

#2

NM State Bar Student Essay Contest

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## I. Summary of Facts

Torredo Charter High School (“Torredo”) is a school located in a very poor district in south central New Mexico, with a high crime rate where gang violence poses a significant threat to students. As part of its efforts to ensure student safety while at school, Torredo adopted a school dress code policy (the “policy”) that required students to wear uniforms provided by the school, prohibited all pierced jewelry for male students, all but discreet pierced earrings for female students, and prohibited facial hair in any form. Torredo’s policy also required all students to wear their hair in a neat and clean manner that did not interfere with schoolwork. For male students, Torredo’s policy identified specific length requirements, while female students were required to keep their hair neat and long hair pulled back or constrained. Torredo’s policy contains an exemption for religious or cultural beliefs that require grooming habits that contradicted with the policy’s requirements. Whether a student is properly groomed or dressed appropriately is, under Torredo’s policy, left to the discretion of the school principal.

John Ballejos, an American Indian who is not a member of any tribe but comes from Apache ancestry, entered Torredo as a freshman. In his junior year, Ballejos began to wear his hair long. Other Native American students at Torredo did not maintain long hair as part of their religious beliefs, nor did most members of Ballejos’ family. When questioned by the principal about his long hair, Ballejos attempted to connect his hair length to his Native American heritage, but Ballejos could not provide written evidence that would support any conclusion that maintaining long hair was required as part of his religious beliefs; instead, Ballejos told Torredo’s principal only that he felt a closer connection to his Native American heritage by

wearing his hair long. Because Ballejos could not prove that wearing his hair long was required by his Native American beliefs or tribal affiliations, and in light of the fact that many Apache students at Torredo did not wear long hair as part of their religious beliefs, Torredo's principal told Ballejos to cut his hair to conform with the Torredo policy or be suspended. Ballejos appealed the principal's decision to the school board. At the school board appeal, Ballejos again provided no concrete evidence that maintaining long hair was required by his Native American beliefs or tribal affiliation. After hearing Ballejos and his witnesses, the school board affirmed the decision of Torredo's principal.

## II. Questions

### 1. Is the policy an appropriate measure to further the educational process?

Ballejos claims that Torredo's policy prohibiting him from having long hair is an unconstitutional restriction on his right to free exercise of his religion. Torredo is a public school. A public school is permitted to adopt reasonable regulations that restrict the personal freedoms of students if those regulations support school discipline and education and were adopted to further the educational process. As stated in *Bishop v. Colaw*, 450 F.2d 1069, "[t]he question confronting us is whether there exists any real educational purpose or societal interest to be served in the discipline the school has adopted." A school dress code restricting hair length may be upheld if the regulation promotes the furtherance of valid educational goals, health or other legitimate educational purposes. See *Dwen v. Barry*, 483 F.2d 1126. A school has the burden of establishing the necessity of infringing upon students' rights in order to carry out the educational mission of the school. *Bishop v. Colaw*, 450 F.2d 1069.

In this case, an examination of Torredo's policy in light of its school environment establishes that Torredo's policy was adopted to further educational purposes for Torredo's students. Torredo is located in a very poor district with a high crime rate and high gang violence

that threatened to spill onto school grounds and disrupt student learning. Torredo's policy expressly connects its requirements related to school uniforms, dress, jewelry and hair to the prevention of interference with schoolwork. Uniformity in student appearance limits potential educational distractions as well as potential signs of gang connection or affiliation at school. Torredo's policy was clearly adopted to promote an atmosphere conducive to learning and is, therefore, a constitutionally appropriate measure to further the educational process of its students.

**2. What is the rational basis for regulating the length of hair for males?**

Torredo's policy is focused on establishing uniformity in appearance for all students. Male and female students are required to wear uniforms provided by the school. No students are permitted to display tattoos or other identifying marks. With regard to jewelry and hair, Torredo's policy makes distinctions between males and females. For hair, female students are permitted to wear hair in any length as long as it is worn in a neat, clean manner that does not interfere with schoolwork, while male students must wear short hair and have no facial hair. If a student is permitted to have hair in his or her eyes or faces, their ability to read textbooks, write notes, read the chalkboard, make class presentations, participate in class discussions, and interact with each other and their teacher may be affected. Long hair for a male student may also be a way to signify membership or affiliation with a particular group of students. Identification through a particular hairstyle, style of clothing, or similar outward signs of appearance is precisely how students recognize what "group" other students may be in. Gang members identify each other, and thus target violence, by this same method. The regulation of male hair length is a rational response to the growing gang problem and is connected to ensuring that students have a safe, positive learning environment. The length of hair regulations for male

students in Torredo's policy is thus rationally related to limit potential interference with the educational process.

### **3. Will the absence of the policy cause harm to school functions?**

It is impossible to pinpoint the precise repercussions of allowing male students to maintain long hair in violation of Torredo's policy prior to an event actually occurring. However, in *Jeflin v. Jacinto Unified School District*, 827 F. Supp. 459, the court determined that the United States Constitution does not require school officials to wait until disruption actually occurs before they may act to curtail free speech; in fact, school officials have a duty to prevent disturbances. Schools must be capable of imposing disciplinary sanctions for a wide range of unanticipated conduct disruptive to the educational process. *Stephenson v. Davenport School District*, 110 F.3d 1303. The Torredo establishmentarians intended to prevent disturbances and gang activity that could arise by adopting the dress code and the denial of Ballejos' unsupported request for an exemption is simply an enforcement of that policy.

Denying enforcement of Torredo's policy in Ballejos' circumstances, without sufficient proof of religious beliefs to support an exception, would give students the impression that Torredo is not serious about properly implementing its policy. Failing to enforce the policy without requiring proof of religious beliefs justifying an exception, as Ballejos asks, would encourage other students to rise up against the policy claiming similar unsupported beliefs in order to be allowed to wear things outside the bounds the policy allows. Given the rampant gang activity and poor economic environment surrounding Torredo, the failure to enforce the dress code for Ballejos would likely open the door for gang activity to become more prominent. Gangs could use hair length as the way to represent gang membership if that were the only means they had to do so. Therefore, it is crucial to require students to abide by policies in place.

Those policies do not exclude Ballejos as long as he is unable to prove a connection between the requested exception and his religious beliefs.

### **III. Conclusion**

Torredo is responsible for the safety and welfare of the students while on school property, and that includes being able to protect students. The Torredo establishmentarians followed proper protocol and acted appropriately through the entire disciplinary process related to Ballejos. Ballejos should not be allowed an exception to the policy because he was unable to provide proof of his religious beliefs being burdened by the policy. As recognized in *Hatch v. Goerke*, 502 F.2d 1189, a majority of complaints against hair style regulations lacks constitutional substance. Failure to enforce the policy for Ballejos would open the door for students to claim first amendment rights to wear certain apparel which would allow outward signs of gang activity to become prominent in the school. The safety and welfare of the students is paramount. In this case, the educational process and safety of students will be put at risk if Ballejos is allowed to grow his hair past the length permitted in the Torredo policy without connecting that long hair to specific requirements of his religious beliefs with sufficient proof or evidence. Ballejos failed to make that connection, and the school board's decision should be upheld.