

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

MARLYN TILLMAN, individually and )  
as next friend of her minor son )  
JOHN DOE, )  
)  
Plaintiffs, )

vs. )

Civil Action File  
No.: \_\_\_\_\_

)  
GWINNETT COUNTY SCHOOL )  
DISTRICT d/b/a GWINNETT COUNTY )  
PUBLIC SCHOOLS, and J. ALVIN )  
WILBANKS, as Superintendent of )  
Gwinnett County Board of Education, and )  
JANE STEGALL, as Principal of )  
Brookwood High School, in their )  
individual and official capacities, )  
)  
Defendants. )

\_\_\_\_\_ )

**VERIFIED COMPLAINT**

**INTRODUCTION**

1.

This is an action for preliminary and permanent injunctive relief and for money damages to redress the deprivation of rights secured to the Plaintiffs by the First and Fourteenth Amendments to the United States Constitution, and by the Constitution of

the State of Georgia. (GA. Const., Art. I, § I, Para. II, III, V, VII, & IX.)

2.

This civil rights action seeks to recover damages for and to enjoin the unconstitutional disciplinary action of the Gwinnett County School District. Despite the unconstitutionality of the action at issue, the administration employed by the Gwinnett County School District, and the District itself, through its lawfully elected Board of Education, has acted under color of law to violate the First and Fourteenth Amendment rights of Plaintiffs.

### **PARTIES**

3.

Plaintiff Marlyn Tillman is, and at all times relevant hereto was, a natural person, and a citizen and resident of the State of Georgia, residing within this judicial district in Gwinnett County, Georgia, and is parent, natural guardian and next friend of Plaintiff John Doe. Plaintiff Marlyn Tillman appears herein both as plaintiff in her own right, and on behalf of her minor son Plaintiff John Doe Edwards.

4.

Plaintiff John Doe is, and at all times hereto was, a natural person, a minor, and a citizen and resident of the State of Georgia, who resides within this judicial district

in Gwinnett County, Georgia. John Doe was, at the time of the events giving rise to this action, a student at Brookwood High School, where he is currently in the 10<sup>th</sup> grade. He is presently set to graduate in June 2006.

5.

Defendant Gwinnett County School District, is a public school system organized and maintained under the laws of the State of Georgia and is a “person” within the meaning of 42 U.S.C. §1983.

6.

Defendant Gwinnett County School District (“the District”) is a political subdivision of the State of Georgia that was created and is maintained pursuant to O.C.G.A. § 20-2-50 for the purpose of providing public education to school aged pupils within its geographical borders. The District is also a “person” within the meaning of 42 U.S.C. §1983. It may be served through its superintendent, J. Alvin Wilbanks, 52 Gwinnett Drive, Lawrenceville, Georgia 30045.

7.

Defendant J. Alvin Wilbanks is superintendent of Gwinnett County School District. He may be served at 52 Gwinnett Drive, Lawrenceville, Georgia 30045. He is sued in his individual and official capacities.

8.

Jane Stegall is the principal of Brookwood High School and may be served at Brookwood High School; 1255 Dogwood Road; Snellville, Georgia 30078. She is sued in her individual and official capacities.

**JURISDICTION AND VENUE**

9.

This action seeks to enforce and to vindicate rights conferred by the First and Fourteenth Amendments to the United States Constitution.

10.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, in that it arises under the Constitution of the United States, under 28 U.S.C. §1343(a)(3), in that it is brought to redress deprivations, under color of state authority, or rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. §1343(a)(4), in that it seeks to secure damages and equitable relief under an Act of Congress, specifically 42 U.S.C. §1983, which provides a cause of action for the protection of civil rights; under 28 U.S.C. §2201(a), in that one purpose of this action is to secure declaratory relief, and; under 28 U.S.C. §2202, in that one purpose of this action is to secure preliminary

and permanent injunctive relief.

11.

Venue is proper in this Court under 28 U.S.C. §1391(b) in that all of the defendants are situated within, and all of the plaintiffs reside within this judicial district, and because all of the claims asserted by the plaintiffs arose within the court's jurisdictional boundaries. Plaintiff demand trial by jury pursuant to Fed. R. Civ. P. 38(b).

### **FACTS**

12.

The Gwinnett County School District is the educational entity provided for by Georgia law for the purpose of providing appropriate education to students living within the District.

13.

