Not Reported in N.E.2d, 2000 WL 33162199 (Mass.Super.)
(Cite as: 2000 WL 33162199 (Mass.Super.))

Superior Court of Massachusetts.
Pat DOE,[FN*,FN1]

FN* Editor's Note: A petition for interlocutory relief from the preliminary injunction entered in this opinion was denied by the Appeals Court sub nom *Doe v. Brockton School Committee,* No.2000-J-638 (November 30, 2000) (Jacobs, J.).

FN1. By her next friend, Jane Doe, plaintiff's grandmother and guardian.

v.
John YUNITS, et al.[FN2]

FN2. Maurice Hancock, Wayne Carter, George Allen, Mary Gill, Dennis Eaniri, Kevin Nolan, Ronald Dobrowski. School Committee Members; Joseph Bage, Superintendent; Kenneth Cardone, Principal of South Junior High School; Dr. Kenneth Sennett, Senior Director for Pupil Services, in their individual and official capacities; and Brockton Public Schools.

No. 001060A.
Oct. 11, 2000.

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

GILES.

***1** Plaintiff Pat Doe [FN3] ("plaintiff'), a fifteen-year-old student, has brought this action by her next friend, Jane Doe, requesting that this court prohibit defendants from excluding the plaintiff from South Junior High School ("South Junior High"), Brockton, Massachusetts, on the basis of the plaintiff's sex, disability, or gender identity and expression. Plaintiff has been diagnosed with gender identity disorder, which means that, although plaintiff was born biologically male, she has a female gender identity. [FN4] Plaintiff seeks to attend school wearing clothes and fashion accouterments that are consistent with her gender identity. Defendants have informed plaintiff that she could not enroll in school this academic year if she wore girls' clothes or accessories. After a hearing, and for the reasons stated below, plaintiff's motion for preliminary injunction is *ALLOWED.*

FN3. A pseudonym.

FN4. This court will use female pronouns to refer to plaintiff: a practice which is consistent with the plaintiff's gender identity and which is common among mental health and other professionals who work with transgender clients.

BACKGROUND

Plaintiff began attending South Junior High, a Brockton public school, in September 1998, as a 7th grader. In early 1999, plaintiff first began to express her female gender identity by wearing girls' make-up, shirts, and fashion accessories to school. South Junior High has a dress code which prohibits, among other things, "clothing which could be disruptive or distractive to the educational process or which could affect the safety of students." In early 1999, the principal, Kenneth Cardone ("Cardone"), would often send the plaintiff home to change if she arrived at school wearing girls' apparel. On some occasions, plaintiff would change and return to school; other times, she would remain home, too upset to return. In June 1999, after being referred to a therapist by the South Junior High, plaintiff was diagnosed with gender identity disorder. Plaintiff's treating therapist, Judith Havens ("Havens"), determined that it was medically and clinically necessary for plaintiff to wear clothing consistent with the female gender and that failure to do so could cause harm to plaintiff's mental health.

Plaintiff returned to school in September 1999, as an 8th grader, and was instructed by Cardone to come to his office every day so that he could approve the plaintiff's appearance. Some days the plaintiff would be sent home to change, sometimes returning to school dressed differently and sometimes remaining home. During the 1999-2000 school year, plaintiff stopped attending school, citing the hostile environment created by Cardone. Because of plaintiff's

many absences during the 1999-2000 school year, plaintiff was required to repeat the 8th grade this year.

Over the course of the 1998-1999 and 1999-2000 school years, plaintiff sometimes arrived at school wearing such items as skirts and dresses, wigs, high-heeled shoes, and padded bras with tight shirts. The school faculty and administration became concerned because the plaintiff was experiencing trouble with some of her classmates. Defendants cite one occasion when the school adjustment counselor had to restrain a male student because he was threatening to punch the plaintiff for allegedly spreading rumors that the two had engaged in oral sex. Defendants also point to an instance when a school official had to break up a confrontation between the plaintiff and a male student to whom plaintiff persistently blew kisses. At another time, plaintiff grabbed the buttock of a male student in the school cafeteria. Plaintiff also has been known to primp, pose, apply make up, and flirt with other students in class. Defendants also advance that the plaintiff sometimes called attention to herself by yelling and dancing in the halls. Plaintiff has been suspended at least three times for using the ladies' restroom after being warned not to.

***2** On Friday, September 1, 2000, Cardone and Dr. Kenneth Sennett ("Sennett"), Senior Director for Pupil Personnel Services, met with the plaintiff relative to repeating the 8th grade. At that meeting, Cardone and Sennett informed the plaintiff that she would not be allowed to attend South Junior High if she were to wear any outfits disruptive to the educational process, specifically padded bras, skirts or dresses, or wigs. On September 21, 2000, plaintiff's grandmother tried to enroll plaintiff in school and was told by Cardone and Sennett that plaintiff would not be permitted to enroll if she wore any girls' clothing or accessories. Defendants allege that they have not barred the plaintiff from school but have merely provided limits on the type of dress the plaintiff may wear. Defendants claim it is the plaintiff's own choice not to attend school because of the guidelines they have placed on her attire. Plaintiff is not currently attending school, but the school has provided a home tutor for her to allow her to keep pace with her classmates.

On September 26, 2000, the plaintiff filed a complaint in this court claiming a denial of her right to freedom of expression in the public schools in violation of G.L.c. 71, § 82; a denial of her right to personal dress and appearance in violation of G.L. c. 76, § 83; a denial of her right to attend school in violation of G.L. c. 76, § 5; a denial of her right to be free from sex discrimination guaranteed by Articles I and XIV of the Declaration of Rights of the Massachusetts Constitution; a denial of her right to be free from disability discrimination guaranteed by Article CXIV of the said Declaration of Rights; a denial of her due process rights as guaranteed by G.L. c. 71, § 37 and G.L. c. 76, § 17; a denial of her liberty interest in her appearance as guaranteed by the Massachusetts Declaration of Rights, Art. I and X; and a violation of her right to free expression as guaranteed by the said Declaration of Rights, Art. I and X.

