

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
ADMINISTRATIVE COMPLAINT**

May 15, 2024

Office for Civil Rights, Dallas Office
U.S. Department of Education
Office for Civil Rights
Renaissance Tower
1201 Elm St., Suite 1000
Dallas, TX 75270

COMPLAINANT

Kimberly Hudson
c/o Complainant's Counsel

COMPLAINANT'S COUNSEL

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Jackson, MS 39225

RESPONDENT

Harrison County School District
11072 Highway 49
Gulfport, MS 39503

PRELIMINARY STATEMENT

1. This is a complaint brought by Kimberly Hudson (“Ms. Hudson”) on behalf of her minor child, A.H., who is currently sixteen years old and a rising junior at Harrison Central High School (“HCHS”) in the Harrison County School District (“District”). Ms. Hudson brings this complaint against the District for discriminating against her daughter based on sex in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, and the Department of Education’s (“ED”) implementing regulations, 34 C.F.R. Part 106.

2. The District has implemented and enforced discriminatory sex-specific dress code policies in a manner that perpetuates invidious sex stereotypes and disproportionately harms girls,¹ particularly transgender and gender nonconforming girls, including A.H. This constitutes discriminatory treatment in violation of Title IX.

3. In addition, the District has created, perpetuated, and failed to respond promptly and equitably to conduct, including but not limited to the conduct listed below, that constitutes a sex-based hostile environment in violation of Title IX:

- a. Prohibiting transgender girls from wearing dresses to school-sponsored activities and events, including school band concert evaluations and graduation programs;
- b. Selectively targeting girls, particularly transgender and gender nonconforming girls, for dress code checks and discipline;
- c. Excluding girls' senior portraits from school yearbooks for wearing tuxedos;
- d. Forcing students to comply with a sex-specific dress code based on the "biological sex" listed in their school records, regardless of their gender identity and/or expression; and
- e. Engaging in and/or otherwise failing to promptly and equitably respond to sex-based harassment against A.H. and other students.

4. The District's discriminatory treatment and its failure to promptly and equitably respond to sex-based harassment has resulted in the loss of valuable class time and instruction, unjust exclusion from important school-sponsored events, programs, and activities, informal and formal disciplinary action, and infliction of significant emotional distress, shame, and

¹ This complaint uses the terms "girl" or "girls" as umbrella terms that include, but are not limited to, girls who identify as cisgender, transgender, and/or gender nonconforming. *See, e.g.*, GLSEN Key Terms and Concept, <https://www.glsen.org/sites/default/files/2020-04/GLSEN%20Terms%20and%20Concepts%20Thematic.pdf> (last visited May 7, 2024) (defining identity terms such as "cisgender," "transgender," and "gender nonconforming").

humiliation. The District's policies and practices discriminate against A.H. and other impacted students on the basis of sex in violation of Title IX and ED's implementing regulations.

5. A.H. and her family request that ED's Office of Civil Rights ("OCR") open an investigation into the District's conduct, focused on sex discrimination that violates Title IX, and take remedial steps to ensure that no students in the District are discriminated against based on sex. Specifically, OCR should request that the District (i) change its sex-specific dress code policies to eliminate sex-based distinctions and other gendered language; (ii) discontinue its discriminatory dress code enforcement practices that selectively target girls, particularly transgender and gender nonconforming girls; (iii) adopt policies and procedures for promptly and equitably responding to reports of discrimination; and (iv) acknowledge and apologize for the harm it has caused A.H. and other impacted students based on sex.

PARTIES

6. Kimberly Hudson ("Ms. Hudson") is the parent of A.H., a 16-year-old transgender girl and rising junior at Harrison Central High School in Harrison County School District. They live in Gulfport, Mississippi and can be contacted through the undersigned counsel.

7. This complaint is against Harrison County School District ("District"). The contact information for the District's superintendent is:

Mitchell King, Superintendent
Harrison County School District
11072 Highway 49
Gulfport, MS 39503
Phone: (228) 539-6500
Email: mking@harrison.k12.ms.us

JURISDICTION

8. The District receives Federal financial assistance from the U.S. Department of Education (“ED”).²

9. ED’s Office for Civil Rights (“OCR”) is responsible for ensuring that educational programs receiving departmental funding comply with Title IX, and for investigating complaints of unlawful discrimination in violation of Title IX. 34 C.F.R. §§ 100.7(c), 106.1, 106.3.

10. This complaint is timely because it challenges discriminatory written policies of the District that remain in effect as of today’s date. Moreover, this complaint is timely because it is filed within 180 days of known discriminatory conduct. 34 C.F.R. § 100.7(b).

FACTUAL BACKGROUND

I. The District Maintains and Enforces Discriminatory Sex-Specific Dress Code Policies Based on Harmful Stereotypes.

11. The District has implemented a sex-specific dress code that expressly requires different attire for girls and boys (“Sex-Based Dress Code”). The Sex-Based Dress Code applies to all students from kindergarten through twelfth grade during the school day and for various school-sponsored events. *See* Exhibit A, Harrison Cnty. Sch. Dist. 2023-2024 Grades 7-12 Handbook at 60; *see also* Exhibit B, Harrison Cnty. Sch. Dist. 2023-2024 Elementary School Handbook at 44.

12. The Sex-Based Dress Code requires boys to “wear shorts or pants, and shirts and footwear.” *Id.* Per the Sex-Based Dress Code, boys are prohibited from wearing clothing items commonly associated with girls, including skirts, dresses, and blouses. *See id.*

² *See, e.g.*, Miss. Off. of the State Auditor, Harrison County School District – Audited Financial Statements for the Year Ended June 30, 2023, 65-66, <https://www.osa.ms.gov/documents/schools/2023/23sHarrison%20County%20School%20District-cpa.pdf> (last visited May 7, 2024).

