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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO RACE; PROHIBITING THE IMPOSITION OF DISCIPLINE,
DISCRIMINATION OR DISPARATE TREATMENT IN SCHOOLS BASED ON THE
HAIR OR CULTURAL HEADDRESSES OF A STUDENT; DEFINING TERMS IN
THE PUBLIC SCHOOL CODE AND THE HUMAN RIGHTS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-5-4.3 NMSA 1978 (being Laws 1986,
Chapter 33, Section 9, as amended) is amended to read:

"22-5-4.3. SCHOOL DISCIPLINE POLICIES--STUDENTS MAY SELF-
ADMINISTER CERTAIN MEDICATIONS.--

A. Local school boards shall establish student
discipline policies and shall file them with the department.
The local school board shall involve parents, school personnel
and students in the development of these policies, and public
hearings shall be held during the formulation of these policies

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1 in the high school attendance areas within each school district
2 or on a district-wide basis for those school districts that
3 have no high school. No local school board shall allow for the
4 imposition of discipline, discrimination or disparate treatment
5 against a student based on the student's race or culture or
6 because of the student's use of protective hairstyles or
7 cultural headdresses.

8 B. Each school district discipline policy shall
9 establish rules of conduct governing areas of student and
10 school activity, detail specific prohibited acts and activities
11 and enumerate possible disciplinary sanctions, which sanctions
12 may include in-school suspension, school service, suspension or
13 expulsion. Corporal punishment shall be prohibited by each
14 local school board and each governing body of a charter school.

15 C. An individual school within a school district
16 may establish a school discipline policy, provided that
17 parents, school personnel and students are involved in its
18 development and a public hearing is held in the school prior to
19 its adoption. If an individual school adopts a discipline
20 policy in addition to the local school board's school district
21 discipline policy, it shall submit its policy to the local
22 school board for approval.

23 D. No school employee who in good faith reports any
24 known or suspected violation of the school discipline policy or
25 in good faith attempts to enforce the policy shall be held

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1 liable for any civil damages as a result of such report or of
2 the employee's efforts to enforce any part of the policy.

3 E. All public school and school district discipline
4 policies shall allow students to carry and self-administer
5 asthma medication and emergency anaphylaxis medication that has
6 been legally prescribed to the student by a licensed health
7 care provider under the following conditions:

8 (1) the health care provider has instructed
9 the student in the correct and responsible use of the
10 medication;

11 (2) the student has demonstrated to the health
12 care provider and the school nurse or other school official the
13 skill level necessary to use the medication and any device that
14 is necessary to administer the medication as prescribed;

15 (3) the health care provider formulates a
16 written treatment plan for managing asthma or anaphylaxis
17 episodes of the student and for medication use by the student
18 during school hours or school-sponsored activities, including
19 transit to or from school or school-sponsored activities; and

20 (4) the student's parent has completed and
21 submitted to the school any written documentation required by
22 the school or the school district, including the treatment plan
23 required in Paragraph (3) of this subsection and other
24 documents related to liability.

25 F. The parent of a student who is allowed to carry

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1 and self-administer asthma medication and emergency anaphylaxis
2 medication may provide the school with backup medication that
3 shall be kept in a location to which the student has immediate
4 access in the event of an asthma or anaphylaxis emergency.

5 G. Authorized school personnel who in good faith
6 provide a person with backup medication as provided in this
7 section shall not be held liable for civil damages as a
8 result of providing the medication.

9 H. As used in this section:

10 (1) "cultural headdresses" includes burkas,
11 head wraps or other headdresses used as part of an individual's
12 personal cultural beliefs;

13 (2) "protective hairstyles" includes such
14 hairstyles as braids, locs, twists, tight coils or curls,
15 cornrows, bantu knots, afros, weaves, wigs or head wraps; and

16 (3) "race" includes traits historically
17 associated with race, including hair texture, length of hair,
18 protective hairstyles or cultural headdresses."

19 SECTION 2. Section 22-8B-4 NMSA 1978 (being Laws 1999,
20 Chapter 281, Section 4, as amended) is amended to read:

21 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
22 OPERATION.--

23 A. A charter school shall be subject to all federal
24 and state laws and constitutional provisions prohibiting
25 discrimination on the basis of disability, physical or mental

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1 handicap, serious medical condition, race, creed, color, sex,
2 gender identity, sexual orientation, spousal affiliation,
3 national origin, religion, ancestry or need for special
4 education services and shall not allow for the imposition of
5 discipline, discrimination or disparate treatment against a
6 student based on the student's race or culture or because of
7 the student's use of protective hairstyles or cultural
8 headdresses.

9 B. A charter school shall be governed by a
10 governing body in the manner set forth in the charter contract;
11 provided that a governing body shall have at least five
12 members; and provided further that no member of a governing
13 body for a charter school that is initially approved on or
14 after July 1, 2005 or whose charter is renewed on or after July
15 1, 2005 shall serve on the governing body of another charter
16 school. No member of a local school board shall be a member of
17 a governing body for a charter school or employed in any
18 capacity by a locally chartered charter school located within
19 the local school board's school district during the term of
20 office for which the member was elected or appointed.

