

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

2012 AUG 31 PM 3:48

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

DYNASTY YOUNG (legal name Darnell Young), by his next friend and parent, Chelisa Grimes;

Civil No. \_\_\_\_\_

Plaintiff,

vs.

**1:12-cv-1241 WTL-DKL**

INDIANAPOLIS PUBLIC SCHOOL CORPORATION; Board of School Commissioners of the City of Indianapolis; and Eugene White, Larry Yarrell, and Debra Barlowe, in their individual capacities,

COMPLAINT

JURY DEMAND

Defendants.

Plaintiff DYNASTY YOUNG (“Dynasty”), by his next friend and parent, Chelisa Grimes, states the following as and for his Complaint against Defendants Indianapolis Public School Corporation (the “School District” or “District”), Board of School Commissioners of the City of Indianapolis (the “School Board” or “Board”), Eugene White, Larry Yarrell, and Debra Barlowe (collectively “Defendants”).

**PRELIMINARY STATEMENT**

1. All students deserve the opportunity to attend public schools without fear that they will be threatened, terrorized, or physically assaulted simply for being who they are. Gay, lesbian, bisexual, and transgender (“LGBT”) students, as well as students who do not conform to stereotypical ideas of masculinity or femininity, have the same right as

YOUNG v. INDIANAPOLIS PUBLIC SCHOOL CORPORATION – COMPLAINT

every other student to obtain an education without fear of harassment and abuse. Even more fundamentally, LGBT and gender non-conforming students have a right to expect that public school staff and administrators will protect them — and certainly that public schools will not affirmatively discriminate against them because they are LGBT or gender non-conforming.

2. This is a civil rights case brought by an openly gay former student at Arsenal Technical High School (“Tech” or “School”) in Indianapolis. From the day he arrived at Tech, Plaintiff Dynasty Young was subjected to relentless, severe harassment and abuse by other students because he was perceived as gay and because his clothing, behavior, and demeanor did not fit stereotypical notions of masculinity. He repeatedly reported the abuse to school staff. Rather than take effective measures to protect him, school staff told him that he was to blame for the harassment because of his appearance and told him to change his dress and behavior to conform to stereotypical ideas of masculinity and to be less “flamboyant.” As school administrators ignored his repeated pleas for help, and as the abuse worsened, Dynasty’s physical health and emotional well-being deteriorated.

3. When it became apparent that Tech staff were not going to protect her son, Dynasty’s mother became so concerned for his physical safety at school that she gave him a small device labeled a “self-protection flashlight” that emitted a light, a loud noise, and a weak electric charge. Shortly thereafter, in April 2012, six students surrounded Dynasty at school and threatened him with imminent bodily harm. To protect himself, Dynasty

activated the device while pointing it straight up in the air, and succeeded in preventing the attack.

4. Rather than attempt to identify the aggressors and address the threat of bodily harm Dynasty had faced, Tech administrators immediately suspended Dynasty. Later, Dynasty learned that he would be recommended for expulsion unless he agreed to the demands of Tech Principal Larry Yarrell that he dress and behave in a manner that conformed to Principal Yarrell's notion of appropriate masculinity. Dynasty refused to accede to administrators' demands to change who he is, and he was expelled for a full school year. The School District eventually reduced the expulsion, but conditioned Dynasty's return to District schools on the requirement that he not attend a regular high school, but attend an alternative school for students unable to adjust to a traditional school setting, where his educational opportunities would be significantly limited. At no time did the District offer to return him to a regular high school, or to take any action to protect him from harassment based on his actual or perceived sexual orientation or gender expression.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over Plaintiff's complaint pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States. This Court has supplemental jurisdiction over Plaintiff's related state law claims under 29 U.S.C. § 1367(a) because those claims arise out of the same case or controversy as Plaintiff's federal claims.

6. Venue is appropriate in this Court since one or more of the Defendants resides within this Court's judicial district and a substantial part of the events or omissions giving rise to the claims occurred within this judicial district, in accordance with 28 U.S.C. §1391(b).

### **PARTIES**

#### **Plaintiff**

7. Plaintiff Dynasty Young is a 17-year-old male and sues here by and through his next friend, parent, and guardian, Chelisa Grimes.

#### **Defendants**

8. Defendant INDIANAPOLIS PUBLIC SCHOOL CORPORATION (the "School District" or "District") is an education corporation organized and existing pursuant to Title 20, Article 25 of the Indiana Code. The School District is a "person" within the meaning of 42 U.S.C. § 1983. Upon information and belief, the School District and each of its component schools are recipients of federal financial assistance. Arsenal Technical High School is a school within the School District.

9. Defendant BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS (the "School Board"), is a public education corporation governing the School District pursuant to the laws of the State of Indiana. The School Board is a political subdivision of the State of Indiana and thus a "person" within the meaning of 42 U.S.C. § 1983. The School Board holds final policymaking authority for the School

District's expulsion policies and procedures. Upon information and belief, the School District and each of its component schools are recipients of federal financial assistance.

