with Indigenous children that called to “Kill the Indian in him and save the man.” A strategy which indicated an awareness of the importance placed by Indians to their hair, and the demoralizing effects it would have.

Native nations across the country have differing, yet similar, beliefs in regard to the maintenance of their hair. Beliefs that may also serve to reinforce cultural mores, customs, traditions, and spirituality. To this day, members of a tribe, clan, other distinction, or as they experience important milestones in life, are identified by the way they style their hair. As today's Indigenous youth continue to learn about their culture, each child makes his choice to grow his hair long or not. NelEA supports each of our children's right to choose and their freedom to do so. It is only fitting that institutions of learning take on the challenge.



Hair Discrimination and the Muslim Community

Written by Muslim Law Students Association (MLSA)

Because of their visibility, Muslim community members who wear hair coverings face heightened exposure to discrimination and have increasingly been targets for harassment in the aftermath of September 11.

The Muslim community is a fast-growing segment of the United States population that reflects the breadth of this country's racial, ethnic, and multicultural heritage which includes immigrants from many countries and regions of the world. Many Muslim women, although by no means all, cover their hair in accordance with their religious beliefs. These women may wear a headscarf, also known as hijab or khimar, while in public or in the presence of men who are not a part of their immediate family. Some other commonly worn hair coverings used by men and women in the Muslim community include burkas, kufis, turbans, and niqabs.

These communities have been the victim of discrimination due to their hair coverings in a wide facet of situations. For example, they have been harassed, fired from jobs, denied access to public places, and otherwise stereotyped because they wear a hair covering. In educational settings, Muslim students who wear hair coverings have been harassed and assaulted. Additionally, students have been denied the right to wear their hair coverings at school and have been prevented from participating in extracurricular activities.



Hair Discrimination and the Black Community

Written by Professor D. Wendy Greene

African descendants have long worn natural hairstyles like Afros, braids, twists, locs and Bantu knots — styles that are often the result of the unimpeded growth of their naturally curly or coily hair texture. They are often worn as a source of cultural pride and tradition as well as positive expression of their tribal, racial, gender, and religious identities. Throughout the era of racial slavery, slave traders, slave owners, and overseers fully understood the personal and cultural meaning of hair to Africans and their descendants. The hair of Africans and their descendants served as a critical site upon which slave owners, traders, and overseers asserted physical, social, and legal control. Alongside the grotesque practices of shackling and branding, the hair of Africans and African descendants was cut as an attempt to erase their cultural identities, individuality, and agency and to cement their legally subjugated status in society. Accordingly, since eras of European colonization, racial slavery and racial segregation, racial discrimination and subordination on the basis of African descendants' natural hair texture have existed and persisted. Like their skin color, African descendants' hair texture has served as a marker of racial identity and thus, the basis of their legal enslavement, exclusion, and stigmatization in various spheres.

Consequently, in the 21st century, African descended women and men experience racial discrimination when donning natural hairstyles, which result in: workplace harassment; the deprivation of job and promotional opportunities for which they are qualified, compensation, and economic security; the loss of housing; the denial of access to public accommodations; and infringements upon the exercise of their constitutional rights like serving on a jury.

Eurocentric supremacist ideology, too, has stigmatized African descendants' natural hair texture and hairstyles as “unclean,” “unkempt,” “unprofessional,” “distracting,” “unattractive,” “extreme,” “radical,” and indicia of criminality among other negative stereotypes. These pejorative stereotypes linked to African descendants' natural hair texture and hairstyles — mainly because of their association with Blackness or African ancestry — have been propagated for centuries not only in the United States but also around the world. Throughout the African diaspora, African descendants' natural hair texture and hairstyles are commonly denigrated as “bad hair” in English speaking nations, “pelo malo” in Spanish speaking nations, and “cabelo ruim” in Portuguese speaking nations. Whereas, straight or loosely curled hair is commonly celebrated as “good hair,” “pelo bueno,” and “bom cabelo” respectively largely because of its association with whiteness or European ancestry.