13. The Sex-Based Dress Code also mandates that “girls must wear dresses or skirts or shorts or pants, and shirts or blouses and footwear.” *Id.*

14. The Sex-Based Dress Code further requires students to “follow the dress attire consistent with their biological sex that is stated in the student’s cumulative folder and permanent record” prepared by the District. *Id.* In other words, the Sex-Based Dress Code forces students to conform to the dress code requirements (and the sex stereotypes underpinning those requirements) based on their sex assigned at birth. This “biological sex” provision disproportionately denies transgender and gender nonconforming students the ability to dress consistent with their gender identity and/or expression on the basis of sex. *Id.*

15. The District added the “biological sex” provision to the Sex-Based Dress Code on July 10, 2023. *See* Exhibit C, Harrison Cnty. Sch. Bd. July 10, 2023 – Board Meeting Agenda. Upon information and belief, the “biological sex” provision was added to the 2023-2024 Sex-Based Dress Code in response to transgender and gender nonconforming students’ complaints about not being permitted to wear clothing associated with their gender identity and/or expression at school-sponsored events. *See* discussion *infra* Sections III.a, III.b.

16. The District’s Sex-Based Dress Code enforces rigid and binary sex stereotypes by requiring students to dress according to their sex assigned at birth, rather than their gender identity and/or expression. This policy disproportionately deprives transgender and gender nonconforming students of full and equal participation in their school community by conditioning their participation in educational programs and activities on dressing in ways that do not align with their gender identities.

17. In addition to setting out these foundational sex-specific rules, the Sex-Based Dress Code reinforces harmful sex stereotypes by restricting many clothing items typically worn by girls. *See* Exhibit A at 60. For example, the Sex-Based Dress Code:

- a. Explicitly prohibits garments commonly associated with girls, including, but not limited to, “halter-tops” and “strapless (tube-type) dresses and tops,” *id.*;
- b. Imposes length requirements on shirts and bottoms, including for clothing items the District only permits girls to wear (e.g., prohibits “skirts, dresses above mid-thigh length”), *id.*; and
- c. Imposes biased standards of modesty and propriety by prohibiting “low cut,” “revealing,” “inappropriate,” or “extremely tight-fitting or short” clothing and requiring “appropriate undergarments to be worn and covered at all times.” *Id.*

18. The District’s prohibition on garments commonly associated with girls and its imposition of vague propriety standards reinforce harmful sex stereotypes, including that girls’ bodies are inherently inappropriate and vulgar, that girls should dress modestly, and that girls’ bodies and their clothing require greater regulation than those of boys.

19. If a school administrator decides that a student has violated the Sex-Based Dress Code, they will send the student to “ISR (In School Reassignment), and parents will be required to bring a change of clothing” for the student to return to regular instruction. *See* Exhibit A at 61. While assigned to ISR, students “forfeit participation in regularly scheduled and extracurricular activities.” *Id.* at 53.

20. Upon information and belief, the District disproportionately targets and disciplines girls, particularly transgender and gender nonconforming girls, for dress code violations. *See* discussion *infra* Sections II.a, III.

21. In addition to its general Sex-Based Dress Code, the District has implemented and enforced a sex-based graduation dress code policy (“Graduation Dress Code”).

22. For the 2022-2023 academic year, the Graduation Dress Code required graduating girls to wear white dresses and dress shoes and required graduating boys to wear white button-down shirts, black dress pants, black dress shoes, and a tie or bowtie. *See* Exhibit D, Complaint at ¶ 3, *L.B. v. Harrison Cnty. Sch. Dist. et al*, No. 1:23-CV-00124 (S.D. Miss. May 18, 2023).

23. For the 2023-2024 academic year, the Graduation Dress Code also imposes sex-specific requirements. Under the policy, girls are required to wear “dresses [...or] a dressy black pantsuit or black pants[,]” and black dress shoes. Boys are required to wear “black dress pants, white button-down shirt, black tie, [...] black dress shoes/boots and socks.” *See* Exhibit A at 84.

24. Significantly, the 2023-2024 Graduation Dress Code further requires students to dress according to their sex assigned at birth, with the District enforcing this policy based on “a graduate’s cumulative folder and permanent record, which includes a copy of a graduate’s original birth certificate.” *Id.* at 82.

25. Under the 2023-2024 Graduation Dress Code, if a student assigned female at birth wears black dress pants, a white button-down shirt, and a black tie, or a student assigned male at birth wears a dressy black pantsuit or a dress, they will not be permitted to participate in the graduation ceremony. School authorities will “remove graduates from the facilities where graduation is held” if their attire violates the Graduation Dress Code. *Id.* at 83.

26. If students fail to conform to the sex-specific dress code requirements associated with their sex assigned at birth (and the sex stereotypes underlying those requirements), they may be deprived of their high school graduation ceremony, a significant rite of passage where

they can be recognized for their hard-earned achievements by their peers, families, and the community at large.

27. To retain their ability to publicly celebrate their achievements, the District unfairly demands that students follow its sex-based Graduation Dress Code even if doing so requires them to dress in clothes that are not consistent with their gender identity and imposes sex-based stereotypes about appropriate dress. Through the Graduation Dress Code, the District tells students that they will be barred from participating in a once-in-a-lifetime capstone event unless they wear pants (for a student assigned male at birth) or a dressy pantsuit, pants, or dress (for a student assigned female at birth), based on the District’s beliefs about how girls and boys should dress and appear. In doing so, the Graduation Dress Code inflicts significant and lasting emotional and stigmatic harm on students.

II. The District Has Unjustly Targeted A.H. for Discriminatory Dress Code Enforcement and Sex-Based Harassment.

a. District officials have prohibited A.H. from wearing a dress to school-sponsored programs and activities based on her sex assigned at birth, under threat of in-school suspension.

28. A.H. is a 16-year-old transgender girl and rising junior at Harrison Central High School (“HCHS”). Wearing traditionally feminine clothing is critically important to A.H.’s sense of self, gender expression, and identity as a girl.

29. On March 28, 2024, A.H. went to school, excited to perform with her peers in the upcoming regional band concert evaluation, held that day in Pearl, MS. A.H. is a talented musician and she spent months preparing for the performance. Students were told to wear black formal attire for their performance.

30. A.H. decided on a black dress that followed the length and style restrictions of the District’s dress code and affirmed her gender identity. Because she had not worn a dress to a

band performance before, A.H. confirmed with the band director that the dress she had chosen was appropriate and consistent with the guidelines. Her band director approved of the dress.

