

FEB 18 2010

IN THE FEDERAL DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

DAVID CREWS, CLERK
BY  Deputy

WILLIAM CODY CHILDRESS, a minor,)
by and through John Childress, Natural Father;)
Plaintiff)

Civil Action No. 2:10cv024-P-A

v.)

TATE COUNTY SCHOOL DISTRICT;)
GARY WALKER, TCSD Superintendent, in his)
official and individual capacities; COREY)
BLAYLOCK, Independence High School)
Principal, in his official and individual capacities,)

Defendants.)

JURY TRIAL DEMANDED

VERIFIED COMPLAINT

Plaintiff, by and through his attorneys, for his Verified Complaint allege, upon knowledge as to himself and otherwise upon information and belief, as follows:

I. PRELIMINARY STATEMENT

1. This is a facial and as-applied action brought pursuant to 42 U.S.C § 1983 and the United States Constitution that seeks to remedy the unconstitutional deprivation of Plaintiff's statutory and constitutional rights. The conduct of Defendants, acting in concert with their officers, agents, servants, employees and attorneys, and all other persons in active concert or participation, violates plaintiffs' rights, privileges, and immunities under the United States Constitution, as amended; specifically the violation of the search and seizure clause of the Fourth Amendment, the cruel and unusual punishment clause of the Eighth Amendment, and equal protection and due process clauses of the Fourteenth Amendment.

2. The cause of action and the underlying claims and allegations made concern §§ 37-11-57 and 11-46-9(x), the discipline immunity statutes, and other related statutes, on their face and as applied to Plaintiff. *See* true and accurate copies of §§ 37-11-57 and 11-46-9, attached hereto as Exhibits “A” and “B,” respectively. These statutes permit school officials to utilize corporal punishment to discipline students in a classroom.

3. The statutory code of the State of Mississippi permits school officials to utilize corporal punishment without providing a framework in which such punishment is administered. *See* a true and accurate copy of Senate Bill 2651, attached hereto as “Exhibit “C.” Rather, corporal punishment is permitted so long as it is used in a “reasonable manner.” Punishment of a child by a government official involving physical and mental trauma to the said child can never be administered in a reasonable manner.

4. Corporal punishment in Mississippi has targeted students based upon gender and race. Such an application runs afoul of the protections guaranteed by the Fourteenth Amendment.

5. This action is also brought pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* because Plaintiff was deprived the benefits of an education. Male students are more likely to be punished by corporal punishment than female students.

6. The Mississippi Constitution guarantees a right to an adequate public education, creating a property interest that cannot be taken away without due process of law. Defendants are obligated to provide an adequate education, but through their own actions and misdeeds, have failed to do so.

7. This action also seeks declaratory and injunctive relief on the grounds that the disciplinary statutes violates the rights guaranteed by the U.S. Constitution, including the right to equal protection, the right to liberty, the right of bodily integrity, the right to due process and the

right to be free from cruel and unusual punishment, all as guaranteed by the Eighth and Fourteenth Amendments to the U.S. Constitution, and 42 U.S.C. § 1983.

8. The relief Plaintiff seeks is supported by satisfactory proofs, including the public records, facts and other documentation referenced throughout the Complaint.

9. Plaintiff seeks nominal, actual and punitive damages against Defendants for the flagrant, willful, knowing, violation of his Fourth, Eighth and Fourteenth Amendment rights and their violations of federal statutes and state law torts, as well as the costs of litigation, including reasonable attorney's fees.

II. JURISDICTION

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3)(4), which confers original jurisdiction on federal district courts to redress the deprivation of rights, privileges and immunities as stated herein.

11. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

12. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

III. VENUE

13. Venue is proper in the United States District Court for the Northern District of Mississippi, Delta Division, pursuant to 28 U.S.C. § 1391(b), because a majority of the claims arise in Tate County, Mississippi.

IV. IDENTIFICATION OF PLAINTIFFS

14. Plaintiff, WILLIAM CODY CHILDRESS, is a sixteen (16) year-old student who enrolled in the Tate County School District, hereinafter "TCSD," and attends school at Independence High School.

15. Plaintiff, JOHN CHILDRESS, is the Natural Father of WILLIAM CODY CHILDRESS and sues on behalf of WILLIAM CODY CHILDRESS for the damages accruing due to Defendant's actions in this matter.

