

**FILED**

AUG 23 2011

DAVID BROWN, CLERK  
*[Signature]*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**TREY CLAYTON, a minor, by and through  
his natural mother DANA HAMILTON,**

Plaintiff,

v.

**TATE COUNTY SCHOOL DISTRICT;  
JAMES MALONE, in his official capacity as  
Conservator of Tate County Schools and in  
his individual capacity; JEROME MARTIN, in  
his official capacity of Assistant Principal and  
in his individual capacity,**

Defendant.

Civil Action No.: 2:11CV181-P-V

**JURY TRIAL DEMANDED**

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**COMPLAINT**

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Plaintiff, by and through his attorney, for his 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, violated Plaintiff's rights, privileges and immunities under the United States Constitution, as amended; specifically a violation of the Establishment Clause of the First Amendment, the search and seizure clause of the Fourth Amendment, the cruel and unusual punishment and excessive force clauses of the Eighth Amendment and the Due Process and Equal Protection clauses of the Fourteenth Amendment.

2. This cause of action and the underlying claims and allegations made concern Miss. Code Ann. §§ 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* a true and accurate copy of §§ 37-11-57 and 11-46-9, attached hereto as Exhibits “A” and “B,” respectively. These statutes permit and protect school officials who utilized corporal punishment to physical strike and beat children in their care.

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 anguish/trauma to the child can never be administered in a reasonable manner.

4. Corporal punishment has targeted students in Mississippi based upon gender. 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 paddled than female students. This fact is not based upon reason, but merely the uncorroborated perception, held by the Tate County School District, that male students misbehave at a rate higher than female students. *See* a true and accurate copy of Schools Under Pressure to Spare the Rod Forever, *New York Times*, March 29, 2011, attached as Exhibit “D.”

6. This Mississippi Constitution guarantees the right to an adequate public education, creating a property interest that cannot be taken away without the 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 relief on the grounds that the disciplinary statutes violates the rights guaranteed by the United States Constitution, including the right to be free from the establishment of religion, the right to be free from unreasonable searches and seizures, the right to be free from cruel and unusual punishment, the rights to be free from excessive force, the right to equal protection, the right to due process, the right to liberty, and the right of bodily integrity; all established and protected by the United States Constitution.

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, compensatory and punitive damages against Defendants for the flagrant, willful, knowing violation of his First, Fourth, Eighth and Fourteenth Amendment rights and their violations of federal statutes and state law torts, as well as the costs of litigation and 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 relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57.

12. This Court has supplemental jurisdiction over Plaintiff's 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, TREY CLAYTON (hereinafter "Plaintiff"), is a fifteen (15) year-old student who is enrolled in the Tate County School District and attended Independence High School at the time a TCSD employee physically struck Plaintiff with a paddle.

15. Plaintiff, DANA HAMILTON, is the natural mother of TREY CLAYTON and sues on behalf of TREY CLAYTON for damages accruing due to Defendants actions in this matter.

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

#### **V. IDENTIFICATION OF DEFENDANTS**

17. Defendant, TATE COUNTY SCHOOL DISTRICT, (hereinafter "TCSD" or "Defendant"), is a political subdivision of the State of Mississippi. It may be served with process upon its conservator, James Malone, 107 Court Street, Senatobia, Mississippi 38668.

18. Defendant, JAMES MALONE, is the Conservator of TCSD and is sued in his official and individual capacities. He may be served with process by personal service at 107 Court Street, Senatobia, Mississippi 38668.

19. Defendant, JEROME MARTIN, is an Assistant Principal employed by TCSD and is sued in his official and individual capacities. He may be served with process by personal service at 107 Court Street, Senatobia, Mississippi 38668.

#### **VI. STATEMENT OF FACTS**

20. Plaintiff was a student attending Independence High School located with the TCSD during the 2010-11 academic year. While enrolled in the TCSD and in the care of TCSD, Plaintiff was the victim of excessive, abusive and discriminatory corporal punishment that showed a wanton and willful disregard for human rights.

