UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

A.C., C.P., T.T., T.M., T.B., R.P., and C.W.,	§	
Plaintiffs, by and through their next	§	
friends and guardians,	§	
	§	
v.	§	
	§	**C.A. NO. 4:21-CV-03466**
MAGNOLIA INDEPENDENT SCHOOL	§	
DISTRICT	§	
Defendant.	§	

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

TO THE HONORABLE CHIEF JUDGE ROSENTHAL:

COMES NOW Defendant MAGNOLIA INDEPENDENT SCHOOL DISTRICT, (Magnolia ISD or the District) and files this Response in Opposition to Plaintiffs' Motion for Temporary Restraining Order and shows the Court the following:

I. NATURE AND STAGE OF PROCEEDING

Plaintiffs filed suit against Magnolia ISD on October 21, 2021 alleging violations of the Fourteenth Amendment to the United States Constitution (Fourteenth Amendment) via 42 U.S.C. § 1983 (Section 1983) and Title IX of the Education Amendments of 1972 (Title IX) arising from Magnolia ISD's enforcement of its hair length regulations for male students. (Dkt. 1). That same day, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction seeking to enjoin Magnolia ISD from enforcing its hair length regulations. (Dkt. 6).

II. STATEMENT OF ISSUES

The issue before the Court is whether Plaintiffs have met their burden to show they are entitled to a temporary restraining order (TRO) or a preliminary injunction. A TRO is an "extraordinary

remedy" that should not be granted unless Plaintiffs can prove: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the relief is not granted; (3) the threatened injury to Plaintiffs outweighs any harm to Magnolia ISD that may result from the TRO; and (4) the TRO will not undermine the public interest.[1] Plaintiffs carry the burden of introducing sufficient evidence to prove each of these elements before they are entitled to a TRO. Plaintiffs simply cannot meet this lofty burden.

III. ARGUMENT

1. Plaintiffs do not enjoy a substantial likelihood of success on the merits of their claims.

When analyzing the likelihood of success for a claim, the Court must look to the standards provided by existing substantive law.[2] In this case, the Court has the benefit of extensive bodies of substantive law on the issue of discrimination based on sex, and a brief review of that substantive law reveals that Plaintiffs are unlikely to succeed on the merits of their claims.

a. Plaintiffs' Section 1983 claim does not have a substantial likelihood of success.

Plaintiffs' Section 1983 claim sounds in a denial of their right to equal protection under the Fourteenth Amendment. Namely, Plaintiffs allege that Magnolia ISD's hair length policy "facially discriminates" against male students because males are subjected to different rules than female students. (Dkt. 6, p. 1). But Plaintiffs' argument is overly simplistic in that it presupposes that every instance of differential treatment is *per se* discrimination. The Equal Protection Clause "does not take from the States all power of classification."[3] Indeed, "[m]ost laws classify, and many affect certain groups unevenly."[4] In other words, "equal protection does not mean that a state must treat

---

[1] *Sanzone v. Brokerage, Inc. v. J&M Produce Sales, Inc.*, 547 F.Supp.2d 599, 601 (N.D. Tex. 2008) (*citing Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995); *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990); *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974)).
[2] *Roho*, 902 F.3d at 358; *Janvey v. Alguire*, 647 F.3d 585, 596 (5th Cir. 2011).
[3] *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 271, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979) (internal citation omitted).
[4] *Id*. at 271-72.

all persons identically."[5] Plaintiffs' belief that the mere existence of a rule that applies only to male students "facially discriminates" against male students is, therefore, misguided.

Nevertheless, Magnolia ISD does recognize that classifications that have adverse effects on a suspect class or quasi-suspect class require a heightened level of justification. Assuming *arguendo* that Plaintiffs are correct in applying intermediate scrutiny to Magnolia ISD's hair length policy, Plaintiffs' equal protection claim still fails.

In order to prevail on their equal protection claim, Plaintiffs must show that Magnolia ISD's hair length policy can be traced to "a discriminatory purpose."[6] A "discriminatory purpose…implies more than intent as volition or intent as awareness of consequences."[7] To the contrary, a governmental entity only acts with a discriminatory purpose if it acts "at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group."[8] That is, in order to prove the requisite discriminatory intent, Plaintiffs will be required to show that Magnolia ISD enacted its hair length policy specifically to injure male students.