In the educational context, African descended boys and girls who don natural hairstyles are enduring heightened levels of scrutiny, harassment, and policing of their bodies at the hands of school administrators and teachers. Black children are also barred from school enrollment, participation in school-sponsored activities, sporting competitions, sports teams, and graduation ceremonies alongside being subject to in-school segregation, in-school suspension, out-of-school suspension, and expulsion when they have refused to cut, cover, or alter their natural hair texture and hairstyles — or rather, when they have refused to suppress or extinguish a fundamental part of their identities. This longstanding form of racial



discrimination and infringement upon African descendants' cultural (and sometimes religious) expression in schools, workplaces, and other spaces negatively impact their physical, psychological, and physiological well-being.

During the eras of racial slavery and universal emancipation, African descended women and men applied hot towels, toxic chemicals, hair lotions, and hot irons to temporarily loosen (or “relax”) their hair cuticle and shaft to achieve a straightened hairstyle. Ayana Byrd and Lori Tharps explain that during the early 1900s, African descendants' “hair, having been subjected for nearly three hundred years to both creative and at times damaging experiments in the quest for straightness and ‘manageability’ was a key element in the construction of [the] New Negro image”; one’s “appearance, including hair was the means to a socio-economic end” for many Black men and women.²⁹

For some Black women and men, straightening one’s hair was a function of personal choice and aesthetic expression; yet, for others, it reflected a means to greater economic security, social inclusion, and social mobility. This state of affairs still exists in the 21st century.

Globally, African descended women and girls are pressured — and in many instances are even required — to maintain straightened hairstyles as a condition of employment and professional advancement as well as a prerequisite to enjoying more full and dignifying educational experiences. To satisfy these “straight hair expectations or mandates,” African descended women and girls often use chemical relaxants, other straightening agents, wigs, and weaves that can damage their scalps and hair shaft, triggering temporary or permanent hair loss. Scientific research has also demonstrated that chemical relaxants, which many African descended women and girls use to maintain straightened hairstyles, are linked to increased hormonal activity amongst Black girls and Black women’s heightened risk of developing uterine cancer, uterine fibroids, breast cancer, and infertility. Therefore, for many African descendants, how they wear their hair is not an inconsequential, aesthetic choice but rather a consequential matter affecting their livelihoods, quality of life, and life span.



Appendix B: Public Records Request

November 1, 2021



Nebraska

134 S. 13th St. #1010
Lincoln, NE 68508
(402) 476-8091
aclunebraska.org

Cheryl Logan
Omaha Public Schools
3215 Cuming Street
Omaha NE 68131-2024
Email: eLoganC169@ops.org

RE: Public Records Request

Dear Superintendent:

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of *all* people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side—we the people dare to create a more perfect union.

We are writing to collect information relating to your student dress code or grooming policies permitted on school grounds or in school-sponsored activities to gain a better understanding of how these policies impact students on the basis of sex, gender, or race in Nebraska public schools.

We are writing to you in your capacity as Superintendent of the School District. This is a request under Nebraska public records law.

In the following request,

“**Documents**” includes policies, emails, notes, memos, faxes, and whether in paper format or electronic format.

“**Student Dress Code**” includes the school district’s rules, procedures, or policies specifying the required manner of dress, student hair style, and grooming at school or during school-sponsored activities.

We request the following information from you:

1. Any document reflecting your *current* Student Dress Code.
2. Any document describing the *current* discipline or penalties students are subjected to should they violate the Student Dress Code.

3. Any and all documents reflecting the number of incidents students have been referred for school discipline for violating the Student Dress Code during the *August, 2018 to May, 2021* school years, disaggregated by race and sex.

When the documents relevant to this request are ready, you may provide them in electronic form by emailing them to me at rgodinez@aclunebraska.org or you may mail them to me at 134 S. 13th Street, Suite 1010, Lincoln NE 68508.