10. Defendant EUGENE WHITE ("Superintendent White") is the current Superintendent of the School District. He has held this position since 2005. As Superintendent, he holds final policymaking authority for the School District with respect to the day-to-day enforcement of the equal opportunity, anti-harassment, anti-bullying, and student discipline policies within the School District as its chief executive officer. As Superintendent, he has the ability and authority to take corrective action on behalf of the School District to stop discrimination and harassment within the School District and to discipline perpetrators of such discrimination and harassment. Superintendent White is a natural person and, upon information and belief, resides in Indiana.

11. Defendant LARRY YARRELL ("Principal Yarrell"), is Principal of Arsenal Technical High School. Principal Yarrell has final policy making authority with respect to the day-to-day enforcement of the equal opportunity, anti-harassment, and anti-bullying policies within Tech High School as its Principal. Principal Yarrell has the ability and authority to take corrective action to stop discrimination and harassment within the School and to discipline perpetrators of such discrimination and harassment. Principal Yarrell is a natural person and, upon information and belief, resides in Indiana.

12. Defendant DEBRA BARLOWE ("Assistant Principal Barlowe") is Assistant Principal at Arsenal Technical High School. On information and belief, Assistant Principal Barlowe has final policy making authority with respect to the day-to-

day enforcement of the equal opportunity, anti-harassment, and anti-bullying policies within Arsenal Technical High School, and/or her actions alleged herein were ratified by individuals with such policy making authority. Assistant Principal Barlowe has the ability and authority to take corrective action on behalf of the School to stop discrimination and harassment within the School and to discipline perpetrators of such discrimination and harassment. Assistant Principal Barlowe is a natural person and, upon information and belief, resides in Indiana.

### **STATEMENT OF FACTS**

13. Plaintiff Dynasty Young is a 17-year-old male. He identifies as a gay youth and sometimes wears clothing and accessories that are stereotypically associated with women's apparel. He was a student at Arsenal Technical High School, a school within the District, from August 2011 until May 2, 2012.

14. Prior to enrolling in the District, Dynasty attended school in Arizona. Dynasty was very active in the school community and loved going to school. His peers accepted him, and he had very few problems with harassment and bullying. When isolated incidents of harassment did occur, Dynasty reported them to the school administration, which took swift and effective actions that ensured that bullying ceased.

15. In August 2011, Dynasty moved to Indianapolis. Dynasty could not contain his excitement about starting his junior year of high school. In preparation for the new school year, Dynasty went shopping for a new wardrobe, and also selected some clothing from his mother Chelisa's closet. Some of the items he chose included knee-high boots,

purses, rings, and bangles. These accessories were permitted under the School's dress code and did not violate any District policy.

16. On the first day of school, Chelisa took Dynasty to enroll him at Arsenal Technical High School ("Tech" or "School"). Following the dress code, but wanting to make a good first impression on his new classmates, Dynasty wore a form-fitting polo shirt, tan shorts, and a large ring. While they were waiting to enroll him, Chelisa overheard students and School personnel referring to Dynasty as a "fag" and making comments such as "he looks like a girl."

17. Dynasty describes his first full day at school at Tech as a "nightmare." He heard students all over the school make disparaging remarks about his presumed sexual orientation and the way he dressed. Nevertheless, Dynasty attempted to remain optimistic that this abuse would fade away after he settled into his new school. Unfortunately, that day never came. A few days after school began, Chelisa had her first conversation with Assistant Principal Debra Barlowe when she discussed her concerns with the way Dynasty was being treated by his peers. During that conversation, Assistant Principal Barlowe told Chelisa that Dynasty should dress differently in order to avoid being harassed and abused. Assistant Principal Barlowe did not offer to take any other steps to protect Dynasty or to address the harassment. Then, within the first few weeks of school Dynasty sought the advice of his counselor, Ms. Martich. She encouraged Dynasty give himself time to settle in and shrug off the harassment and bullying he was experiencing. During their meeting, Ms. Martich commented that the other students might be reacting to

Dynasty's "flashy" fashion. To the best of Dynasty's knowledge, Ms. Martich did not report the harassment to school administrators at this time, and no action was taken to address it.

18. Dynasty realized that the bullying and harassment he was experiencing was not something he could deal with on his own. Although he initially tried to shield Chelisa from everything that was going on, Dynasty began reporting these incidents to his mother as well. Around this same time, Chelisa began receiving phone calls from unidentified School employees making statements such as "did you know your son was gay?" and informing her that he was being harassed because he was "flamboyant." The School staff who contacted Chelisa did not complain that Dynasty was breaking any school rules or misbehaving in any way or say that his clothing did not comply with the School's dress code. To the best of Dynasty's and Chelisa's knowledge, despite their awareness of the harassment, School employees took no other action to address it, and the abuse continued. Similar calls from School employees continued throughout the school year.