22. Plaintiff was in the Eighth (8<sup>th</sup>) grade at the time he was subjected to his paddling/beating. It was the first year Plaintiff attended IHS. He maintained a solid attendance and received satisfactory grades.

23. On or about March 10, 2011, Plaintiff was present at IHS during school hours. Plaintiff's day at school started off as uneventful, but that changed when he arrived at his second (2<sup>nd</sup>) period English class.

24. Plaintiff's teacher, Ms. Dana Patton, has a history of being unable to control her classroom students. Whenever a situation arises in her class, rather than confronting the situation and maintaining the learning environment, Ms. Patton kicks any student she deems a problem out of the class.

25. Plaintiff has had trouble with students in Ms. Patton's class taking his seat before the class starts. In other words, when Plaintiff attempts to sit in his assigned seat there is another student already occupying the seat. Plaintiff has attempted to correct this situation with Ms. Patton, but she has ignored his complaints. Instead, Ms. Patton adopted a policy of kicking Plaintiff out of the classroom. Remarkably, the reason Plaintiff was removed from Ms. Patton's class on March 10, 2011, the date he suffered his corporal punishment related injury, was due to the fact he was not occupying his – already occupied – assigned seat.

26. Ms. Patton's classroom management clearly violates TCSD policy. TCSD policy states that "the classroom teacher shall handle minor violations" of school policy. *See* Exhibit "TCSD Policy/Student Handbook, attached hereto as Exhibit "E." Rather than handle minor violations, such as correcting a student who is sitting in another student's assigned seat, Ms. Patton opts to pass the buck. She passes the buck to the librarian and other school officials rather than owning and fixing the minor disturbance. Because Ms. Patton was unable to handle her classroom,

Plaintiff was kicked out, which, in turn, caused his excessive paddling, which in turn, caused his injuries.

26. Rather than address the minor situation in the classroom, as dictated by TCSD's policy handbook, Ms. Patton kicked Plaintiff out of her English class and sent him to the library. Why Ms. Patton did not send Plaintiff to the office is unknown at this time.

27. This was not the first time Ms. Patton has sent Plaintiff to the library. Ms. Patton maintained a pattern of denying Plaintiff his education by kicking him out of the class and dispatching him to the library.

28. While sitting in the library on March 10, 2011, Defendant Martin noticed Plaintiff. Mr. Martin approached Plaintiff and stated Plaintiff's alleged behavior problems were going to stop. Mr. Martin appeared angry and agitated to Plaintiff.

29. Mr. Martin told Plaintiff to follow him to his office. Mr. Martin, not IHS principal Corey Blaylock, proceeded to call Plaintiff's mother, Ms. Hamilton, to inform her of Plaintiff's alleged behavioral problems. Mr. Martin struck Clayton with excessive and great force three (3) times on the buttocks.

30. Ms. Melinda White, IHS's assistant principal, witnessed the paddling.

31. The paddling, however, was so severe that within seconds of being struck by Mr. Martin, Plaintiff fainted and fell face-first onto the concrete floor. Plaintiff fell in the hallway just outside the office and steps away from where, moments before, he was forcefully struck with a paddle.

32. When Plaintiff regained consciousness, he was bleeding and five (5) of his teeth were shattered. His jaw was in severe pain and he never made it back to class. This occurred at approximately 9:30 am on or about March 10, 2011.

33. The severity of the paddling suffered by Plaintiff was evident by the visible bruising of his buttocks. Mr. Martin hit Clayton so hard welts and severe bruising remained on his buttocks for days.

34. Mr. Martin, nor any other TCSD employee, called 9-1-1 or any other emergency response crew to tend to a Plaintiff who suffered serious injury and was in visible pain. Rather, Mr. Martin called Ms. Hamilton and asked her to come down to the school. Mr. Martin did not communicate the extent of Plaintiff's injuries, nor did he explain that Plaintiff was bleeding, missing teeth and in severe pain. Ms. Hamilton, therefore, did not appreciate the emergency nature of the phone call.