As you may know, Nebraska state law requires a response to an open records request to be made within four (4) days of receipt.

Please contact me should you have any questions regarding this request. We look forward to your response and thank you for your prompt attention to this matter.

Sincerely,



Rose Godinez
Legal & Policy Counsel



Appendix C: Summary of Responses

School District	Policy Contains Vague Language	Policy Contains Racial Implications	School Administrators/Staff Given Explicit Discretion to Enforce Policies	Discipline Includes Missed Class Time	District Tracks Incidents
Alliance	X	X	X	X	X
Bridgeport	X			X	
Chadron	X		X	X	Unk
Chase County	X	X	X	X	
Columbus	X	X	X	Unk	
Crete	X	X	X	X	X
Fremont	X	X	X	X	X
Gordon-Rushville	X	X	X	X	Unk
Grand Island	X	X	X	Unk	X
Johnson County	X	X	X	X	
Lexington	X	X	X	X	
Lincoln	X	X	X	X	X
Norfolk	X	X	X	X	X
Omaha	X	X	X	X	X
Papillion-La Vista	X	X		X	X
Ponca	X	X	X	X	X
Schuyler	X	X	X	X	X
Scottsbluff	X	X	X	X	X
South Sioux City	X	X	X	X	X
Winnebago	X	X			X

"X" indicates at least one school within the school district.
 "Unk" indicates it is unknown or unclear from the documents received.