16. Both Plaintiffs are residents of Senatobia, Mississippi, located in Tate County.

V. IDENTIFICATION OF DEFENDANTS

17. Defendant TATE COUNTY SCHOOL DISTRICT is a political subdivision of the state of Mississippi. It may be served with process upon its Superintendent of Education, Gary Walker, 107 Court Street Senatobia, MS 38668.

18. Defendant GARY WALKER, who is sued both individually and in his official capacity, is the Superintendent of TCSD. He may be served with process at 107 Court Street Senatobia, MS 38668.

19. Defendant COREY BLAYLOCK, who is sued in his individual and official capacities, is the principal of Independence High School. He may be served with process at 3184 Hwy 305, Coldwater, MS 38618.

VI. STATEMENT OF FACTS

20. Plaintiff is a student of the Independence High School, hereinafter "IHS," and was the victim of excessive, abusive and discriminatory corporal punishment that showed a wanton and willful disregard for human rights.

21. On or about September 1, 2009, Plaintiff was at school in the care of IHS.

22. During his seventh (7th) period biology class, Plaintiff, as well as the other students, were told they could talk quietly amongst themselves by Mr. Galloway; the substitute teacher who was in charge of the class on the day in question.

23. At approximately 2:45 pm, Mr. Galloway approached Plaintiff and instructed Plaintiff to go directly to the principal's office. This occurred ten (10) minutes before class would be dismissed for the day.

24. Prior to being approached by Mr. Galloway, Plaintiff was looking at a picture on a digital camera that was brought into the classroom by another female student. The camera did not belong to Plaintiff.

25. The female student who possessed the camera in violation of school policy was not told to go to the principal's office, nor was she punished.

26. When Plaintiff arrived at Defendant Blaylock's office, he was instructed to sign a piece of paper. Plaintiff signed the paper because he felt compelled by an authority figure to do so. Defendant Blaylock did not give Plaintiff a copy of the paper. The contents of the paper are unknown at this time, but the paper is in the care and custody of Defendants.

27. Defendant Blaylock then said Plaintiff's parents would be upset if Plaintiff had an ISS on his record, so he told Plaintiff he was to be paddled.

28. Defendant Blaylock instructed Plaintiff to bend over and position his hands firmly on a desk.

29. Plaintiff followed the instructions because Defendant Blaylock had taken away his choice.

30. Defendant Blaylock proceeded to strike Plaintiff twice, with excessive force, on the buttocks. The paddling inflicted visible injuries on Plaintiff and caused a great deal of physical and emotional pain.

31. After returning home, Plaintiff was in physical discomfort and told his parents he was paddled by Defendant Blaylock.

32. After inspecting the injuries, Plaintiff's step-mother, Katherine Marie Childress, took Plaintiff to the North Oak Hospital in Senatobia, Mississippi.

33. Mrs. Childress also called the Tate County Sheriff's Office to report that her son had been beaten and abused.

34. Tate County Sheriff Deputies were dispatched to the Childress' residence where pictures were taken of the Plaintiff's buttocks. Deputies also told Mrs. Childress she could file a formal complaint against Defendant Blaylock at the Tate County Justice Court the next day.

35. On or about September 2, Mrs. Childress went to the Tate County Justice Court to file a criminal complaint against Defendant Blaylock. This matter is still pending in Tate County Circuit Court, styled *State of Mississippi v. Cory Blaylock*, Cause No.: CR2009-163-BT.

36. Mrs. Childress, upset her step-son was beaten, went to IHS to speak with Defendant Blaylock. Defendant Blaylock proceeded to tell Mrs. Childress Plaintiff had "disturbed" the class.

37. Mrs. Childress had also telephoned Defendant Walker. Defendant Walker returned Mrs. Childress' phone call and told her he had reviewed the pictures taken by the sheriff deputies. He further stated he, Judy Black, Tate County's youth officer, and the Sheriff had concluded there was no wrong doing.

38. Defendant Walker came to this arbitrary conclusion without speaking to Plaintiff or Plaintiff's parents.

39. Recent statistical studies conducted by the United States Department of Education show corporal punishment is: (i) disproportionately administered depending on the student's race and gender and (ii) falling out of fashion among the 50 states.

40. During the 2006-2007 school year, 223,190 school children in the U.S. were subjected to physical punishment. *See* a true and accurate copy Department of Education Statistics, attached hereto as Exhibit "D."