Plaintiff John Doe was a student of Gwinnett County School District during the 2001 - 2002 and 2002 - 2003 academic years. He is currently enrolled in the 2003 - 2004 academic year and is an 11<sup>th</sup> grade student at Brookwood High School.

14.

At times relevant to this action, Brookwood High School's Dress Code stated, in part that, "No student clothing should display words or symbols that are inflammatory, derogatory, insulting to other students, or in reference to gangs."

15.

During his time as a student with the Gwinnett County School District, Plaintiff John Doe has been disciplined numerous times for alleged violations of his school's dress code because school officials alleged that his clothing was gang-related.

16.

Plaintiff John Doe is currently, and frequently has been in the past, enrolled in Honors and Advanced Placement courses. As a result of his academic performance, he was selected to attend the NBA Crump Law Camp at Howard University for minority teens aspiring to the law profession during the summer of 2003. Plaintiff Tillman is a highly involved parent in her children's lives and schooling. Plaintiff Tillman currently serves as Co-Vice-President of Brookwood's Parent Teacher Student Association, and did in the 2002-2003 school year as well.

17.

In January or February 2001, John Doe was verbally reprimanded, and his mother received a phone call, because he wore a pocket watch that his mother had given him as a gift. The school considered the watch “gang-related.”

18.

On or about January 16, 2002, Plaintiff John Doe was disciplined for rolling up a pants leg and wearing a University of North Carolina sports outfit. School officials admitted that the discipline was in reaction to John Doe’s clothing which they considered “gang-related.”

19.

On or about April 17, 2003, Plaintiff John Doe was disciplined for wearing a red shirt, a black wrist band and having a “dew-rag” in his pocket. School officials admitted that the discipline was in reaction to John Doe’s clothing which they considered “gang-related.” Plaintiff John Doe doesn’t own a black wristband. As a result of Ms. Tillman’s vigorous protest about the characterization of the incident as “a gang-related offense,” the school agreed to change the discipline report to “inappropriate dress.”

20.

On or about August 25, 2003, Plaintiff John Doe was suspended from school for wearing a shirt of his own design. School officials were unsure of the meaning, but concluded that it was “gang-related,” and noted in his school records that “John Doe was wearing a gang-related shirt today.” Two days later, school officials inferred a gang connection based on theories and speculation, and suspended John Doe from school.

21.

Defendants’ alleged reason for this suspension was that Plaintiff John Doe’s shirt conveyed a gang related message. He was charged with a “gang related act.”

22.

The shirt was not gang-related. Rather, the lettering that Plaintiff John Doe had placed on the shirt related a number of things, including a reference to his home town of Silver Spring, Maryland and his birthday, February 13.

23.

Plaintiff had worn this shirt to school on a number of occasions during the previous school year without incident.

24.

As a direct result of these “gang-related dress code violations,” Plaintiffs were given notice that Plaintiff was a “Chronic Disciplinary Problem Student.” This action resulted in Plaintiff John Doe being suspended for three days.

25.

Plaintiff John Doe repeatedly attempted to explain that his clothing was not related to gangs, that it reflected current styles and trends in African American culture and that the school’s constant targeting felt like a violation of his civil liberties. Even after all of the disciplinary problems encountered solely premised on his clothing, school officials have acknowledged that they don’t believe Plaintiff John Doe is involved in gangs, and that he was not a “problem student.”

26.

During all relevant times, Defendants did not provide, post, or otherwise describe the clothing that they consider “gang-related.” Neither Plaintiff John Doe, nor his mother, Plaintiff Tillman, were provided a list of prohibited “gang-related” attire.

27.

Plaintiff Tillman repeatedly requested a list of prohibited clothing items from various school officials. She received vague publications on ways to prevent your child from becoming involved in a gang, and vague gang information. None of the information received listed pocket watches, self-designed shirts, wrist bands, doo-rags, or University of North Carolina outfits.

28.

On or around November 02, 2003, school officials were put on notice of the constitutional problems with their rules related to “gang-related clothing” via letters from the American Civil Liberties Union of Georgia.

29.

In 2004, the dress code was amended to read, in part, as follows:

Students are not allowed to display clothing or symbols that have been identified by the Gwinnett County Police Gang Taskforce as being commonly identified with gangs. Garments, jewelry, body art and tattoos that communicate gang allegiance are not allowed to be worn at school, and no item may be worn in a manner that communicates gang affiliation.

