

Via Electronic Mail

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Dear President Kauwe:

The NAACP Legal Defense and Educational Fund, Inc. (LDF)¹ writes to express our concerns with Brigham Young University-Hawaii's (BYU-Hawaii) grooming policies, which penalize Black, Indigenous, and other students of color for wearing their hair in culturally significant hairstyles.

BYU-Hawaii's dress and grooming policies provide that "hair should be clean, neat, modest, and avoid extremes in styles and colors."² The policies further provide that "[m]en's hair should neatly trimmed. Men should be clean shaven. If worn, mustaches should be neatly trimmed."³ BYU-Hawaii defines "neatly trimmed" as "neat, modest, and avoid extremes;" and states that "[t]he intent of this standard for men is that hair should be cut short and neatly trimmed."⁴ Such hair length restrictions

¹ LDF is the nation's oldest civil and human rights law organization. LDF was founded in 1940 by Thurgood Marshall, who later became the first Black Supreme Court Justice. Since its inception, we have worked to defend and advance racial equality and civil rights for Black Americans, including in education. We litigated and won the landmark case *Brown v. Board of Education*, which ended de jure segregation in public schools. Today, we continue to challenge discriminatory school policies and practices, including racially discriminatory grooming policies.

² BYU-Hawaii, *CES Dress and Grooming Principals and Expectations*, <https://honorcode.byuh.edu/dress-and-grooming>.

³ *Id.*

⁴ BYU-Hawaii, *Honor Code Frequently Asked Questions*, <https://honorcode.byuh.edu/faqs#:~:text=The%20intent%20of%20this%20standard%20for%20men%20is%20that%20hair%20should%20be%20cut%20short>.

and “clean shaven policies”⁵ have had an adverse impact on Black students and may also negatively impact other students of color. Recently, LDF understands that a school official ordered Kanaan Vyshonne Barton, a Black computer science student, to cut his culturally significant locs, which he maintains to be “neat, clean, and fresh,” or face expulsion.⁶ Notably, A February 2021 report released by the Committee on Race, Equity, and Belonging (the Committee) at BYU-Hawaii’s sister school, Brigham Young University (BYU) in Utah, surveying Black, Indigenous, and other people of color (BIPOC) in the BYU community found that “[m]any BIPOC students feel unsafe and isolated at BYU.”⁷ The Committee also found that “BIPOC students have experienced discriminatory application of Dress and Grooming Standards on campus, *especially hairstyles for Black students.*”⁸

LDF urges BYU-Hawaii to review its dress and grooming codes to ensure that its policies will allow Black, Indigenous, and other students of color to express their authentic selves and feel welcome and safe.

I. Many People Wear Culturally Significant Hairstyles to Honor Their Heritage.

A person’s decision to wear their hair in a racially or culturally significant way is not simply a matter of personal preference or style. Dating back to the fifteenth century, “hair was not only a cosmetic concern [for Black people], but ‘its social, aesthetic, and spiritual significance has been intrinsic to their sense of self for thousands of years.’”⁹ Likewise for many Indigenous American

⁵ See generally Yucheng Renee Jiang, *Reasonable Accommodation and Disparate Impact: Clean Shave Policy Discrimination in Today’s Workplace*, 50 *Fordham Urb. L.J.* 151 (2022), <https://www.cambridge.org/core/journals/journal-of-law-medicine-and-ethics/article/abs/reasonable-accommodation-and-disparate-impact-clean-shave-policy-discrimination-in-todays-workplace/CCB10F338C98936CCA81D5463B70984F>.

⁶ See Rob Quinn, *BYU-Hawaii Student Says He Was Ordered to Lose His Locs*, *Newser* (Mar. 20, 2024), <https://www.newser.com/story/347958/byu-hawaii-student-fights-to-keep-dreadlocks.html>; Courtney Tanner, *A Black Student at BYU-Hawaii Was Told His Locs Were Against the Honor Code. This is What Happened Next*, *Salt Lake Tribune* (Mar. 19, 2024), <https://www.sltrib.com/news/education/2024/03/19/will-black-students-case-byu/>.

⁷ *BYU, Report and Recommendations of the BYU Committee on Race, Equity, and Belonging* 12, (Feb. 25, 2021), <https://race.byu.edu/00000177-d543-dfa9-a7ff-d5cfc1dc0000/race-equity-belonging-report-feb-25-2021>.