41. In assessing national statistics on corporal punishments, 40 percent of the children struck during school hours come from Mississippi and Texas. *Id.* When Alabama, Arkansas and Georgia are included, the five states constitute close to three-quarters of all instances of corporal punishment. *Id.*

42. Mississippi has the worst record in the country when it comes to corporal punishment and paddled over 30,000 students or approximately 7.5 percent of its student body. *Id.*

43. Forty eight percent of the students registered in the TCSD are female, while 52 percent are male (Statewide, 51 percent of students in the Mississippi public school system are male, 49 percent are female). *See* Mississippi Assessment and Accountability Report on TCSD, attached hereto as Exhibit “E.” Thirty-eight (38) percent of the IHS’s students are black, three (3) percent are Hispanic and fifty-nine (59) percent are white. *Id.*

44. Forty-seven (47) percent of the students attending IHS are female, while fifty-three (53) percent are male. *See* Mississippi Assessment and Accountability Report on IHS, attached hereto as Exhibit “F.” Forty (40) percent of the IHS’s students are black, two (2) percent are Hispanic and fifty-eight (58) percent are white. *Id.*

45. In completing its study, 6,000 U.S. school districts were surveyed by the Department of Education, hereinafter “DOE.” Not all school districts were asked to participate, nor were they required to.

46. TCSD was not asked to participate or did not provide the DOE with hard data. Such statistical evidence is, or should be, in Defendants’ control.

47. Every day in Mississippi approximately 184 students are disciplined by a school district using some means of corporal punishment. *See* DOE Survey, statistical breakdown by sex, attached hereto as Exhibit “G.”

48. School officials, however, administered corporal punishment in a sexist, gender-biased manner. Of the 33,055 students who received corporal punishment in Mississippi, 8,625 of the students were female while an overwhelming 24,430 were male; thus roughly three-quarters of the students paddled in this state were male even though they constitute 51 percent; a slim majority of the state student population. *Id.*

49. In Cody's case, a female student had brought in a camera, in violation of school policy. Rather than paddle the female student, Plaintiff, who was merely viewing the photograph displayed on the camera, was paddled. This is because Plaintiff was male.

50. Paddling has become a serious, gender driven crisis in Mississippi because school districts do not treat male and female students equally when administering the punishment. Male students are overwhelmingly singled out, while female students receive a pass. This crisis is further heightened by the fact there are zero guidelines on how school districts, such as TCSD, should administer the punishment; this creates an environment where discretion can, and is, abused.

51. TCSD policy states, "Corporal punishment may be administered in the Tate County School System as a disciplinary procedure for infractions deemed appropriate. In each instance, another staff member shall be present. Corporal punishment may be administered to both sexes." *See* Tate County School District Student Handbook, attached hereto as Exhibit "H."

52. This, however, is not the case and male students receive the brunt of paddling's/corporal punishment.

53. TCSD policy on corporal punishment gives school officials a wide spectrum to use their power irrespective of equal protection and other constitutional rights.

54. Defendant Blaylock, by paddling Plaintiff, demonstrated corporal punishment is in inherently unequal.

55. Actually, Plaintiff, according to Defendants' handbook, should have never been paddled.

56. In regards to minor violations, the student handbook reads, "The classroom teacher should handle minor violations." *Id.*

57. It continues, "The principal will notify the parent upon first referral. Each student will be given a copy of his/her referral to give the parent. This type of violations includes, but is not limited to... general disruptions and/or excessive distractions of other students." *Id.*

58. Again, in this situation Defendants behaved in a manner demonstrating the inherent problems with corporal punishment. Plaintiff's alleged minor infraction was not handled by the classroom teacher, Plaintiff's parents were not notified of the incident and a referral was not given to Plaintiff to deliver to his parents.

59. In other words, a paddle replaced policy at IHS.

60. This should not come as a surprise because paddling has historic connections with the way slave owners disciplined unruly slaves on the plantation. *See* Common Mode of Whipping with the Paddle and Unchained Memories: Reading from the Slave Narratives, attached hereto as Exhibits "I" and "J," respectively.

61. Black students, therefore, have also suffered disproportionately when it comes to corporal punishment. Even though black students constitute 17 percent of the U.S. public school student body, 36 percent have had corporal punishment inflicted on them, according to the DOE study. *See* DOE Statistics, attached hereto as "K." Such a number is more than twice the white student body population.