35. Ms. Hamilton arrived at IHS about twenty (20) minutes after Mr. Martin's nonchalant phone call. By the time Ms. Hamilton arrived at the school, Plaintiff had been in severe pain for close to an hour.

36. Mr. Martin informed Ms. Hamilton that Plaintiff "passed out" after the paddling.

37. Ms. Hamilton grabbed Plaintiff and immediately drove him to Senatobia Hospital (North Oaks) located in Senatobia, Mississippi. A CT was conducted and doctors discovered Plaintiff's chin was busted open and he had multiple fractures on his jaw bone (broken jaw). Doctors sewed his chin with ten (10) stitches.

38. Hospital workers saw the severity of Plaintiff's injuries and within hours he was sent to Le Bonheur in Memphis, TN. At Le Bonheur Plaintiff underwent surgery to fix his broken jaw bone. His mouth was wired shut for two (2) weeks and he could only receive meals by drinking through a straw. Rods were also placed in the mouth/jaw area. Plaintiff remained in constant pain after the surgery.

39. Plaintiff's injuries caused him to miss four (4) weeks of school. He did not return to IHS until April 11, 2011.

40. To date, Plaintiff has incurred approximately thirty thousand dollars (\$30,000) in medical bills. Because of his injuries Clayton must undergo routine doctors' visits to track the progress his healing. His jaw function, even after he is fully healed, will never be the same.

41. Plaintiff has also suffered severe mental anxiety and stress as a result of this incident. He has endured a heightened self-consciousness regarding his beating, anger from other students, difficulty sleeping, crying and panic attacks.

42. In addition, the injury caused severe dental damage and a number of Plaintiff's teeth will need to be capped or replaced with implants. Two (2) teeth had to be surgically removed and three (3) teeth were shattered.

43. Plaintiff's injury is of such a nature that it will take years to correct and rehabilitate. It is anticipated Plaintiff's injuries will require him to see doctors regularly for years until his jaw and teeth heal.

44. Furthermore, hospital officials in Senatobia and Memphis both notified child protective services after they saw the nature of Plaintiff's injuries.

45. The severity of the punishment is evident do to the fact it caused Plaintiff to faint and left welts and severe bruising on his buttocks.

46. Defendant's sanctioning of a beating under the guise of corporal punishment are particularly egregious, since the school district knew, from a corporal punishment lawsuit ongoing at this time, its corporal punishment practices were severe, excessive and under judicial review. *See Childress v. Tate County School District, et al.*, Case No. 2:10CV-024 (filed February 18, 2010). This lawsuit was filed weeks before TCSD severely paddled Plaintiff.

47. Recent statistical studies conducted by the United States Department of Education (hereinafter "DOE") show corporal punishment is: (i) disproportionately administered according to gender and (ii) falling out of fashion among the majority of the fifty (50) states.



48. During the 2006-2007 academic year , 223,190 school children were subjected to corporal punishment. *See* a true and accurate copy of the Department of Education Statistics, attached hereto as Exhibit “F.”

49. In assessing national statistics on corporal punishment, forty percent (40%) of the children struck by school officials during school hours come from Mississippi and Texas. *Id.* When Alabama, Arkansas and Georgia are included, the five states constitute approximately seventy-five percent (75%) of all instances of corporal punishment in the United States. *Id.*

50. Mississippi has the worst record in the nation when it comes to corporal punishment and paddled over thirty-thousand (30,000) students. *Id.* This constitutes seven and a half percent (7.5%) of its student population. *Id.*

51. Forty-eight percent (48%) of the students registered in the TCSD are female, while fifty-two percent (52%) are male (Statewide fifty-one percent (51%) of students are male, while forty-nine percent (49%) are female). *See* a true and accurate copy of the Mississippi Assessment and Accountability Report on TCSD, attached hereto as Exhibit “G.”

