



ACLU of Tennessee, P.O. Box 120160, Nashville, TN 37212 | American Muslim Advisory Council, 2195 Nolensville Pike, Nashville, TN 37211

October 21, 2020

Via U.S. Mail and Email

Mr. Bernard Childress
Executive Director
Tennessee Secondary School Athletic Association
3333 Lebanon Pike
P.O. Box 319
Hermitage, TN 37076
bchildress@tssaa.org

Re: Religious Accommodation in Uniform and Headgear Standards

Dear Mr. Childress,

We write regarding an incident on September 15, 2020, in which a Muslim-American student at a Tennessee high school was disqualified from competing in a volleyball match because she was wearing a headscarf, or hijab, in accordance with her religion.¹ According to news reports, a TSSAA-approved game official barred the student from competition because (1) her head covering did not comply with TSSAA rules (adopted from the National Federation of State High School Associations) concerning headgear and (2) TSSAA had not granted prior approval.

We implore you to create an exception to TSSAA rules to allow for religious headgear worn by student athletes without prior approval. Students should never have to choose between participating in interscholastic sports and the free exercise of their religious beliefs; nor should they have to take on additional administrative burdens in order to participate where their peers of different faiths do not.

As you may know, many religious faiths value modesty in dress in both men and women. Many Muslim women express this deeply held tenet of their faith by choosing to wear a head covering. And, many professional Muslim athletes, like Olympic-medal winner Ibtihaj Muhammad, perform at the highest levels of national and international competition while wearing a head covering.²

¹ The Arabic word “hijab” means covering or barrier; however, it stands for the concept of modesty in dress and behavior as described in the Quran and Hadith. In Western countries, the word “hijab” has become synonymous with “headscarf.”

² See, e.g., Arnie Stapleton, “Muhammad First US Athlete to Wear Hijab at Olympics,” Associated Press, Aug. 8, 2016, available at <https://apnews.com/article/f3a1a2df6a18409fac98844fcc0e4c1d>; Valeriya Safronova, “Nike Reveals the ‘Pro Hijab’ for Muslim Athletes,” The New York Times, Mar. 8, 2017, available at <https://www.nytimes.com/2017/03/08/fashion/nike-pro-hijab-muslim-athlete.html>.

Student athletes, like all students, do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). This includes the right to freely exercise their religious beliefs. U.S. Const. amend. I.

In Tennessee, a person’s free exercise of their religion is afforded especial protection from government interference. Tennessee’s Religious Freedom Restoration Act forbids government entities from taking any action that “substantially burden[s] a person’s free exercise of religion” unless that action is “(1) essential to further a compelling governmental interest; and (2) the least restrictive means of furthering that compelling governmental interest.” Tenn. Code Ann. § 4-1-407(c). While TSSAA may be concerned about student safety, its overly broad headgear standards, which do not make exceptions for religious head coverings, may not survive the strict scrutiny that Tennessee law requires; indeed, these rules may substantially (and therefore illegally) burden students’ free exercise of their religious beliefs.

In addition, the application of these rules may violate Title IV and VI of the Civil Rights Act of 1964. Title IV allows the attorney general to investigate cases of religious discrimination in schools, and Title VI prohibits discrimination on the basis of race, color, or national origin in schools. While Title VI does not explicitly prohibit religious discrimination, the U.S. Department of Education’s Office of Civil Rights warns that Title VI may be implicated where a student is harassed “for how they look, dress, or speak in ways linked to ethnicity or ancestry...”³ This can include harassment for wearing religious attire if the harassment is based on perceived membership in a certain national or ethnic group. Hindu, Jewish, Muslim and Sikh students are thus frequent targets for this particular kind of racial harassment.

Recognizing these potential harms, several states have authorized deviations from NFSH rules for religious reasons. For example, in 2017, the Maryland Public Secondary Schools Athletic Association (MPSSAA) issued “an exception to the NFSH uniform standards for religious purposes.”⁴ Under the new MPSSAA guidance, “[a]ny participant may wear a head covering, wrap, or other required religious garment which is not abrasive, hard, or dangerous to any player/others, and is attached in such a way that it is unlikely to come off during play.” In 2018, the Pennsylvania Interscholastic Athletic Association made nearly identical changes to its handbook after a Muslim basketball player was barred from competing because she did not have prior approval to wear a hijab.⁵ The Ohio High School Athletic Association handbook also explicitly permits headgear worn for a “religious purpose.”⁶

We respectfully request that you take the necessary steps to protect every Tennessee student’s right to exercise their faith and to ensure that no student has to endure the humiliation and disrespect of being barred from competition because of their religious attire. Please exempt

³ See Office of Civil Rights, FAQ: Race and National Origin Discrimination, available at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html#racedisc4>.

⁴ https://www.mpssaa.org/assets/1/6/NFHS_Uniform_Standards.pdf.

⁵ <https://www.pahouse.com/InTheNews/NewsRelease/?id=98492>

⁶ <https://ohsaaweb.blob.core.windows.net/files/SchoolResources/Handbook.pdf>

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religious head gear from TSSAA's uniform standards and remove the requirement of prior TSSAA-approval.

Thank you for your prompt attention to this matter; please do not hesitate to contact us should you have any questions or concerns.

Sincerely,



Hedy Weinberg
Executive Director
ACLU of Tennessee



Sabina Mohyuddin
Executive Director
American Muslim Advisory Council