

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA,  
HAMMOND DIVISION

2007 DEC 12 AM 9:06  
STATE CLERK  
U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF INDIANA

KEVIN LOGAN,

Plaintiff,

vs.

GARY COMMUNITY SCHOOL  
CORPORATION, BOARD OF SCHOOL  
TRUSTEES OF THE GARY COMMUNITY  
SCHOOL CORPORATION, MARY  
STEELE-AGEE, in her official capacity as  
Superintendent, and DIANA ROUSE, in her  
individual capacity and official capacity as  
Principal,

Defendants.

No.

2:07CV 431

COMPLAINT

Introductory Statement

1. Plaintiff Kevin "K.K." Logan ("Logan") is an African-American transgender person whose sex is male but whose expression of gender is feminine. In virtually all facets of his daily life, Logan expresses his deeply-rooted femininity through his appearance and manner. Each day during his entire senior year at West Side High School in Gary, Indiana, Logan wore makeup, women's clothing and hair extensions and carried a purse. Admirably, Logan's fellow students and teachers embraced and supported him, rather than shunning or harassing him because he was different. However, on the evening of Logan's senior prom, the principal of his high school denied Logan admittance – literally stretching her hands across the door to block his entry – because Logan was wearing a prom gown of the kind customarily worn by female prom

attendees. No facts existed which reasonably could have led school authorities to forecast substantial disruption as a result of Logan's attire and feminine gender expression. Indeed, the only reaction of fellow students that did occur was their objection to the principal's exclusion and discriminatory treatment of Logan. What should have been a once-in-a-lifetime opportunity for Logan to share memories with friends before graduation became an episode of humiliation and exclusion. Logan spent prom night in a parking lot and then at home, while all other attendees literally danced the night away. The Gary school district affirmed the principal's decision to exclude Logan, purportedly based upon its policy that "Clothing/accessories that advertise sexual orientation" are *per se* "inappropriate."

2. Logan seeks compensatory, nominal and punitive damages for the violation of his constitutional rights under the First and Fourteenth Amendments and under Title IX of the Education Amendments of 1991, 20 U.S.C. §§ 1681 et seq. ("Title IX"), together with a judgment declaring that Defendants violated his First and Fourteenth Amendment rights and his rights under Title IX. The law is clear that, in certain contexts, clothing or conduct may convey an identifiable message graspable by others. Students and teachers unquestionably understood Logan to be sending a message, through his clothing and accessories, about his own femininity and his right to attend prom consistent with his gender identity. The message was received, as the school principal's own conduct makes clear. Logan's expression relates to a serious cultural and political subject: whether gay, lesbian, bisexual and transgender people openly may express their sexual orientation and gender identity. In addition to a violation of Logan's rights under the First Amendment, the Defendants also denied him equal protection of the laws on account of his sex and his gender identity and expression. A judgment in Logan's favor not only will vindicate the violation of his civil rights but also will protect countless other students whose expression of

their sexual orientation or gender identity would otherwise be chilled by Defendants' unconstitutional actions and policy.

### **Jurisdiction and Venue**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and 2201 because this action arises under the Constitution and laws of the United States, seeks to redress the deprivation of Plaintiff's civil rights by Defendants acting under color of state law and seeks a declaratory judgment.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because substantially all of the events or omissions that give rise to the claims in this action occurred within Lake County, Indiana.

### **Parties**

5. Plaintiff Kevin Logan ("Logan") is an individual citizen of Indiana who is eighteen years old and who, at the time of the events alleged herein, was a student at West Side High School in Gary, Indiana. Most students and teachers at West Side High School referred to Logan by the gender-neutral nickname "K.K."

6. Defendant Gary Community School Corporation ("School Corporation") operates public elementary, middle and high schools within the city of Gary, Indiana. The School Corporation operates West Side High School ("High School"), a public school in Gary, Indiana. According to its website, the High School was founded in 1968 for the purpose of facilitating racial integration within the Gary school system. The mission of the High School is

to provide a safe, nurturing and learning environment for our students. A quality education must include administrators, teachers, support staff, students, parents and the community in the decision making process. In an academic environment that is conducive to learning, we must prepare our students to become responsible, caring and educated citizens who are aware of the global aspects of our diverse society.

