

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

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NICKY WILLIAMS, individually and
on behalf of her minor son, J.W.,
SHERRY MILLENDER, individually
and on behalf her minor son, J.F.,
FELICIA GIBBS, individually
and on behalf of her minor daughter,
V.G., TIFFANY SMITH, individually
and on behalf of her minor daughter,
K.S., ANGELA and AARON CHANEY,
individually and on behalf of their minor
son, A.C., DAFFNIE MARTIN, individually
and on behalf of her minor daughter, C.M.,
JACQUELINE DAVIS, individually and on behalf
of her minor daughter, C.N., TABITHA
KIDD-FOUNTAIN, individually and on
behalf of her minor son, M.K., and
TANGELIA D.YATES, individually and
on behalf of her minor son, A.Y.

1:07-cv-00561-CG-B

Second Amended Complaint

[Class Action]

PLAINTIFFS,

-against-

MONROE COUNTY BOARD OF
EDUCATION, GEORGE COKER, in his individual
and official capacities, MARTHA JORDAN,
in her individual and official capacities,
TONY POWELL, in his individual and official

capacities, PATRICIA M. BLACK, in her individual and official capacities, WILLIAM F. ANDREWS, in his individual and official capacities, DENNIS MIXON, Superintendent of Schools of the Monroe County Board of Education, in his individual and official capacities, LANA WILSON, Principal of Monroeville Junior High School, in her individual and official capacities,

DEFENDANTS.

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Pursuant to this Court's order dated May 8, 2008, Plaintiffs submit this Second Amended Complaint.

PRELIMINARY STATEMENT

1. This class action lawsuit is brought pursuant to Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Free Speech Clause of the First Amendment to the United States Constitution. This lawsuit challenges policies and practices in Monroe County School District that systemically deny African American children in Monroeville Junior High School the right to equal educational opportunity, and the free speech rights of students and parents to object to such treatment.

2. The Monroe County School District has a history of intentionally discriminating against African American students. As part of the effort to end *de jure* segregation in the State of Alabama, the United States Department of Justice

and private plaintiffs sued the Monroe County School District and other districts (*Lee et al. v. Monroe County Board of Education et al.*, 70-CIV-5945, Southern District of Alabama, United States District Court). The suit against the Monroe County School District was settled in 1982. However, on information and belief, the Monroe County School District remains the only district in the Southern District of Alabama that has not yet been declared “unitary.” In other words, no court has found that the Monroe County School District has eliminated all of the vestiges of its prior *de jure* segregation. Those vestiges continue today.

3. According to the United States Census, 40.9 percent of the population of Monroe County is African American, and 57.0 percent is white. The public schools in Monroe County School District, however, do not reflect this overall racial distribution. According to the National Center for Education Statistics within the Department of Education, three of Monroe County’s ten regular public schools are 100 percent African American, while two schools are mostly white (90 percent and 64 percent, respectively).

4. Monroeville Junior High School (MJHS), which serves grades six through eight, is one of the more racially diverse schools in the District. According to the National Center for Education Statistics, about 78 percent of its students are African American and 22 percent are white.

5. The African American children in MJHS are subjected to a racially hostile educational environment. They are subjected to the widespread use of racial epithets and slurs not only by white students, but also by school officials themselves. They are excluded from opportunities, including athletic teams and honors clubs, on the basis of race.

6. African American children in MJHS are subjected to racially discriminatory discipline. Defendants impose corporal punishment, suspensions, and police referrals on African American students, often for minor misconduct, and sometimes, for no misconduct at all. African American students are suspended for not having their shirts tucked in, for not wearing a belt, or simply because the principal does not like the way they are dressed. They are paddled for throwing a crumpled piece of paper and for running in the halls. They are referred to the police when they defend themselves against racial slurs and fights initiated by white students. Similarly situated white students are not punished in this way.

7. African American students at MJHS are channeled into classrooms with virtually no white students, and white students are channeled into classrooms with very few African American students. African American parents who complain about this racial segregation receive no explanation for the class assignments and have been subjected to retaliation.

8. Students whose parents complain about arbitrary racially discriminatory treatment are targeted for more discipline. Parents and guardians who complain are banned from the school grounds, threatened with arrest, and denied their right to address these issues before the school board in a public forum.

9. Defendants have denied the rights of African American parents to speak at public meetings to address concerns about racially discriminatory treatment at the schools. They have denied such speech altogether, or closed otherwise public meetings based on the content of parents' anticipated speech.

10. As a result of Defendants' discriminatory policies and practices, African American students have been denied access to equal educational opportunity. They have been denied classroom instructional time due to suspensions resulting from discriminatory discipline. Their grades have dropped precipitously. They have been denied access to athletics and other extra-curricular activities. Their permanent academic records are marred by long periods of disciplinary suspensions and failing grades, compromising their ability to earn a diploma or enter post-secondary education. Several African American families have, as a result of the discrimination, transferred to other schools.

11. The types of educational violations described herein have been extensively studied and remedied by educational researchers around the country, including many funded by the United States Department of Education.

12. Plaintiffs represent two sub-classes of students. The first sub-class consists of all African American students who are currently or in the future will be enrolled in the Monroeville Junior High School, and their parents or guardians. This sub-class seeks a declaration that the Defendants' policies and practices violate Title VI of the Civil Rights Act, and the Fourteenth and First Amendments to the United States Constitution.

13. The first sub-class further seeks prospective injunctive relief, including ordering Defendants to investigate and address all acts of racial harassment; implement transparent and objective policies to ensure equal access to extracurricular activities, eliminate racially discriminatory discipline, and ensure that class assignments are not made in a racially discriminatory manner; cease and desist from retaliating against and violating the rights of students and parents who complain about racial discrimination; expunge the disciplinary records of students who have been disciplined on the basis of race; provide compensatory educational services for students who have been denied access to education due to Defendants' unlawful conduct; and any other appropriate relief. Defendants' violations of the law will continue absent injunctive and declaratory relief ensuring that Plaintiffs are provided with the access to equal educational opportunity and free speech rights to which they are entitled by law.