52. Forty-seven percent (47%) of the students attending Independence High School are female, while fifty-three percent (53%) are male. *See* a true and accurate copy of the Mississippi Assessment and Accountability Report on Independence High School, attached hereto as Exhibit “H.”

53. In completing its student, six thousand (6000) school districts were surveyed by the DOE. Not all school districts were asked to participate, nor where they required to.

54. TCSD was not asked to participate or did not provide the DOE with hard data concerning corporal punishment. Such statistical evidence is in the control of TCSD.

55. Every day in Mississippi approximately one-hundred and eighty-four (184) students are subjected to corporal punishments. *See* a true and accurate copy of the DOE Survey, broken down by gender, attached hereto as Exhibit "I."

56. School officials, however, administered corporal punishment in a sexist, gender biased manner. Of the thirty three thousand and fifty-five (30,055) students who were subjected to corporal punishment, eight thousand six hundred and twenty-five (8625) of the students were female and twenty four thousand four hundred and thirty (24,430) were male; thus roughly seventy-five percent (75%) of the students paddled in this state were male even though males constitute fifty-one percent (51%) of the student population.

57. The reason behind the disproportionate administration of corporal punishment stems from an institutionalized biased that male students misbehave more frequently than female students. In an interview with the *New York Times*, Mr. Malone admitted this biased, unfounded and uncorroborated belief that males are more troublesome than girls is the reason why male students are paddled more frequently than female students. *See* Exh. "D."

58. Corporal punishment has become a serious, gender-drive crisis in Mississippi because school districts, as evident by Mr. Malone's admission, do not treat male and female students equally when it comes to beating the students' backside. Male students, due to the unfounded belief they are more troublesome, 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 TSCD, should administer the punishment. This creates an environment where discretion is influenced by unfounded prejudices.

59. According to TCSD policy, "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* Exh. “E.” The policy adds, “The principal will notify the parent upon first referral. Each student will be given a copy of his/her referral to give to the parent. This type of violation includes, but is not limited to ... general disruptions and/or excessive distractions to other students.” *Id.*

60. This, however, is not the case. As evident by Mr. Malone’s admission to the *New York Times*, male students receive the brunt of the punishment because of the prejudicial belief male students are more rowdy than their female counterparts. *See* Exh. “D.” This is a sexist and stereotypical belief that its out-dated in the Twenty-first Century.

61. TCSD policy on corporal punishment gives its employees a wide spectrum to use (and abuse) their power irrespective of equal protection and other constitutional rights.

62. Mr. Martin, by paddling Plaintiff, demonstrated corporal punishment is inherently unequal.

63. The excessive nature of the paddling he administered was not objectively reasonable.

64. Actually, according to TCSD’s handbook, Plaintiff should have never been paddled and his discipline should have been handled by the classroom teacher.

65. In regards to minor violations, such as not having an assigned seat, the student handbook reads, “The classroom teacher should handle minor violations.” *See* Exh. “E.”

66. In Plaintiff’s 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.

67. In other words, a paddle replaced policy at TCSD.

68. This should not come as a surprise because paddling has historic connections with the way slave owners disciplined slaves they deemed unruly on the plantation. *See* Common Mode of Whipping with the Paddled and Unchained Memories: Reading from the Slave Narratives, attached hereto as Exhibits “J” and “K,” respectively.

69. Corporal punishment is also rooted in the Christian religion and Christian doctrine. *See* Proverbs 13:24 (He that spareth his rod hateth his son: but he that loveth him chasteneth him betimes). *See also* Proverbs 22:15 (Foolishness [is] bound in the heart of a child; [but] the rod of correction shall drive it far from him); Proverbs 23:13-14 (Withhold not correction from the child: for [if] thou beatest him with the rod, he shall not die. Thou shalt beat him with the rod, and shalt deliver his soul from hell); and Proverbs 23:13 (Withhold not correction from the child: for if thou beatest him with the rod, he shall not die.23:14 Thou shalt beat him with the rod, and shalt deliver his soul from hell).