Plaintiffs admit in their Motion that they are aware of Magnolia ISD's position that its dress code "reflects the values of [the Magnolia] community at large."[9] (Dkt. 6, p. 21). Plaintiffs attempt to controvert this assertion by attaching evidence that Magnolia ISD has posted images of "boys…wearing visibly long hair." (Dkt. 6, p. 22). This argument falls flat for multiple reasons. First, Magnolia ISD's policy does not prohibit "visibly long hair." As noted by Plaintiffs in their Motion, the policy requires that hair for males be "no longer than the bottom of a dress shirt collar."

---

[5] *Williams v. Taylor*, 677 F.2d 510, 516 (5th Cir. 1982).
[6] *Feeney*, 442 U.S. at 272.
[7] *Id*. at 279 (*citing United Jewish Organizations v. Carey*, 430 U.S. 144, 179, 97 S.Ct. 996, 51 L.Ed.2d 229 (concurring opinion)).
[8] *Id*. (internal citation omitted).
[9] This pleading is intended to serve as a response to the arguments set forth in Plaintiffs' Motion concerning one proffered justification for the hair length policy. Magnolia ISD reserves the right to present evidence as to any and all legitimate justifications for its hair length policy at the appropriate juncture as permitted by the Court.

It follows, then, that Plaintiffs' proffered evidence of alleged violations would in fact show boys with hair extending below the bottom of a dress shirt collar. However, of the forty-four (44) photographs Plaintiffs meticulously plucked from Magnolia ISD's website and social media accounts, approximately one (1) student's hair exceeds the hair length requirements for male students. This evidence is insufficient to overcome Magnolia ISD's stated representation as to its community's expectations for hair length and styles for males.

Second, Plaintiffs' argument that Magnolia ISD allowed long hair during the COVID-19 pandemic is similarly unconvincing to disprove Magnolia ISD's non-discriminatory basis for its hair length policy. Plaintiffs would be hard-pressed to prove that temporary suspensions of laws, rules, and procedures during the height of the COVID-19 pandemic is evidence of anything other than confusion, chaos, and general exhaustion on the part of both Magnolia ISD and its students that was commonplace in schools during the 2020-2021 school year. By Plaintiffs' logic, the myriad of laws that were suspended by not only state and local governments, but the federal government – including this Court – are less enforceable now than they were before being temporarily suspended due to COVID-19. By Plaintiffs' own admission, Magnolia ISD has "vigorously enforced its gender-based hair-length rule this school year," upon the District's return to normal operations. (Dkt. 6, p. 9).

Finally, assuming *arguendo* that intermediate scrutiny does apply to this case, Plaintiffs do not allege that Magnolia ISD's proffered reason for adopting and upholding its dress code (*i.e.*, reflecting community values at large) does not amount to an "important governmental objective" sufficient to satisfy Magnolia ISD's burden under that test. Indeed, in one of Plaintiffs' most compelling cases to support their claims, the Seventh Circuit acknowledged that requiring students to dress in accordance with community standards may constitute a permissible form of sex-

differentiated grooming standards.[10] This acknowledgment is proper of course, given that community standards play a role in government-shaped policies across the board and have consistently been held to be a valid yardstick for the constitutionality of government-imposed rules, even where rights as fundamental free speech are involved.[11] Notably, reliance on community standards has defeated challenge even under the intermediate scrutiny test for gender-based classifications.[12] Reliance on community standards in the policymaking process is a vital component of a democratic government and should not be summarily dismissed because Plaintiffs have decided they do not like the standards of the community in which they live.

In summary, Plaintiffs have presented no evidence—and can present no evidence—tending to show that Magnolia ISD's proffered reason for enforcing its hair length policy is pretext for a discriminatory intent. Absent such a showing, Plaintiffs' equal protection claim will fail.

i. Magnolia ISD's hair length policy is expressly permitted by Fifth Circuit precedent.