14. The second sub-class consists of all African American students who have attended Monroeville Junior High School in the past three school years --- 2005-2006, 2006-2007, and 2007-2008 --- and who continue to attend Monroe County public schools, and their parents or guardians. This sub-class also seeks a declaration that the Defendants' policies and practices violate Title VI of the Civil Rights Act, and the Fourteenth and First Amendments to the United States Constitution. This sub-class requests an order requiring Defendants to expunge the disciplinary records of students who have been disciplined on the basis of race; provide compensatory educational services for students who have been denied access to education due to Defendants' unlawful conduct; and any other appropriate relief.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over the Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because this action seeks a remedy under Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, 42 U.S.C. § 1983, and the Fourteenth and First Amendments to the United States Constitution.

16. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights of the parties and to grant all further relief deemed necessary and proper. Rule 65 of the Federal Rules of Civil Procedure authorizes injunctive

relief. The Court has authority to award costs and attorneys' fees under 42 U.S.C. § 1988.

17. Venue is proper in this action pursuant to 28 U.S.C. § 1391.

PARTIES

PLAINTIFFS

18. Plaintiff Nicky Williams, individually and on behalf of her African American minor son, J.W. (date of birth August 7, 1992), is a resident of Monroeville, Alabama. J.W. attended MJHS from August 2005 through June 2007. He now attends Monroe County High School, a school within the Monroe County School District. Nicky Williams and her son are members of the second sub-class only.

19. Plaintiff Sherry Millender, individually and on behalf of her African American minor son, J.F., (date of birth October 5, 1994), is a resident of Monroeville, Alabama. J.F. has attended MJHS from August 2006 to the present. Sherry Millender and her son are members of both sub-classes.

20. Plaintiff Felicia Gibbs individually and on behalf of her African American minor daughter, V.G., (date of birth September 27, 1993), is a resident of Monroeville, Alabama. V.G. has attended MJHS from August 2005 to the present. Felicia Gibbs and her daughter are members of both sub-classes.

21. Plaintiff Tiffany Smith, individually and on behalf of her African American minor daughter, K.S., (date of birth June 14, 1995). K.S. is a resident of Monroeville, Alabama. K.S. has attended MJHS from August 2006 to the present. Tiffany Smith and her daughter are members of both sub-classes.

22. Plaintiffs Angela and Aaron Chaney, individually and on behalf of their African American minor son, A.C., (date of birth February 23, 1993) are residents of Mexia, Alabama. A.C. attended MJHS August 2005 through June 2007. He presently attends Monroe County High School, a school within the Monroe County School District. Angela and Aaron Chaney, and their son, are members of the second sub-class only.

23. Plaintiff Daffnie Martin, individually and on behalf of her African American daughter C.M., (date of birth October 15, 1993), is a resident of Mexia, Alabama. C.M. has attended MJHS from August 2005 to the present. Daffnie Martin and her daughter are members of both sub-classes.

24. Plaintiff Jacqueline (Jackie) Davis, individually and on behalf of her African American minor daughter C.N., (date of birth March 23, 1994), is a resident of Monroeville, Alabama. C.N. attended MJHS from August 2005 to October 2006. She presently attends Frisco City School, a school within the Monroe County District. Jackie Davis and her daughter are members of the second sub-class only.

25. Plaintiff Tabitha Kidd-Fountain, individually and on behalf of her African American minor son, M.K., (date of birth January 6, 1993), is a resident of Mexia, Alabama. M.K. attended MJHS from August 2005 to May 2007. He presently attends Monroe County High School, a school within the Monroe County School District. Tabitha Kidd-Fountain and her son are members of the second-sub-class only.

26. Plaintiff Tangelia D. Yates, individually and on behalf of her African American minor son, A.Y., (date of birth January 22, 1994), is a resident of Monroeville, Alabama. A.Y. has attended MJHS from August 2005 to the present. Tangelia Yates and her son are members of both sub-classes.

DEFENDANTS

27. Defendant Monroe County Board of Education (MCBOE) receives federal financial assistance from the United States Department of Education and operates Monroeville Junior High School (MJHS), a public high school within the district. As a recipient of federal financial assistance, the MCBOE is subject to suit pursuant to Title VI of the Civil Rights Act of 1964.

28. Defendant Dennis Mixon, sued herein in his individual and official capacities, was at all times relevant herein the Superintendent of Schools of MCBOE.

29. Defendant Lana Wilson, sued herein in her individual and official capacities, was at all times relevant herein the Principal of Monroeville Junior High School.

30. Defendant George Coker, sued herein in his individual and official capacities, was at all relevant times herein a Board Member of the MCBOE.

31. Defendant Martha Jordan, sued herein in her individual and official capacities, was at all relevant times herein a Board Member of the MCBOE.

32. Defendant Tony Powell, sued herein in his individual and official capacities, was at all relevant times herein a Board Member of the MCBOE.

33. Defendant Patricia M. Black, sued herein in her individual and official capacities, was at all relevant times herein a Board Member of the MCBOE.

34. Defendant William F. Andrews, sued herein in his individual and official capacities, was at all relevant times herein a Board Member of the MCBOE.

CLASS ALLEGATIONS

35. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 on behalf of two sub-classes of students.

36. The first sub-class is composed of all African American students who are currently or in the future will attend Monroeville Junior High School, and their parents or guardians. Named Plaintiffs Sherry Millender and her son J.F., Felicia

Gibbs and her daughter V.G., Tiffany Smith and her daughter K.S., Daffnie Martin and her daughter C.M., and Tangelia Yates and her son A.Y. are members of this sub-class.

37. The second sub-class is composed of all African American students who attended Monroeville Junior High School in the prior three school years, during the 2005-2006, 2006-2007, or 2007-2008 school years, and who continue to attend Monroe County public schools, and their parents or guardians. All of the named Plaintiffs are members of this sub-class.

38. Both sub-classes satisfy the requirements of Rule 23(a).

39. *Numerosity:* Joinder of all class members is impracticable because of the size of the class and the fact that the class includes some members who cannot be identified with any degree of specificity. According to the National Center for Education Statistics, between 350 and 400 African American students are enrolled in MJHS in a given year. The identity of those who will attend the school in the future cannot be determined, particularly given that students may transfer in or out of the school at any time during the school year or between school years.

