

1 AN ACT

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

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

11 "22-5-4.3. SCHOOL DISCIPLINE POLICIES--STUDENTS MAY  
12 SELF-ADMINISTER CERTAIN MEDICATIONS.--

13 A. Local school boards shall establish student  
14 discipline policies and shall file them with the department.  
15 The local school board shall involve parents, school  
16 personnel and students in the development of these policies,  
17 and public hearings shall be held during the formulation of  
18 these policies in the high school attendance areas within  
19 each school district or on a district-wide basis for those  
20 school districts that have no high school. No local school  
21 board shall allow for the imposition of discipline,  
22 discrimination or disparate treatment against a student based  
23 on the student's race, religion or culture or because of the  
24 student's use of protective hairstyles or cultural or  
25 religious headdresses.

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

9           C. An individual school within a school district  
10 may establish a school discipline policy, provided that  
11 parents, school personnel and students are involved in its  
12 development and a public hearing is held in the school prior  
13 to its adoption. If an individual school adopts a discipline  
14 policy in addition to the local school board's school  
15 district discipline policy, it shall submit its policy to the  
16 local school board for approval.

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

23           E. All public school and school district  
24 discipline policies shall allow students to carry and  
25 self-administer asthma medication and emergency anaphylaxis

1 medication that has been legally prescribed to the student by  
2 a licensed health care provider under the following  
3 conditions:

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

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

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

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

22 F. The parent of a student who is allowed to carry  
23 and self-administer asthma medication and emergency  
24 anaphylaxis medication may provide the school with backup  
25 medication that shall be kept in a location to which the

1 student has immediate access in the event of an asthma or  
2 anaphylaxis emergency.

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

7 H. As used in this section:

8 (1) "cultural or religious headdresses"  
9 includes hijabs, head wraps or other headdresses used as part  
10 of an individual's personal cultural or religious beliefs;

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

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

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

19 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND  
20 RESPONSIBILITIES--OPERATION.--

21 A. A charter school shall be subject to all  
22 federal and state laws and constitutional provisions  
23 prohibiting discrimination on the basis of disability,  
24 physical or mental handicap, serious medical condition, race,  
25 creed, color, sex, gender identity, sexual orientation,

1 spousal affiliation, national origin, religion, ancestry or  
2 need for special education services and shall not allow for  
3 the imposition of discipline, discrimination or disparate  
4 treatment against a student based on the student's race,  
5 religion or culture or because of the student's use of  
6 protective hairstyles or cultural or religious headdresses.

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

20 C. A charter school shall be responsible for:

21 (1) its own operation, including preparation  
22 of a budget, subject to audits pursuant to the Audit Act; and

23 (2) contracting for services and personnel  
24 matters.

25 D. A charter school may contract with a school

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

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

15 F. The school district in which a charter school  
16 is 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

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

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

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

1 extend beyond the school district boundary.

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

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

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

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

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



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

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

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

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

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

24           T. A charter school shall comply with all  
25 applicable state and federal laws and rules related to

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

13 U. As used in this section:

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

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

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

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

25 "28-1-2. DEFINITIONS.--As used in the Human Rights Act: SJC/SB 80  
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1           A. "person" means one or more individuals, a  
2 partnership, association, organization, corporation, joint  
3 venture, legal representative, trustees, receivers or the  
4 state and all of its political subdivisions;

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

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

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

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

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

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

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

1 is by its nature and use distinctly private;

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

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

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

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

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

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

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

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

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

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

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

19 (1) the nature and cost of the  
20 accommodation;

21 (2) the financial resources of the employer  
22 involved in the provision of the reasonable accommodation;

23 (3) the number of persons the employer  
24 employs;

25 (4) the effect of the accommodation on

1 expenses and resources;

2 (5) the impact of the accommodation  
3 otherwise upon the employer's business;

4 (6) the overall financial resources of the  
5 employer;

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

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

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

15 T. "cultural or religious headdresses" includes  
16 hijabs, head wraps or other headdresses used as part of an  
17 individual's personal cultural or religious beliefs;

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

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

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