21 C. A charter school shall be responsible for:
22 (1) its own operation, including preparation
23 of a budget, subject to audits pursuant to the Audit Act; and
24 (2) contracting for services and personnel
25 matters.

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1 D. A charter school may contract with a school
2 district, a university or college, the state, another political
3 subdivision of the state, the federal government or one of its
4 agencies, a tribal government or any other third party for the
5 use of a facility, its operation and maintenance and the
6 provision of any service or activity that the charter school is
7 required to perform in order to carry out the educational
8 program described in its charter contract. Facilities used by
9 a charter school shall meet the standards required pursuant to
10 Section 22-8B-4.2 NMSA 1978.

11 E. A conversion school chartered before July 1,
12 2007 may choose to continue using the school district
13 facilities and equipment it had been using prior to conversion,
14 subject to the provisions of Subsection F of this section.

15 F. The school district in which a charter school is
16 geographically located shall provide a charter school with
17 available facilities for the school's operations unless the
18 facilities are currently used for other educational purposes.
19 An agreement for the use of school district facilities by a
20 charter school may provide for reasonable lease payments;
21 provided that the payments do not exceed the sum of the lease
22 reimbursement rate provided in Subparagraph (b) of Paragraph
23 (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any
24 reimbursement for actual direct costs incurred by the school
25 district in providing the facilities; and provided further that

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1 any lease payments received by a school district may be
2 retained by the school district and shall not be considered to
3 be cash balances in any calculation pursuant to Section 22-8-41
4 NMSA 1978. The available facilities provided by a school
5 district to a charter school shall meet all occupancy standards
6 as specified by the public school capital outlay council. As
7 used in this subsection, "other educational purposes" includes
8 health clinics, daycare centers, teacher training centers,
9 school district administration functions and other ancillary
10 services related to a school district's functions and
11 operations.

12 G. A locally chartered charter school may pay the
13 costs of operation and maintenance of its facilities or may
14 contract with the school district to provide facility operation
15 and maintenance services.

16 H. Locally chartered charter school facilities are
17 eligible for state and local capital outlay funds and shall be
18 included in the school district's five-year facilities plan.

19 I. A locally chartered charter school shall
20 negotiate with a school district to provide transportation to
21 students eligible for transportation under the provisions of
22 the Public School Code. The school district, in conjunction
23 with the charter school, may establish a limit for student
24 transportation to and from the charter school site not to
25 extend beyond the school district boundary.

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1 J. A charter school shall be a nonsectarian,
2 nonreligious and non-home-based public school.

3 K. Except as otherwise provided in the Public
4 School Code, a charter school shall not charge tuition or have
5 admission requirements.

6 L. With the approval of the chartering authority, a
7 single charter school may maintain separate facilities at two
8 or more locations within the same school district; but, for
9 purposes of calculating program units pursuant to the Public
10 School Finance Act, the separate facilities shall be treated
11 together as one school.

12 M. A charter school shall be subject to the
13 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
14 Accountability Act.

15 N. Within constitutional and statutory limits, a
16 charter school may acquire and dispose of property; provided
17 that, upon termination of the charter, all assets of the
18 locally chartered charter school shall revert to the local
19 school board and all assets of the state-chartered charter
20 school shall revert to the state, except that, if all or any
21 portion of a state-chartered charter school facility is
22 financed with the proceeds of general obligation bonds issued
23 by a local school board, the facility shall revert to the local
24 school board.

25 O. The governing body of a charter school may

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1 accept or reject any charitable gift, grant, devise or bequest;
2 provided that no such gift, grant, devise or bequest shall be
3 accepted if subject to any condition contrary to law or to the
4 terms of the charter. The particular gift, grant, devise or
5 bequest shall be considered an asset of the charter school to
6 which it is given.

7 P. The governing body may contract and sue and be
8 sued. A local school board shall not be liable for any acts or
9 omissions of the charter school.

10 Q. A charter school shall comply with all state and
11 federal health and safety requirements applicable to public
12 schools, including those health and safety codes relating to
13 educational building occupancy.

14 R. A charter school is a public school that may
15 contract with a school district or other party for provision of
16 financial management, food services, transportation,
17 facilities, education-related services or other services. The
18 governing body shall not contract with a for-profit entity for
19 the management of the charter school.

20 S. To enable state-chartered charter schools to
21 submit required data to the department, an accountability data
22 system shall be maintained by the department.

23 T. A charter school shall comply with all
24 applicable state and federal laws and rules related to
25 providing special education services. Charter school students

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1 with disabilities and their parents retain all rights under the
2 federal Individuals with Disabilities Education Act and its
3 implementing state and federal rules. Each charter school is
4 responsible for identifying, evaluating and offering a free
5 appropriate public education to all eligible children who are
6 accepted for enrollment in that charter school. The state-
7 chartered charter school, as a local educational agency, shall
8 assume responsibility for determining students' needs for
9 special education and related services. The division may
10 promulgate rules to implement the requirements of this
11 subsection.

