

Delivered via first class mail and email to latkinson@nfhs.org

September 11, 2023

Lindsey Atkinson
Director of Sports/Communications Associate
National Federation of State High School Associations
P.O. Box 690
Indianapolis, IN 46206

RE: Violation of Massachusetts' Crown Act: Discrimination Based on Natural and Protective Hairstyles

Dear Ms. Atkinson:

Lawyers for Civil Rights (“LCR”) is a non-profit legal organization that works with communities of color and migrants to fight discrimination and foster equity through creative and courageous legal advocacy, education and economic empowerment. We write to demand that the National Federation of State High School Associations (“NFHS”) take immediate action to stop enforcement of NFHS hairstyle rules that discriminate against students athletes of color – in light of recent violations of Massachusetts’ Crown Act.

We request a written response within fourteen (14) days of receipt of this letter with a description of the steps you will take to address the discrimination concerns outlined below. If we do not hear from you, we will explore various legal actions against NFHS. We also request a meeting to discuss our concerns in greater detail and to actively explore the suggested solutions.

I. Massachusetts’ CROWN Act

Hair and hairstyles play a vital role in the formation of Black childrens’ identities, and being made to feel ashamed of their hair can cause longlasting, irreparable harm.¹ According to a leading educational research institute, Black children are more likely to be disciplined for long hair violations than their white peers, a practice that has unfortunately become too prevalent.² To many Black people, their hair and their identity are one and the same. To them, an attack on their hair is an attack on their identity.

¹ Illeana Najarro, ‘Our Hair is Our Identity’: What Educators Need to Know About Hair Discrimination Laws, Education Week (retrieved from <https://www.edweek.org/leadership/our-hair-is-our-identity-what-educators-need-to-know-about-hair-discrimination-laws/2022/07>).

² *Id.*

Recognizing this unfortunate reality, in 2022, Massachusetts became the eighteenth state to adopt its version of the Crown Act.³ The Act prohibits discrimination based on race, which “include[s] traits historically associated with race, including, but not limited to, hair texture, hair type, hair length and protective hairstyles.”⁴ “Protective hairstyle” is defined to include “braids, locks, twists, Bantu knots, hair coverings and other formations.”⁵ This law is applicable to workplaces, school districts, and school-related organizations.⁶

II. NFHS Violations of the Crown Act

This spring, LCR was contacted by a number of concerned families after an incident at a middle school basketball game where a white referee told three Black female basketball players from Clinton Middle School that they were ineligible to play in an upcoming game unless they tied back their braided hair. In making his decision, the referee cited NFHS’ Rule 3-5-4d, which provides in part that “[h]air adornments must be securely fastened close to the head and not increase risk to the athletes, teammates or opponents.”⁷ When these young, Black basketball players were told that their hair prevented them from playing a game that they loved, they were deeply hurt and insulted. Despite their talent, this incident has made the girls question whether they wanted to play basketball – in *any* organized team setting – in the future.

The use of Rule 3-5-4d against these young athletes is problematic in a number of different ways. First, the referee’s interpretation and enforcement of this rule was incorrect, as braids are simply hair – not hair-control devices or adornments. However, the Rule itself invites different interpretations, as it fails to specifically state that natural hairstyles alone do not qualify as violations. The broad language of Rule 3-5-4d also invites different interpretations that can be applied in a discriminatory manner—as was the case here, where the referee singled these players out because of their race. No white players were given the same instruction, including those whose hair fell past their shoulders.