31. That morning, A.H. was happy to receive so many compliments from her classmates, especially since she was nervous to wear a dress to a band performance.

32. During first period, A.H. went to the restroom. On her way back to class, A.H. was stopped by HCHS Principal Kelly Fuller, who said, “You know you can’t wear that, right?”

33. When A.H. asked why, Principal Fuller stated that A.H.’s dress violated the dress code because “boys can’t wear skirts or dresses.” Because A.H. was due to leave for the band concert evaluation shortly, she pleaded with Principal Fuller to allow her to go directly to the band room. Principal Fuller responded, “You can’t represent our school dressed like that.” Principal Fuller then gave A.H. an ultimatum – she could either ask her mother to bring “boys’ clothes” for A.H. to wear or be sent to In-School Reassignment and not be allowed to participate in the band concert evaluation.

34. Brought to tears, A.H. called her mother, who was very upset to hear what happened but quickly brought an outfit so that A.H. could go to the evaluation she had worked so hard to qualify for.

35. A.H. changed into the “boys’ clothes” her mother brought, a button-down shirt and dress pants. Returning to the classroom where her dress had been celebrated by her peers, A.H. felt utterly humiliated to be seen in clothing that was inconsistent with her gender identity.

36. Despite this upsetting experience, A.H. was very excited to attend the annual HCHS Band Banquet on April 27, 2024. A.H. asked her band director ahead of time whether she could wear a dress. Although he did not personally object to A.H. wearing a dress, A.H.’s band director forbade her from wearing a dress because Principal Fuller would be there.

b. District officials have created, perpetuated, and failed to respond promptly and equitably to conduct that constitutes a sex-based hostile environment against A.H.

37. Based on A.H.'s sex assigned at birth, District officials have engaged in a pattern of sex-based harassment against A.H.

38. One such incident occurred in eighth grade, when A.H. was a student at West Wortham Elementary & Middle School. In between classes, A.H. needed to use the restroom. Although A.H. found using the boys' restroom humiliating, she felt it was her only option.

39. When she attempted to enter the boys' restroom, a teacher screamed at her in a crowded hallway, "What are you doing?! Get out of there! You don't belong in there!" This was deeply distressing, embarrassing, and confusing for A.H., who started to cry and did not know where she could go to relieve herself. Multiple teachers witnessed this incident, and one of A.H.'s teachers asked the yelling teacher why A.H. was crying. To A.H.'s knowledge, the teacher who screamed at her was never disciplined.

40. During A.H.'s ninth grade year at HCHS, she continued to experience multiple instances of sex-based harassment by District officials and other students.

41. Because of her experience the previous year, A.H. avoided using the restroom at school as much as possible, even refraining from drinking or eating during the school day. On one occasion, A.H. was confronted by a hall monitor—a District employee—on her way into the restroom. The hall monitor demeaned A.H. by asking, "What are you?" Incredulous, A.H. asked, "What did you just say to me?" A.H. then entered the restroom and began to cry, distressed by the hall monitor's question.

42. A.H. was extremely upset by this event, so Ms. Hudson wrote an email to Principal Fuller and other school administrators to complain about the incident. Ms. Hudson never received a response from District officials about the harassment A.H. had experienced.

43. Following this incident, a school counselor spoke to A.H. about it. During this meeting, A.H. explicitly requested to use the girls' restroom moving forward. The counselor then advised A.H. that she would not be permitted to use the girls' restroom, and that she would be written up if she was caught using it. Instead, the school counselor told A.H. to use the teachers' one-stall restroom going forward.

44. This directive required A.H. to go further away from her classrooms to relieve herself than her cisgender peers, and because A.H. was never notified of all the staff restrooms on campus, she often had to run between school buildings to relieve herself between classes.

45. Moreover, forcing A.H. to use separate facilities from her peers was both stigmatizing and embarrassing.

46. Later, another teacher chastised A.H. for getting the hall monitor "in trouble" because what happened "wasn't that big of a deal."

47. In ninth grade, A.H. also experienced a pattern of transphobic and homophobic bullying by an older student during her second period class that District officials failed to address promptly and equitably.

48. On multiple occasions, while class was in session, A.H. was repeatedly called transphobic and homophobic slurs, including "fa***t" and "tr***y," from across the room in the presence of her teacher. When A.H.'s friends, who are African American girls, tried to come to her defense, the student called them the N-word. A.H. repeatedly asked District officials to intervene because she felt increasingly threatened by the student's behavior. Yet, despite the student persistently verbally abusing and harassing A.H. and her friends during class, District officials failed to take meaningful action to stop the harassment against A.H.

49. On one occasion, after facing yet another class period of harassment by this student, A.H. stood up for herself and loudly told the student to stop harassing her during class. The teacher then removed A.H. and the other student from class and attempted to send them to the school counselor, but former HCHS Vice Principal Jaworski Rankin called them to his office. A.H. brought her friends with her to the vice principal's office as witnesses, where they attempted to explain the pattern of bullying by the other student. Vice Principal Rankin sent away A.H.'s friends, saying that they were "biased" and attempting to defend A.H. He also told A.H. that she would be "written up" for her actions. Vice Principal Rankin then called the other student into the office, but the student began to harass and use slurs against both A.H. and the vice principal. The vice principal's office called the campus peace officer, then allowed the student to leave campus voluntarily. Before she left, the student threatened A.H. again, in full view of the vice principal and other District officials.

50. The next day, Ms. Hudson was informed that A.H. was being suspended for two days for disrupting the learning environment. Until that point, A.H. had a perfect disciplinary record. Ms. Hudson and A.H. believe that A.H. was unfairly and harshly punished for defending herself against bullying when the school would not.

51. Ms. Hudson promptly emailed Superintendent Mitchell King on March 3, 2023, to complain about the unfair discipline A.H. received and the unaddressed bullying A.H. experienced. Although Superintendent King indicated that he would investigate the matter in an email on March 6, 2023, Ms. Hudson never heard from him again.

