

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

DANTE TRICE and	)
ANGELA WASHINGTON,	)
<i>Individ., and as next friends of J.T., a minor,</i>	)
	)
<i>Plaintiffs,</i>	)
	)
V.	)
	)
PEARLAND INDEPENDENT SCHOOL DIST.,	)
PRINCIPAL TONY BARCELONA, <i>Individ.,</i>	)
DISCIPLINE CLERK HELEN DAY, <i>Individ.,</i> and	)
JEANETTE PETERSON, <i>Individ.,</i>	)
	)
<i>Defendants.</i>	)

**PLAINTIFFS’ ORIGINAL COMPLAINT  
DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND DAMAGES**

TO THE HONORABLE JUDGE OF THE COURT:

NOW COME PLAINTIFFS DANTE TRICE and ANGELA WASHINGTON, *Individually, and as next friends of J.T., a minor* complaining of the PEARLAND INDEPENDENT SCHOOL DISTRICT; PRINCIPAL TONY BARCELONA, *Individ.*; DISCIPLINE CLERK HELEN DAY, *Individ.*; and JEANETTE PETERSON, *Individ.*, and seeking monetary damages, declaratory judgment and injunctive relief and will show the following:

**I. INTRODUCTORY FACTS and STATEMENT**

1. A school discipline clerk, an assistant principal (now head principal), and a teacher at a Pearland, Texas ISD junior high school used a black permanent marker (Sharpie) to

color jet black the scalp of a never-before-disciplined 7<sup>th</sup> grader's head (95 lbs., 4 ft., 11 in.) because they claimed his common African American "fade" haircut violated the Pearland ISD dress code policy. They laughed as they took many minutes to color 13 year-old J.T.'s scalp which took many days of scrubbing to come off. J.T. was immensely humiliated and shamed. Afterward Pearland ISD changed their dress code hairstyle policy as it was vague. Despite significant media coverage and public outcry the assistant principal was installed as Head Principal where J.T. is now in the eighth grade. After several attempts by the parents and their lawyer to resolve the issues with no response, the plaintiffs initiated this instant litigation for training and compensation.

## **II. JURISDICTION, VENUE, AND CAUSE OF ACTION**

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as the facts arose in Brazoria County, Texas within the U.S. Southern District of Texas, Galveston Division, and defendants are located within the district.
4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
5. This action is brought pursuant to 42 U.S.C. §§ 1983, 1985, 1988 and Title VI of the Civil Rights Act of 1964.to redress the deprivation, under color of state law, of rights secured by the U.S. Constitution as well as state tort law.

## **III. PARTIES**

6. Plaintiff Dante Trice is a resident of Brazoria County, Texas.
7. Plaintiff Angela Washington is a resident of Brazoria County, Texas.

8. Pearland Independent School District “Pearland ISD” is a governmental entity existing under the laws of the State of Texas and can be served with process by serving Superintendent John Kelly at 1928 N. Main Street, Pearland, Texas 77581 or wherever he is found.

9. Defendant Principal Tony Barcelona is an individual and resident of Brazoria County, Texas and can be served with process at 3301 Manvel Road, Pearland, Texas 77584 or wherever he is found.

10. Defendant Discipline Clerk Helen Day is an individual and resident of Harris County, Texas and can be served with process at 3301 Manvel Road, Pearland, Texas 77584 or wherever she is found.

11. Defendant Jeanette Peterson is an individual and resident of Brazoria County, Texas and can be served with process at 3301 Manvel Road, Pearland, Texas 77584 or wherever she is found.

#### **IV. ADDITIONAL FACTS**

12. Parents Dante Trice and Angela Washington had their minor son J.T. enrolled at the Berry Miller Junior High School in the Pearland ISD for the 2018-2019 school year in the 7<sup>th</sup> grade. J.T. and his parents are African American. The address of the school is 3301 Manvel Road, Pearland, Texas 77584.

13. Before, or after, the incident herein described J.T. was never the subject of any discipline by the Pearland ISD school or any other school.

14. Presently, J.T. is in the 8<sup>th</sup> grade at Berry Miller Junior High School and in all likelihood will graduate from a Pearland ISD school in 2025.

15. The Pearland ISD has over 1,600 faculty and over 22,000 students making it one of the largest independent school districts in Texas. Pearland ISD receives federal funding.

16. April 16, 2019 J.T. got a “fade” haircut with a design line. A fade haircut is common with African American youth. The haircut did not depict anything violent, gang-related, obscene or otherwise offensive or inappropriate in any manner. J.T. did not believe the haircut violated any school policy.