40. *Commonality:* There are questions of law and fact common to all members of the class, including, but not limited to, whether Defendants are deliberately indifferent to the maintenance of a racially hostile educational environment for African American students in MJHS, whether Defendants

maintain a policy or practice of discriminatorily disciplining African American students in MJHS, whether Defendants segregate African American students from white students within MJHS, and whether Defendants have a policy or practice of retaliating against African American students and their parents who complain about racial discrimination.

41. *Typicality*: The claims of the representative Plaintiffs are typical of those of the class. Each Plaintiff has been subjected to the racially hostile educational environment at the MJHS, Defendants' racially discriminatory disciplinary policies and practices, discriminatory class-assignment policies, and Defendants' policy and practice of retaliating against students and parents who complain about racial discrimination.

42. *Adequacy of Representation*: The class representatives and class counsel will fairly and adequately represent the interests of the class. The class representatives have no interests in this matter that are antagonistic to other Plaintiffs. Class counsel has experience in civil rights and class action litigation, including in the area of racially hostile environments and discriminatory discipline in the public school context, and has the financial resources to zealously represent the class.

43. The first sub-class, consisting of all African American students who are currently or in the future will attend Monroeville Junior High School, and their

parents or guardians, is properly maintainable under Federal Rule of Civil Procedure Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declarative relief with respect to the sub-class as a whole.

44. The second sub-class, consisting of all African American students who attended Monroeville Junior High School in the prior three school years, during the 2005-2006, 2006-2007, or 2007-2008 school years, and who continue to attend Monroe County public schools, and their parents or guardians, is properly maintainable under Federal Rule of Civil Procedure 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declarative relief with respect to the sub-class as a whole. In the alternative, this sub-class is properly maintainable under Rule 23(b)(3) because questions of law and fact common to the members of this sub-class predominate over any questions affecting individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

FACTUAL ALLEGATIONS RELATING TO THE MAINTENANCE OF A RACIALLY HOSTILE EDUCATIONAL ENVIRONMENT

45. Defendants have been deliberately indifferent to the maintenance of a racially hostile educational environment for African American students in

Monroeville Junior High School, in violation of Title VI of the Civil Rights Act and the Equal Protection Clause of the Fourteenth Amendment. This hostile environment is evident from the pervasive use of racial slurs and epithets by school officials and students, the exclusion of African American students from extracurricular activities, the discriminatory imposition of discipline, the racial segregation of classrooms, and retaliation against African American students and parents who complain about racially discriminatory treatment.

Use of Racial Epithets and Slurs

46. African American children in MJHS are subjected to racial epithets by school officials. The Principal of MJHS, Defendant Wilson, has called more than one African American student a “nigger.” She has told African American parents that she will not let them run her schools “like a bunch of animals.” She has referred to African American parents as “you people,” and an African American student as “filthy nasty trash.”

47. On one occasion, Defendant Principal Wilson grabbed an African American student and threw the student up against the wall, stating “Your breasts are too big. Your mama got to do something about your breasts.” The student was then disciplined for pushing Defendant Wilson off of her.

48. On another occasion, the Principal told an African American teacher that white parents had complained about her teaching style. The teacher

understood that to mean that white parents had complained about their children being taught by an African American teacher, and asked the principal if this was true; subsequently, her teaching load was reassigned to a white teacher.

49. White students in Monroeville Junior High School call African American students “nigger” and “black monkey” and initiate racially-motivated fights with African American students. When the African American students or their parents complain, Defendants do nothing.

50. White teachers also racially harass African American students and, again, are not punished. Teachers and school administrators tell African American students that they are “stupid,” “lazy,” and “slow.” On information and belief, they do not make these statements to white students.

51. One African American parent witnessed a white teacher call an African American student “filthy trash” and then push the student up against a brick wall. On information and belief, teachers do not treat similarly situated white students in the same manner.

Exclusion from Extracurricular Activities

52. African American students are excluded from extracurricular activities including athletics and honors clubs on the basis of race. Some are excluded because they have been subjected to discriminatory discipline, thus disqualifying them from participation.

53. Other African American students are excluded for virtually no reason at all. For example, one African-American girl was disqualified from the cheerleading team because her clothes were brightly colored, which school administrators insisted signified gang activity. The girl is not a member of a gang.

54. African American students who are excluded from extracurricular activities at MJHS on the basis of race continue to be excluded even when they enter the high school, due to requirements that students participate in the activity in the prior years.

Other Evidence of a Hostile Climate

55. In addition, African American students are subjected to racially discriminatory discipline, racial segregation of classrooms, and retaliation for complaining about racism, as described more fully in subsequent sections.

Actual Knowledge

56. Defendant Principal Wilson has actual knowledge of her own conduct. She also has actual knowledge of the racial harassment committed by teachers and students based on complaints to her by African American parents and students. African American students and parents have repeatedly complained to her about the hostile environment, including racially segregated classrooms, discriminatory and arbitrary imposition of punishments, and the use of racial slurs at school.

57. Defendant Mixon and Defendant MCBOE members have actual knowledge of the hostile environment. African American parents or guardians have repeatedly complained to Defendant Mixon and Defendant MCBOE members about the racially discriminatory treatment and racially hostile environment, including the use of racial slurs by school officials, discriminatory discipline, and retaliation by Defendant Wilson. Defendant Mixon and Defendant MCBOE members received further notice of the hostile environment from local television news coverage about discipline in the schools and from a petition circulated to them demanding accountability for Defendant Wilson's racially motivated conduct.

Deliberate Indifference

58. Defendant Wilson has been deliberately indifferent to the hostile environment, is largely responsible for creating it and has done nothing to remedy it. Rather than investigating or addressing the complaints of parents and students, Defendant Wilson has accused a student who complained of being a liar, has told a complaining student not to come back to school, has told a complaining relative to "kiss [her] ass," and ordered several complaining parents off the campus upon threat of arrest.

59. Defendant Mixon and Defendant MCBOE members have been deliberately indifferent to the hostile environment. Far from investigating reports

of discriminatory treatment, they have prevented parents from raising these concerns in public, laughed at the parents who succeed in raising these issues during school board meetings, and defended Defendant Wilson's conduct. They have told complaining parents that the use of the term "nigger" by a school official is not racial, and that parents who have problems with the administration of MJHS should send their children to other schools.