7. Defendant Board of School Trustees of the Gary Community School Corporation ("School Board") is the governing body of and has final policymaking authority over the School Corporation. The School Board comprises seven elected individuals who act collectively with authority granted by Indiana state law.

8. Defendant Mary Steele-Agee is Superintendent of the School Corporation ("Superintendent") and oversees its operation. The Superintendent exercises powers delegated to her by Indiana state law and by the School Board. The Superintendent implements policies established by the School Board. In the absence of School Board policy on point for a particular situation, the School Board expressly has granted the Superintendent authority to make decisions that constitute the policy of the School Corporation. The Superintendent is sued in her official capacity only.

9. Defendant Diana Rouse is, and was at the time of the events alleged herein, principal of the High School ("Principal Rouse"). Principal Rouse is the highest-ranking authority figure within the High School. Principal Rouse exercises authority over students of the High School granted to her by the School Corporation. Principal Rouse is sued in both her individual and official capacities.

10. Defendants acted under color of state law.

#### **General Allegations**

11. Logan is transgender, meaning that while his sex is male, he also has a deeply-rooted awareness of himself as feminine that is fundamental to his identity. Logan's gender expression – that is, Logan's outward manifestation of gender identity through clothing, jewelry, accessories, hairstyle, appearance, mannerisms and other characteristics – is feminine.

12. Logan's sexual orientation is gay, meaning that he is emotionally and physically attracted to males.

13. Logan attended the High School during his junior year (2004-05) and senior year (2005-06).

14. Rouse became principal of the High School as of the beginning of Logan's senior year (2005-06).

15. Daily throughout his senior year at the High School – both in and outside of school – Logan openly expressed a feminine gender identity through his spoken word, manner, and choice of dress. Logan wore:

- a. feminine clothing, including items such as a brassiere, women's style shirts, women's style jeans, halter tops and women's style boots with heels;
- b. jewelry and accessories customarily worn by women, including a purse, rings, bracelets, necklaces and an ankle bracelet; and
- c. makeup, including liquid concealer, mascara, eye shadow, blush and lip gloss.

16. On or around the first day of classes of his senior year, Logan was summoned from class by High School security and taken to the principal's office, where he was questioned by Principal Rouse. Principal Rouse asked Logan about his appearance and specifically asked why he was carrying a purse. Logan stated that he preferred to look and present himself this way. Principal Rouse asked Logan if he considered his behavior typical, to which Logan replied that it was typical for him. Principal Rouse sent Logan back to class and no disciplinary action was taken against Logan

17. Logan openly expressed and presented his feminine identity as a member of the High School drill team, including at pep rallies and parades.

18. As noted above, most students and many teachers at the High School referred to Logan by a gender-neutral nickname "K.K." Many students used female pronouns and

euphemisms when addressing Logan, including "girl" and "girlfriend." Teachers were supportive and respectful of Logan's feminine presentation and behavior.

19. Logan's feminine gender expression did not cause any substantial, material disruption among fellow students at the High School.

20. Defendants did not prohibit Logan from, or discipline Logan for, his feminine gender expression during class and on campus at the High School.

21. Sometime in the final month of his senior year, Logan spoke to Assistant Principal D. Nichols about Logan's interest in attending the prom. Nichols advised Logan that he had a right to attend the prom wearing female attire, including a prom dress. Nichols specifically advised Logan that there was no policy prohibiting him from wearing a dress to the prom.

22. Following his conversation with Assistant Principal Nichols, Logan spoke with Principal Rouse about his desire to attend the prom. During the conversation, Principal Rouse communicated her opposition to Logan wearing a dress to the prom, but suggested that a women's style pants suit would be acceptable. Logan and Rouse did not reach agreement.

23. Around two days before the prom, Assistant Principal Nichols again encouraged Logan to attend the prom in an outfit of Logan's choosing. Logan reviewed the High School's rules and policies and found no rule that would prohibit him from wearing a dress to the prom.

24. On the evening of Friday, May 19, 2006, the High School prom was held off campus at a private banquet center called Avalon Manor in Hobart, Indiana.

25. Logan arrived at the prom wearing an ankle-length pink prom dress, which he had purchased specifically for the occasion.

26. As per custom, many parents and others from the community were gathered outside the prom facility to observe students in their formal attire and to take photos.