Plaintiffs dedicate much of their Motion to attacking the Fifth Circuit's decision in *Karr v. Schmidt* in an effort to preclude the Court from applying *Karr* to the instant case. (Dkt. 6, p. 18). While it is certainly understandable that Plaintiffs would attempt to invalidate precedent that squarely disposes of their equal protection claim, it is not proper for Plaintiffs to ask this Court to wholly disregard binding precedent in favor of Plaintiffs' preferred analysis.

As it stands, *Karr* is valid law setting forth "a per se rule that regulations [on hair length] are constitutionally valid."[13] Plaintiffs' various disagreements with the Fifth Circuit's analysis and

---

[10] *Hayden ex rel AH v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 578 (7th Cir. 2014).
[11] *See, e.g., Miller v. California*, 413 U.S. 15, 33, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973) ("It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City.").
[12] *Hines v. Caston Sch. Corp.*, 651 N.E.2d 330, 335-36 (Ind. App. 1995); *Jones on behalf of Cooper v. W.T. Henning Elementary Sch. Principal*, 720 So.2d 530, 532 (La. App. [3d Cir.] 1998).
[13] *Karr v. Schmidt*, 460 F.2d 609, 617 (5th Cir. 1972).

decision in *Karr* do not increase the likelihood of success on their Section 1983 claim, as the Court is bound by existing substantive law when considering Plaintiffs' request for a TRO. While Magnolia ISD does not concede that Plaintiffs' Section 1983 claim is any more viable in any other federal circuit, Plaintiffs' claim is a non-starter in the Fifth Circuit at this time.[14]

b. Plaintiffs' Title IX claim does not have a substantial likelihood of success.

Because both Section 1983 and Title IX require a showing of intentional discrimination based on sex, Plaintiffs' claim under Title IX should be analyzed under the same framework as their equal protection claim.[15] Applying the same rigorous requirement to show a discriminatory animus behind the District's hair length policy, Plaintiffs' Title IX claim is similarly likely to fail for the same reason as their Section 1983 claim. Simply put, Plaintiffs will not prevail on a discrimination claim sounding in Magnolia ISD's conformity with the expectations of its community at large absent proof that Magnolia ISD intended to harm male students because they are male.

2. Plaintiffs do not face a substantial threat of irreparable harm.

Plaintiffs acknowledge that Magnolia ISD notified them of its intent to enforce the dress code "[a]t the start of this school year," which began on or about August 11, 2021 (Dkt. 6, pp. 13-14). Plaintiffs A.C., C.P., T.T., T.M., and T.B. were all assigned ISS for dress code violations in "mid-August." (Dkt. 6, p. 10). Plaintiffs A.C., C.P., and T.T. were assigned DAEP on September 30, 2021. (Dkt. 6, pp. 11-13). In other words, Plaintiffs were not only aware of Magnolia ISD's intent to enforce its dress code, but have been subject to such enforcement for months. Plaintiffs have

[14] Plaintiffs' arguments against the Fifth Circuit's analysis and decision in *Karr* are more appropriately presented to the Fifth Circuit itself and should be reserved for that venue. At this juncture, Plaintiffs' likelihood of success on a claim that squarely contradicts the *per se* rule set forth in *Karr* is extremely low, defeating the first element of Plaintiffs' request for a TRO.

[15] *See Hayden*, 743 F.3d at 583.

presented no evidence as to why they are only just now facing irreparable harm sufficient to justify the extraordinary relief of a TRO.

Furthermore, any claim by Plaintiffs that they are being denied access to an education by Magnolia ISD's enforcement of its dress code is false and misleading. It is well-settled law in the Fifth Circuit that a student's removal to disciplinary alternative education placement (DAEP) does not deny access to public education.[16] By their own admission, Plaintiffs were given a choice to remain in their regular classroom setting by complying with the hair length policy or, alternatively, accept disciplinary consequences—up to and including DAEP placement—for violating the policy. Plaintiffs chose not to comply with the policy, and have faced consequences accordingly. However, those consequences simply do not amount to a deprivation of Plaintiffs' right to an education.

3. Plaintiffs' threatened injury does not outweigh Magnolia ISD's interest in maintaining order and discipline on its campuses.