52. In addition to the recent discriminatory dress code enforcement she has experienced, the District's perpetuation of and failure to respond promptly and equitably to these incidents of grave sex-based harassment have made A.H. feel unsafe and unwelcome at school.

53. A.H. also suffers constant misgendering and deadnaming by District staff.

54. A.H.'s prior experiences have made her fearful of sharing her name and pronouns.

Correcting school officials would likely cause District officials to target her more.

55. Because she is a transgender girl, A.H. has been publicly embarrassed, required to use separate restroom facilities than her peers, prohibited from wearing a dress and forced to wear clothes that are inconsistent with her gender identity and expression to participate in school-sponsored events and programs, punished for being the target of transphobic and homophobic bullying, and harassed by multiple District officials.

III. The District Has Unjustly Targeted Girls, Particularly Transgender and Gender Nonconforming Girls, for Discriminatory Dress Code Enforcement.

a. The District has excluded students' senior portraits from the yearbook when students did not conform to its sex-based dress code policy.

56. Based on an investigation by the ACLU and the ACLU of Mississippi, the District has excluded senior portraits of students who do not comply with its sex-based dress code policy and practices from the 2023-2024 yearbook, including the portrait of Student A—an 18-year-old cisgender woman and graduating senior at HCHS.³ Student A identifies as gay and has dressed in masculine-leaning attire (including pants) for as long as she can remember. Wearing masculine attire is a critical part of Student A's gender expression. She has worn masculine clothing since she started at HCHS in ninth grade without any issues.

57. In Fall 2023, Student A and her mother were excited to memorialize her high school career with a yearbook portrait she and her family could cherish for years to come. Consistent with the way she has always dressed, Student A picked out a tuxedo for her photoshoot. When Student A and her mother arrived at the studio that the District told students to

³ The ACLU and the ACLU of Mississippi represent this student in a separate OCR complaint.

use for their portraits, the photographer told them that because the District requires girls to wear drapes and only boys can wear tuxedos, Student A's portrait would not be included in the yearbook if she wore her tuxedo.

58. Not only was Student A uncomfortable wearing a drape, but it was inconsistent with her long-standing expression of her gender and sexual orientation. Because of how significant this attire was to her gender expression, she proceeded as planned by taking her portrait in her tuxedo, an option the District had deemed acceptable for boys' published portraits.

59. Afterwards, Student A's mother contacted the Harrison County School Board to ask for her portrait to be included in the yearbook, especially because Student A was not in violation of the District's Sex-Based Dress Code. When Student A's mother spoke to Superintendent King, he refused to consider including her tuxedo portrait in the yearbook based on her sex assigned at birth. Superintendent King insisted on enforcing the District's practice of requiring girls to wear drapes for their senior portraits.

60. Dismayed by this decision, Student A's mother advocated for her by filing an OCR complaint soon thereafter.

61. In an attempt to ensure her tuxedo portrait would be included in some way, Student A's mother purchased a full-page senior ad in the yearbook and included the tuxedo portrait in the ad. In late March 2024, the staff member managing the yearbook process notified Student A's mother that they were still seeking approval from HCHS Principal Kelly Fuller to include Student A's tuxedo portrait in her senior ad. As of May 8, 2024, Student A has not received a yearbook and remains in suspense about whether her tuxedo portrait will be included in her senior ad.

62. This experience has been very upsetting and distressing for Student A, who has dressed in masculine clothing without issue on every other occasion, including wearing a tuxedo to prom in March 2024 without incident. She does not understand why she would have to make herself uncomfortable for the sake of a high school senior portrait, which serves as a snapshot encapsulating a student's journey through high school and will be used into perpetuity by a student, their family, and their wider community to remember who that person was at that pivotal time in their life. Since the senior portrait is intended to represent who she is, Student A is devastated that the District forced her to choose between expressing herself authentically and having her portrait excluded entirely.

63. Between the incidents with the 2023 graduation ceremony and having her senior portrait excluded from the yearbook, Student A was very afraid that if she wore her preferred masculine clothing to graduation, she could be removed from graduation and deprived of her experience of walking the stage. To avoid this, she showed her intended graduation outfit to Principal Fuller. Although her outfit was approved, Student A felt compelled to take precautions that other students were not forced to take. In her opinion, only students whose gender expression does not align with the District's rigid, sex-based dress code policies must take the added precaution of asking for the principal's approval so that they can walk the stage at graduation.

b. The District previously targeted transgender and gender nonconforming girls for discriminatory dress code enforcement, resulting in their exclusion from District-sponsored graduation programs.

64. Based on an investigation by the ACLU and the ACLU of Mississippi, the District has targeted and excluded transgender and gender nonconforming girls from District-sponsored graduation programs based on alleged dress code violations.

65. During the 2022-2023 academic year, the District prohibited Student B, a transgender girl and a HCHS senior, from participating in the District's May 20, 2023, graduation ceremony because she planned to wear a dress consistent with her gender identity and expression. The District took this action despite Student B living openly as a transgender girl for the entirety of her high school career without previous issue or repercussion. *See* Exhibit D, Complaint at ¶¶ 23-24, *L.B. v. Harrison Cnty. Sch. Dist. et al*, No. 1:23-CV-00124 (S.D. Miss. May 18, 2023).

66. On May 9, 2023, HCHS Principal Kelly Fuller called Student B to her office to ask what she planned to wear for graduation. *Id.* at ¶ 30. Principal Fuller acted on the instruction of Superintendent Mitchell King, who had previously asked each high school principal “to identify students who might be suspected of breaking the dress code” because of their gender identity and/or expression. *See* Exhibit E, Hugh Keeton, *Court upholds school district policy not allowing transgender student to wear dress to graduation*, WLOX (May 20, 2023, 4:26 AM), <https://www.wlox.com/2023/05/20/court-upholds-school-district-policy-not-allowing-transgender-student-wear-dress-graduation/>.