62. Because of its dubious connection with sexism and racism, the number of paddling's in this country are rapidly dropping from 1,521,896 in 1976 to 223,190 in 2006. *Id.*

63. This, however, does not mean the corporal punishment crisis is taking care of itself. Of those 223,190, a whopping 40 percent took place in Mississippi and Texas. *See* DOE Statistics, attached hereto as Exhibit "D." Thus, students in Mississippi are still suffering from an unconstitutional and discriminatory punishment while the rest of the nation progresses.

VII. ALLEGATIONS OF LAW

64. All acts of Defendants were conducted under the color and pretenses of the ordinances, policies, practices, customs, regulations, usages and/or statutes of the County of Tate, as well as the State of Mississippi.

65. Defendant Walker, in his official capacity as Superintendant of TCSD, was a final policy maker, capable of ratification for Defendant TCSD.

66. Defendant Blaylock, in his official capacity as Principal of Independence High School, was a final policy maker, capable of ratification for Defendant TCSD.

67. It is the policy, practice or custom of Defendant TCSD to treat male and female students differently when administering corporal punishment.

68. Plaintiff is similarly situated to his female students, except for the fact he is a male. Defendants treated Plaintiff different because of his sex/gender.

69. It is the policy, practice or custom of Defendant PCSD to violate the bodily integrity of its students, especially male students.

70. It is the policy, practice or custom of Defendant TCSD to violate the procedural and substantive due process rights of those students enrolled in its district.

71. Defendants' actions, as alleged herein, were made in bad faith and were designed and intended to punish Plaintiff because of his sex/gender.

72. Defendants, by and through their actions and under the color of law, failed to provide Plaintiff equal protection under the law.

73. Defendants failed to provide Plaintiff a free adequate public education.

74. Defendants denied Plaintiff an education because of his sex/gender.

75. Defendants' actions, as alleged herein, were made with actual malice and/or constituted willful misconduct.

76. In the alternative, Defendants' actions, as alleged herein, were negligent.

77. Defendants' actions, as alleged herein, were conducted in bad faith for the purpose of deterring the exercise of Plaintiff's constitutional rights.

78. Defendant Blaylock's inflicting of corporal punishment on Plaintiff was not administered in a reasonable manner.

79. Defendant Blaylock's inflicting of corporal punishment on Plaintiff was executed in a manner that demonstrated a wanton and willful disregard of human rights or safety

80. At all times relevant, Plaintiff's constitutional right to be free from intrusions to his bodily integrity was clearly established.

81. At all times relevant, Plaintiff's constitutional right to be free from excessive force was clearly established.

82. At all times relevant, Plaintiff's constitutional right to be free from cruel and unusual punishment was clearly established.

83. At all times relevant herein, Plaintiff's right to receive a free and adequate education, absent abuse, excessive force and danger, was clearly established.

84. Plaintiff has suffered, is suffering and will continue to suffer injury to his constitutional and statutory rights.

85. At all times relevant, Plaintiff's constitutional right to equal protection was clearly established.

86. Alternatively, because liability in effect for issues of this kind, and because it is the intent of the Mississippi Legislature that the school district pay any claims for violation of a citizen's rights in damages under Mississippi Law, the doctrine of *Monell v. Department of Social Services*, 475 U.S. 335 (U.S. 1986), should not apply to this cause, and the Defendants should be held vicariously liable for its officials causing the physical assault and civil liberty violations of Plaintiff.

87. As a result of Defendants' action, Plaintiff has suffered injury to his constitutional right to be free from bodily intrusions.

88. As a result of Defendants' action, Plaintiff has suffered injury to his constitutional right to be free from excessive force.

89. As a result of Defendants' action, Plaintiff has suffered injury to his constitutional right to be free from cruel and unusual punishment.

90. As a result of Defendants' action, Plaintiff has been denied his right to a free and adequate education absent abuse, excessive force and danger.

91. As a result of Defendants' action, Plaintiff has suffered injury to his constitutional right to equal protection.

92. As a result of Defendants' actions, Plaintiff has been denied his substantive and procedural due process rights.

93. At all times alleged herein, Defendants acted with deliberate indifference.

94. At all times alleged herein, Defendants acted unreasonably and demonstrated a wanton and willful disregard for human rights.

95. As a result of Defendants' conduct, Plaintiff has suffered battery, humiliation, embarrassment, and loss of reputation in his school community.