17. Wednesday, April 17, 2019 J.T. arrived at school by bus in a timely manner at about 8:20 am and went to the cafeteria for breakfast.

18. Assistant Principal Tony Barcelona, a Caucasian “white” person, approached J.T. and told J.T. to go to the office because he was “out of dress code.” J.T. had never been “out of dress code” before.

19. J.T. went to the office and waited for approximately twenty minutes until Principal Barcelona showed up.

20. Principal Barcelona instructed J.T. to go the office of Discipline Clerk Helen Day, a Caucasian “white” person. A discipline clerk is, as the title suggests, a person knowledgeable about the Pearland ISD discipline policies and charged with their enforcement including hairstyles in the dress code.

21. J.T. walked into Discipline Clerk Day’s office and she showed J.T. a copy of the Pearland dress code and said J.T. was in violation of the dress code regarding hairstyles.

22. After a short while Principal Barcelona came to Discipline Clerk Day’s office. In the presence of the Discipline Clerk Day, Principal Barcelona threatened that J.T. would be put in In School Suspension of an indeterminate length or instead that J.T.’s fade haircut

line design scalp would be immediately colored. In J.T.'s mind this was intended to somehow cover up the line design. In-School Suspension requires a student to stay in one room all school day and cannot go to his classes, thereby, straining academic success. Any school discipline can affect extracurricular activity participation and J.T. was in track.

23. Neither Principal Barcelona nor Discipline Clerk Day informed J.T. that he could appeal the proposed suspension/head coloring or have a meeting or hearing about the matter or that he could contact his parents for their advice. No one made any attempt to contact Ms. Washington or Mr. Trice despite their phone numbers being readily accessible. No hearings or meetings were ever proposed or set up by any Pearland ISD employee.

24. As J.T. had never been in trouble before, or since, and he did not want to be suspended, get in trouble with his parents, have a first time suspension on his school record and be kicked out of track, so J.T. under great duress, indicated that of the only two options to be immediately implemented it would be the coloring of his scalp.

25. Then Discipline Clerk Day handed J.T. a jet-black Sharpie permanent marker in full view of Principal Barcelona.

26. There are hardly any African Americans in America with jet black skin and, of course, neither does J.T. It is commonly understood among scholars and the general public that depicting African Americans with jet black skin is a negative racial stereotype. During the Jim Crow era slaves were often depicted as happy in their slave existence and with jet black skin as a means to disguise their humanity and imply that they are unlike "white" people.

See <https://www.houstonpress.com/news/as-the-jim-crow-flies-6556145> and

<https://www.ferris.edu/HTMLS/news/jimcrow/antiblack/index.htm>

27. The jet-black markings did not cover the haircut design line but made the design more prominent and such was obvious to those present at the very beginning of the scalp blackening process.

28. After a few minutes, with Principal Barcelona overseeing, Discipline Clerk Day took the jet-black Sharpie and starting coloring J.T.'s scalp. J.T. did not consent to Discipline Clerk Day coloring his scalp jet black and found it highly offensive.

29. As Discipline Clerk Day was blackening J.T.'s scalp schoolteacher Jeanette Peterson, a Caucasian "white" person, happened to come by the office. Discipline Clerk Day asked if Peterson would continue the blackening of J.T.'s scalp and she did so. J.T. did not consent to Discipline Clerk Day coloring his scalp jet black and found it highly offensive.

30. At times during the coloring of J.T.'s scalp Principal Barcelona, Discipline Clerk and Petersen were laughing at what was happening. J.T. was not laughing but very frightened of these three much larger Pearland ISD employees coloring his scalp jet black.

31. After the blackening of J.T.'s scalp Discipline Clerk Day sent J.T. to Miller Moment (study hall) as he had missed the entirety of his Spanish class. Students noticed the jet-black coloring of J.T.'s scalp and there was much talk around the school. Some student criticized J.T. and made fun of him. Social media posts with memes followed which caused J.T. mental anguish. Below is a photo of J.T.'s scalp.



32. J.T. felt extremely degraded and suffered at least great embarrassment, shame, anxiety and depression. A white student called J.T. a thug. “Thug” is often used as a negative racial stereotype of African American youth indicating they are criminals. J.T., however, has never been in trouble with the law or at school save for this episode of scalp blackening by the three defendant Pearland ISD employees.

33. Despite substantial media attention Principal Barcelona has since been promoted to Head Principal at J.T.’s school. Discipline Clerk Day and Peterson still have the same positions in the Pearland ISD.