19. A few weeks into the school year, the bullying and harassment Dynasty experienced continued to intensify. In September 2011, Dynasty was walking to lunch one day when another student spat at him and continued to walk away. Dynasty reported the incident to the security guard in the lunchroom, but being the "new kid" in a school of over 2,000 students, Dynasty could not identify the other student by name. Dynasty offered to walk around with the guard and point the other student out, but the guard did nothing about the incident. Later that month, Dynasty was talking to a school employee



about having his credits from Arizona transferred to Indianapolis. Throughout the conversation, the woman's facial expressions demonstrated that she was disgusted or repulsed by Dynasty. Chelisa happened to be at the school at the time and witnessed this conversation. She approached this School employee, and after asking that the woman treat Dynasty with respect, she asked Dynasty how he was doing. Overwhelmed with stress caused by the harassment he was experiencing, Dynasty began to cry. Chelisa immediately went to speak with Assistant Principal Barlowe, a School administrator. At that time, Chelisa mentioned to Assistant Principal Barlowe the incident that she had just witnessed as well as the harassment that Dynasty had experienced over the past month of the school year. As Dynasty had done with the security guard, Chelisa offered to have Dynasty walk the halls with Assistant Principal Barlowe to identify Dynasty's harassers. Assistant Principal Barlowe rejected that offer and instead responded that Dynasty was being bullied for the way he was dressing. Finally, Assistant Principal Barlowe recommended that Dynasty should just shrug it off. Assistant Principal Barlowe did not offer to take any steps to protect Dynasty or to address the harassment.

20. Worried that the School was not taking steps to address the bullying and harassment Dynasty was experiencing, Chelisa asked that Dynasty's siblings and other members of his family meet him after school to walk him home. Nearly every day thereafter, Dynasty met a family member, either at school or the bus stop, before making his way home.

21. Emboldened by the School's lack of response, students became more vocal and aggressive with their harassment. Some groups of kids would prevent Dynasty from passing through certain hallways by standing in his way, while others moved far out of his way as if he had some disease that they could contract if they stood too close. In some of his classes, students would inform the teachers that they did not "want to sit next to that fag," referring to Dynasty. The teachers would attempt to coax the student into remaining in their current seat, but ultimately gave in and reassigned the student without addressing the underlying discrimination and harassment.

22. Despite Dynasty's best efforts to protect his family from the pain that he was experiencing, around September and October 2011, they began noticing changes in Dynasty's mood and attitude. Dynasty no longer expressed enthusiasm about school and how much he loved going to school. He no longer was the person in the room who was always smiling and cheerful. By Fall Break in October 2011, Dynasty began experiencing significant depression as a result of his experiences at school. Dynasty became more confrontational with his siblings and mother than he had ever been. Although he continued to dress in the same manner, he took less care with his appearance.

23. When Dynasty returned from Fall Break, nothing changed. Students continued to bully and harass him because of his sexual orientation and gender non-conforming behavior and clothing. Dynasty regularly reported the harassment he was experiencing and the issues that he was having in school to Dean Hoover and Assistant Principal Barlowe. Each time that he reported an incident of harassment, Dynasty would

offer to walk the halls and point the students out or find alternative ways to identify the harassers. Those administrators never took him up on his offer.

24. Tired and defeated, in November 2011, Dynasty decided to try and wear stereotypically male clothes and even consulted male family members about how to act “like a man.” Dynasty was only able to keep it up for a day or two. Just three months into the school year, Dynasty had been targeted for his gender non-conforming clothing and behavior so regularly that it did not matter what he wore; his peers still bullied and harassed him for being gender non-conforming. Furthermore, wearing those clothes made him feel like someone other than his true self. As the bullying continued, Dynasty’s depression worsened. In addition to becoming more confrontational with his family members, Dynasty was not eating well and started losing weight.

25. Just before Winter Break, the school hosted a talent show. Not willing to give up, Dynasty entered the talent show in hopes that seeing his talent would help him gain respect and acceptance from his fellow students. Dynasty signed up with a group of friends and began preparing to do a choreographed dance performance for the show. The performance went very well and his group won second place, giving Dynasty some hope that things would be different at school once everyone returned from Winter Break.

26. Nevertheless, over Winter Break, Dynasty’s well-being deteriorated further. Between the stress caused by the bullying and harassment, and receiving poor grades for the first semester, Dynasty sunk deeper into depression. He continued to lose weight and ultimately lost approximately twenty pounds of his already slender frame.

27. It did not take long for Dynasty to realize that his performance at the talent show did not change the hearts and minds of his peers as he had hoped. In fact, many of his harassers became even more aggressive. Even though his prior reports had not resulted in any reduction in the harassment, Dynasty continued to report incidents of bullying and harassment to School administrators. About two weeks after school came back in session, a group of students saw Dynasty get off the school bus on his way home and began throwing rocks and empty glass bottles at him while yelling “there goes that fag!” Dynasty immediately told Chelisa what happened and she in turn called the School and spoke with Assistant Principal Barlowe. As she had done in the past, Assistant Principal Barlowe blamed Dynasty and his gender non-conforming clothing, stating that Dynasty should change how he dressed. After that incident Dynasty hit a new low; he stopped caring about school, his hair began to fall out, and began distancing himself from his family due to his depression.