96. Loss of constitutional rights for even minimal periods of time unquestionably constitutes irreparable harm.

97. Mississippi Code Ann. § 37-11-57 (2) and 11-46-9 (x) are unconstitutional as applied and on their face because they violate Plaintiff's clearly established equal protection rights.

98. Mississippi Code Ann. § 37-11-57 (2) and 11-46-9 (x) unconstitutional as applied and on their face because they violate Plaintiff's clearly established due process rights.

99. Mississippi Code Ann. § 37-11-57 (2) and 11-46-9 (x) unconstitutional as applied and on their face because they are arbitrary and capricious.

**VIII. FIRST CAUSE OF ACTION – 42 U.S.C. § 1983
(Fourteenth Amendment - Intrusion into Bodily Integrity)**

100. Paragraphs 1 - 99 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

101. The unlawful actions of the Defendants, as alleged herein, constituted an intrusion into Plaintiff's bodily integrity.

102. Defendants had an affirmative duty to prevent such intrusions.

103. Plaintiff has an established constitutional right to receive an education free of excessive force and confinement.

104. As a direct and proximate cause of Defendants' actions, Plaintiff's rights, as guaranteed by the Fourteenth Amendment, were injured.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**IX. SECOND CAUSE OF ACTION – 42 U.S.C. § 1983
(Fourteenth Amendment – Procedural and Substantive Due Process)**

105. Paragraphs 1 – 104 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

106. The unlawful actions of Defendants, as alleged herein, deprived Plaintiff of his educational, privacy and due process rights.

107. As a direct and proximate cause of Defendants' actions, Plaintiff's rights, as guaranteed by the Fourteenth Amendment, were injured.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**X. THIRD CAUSE OF ACTION – 42 U.S.C. § 1983
(Eighth/Fourteenth Amendment – Excessive Force)**

108. Paragraphs 1 - 107 of the Complaint are incorporated herein by reference, the same as being plead in full.

109. The unlawful actions of the Defendants, as alleged herein, constituted force in excess of the reasonable standard established for corporal punishment.

110. As a direct and proximate cause of Defendants' actions, Plaintiff's rights, as guaranteed by the Eighth and Fourteenth Amendments, were injured.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XI. FOURTH CAUSE OF ACTION – 42 U.S.C. § 1983
(Eighth/Fourteenth Amendment - Cruel & Unusual Punishment)**

111. Paragraphs 1 -112 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

112. The unlawful actions of the Defendants, as alleged herein, constituted cruel and unusual punishment.

113. As a direct and proximate cause of Defendants' actions, Plaintiff's rights, as guaranteed by the Eighth and Fourteenth Amendments, were injured.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XII. FIFTH CAUSE OF ACTION – 42 U.S.C. § 1983
(Fourteenth Amendment – Equal Protection)**

114. Paragraphs 1 -115 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

115. With respect to receiving corporal punishment, Plaintiff is similarly situated to female students except for the fact he is male.

116. Defendants' treatment of Plaintiff is markedly different from the treatment received by females.

117. Defendants did not follow school policy in punishing Plaintiff, but rather deviated from it. Defendants punished Plaintiff while leaving the female instigator unscathed. .

118. Defendants intentionally and impermissibly distinguished between two groups of similarly situated students on the basis of the gender of the student in violation of the Equal Protection Clause of the Fourteenth Amendment.

119. The unlawful actions of Defendants, as alleged herein, deprived Plaintiff of his equal protection rights.

120. As a direct and proximate cause of Defendants' actions, Plaintiff's rights, as guaranteed by the Fourteenth Amendment, were injured.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XIII. SIXTH CAUSE OF ACTION – 42 U.S.C. § 1983
(Failure to Train and/or Supervise)**

121. Paragraphs 1 - 120 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

122. Defendants have failed to provide adequate training to their administration, staff and/or faculty.

123. Defendants have failed to supervise their administration, staff and/or faculty.

124. Specifically, Defendants have failed to train and/or supervise their administration, staff and/or faculty from violating Plaintiff's equal protection rights, creating a hostile educational environment for males and denying Plaintiff's right to an adequate education.

125. Defendants' failure to train and/or supervise was the proximate cause of Plaintiff's injuries.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below

**XV. SEVENTH CAUSE OF ACTION – 20 U.S.C. § 1681
(Prohibition Against Sex Discrimination in Schools)**

126. Paragraphs 1 - 125 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

127. The actions of Defendants, as alleged herein, created a hostile learning environment fueled by sex-based discrimination.