34. No Pearland ISD employee has given an apology to J.T. or to Ms. Washington or to Mr. Trice.

35. Angela Washington phoned the Pearland ISD Superintendent’s office to talk to the Superintendent but to no avail.

36. Angela Washington sent an email April 24, 2019 to Head Principal Kim Brooks stating:

*“Sending this email to confirm our phone conversation this morning stating I would like to set up a meeting with everyone involved including Mrs. Day along with the superintendent at everyone’s earliest convenience to discuss the incident that happened on April 17th to my son [J.T.]. I can be reached by email or phone with date and time.”*

*Thank you*

Head Principal Brooks replied to the email:

*Good Morning,*

*I have passed along your request to the superintendent's office. I trust someone will contact you.*

*Thank you*

*Kim Brooks  
Principal  
Berry Miller Junior High  
281-997-3900 ext. 73901*

No one from the Pearland ISD has contacted Ms. Washington about this matter since the email.

37. July 1, 2019 undersigned plaintiffs’ attorney sent a letter demanding training of defendants and Pearland ISD employees and unspecified monetary damages via certified mail, return receipt requested to each of the seven Pearland ISD Board of Trustees members and the Superintendent. There was no response.

38. After the incident defendants received no training in Constitutional law regarding students, the Pearland dress code or racial sensitivity.

39. Due to the lack of training, lack of proper policies, lack of employee discipline, failure to fire or reassign the individual defendants, and pattern of racial discrimination J.T. is likely to experience further instances of discriminatory actions at the Pearland ISD.

40. Prior to the incident the Pearland ISD hairstyle code stated:

<b>PK-12<sup>th</sup> GRADE HAIR</b>
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Must be neat, clean and well groomed. Extreme hair styles such as carvings, mohawks, spikes, etc. are not allowed.

- No type of head covering, cap, hat or hair rollers may be worn inside the building.
- Symbols and/or styles that are identified with gang membership, affiliation or representation shall not be allowed.
- Distracting styles and/or coloring are not allowed. (Only natural hair colors allowed)
- Sideburns must be kept neatly trimmed and must not extend below ear level or flare at the bottom.
- Students must be clean shaven. Goatees, beards and moustaches or any other facial hair are prohibited.

40. May 22, 2019 Pearland ISD implemented a new hairstyle policy for the 2019-2020 school year:

*Hair:*

- *Must be clean, neat and well groomed*
- *Distracting colors are not allowed.*
- *Mustaches, beards, or goatees are not allowed.*
- *Sideburns must be kept neatly trimmed and must not extend beyond ear level.*
- *Head coverings such as hats, caps, bandanas, or hair rollers are not allowed. (An exception will be made for religious headwear)*

41. After the incident Pearland ISD Board of Trustee<sup>1</sup> Mike Floyd stated:

"It's no secret that racism, whether intentional or not, has crept into the code. ... "The administration has made it clear that they are aware of the Board's stance that provisions which are rooted in cultural or racial inequalities must be changed, and anything less will be unacceptable in my opinion."

42: According to a 2015 study by the United States Department of Justice Office for Civil Rights, while there were more than twice as many white students (38.6%) than

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<sup>1</sup> The Pearland Board of Trustees is the governing body of the Pearland ISD. The Board is 86% white.

African American (15.9%) enrolled in the Pearland ISD, the two groups made up equal portions of students who received In-School Suspensions (30.4%). That is African American students were suspended 143% *more* often than whites.

## V. LEGAL CLAIMS

### **Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.**

43. Plaintiffs reassert all previous paragraphs.

44. Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance. Programs that receive Federal funds cannot distinguish among individuals on the basis of race, color or national origin, either directly or indirectly, in the types, quantity, quality or timeliness of program services, aids or benefits that they provide or the manner in which they provide them. This prohibition applies to intentional discrimination as well as to procedures, criteria or methods of administration that appear neutral but have a discriminatory effect on individuals because of their race, color, or national origin. Policies and practices that have such an effect must be eliminated unless a recipient can show that they were necessary to achieve a legitimate nondiscriminatory objective. Even if there is such a reason the practice cannot continue if there are alternatives that would achieve the same objectives but that would exclude fewer minorities.

### **ASSAULT**

45. Plaintiffs reassert all previous paragraphs.

46. In the alternative plaintiffs allege assault and battery.

47. The elements of assault are the same in civil and criminal suits. *Hall v. Sonic Drive-In of Angleton, Inc.*, 177 S. W.3d 636, 649 (Tex. App.—Houston [1st Dist.] 2005, no pet.); *Morgan v. City of Alvin*, 175 S.W.3d 408, 418 (Tex. App.—Houston [1st Dist.] 2004, no pet.). A person commits an assault if the person

...