28. Despondent and disoriented, Dynasty left his home to live with an acquaintance and her sister. Dynasty’s attendance at school became spotty; he missed entire days of school and, on those days that he did make it to school, he arrived late, missing a significant amount of class time. When Dynasty was at school, he was confronted by nasty and baseless rumors, students threatening to harm him, and making comments such as “why are you like this?” Unable to cope with all the stress, Dynasty seriously contemplated suicide.

29. Meanwhile Chelisa was constantly worried about Dynasty; he was fading before her eyes. Chelisa texted Dynasty regularly throughout every day. She would cook his favorite meals in hopes of enticing him to come home. When Dynasty would not come home to her, she would go to him to bring him food and check in on him. She was finally able to convince Dynasty to return home over a month later in early March 2012.

30. Shortly after Dynasty returned home, in or around March 2012, Chelisa had an extended conversation with Assistant Principal Barlowe regarding Dynasty's experiences at School. Assistant Principal Barlowe continued to cite Dynasty's clothing as the reason he was being bullied so severely. Based on her discussion with Assistant Principal Barlowe, it became abundantly clear to Chelisa that the School was not going to protect Dynasty.

31. Having nearly just lost her son to suicide, and with Dynasty reporting to her that students were regularly threatening to harm him, Chelisa felt as though she had nowhere else to turn. Fearing for her son's life, Chelisa gave Dynasty a self-protection flashlight, a small device that emits a weak electric charge and loud noise when activated. Dynasty began bringing the device to school at the beginning of March 2012. He kept the device in a small shoulder bag that he carried with him at all times and never told anyone at school that he had the device.

32. Far behind on his work, but wanting to finish out the school year with passing grades in each of his classes, Dynasty struggled to refocus on school and tune out the bullying. On March 19, 2012, frustrated and exasperated, Dynasty cussed at a teacher

after a dispute about his make-up work. He was suspended for five days. Coming back from the suspension, Dynasty again sought to concentrate on getting credit for each of his classes so he would not have to repeat his junior year.

33. On April 16, 2012, Dynasty arranged to meet with his teachers to develop a plan for him to make up his work and pass all of his classes. Buoyed by the positive tenor of those meetings, Dynasty had recommitted to his schooling and was looking forward to getting back on track. Then, after lunch while Dynasty was on his way to his next class, a group of six male students began to surround him while yelling at him and threatening to attack him. Fearing that he was about to be physically attacked, Dynasty removed the self-protection flashlight from his bag, raised it straight into the air above his head, and activated the device, causing a loud noise. The noise startled Dynasty's would-be attackers, allowing Dynasty to continue on to class without further incident. Not long after Dynasty sat down for class, a School security officer came into Dynasty's class, cuffed him, and escorted him out of the room. Once outside the door, the officer remarked, "if you did not dress like this, people would not mess with you." Dynasty was then brought to Dean Gant to discuss the situation.

34. As with prior incidents of harassment and threatened assault that Dynasty experienced, he was not able to identify the students that surrounded him by name, but he did tell Dean Gant that the students hung out in the same place every day and offered to show him where and even to point them out. Despite Dynasty's best efforts to advocate for himself and explain the context surrounding the incident, Dean Gant responded in the

same way the other School administrators had responded to Chelisa's and Dynasty's reports of bullying and harassment by blaming Dynasty's gender nonconformity and attire. Dean Gant informed Dynasty that he was being suspended for five days and was not permitted on School grounds during his suspension. Dynasty immediately left the premises and returned home.

35. Five school days later, Dynasty returned to school only to find out that he was being recommended for expulsion and that his suspension had been extended until the expulsion determination was made. Before leaving the school, Dynasty contacted Chelisa and informed her of what had happened. She came to School immediately to speak with the principal, but was initially told he was unavailable. After Chelisa made repeated demands to see the principal, Principal Yarrell finally agreed to meet with Chelisa, Dynasty, and Derrick, Chelisa's brother. Throughout the meeting, Principal Yarrell repeatedly said that he would help Dynasty only if Dynasty agreed to change his appearance and stop wearing gender non-conforming clothes and accessories. Chelisa instructed Dynasty not to respond and told Principal Yarrell that Dynasty should not have to change who he is to be safe at school and that there was nothing wrong with the way he was dressed.

36. Meanwhile, the District was preparing to expel Dynasty. A notice was sent stating the date and time of the hearing. However, the District mailed that letter to the incorrect address, hindering Chelisa and Dynasty's ability to obtain the advice of counsel

and prepare for the hearing. The expulsion hearing was held on May 2, 2012, and an audio recording of the hearing was made.

37. The hearing officer, Alfred Finnel, Jr., prepared and mailed his expulsion hearing report and recommendation later that day. According to the report, Mr. Finnel found that Dynasty was carrying a “deadly weapon” as defined by Indiana law and recommended that he be expelled from the District until January 2013.

