

#6

New Mexico Bar Student Essay Contest



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1,457 Words

### **Facts**

John Bajellos, an American Indian, moved to south central New Mexico and enrolled as a freshman at Torredo Charter High School. John conformed to school policy in all matters until his junior year when he began to wear his hair long. This created a conflict with school policy in regard to what the school considered proper grooming for male students; and upon being threatened with suspension, he stated that he was following his tribe's cultural and religious beliefs. John claimed he was reconnecting with his Native American heritage as a Lipan Apache and had petitioned to join the Mescalero Apache tribe. He asserted the exemption under school policy for grooming standards based on his religious and cultural beliefs. However, the principal requested written evidence providing proof that the Mescalero Apache or Lipan Apache required members to have long hair. Since John could not provide written proof of his beliefs, the principal decided that John did not qualify for the exemption and gave him an ultimatum to either cut his hair or to be suspended. John appealed and argued to the school board that wearing his hair long connected him to his tribe and beliefs. John stated that he had only begun to study his heritage and even offered statements of two Lipan tribe members who were teaching him. However, after considering John's statements and testimony, the school board also declared that John did not fall under the exemption and was only asserting personal preference. The school board subsequently sided with the principal's ruling, causing John to file a suit in federal court.

## Issues

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

A policy refers to a definite course of action adopted for the sake of expediency. The primary focus of the Torredo school policy was intended to ensure that students would be safe on school grounds. As a precautionary measure, uniforms were mandated to create uniformity among students. Students were also not allowed to have tattoos or other identifying markings that could define affiliation with specific gangs. The school policy restricted male students from having hair descending below the ears and mandated that female students should wear their hair in a braid or otherwise constrained in a clean and neat manner that did not interfere with their schoolwork. Many public schools adopted dress codes and uniforms after President Bill Clinton endorsed uniforms in his 1996 state of the union address. He stated, "I challenge all our schools to teach character education, to teach good values and good citizenship. And if it means that teenagers will stop killing each other over designer jackets, then our public schools should be able to require their students to wear uniforms." According to *U.S. v. O'Brien 1968*, the U.S. Supreme court developed a test to determine if a school dress code is constitutional. Under the O'Brien test a school dress code or uniform policy is constitutional if it:

1. Is authorized under state law.
2. Advances an important government interest.
3. Is not related to the **suppression of free expression.**
4. Only incidentally restricts free expression in a **minimal** fashion.

In a school where uniforms are required, hair length restrictions are related to the suppression of free expression. Hair can be seen not only as personal expression, but in John's case, religious

expression. According to the *First Amendment of the United States Constitution*, “The Free Exercise Clause...withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions there by civil authority.” When the school required John to cut his hair, they invaded his religious liberty, thus violating his First Amendment Rights. Most aspects of the policy like uniform requirements are beneficial to the learning process given the school’s problematic location, but hair length requirements can be seen as being over-intrusive to a student’s overall freedom of expression and irrelevant to the learning process. Unlike uniforms, hair length cannot be changed once out of school; so because the school requires male students to have a certain hair length, they are intruding upon the students’ freedom of expression outside of school as well. In addition, female students are allowed long hair as long as it is worn in an unobtrusive manner. If hair length detracts from the educational process, all students would have to have their hair short. Since part of the student population is allowed long hair while the other is not, this not only verifies the irrelevancy of hair length to learning, but also confirms how the school ultimately discriminates against their male population.

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

According to the Torredo school policy, “male students should wear their hair in a neat and clean manner with hair no lower than the middle of their foreheads in the front, no lower than the shirt collar in the back, and no lower than the middle of their ears on the sides.” An exemption is provided for religious or cultural beliefs for certain grooming standards at odds with the school policy. John petitioned for membership with the Mescalero Apache Tribe and argued that by wearing his hair long, he feels a closer connection to his tribe and his

understanding and belief is not to cut his hair except at life-changing events. He asserted that his hair is a symbol that connects him to his ancestors and a reminder of who he is. According to *A.A. v. Needville Independent School District*, the 5<sup>th</sup> U.S. Circuit Court of Appeals ruled that a Texas school district cannot punish an American Indian student for wearing his hair in traditional braids to express his family's religious beliefs. According to the *New Mexico Religious Freedom Restoration Act (Laws of 2000, 2<sup>nd</sup> Special Session, Chapter 17)*, a person's free exercise of religion is protected. It allows a person whose right has been restricted by a violation to assert that violation as a claim or defense in a judicial proceeding and obtain relief against a government agency. If the school has regulation regarding hair length, it should not intrude upon students' religious beliefs. Even though the school has an exemption for cultural beliefs in conflict with school policy, the decision of whether or not a student qualifies for the exemption is left to the principal's discretion. Since he has full discretion over the matter, the decision ultimately lies with his own opinion; and if he does not agree with a student's beliefs, he may be biased and disallow that student from falling under the exemption. Also, because females are allowed to have long hair as long as it is worn in a clean and unobtrusive manner, why can't this regulation in the policy also pertain to male students?

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

The policy is intended to ensure that students will be safe, free of crime and gang violence on school grounds. Given the location and issues of gang violence and crime rate, it is appropriate for the school district to implement a policy to address these issues. However, the absence of a hair regulation will not be counterproductive to the school's functions as John's hair length does not impede his learning or the learning of other students.

## Conclusion

The school policy ensures a safe environment for students, but violates John's right to free exercise of religion. According to the *New Mexico Religious Freedom Restoration Act (laws of 2000, 2<sup>nd</sup> Special Session, Chapter 17)*, a government agency shall not restrict a person's free exercise of religion unless:

- A. The restriction is in the form of a rule of general applicability and does not directly discriminate against religion or among religions, and
- B. The application of the restriction to the person is essential to further a compelling governmental interest and in the least restrictive means of furthering that compelling governmental interest.

John asserts that his hair is a symbol of his religion and culture as a future Mescalero Apache member. The school district did not allow John free exercise of religion and applied restrictive measures, therefore directly discriminating against and oppressing his religious beliefs. By suppressing John's religious beliefs, the school district violated his First Amendment Right to freedom of religious expression. School officials could not effectively demonstrate how John's hair length infringed upon his learning and the learning of other students. The school's failure in showing how hair length inhibits learning only solidifies how aspects of the policy are insignificant to the educational process; therefore, the school district should have granted John an exemption from the policy.