(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative. Tex. Penal Code Ann. § 22.01(a) (Vernon Supp. 2010). The common law tort of assault exists to redress personal injury caused by offensive physical contact or the threat of imminent bodily injury. See *Hall v. Sonic Drive-In of Angleton, Inc.*, 177 S.W.3d 636, 650 (Tex.App.-Houston [1st Dist.] 2005, pet. denied).

48. Under Texas law, official immunity is an affirmative defense that can be raised by a government official who has been sued in his or her individual capacity. *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 843 (Tex. 2007). State actors have official immunity while performing discretionary duties within the scope of their authority, so long as they act in good faith. *Crostley v. Larmer Cty.*, 717 F.3d 410, 424 (5th Cir. 2013) (citing *Telthorster v. Tennell*, 92 S.W.3d 457, 460–61 (Tex. 2002)). Defendants did not act in good faith as they knew their actions were not legal.

### **VIOLATION OF THE 5<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS**

49. Plaintiffs reassert all previous paragraphs.

50. The Fifth Amendment to the Constitution provides that “No person shall...be deprived of life, liberty, or property, without due process of law...”

51. The Fourteenth Amendment applies this right to the State action "...nor shall any state deprive any person of life, liberty, or property, without due process of law..."

52. This Fifth Amendment right extends to public school students who are subject to being expelled from public school. *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Brown v. Board of Education*, 347 U.S. 483 (1954). "*The precise nature of the private interest involved in this case is the right to remain at a public institution of higher learning in which the plaintiffs were students in good standing.*" *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961).

53. Regarding students, such as J.T. subject to suspension and expulsion "*due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.*" *Goss v. Lopez*, 419 U.S. 565 (1975).

54. Defendants instant threat of suspension and then discipline of assault by coloring J.T's scalp without notice and opportunity to be heard violated J.T's due process rights and he suffered great mental anguish and pain and suffering.

**42 USC SECTION 1985 and TITLE VI of the CIVIL RIGHTS ACT OF 1964**

55. India was discriminated against because of her race, African American, and was not treated the same as white children. The facts herein state a claim under both 42 U.S.C. Section 1985 and Title VI of the Civil Rights Act of 1964.

**VIOLATION OF 14TH AMENDMENT EQUAL PROTECTION OF THE LAWS**

56. Plaintiff reasserts all previous paragraphs.

57. Defendant acted arbitrarily in their actions against J.T. and treated him differently than those with other hairstyles and similarly situated white students thereby violating J.T.'s right to the equal protection of the laws and 42 USC Section 1983.

### **EXCESSIVE FORCE**

58. Plaintiff reasserts all previous paragraphs.

59. The individual defendants under color of law violated J.T.'s right to be free from excessive force under 42 U.S.C. Section 1983.

### **MONELL LIABILITY of PEARLAND ISD**

60. Plaintiff reasserts all previous paragraphs.

61. Pearland ISD's hairstyle dress code policy was Unconstitutionally vague and caused Barcelona, Day and Peterson to violate J.T.'s rights.

62. Furthermore, Pearland ISD failed to train its employees including defendants in what constituted a dress code violation hairstyle, as to proper discipline which exclude coloring a student's scalp jet black, as to proper treatment of racial minorities, and as to the due process rights to challenge suspensions of indeterminate length and whether coloring of the scalp was a proper discipline.

63. Additionally, there is a pattern and practice of racial discrimination and disparate treatment of African American students at the Pearland ISD.

### **VII. REQUEST FOR RELIEF**

**WHEREFORE**, the plaintiffs respectfully request that this Court:

- a. Enter judgment awarding the plaintiffs compensatory damages against defendants jointly and severally in an amount to be determined;

- b. Declare that the defendants have violated the rights of the plaintiff for the reasons described above;
- c. Enter judgment awarding the plaintiffs exemplary and punitive damages against the individual defendants;
- d. Award the plaintiffs reasonable costs and attorneys' fees;
- e. Award pre- and post-judgment interest;
- f. Order that the defendant Pearland ISD immediately instruct each and every employee that students have the right to a fade haircut with a non-offensive line design and as to due process of law in disciplinary matters involving suspension and coloring of the scalp and that Pearland ISD employees cannot interfere with those rights as well as racial sensitivity.
- g. Declare Pearland ISD's former dress code hairstyle policy Unconstitutional, and
- h. Award all other relief to which plaintiffs show themselves entitled.

Respectfully Submitted,

/s/ Randall L. Kallinen

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