38. Like the hearing notice, the expulsion hearing report was also sent to the incorrect address. Chelisa received a copy of the letter on or about May 8, 2012. She submitted a request to appeal the expulsion on or about May 9, 2012, which she handed to Dr. White’s secretary. On or about May 10, 2012, Chelisa received a call from the District inviting her to a meeting at the District office. According to the caller, the meeting would be with Chelisa, Dynasty, and one or two District personnel. Wary of meeting with the District without a lawyer, Chelisa stated that she would contact them at a later time to respond to their request. Chelisa was never told that the meeting would constitute the appeal hearing, a proceeding that the District’s administrative guidelines require to be held before the School Board, nor was she informed that she would waive her right to appeal if she did not call again to schedule a meeting. Chelisa did not receive any written correspondence regarding the requested appeal. Despite having a policy of hearing those appeals within twenty (20) days, the School Board has yet to hear Chelisa’s and Dynasty’s appeal.



39. On or about July 17, 2012, counsel notified the District that Chelisa and Dynasty were represented. The letter reiterated the request Chelisa made for all of Dynasty's records when she initially filed the appeal request more than two months prior.

40. In response, the District informed counsel that Dynasty's records would be available the following day at the District offices. Chelisa and counsel went to the District offices to retrieve those records. Counsel was given a letter by Dr. Dexter Suggs offering Chelisa and Dynasty an expulsion review meeting pursuant to I.C. § 20-33-8-20(c) and a very limited number of Dynasty's records were faxed to counsel's office in the afternoon of July 18, 2012. On or about July 24, 2012, counsel replied to Dr. Suggs's letter scheduling the meeting for August 1, 2012 and explicitly stating that Chelisa's and Dynasty's participation in this process does not constitute a waiver of appeal hearing requested on or about May 9, 2012.

41. On or about July 31, 2012, counsel sent a letter to Robert Rund and Manuel Herceg, attorneys at Lewis & Kappes who had been retained by the District to conduct an investigation of this matter. In the letter, counsel requested that Lewis & Kappes provide counsel with all of the records that Chelisa enumerated in her request to appeal Dynasty's expulsion.

42. On August 1, 2012, the District convened the expulsion review meeting to determine whether to continue Dynasty's expulsion through the fall semester of the 2012-2013 school year. Dr. Suggs conducted the meeting and a digital audio recording was made. At the review meeting, counsel for Dynasty and Chelisa again raised the issue of

the pending appeal of the initial expulsion decision and reminded Dr. Suggs that no hearing had yet been scheduled to address it. Dr. Suggs responded that he would address the matter, but he never did, confining his questions to Dynasty's reasons for wanting to return to school. On August 6, 2012, counsel for Chelisa and Dynasty received notice that the District decided to end his expulsion, but conditioned his return to the District on his agreeing to attend an alternative high school within the District, thereby treating Dynasty as if he were still expelled and failing to acknowledge its responsibility for failing to address the constant harassment and for the events that occurred on April 16, 2012. That letter also informed counsel that Dynasty's "only remaining recourse is with the courts."

43. Seeking to clarify the status of the appeal hearing and request additional missing records, counsel send a letter to Roberta Recker, counsel for the District, on August 16, 2012. Then, on or about August 24, 2012, Ms. Recker replied stating that the District deemed that Chelisa failed to follow up on the appeal, a position the District failed to advance in response to multiple prior written communications regarding the matter. The District continues to refuse to hear Chelisa's and Dynasty's appeal of his expulsion.

44. Despite beginning their search immediately after Dynasty was expelled, Dynasty was unable to enroll in a new school for the remainder of the spring semester of the 2011-2012 school year or for summer school. Consequently, Dynasty has missed a considerable amount of school and remains far behind on credits.

**FIRST CLAIM FOR RELIEF**

**Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*  
Discrimination Based on Sex**

(Brought Pursuant to 20 U.S.C. § 1681 Against the School District)

45. Plaintiff incorporates by reference all preceding paragraphs.

46. The School District and the School are recipients of federal financial assistance.

47. The acts and omissions of Defendants violated Dynasty's rights under Title IX by discriminating against him on the basis of sex, including sex stereotyping.

48. Defendants had actual notice that the harassment based on sex was so severe, pervasive, and objectively offensive that it created a hostile climate that deprived Dynasty of access to educational programs, activities, and opportunities.

49. Defendants exhibited deliberate indifference to the harassment of Dynasty based on sex in violation of Title IX. This indifference caused Dynasty to be subjected to the described sex discrimination, sexual harassment, and gender-based harassment. On information and belief, Defendants would have taken effective measures to protect him had he been female, and would not have told a female student that she should not wear stereotypically feminine clothing and accessories.

50. Furthermore, Defendants' refusal to halt the expulsion unless Dynasty began dressing in more gender conforming clothing, and their subsequent decision to condition his return to IPS schools on his attendance at an alternative school, constituted

intentional discrimination and infringed on Dynasty's right to attend school free from discrimination on the basis of sex.

51. As an actual and proximate result of Defendants' conduct, Dynasty has been injured and suffered damages to be determined according to proof.