67. Superintendent King claimed that he was motivated to take this action because he previously “saw a young man wearing a dress.” *Id.* In this district-wide witch hunt for transgender and gender nonconforming students, Student B was one of only four students that District officials “suspected of not intending to follow the dress code policy” because of their gender identity and/or expression. *Id.*

68. When Student B told Principal Fuller that she planned to wear a dress, Principal Fuller stated she could not wear a dress and she would need to “wear what the boys are

wearing.” Extremely upset, embarrassed, and distressed about being singled out, the student left the meeting crying and called her mother. *See* Exhibit D, Complaint at ¶ 31.

69. On May 10, 2023, Student B’s mother called Superintendent King for clarity on the 2022-2023 Graduation Dress Code. During the call, Superintendent King deliberately misgendered the student, saying she “‘is still a boy’ and that ‘*he* needs to wear pants, socks, and shoes like a boy.’” *Id.* at ¶ 32. Superintendent King also said Student B would not be allowed to participate in graduation if she wore her dress. *Id.*

70. Student B and her mother sought a temporary restraining order on May 18, 2023, in a final effort to stop the District from “prohibiting [the student] from wearing a dress and heeled shoes at her high school graduation ceremony, on the basis that doing so violates the Equal Protection Clause, Title IX, and First Amendment.” *Id.* at ¶ 53. Ultimately, the Court denied her request for emergency relief.

71. As a result of the District’s sex-specific dress code policy and targeted enforcement, Student B did not attend her graduation because she felt that “going to graduation in what they asked me to wear would be me telling them that it’s OK, and it’s not. It would just feel like I was shadowed and tainted by bigotry [and] hate.” *See* Exhibit F, Amber Spradley, *Transgender student who sued over graduation dress code tells her story*, ACTION NEWS 5 (May 22, 2023, 2:16 AM), <https://www.actionnews5.com/2023/05/22/transgender-student-who-sued-over-graduation-dress-code-tells-her-story/>.

72. What happened to Student B is further evidence of the sex-based hostile environment that the District has created and perpetuated. The District deliberately singled out transgender and gender nonconforming students as probable violators of the graduation dress code policy, misgendered Student B and forced her to choose between graduating and wearing

clothing consistent with her gender identity, and subsequently added a “biological sex” provision to the Sex-Based Dress Code. *See* discussion *supra* Section I. This conduct signals to transgender and gender nonconforming students that they are not welcome in the District, and that they will be targeted for mistreatment if they dare to be true to themselves.

73. In addition to forcing Student B to miss her high school graduation based on sex, media reports reveal that the District enforced its 2022-2023 Graduation Dress Code to prevent another girl from participating in its graduation ceremony because she wore pants. *See* Exhibit F, Spradley Article.

74. On May 20, 2023, Student C was pulled from the graduation line “just moments before receiving her diploma.” *Id.* Despite participating in an “hours-long rehearsal” and being told by “several adults...that her attire was OK,” District officials waited until the very last moment to “dress code” Student C for wearing black pants under her graduation robe, similar to what boys were permitted to wear to the ceremony. *See id.*

75. According to Student C’s mother, a District official told the girl that ““she could take her pants off and walk the stage, but she needed white shoes.”” *Id.* Her mother then pointed out the absurdity of the District’s position, saying “So, she could walk in her underwear, but she can’t walk in pants.” *Id.*

76. The District’s sex-specific dress code policies and biased enforcement lead to such invasive and inappropriate results as this: a girl must choose between wearing no pants at all or losing her opportunity to walk in a once-in-a-lifetime high school graduation mere moments before receiving her diploma.

77. Student C ultimately did not walk across the stage, resulting in significant emotional harm and distress to her and her family. Her grandmother, who traveled 800 miles to

see her graduate, remarked: “I don’t understand how this, a moment this important, can be taken away from a child that’s worked 12 years to get here.” *Id.* Indeed, this is a moment that Student C and her family will never get back, all because the District insisted on enforcing its sex-based dress code policy.

c. The District has harshly penalized elementary and middle school girls for minor dress code violations.

78. In addition to student and media reports of discriminatory dress code enforcement against high school girls, media reports reveal that the District has also unfairly targeted elementary and middle school girls for dress code enforcement.

79. According to one media report, on or about February 4, 2022, West Wortham Elementary & Middle Principal Michael Weaver required Student D, an 11-year-old girl, to do a “fingertip test” to check the length of her sweatshirt and further told her “to pull up [her] hoodie so he could see [her] shirt” to check the length. *See Exhibit G, Gautama Mehta, Coast 5th grader suspended for wearing hoodie and leggings. Did she violate dress code?, SUNHERALD (Feb. 9, 2022, 5:12 PM), <https://www.sunherald.com/news/local/education/article258192573.html>.* Principal Weaver then sent Student D to In-School Reassignment without notifying her parents, although such notice is “mandated” by the District’s dress code policy. *Id.* The District’s dress code enforcement caused the 11-year-old girl to feel “embarrassed and upset” and caused her “a lot of anxiety.” *Id.* Student D’s parents also reported that “all of the students punished were girls.” *Id.*

80. According to a separate report that catalogued dress code enforcement against several girls, Student E, an eighth-grade girl at West Wortham, missed “five days of in-person instruction” because of minor dress code violations, including a “shirt worn with leggings being slightly higher than her fingertips, or on one occasion a dark maroon streak in her naturally red

hair.” See Exhibit H, Gautama Mehta, *Coast school’s ‘sexist’ dress code enforcement unfairly targets girls, upset parents say*, SUNHERALD (Feb. 16, 2022, 10:56 AM), <https://www.sunherald.com/news/local/education/article258380668.html>. Student E also reported that on four of the five days she was sent to In-School Reassignment, no boys were there for dress code violations. *Id.*

81. The District’s dress code policies and enforcement practices have subjected girls, particularly transgender and gender nonconforming girls, to a culture of pervasive surveillance, discriminatory discipline, and public shaming and humiliation for what they are wearing. These students have been sent a message that their bodies are vulgar, suspect, and subject to disproportionate consequences by the District. The constant scrutiny of these students’ attire has caused them distress, created an unsafe learning environment, and resulted in loss of education time and other school-related opportunities.