As discussed *supra*, Magnolia ISD does not concede that Plaintiffs are suffering or facing injury that warrants the extraordinary relief of a TRO. However, assuming *arguendo* that Plaintiffs were facing a threat of harm by being disciplined for violating the dress code, Magnolia ISD maintains that its right to enforce policies and rules designed to maintain order on its campuses outweighs Plaintiffs being subjected to ordinary disciplinary consequences for rule violations. As is evident by Plaintiffs' numerous photographic exhibits, Magnolia ISD allows male students to wear their hair to the maximum length permitted by policy (*i.e.*, to the bottom of the collar). Even temporarily enjoining Magnolia ISD from enforcing its hair length policy will likely result in numerous infractions of the hair length policy in a short period of time, which, for the reasons

[16] *Harris ex rel Harris v. Pontotoc Cnty. Sch. Dist.*, 635 F.3d 685, 690 (5th Cir. 2011) (*citing Nevares v. San Marcos Consol. Indep. Sch. Dist.*, 111 F.3d 25, 26-27 (5th Cir. 1997)).

discussed *supra*, Magnolia ISD believes would not be in the best interest of the school district as a whole.

4. Granting Plaintiffs' TRO would undermine the public interest.

Plaintiffs summarily state that "[i]t harms the public interest to permit Magnolia ISD to subject Plaintiffs to severe and ongoing gender discrimination in violation of federal law." (Dkt. 6, p. 5). Not only does this argument presuppose, incorrectly, that Magnolia ISD's policy is discriminatory; it is entirely specific to Plaintiffs and disregards the public interest completely. Magnolia ISD maintains that the public interest is best served when a school district is permitted to uniformly and consistently enforce the policies set forth by its elected officials, particularly where there is no cognizable argument that such policies are in violation of existing law. Moreover, Magnolia ISD believes it is contrary to the public interest for Plaintiffs, or even this Court, to unilaterally decide what policies should or should not be in place absent a showing that such policies are clearly in violation of the law. Policymaking is a function reserved exclusively for the Board of Trustees of Magnolia ISD, which is elected by the community through the democratic process. Magnolia ISD further avers that Plaintiffs' subjective belief that the dress code is socially or politically incorrect is inadequate justification for Plaintiffs to be wholly excused from accountability for complying with the dress code set, let alone to warrant forcing the District to change its policy.

IV. CONCLUSION AND PRAYER

Magnolia ISD maintains that its hair length policy is consistent with currently binding law in the Fifth Circuit. While Plaintiffs are certainly entitled to take advantage of the court system to advocate for a change in that law, the judicial process takes time. Plaintiffs' desire for immediate relief without full adjudication of their claims is met with lofty burdens of proof and production, which Plaintiffs have not satisfied. Furthermore, without jurisprudence supporting Plaintiffs'

position on their claims, Plaintiffs' Motion amounts to little more than a request for an advisory opinion from the Court and should be denied as such.[17]

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Court deny Plaintiffs' Request for Temporary Restraining Order and Preliminary Injunction and grant Defendant such other relief to which the Defendant may be justly entitled.

Respectfully submitted,

/s/ *Morgan P. Beam*
MORGAN P. BEAM
Federal Bar No. 3159785
WALSH GALLEGOS TREVIÑO
KYLE & ROBINSON P.C.
10375 Richmond Avenue, Suite 1357
Houston, Texas 77042

D. CRAIG WOOD
Federal Bar No. 979301
WALSH GALLEGOS TREVIÑO
KYLE & ROBINSON P.C.
1020 N.E. Loop 410, Suite 450
San Antonio, Texas 78209

ATTORNEYS FOR DEFENDANT MAGNOLIA INDEPENENT SCHOOL DISTRICT

[17] *United Pub. Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 89, 67 S.Ct. 556, 91 L.Ed. 754 (1947).

CERTIFICATE OF SERVICE

On October 22, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Brian Klosterboer
Adriana Pinon
Andre Segura
ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, Texas 77288

via Electronic Case Filing

Jane Langdell Robinson
Monica Uddin
AHMAD, ZAVITSANOS, ANAIPAKOS,
ALAVI & MENSING P.C.

via Electronic Case Filing

/s/ *Morgan P. Beam*
MORGAN P. BEAM