60. One of the two African American Defendant MCBOE members confided to an African American grandmother who addressed the MCBOE about discrimination in MJHS that he felt bad about what was happening at the school and stated, "I know that a lot of black parents are mad at me and the other black board members, but it is 2 to 4, so our opinion doesn't matter."

Deprivation of Equal Educational Opportunity

61. African American students who are subjected to this hostile environment are deprived of equal access to educational opportunity. On information and belief, at least nine students have transferred out of MJHS as a result of the hostile environment. Additional class members are seriously considering transferring as a result of the hostile environment and discriminatory discipline.

62. African American students who previously received A's and B's suffer a significant fall in grades as soon as they arrive at MJHS, and become D

and F students, as a result of being subjected to frequent and pervasive racial slurs, racially motivated harassment, and the discriminatory imposition of in-school suspensions (“ISS”) and out-of-school suspensions and the consequent lack of instruction.

63. African American students are excluded from extra-curricular activities including honors clubs and athletics as a result of the discrimination.

**FACTUAL ALLEGATIONS RELATING TO RACIALLY
DISCRIMINATORY DISCIPLINE**

64. Defendants maintain a policy and practice of disciplining students on the basis of race, in violation of Title VI of the Civil Rights Act and the Equal Protection Clause to the United States Constitution. Defendants discriminatorily enforce dress code regulations against African American students, discipline African American students but not whites for the same alleged infractions, discriminatorily require African American students to write demeaning “Motivator” essays, impose corporal punishment on African American students but not similarly situated white students, accuse African American children of gang activity on the basis of race, and discriminatorily refer African American students to law enforcement and the juvenile courts.

Dress Code Violations

65. Students at MJHS are required to wear uniforms.

66. Defendants discriminatorily and arbitrarily impose punishment on African American students for minor dress code violations such as not wearing a belt, having a shirt un-tucked, wearing a jacket during class, or for wearing the wrong kind of jacket or shirt. On information and belief, they do not do so for similarly situated white students.

67. When Plaintiff J.W., who had received in-school suspension for an un-tucked shirt, pointed out a white student with an un-tucked shirt did not receive punishment to Defendant Wilson, Defendant Wilson told him to be quiet.

68. Defendants discriminatorily and arbitrarily punish African American students for alleged dress code violations, even when there is no violation. Defendants have suspended African American students because they did not like the color of an undershirt, the fabric of a pair of pants, or when a student had a loose button.

69. In February of 2007, Defendant Principal Wilson scolded an African American student for wearing a jacket that “looked like she paid a dollar for it.”

70. During the 2005-2006 school year, an African American student who is President of the school’s honors club, came to school with a belt (as part of her uniform) made out of ribbon. The student was removed from her classroom and told she had to go home. When the student’s mother arrived, she pointed out to Defendant Principal Wilson that there was no rule prohibiting the type of belt her

daughter wore, and that there were no guidelines on the size or style of belts in the handbook. On information and belief, in response to this complaint of arbitrary punishment, Wilson had the mother and student escorted out by the police.

71. That same honors student was disqualified from the cheerleading team because she wore brightly colored clothes, which school administrators insisted signified gang activity. The girl is not a member of a gang. She was disciplined on another occasion for wearing suspenders, even though there was no prohibition in the student code on wearing suspenders.

Imposition of Suspensions

72. On information and belief, African American students at MJHS are disproportionately subjected to in-school suspension (ISS). African American students have received ISS for several days at a time for laughing in class, dress code violations, or for talking in class. On information and belief, white students who commit the same offenses do not receive ISS.

73. The ISS room provides no classroom instruction; students are given worksheets, are not permitted to ask questions about their assignments, and receive no help from teachers. Being in ISS means no teaching or learning takes place, and the students receive zeroes in all of their classes for the days spent in ISS.

74. In January of 2007, an African American student was punished for talking to a classmate during class. The teacher waved her finger in the student's

face and stated, "This is why you are going to be left back." The student was sent to the office and began to cry.

75. When the student's mother complained about the teacher's behavior to Defendant Principal Wilson, the Principal defended the teacher's behavior. On information and belief, the student was sent to the Alternative School for one week as punishment for talking in class. On information and belief, white students are not sent to the Alternative School for talking in class.

76. When the student's mother complained about the punishment to Defendant Superintendent Mixon, Defendant Mixon did nothing.

Corporal Punishment

77. On information and belief, African American students at MJHS are disproportionately subjected to corporal punishment. On information and belief, up to 50 African American students receive corporal punishment at Monroeville Junior High School each year. African American students have been paddled for running in the hallways, talking back, or being disobedient.

78. On information and belief, only one white student has received corporal punishment in the past several years, even though white students also run in the hallways, talk back, or are disobedient.

79. One African American student required medical attention at a hospital after Defendant Wilson paddled him.

Accusations of Gang Activity

80. Defendants discriminatorily accuse African American students who are not gang members of being gang members. African American students have been accused of being in a gang any time they are standing in a group, and they are ordered to disperse. On information and belief, similarly situated white students are not accused of gang activity.

81. African American students have been accused of being in a gang for wearing bright colors, or wearing any particular color. On information and belief, similarly situated white students are not accused of gang activity.

82. African American students have been accused of gang activity for engaging in entirely innocent and typical pre-teenage conduct such as coordinating their outfits or identifying their group of friends. On information and belief, similarly situated white students are not accused of gang activity.

Punishments for Fighting

83. On information and belief, Defendants discriminatorily punish African American students for fighting. During the 2006-2007 school year, a white student was involved in a fight with an African American student; both students threw punches. The African American student received out-of-school suspension, while the white student, on information and belief, received only an in-school suspension. When the parent of the African American student complained

about the difference in punishments, the principal claimed it was because the African American student initiated the fight.

84. Yet, when a white student initiated a fight with several African American students during that same school year by using the word “nigger,” each of the African American students received out-of-school suspensions, while the white student went unpunished. In addition, all of the black students were referred to law enforcement by school officials.

85. Similarly, also during that same school year, a white student initiated a fight with an African American student; both students threw punches. On information and belief, Defendants filed a juvenile delinquency petition against the African American student and three other African American students who were bystanders to the fight, but not against the white student who initiated the fight and threw the first punch.