128. Being subjected to physical assault, through the willful indifference of school officials and because of gender, violates the Education Amendments of 1972.

129. Defendants, through their actions as alleged herein, are guilty of deliberate indifference to Plaintiff's right to be free from physical assault.

130. Defendants' deliberate indifference was the proximate cause of Plaintiff's injuries.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XVI. EIGHTH CAUSE OF ACTION
(Mississippi Statute Unconstitutional On Its Face)**

131. Paragraphs 1 - 130 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

132. The statute defining and authorizing corporal punishment in Mississippi, found in Miss. Code Ann. § 37-11-57 (2), is unconstitutional as written. The statute shielding schools from corporal punishment liability, Miss. Code. Ann. 11-46-9(x) is equally unconstitutional.

133. Plaintiff brings this action for a judgment declaring §§ 37-11-57 and 11-46-9(x) are of the Mississippi Code Annotated (1972) to be unconstitutional as violating the Equal Protection and

Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution, as well as the Eighth Amendment's prohibition against excessive force and cruel and unusual punishment.

134. Miss. Code Ann. § 37-11-57 (2) is unconstitutionally vague.

135. Miss. Code Ann. §§ 37-11-57 defines corporal punishment as “the reasonable use of physical force or physical contact by a teacher, assistant teacher, principal or assistant principal, as may be necessary to maintain discipline, to enforce a school rule, for self-protection or for the protection of other students from disruptive students.”

136. There are no guidelines determining how corporal punishment, the physical striking of a student by a government official, is to be administered or when. It is left to the sole discretion of the school official.

137. Miss. Code Ann. §§ 37-11-57 and 11-46-9(x) constitute a violation of a student's bodily integrity by a person not his parent.

138. Compromising the student's bodily integrity is accomplished under the color of state law and is violative of Section 1983, the equal protection and due process clauses of the U.S. Constitution, Fourteenth Amendment.

139. The State of Mississippi, through constitutional provisions and statutory enactment, grants to the school districts, such as TCSD, authority to inflict corporal punishment on its students.

140. As it stands, a student can be chewing gum in a classroom and subjected to a paddling from the principal. Students never know when a paddle might be connected with their buttocks, as that decision is based on the whim of a school official.

141. Miss. Code Ann. §§ 37-11-57 and 11-46-9(x) are arbitrary and capricious because it places unadulterated authority and discretion in the hands of a school official. It permits the abuse of discretion by school officials because there are no clearly established guidelines as to when corporal punishment can be administered.

142. Miss. Code Ann. §§ 37-11-57 and 11-46-9(x) are unconstitutional because it subjects students to Nero-like discipline in which students can be paddled, thus physical struck, for merely chewing gum.

143. Plaintiff, by virtue of his sex/gender, is subjected to corporal punishment at a rate disproportionate to similarly situated female students.

144. Because of its discretionary nature, males are the victims of corporal punishment at a rate far higher than females. This violates the equal protection and due process clauses of the U.S. Constitution, Amendment Fourteen.

145. As a result of the terms of Miss. Code Ann. §§ 37-11-57 and 11-46-9(x), students such as Plaintiff are deprived their constitutional rights of equal protection and due process.

146. Notice was given to the Mississippi Attorney General's Office pursuant to MRCP 24(d). *See* Letter from Joseph R. Murray, II to Mississippi Attorney General, attached hereto as Exhibit "L."

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XVII. NINTH CAUSE OF ACTION
(Mississippi Statute Unconstitutional As Applied)**

147. Paragraphs 1 - 146 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

148. Miss. Code Ann. § 37-11-57 (2) is unconstitutional as applied to Plaintiff.

149. Defendants interpreted and applied Miss. Code Ann. §§ 37-11-57 and 11-46-9(x) in such a fashion as to punish male students more frequently than female students. This was evident by a DOE study concerning corporal punishment.

150. The application of Miss. Code Ann. §§ 37-11-57 and 11-46-9(x) result in an invasion of Plaintiff's bodily integrity, an improper seizure of his person and a violation of his equal protection and due process rights.

151. The Defendants' action in administering corporal punishment is an abuse of discretion and violative of 42 U.S.C. § 1983.