52. Dynasty requests judgment in his favor against Defendants as set forth in the Prayer for Relief.

### **SECOND CLAIM FOR RELIEF**

#### **U.S. Constitution Amendment XIV Denial of Equal Protection on the Basis of Sexual Orientation**

(Brought Pursuant to 42 U.S.C. § 1983 Against the School District; School Board; Superintendent White; Principal Yarrell; and Assistant Principal Barlowe)

53. Plaintiff incorporates by reference all preceding paragraphs.

54. Defendants, acting under color of state law, have deprived Dynasty of the rights, privileges, or immunities secured by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, by discriminating against him and failing to protect him from harassment and abuse on the basis of actual or perceived sexual orientation. On information and belief, Defendants would have taken effective measures to protect him but for his actual or perceived sexual orientation.

55. Defendants had actual notice that the harassment based on actual or perceived sexual orientation was so severe, pervasive, and objectively offensive that it created a hostile climate that deprived Dynasty of access to educational programs, activities, and opportunities.

56. Defendants were deliberately indifferent to the harassment of Dynasty based on actual or perceived sexual orientation in violation of Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. Defendants' deliberate indifference caused Dynasty to be subjected to the described anti-gay discrimination and harassment.

57. Defendant School District's punishment of and failure to protect Dynasty was pursuant to its policy, practice, or custom to punish and fail to protect students from other student harassment based upon the sexual orientation of the student.

58. Pursuant to District and/or School custom, policy, or practice, Defendants disciplined Dynasty more severely and conditioned his return IPS schools on his attendance at an alternative school, because of his actual or perceived sexual orientation.

59. As an actual and proximate result of Defendants' conduct, Dynasty has been injured and suffered damages to be determined according to proof.

60. Dynasty requests judgment in his favor against Defendants as set forth in the Prayer for Relief.

### **THIRD CLAIM FOR RELIEF**

#### **U.S. Constitution Amendment XIV Denial of Equal Protection on the Basis of Sex**

(Brought Pursuant to 42 U.S.C. § 1983 Against the School District; School Board; Superintendent White; Principal Yarrell; and Assistant Principal Barlowe)

61. Plaintiff incorporates by reference all preceding paragraphs.

62. Defendants, acting under color of state law, have deprived Dynasty of the rights, privileges, or immunities secured by the Equal Protection Clause of the Fourteenth

Amendment of the U.S. Constitution, in that Defendants, without justification, have treated Dynasty differently than other similarly situated students and student groups on the basis of sex, including sex stereotyping.

63. Defendants had actual notice that the harassment based on sex was so severe, pervasive, and objectively offensive that it created a hostile climate that deprived Dynasty of access to educational programs, activities, and opportunities.

64. Defendants were deliberately indifferent to the harassment of Dynasty based on sex in violation of Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. Defendants' deliberate indifference caused Dynasty to be subjected to the described discrimination and harassment on the basis of sex, including sex stereotyping. On information and belief, Defendants would have taken effective measures to protect him had he been female, and would not have told a female student that she should not wear stereotypically feminine clothing and accessories.

65. Furthermore, Defendants' refusal to halt the expulsion unless Dynasty began dressing in more gender conforming clothing, and their subsequent decision to condition his return to IPS schools on his attendance at an alternative school, constituted intentional discrimination on the basis of sex and infringed on Dynasty's right to attend school free from discrimination on the basis of sex.

66. Defendant School District's punishment of and failure to protect Dynasty was pursuant to its policy, practice, or custom to punish and fail to protect students from

other student harassment based upon the sex of the student, including failure to conform to sex stereotypes.

67. As an actual and proximate result of Defendants' conduct, Dynasty has been injured and suffered damages to be determined according to proof.

68. Dynasty requests judgment in his favor against Defendants as set forth in the Prayer for Relief.

#### **FOURTH CLAIM FOR RELIEF**

##### **U.S. Constitution Amendment I Denial of Free Speech and Expression**

(Brought Pursuant to 42 U.S.C. § 1983 Against the School District; School Board; Superintendent White; Principal Yarrell; and Assistant Principal Barlowe)

69. Plaintiff incorporates by reference all preceding paragraphs.

70. Dynasty's wearing of gender non-conforming clothing and his non-stereotypical gender expression, constitute speech, symbolic action and expressive conduct protected by the First Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment to the United States Constitution because Dynasty intended to convey a message that he was an openly gay, gender non-conforming youth and that he was happy and proud of his identity and wanted to live an open life being true to himself and sharing his real self with others.

71. Defendants, acting under color of state law, have deprived Dynasty of his right to free speech and expression under the First Amendment of the U.S. Constitution. Defendants and Dynasty's fellow students at Tech were aware that Dynasty's gender non-

conforming dress and appearance conveyed a message that he is an openly gay, gender non-conforming youth who was proud of his identity and unwilling to hide or conceal his sexual orientation and gender non-conformity, and that men do not have to conform to conventional gender stereotypes. Defendants understood that Dynasty's clothing and appearance conveyed this message to staff and students and sought to discourage Dynasty from having a gender non-conforming appearance because they disagreed with his point of view and wished to silence it, and therefore they told him that he was inviting harassment and abuse by being "flamboyant" and openly gay and gender non-conforming.

