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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB29/aHEC/aHJC</u>	Sponsor	<u>Williams Stapleton/Caballero</u>
Tracking Number	<u>.218242.1</u>	Committee Referrals	<u>HEC/HJC</u>
Short Title	<u>No School Discrimination for Hair</u>		
Analyst	<u>Juliani</u>	Original Date	<u>1/26/2021</u>
		Last Updated	<u>2/8/2021</u>

BILL SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB29 (HB29/aHEC/aHJC) adds language that includes a student's religion as a category protected from discrimination, discipline, or disparate treatment in schools and expands the types of protected headdresses to encompass those religious in nature.

Synopsis of HEC Amendment

The House Education Committee amendment to HB29 (HB29/aHEC) adds language which strikes the three references to "burkas" and inserts the term "hijabs" instead, a more accurate descriptor of cultural headdress for people of the Islamic faith.

Synopsis of Original Bill

House Bill 29 (HB29) would add a new section to the Public School Code (Laws 1986, Chapter 33, Section 9) to prevent school districts and charter schools from imposing discipline, discrimination, or disparate treatment against a student based on race or culture or due to a student's use of protective hairstyle or cultural headdresses. The bill defines or provides examples of "race," "cultural headdresses," and "protective hairstyles," the latter of which includes such hairstyles as braids, twists, tight coils or curls, cornrows, and bantu knots.

FISCAL IMPACT

The bill does not contain an appropriation, and its implementation carries no discernible fiscal impact. School districts and charter schools would not require additional staff to comply with the proposed bill.

NMPSIA's analysis noted HB29/aHEC/aHJC would entail no fiscal impact, as member school districts and school boards are included in liability coverage. However, school districts and charter

schools may be faced with additional costs due to an additional right of action arising from implementation of the bill.

Analysis from the Department of Workforce Solutions indicated its staff and investigators are already trained in race discrimination, and the bill will not predictably result in a significant enough increase in the number of filings to justify additional FTE positions.

SUBSTANTIVE ISSUES

Discrimination and Race-Based Hairstyles. Discrimination or disparate treatment of individuals arising from race-based hairstyles most commonly appears in the workplace and schools, affecting how students are viewed, treated and disciplined. Data indicate African American women are 30 percent more likely to be made aware of a formal work place appearance policy than their non-African American counterparts, and African American women's hair is 3.4 times more likely to be perceived as unprofessional.

National and local examples exist of discrimination and unconscious bias based on hairstyles for students of color who often become stigmatized and subjected to disparate treatment or discipline. In 2017, a charter high school outside Boston issued multiple detentions to African American girls who wore their hair in braided extensions, saying the hairstyle violated the dress code. In 2018 a referee in New Jersey forced a mixed-race high school wrestler to cut his dreadlocks or forfeit his match. In 2018, a Cibola High School teacher in Albuquerque cut a Native American girl's long hair. In 2019, a public elementary school in suburban Atlanta displayed several photos of African American children, including girls with braids, to illustrate "inappropriate" haircuts.

Some schools have argued that dress codes are critical components of school culture that promote safety and discipline, and certain hairstyles or head wraps are distracting, unprofessional, or promote gangs or prison culture. However, many students and student advocates, asserting such definitions of professionalism are rooted in racism, have encouraged adoption of more restorative and less punitive discipline as part of a broader push to reduce racial disparities in how students are disciplined at school. Research indicates African American girls face disproportionate discipline for low-level offenses like dress code violations.

School Discipline in Statute. Section 22-5-4.3 of the Public School Code (Laws 1986, Chapter 33, Section 9) indicates local school boards and each governing body of a charter school shall establish student discipline policies with input from parents, school personnel, and students in the development of these policies, along with public hearings. Each local discipline policy is to establish rules of conduct in the areas of student and school activity and detail specific prohibited acts and possible disciplinary sanctions, which may include in-school suspension, school service, suspension, or expulsion.

The Safe Schools for All Students Act, enacted in the 2019 legislative session, mandates school districts and charter schools not resort to punitive discipline, but only in the context of responding to incidences of bullying. The act defines progressive discipline as disciplinary action, other than suspension or expulsion from school, designed to correct and address the basic causes of a student's specific misbehavior, while retaining the student in class or in school, including restorative school practices, to repair harm done to relationships and others from the student's misbehavior.

Public Education Department Guidance. The Public Education Department's (PED) *Planning for Safe Schools in New Mexico* guide, while focused primarily on prevention of school violence and bullying, includes social and emotional well-being as a chief component of safe schools.

PED's document urges schools to create an atmosphere in which students' psychological, social and emotional needs are integrated into all parts of student life and wellness. However, the guidebook does not contain any references to discipline, discrimination, or disparate treatment of students based on race-based hairstyles or cultural headdresses. PED's annual data on disciplinary infractions do not include any specific examples of student discipline based on hairstyles or use of cultural headdresses, rendering it impossible of any attempts to use statewide data to determine the extent or nature of race-based disciplinary measures in the state's public schools.