⁸ *Id.* (emphasis added). The Committee also found that “There appears to be some confusion and inadequate training on campus about how certain aspects of the Dress and Grooming Standards apply to BIPOC populations.” *Id.*

⁹ Tracey O. Patton, *Hey Girl, Am I More than My Hair?: African American Women and Their Struggles with Beauty, Body Image, and Hair*, 18:2 *Nat’l Women’s Stud. Ass’n J.* 24, 27 (2006),

peoples, hair represents strength, power, and even the unique relationships a person has with themselves and their loved ones.¹⁰ Policies that prohibit hair textures, types, and formations—and accommodating hair accessories—commonly or historically associated with a person’s racial or ethnic heritage ignore the cultural significance of certain hair styles, particularly for Black, Indigenous, and other people of color. Such policies unjustly require the people subjected to them to assimilate to the norms of a different culture. Such policies are often also premised on discriminatory stereotypes about the appropriateness or acceptability of racially or culturally significant hairstyles. For example, Black people have long battled the prevalent stereotype that natural and protective styles and formations are unsanitary, unkempt, and unsuitable for the workplace.¹¹

II. Policies that Discriminate Against Students Based on Their Culturally Significant Hair Hurt Students.

Dress and grooming policies that prohibit, or limit (without exemption) students from wearing culturally significant hairstyles or formations pose many harms to Black, Indigenous, and other students of color. For example, “dress codes that ban hairstyles most commonly associated with Black Americans . . . signal to Black students that they must manipulate the natural state of their physical self just to belong in the classroom,” thereby marginalizing them as the “other.”¹² “Othering

<https://www.jstor.org/stable/4317206> (noting that, dating back to the fifteenth century, “[t]he complicated and time-consuming task of hair grooming included washing, combing, oiling, braiding, twisting, and/or decorating the hair with any number of adornments including cloth, beads, and shells. The process could last several hours, sometimes several days”).

¹⁰ See Brianna Holt, *For Many Native Americans, Hair Tells a Life Story*, Bus. Insider, (Nov. 24, 2022), <https://www.businessinsider.com/what-hair-signifies-in-native-american-culture-2022-11>.

¹¹ A 2017 study found that white women, on average, believe that “[B]lack women’s textured hair,” is “less professional than smooth hair.” Alexis McGill Johnson et al., *The “Good Hair” Study: Explicit And Implicit Attitudes Toward Black Women’s Hair* 6, Perception Inst. (Feb. 2017), <https://perception.org/wp-content/uploads/2017/01/TheGood-HairStudyFindingsReport.pdf>; see Dawn D. Bennett-Alexander & Linda F. Harrison, *My Hair Is Not Like Yours: Workplace Hair Grooming Policies for African American Women as Racial Stereotyping in Violation of Title VII*, 22 *Cardozo J.L. & Gender* 437, 446 (2016), https://works.bepress.com/linda_harrison/1/download/; David S. Joachim, *Military to Ease Hairstyle Rules After Outcry from Black Recruits*, N.Y. Times (Aug. 14, 2014), <https://www.nytimes.com/2014/08/15/us/military-hairstyle-rules-dreadlocks-cornrows.html>; Maya Rodan, *U.S. Military Rolls Back Restrictions on Black Hairstyles*, TIME (Aug. 13, 2014), <http://time.com/3107647/military-black-hairstyles/>.

¹² DeLeon L. Gray, Elan C. Hope, & Jamaal S. Matthews, *Black and Belonging at School: A Case for Interpersonal, Instructional, and Institutional Opportunity Structures*, 53:2 *Educ. Psych.* 97–113 (2018), <https://doi.org/10.1080/00461520.2017.1421466>.

experiences have psychological consequences not only for the Black students who have been directly victimized by discriminatory institutional policies but also for those who learn of such events through exposure to these students' stories."¹³ "The conditional acceptance of the Black physical self in school environments is likely to shape the way Black students interpret and respond to commonly assessed Likert-type school-belonging items such as 'It is hard for people like me to be accepted here.'"¹⁴ Given this, racially discriminatory hair policies that target students for wearing culturally significant styles and formations are "detrimental to students' motivation, engagement, development, learning, performance, and psychological well-being."¹⁵

III. Dress and Grooming Codes Must Comport with the Hawaii Constitution, the United States Constitution, and Federal Anti-Discrimination Laws.

Penalizing students of color for culturally significant hairstyles or formations constitutes discrimination based on race in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title VI of the Civil Rights Act of 1964 ("Title VI"), and Section 5 of the Hawaii Constitution. Similarly, policies that discriminate on the basis of gender violate Title IX of the Education Amendments of 1972 ("Title IX"), the Equal Protection Clause, and Sections 2 and 5 of the Hawaii Constitution.

Policies that discriminate against culturally significant hairstyles also infringe on students' rights to express themselves freely. Expression, even when not verbal or written, is protected under the First Amendment when it is intended to communicate a message that is received by others.¹⁶ It is well established that a person is "capable of communicating" their heritage by "[v]isibly wearing [their] hair in a particular manner."¹⁷

IV. Universities Have an Integral Role to Play in Ending Hair Discrimination.

It is imperative for higher education officials to review policies to prevent discriminatory outcomes and ensure compliance with state and federal laws. It is important to review policies both written and as applied, as even facially neutral policies can be applied in ways that disproportionately target racially identifiable groups of students. For example, gender-specific hair length restrictions

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Anderson v. City of Hermosa Beach*, 621 F.2d 1051, 1058–59 (9th Cir. 2010).