FACTUAL ALLEGATIONS RELATING TO RACIAL SEGREGATION OF CLASSROOMS

86. Classes at MJHS are segregated by race. According to the National Center for Education Statistics, the student body at Monroeville Junior High School (MJHS) is approximately 78 percent African American and 22 percent white. On information and belief, it is possible to find virtually all white classrooms and all African American classrooms within the school.

87. Classes at MJHS are tracked according to academic rigor. On information and belief, African American students are disproportionately assigned to lower-performing or poor-performing classes, while the most academically advanced classes are virtually all white.

88. Class assignments are made unilaterally by a school counselor and, on information and belief, on the basis of race.

89. Parents are not given any opportunity to influence the placement of their children or to review the criteria for student assignments.

**FACTUAL ALLEGATIONS RELATING TO RETALIATION AGAINST
STUDENTS AND PARENTS WHO COMPLAIN ABOUT RACIAL
DISCRIMINATION**

90. Defendants maintain a policy and practice of systematically retaliating against students and parents who complain about racially discriminatory treatment, in violation of Title VI of the Civil Rights Act and the Equal Protection Clause of the United States Constitution.

91. Students who complain or whose parents or family members complain about racially discriminatory treatment have been accused of lying, have been told not to come back to school, and have been targeted for further discipline and suspensions.

92. The current assistant principal at MJHS stated that, because one of the Plaintiffs obtained legal representation in this matter, that student was “going to pay for it” at school.

93. Parents and family members who object to racially discriminatory treatment have been banned from the school grounds. They have been told that they will be arrested if they come back to the school. These parents have been prevented from coming to the campus for parent-teacher conferences or pick up their children.

94. Parents and guardians who complain about discriminatory discipline have been unlawfully denied access to their children’s educational records.

95. Parents and family members who complain about racial discrimination have been denied their right to speak out about these issues at public school board meetings.

FACTUAL ALLEGATIONS RELATING TO VIOLATION OF FIRST AMENDMENT RIGHTS

96. Under Alabama law, the County Board of Education is required to hold school board meetings open to the public.

97. Parents who have attended MCBOE meetings seeking to speak out about the discriminatory treatment in the schools have been prevented by Defendants from speaking, on the pretext that they failed to request that their names be added to the MCBOE agenda.

98. Parents and family members who have requested to be placed on the MCBOE public meeting agenda to raise the issue of racially discriminatory treatment have had their requests rejected. Based on the content of their speech, Defendants have refused to place these parents on the meeting agenda.

99. Parents who have succeeded in obtaining a place on the agenda to object to the discriminatory treatment have been denied the right to address the meeting in public. Defendants have closed these otherwise public meetings and removed all members of the public, based on the content of the expected speech.

HARM TO PLAINTIFF CLASS MEMBERS

100. As a result of the above policies and practices, African American students have been denied access to equal educational opportunity. African American students have expressed that they do not want to go school anymore because of the discriminatory treatment. Some have stated that they are scared to speak up for fear of retaliation. They have been denied significant classroom instructional time due to suspensions resulting from discriminatory discipline. Their grades have dropped. They have been excluded from athletics and other extra-curricular activities. Their permanent academic records are marred by repeated and/or long periods of disciplinary suspensions and failing grades, compromising their ability to earn a diploma or enter post-secondary education. Several African American families have transferred to other schools as a result.

FACTUAL ALLEGATIONS OF THE NAMED PLAINTIFFS

Plaintiff J.W.

101. J.W. is fifteen years old and in the 9th grade at Monroe County High School. For the preceding three years, he was enrolled in Monroeville Junior High School.

102. In October 2006, J.W. was suspended because his shirt was allegedly un-tucked. In a meeting with J.W. and his grandfather, Jeffery Williams, to discuss the suspension, Defendant Principal Wilson twice told Mr. Williams and his grandson “your grandson is a young nigger gang member.”

103. Mr. Williams complained in a letter on October 11, 2006, to Defendant Superintendent Mixon and requested that the MCBOE place him on the agenda for the next MCBOE meeting, to address the principal’s use of the word “nigger” and other racist conduct directed at him and his grandson.

104. Defendant Mixon and the MCBOE refused to place Mr. Williams on the agenda.

105. Mr. Williams appeared at the meeting to attempt to address these issues nonetheless. Defendant MCBOE members prevented him from speaking, stating that they were moving on to another subject.

106. Later, Defendant Mixon informed Mr. Williams that the Defendant MCBOE members found that Defendant Wilson’s use of the term “nigger” was not

racial. On information and belief, no disciplinary action was taken against Defendant Wilson.

107. After Mr. Williams attempted to address the MCBOE meeting, the frequency of J.W.'s suspensions increased. J.W. missed more than 20 days of school in the 2006-2007 school year due to suspensions. On information and belief, J.W. was targeted for discipline because his grandfather had complained about the racially hostile environment and arbitrary disciplinary policies.

108. Defendant Wilson has given J.W. ISS numerous times for minor infractions of the dress code. J.W. has been removed from the classroom for not wearing a belt, for example. On information and belief, white students are not punished for such infractions.

109. J.W. has been suspended for not having his shirt tucked into his pants. J.W. pointed out to Defendant Wilson a white student who did not have his shirt tucked in and did not receive punishment, Defendant Wilson told him to be quiet.

110. In January of 2007, J.W. wore an undershirt under his uniform shirt because of the cold. He received ISS for five days. On information and belief, there were no dress code rules or guidelines on undershirts at the time.

111. In April of 2007, J.W. was taking the state standardized test when Defendant Wilson pulled him aside because the bottom button on his shirt was loose. Defendant Wilson did not want him to finish the test as a result, but finally

agreed after J.W.'s grandfather called the school. Nonetheless, J.W. received a 5-day suspension for the alleged dress code violation. There is no rule for loose buttons on shirts.

Plaintiff J.F.

112. J.F. is 13 years old and enrolled in the 7th grade in Monroeville Junior High School.

113. J.F. has received in-school suspensions for laughing in class and for not having his shirt tucked into his pants. J.F. was accepted into the Beta Club, the club for honors students at MJHS. However, he was disqualified from participating because he had received too many suspensions. On information and belief, white students who laugh in class or do not have their shirts tucked into their pants are not punished or denied membership or participation in extracurricular activities as a result.

114. At the end of the last school year, J.F. signed up to play on the football team for the 2007-2008 school year and obtained the necessary physical form from the coach.