ENDNOTES

- 1 Monique W. Morris, *PUSHOUT: THE CRIMINALIZATION OF BLACK GIRLS IN SCHOOL* (The New York Press 2016).
- 2 Title VI, The Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; Title IX, Education Amendments of 1972, 20 U.S.C. §§ 1681-1688.
- 3 See *Metro Mother 'Angry' After Son's Hair Was Cut By Teacher Without Permission*, CBS MINN. (Apr. 20, 2022), <https://www.cbsnews.com/minnesota/news/metro-parents-angry-after-sons-hair-was-cut-by-teacher-without-permission/>; See also Patrick Reilly, *South Dakota Student to Leave High School After Being Told to Cut Hair*, N.Y. POST (Aug. 31, 2022), <https://nypost.com/2022/08/31/south-dakota-student-leaving-school-instead-of-cutting-hair/>; See also Mary Ann Koruth, *Maplewood Child Suffered 'Emotional Harm' When Her Hijab Was Removed By Teacher*, SUIT SAYS, NORTHJERSEY.COM (Apr. 25, 2022), <https://www.northjersey.com/story/news/2022/04/25/hijab-removed-maplewood-nj-teacher-harmed-child-lawsuit/7388610001/>.
- 4 Neb. Rev. Stat. § 48-1101.
- 5 Neb. Rev. Stat. § 48-1102.
- 6 Neb. Rev. Stat. § 48-1104.
- 7 Neb. Rev. Stat. § 48-1102. Smaller employers could potentially fall under the jurisdiction of local administrative agencies using race and/or religion as protected classes. (e.g. Lincoln, Neb. Municipal Code ch. 11 § 11.01.010; Omaha, Neb. Municipal Code ch. 13 § 13-188(c)).
- 8 *2021-2022 Membership By Grade, Race and Gender*, NEB. DEP'T OF EDUC. DATA, RSCH. AND EVALUATION (Dec. 20, 2021), https://www.education.ne.gov/wp-content/uploads/2021/12/MembershipByGradeRaceAndGender_20212022.pdf.
- 9 Complete copies of the public school district responses are on file at the ACLU of Nebraska and available upon request.
- 10 These districts were Alliance Public Schools, Bridgeport Public Schools, Chadron Public Schools, Chase County Schools, Crete Public Schools, Fremont Public Schools, Gordon-Rushville Public Schools, Grand Island Public Schools, Lexington Public Schools, Ponca Public Schools, Winnebago Public Schools.
- 11 These districts were Columbus Public Schools, Lincoln Public Schools, Norfolk Public Schools, Omaha Public Schools, Schuyler Community Schools, Scottsbluff Public Schools, South Sioux City Community Schools.
- 12 These districts were Papillion La Vista Community Schools and Johnson County Central Public Schools.
- 13 See *U.S. Gov't Accountability Off.*, GAO-23-105348, Report to Congressional Addressees: K-12 Education, Department of Education Should Provide Information on Equity and Safety in School Dress Codes (2022) available at <https://www.gao.gov/assets/gao/23-105348.pdf>; see also *Oregon Now Model Student Dress Code*, OREGON NOW (Feb. 2016), https://noworegon.org/wp-content/uploads/sites/12/2018/01/or_now_model_student_dress_code_feb_2016_1_.pdf.
- 14 See *id.*; e.g., Halo, *We're building a future without hair discrimination*, <https://halocollective.co.uk/halo-school/>.
- 15 *Id.*
- 16 See e.g., Lakshmi Gandhi, *Black girls are fighting back against discriminatory school dress codes*, PRISM (Sept. 14, 2021), <https://prismreports.org/2021/09/14/bipoc-girls-are-fighting-back-against-discriminatory-school-dress-codes/>.
- 17 Anne Branigin, *Mass. just banned hair discrimination. These twins helped pave the way.*, THE WASH. POST (July 29, 2022), <https://www.washingtonpost.com/nation/2022/07/29/crown-act-massachusetts-hair-discrimination/>; H.R. 4554, 192nd Leg., Gen. Assemb., 1st Reg. Sess. (Mass. 2022); H.R. LD598, 130th Leg., Gen. Assemb., 2nd Reg. Sess. (Me. 2022); S. Res. SB3616, 102nd Gen. Assemb., 2nd Reg. Sess. (Ill. 2022); H.R. HB2935, 81st Leg., Assemb., 1st Reg. Sess. (Or. 2021); S. Res. SB327, 81st Reg. Sess. (Nev. 2021); H.R. HB29 55th Leg., 1st Reg. Sess. (N.M. 2021); S. Res. SB32, 151st Gen. Assemb., 1st Reg. Sess. (Del. 2021); H. R. J. Res. HB6515, Gen. Assemb., 1st Reg. Sess. (Conn. 2021); H.R. HB2602, 66th Leg., 2nd Reg. Sess. (Wash. 2020); H. R. J. Res. HB1048, 72nd Gen. Assemb., 2nd Reg. Sess. (Colo. 2020); H.R. HB1514, Gen. Assemb., 2nd Reg. Sess. (Va. 2020); S. Res. SB531, Gen. Assemb., 2nd Reg. Sess. (Md. 2020); S. Res. S3945, Gen. Assemb., 1st Reg. Sess. (N.J. 2019); S. Res. S6209A, Gen. Assemb., 1st Reg. Sess. (N.Y. 2019); S. Res. SB188, Gen. Assemb., 1st Reg. Sess. (Cal. 2019).
- 18 S. Res. S6209A, Gen. Assemb., 1st Reg. Sess. (N.Y. 2019); S. Res. S6209A, Gen. Assemb., 1st Reg. Sess. (N.Y. 2019); H.R. HB2935, 81st Leg., Assemb., 1st Reg. Sess. (Or. 2021); H.R. HB29 55th Leg., 1st Reg. Sess. (N.M. 2021).
- 19 See S. Res. S6209A, Gen. Assemb., 1st Reg. Sess. (N.Y. 2019).
- 20 *National Teacher and Principal Survey*, National Center for Education Statistics (2017-2018) available at https://nces.ed.gov/surveys/ntps/tables/ntps1718_fitables01_t1s.asp; Brandon McDermott, *Diversifying Nebraska's Teacher Base*, Nebraska Public Media (Dec. 27, 2018, 6:45 AM), <https://nebraskapublicmedia.org/en/news/news-articles/diversifying-nebraskas-teacher-base/>; Julie Cornell, *Diverse teachers needed in Nebraska*, KETV Omaha (May 16, 2019 3:26 PM) <https://www.ketv.com/article/diverse-teachers-needed-in-nebraska/27497743>; NE DEP'T OF EDUC., *State Education Leaders Launch Effort to Foster a Diverse and Culturally Responsive Teaching Workforce*, (Mar. 21, 2018) https://www.education.ne.gov/press_release/state-education-leaders-launch-effort-to-foster-a-diverse-and-culturally-responsive-teaching-workforce/; Margaret Reist, *LPS educators of color encourage students to follow in their footsteps*, Lincoln Journal Star (Oct. 2, 2018) https://journalstar.com/news/local/education/lps-educators-of-color-encourage-students-to-follow-in-their-footsteps/article_383d73e0-111f-5afa-8459-4e0b3d40841a.html.
- 21 Daniel J. Losen & Amir Whitaker, *11 Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools Part 1*, The Center for Civil Rights Remedies & ACLU, https://www.aclu.org/sites/default/files/field_document/final_11-million-days_ucla_aclu.pdf.
- 22 See Branigin, *supra* note 16.
- 23 *Ban on Hair Discrimination Advanced*, UNICAMERAL UPDATE (Apr. 6, 2021), <http://update.legislature.ne.gov/?p=29915>.
- 24 *Nat'l Teacher and Principal Survey*, *supra* note 19.