27. Principal Rouse was outside of the banquet center when Logan arrived. When Logan went to walk inside the door of the banquet center, where the prom was underway, Principal Rouse stretched her hands across the entrance and advised Logan that she would not permit Logan to enter. Principal Rouse ordered Logan to leave the facility and summoned security.

28. Logan was devastated and humiliated. A few friends accompanied him away from the door and to the parking lot. Logan and a few friends took pictures of one another in the parking lot. When attendees inside the prom learned that Logan was not allowed to enter, students and teachers came outside to the parking lot to voice their support for him, as did members of the community who witnessed Logan's exclusion. Some students spoke to Principal Rouse asking her to change her mind; Rouse refused.

29. An owner or operator of the Avalon Manor banquet center also came outside to advise Logan that he had no objection to Logan's attendance.

30. A female student named Telicia was permitted to attend the prom wearing a men's tuxedo, with the knowledge of High School administrators who were in attendance, including Principal Rouse.

31. Sometime after the prom, officials from the School Corporation confirmed that Logan was excluded from the prom pursuant to School Board policy.

32. On July 20, 2007, Logan's counsel submitted a request to the High School, the Superintendent, and the School Corporation pursuant to the Indiana Access to Public Records Act. The request sought:

- a. Rules, policies, and/or student disciplinary codes of conduct that concern, govern or reference student dress and/or attire at extracurricular events including, without limitation, the West Side High School prom and other dances for the school year 2005-2006;

- b. Reasons, justifications, rules, policies, documents and/or statements regarding sex-specific or gender-specific student dress, attire or clothing at extra-curricular events or other student activities; and
- c. Reasons, justifications, rules, policies, documents and/or statements that support or provide reason for or that, on the other hand, show lack of support or justification for the exclusion of Kevin Logan from attending the West High School Prom on or about May 19, 2006.

33. On July 30, 2007, Defendants issued a response to the request containing a copy of School Board Policy No. 319 regarding "Uniform/Dress Code," with no explanation. Circled on the response was a bulleted portion of Policy No. 319 providing:

[T]he following continues to be inappropriate:

\* \* \*

- Clothing/accessories that advertise sexual orientation, sex, drugs, alcohol, tobacco, profanity, negative social or negative educational statements.

34. On August 29, 2007, Logan's counsel wrote to the Superintendent advising her that Defendants' actions toward Logan on May 19, 2006, violated his rights and that Policy No. 319 appeared to be unconstitutional. The letter requested that the Superintendent or the School Corporation's counsel meet with Logan's counsel to discuss the exclusion of Logan from his prom as well as the School Corporation's policy prohibiting students from engaging in any speech that reveals their sexual orientation. Defendants did not respond.

### **FIRST CLAIM FOR RELIEF**

#### **Violation of the First Amendment - 42 U.S.C. § 1983 (Against all Defendants)**

35: Logan incorporates each of the above and foregoing allegations as if fully set forth herein.



36. Logan's feminine gender expression in the context of his attendance at the High School's prom wearing feminine attire was speech, symbolic action and expressive conduct protected by the First Amendment.

37. Logan's feminine attire in the context of his attendance at prom was protected by the First Amendment because:

- a. it was imbued with elements of communication; and
- b. it conveyed an identifiable message that was likely to be understood by those who viewed Logan.

38. Defendants took action against Logan *because of* the expressive content, viewpoint, symbolic value and/or communicative impact of Logan's feminine presentation of himself at prom. Specifically, Defendants took action against Logan because they disagreed with and/or disapproved of the ideas communicated by Logan's feminine presentation of himself at the prom.

39. Defendants' actions were not narrowly tailored to achieve a compelling state interest and were more restrictive than necessary.

40. Defendants' actions were not reasonably related to legitimate pedagogical concerns.

41. The government interest to which Defendants' actions were actually related was in suppression of the ideas conveyed by Logan's speech, symbolic actions and expressive conduct.

42. Defendants failed to establish or apply clear and consistent, content-neutral criteria for determining what clothing may be worn by students at High School proms. Defendants instead afforded themselves unlimited discretion, applied vague standards and acted in an arbitrary and biased manner toward Logan.

43. Logan has been injured as a result of Defendants' actions. Defendants violated Logan's rights, privileges and immunities under the First Amendment to the United States Constitution, made applicable to Defendants by the Fourteenth Amendment.