115. J.F. lost the form and asked the coach for a replacement. The Coach refused, stating that J.F. needed to learn to be more responsible.

116. A white student who signed up to play football also lost his physical form. On information and belief, the Coach gave the white student a replacement

form. As a result of this discriminatory treatment, the white student was permitted to play football during the 2007-2008 school year, but J.F. was not.

117. In November 2007, J.F. tried out for and was accepted on the basketball team. The coach informed him, however, that he could not play because he had received too many in-school suspensions. When J.F.'s mother complained to the principal, pointing out a white student who also had many in-school suspensions but was nonetheless permitted to play on the basketball team, the principal defended the decision to disqualify J.F. but not the white student, saying, "We have to equal things out."

118. J.F. was an honors student in Middle School and received A's and B's as well as several awards for academic achievement. Due to the hostile environment at MJHS, including repeated suspensions imposed in a racially discriminatory manner that removed him from the classroom, his grades have fallen to D's and F's.

119. J.F.'s parents are considering sending him to another school because of the hostile environment at MJHS.

Plaintiff C.N.

120. C.N. is 14 years old and enrolled in the 8th grade at Frisco City School. For the preceding two years, she was enrolled in Monroeville Junior High School.

121. During the 2005-2006 school year, the MJHS principal, Defendant Wilson, arbitrarily suspended C.N. because Defendant Wilson “did not like the clothes she wore.”

122. The principal did not like the material of C.N.’s pants, even though there was no dress code violation, and forced C.N. to change into a pair of pants Defendant Wilson obtained from the thrift store.

123. When C.N.’s mother, Ms. Jackie Davis, complained to the principal about the unfair treatment, the principal responded, “I will not let you people run my school like a bunch of animals.”

124. Ms. Davis then complained to Defendant Superintendent Mixon about the principal’s response, and Defendant Mixon stated, “Well, that’s a good thing.”

125. Ms. Davis has attempted to address the MCBOE about the treatment of her daughter at public school board meetings, but Defendant board members refused to place her name on the meeting agenda.

126. On another occasion, Ms. Davis presented a petition to the MCBOE with approximately 300 signatures in the 2005-2006 school year, requesting that the MCBOE take action to address Defendant Wilson’s discriminatory treatment of African American students. On information and belief, the MCBOE took no action.

127. After this incident, C.N. ran away. The police were called and they found her. The police report states that the little girl told them she ran away because she did not want to go back to school.

128. As a result of the racially hostile environment and discriminatory discipline, C.N. has left MJHS and now attends Frisco City School. C.N. is now required to ride 60 miles round trip to attend school.

129. C.N. was an A and B student on the honor roll for most of her life. After her first six weeks at MJHS, however, her grades dropped to F's. Now that she is currently attending Frisco City School, she is receiving A's and B's again.

Plaintiff V.G.

130. V.G. is 14 years old and is enrolled in the 8th grade at MJHS. She has attended MJHS for the past 3 years.

131. In January 2006, the fire alarm went off in V.G.'s classroom. Her teacher was not present, but all of the students got up to evacuate. When the teacher returned, she punished the entire class for leaving the room without permission.

132. V.G.'s mother Felicia Gibbs met with Defendant Wilson to object to punishing the students for evacuating the classroom during a fire drill, reasoning, "Hell, what do you want the kids to do, burn up?"

133. In response, Defendant Wilson sent a certified letter to Ms. Gibbs informing her that she was banned from the school because she used the word “hell.” On information and belief, Defendant Wilson banned Ms. Gibbs from the school on the basis of race. On information and belief, Defendant Wilson does not ban white parents in similar circumstances.

134. Ms. Gibbs did not receive the letter until the Sheriff came to her house to inform her that there was a certified letter for her at the court house that she needed to retrieve. He stated that he would bring it to her workplace if she did not retrieve it.

135. The letter from Defendant Wilson stated, “As the principal I feel it is necessary to ban you from MJHS campus and/or buildings. You will not be allowed to attend any activity during or after school hours unless you receive my personal permission. If you violate this official ban, you leave me no alternative except to have you taken into custody by the Monroeville Police Department and removed from the premises as well as prosecuted to the fullest extent of the law for trespassing.”

136. After receiving the letter Ms. Gibbs complained to Defendant Mixon. However, the ban continued.

137. The following month, the school nurse called Ms. Gibbs stating that her daughter was sick. V.G. was sent outside without an escort while she was ill to

wait for her mother to pick her up because of the ban on Ms. Gibbs's coming to the school to pick up her daughter.

138. The following school year, in October of 2006, the assistant principal asked Ms. Gibbs to come to school to have a meeting with V.G.'s math teacher.

139. When Ms. Gibbs arrived at the meeting, she was told by the assistant principal that Defendant Wilson had ordered that Ms. Gibbs not be allowed into the school and that Ms. Gibbs would be arrested if she came into the school office. Ms. Gibbs was forced to leave without meeting with V.G.'s teacher.

140. Ms. Gibbs requested to be placed on the MCBOE meeting agenda to discuss the policy of banning parents from the school who complained about disciplinary policies and practices. The MCBOE informed Ms. Gibbs that it would close the meeting, and that she would not be permitted to address them before the public.

141. The following school year, in October of 2007, during a pep rally, Defendant Wilson called V.G. "filthy nasty trash" in front of several other students and teachers.

142. Ms. Gibbs sought to raise this incident before the MCBOE at the October 11, 2007 school board meeting. Although she was permitted to do so, Defendant MCBOE members did not seek to investigate this incident, much less discipline Defendant Wilson. Instead, Defendant MCBOE members Patsy Black

and George Coker and Defendant Mixon laughed openly while Gibbs was speaking.

Plaintiff A.C.

143. A.C. is fifteen years old and enrolled in the 9th grade at Monroe County High School. He attended MJHS the prior three school years.

144. During the middle of the last school year, Defendant Wilson suspended A.C. entirely without cause. When A.C.'s parents inquired about the suspension, they received no explanation.

145. A.C.'s father, Aaron Chaney, complained to Defendant Wilson about arbitrary suspensions.

146. After Mr. Chaney complained, Defendant Wilson began to make racially-motivated remarks about A.C.

147. When A.C. was sent to Defendant Wilson's office in the beginning of 2007, Defendant Wilson mocked, "old Chaney boy is coming to my office again." A.C. interpreted this as a racial slur and came home crying. His parents also interpreted the use of the phrase "old Chaney boy" as a racial slur.