ARGUMENT

I. The District Has Engaged in Discriminatory Treatment in Violation of Title IX by Implementing and Enforcing a Sex-Specific Dress Code Policy Based on Harmful Stereotypes.

82. Title IX is a broad remedial statute enacted to eradicate gender inequality and stereotypes in education. Title IX provides that no person “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.” 20 U.S.C. § 1681(a). Title IX was designed to “protect[] individuals from discriminatory practices carried out by recipients of federal funds.” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998).

83. ED has promulgated regulations implementing Title IX in schools that receive departmental funding. These regulations specifically prohibit schools from “subject[ing] any

person to separate or different rules of behavior, sanctions, or other treatment” on the basis of sex. 34 C.F.R. § 106.31(b)(4). Sex discrimination under Title IX includes discrimination against individuals based on their sexual orientation or gender identity.⁴ *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 659-62 (2020).

84. In light of Title IX’s remedial purpose to eliminate sex discrimination in education, the Supreme Court has held that courts “must accord [Title IX] a sweep as broad as its language.” *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982) (quoting *United States v. Price*, 383 U.S. 787, 801 (1966)). Title IX is absolute in its prohibition against “discrimination” in any program or activity that receives federal funds. Although the statute contains a number of narrow, clearly enumerated exceptions (covering, e.g., private schools controlled by religious organizations, schools training individuals for military services or merchant marine, social fraternities or sororities, *see* 20 U.S.C. § 1681(a)(2)-(9), or separate living facilities, *see* 20 U.S.C. § 1686), sex-differentiated dress codes are not among them.

85. Federal courts have held that Title IX unambiguously applies to sex-based dress code policies in schools. *See, e.g., Peltier v. Charter Day Sch.*, 37 F.4th 104, 128 (4th Cir. 2022) (en banc), *cert denied*, 143 S. Ct. 2657 (2023) (“Based on the plain language and structure of the statute, we conclude that Title IX unambiguously encompasses sex-based dress codes

⁴ On April 19, 2024, ED released its recently revised Title IX regulations. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474 (Aug. 1, 2024) (to be codified at 34 C.F.R. pt. 106). Although the new Title IX regulations do not go into effect until August 1, 2024, the revised regulations and attached preamble provide helpful clarification as to Title IX’s protections against discrimination. *See, e.g., id.* at 33807 (“A person’s nonconformity with expectations about the sex of the person to who they should be attracted or the sex with which they should identify implicate one’s sex, and discrimination on that basis is prohibited.”); *id.* at 33809 (“*Bostock* instructs that when a person is discriminated against because their gender identity is not consistent with their sex assigned at birth, “sex” is, at least in part, a basis for that discrimination. This therefore includes discrimination against a person because they are transgender, or because they identify in some other way that is inconsistent with their sex assigned at birth.”) (internal citations omitted); *id.* at 33818 (“Under *Bostock*, treating a person worse because their sex assigned at birth differs from their gender identity is sex discrimination under Title IX, just as it is under Title VII.”) (citation omitted).

promulgated by covered entities.”); *Hayden ex rel. A.H. v. Greensburg Comm. Sch. Corp.*, 743 F.3d 569, 583 (7th Cir. 2014) (holding that a sex-specific dress code policy denying participation in interscholastic basketball to boys who did not comply with hair-length requirements violated Title IX); *A.C. v. Magnolia Indep. Sch. Dist.*, No. 4:21-cv-03466, 2021 WL 11716732, at *1 (S.D. Tex. Oct. 26, 2021) (holding that the plaintiffs established a substantial likelihood of success in showing that the school district’s sex-based dress code policy violated Title IX); *Sturgis v. Copiah Cnty. Sch. Dist.*, No. 3:10-cv-455, 2011 WL 4351355, at *5 (S.D. Miss. Sept. 15, 2011) (declining to dismiss a Title IX challenge to a sex-based school dress code).

86. ED and the U.S. Department of Justice (“DOJ”) have recently reiterated that Title IX prohibits discrimination in school dress and appearance codes, and ED has investigated Title IX complaints involving dress and appearance policies.⁵

87. As a recipient of federal funds, the District must comply with Title IX and ED’s implementing regulations.

88. The District’s sex-specific dress code policies and its targeted enforcement of those policies has subjected A.H. and other girls to “different rules of behavior, sanctions, or other treatment” based on sex in violation of Title IX. 34 CFR 106.31(b)(4).

89. As discussed *supra*, the District’s Sex-Based Dress Code, Graduation Dress Code, and other dress code practices (e.g., for activities like yearbook and band) impose sex-specific requirements for boys and girls, require students to follow the sex-specific dress code

⁵ See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33824 (Aug. 1, 2024) (to be codified at 34 C.F.R. pt. 106) (“The Departments of Justice and Education have clarified that the 1982 amendment did not exempt rules of appearance from the regulatory prohibitions on sex discrimination”) (citing United States’ Statement of Interest at 14 n.13, *Arnold v. Barbers Hill Sch. Dist.*, No. 20-cv-01802 (S.D. Tex. July 23, 2021), <https://www.justice.gov/crt/case-document/file/1419201/download>; see also Rehearing En Banc Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellees/Cross-Appellants, at 28 n.5, *Peltier v. Charter Day School*, Nos. 20-1001(L), 20-1023 (4th Cir. Nov. 18, 2021), <https://www.justice.gov/crt/case-document/file/1449811/download>).

requirements aligned with their sex assigned at birth (and force students to conform to sex stereotypes underpinning those requirements), and target attire typically worn by girls for further restriction based on biased notions of impropriety. *See* Exhibit A, Exhibit B.

90. Dress code policies that utilize sex-specific “modesty” requirements and target attire commonly associated with girls for additional restriction perpetuate patriarchal notions of femininity and modesty and set unfair expectations for how girls should dress. These dress codes also strip girls of autonomy and opportunities for self-expression based on their sex.⁶

91. In addition, sex-specific dress code policies that require students to dress according to their sex assigned at birth are especially harmful to LGBTQ+ students, namely transgender and gender nonconforming students who seek to dress in alignment with their gender identity. Because these policies enforce rigid, binary sex stereotypes, they penalize and isolate students who express their gender in nontraditional ways.