44. Defendants violated clearly established constitutional rights under the First Amendment, of which Defendants knew or reasonably should have known.

45. Defendants acted consciously of, or were callous and reckless toward the risk of, the illegality of their actions and the infringement of Logan's federal constitutional rights.

46. Plaintiff requests that this Court enter judgment in his favor against all Defendants and:

- (i) award Logan compensatory damages;
- (ii) award Logan nominal damages;
- (iii) award Logan punitive damages;
- (iv) award Logan his costs, including attorneys' fees; and
- (v) grant such further and different relief as this Court deems just and proper.

### **SECOND CLAIM FOR RELIEF**

#### **Facial Challenge to School Board Policy No. 319 - 42 U.S.C. § 1983 (Against Defendants School Corporation, School Board and Superintendent)**

47. Logan incorporates each of the above and foregoing allegations as if fully set forth herein.

48. Insofar as it relates to sexual orientation and gender, School Board Policy No. 319 prohibits a substantial amount of constitutionally protected expression and expressive conduct.

49. On its face, School Board Policy No. 319 violates the First Amendment because:

- a. it is directed narrowly and specifically at expression or conduct commonly associated with expression;

- b. it explicitly singles out expression regarding sexual orientation for discriminatory treatment;
- c. it explicitly discriminates on the basis of the content of expression; and
- d. it explicitly discriminates on the basis of the viewpoint of expression.

50. School Board Policy No. 319 is substantially overbroad in violation of the First Amendment because:

- a. its very existence may cause students not before the Court to refrain from constitutionally protected expression or expressive conduct; and
- b. it creates an unacceptable risk of suppression of ideas.

51. School Board Policy No. 319 is unconstitutionally vague in violation of the First Amendment and the Due Process Clause of the Fourteenth Amendment because:

- a. it fails to define what clothing is proscribed with sufficient definiteness that ordinary people can understand what conduct is prohibited;
- b. it fails to establish standards to permit enforcement in a nonarbitrary, nondiscriminatory manner; and
- c. it is impermissibly vague in all of its applications.

52. The special circumstances of a school environment do not justify School Board Policy No. 319 and do not cure its vagueness and substantial overbreadth.

53. By promulgating and enforcing School Board Policy No. 319, Defendants violated students' clearly established constitutional rights, of which Defendants knew or reasonably should have known.

54. Defendants acted consciously of, or were callous and reckless toward the risk of, the illegality of School Board Policy No. 319 and of their infringement of Logan's and other students' federal constitutional rights.

55. The parties, as well as students not before the Court who are governed by School Board Policy No. 319, have an actual and substantial controversy that affects their adverse legal

interests and can be resolved by grant of specific relief through a court decree of conclusive character. The existence and enforcement of School Board Policy No. 319 damages and affects the rights of students not before the Court in a concrete manner that provides the factual predicate for reasoned judicial resolution.

56. Plaintiff requests that this Court enter judgment in his favor against Defendants School Corporation, School Board and Superintendent, and:

- (i) declare the rights, obligations and other legal relations among the parties;
- (ii) declare that School Board Policy No. 319 is unconstitutional;
- (iii) award Logan his costs, including attorneys' fees; and
- (iv) grant such further and different relief as this Court deems just and proper.

### **THIRD CLAIM FOR RELIEF**

#### **Violation of Title IX – 20 U.S.C. §§ 1681 et seq. (Against Defendant School Corporation)**

57. Logan incorporates the above and foregoing allegations as if fully set forth herein.

58. Pursuant to 20 U.S.C. § 1681(a), with certain exceptions not at issue here, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

59. Pursuant to regulations issued by the United States Department of Education, discrimination "against any person in the application of any rules of appearance" in any such education program or activity is prohibited by Title IX. 45 C.F.R. § 86.31(b)(5).

60. Pursuant to regulations issued by the United States Department of Education, discrimination in extracurricular activities and benefits provided by an entity receiving federal financial assistance is prohibited by Title IX. 45 C.F.R. § 86.31(a).

61. Title IX's prohibition of sex discrimination includes a prohibition of discrimination on the basis of sex stereotypes and on the basis of gender identity and expression.