148. Mr. Chaney met with Ms. Wilson after A.C. was suspended again. After Mr. Chaney's meeting, A.C.'s teachers taunted him by saying "here is big bad Chaney's boy."

149. When Mr. Chaney took his son to suspension during the week, all of the suspended students were African American. There were approximately 60 African Americans students present. There were no whites present.

Plaintiff C.M.

150. C.M. is fourteen years old and enrolled in the 8th grade at MJHS.

151. Most of C.M.'s classes are all African American, although one in five students at MJHS is white.

152. During the spring of 2007, Defendant Wilson called C.M. and other African American students "stupid." On information and belief, Defendant Wilson does not call white students stupid.

153. C.M. is a cheerleader. On one occasion C.M. wore blue football socks. Defendant Wilson prohibited her from wearing them. White cheerleaders wear blue football socks and nothing is said.

Plaintiff A.Y.

154. A.Y. is 14 years old and enrolled in the 8th grade at MJHS.

155. A.Y. attends classes with all African American students at MJHS. Ms. Yates asked the school counselor why African Americans are placed together, while white students are separated into other classrooms and asked Defendant Wilson for A.Y.'s disciplinary records. In response, Wilson ordered Ms. Yates to leave the premises.

156. A.Y.'s mother asked the school counselor, who makes the class assignment decisions, why A.Y. was placed in a particular class. Before he entered MJHS, A.Y. received mostly A's and B's in middle school, but the counselor responded that A.Y. was placed in his classroom because he had received a couple of C's in middle school. Once in the class, the classroom teacher told A.Y. and his classmates, "This is why you're here in this class, because you're lazy and slow."

157. On another occasion, A.Y. was removed from the classroom and his mother was called because A.Y. allegedly was "wearing the wrong color shirt." When Ms. Yates arrived, she pointed out to Defendant Wilson that A.Y.'s shirt was in fact navy blue, as required by the dress code. Defendant Wilson agreed, but teachers continued to remove him from the classroom for wearing the shirt.

158. A.Y. has been removed from the classroom for not wearing a belt. He has seen white students not wearing a belt who are not punished.

159. During a class assignment to make a pair of futuristic pants, a teacher gave A.Y. an F and told him that his project "looks like something a slave would wear." Ms. Yates complained to the principal, but on information and belief, Defendant Wilson did nothing.

160. In April of 2007, A.Y. threw a small piece of paper balled up at his friend. The teacher sent him to Defendant Wilson's office. Defendant Wilson imposed corporal punishment on A.Y. and required him to write a "Motivator

essay” stating that “he is a bad student.” On information and belief, Defendant Wilson imposed corporal punishment on A.Y. on the basis of race.

161. Ms. Yates complained to Defendant Mixon about the corporal punishment paddling. She told him that she felt Defendant Wilson paddled her son for throwing a small wad of paper because he is black. On information and belief, Defendant Mixon took no action.

Plaintiff M.K.

162. M.K. is 15 years old in enrolled in the 9th Grade at Monroe County High School. Previously, he was enrolled in MJHS.

163. In the fall of 2006 when M.K. was in eighth grade, a white student initiated a fight with several African American students including M.K., calling them “niggers.” Defendants suspended each of the African American students, but, on information and belief, not the white student. In addition to being suspended, Defendants referred M.K. to law enforcement. M.K. was placed on probation as a result. M.K. had never been in trouble before.

164. While M.K. was on probation for the fight, Defendant Wilson wrote to his probation officer, accusing M.K. of being a gang member. M.K. is not a gang member.

165. Two weeks later, while M.K. was waiting to go into class, another white student called him a “nigger.” M.K. reported the incident to Defendant Wilson.

166. Defendant Wilson told M.K. that she would call him, the white student and a witness M.K. identified, to her office the next day to investigate.

167. Defendant Wilson never called M.K., the white student or the witness M.K. identified to her office. On information and belief, she never investigated M.K.’s complaint.

168. While enrolled in MJHS, M.K. stated that he wanted to leave the school because of the environment there. His grades dropped precipitously while in MJHS.

Plaintiff K.S.

169. K.S. is 12 years old and enrolled in the 7th grade in Monroeville Junior High School.

170. On the second to last day of the 2006-2007 school year, K.S. was racially harassed by her classmates, who called her a “black monkey.”

171. K.S. told her teacher. The teacher responded by saying, “Sit back down because you do look like a black monkey.”

172. K.S. then reported the incident to the principal. The principal responded by calling K.S. a liar and stating that her family was a bunch of liars.

173. Later that day, the same student who had picked on K.S. earlier kicked her during gym class. K.S. informed the white gym teacher. The gym teacher called K.S. a “drama queen” and told her to “get out of [his] face.” Every time K.S. said anything to the gym teacher, he would respond by calling her a “drama queen.” The white students in the class would laugh.

174. K.S. told Defendant Wilson, and Defendant Wilson did nothing.

175. Defendant Wilson then told K.S. not to come back to school the following day, which was the last day of the school year. Defendant Wilson stated that if K.S. did attend school, she would be removed by the police.

176. K.S.’s aunt arrived at the school and protested that if K.S. was to be suspended, Defendant Wilson was required at the very least to provide formal notice to her family. Defendant Wilson responded by threatening to call the police, stating that if K.S.’s aunt returned she would be arrested, and that she should “kiss [her] ass.”

177. K.S.’s family called Defendant Mixon and informed him of what transpired. He responded that there was nothing he could do.

178. K.S.’s grandmother, Mary Preyear, requested to be placed on the MCBOE meeting agenda to speak out about these incidents. Ms. Preyear followed the required procedures to be placed on the agenda for the June 7, 2007, meeting. Defendants denied her request, until Ms. Preyear contacted the Alabama State

Superintendent of Education in Montgomery, who instructed that MCBOE place Ms. Preyear on the agenda.

179. During the MCBOE meeting, when it was Ms. Preyear's turn to address the public meeting, Defendants ordered all parents and teachers out of the meeting, telling Ms. Preyear that her remarks would be closed to the public.