92. The District’s enforcement practices also demonstrate that its dress code policies are grounded in harmful sex stereotypes. The District has targeted cisgender, transgender, and gender nonconforming girls in several ways, including, but not limited to:

- a. Before the District’s May 2023 graduation ceremony, Superintendent Mitchell King and District high school principals deliberately targeted known transgender and gender nonconforming students to threaten them with being barred from graduation if they did not comply with the District’s sex-specific policies according to their sex assigned at birth.
- b. On May 20, 2023, District officials removed a girl from graduation for wearing pants, moments before she walked the stage.

⁶ *See, e.g.*, Nadra Nittle, *Lawsuits, complaints and protests are upending sexist school dress codes*, THE 19TH NEWS (Jan. 12, 2022), <https://19thnews.org/2022/01/school-dress-code-challenges/>.

- c. In Fall 2023, the District decided to exclude a gender nonconforming girl's senior portrait from the yearbook because she wore a tuxedo, rather than the drupe the District required girls to wear.
- d. On March 28, 2024, A.H. was threatened with In-School Reassignment and being excluded from her band evaluation if she did not change out of her dress and into "boys' clothes."
- e. A.H. was prohibited from wearing a dress to her band banquet on April 27, 2024.
- f. During the 2021-2022 school year, the West Wortham Elementary & Middle principal repeatedly targeted girls for dress code checks and discipline, often without notifying their parents.

93. At every turn, the District's justifications confirm that its policies and practices are grounded in harmful sex stereotypes. For example, Superintendent King initiated his search for students likely to violate the dress code after he previously "saw a young man wearing a dress," and A.H.'s principal told her that "boys can't wear skirts or dresses."

94. The District reinforces a rigid gender binary, signaling that any student whose gender identity and expression do not conform to narrow sex stereotypes about what it means to dress as a "girl" or a "boy" will be deemed suspect and in need of regulation, and disciplined more than students who conform. The District's policies and practices limit transgender and gender nonconforming students' ability to retain essential control over how they express their individual gender identities.

95. The District's policies and practices also diminish girls' autonomy, physical comfort, safety, and wellbeing by forcing them to worry over and ultimately choose specific types of clothing to avoid scrutiny and disciplinary action. These policies and practices reflect

and reinforce broad, archaic generalizations about boys’ and men’s inability to control their sexual impulses and girls’ inability to make their own decisions about the clothing that makes them feel safe and physically comfortable. Importantly, these stereotypes are embedded in a longstanding culture of victim-blaming, rooted in misogyny, which conveys the message to girls that their clothing choices may justify anything that happens to them. Such attitudes reflect the “romantic paternalism” that the U.S. Supreme Court has recognized puts women “in practical effect...not on a pedestal, but in a cage.” *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

II. The District Has Created, Perpetuated, and Failed to Respond Promptly and Equitably to Conduct that Creates a Hostile Environment Based on Sex in Violation of Title IX.

96. Title IX further prohibits sex-based harassment, which includes hostile environment harassment. *See Sewell v. Monroe City Sch. Bd.*, 974 F.3d 577, 583-84 (5th Cir. 2020); *Hauff v. State Univ. of N.Y.*, 425 F. Supp. 3d 116, 135 (E.D.N.Y. 2019).

97. A Title IX hostile environment claim “arises from the ‘cumulative effect of individual acts,’ some of which ‘may not be actionable on [their] own.’” *Sewell*, 974 F.3d at 583-84 (quoting *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002)). Accordingly, if an act contributing to the hostile environment claim “occurs within the filing period, the entire time period of the hostile environment may be considered” for purposes of determining liability. *Id.* at 584 (quoting *Morgan*, 536 U.S. at 117).

98. To establish a hostile environment, “harassment must be sufficiently serious (i.e., severe, persistent or pervasive) as to limit or deny a student’s ability to participate in or benefit from an educational program.”⁷ Off. for C.R., U.S. Dep’t of Educ., *Dear Colleague Letter*, July

⁷ ED has noted that the standards for sexual harassment, as set forth in Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026 (May 19, 2020) (“2020 Title IX Regulations”), only apply to claims of unwelcome sexual conduct—none of which are at issue in

28, 2003, <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>; *see also*

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33884 (Aug. 1, 2024) (to be codified at 34 C.F.R. pt. 106) (“2024 Title IX Regulations”).

99. Whether a hostile environment exists is determined by the totality of the circumstances. *See* Off. for C.R., U.S. Dep’t of Educ., *Dear Colleague Letter*, July 28, 2003. ED has articulated many relevant factors in various ways, most recently in its promulgation of 2024 Title IX regulations. 2024 Title IX Regulations, 89 Fed. Reg. at 33884. Relevant factors include, but are not limited to, (i) the degree to which the conduct affected the student’s or students’ ability to access education programs or activities; (ii) the type, frequency, and duration of the conduct; (iii) the parties’ ages, roles within the education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other sex-based harassment in education programs or activities. *Id.*

100. Recipients of Federal financial assistance, including the District, are liable for sex-based harassment when they know of conduct that may reasonably constitute sex discrimination and fail to respond promptly and equitably. *See id.*

i. Degree to Which the District’s Conduct Affected Students’ Ability to Access Education

101. Through its creation and enforcement of sex-specific dress code policies and practices, the District’s conduct has significantly interfered with and, in some cases, entirely prevented A.H. and other impacted students from participating in or benefiting from its

this case. *See* U.S. Dep’t of Educ., *Questions and Answers on the Title IX Regulations on Sexual Harassment* (June 28, 2022), at 4-5, <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>.

education programs and activities—including school-sponsored band performances, yearbook programs, and high school graduation programs—alongside their peers, teachers, and family members. The District’s conduct has also denied and/or threatened to deny A.H. and other students equal access to classroom instruction and time through the threat and/or issuance of in-school suspension (or “In-School Reassignment”) for dress code violations. In some cases, the District has forced girls to miss multiple days of valuable class time and instruction solely based on its discriminatory dress code enforcement practices.