- 25 Thomas Dee, *Teachers, Race, and Student Achievement in a Randomized Experiment*, *Review of Economics and Statistics*, 2004; Thomas Dee, *A Teacher Like Me: Does Race, Ethnicity, or Gender Matter?*, *American Economic Review*, 2005; Anna Egalite, Brian Kisida, and Marcus Winters, *Representation in the Classroom: The Effect of Own-Race Teachers on Student Achievement*, *Economics of Education Review*, 2015; Stephen Holt and Seth Gershenson, *The Impact of Teacher Demographic Representation on Student Attendance and Suspensions*, IZA discussion paper 9554, 2015; and Constance Lindsay and Cassandra Hart, *Exposure to Same-Race Teachers and Student Disciplinary Outcomes for Black Students in North Carolina*, *Educational Evaluation and Policy Analysis*, 2017.
- 26 Elizabeth Heubeck, *Recruiting and Retaining Teachers of Color: Why It Matters, Ways to Do It*, *Education Week* (June 30, 2020) <https://www.edweek.org/leadership/recruiting-and-retaining-teachers-of-color-why-it-matters-ways-to-do-it/2020/06>; Desiree Carver-Thomas, *Diversifying the Teaching Profession: How to Recruit and Retain Teachers of Color*, *Learning Policy Institute* (April 19, 2018) <https://learningpolicyinstitute.org/product/diversifying-teaching-profession-report>; Lisette Partelow, Angie Spong, Catherine Brown, and Stephanie Johnson, *America Needs More Teachers of Color and a More Selective Teaching Profession*, *Center for American Progress* (Sept. 14, 2017, 9:00 AM) <https://www.americanprogress.org/issues/education-k-12/reports/2017/09/14/437667/america-needs-teachers-color-selective-teaching-profession/>.²⁷ L.B. 960, 107th Leg. (2022). LB 960 would have removed both the basic skill and content test requirements for teachers beginning their career.
- 27 L.B. 960, 107th Leg. (2022). LB 960 would have removed both the basic skill and content test requirements for teachers beginning their career.
- 28 L.B. 1128, 107th Leg. (2022). LB 1128 would have created a loan forgiveness grant program for public school teachers that would have not only incentivized more students to pursue a career in teaching, but also helped teachers secure some financial stability and economic mobility for Black and Brown borrower teachers who are disproportionately burdened by the student debt crisis and the impacts of the racial wealth gap in this country.
- 29 HAIR STORY: UNTANGLING THE ROOTS OF BLACK HAIR IN AMERICA by Ayanna D. Byrd and Lori L. Tharps at 28, 30 (St. Martin's Press 2001).

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