Gang related attire includes but is not limited to the following: students rolling up one pant leg, long bulky chains and necklaces, gang-styled belt buckles (belt buckles which have Old English script letters and symbols), large oversized pendants on necklace and chains, bandanas, altering clothing from its original form to change the names

and/or intended marking on the clothing, sweatbands and/or headbands, and draping articles of clothing, towels, or other objects out of pants pockets or over the shoulder or neck area.

This rule is subject to updates as additional wearing apparel becomes identified as gang affiliated or disruptive. You should consult the BHS web site frequently to be informed about additions or changes to this rule.

30.

On several occasions, Plaintiff John Doe complained that he was being unfairly disciplined for alleged violations of his school's dress code and that Defendant's actions were unfair, unlawful, and unconstitutional. Based upon information and belief, Plaintiff was more severely disciplined because of this speech.

31.

On at least one occasion, Plaintiff John Doe's mother, Plaintiff Tillman complained that Defendant's actions against her son were unfair, unlawful, and unconstitutional. Based upon information and belief, Plaintiff was more severely disciplined because of this speech.

32.

John Doe is not now, nor has he ever been, associated with gangs. Prior to the harassment, discipline, suspensions, and negative attention that he suffered as a result of his clothing, and the school's mistaken assumptions about his affiliation with gangs, he was an honor roll student.

33.

All of the disciplinary actions referenced herein were taken by Administrators of Gwinnett County School District, and upon information and belief were taken upon the instructions and on the authority of the Gwinnett County School District.

34.

Plaintiff John Doe's dress and his complaints about Defendant's dress policies were the sole motives or the principal reasons for the disciplinary actions taken against Plaintiff John Doe.

35.

At no time did Plaintiff's dress and/or personal appearance cause or threaten to cause harm to himself or others and at no time was there a rational basis for inferring that Plaintiff's dress and/or personal appearance could cause or threaten to cause harm to himself or others. In October 2003, Principal Stegall admitted

that John Doe's school has "had very little actual gang activity."

36.

As a direct and proximate result of the disciplinary and other actions of the Defendants complained of herein, Plaintiff John Doe, has suffered, and will continue to suffer, harms including but not limited to diminished academic performance, reduced grades, lost academic opportunity, a permanent disciplinary record, the chill of and punishment for the lawful exercise of his rights under the First Amendment, emotional distress, shame, humiliation, loss of enjoyment of life, and mental anguish.

37.

As a direct and proximate result of the disciplinary and other actions of the Defendants complained of herein, Plaintiff Tillman has suffered and will continue to suffer, financial costs that are ongoing, and will be specified in detail before trial.

**COUNT I**

**CLAIM FOR DAMAGES FOR VIOLATION OF THE FIRST AND  
FOURTEENTH AMENDMENTS TO THE UNITED STATES  
CONSTITUTION AND 42 U.S.C. §1983**

38.

Plaintiff realleges and reincorporates the allegations set forth in the above paragraphs as if rewritten in their entirety here.

39.

In imposing, approving, ratifying and enforcing the disciplinary actions against Plaintiff John Doe, Defendants were at all times relevant hereto acting under color and authority of state law.

40.

Plaintiff John Doe was engaged in the lawful exercise of his First Amendment rights in his dress and/or appearance at school.

41.

Plaintiff John Doe was engaged in the lawful exercise of his First Amendment rights in voicing his concerns about the Defendants' dress codes and policies and Defendants' discipline of him.

42.

In imposing, upholding and maintaining disciplinary sanctions upon Plaintiff John Doe based – in whole or in part – upon his dress and/or appearance, Defendant violated the right to free expression secured to John Doe by the First and Fourteen Amendments to the United States Constitution.

43.

In imposing, upholding and maintaining disciplinary sanctions upon Plaintiff John Doe based – in whole or in part – upon his voicing his legitimate concerns about Defendant's dress codes and policies and Defendants' discipline of him, Defendants violated the right to free expression secured to John Doe by the First and Fourteen Amendments to the United States Constitution.

44.

In imposing, upholding and maintaining disciplinary sanctions upon Plaintiff John Doe, Defendants acted wantonly, willfully, maliciously and with a reckless disregard for the rights of Plaintiff John Doe.

45.

As the direct and proximate result of these actions and inactions by the Defendants complained of herein, Plaintiffs have suffered and will continue to

suffer the harms and damages complained of herein.