70. Corporal punishment's infusion into the Mississippi school system is founded upon the religious conviction it is a sin to spare the rod and spoil the child. Mississippi is in the Bible Belt, as are Arkansas, Alabama, Georgia and Texas. It is this religious connection – the connection between religious demographics and geography – that has resulted in seventy-five percent (75%) of all the nation's use of corporal punishment stemming from the five states in the Bible Belt.

71. Like a pit bull with a dirty rag, these schools have refused to abandoned corporal punishment despite the fact the national consensus is changing. This refusal stems from being viewed as a counter-culture; a counter-culture rooted in a Judeo-Christian belief that rejects a secular condemnation of state officials beating students. By failing to shed this policy, TCSD, and others like it, have established religion by remaining wedded to a punishment stepped in the Christian tradition.

72. Because of its dubious connection to slavery and sexism, the number of paddlings in this country are rapidly dropping from one million five hundred twenty one thousand eight hundred and ninety-six (1,521,896) in 1976 to two hundred twenty-three thousand one hundred and ninety (223,190) in 2006. *See* a true and accurate copy of the DOE statistics, attached hereto as Exhibit "L."

73. Despite fulfilling his end of the educational relationship with TCSD, the district failed Plaintiff by creating and maintaining an educational atmosphere rife with danger, derision and discrimination. Failure to provide a safe school environment, coupled with the inability to train and supervise its educational professionals, led to Plaintiff being paddled so severely it caused him to faint and incur significant damage to his mouth and jaw. TCSD has a history of paddling its students in a manner that is both excessive and discriminatory.

74. Plaintiff timely filed his Notices of Claim to the respective state agencies and received a notice from the TCSD rejecting the said claim. *See* true and accurate copies of Plaintiff's notices of claim and TCSD's rejection, attached hereto as collective Exhibit "M."

## VII. ALLEGATIONS OF LAW

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

76. Defendant Malone, in his official capacity as Conservator of TCSD, was a final policy maker, capable of ratifying the actions of TCSD.

77. Defendant Martin, in his official capacity as Assistant Principal of Independence High School, was a final policy maker, capable of ratifying the actions of TCSD.

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

79. Plaintiff is similarly situated to his female student counterparts, except for the fact he is male. Defendants treated Plaintiff differently because of his sex/gender.

80. It is the policy, practice and/or custom of TCSD to violate the bodily integrity of its students; especially its male students.

81. It is the policy, practice and/or custom of TCSD to violate the procedural and substantive due process rights of its students.

82. It is the policy, practice and/or custom of TCSD to violate the Eighth Amendment rights of its students.

83. It is the policy, practice and/or custom of TCSD to violate the First Amendment prohibition against the establishment of religion.

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

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

86. Defendants failed to provide Plaintiff a free and adequate education.

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

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

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

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

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

92. Defendant Martin's administration of corporal punishment to Plaintiff was not reasonable.

93. Defendant Martin's administration of corporal punishment to Plaintiff was executed in a manner that demonstrated a wanton and willful disregard of human rights or safety.

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

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

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

97. At all times relevant, Plaintiff's constitutional right to be free from an unreasonable search and seizure was clearly established.

98. At all times relevant, Plaintiff's constitutional right to be free from the establishment of religion was clearly established.

99. At all times relevant, Plaintiff's constitutional rights to due process were clearly established.

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

101. At all times relevant, Plaintiff's constitutional right to equal protection under the law was clearly established.

102. Plaintiff has suffered and continues to suffer injury to his constitutional and statutory rights.

103. 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 sexual assault and civil liberty violations of Plaintiff.

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

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

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

108. As a result of Defendants' action, Plaintiff has suffered injury to his constitutional right to be free unreasonable search and seizures.

109. As a result of Defendants' action, Plaintiff has suffered injury to his constitutional right to be free from the establishment of religion.