102. A.H. was also removed from class and ultimately suspended for two days because of the District’s failure to respond promptly and equitably to transphobic comments made by A.H.’s teachers and peers.

103. In addition to denying equal access to various education programs and activities, the District’s conduct has caused A.H. and other students to experience significant emotional distress, anxiety, body-shaming, and humiliation. Moreover, the District’s conduct has sent the message to girls, particularly transgender and gender nonconforming girls, that they are not welcome in the District. Accordingly, the District’s conduct has significantly limited and, in many cases, outright denied A.H. and other students the ability to participate in and benefit from the District’s education programs and activities.

ii. Type, Frequency, and Duration of Conduct

104. The District’s discriminatory conduct is constant, persistent, and presently ongoing. The District’s discriminatory dress code policies have remained in full effect at all times relevant to this complaint.

105. Moreover, District officials have frequently and persistently targeted girls, particularly transgender and gender nonconforming girls, for biased, humiliating, and disruptive dress code enforcement and discipline.

106. The District also failed to respond promptly and equitably to transphobic comments made by A.H.’s teachers and peers over the course of several months despite A.H. and Ms. Hudson making multiple explicit requests for District officials to intervene.

iii. The Parties’ Ages, Roles, Previous Interactions, and Other Factors

107. District officials have persistently targeted minor elementary, middle, and high school girl students—particularly transgender and gender nonconforming girls—for discriminatory dress code enforcement on campus and during public-facing events. District officials’ constant scrutiny of impacted students’ bodies, particularly in front of their peers and teachers, is deeply stigmatizing and damaging to students’ confidence, body image, and sense of belonging in school and beyond.

iv. Location of the Conduct and the Context in which the Conduct Occurred

108. The District’s conduct has occurred entirely on campus and at District-sponsored events, programs, and activities. The District adopted its current sex-based dress code policies during scheduled meetings of the Harrison County School District Board of Education (“School Board”), which are held at the District’s own Administration Building. *See* Harrison Cnty. Sch. Dist., *School Board*, https://www.harrison.k12.ms.us/22309_3 (last visited May 10, 2024); *see also* Exhibit C. Moreover, the District’s discriminatory dress code enforcement has taken place exclusively on campus, often during school hours, and at school-sponsored and/or related events and programming.

v. Other Incidents of Sex-Based Harassment

109. District officials have actively participated in and/or failed to intervene in sex-based harassment of LGBTQ+ students, particularly transgender girls like A.H. Indeed, District officials even punished A.H. when she defended herself against repetitive sex-based harassment to which the District had failed to respond promptly and equitably.

110. The District's reliance on "biological sex" in its dress code policies, first enacted in apparent response to transgender girls' plans to wear dresses at graduation, further demonstrates animus and hostility toward transgender students in particular and has contributed to a hostile environment based on sex. In requiring students to conform to the sex-specific dress code requirements based on "biological sex," the District has dismissed the gender identities and expressions of students, including A.H., and sent the message that transgender and gender nonconforming students do not belong.

111. The District's ongoing implementation of its sex-specific dress code policies, targeted and widespread dress code enforcement against girls (particularly against transgender and gender nonconforming girls), and ongoing harassment and/or failure to address harassment of transgender girls have created and perpetuated a hostile educational environment based on sex.

vi. The District's Knowledge of and Inadequate Response to Sex-Based Harassment against A.H. and Other Students

112. The District had actual knowledge of the persistent and ongoing sex-based harassment against A.H. and other impacted students based on numerous complaints from Ms. Hudson, A.H., and other directly impacted parents and students to District officials, including Superintendent King, HCHS Principal Fuller, HCHS Vice Principal Rankin, an HCHS guidance counselor, and other HCHS staff members; direct observation of multiple incidents of sex-based harassment by District officials, including Vice Principal Rankin and other HCHS staff

members; and media reports about discriminatory targeting of girls, including transgender and gender nonconforming girls, at school-sponsored programs and activities in the District.

113. Despite having actual knowledge of severe and pervasive sex-based harassment against A.H. and other impacted students, District officials have failed to promptly and equitably respond to that harassment. Following observed and/or reported incidents of sex-based harassment against A.H., the District failed to promptly and effectively respond to ongoing transphobic and homophobic bullying by other students; failed to address sex-based harassment by District employees; failed to inform Ms. Hudson of the reported and/or observed incident and, in some cases, ignored her complaints entirely; failed to offer any supportive measures for A.H. concerning her ongoing experiences of sex-based harassment, even when A.H. requested specific measures; and even shamed and punished A.H. for the harassment that she experienced by suspending her from school for two days.

114. Rather than addressing such harassment or taking supportive measures, District officials further stigmatized and humiliated A.H. by prohibiting her from using the girls' restroom in accordance with her gender identity; requiring her to use separate restroom facilities from her peers; forbidding her from wearing a dress to her band performances and related activities in accordance with her gender identity; issuing a two-day suspension against A.H. despite that she was a victim of severe and pervasive sex-based harassment in school; and otherwise perpetuating a hostile environment by implementing and enforcing discriminatory sex-based dress code policies.

REMEDIES

115. Ms. Hudson requests that the Department of Education Office for Civil Rights:

- a. Investigate the District to determine whether its sex-specific dress code policies and practices comply with Title IX and Department of Education implementing regulations, both on their face and as enforced;
- b. Investigate the District to determine whether it has created, perpetuated, and/or failed to respond promptly and equitably to conduct that constitutes a sex-based hostile environment in violation of Title IX and its implementing regulations;
- c. Take all steps necessary to remedy any unlawful sex discrimination, as required by Title IX and Department of Education implementing regulations, including, but not limited to, ordering the District to adopt gender-neutral dress code policies; stop targeting, surveilling, and disciplining students based on sex; adopt policies and procedures for promptly and equitably responding to reports of discrimination; and provide mandatory training for District employees about non-discrimination and compliance with federal anti-discrimination laws;
- d. Require the District to issue a written apology to A.H. for its discriminatory conduct; and
- e. Monitor any resulting agreement with the District to ensure continued compliance.

Respectfully Submitted,
/s/ Linda S. Morris

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