46.

The “Gwinnett County School System Policies on Student Conduct and Behavior” and Brookwood High School’s Dress Code are official sets of rules and regulations adopted by the District for the conduct of students with respect to the subject matter treated therein, and as such represents the official policies, practices, customs and usages of Defendants and the Board.

47.

The provisions of the “Gwinnett County School System Policies on Student Conduct and Behavior” and Brookwood High School’s Dress Code, including without limitation the prohibition of clothing with “reference to gangs,” are unconstitutionally vague in that they fail to define with sufficient particularity what activities, including expressive activities and protected speech, might subject a student to punishment.

48.

The provisions of the “Gwinnett County School System Policies on Student Conduct and Behavior” and Brookwood High School’s Dress Code, including without limitation the prohibition of clothing with “reference to gangs,” are

unconstitutionally over-broad, in that they proscribe activities and expression wholly protected by the First Amendment to the United States Constitution, and proscribe substantially more conduct and expression than necessary to achieve their lawful aims.

49.

Upon information and belief, Plaintiff John Doe will continue to be subject to the provisions of The Gwinnett County School System Policies on Student Conduct and Behavior and the Brookwood High School Dress Code.

50.

The past and continued application of the provisions of The Gwinnett County School System Policies on Student Conduct and Behavior and the Brookwood High School Dress Code to Plaintiff John Doe has violated, and continues to violate, his rights under the First Amendment to the United States Constitution.

51.

As the direct and proximate result of these actions and inactions by the Defendant complained of herein, Plaintiffs have suffered and will continue to suffer the harms and damages complained of herein.

52.

The actions of the defendant as afore described were taken pursuant to the policies of the Gwinnett County School District pursuant to the Defendants' policies and rules.

53.

The actions of the defendants, were motivated and taken because of Plaintiff John Doe's conduct and speech that is and was protected by the First and Fourteenth Amendments to the United States Constitution and for which redress, in the form of damages, is provided in 42 U.S.C. §1983. The conduct of the Defendants was further calculated to and had the effect of suppressing, chilling, and punishing conduct and speech that was so protected.

54.

As a direct and proximate result of the actions of the defendant afore so described, Plaintiff John Doe has suffered damages as follows: he was compelled to curtail activity and speech that is protected by the First and Fourteenth Amendments to the United States Constitution; he was punished for the exercise of his First Amendment rights; he was suspended from school for the exercise of his First Amendment rights, resulting in his being penalized in the loss of school time and

suffering performance difficulties upon his return to school.

55.

The record of suspension and discipline on Plaintiff John Doe's academic record will have severe and irreparable negative consequences on their future as he seeks admission to college, the military, or seeks to enter the work-force. Plaintiff John Doe has suffered and will continue to suffer pain, suffering, consternation and emotional distress over the deprivation of his constitutionally protected rights, over the suspensions that they were forced to serve, over the disruption of their high school careers, over the negative effect on their high school record, and over the continued threat of retaliation by the school for any subsequent, yet minor, disciplinary violation.

56.

Pursuant to 42 U.S.C. §1988, Plaintiffs are entitled to reasonable attorney fees if they are the prevailing parties herein.

## **COUNT II**

### **INJUNCTIVE RELIEF**

57.

Plaintiffs reallege and reincorporate the allegations set forth in the above paragraphs as if rewritten in their entirety here.

58.

By the acts afore described, Defendants have violated and continue to violate the rights of Plaintiff John Doe (and other students in said Defendant's school district) protected by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, causing great, immediate and irreparable harm to Plaintiffs. Defendants' intentional and willful disciplining of Plaintiff John Doe for having made Constitutionally protected expressions has and continues to greatly damage Plaintiffs and will greatly damage Plaintiffs in the future if permitted to continue.

59.

Unless and until Defendants are restrained, prevented and enjoined from the continuing violation of the Plaintiffs' First Amendment rights and continued endorsement on Plaintiffs' records of the discipline imposed therefore, the Plaintiffs will continue to be immediately, irreparably and exponentially harmed by defendant's intentional and willful wrongdoing.

60.

Plaintiff John Doe has no adequate remedy at law for defendant's violation of his Constitutionally protected rights and expungement from his records of the disciplinary actions taken against him by the Defendant.

61.