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

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

112. As a result of Defendants' action, Plaintiff has suffered injury to his constitutional right to equal protection under the law.

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

114. Miss. 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.

115. Miss. 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 due process rights.

116. Miss. 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 rights against unreasonable search and seizures.



117. Miss. 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 rights to be free from the establishment of religion.

118. Miss. Code Ann. §§ 37-11-57 (2) and 11-46-9(x) are 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)**

119. Paragraphs 1 - 118 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

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

121. Defendants had an affirmative duty to prevent such actions.

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

123. 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)**

124. Paragraphs 1 – 123 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

125. The unlawful actions of Defendants, as alleged herein, deprived Plaintiff of his due process rights.

126. 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  
(Fourteenth Amendment – Equal Protection)**

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

128. The unlawful actions of Defendants, as alleged herein, violated Plaintiff's rights to equal protection under the law.

129. 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.

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

130. Paragraphs 1 – 129 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

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

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

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

**XII. FIFTH CAUSE OF ACTION – 42 U.S.C. § 1983  
(Eighth/Fourteenth Amendment – Cruel and Unusual Punishment)**

133. Paragraphs 1 – 132 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

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

135. As a direct and proximate cause of Defendants' actions, Plaintiff's rights, as guaranteed by the Eighth and 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  
(First Amendment – Establishment of Religion)**

136. Paragraphs 1 – 135 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

137. The unlawful actions of Defendants, as alleged herein, constituted an impermissible establishment of religion.

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

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

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

139. Paragraphs 1 – 139 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

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

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

142. Specifically, Defendants have failed to train and/or supervise their administration, staff and/or faculty from violating Plaintiff's rights in association with the administering of corporal punishment.

143. Defendant's 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. EIGHTH CAUSE OF ACTION  
(Mississippi Statute Unconstitutional on its Face)**

144. Paragraphs 1 – 143 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

145. 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 and school employees from corporal punishment liability, Miss. Code Ann. § 11-46-9 (x) is also unconstitutional as written.

146. Plaintiff brings this action for a judgment declaring §§ 37-11-57 and 11-46-9 of the Mississippi Code Annotated (1972) to be unconstitutional as violating the First, Eighth and Fourteenth Amendments to the United States Constitution.

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

148. 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.”

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

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

151. 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 Fourteenth Amendment of the United States Constitution.

152. The State of Mississippi, through constitutional provision and statutory enactments, grants to the school districts authority to inflict physical pain on its students without the threat of liability.

153. As it stands, a student chewing gum in class can be subjected to a physical striking by a government official. Students never know when a paddle will make contact with their buttocks, as that decision is based on the whim of a government official.

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

155. Miss. Code. Ann. § 37-11-57 and Miss. Code. Ann. § 11-46-9 (x) are unconstitutional because they subject students to Nero-like discipline in which students can be physically struck by a government official for merely chewing gum.

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

157. Because of its discretionary nature and because Defendant Malone admitted his unfounded bias as to male students misbehaving at a rate greater than female students, males are victims of corporal punishment at a rate far higher than females. This violates the equal protection clause and the due process clauses of the Fourteenth Amendment to the United States Constitution.

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

159. Notice was given to the Mississippi Attorney general's Office pursuant to MRCP 24(d). *See* a true and accurate copy of a letter from Joseph R. Murray, II, Esq. to Mississippi Attorney General, attached hereto as Exhibit "N."

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

**XVI. NINTH CAUSE OF ACTION  
(Mississippi Statute Unconstitutional as Applied)**

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

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

162. Defendants interpreted and applied Miss. Code. Ann. § 37-11-57 and Miss. Code. Ann. § 11-46-9 (x) in such a fashion as to punish male students more frequently than female students. This was evident by Defendant Malone’s biased and unfounded statement that male students are paddled more than girls because they get in trouble more frequently.