Problematic Definitions or Use of Terms. Instead of actually defining "race," HB29/aHEC/aHJC describes it somewhat awkwardly as "traits historically associated with race, including hair texture, length of hair, protective hairstyles or cultural or religious headdresses," a recursive statement because it assumes an understanding of the very term it is attempting to define. It also opens up exception for traits not historically associated with race but nevertheless integral to one's identity. Rather than a formal definition of "race," HB29/aHEC/aHJC offers examples of traits that historically have been associated with race pertaining to an individual's hair. It may useful if HB29/aHEC/aHJC adopted a formal definition of "race." The New Mexico Human Right Act prohibits discrimination based on race without providing a formal definition. Categories developed by the federal Office of Management and Budget and U.S. Census Bureau have been used to describe groups to which individuals belong or identify with, such as African American, Asian, or White. While such racial categories do not denote scientific definitions of anthropological origins, they serve as designations used to categorize United States citizens, resident aliens, and other eligible noncitizens based on place of ancestral origin.

Analysis from the Department of Workforce Solutions (DWS) made a similar observation on the bill's inadequate definition of "race," noting HB29/aHEC/aHJC only partially defines "race." DWS's analysis indicated if "race" is to be defined in state statute, a more complete definition should be provided, offering the following definition: "physical characteristics, features, or social or cultural commonalities associated with a group of people that has a common history or biological origin, which includes traits historically associated with race, including hair texture, length of hair, protective hairstyles, or cultural headdresses."

HB29/aHEC/aHJC adds "religious" as a distinct category of headdresses protected from discrimination, discipline, and disparate treatment. The DWS analysis also indicated other states with similar statutes have made useful distinctions between racial, cultural, and *religious* hairstyles and headdresses, having the effect of prohibiting discrimination on the basis of a hairstyle or headdress that is religious in nature as opposed to cultural or racial.

Likewise, HB29/aHEC/aHJC presents examples of cultural or religious headdresses and protective hairstyles, rather than definitions. If the examples provided are intended to be comprehensive or inclusive, the definition likely overlooks other types of headdresses and hairstyles, such as fades, that would require protection from discrimination, discipline, and disparate treatment regardless of race or culture. The bill would benefit from providing a formal definition of these terms.

HB29/aHEC/aHJC includes a more accurate descriptor of a headdress used by people of the Islamic faith, substituting "hijabs" for "burkas." During the HEC hearing, a comment from a member of the public indicated that a burka is not a headdress but rather an outer garment covering the body and face worn by women in some Islamic traditions. The commenter went on to indicate a hijab is a more accurate term for an Islamic headdress.

Finally, the definition of "cultural or religious headdress" refers to an individual's personal cultural beliefs. The term "personal" is unnecessary and contradictory, as cultural beliefs, by definition,

reflect group values and norms. Moreover, the use of the term “individual” immediately preceding “personal” renders the use of the latter redundant. Deletion of the term “personal” would prevent an overly broad application of the bill and ensure the intended protections relate to a student’s use of race-based hairstyles or cultural headdresses, rather than simply a personal impulse.

ADMINISTRATIVE IMPLICATIONS

PED’s analysis indicated HB29/aHEC/aHJC would entail no administrative implications for the department as the bill does not require any administrative duties.

OTHER SIGNIFICANT ISSUES

In 2019, beauty products company, Dove, and the CROWN Coalition created the CROWN (Create a Respectful and Open World for Natural Hair) Act to ensure protection in the workplace and public schools against discrimination based on race-based hairstyles by extending statutory protection to hair texture and protective styles, such as braids, locs, twists, and knots. The CROWN Act defines “natural hair” as hair that has not been chemically altered to change its kinky, curly, or coil state. The act defines “protective hairstyle” as a style that tucks the ends of the hair away from being exposed to damaging agents such as sun, heat, and constant manipulation. Seven states – California, New York, New Jersey, Colorado, Washington, Virginia, and Maryland – and the U.S. House of Representatives have passed the CROWN Act banning discrimination based on race-based hairstyles. In addition, nine cities, including Albuquerque, have passed the CROWN Act, adding to their anti-discrimination ordinances protection for citizens from discrimination based on a person's hair texture or hairstyle if that style or texture is commonly associated with a particular race or national origin.

Analysis from the Office of African American Affairs indicated HB29/aHEC/aHJC, when implemented and abided by, has the potential to shift the rates of discipline against students from marginalized communities, increasing students’ opportunities for learning, building a school learning environment that feels safe and welcoming, and potentially decreasing the disparities in achievement of students of color within the school systems.

Analysis by the Indian Affairs Department (IAD) noted HB29/aHEC/aHJC supports IAD’s vision that “tribal nations, tribal communities, and Indigenous people are happy, healthy, and prosperous and that traditional ways of life are honored, valued, and respected.” IAD’s analysis also indicated the bill would normalize cultural differences and allow Native American students to express themselves freely in and outside of school in relation to their hairstyles and headdresses.

Analysis from the Office of the Attorney General noted HB29/aHEC/aHJC does not specify what acts regarding hairstyle or headdress discrimination constitute prohibited discriminatory practice or who may be penalized for such discrimination.

RELATED BILLS

HB29 and Senate Bill 80, No School Discrimination for Hair, are no longer duplicate bills as HB29 has been twice amended—first, by HEC to include altered language regarding the types of cultural headdresses that the bill covers, and subsequently by HJC to include religion as a category protected from discrimination, discipline, or disparate treatment and as an expanded type of protected headdress.

SOURCES OF INFORMATION

- LESC Files
- Department of Workforce Solutions (DWS)
- New Mexico Public Schools Insurance Authority (NMPSIA)
- Office of African American Affairs
- Indian Affairs Department (IAD)
- Public Education Department (PED)
- Office of the Attorney General

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