Plaintiffs show that an Order for declaratory and preliminary and permanent injunctive relief to enjoin Defendants from continuing to enforce its rules and policies against Plaintiff John Doe in suppression of the rights guaranteed to him by the First and Fourteenth Amendments to the Constitution of the United States of America.

62.

Plaintiffs show that an Order should issue requiring Defendant to strike, expunge and eliminate any and all record of disciplinary actions taken against Plaintiff John Doe by the Defendants referenced herein.

63.

The Plaintiffs further show that they are entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988; and for other such declaratory, equitable and injunctive relief as the Court deems just and proper.

**COUNT THREE**

**VIOLATION OF RIGHTS CONFERRED BY THE FIRST AMENDMENT  
TO THE UNITED STATES CONSTITUTION BY THE DEFENDANTS**

64.

Plaintiff realleges and reincorporates the allegations set forth in the above paragraphs as if rewritten in their entirety here.

65.

Each of the actions taken by the Defendants was taken under color of state law in a manner that was malicious, reckless, wanton, willful and manifested a deliberate indifference to the rights of Plaintiffs.

66.

Each of these actions was undertaken by the Defendants in a manner calculated to chill Plaintiffs in the exercise of their First Amendment rights.

67.

Plaintiff John Doe has in fact been chilled in the exercise of their First Amendment rights, and has refrained since his being punished from exercising his freedom of expression through his dress and personal appearance and from voicing his concerns about Defendants' dress codes and policies. He continues to do so

fearing he will be punished, absent a judicial determination of his rights.

68.

In failing to train, supervise, discipline or otherwise restrain Defendants' staff and discipline panels from imposing the discipline complained of in this case upon Plaintiff John Doe, the Defendants, and through its actions and culpable inaction, adopted, sanctioned, ratified and approved the actions of complained of herein.

69.

As the direct and proximate result of these actions and inactions by the Defendants complained of herein, Plaintiffs have suffered and will continue to suffer the harms and damages complained of with greater particularity herein.

#### **COUNT FOUR**

#### **VIOLATION OF RIGHTS CONFERRED BY THE CONSTITUTION OF THE STATE OF GEORGIA**

70.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 69, inclusive, of this Complaint above.

71.

To the extent that the actions complained of herein violate the First Amendment to the United States Constitution, they also *per se* violate Article I, Section I, Para II, III, V, VII, & IX of the Georgia State Constitution.

72.

As the direct and proximate result of these actions and inactions by the Defendants complained of herein, Plaintiffs have suffered and will continue to suffer the harms and damages complained of with greater particularity herein.

### **PRAYER**

**WHEREFORE**, having stated their claims against the Defendants, Plaintiff demands judgment against each of the Defendants as follows:

A. An injunction and declaration that the disciplinary actions taken by the Defendants against Plaintiff John Doe violated his right to free expression under the First Amendment to the United States Constitution as incorporated against the states by the Fourteen Amendment to the United States Constitution, and their rights under Article I, Section I, Para II, III, V, VII, & IX, of the Constitution of the State of Georgia.

B. A declaration that the provisions of the Gwinnett County School System Policies on Student Conduct and Behavior, District Student Conduct Code and the

Brookwood High School Dress Code are unconstitutionally vague and overbroad, and in violation of the First Amendment to the United States Constitution as incorporated against the states by the Fourteenth Amendment to the United States Constitution, and a preliminary and permanent injunction against the further enforcement thereof;

C. A mandatory injunction requiring Defendant to clear and expunge the disciplinary record of Plaintiff John Doe of all offenses and punishments complained of herein; to amend his grades to ameliorate any academic disability suffered as a result of the punishments complained of herein; to provide such tutoring and compensatory education as is necessary to offset the academic effects of the punishments complained of herein; to dissolve and expunge from his record any disciplinary action now in place; and to remove from his files all references to any discipline complained of herein;

D. An award of compensatory damages against the Defendants in an amount to be proven at trial;

E. An award of punitive damages against individual Defendants in an amount to be proven at trial;

F. An award of attorney fees and costs of suit pursuant to 42 U.S.C. Section 1988

and Fed.R.Civ.P. 54;

G. Such other legal and equitable relief as this Court shall, in the sound exercise of its discretion, deem just; and

H. That the within action be tried by a jury on all issues so triable.

This the \_\_\_\_\_ day of April, 2004.

Respectfully submitted,

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Gerald R. Weber  
Georgia Bar No. 744878

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Beth Littrell  
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