This conduct violates the Massachusetts Crown Act. By its terms, the Act specifically states that “any equivalent . . . entity [to NFHS] . . . that provides athletic officials . . . for school sports or athletic events . . . shall not adopt or implement a policy or code . . . that impairs or prohibits a hairstyle that is historically associated with race.”⁸ Because athletic officials in Massachusetts

³ Steve LeBlanc, *Baker signs Crown Act, banning hairstyle discrimination at school, work in Mass.*, WBUR (July 26, 2022) (retrieved from <https://www.wbur.org/news/2022/07/26/crown-act-hair-discrimination-massachusetts>) (see also Kay Lazar, *Mystic Valley charter school drops ban on hair extensions*, The Boston Globe (August 11, 2017) (retrieved from <https://www.bostonglobe.com/metro/2017/08/11/mystic-valley-charter-school-eliminates-controversial-hair-rules/iRKY5eQ0S0EedNK9rSwqEM/story.html>)). The impetus for this Act was the Cook Twins, who were represented by LCR.

⁴ An Act Prohibiting Discrimination Based on Natural and Protective Hairstyles, 2022 Mass. Acts 117.

⁵ *Id.*

⁶ *Id.*

⁷ NFHS (retrieved from <https://www.nfhs.org/media/5989233/hair-religion-jewelry-rules-spreadsheet.pdf>).

⁸ 2022 Mass. Acts 117.

must follow rules disseminated by NFHS, the failure of officials to comply with the Crown Act when enforcing Rule 3-5-4d exposes NFHS to legal liability. In a similar context, a court in Ohio has held that because an athletic association exercises control over its member organizations through the rules it imposes and that the member organizations must follow under threat of penalties and fees, the athletic association can be held liable when an athlete is harmed by the rules it promulgates.⁹

This is a nationwide issue for NFHS, as many other states including Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Louisiana, Maine, Maryland, Minnesota, Nebraska, Nevada, New York, Oregon, Tennessee, Texas, Virginia, and Washington have enacted similar hairstyle discrimination laws.¹⁰ And even in those states that have not yet passed Crown Act legislation, disparate treatment of Black athletes based on their hairstyles also likely violates general anti-discrimination laws. In 2021, attention was brought to this very issue when a Black high school athlete in Durham, North Carolina, was similarly singled out when she was told that she could not play in a softball game because she had long box braids with clear beads at the end, and that her hairstyle violated athletic rules.¹¹

III. Remedial Action Required

Unless NFHS takes immediate action to ensure compliance with the Crown Act, this issue will keep arising and additional Black athletes will be harmed as a result. Although Rule 3-5-4d includes a reference to “inclusivity of hair styles,” which indicates that NFHS is aware of these issues, the Rule’s wording and its implementation are highly problematic.

Young athletes of color will continue to be harmed unless NFHS takes affirmative steps to remedy this problem, including but not limited to: a) revising Rule 3-5-4d to specifically state that it does not apply to natural hair; b) reviewing NFHS’ rule books for other high school sports to ensure similar changes are made; c) issuing written guidance to officials on the appropriate implementation of Rule 3-5-4d and similar hairstyle rules; and d) training all officials on the Crown Act and on proper enforcement of any NFHS rules pertaining to hair.

Please email Erika Richmond at erichmond@lawyersforcivilrights.org to set up a meeting to discuss the discrimination concerns outlined above. We look forward to an expedient resolution.

Sincerely,

⁹ Sam C. Ehrlich, *Gratuitous Promises: Overseeing Athletic Organizations and the Duty to Care*, 25 Jeffrey S. Moorad Sports L.J. 1 (2018) (see also *Wissel v. Ohio High Sch. Athletic Ass’n*, 605 N.E.2d 458, 465 (Ohio Ct. App. 1992)).

¹⁰ Nigel Telman and Margaret Swetman, *What’s Coming Up in CROWN Act Legislation, and How to Prepare*, Bloomberg Law (February 1, 2023) (retrieved from <https://news.bloomberglaw.com/us-law-week/whats-coming-up-in-crown-act-legislation-and-how-to-prepare>).

¹¹ *NC High School Student and Father Demand Policies to End Hair Discrimination in Schools*, Southern Coalition for Social Justice (retrieved from <https://southerncoalition.org/end-hair-discrimination-in-schools/>).

Erika Richmond, Esq.
Sophia Hall, Esq.
Oren Sellstrom, Esq.