¹⁷ *Gonzales v. Mathis Indep. Sch. Dist.*, No. 2:18-CV-00043, 2018 U.S. Dist. LEXIS 216577, at *20 (S.D. Tex. Dec. 27, 2018); *see also A.A. v. Needville Indep. Sch. Dist.*, 701 F. Supp. 2d 863, 883 (S.D. Tex. 2009).

may disproportionately affect Black, Indigenous, and other male students of color by making it functionally impossible for them to wear and maintain culturally significant hairstyles (e.g., locs) or refrain from cutting their hair consistent with their cultural traditions.¹⁸ For Indigenous students and their families, these disparate impacts may further aggravate generational traumas associated with assimilative hair cutting at Indian residential boarding schools.¹⁹

Moreover, dress code rules that contain subjective language or that are open to interpretation risk being “disproportionately applied to vulnerable student groups including LGBTQI+ students, Black students, and students with disabilities.”²⁰ The enforcement of restrictions with vague terms such as requiring hair to look “natural,” “clean,” or “well-groomed,” may be legally infirm and subject to constitutional and statutory challenges, as described above. BYU-Hawaii should maintain a policy that permits *all* students to wear culturally significant hairstyles and formations.²¹

BYU-Hawaii’s commitment to cultural inclusivity is especially important given its affiliation with the Church of Jesus Christ of Latter Day Saints (“LDS Church”). In a declaration published on December 6, 2013, the LDS Church declared that “Today, the Church disavows the theories advanced in the past that black skin is a sign of divine disfavor or course” and that “Church leaders today unequivocally condemn all racism, past and present, in any form.”²² In 2018, presidents of the LDS Church and the National Association for the Advancement of Colored People (NAACP)²³ held for the first time a joint summit between the two organizations to call for an end to racism and to promote

¹⁸ In *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511, 526 (S.D. Tex. 2020), and *Gray v. Needville Indep. Sch. Dist.*, No. 22-CV-01245, 2022 WL 1438765 *1 (S.D. Tex. May 4, 2022), courts barred the continued enforcement of hair policies on which school officials relied in trying to force Black students to cut their locs, which are often worn in homage to one’s Black heritage.

¹⁹ See Jenna Kunze, *Harvard Museum Says It Has Hair Clippings from 700 Native Children Who Attended Indian Boarding Schools*, Native News Online (Nov. 10, 2022), <https://nativenewsonline.net/sovereignty/harvardmuseum-says-it-has-hair-clippings-from-700-native-children-who-attended-indian-boarding-schools> (recounting a boarding school survivor’s experience in which nuns cut her hair at the St. Francis Indian School on the Rosebud Indian Reservation).

²⁰ U.S. Accountability Off., *Department of Education Should Provide Information on Equity and Safety in School Dress Codes* 13 (Oct. 2022), <https://www.gao.gov/assets/gao-23-105348.pdf>.

²¹ Wearing one’s hair in a bun or gathered, however, may not be possible for some Black students because of their hair length, hair texture, or for medical reasons. Students should also have an opportunity to receive an exemption from dress and grooming codes if it poses a personal or health concern.

²² The Church of Jesus Christ of Latter-Day Saints, *Race and Priesthood* (Dec. 6, 2013), <https://www.churchofjesuschrist.org/study/manual/gospel-topics-essays/race-and-the-priesthood?lang=eng>.

²³ In 1957, LDF became an entirely separate entity from the NAACP.

racial harmony.²⁴ During this summit, the president of the LDS Church stated “we are impressed to call on people of this nation, and indeed, the entire world, to demonstrate civility, racial and ethnic harmony, and mutual respect.”²⁵

In addition, BYU-Hawaii’s website states that “[d]iversity of culture, experience, and thought is one of [BYU-Hawaii’s] greatest strengths,” and “[d]iversity and unity work together here at BYU-Hawaii in remarkable ways.”²⁶ However, the language and application of BYU-Hawaii’s dress and grooming policy is not consistent with either these statements or the LDS Church’s stated commitment to cultivate racial equity and inclusivity within its community.

The university’s commitment to diversity of culture, experience, and thought must include the elimination of policies that prohibit hairstyles and formations that pay homage to racial and cultural heritage, regardless of whether those prohibitions are explicit or implicit. BYU-Hawaii must ensure that its dress and grooming policies do not target Black and other students of color and bear no remnants of the prior attitudes held by the LDS Church about Black people and their features.

LDF requests the opportunity to speak with you about how to rectify policies that harm Black, Indigenous, and other students of color. If you wish to discuss any of the aforementioned issues, please contact Patricia Okonta at pokonta@naacpldf.org. Additionally, attached to this letter, we have included LDF’s *Black Hair Belongs Everywhere* booklet. You can also find additional information and answers to frequently asked questions concerning hair discrimination at <https://www.naacpldf.org/natural-hair-discrimination>. Together, we can work to ensure that students at BYU-Hawaii, regardless of race or ethnicity, are in spaces where they feel safe and their rights are upheld. We look forward to your response.

²⁴ The Church of Jesus Christ of Latter-Day Saints, *First Presidency and NAACP Leaders Call for Greater Civility, Racial Harmony* (May 17, 2018), <https://newsroom.churchofjesuschrist.org/article/joint-statement-first-presidency-naacp-national-leadership>.

²⁵ *Id.*

²⁶ BYU-Hawaii, *Office of the President*, <https://president.byuh.edu/>.

Respectfully,



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