180. Forced to address the MCBOE in the closed session, Ms. Preyear advised the MCBOE of these incidents. Defendant Mixon's response was to ask why they did not simply send K.S. to another public school. On information and belief, no disciplinary action was taken against Defendant Wilson.

181. During the current school year, Defendant Wilson accused K.S. of being a gang member solely on the basis of a note circulated by African American girls who identified which girls were their friends.

182. Defendants have threatened to remove K.S. from MJHS and send her to the alternative school because she failed to get a paper signed.

183. In April of 2008, K.S. was removed from the classroom for not having a pencil. On information and belief, white students are not removed from the classroom for not having a pencil.

184. K.S. has been sent to ISS approximately twenty times since enrolling in MJHS due to the discriminatory discipline and racially hostile environment. She has been denied access to classroom instruction as a result. K.S. cries before going

to school, but states that she does not want to complain because she fears retaliation. K.S. has stated that she does not want to go to school anymore.

185. In April 2008, Ms. Preyear, K.S.'s grandmother who complained at the school board meeting about the discriminatory discipline, requested K.S.'s educational records. School officials met privately, and then denied her access to these records, claiming that they no longer had these records and had sent them to their legal counsel. They did not provide any alternative means for K.S.'s family to access the missing educational records.

186. After this lawsuit was filed, the current assistant principal at MJHS was overheard off of school grounds stating, "since [Plaintiffs are] getting lawyers, [K.S.] is going to pay for it. I'm really going to dog her now."

COUNT I
All Plaintiffs v. Defendant BOE
Title VI of the Civil Rights Act of 1964 – Discrimination on the Basis of Race

187. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein at length.

188. Plaintiffs, all African Americans, are members of a protected class.

189. Defendant Monroe County Board of Education receives financial assistance from the United States Department of Education. As a result, Defendant Monroe County Board of Education is liable to suit under Title VI of the Civil Rights Act of 1964.

190. Defendant Monroe County Board of Education violated Title VI by discriminating against Plaintiffs on the basis of race, by maintaining a policy and practice of discriminatorily disciplining students on the basis of race, by being deliberately indifferent to the maintenance of a racially hostile educational environment, by segregating students into different classrooms on the basis of race, and by retaliating against parents and students who complain about racial discrimination.

COUNT II

All Plaintiffs v. Defendants Wilson and Mixon

42 U.S.C. §1983 – Discrimination on the Basis of Race in Violation of the Equal Protection Clause

191. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein at length.

192. Defendants Wilson and Mixon, acting under color of state law, deprived Plaintiffs of federally protected rights, including but not limited to, rights secured by the Equal Protection Clause of the 14th Amendment of the U.S. Constitution, by maintaining a policy and practice of discriminatorily disciplining students on the basis of race, by being deliberately indifferent to the maintenance of a racially hostile educational environment, by segregating students into different classrooms on the basis of race, and by retaliating against parents and students who complain about racial discrimination.

COUNT III

**All Plaintiffs v. Defendants George Coker, Martha Jordan,
Tony Powell, Patricia M. Black, and William Andrews**
**42 U.S.C. 1983 – Discrimination on the Basis of Race in Violation of the Equal
Protection Clause**

193. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein at length.

194. Defendants Coker, Jordan, Powell, Black, and Andrews, acting under color of state law, deprived Plaintiffs of federally protected rights, including but not limited to, rights secured by the 14th Amendment of the U.S. Constitution and Title VI of the Civil Rights Act, by maintaining a policy and practice of discriminatorily disciplining students on the basis of race, by being deliberately indifferent to the maintenance of a racially hostile educational environment, by segregating students into different classrooms on the basis of race, and by retaliating against parents and students who complain about racial discrimination.

COUNT IV

**All Plaintiffs v. Defendants Coker, Jordan,
Powell, Black, Andrews, Mixon and Wilson**
**42 U.S.C. § 1983 – Violation of Plaintiffs’ Rights to Free Speech Under the
First Amendment to the U.S. Constitution**

195. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein at length.

196. Defendants Coker, Jordan, Powell, Black, Andrews Mixon and Wilson have denied Plaintiffs access to public MCBOE meetings based on the

content of their speech in violation of the First and Fourteenth Amendments to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Assume jurisdiction over this matter;
- B. Certify this action as a class action pursuant to Federal Rule of Civil Procedure 23;
- C. Declare that Defendants' actions and inactions, including Defendants' perpetuation of the racially hostile educational environment at Monroeville Junior High School, Defendants' racially discriminatory disciplinary practices and procedures, Defendants' policies for assigning students into classes on the basis of race, and Defendants' policy and practice of retaliating against students and parents who assert their rights and denying free speech rights to speak out about these issues, violate rights guaranteed by the Fourteenth and First Amendments to the United States Constitution, and Title VI of the Civil Rights Act, 42 U.S.C. § 2000d;
- D. With respect to the claims raised by the sub-class consisting of all African American students who are currently or in the future will be enrolled in MJHS and their parents or guardians, enjoin any further

violations of Plaintiffs' constitutional and statutory rights, including ordering Defendants to investigate and address all acts of racial harassment; implement transparent and objective policies to ensure equal access to extracurricular activities, eliminate racially discriminatory discipline, and ensure that class assignments are not made in a racially discriminatory manner; cease and desist from retaliating against and violating the rights of students and parents who complain about racial discrimination; expunge the disciplinary records of students who have been disciplined on the basis of race; and provide compensatory educational services for students who have been denied access to education due to Defendants' unlawful conduct, and any other appropriate relief;

- F. With respect to the claims raised by the sub-class of students consisting of African American students who attended MJHS in the past three years and who continue to attend Monroe County public schools, and their parents or guardians, order Defendants to expunge the disciplinary records of students who have been disciplined on the basis of race; provide compensatory educational services for students who have been denied access to education due to Defendants' unlawful conduct; and any other appropriate relief;

- G. Award the Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988, including the fees and costs of experts, incurred in prosecuting this action; and
- H. Grant any other relief the Court deems necessary and proper.

Dated: May 21, 2008

Respectfully submitted,

/s/ Catherine Y. Kim
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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2008, I electronically filed the foregoing with the Clerk of Court using the CM-ECF electronic filing system which will send notification of such filing to the following counselors of records, to wit:

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