163. The application of Miss. Code. Ann. § 37-11-57 and Miss. Code. Ann. § 11-46-9 (x) resulted in numerous violations of Plaintiff’s statutory and constitutional rights.

164. The defendants’ actions in administering corporal punishment is an abuse of discretion and violative of 42 U.S.C. § 1983.

165. Notice was given to the Mississippi Attorney general’s Office pursuant to MRCP 24(d). *See* Exh. “M.”

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

**XVII. TENTH CAUSE OF ACTION – 42 U.S.C. § 1983  
(Fourth Amendment – Unreasonable Search and Seizure)**

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

167. The unlawful actions of Defendants, as alleged herein, constituted a seizure of Plaintiff’s person.

168. As a direct and proximate cause of Defendants’ actions, Plaintiff’s rights, as guaranteed by the Fourth Amendment, were injured.

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

**XVIII. ELEVENTH CAUSE OF ACTION – Supplemental State Claim  
(Excessive Force)**

169. Paragraphs 1 – 168 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

170. Defendant Martin used excessive force in dealing with Plaintiff's corporal punishment, thus causing Plaintiff injury.

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

**XIX. TWELFTH CAUSE OF ACTION – Supplemental State Claim  
(Gross Negligence)**

171. Paragraphs 1 – 170 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

172. Defendant Martin was grossly negligent in physically assaulting Plaintiff, thus causing him harm.

173. Defendant Martin's actions were not reasonable and demonstrated and wanton and willful disregard for human rights.

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

175. It was foreseeable that Defendants' negligent behavior would cause harm to Plaintiff.

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

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

176. Paragraphs 1 – 175 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

177. Defendant Martin was negligent in his unreasonable application of corporal punishment and demonstrated a wanton and willful disregard for human rights, thus causing harm to Plaintiff.

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

179. It was foreseeable that Defendants' negligent behavior would cause harm to Plaintiff.

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

**XXI. FOURTEENTH CAUSE OF ACTION – Supplemental State Claim  
(Battery)**

180. Paragraphs 1 – 179 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

181. Defendant Martin battered Plaintiff's by physically striking Plaintiff, thus causing Plaintiff injury.

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

**XXI. FIFTEENTH CAUSE OF ACTION – Supplemental State Claim  
(Intentional Infliction of Emotional Distress)**

182. Paragraphs 1 – 181 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

183. Defendants actions were reckless and intentional.

184. Such conduct was so extreme and outrageous.

185. Defendants conduct was the cause of Plaintiff's harm.

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

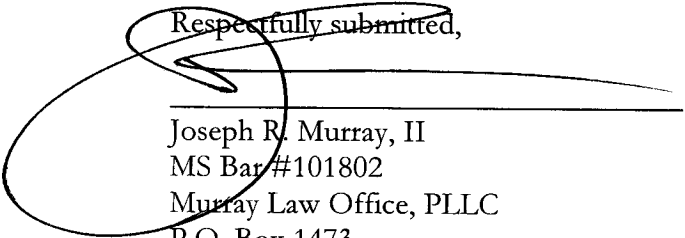
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays this Court:



- a. Assume jurisdiction over this action;
- b. Declare that Defendants' actions, as herein described, violated Plaintiff's rights under the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution;
- c. Declare Miss. Code. Ann. § 37-11-57 and Miss. Code. Ann. § 11-46-9 as void as being unconstitutional on their face and as applied;
- d. Declare the use of corporal punishment to be unconstitutional;
- e. Declare that Defendants' actions, as described herein, violated Plaintiff's right to a minimally adequate education under the Mississippi State Constitution;
- f. Declare that Defendants' actions, as described herein, violated Plaintiff's statutory right to an education from physical assault and/or sex-based discrimination;
- g. Award Plaintiff nominal, actual, compensatory damages for Defendants violation of his state and federal constitutional rights;
- h. Award Plaintiff nominal, actual and punitive damages against Defendants for committing the above described state law torts;
- 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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