72. Defendants refused to take effective action to address the harassment and to protect Dynasty from harassment by other students unless he agreed to change his gender non-conforming dress, appearance, and demeanor. Ultimately, Defendants suspended, and then expelled, Dynasty in substantial part because he was unwilling to change his gender non-conforming appearance, and subsequently conditioned his return to IPS schools on his attendance at an alternative school. Defendants took these actions to inhibit, suppress and otherwise regulate Dynasty's speech because of the expressive content, viewpoint, symbolic value and/or communicative impact of his gender non-conforming clothing and appearance, which sent a clear message that it is okay to be an openly gay, gender non-conforming youth and that men do not have to conform to gender stereotypes. Defendants' violations of Dynasty's right to free speech and expression were the actual, direct, and proximate cause of injuries suffered by Dynasty as alleged, and had



the desired effects of chilling Dynasty's right of free speech and expression and punishing him for exercising that right.

73. Defendant School District's punishment of and failure to protect Dynasty and repeated insistence that he change his openly gay and gender non-conforming appearance was pursuant to its policy, practice, or custom to punish students and fail to protect students from other student harassment based upon the student's exercise of speech and expression.

74. Defendants' actions were not narrowly tailored to achieve a compelling state interest.

75. As an actual and proximate result of Defendants' conduct, Dynasty has been injured and suffered damages to be determined according to proof.

76. Dynasty requests judgment in his favor against Defendants as set forth in the Prayer for Relief.

#### **FIFTH CLAIM FOR RELIEF**

#### **U.S. Constitution Amendment XIV Denial of Procedural Due Process**

(Brought Pursuant to 42 U.S.C. § 1983 Against the School District and School Board)

77. Plaintiff incorporates by reference all preceding paragraphs.

78. Defendants, acting under color of state law, have deprived Dynasty of the liberty interested safeguarded by the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

79. Dynasty has a strong liberty interest in establishing that his expulsion was unwarranted and arbitrary.

80. Through their actions and failures to act as alleged herein, Defendants have interfered with Dynasty's ability to appropriately contest the bases for his expulsion, denying him a meaningful opportunity to be heard.

81. The procedural safeguards implemented by Defendants with respect to the expulsion appeal process bear a high risk for erroneous deprivation of the relevant liberty interests, where additional or substitute procedures exist that could eliminate that risk for little to no additional cost to Defendants.

82. Defendants failed to use those additional or substitute procedures by failing to provide Chelisa and Dynasty with written notice of the scheduling of an appeal of the hearing officer's determination; by failing to schedule or conduct any appeal hearing within a reasonable amount of time; by violating their own written policies and procedures concerning expulsion appeals; and by their failure, despite repeated requests and continuing to the present, ever to schedule or conduct the duly requested appeal hearing concerning the decision to expel Dynasty.

83. Defendant School District's conduct was pursuant to its policy, practice, or custom to fail to provide students with a procedure to contest expulsion decisions that comports with the requirements of due process and its own written policies.

84. As an actual and proximate result of Defendants' conduct, Dynasty has been injured and suffered damages to be determined according to proof.

85. Dynasty requests judgment in his favor against Defendants as set forth in the Prayer for Relief.

**SIXTH CLAIM FOR RELIEF**

**U.S. Constitution Amendment XIV  
Denial of Substantive Due Process – Arbitrary State Action**

(Brought Pursuant to 42 U.S.C. § 1983 Against the School District; School Board; Superintendent White; Principal Yarrell; and Assistant Principal Barlowe)

86. Plaintiff incorporates by reference all preceding paragraphs.

87. Dynasty has a strong interest in establishing that his expulsion was unwarranted and arbitrary, sufficient to trigger the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

88. Defendants' decision to expel Dynasty for possessing a "deadly weapon," when in fact their actions were motivated in whole or in part by his unwillingness to change his gender non-conforming appearance and his nonconformity with sex stereotypes, was arbitrary and inconsistent with due process. Defendants' determination that Dynasty possessed a "deadly weapon" was so arbitrary and irrational as to violate the requirements of due process.

89. Defendant School District's conduct was pursuant to its policy, practice, or custom to fail to comply with the requirements of due process.

90. As an actual and proximate result of Defendants' conduct, Dynasty has been injured and suffered damages to be determined according to proof.

91. Dynasty requests judgment in his favor against Defendants as set forth in the Prayer for Relief.

**SEVENTH CLAIM FOR RELIEF**

**U.S. Constitution Amendment XIV  
Substantive Due Process – Deprivation of Liberty**

(Brought Pursuant to 42 U.S.C. § 1983 Against the School District; School Board; Superintendent White; Principal Yarrell; and Assistant Principal Barlowe)

92. Plaintiff incorporates by reference all preceding paragraphs.

93. Dynasty has a constitutionally protected liberty interest in his choice of personal appearance and in determining his own identity as an openly gay, gender non-conforming youth.