152. Notice was given to the Mississippi Attorney General's Office pursuant to MRCP 24(d). *Id.*

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XVIII. TENTH CAUSE OF ACTION – Supplemental State Claim
(MISS. CONST. Art. 8, § 201)**

153. Paragraphs 1 -152 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

154. Plaintiff has a right to a minimally adequate public education.

155. Defendants' actions, alleged herein, deprived Plaintiff of that right.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XIX. ELEVENTH CAUSE OF ACTION – Supplemental State Claim
(Battery)**

156. Paragraphs 1 -155 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

157. Defendant Blaylock physically assaulted Plaintiff by excessively paddling Plaintiff on the buttocks twice, demonstrating a wanton and willful disregard for human rights.

158. As a direct and proximate cause of the intentional conduct of Defendant Blaylock, Plaintiff was battered. Further, the actions of Defendant Blaylock caused Plaintiff to be humiliated, embarrassed and feel degraded and inferior.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XX. TWELFTH CAUSE OF ACTION – Supplemental State Claim
(Excessive Force)**

159. Paragraphs 1 -158 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

160. Defendant Blaylock used excessive force in dealing with Plaintiff's corporal punishment.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XXI. THIRTEENTH CAUSE OF ACTION – Supplemental State Claim
(Gross Negligence)**

161. Paragraphs 1 -160 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

162. Defendant Blaylock was grossly negligent in physically assaulting Plaintiff, thus causing harm.

163. Defendant Blaylock's actions were not reasonable and demonstrated a wanton and willful disregard for human rights.

164. Defendants TCSD and Walker were grossly negligent in failing to providing its administration, staff and faculty the necessary training to administer corporal punishment, thus causing Plaintiff harm.

165. It was foreseeable that Defendants negligent behavior would cause Plaintiff harm.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**XXII. FOURTEENTH CAUSE OF ACTION – Supplemental State Claim
(Negligence)**

166. Paragraphs 1 -165 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

167. Defendants Blaylock was negligent in unreasonable assaulting Plaintiff, and demonstrated a wanton and willful disregard for human rights, thus causing Plaintiff harm.

168. Defendants TCSD and Walker were negligent in failing to provide its administration, staff and faculty the necessary training to administer corporal punishment, thus causing Plaintiff harm.

169. It was foreseeable that Defendants negligent behavior would cause Plaintiff harm.

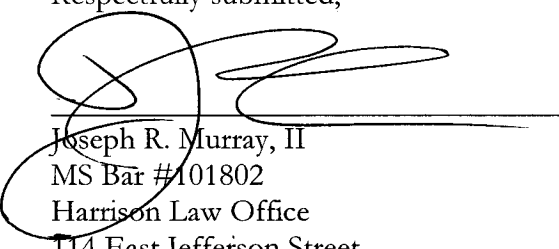
WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendants' actions, as herein described, violated Plaintiff's constitutional rights under the Eighth and Fourteenth Amendment to the United States Constitution;
- c. Declare Miss. Code Ann. § 37-11-57 and 11-46-9(x) are void as being unconstitutional on its face and as applied;
- d. Declare the use of corporal punishment on students to be unconstitutional.
- e. Declare that Defendants' actions, as herein described, violated Plaintiff's right to a minimally adequate education under the Mississippi State Constitution;
- f. Declare that Defendants' actions, as herein described, violated Plaintiff's statutory right to an education free from physical assault and/or sex-based discrimination;
- g. Award Plaintiff nominal and actual damages for Defendants violation of her state and federal constitutional rights;
- h. Award Plaintiff compensatory and punitive damages against Defendants for the torts of gross negligence;
- i. Award Plaintiff his costs of litigation, including reasonable attorney's fees and expenses, pursuant to 42 U.S.C. sec. 1988 and/or 20 U.S.C. sec. 1400 et seq.,
- j. Grant such other relief to which Plaintiff may be entitled or as this Court deems necessary and proper.

Respectfully submitted,



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Ripley, MS 38663

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MS Bar # 101442
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VERIFICATION

STATE OF Mississippi
COUNTY OF Tippah

PERSONALLY APPEARED BEFORE ME the undersigned authority in and for said county and state, the within named, JOHN CHILDRESS, on behalf of his minor son, WILLIAM CODY CHILDRESS, did affirm that the above and foregoing Complaint is true and correct as therein stated.


JOHN CHILDRESS

SWORN TO AND SUBSCRIBED before me this the 17th day of February, 2010.


NOTARY PUBLIC

