

HOUSE BILL 29

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

INTRODUCED BY

Sheryl Williams Stapleton and Patricia Roybal Caballero

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO RACE; PROHIBITING THE IMPOSITION OF DISCIPLINE, DISCRIMINATION OR DISPARATE TREATMENT IN SCHOOLS BASED ON THE HAIR OR CULTURAL HJC→OR RELIGIOUS←HJC HEADRESSES 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-

.218242.1AIC February 5, 2021 (10:49am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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 in the high school attendance areas within each school district or on a district-wide basis for those school districts that have no high school. No local school board shall allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race HJC→, religion←HJC or culture or because of the student's use of protective hairstyles or cultural HJC→or religious←HJC headdresses.

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

C. An individual school within a school district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

its adoption. If an individual school adopts a discipline policy in addition to the local school board's school district discipline policy, it shall submit its policy to the local school board for approval.

D. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of the employee's efforts to enforce any part of the policy.

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

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

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

(3) the health care provider formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours or school-sponsored activities, including

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

transit to or from school or school-sponsored activities; and

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

F. The parent of a student who is allowed to carry and self-administer asthma medication and emergency anaphylaxis medication may provide the school with backup medication that shall be kept in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

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

H. As used in this section:

(1) "cultural HJC→or religious←HJC headdresses" includes HEC→burkas←HEC HEC→hijabs←HEC , head wraps or other headdresses used as part of an individual's personal cultural HJC→or religious←HJC beliefs;

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

(3) "race" includes traits historically associated with race, including hair texture, length of hair,

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

protective hairstyles or cultural HJC→or religious←HJC
headdresses."

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

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

A. A charter school shall be subject to all federal
and state laws and constitutional provisions prohibiting
discrimination on the basis of disability, physical or mental
handicap, serious medical condition, race, creed, color, sex,
gender identity, sexual orientation, spousal affiliation,
national origin, religion, ancestry or need for special
education services and shall not allow for the imposition of
discipline, discrimination or disparate treatment against a
student based on the student's race HJC→, religion←HJC or
culture or because of the student's use of protective
hairstyles or cultural HJC→or religious←HJC headdresses.

B. A charter school shall be governed by a
governing body in the manner set forth in the charter contract;
provided that a governing body shall have at least five
members; and provided further that no member of a governing
body for a charter school that is initially approved on or
after July 1, 2005 or whose charter is renewed on or after July
1, 2005 shall serve on the governing body of another charter
school. No member of a local school board shall be a member of

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

a governing body for a charter school or employed in any capacity by a locally chartered charter school located within the local school board's school district during the term of office for which the member was elected or appointed.

C. A charter school shall be responsible for:

- (1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and
- (2) contracting for services and personnel matters.

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

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

F. The school district in which a charter school is geographically located shall provide a charter school with

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

available facilities for the school's operations unless the facilities are currently used for other educational purposes. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Subparagraph (b) of Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and provided further that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

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

H. Locally chartered charter school facilities are

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

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

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

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

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

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

N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state, except that, if all or any portion of a state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.

O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

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

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

R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation,

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

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

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

U. As used in this section:

(1) "cultural HJC→**or religious**←HJC headaddresses" includes HEC→**burkas**←HEC HEC→**hijabs**←HEC , head wraps or other headaddresses used as part of an individual's personal cultural HJC→**or religious**←HJC beliefs;

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

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

(3) "race" includes traits historically associated with race, including hair texture, length of hair, protective hairstyles or cultural HJC→or religious←HJC headdresses."

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

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

A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions;

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

C. "commission" means the human rights commission;

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

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

F. "labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances,

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

terms or conditions of employment or of other mutual aid or protection in connection with employment;

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

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

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

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

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

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

M. "physical or mental handicap" means a physical

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

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

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

P. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived;

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

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

.218242.1AIC February 5, 2021 (10:49am)

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight←

delete = →bold, red, highlight, strikethrough←

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

- (1) the nature and cost of the accommodation;
- (2) the financial resources of the employer involved in the provision of the reasonable accommodation;
- (3) the number of persons the employer employs;
- (4) the effect of the accommodation on expenses and resources;
- (5) the impact of the accommodation otherwise upon the employer's business;
- (6) the overall financial resources of the employer;
- (7) the overall size of the business of an employer with respect to the number, type and location of its facilities;
- (8) the type of operation of the employer, including the composition, structure and functions of the workforce of the employer; or
- (9) the geographic separateness or administrative or fiscal relationship to the employer of the employer's facilities;

T. "cultural HJC→or religious←HJC headdresses" includes HEC→burkas←HEC HEC→hijabs←HEC , head wraps or other

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

headdresses used as part of an individual's personal cultural
HJC→or religious←HJC beliefs;

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

V. "race" includes traits historically associated
with race, including hair texture, length of hair, protective
hairstyles or cultural HJC→or religious←HJC headdresses."

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

- 15 -