94. Defendants interfered with and substantially burdened that constitutionally protected interest by penalizing Dynasty for his personal appearance and identity as an openly gay gender non-conforming youth by refusing to protect him unless he changed his appearance and identity as an openly gay gender non-conforming youth, by suspending and then expelling Dynasty in substantial part because he was unwilling to change his gender non-conforming appearance and identity as an openly gay gender non-conforming youth, by punishing him more severely due to his gender non-conforming appearance and identity as an openly gay gender non-conforming youth, by refusing to permit him to appeal the expulsion, and by barring him from returning to a regular school and permitting him to return only to an alternative school.

95. Defendants' actions as described above did not bear a rational relationship to a legitimate state interest.

96. Defendant School District's punishment of and failure to protect Dynasty and repeated insistence that he change his openly gay and gender non-conforming appearance and identity as an openly gay gender non-conforming youth was pursuant to its policy, practice, or custom to punish students and fail to protect students from other student harassment based upon the student's exercise of the constitutionally protected liberty interest in choice of personal appearance and expression of identity.

97. As an actual and proximate result of Defendants' conduct, Dynasty has been injured and suffered damages to be determined according to proof.

98. Dynasty requests judgment in his favor against Defendants as set forth in the Prayer for Relief.

### **EIGHTH CLAIM FOR RELIEF**

#### **Indiana Code § 20-33-8-21**

#### **Failure to Comply with Expulsion Hearing Procedures**

(Brought Pursuant to I.C. § 20-33-8-21 Against the School District and School Board)

99. Plaintiff incorporates by reference all preceding paragraphs.

100. Defendants have adopted a written policy to provide parents and students an opportunity to appeal expulsion decisions to the School Board, as memorialized in the administrative guidance to Board Policy #5500, and as authorized by I.C. § 20-33-8-19(f).

101. Defendants improperly imposed additional requirements upon Chelisa's and Dynasty's right to appeal in contravention of I.C. § 20-33-8-19(d) and/or without sufficient and/or adequate notice.

102. Defendants also refused to hear Chelisa's and Dynasty's appeal of his expulsion in violation of I.C. 20-33-8-19(d).

103. Defendants' acts and omissions are actionable under I.C. 20-33-8-21.

104. Defendants' violations of Indiana's expulsion hearing procedures were the actual, direct, and proximate cause of injuries suffered by Dynasty as alleged.

105. Dynasty requests judgment in his favor against Defendants as set forth in the Prayer for Relief.

#### **JURY DEMAND**

106. Plaintiff demands trial by jury for all claims so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in its favor and against Defendants, providing the following relief:

1. An order granting Plaintiff nominal, compensatory, and punitive damages against Defendants for violations of the Equal Protection Clause of the 14th Amendment of the United States Constitution.
2. An order granting Plaintiff nominal, compensatory, and punitive damages against Defendants for violations of the First Amendment of the United States Constitution, made applicable to the states by the 14th Amendment of the United States Constitution.

3. An order granting Plaintiff nominal, compensatory, and punitive damages against Defendants for violations of the Due Process Clause of the 14th Amendment of the United States Constitution.
4. An order granting Plaintiff nominal, compensatory, and punitive damages against Defendants for violations of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.
5. An order reversing Plaintiff's expulsion from District or, in the alternative, granting Plaintiff another expulsion hearing with any and all procedural safeguards the Court deems necessary to ensure Plaintiff receives adequate notice, opportunity to present testimony and evidence, and, if necessary, an appeal hearing before the School Board.
6. Interest, where appropriate, on any damages awarded to Plaintiff.
7. Attorneys' fees, expenses, and costs incurred in the prosecution of this action pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws.
8. Any other and further relief as the Court may deem just and proper.

**RESPECTFULLY SUBMITTED,**

Dated: August 31, 2012

WAPLES & HANGER



---

Richard A. Waples, #2132 49  
rwaples@wapleshanger.com  
JauNae M. Hanger, #16054 49  
jhanger@wapleshanger.com  
410 North Audubon Road  
Indianapolis, IN 46219  
Phone: (317) 357-0903  
Fax: (317) 357-0275

NATIONAL CENTER FOR LESBIAN  
RIGHTS

Christopher F. Stoll\*  
cstoll@nclrights.org  
Asaf Orr\*  
aorr@nclrights.org  
870 Market Street, Suite 370  
San Francisco, CA 94102  
Phone: (415) 365-1326  
Fax: (415) 392-8442

KIRKLAND & ELLIS LLP

Brent Ray\*  
brent.ray@kirkland.com  
Daniel Bond\*  
dbond@kirkland.com  
Vanessa Barsanti\*  
vanessa.barsanti@kirkland.com  
Eliza Davis\*  
eliza.davis@kirkland.com  
Erin Wagner\*  
erin.wagner@kirkland.com  
300 North LaSalle  
Chicago, IL 60654  
Telephone: (312) 862-2000  
Fax: (312) 862-2200

\*Motion for admission *pro hac vice* forthcoming

**ATTORNEYS FOR PLAINTIFF**

YOUNG v. INDIANAPOLIS PUBLIC SCHOOL CORPORATION – COMPLAINT