12 U. As used in this section:

13 (1) "cultural headdresses" includes burkas,
14 head wraps or other headdresses used as part of an individual's
15 personal cultural beliefs;

16 (2) "protective hairstyles" includes such
17 hairstyles as braids, locs, twists, tight coils or curls,
18 cornrows, bantu knots, afros, weaves, wigs or head wraps; and

19 (3) "race" includes traits historically
20 associated with race, including hair texture, length of hair,
21 protective hairstyles or cultural headdresses."

22 SECTION 3. Section 28-1-2 NMSA 1978 (being Laws 1969,
23 Chapter 196, Section 2, as amended) is amended to read:

24 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

25 A. "person" means one or more individuals, a

1 partnership, association, organization, corporation, joint
2 venture, legal representative, trustees, receivers or the state
3 and all of its political subdivisions;

4 B. "employer" means any person employing four or
5 more persons and any person acting for an employer;

6 C. "commission" means the human rights commission;

7 D. "director" or "bureau" means the human rights
8 bureau of the labor relations division of the workforce
9 solutions department;

10 E. "employee" means any person in the employ of an
11 employer or an applicant for employment;

12 F. "labor organization" means any organization that
13 exists for the purpose in whole or in part of collective
14 bargaining or of dealing with employers concerning grievances,
15 terms or conditions of employment or of other mutual aid or
16 protection in connection with employment;

17 G. "employment agency" means any person regularly
18 undertaking with or without compensation to procure
19 opportunities to work or to procure, recruit or refer
20 employees;

21 H. "public accommodation" means any establishment
22 that provides or offers its services, facilities,
23 accommodations or goods to the public, but does not include a
24 bona fide private club or other place or establishment that is
25 by its nature and use distinctly private;

1 I. "housing accommodation" means any building or
2 portion of a building that is constructed or to be constructed,
3 which is used or intended for use as the residence or sleeping
4 place of any individual;

5 J. "real property" means lands, leaseholds or
6 commercial or industrial buildings, whether constructed or to
7 be constructed, offered for sale or rent, and any land rented
8 or leased for the use, parking or storage of house trailers;

9 K. "secretary" means the secretary of workforce
10 solutions;

11 L. "unlawful discriminatory practices" means those
12 unlawful practices and acts specified in Section 28-1-7 NMSA
13 1978;

14 M. "physical or mental handicap" means a physical
15 or mental impairment that substantially limits one or more of a
16 person's major life activities. A person is also considered to
17 be physically or mentally handicapped if the person has a
18 record of a physical or mental handicap or is regarded as
19 having a physical or mental handicap;

20 N. "major life activities" means functions such as
21 caring for one's self, performing manual tasks, walking,
22 seeing, hearing, speaking, breathing, learning and working;

23 O. "applicant for employment" means a person
24 applying for a position as an employee;

25 P. "sexual orientation" means heterosexuality,

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1 homosexuality or bisexuality, whether actual or perceived;

2 Q. "gender identity" means a person's self-
3 perception, or perception of that person by another, of the
4 person's identity as a male or female based upon the person's
5 appearance, behavior or physical characteristics that are in
6 accord with or opposed to the person's physical anatomy,
7 chromosomal sex or sex at birth;

8 R. "reasonable accommodation" means modification or
9 adaptation of the work environment, work schedule, work rules
10 or job responsibilities, and reached through good faith efforts
11 to explore less restrictive or less expensive alternatives to
12 enable an employee to perform the essential functions of the
13 job and that does not impose an undue hardship on the employer;
14 [~~and~~]

15 S. "undue hardship" means an accommodation
16 requiring significant difficulty or expense when considered in
17 light of the following factors:

- 18 (1) the nature and cost of the accommodation;
- 19 (2) the financial resources of the employer
20 involved in the provision of the reasonable accommodation;
- 21 (3) the number of persons the employer
22 employs;
- 23 (4) the effect of the accommodation on
24 expenses and resources;
- 25 (5) the impact of the accommodation otherwise

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1 upon the employer's business;

2 (6) the overall financial resources of the
3 employer;

4 (7) the overall size of the business of an
5 employer with respect to the number, type and location of its
6 facilities;

7 (8) the type of operation of the employer,
8 including the composition, structure and functions of the
9 workforce of the employer; or

10 (9) the geographic separateness or
11 administrative or fiscal relationship to the employer of the
12 employer's facilities;

13 T. "cultural headdresses" includes burkas, head
14 wraps or other headdresses used as part of an individual's
15 personal cultural beliefs;

16 U. "protective hairstyles" includes such hairstyles
17 as braids, locs, twists, tight coils or curls, cornrows, bantu
18 knots, afros, weaves, wigs or head wraps; and

19 V. "race" includes traits historically associated
20 with race, including hair texture, length of hair, protective
21 hairstyles or cultural headdresses."

22 **SECTION 4. EFFECTIVE DATE.**--The effective date of the
23 provisions of this act is July 1, 2021.