62. The School Corporation receives federal financial assistance.

63. The School Corporation intentionally violated Title IX.

64. The School Corporation had actual knowledge of discrimination yet failed to take action to stop or correct it.

65. The School Corporation discriminated against Logan on the basis of sex.

66. The School Corporation discriminated against Logan on the basis of sex stereotypes and on the basis of gender identity and expression.

67. Logan was excluded from participation in the prom, denied the benefit of attending the prom, and subjected to discrimination in the application of the School Corporation's rules of appearance.

68. The way in which the School Corporation applied its dress code policies, including School Board Policy No. 319, was more burdensome to male students than to female students.

69. Logan has been injured as a result of the School Corporation's actions. The School Corporation violated Logan's clearly established rights, privileges and immunities under Title IX, of which the School Corporation knew or reasonably should have known.

70. The School Corporation acted consciously of, or were callous and reckless toward the risk of, the illegality of its actions and the infringement of Logan's rights under Title IX.

71. Plaintiff requests that this Court enter judgment in his favor against Defendant School Corporation, and:

- (i) award Logan compensatory damages;

- (ii) award Logan nominal damages;
- (iii) award Logan punitive damages;
- (iv) award Logan his costs, including attorneys' fees; and
- (v) grant such further and different relief as this Court deems just and proper.

**FOURTH CLAIM FOR RELIEF**

**Violation of the Equal Protection Clause of the  
Fourteenth Amendment - 42 U.S.C. § 1983  
(In the Alternative Against the School Corporation and Against All Other Defendants)**

72. Logan incorporates the above and foregoing allegations as if fully set forth herein.

73. This claim for relief is brought against the School Corporation in the alternative to the Third Claim for Relief, in the event that the Court determines that Title IX does not provide a sufficient private right of action for the unlawful policy or practice.

74. This claim for relief is brought against Principal Rouse in the event that the Court determines that the Third Claim for Relief does not provide a sufficient private right of action because Principal Rouse's liability is based on acts other than her implementation of an unlawful practice or policy.

75. Defendants discriminated against Logan based on his sex.

76. Defendants discriminated against Logan based on sex stereotypes and gender identity.

77. Without a furthering any compelling, substantial, rational or legitimate purpose, and based upon invidious animus, Defendants intentionally treated Logan differently than other students and prom attendees who were similarly situated.

78. Defendants' discrimination was intentional, arbitrary and lacked any rational basis.

79. Logan has been injured as a result of Defendants' actions. Defendants subjected Logan to the deprivation of the equal protection of law secured by the Fourteenth Amendment.

80. Defendants violated clearly established constitutional rights under the Fourteenth Amendment, of which Defendants knew or reasonably should have known.

81. Defendants acted consciously of, or were callous and reckless toward the risk of, the illegality of their actions and the infringement of Logan's federal constitutional rights.

82. Plaintiff requests that this Court enter judgment in his favor against all Defendants and:

- (i) award Logan compensatory damages;
- (ii) award Logan nominal damages;
- (iii) award Logan punitive damages;
- (iv) award Logan his costs, including attorneys' fees; and
- (v) grant such further and different relief as this Court deems just and proper.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Kevin Logan respectfully requests that this Court enter judgment in his favor against Defendants as specified in each of the above claims for relief, and:

- (i) award Logan compensatory damages;
- (ii) award Logan nominal damages;
- (iii) award Logan punitive damages;
- (iv) declare the rights, obligations and other legal relations among the parties;
- (v) declare that School Board Policy No. 319 is unconstitutional;
- (vi) award Logan his costs, including attorneys' fees; and

(vii) grant such further and different relief as this Court deems just and proper.

**KEVIN LOGAN**

By: 

One of his Attorneys

William Gantz  
Duane C. Quaini\*  
Steven L. Merouse\*  
Lisa M. Lilly\*  
SONNENSCHN NATH & ROSENTHAL LLP  
7800 Sears Tower  
233 South Wacker Drive  
Chicago, IL 60606-6404  
(312) 876-8000  
(312) 876-7934 fax  
wgantz@sonnenschein.com

James P. Madigan\*  
Cole Thaler\*  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
11 East Adams, Suite 1008  
Chicago, Illinois 60603  
(312) 663-4413  
(312) 663-4307 fax  
jmadigan@lambdalegal.org

*Attorneys for Plaintiff*

\* Applications for admission pending.