DISCUSSION

I. Introduction

In evaluating a request for a preliminary injunction, the court must examine "in combination the moving party's claim of injury and chance of success on the merits." *Packing Industries Group, Inc. v. Cheney,* 380 Mass. 609, 617 (1980). "If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party ... Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue." *GTE Products Corp. v. Stewart,* 414 Mass. 721, 722-23 (1993), quoting *Packaging Industries Group, Inc. v. Cheney, supra* (footnote omitted). In addition, where the injunction is sought against a public entity, as it is here, the court must consider the risk of injury to the public interest which would flow from the grant of the injunction. *Brookline v. Goldstein,* 388 Mass. 443, 447 (1983); *Biotti v. Board of Selectmen of Manchester,* 25 Mass.App.Ct. 637, 639 (1988).

II. The Likelihood of Plaintiff's Success on the Merits

***3** Plaintiff's complaint asserts eight causes of action based on the Massachusetts Declaration of Rights and the General Laws. They are individually addressed below to evaluate the likelihood of success on the merits.

A. Freedom of Expression, Massachusetts Declaration of Rights, Art. II and X

The Massachusetts Declaration of Rights, Article XVI (as amended by Article 77) provides, "[t]he right of free speech shall not be abridged." The analysis of this article is guided by federal free speech analysis. See *Hosford v. School Committee of Sandwich,* 421 Mass. 708, 712 n. 5 (1996); *Opinion of the Justices to the House of Representatives,* 387 Mass. 1201, 1202 (1982); *Colo. v. Treasurer and Receiver General,* 378 Mass. 550, 558 (1979). According to federal analysis, this court must first determine whether the plaintiff's symbolic acts constitute expressive speech which is protected, in this case, by Article VXI of the Massachusetts Declaration of Rights. See *Texas v. Johnson, supra,* citing *Spence v. Washington, supra.* If the speech is expressive, the court must next determine if the defendants' conduct was impermissible because it was meant to suppress that speech. See *Texas v. Johnson,* 491 U.S. 397, 403 (1989), citing *United States v. O'Brien,* 391 U.S. 367, 377 (1968); see also *Spence v. Washington,* 418 U.S. 405, 414 n. 8 (1974). If the defendants' conduct is not related to the suppression of speech, furthers an important or substantial governmental interest, and is within the constitutional powers of the government, and if the incidental restriction on speech is no greater than necessary, the government's conduct is permissible. See *United States v. O'Brien, supra.* In addition, because this case involves public school students, suppression of speech that "materially and substantially interferes with the work of the school" is permissible. See *Tinker v. Des Moines Community School Dist.,* 393 U.S. 503, 739 (1969).

1. The Plaintiff's Conduct is Expressive Speech Which is Understood by Those Perceiving It

Symbolic acts constitute expression if the actor's intent to convey a particularized message is likely to be understood by those perceiving the message. See *Spence v. Washington,* 418 U.S. 405, 410-11 (1974) (finding that an upside-down flag with a peace symbol attached was protected speech because it was a purposeful message people could understand); see also *Chalifoux v. New Caney Independent School Dist.,* 976 F.Sup. 659 (S.D.Tex.1997) (students wearing rosary beads as a sign of their religious belief was likely to be understood by others and therefore protected).

Plaintiff in this case is likely to establish that, by dressing in clothing and accessories traditionally associated with the female gender, she is expressing her identification with that gender. In addition, plaintiff's ability to express herself and her gender identity through dress is important to her health and well-being, as attested to by her treating therapist. Therefore, plaintiff's expression is not merely a personal preference but a necessary symbol of her very identity. Contrast *Olesen v. Board of Education of School District No. 228,* 676 F.Sup. 820 (N.D.Ill.1987) (school's anti-gang policy of prohibiting males from wearing earrings, passed for safety reasons, was upheld because plaintiff's desire to wear an earring as an expression of his individuality and attractiveness to girls was a message not within the scope of the First Amendment).

***4** This court must next determine if the plaintiff's message was understood by those perceiving it, i.e., the school faculty and plaintiff's fellow students. See *Bivens v. Albuquerque Public Schools,* 899 F.Sup. 556 (D.N.M.1995) (student failed to provide evidence that his wearing of sagging pants to express his identity as a black youth was understood by others and, therefore, such attire was not speech). In the case at bar, defendants contend that junior high school students are too young to understand plaintiff's expression of her female gender identity through dress and that "not every defiant act by a high school student is constitutionally protected speech." *Id.* at 558. However, unlike *Bivens,* here there is strong evidence that plaintiff's message is well understood by faculty and students. The school's vehement response and some students' hostile reactions are proof of the fact that the plaintiff's message clearly has been received. Moreover, plaintiff is likely to establish, through testimony, that her fellow students are well aware of the fact that she is a biological male more comfortable wearing traditionally "female"-type clothing because of her identification with that gender.

2. The Defendants' Conduct Was a Suppression of the Plaintiff's Speech

Plaintiff also will probably prevail on the merits of the second prong of the *Texas v. Johnson* test, that is, the defendants' conduct was meant to suppress plaintiff's speech. Defendants in this case have prohibited the plaintiff from wearing items of clothing that are traditionally labeled girls' clothing, such as dresses and skirts, padded bras, and wigs. This constitutes direct suppression of speech because biological females who wear items such as tight skirts to

school are unlikely to be disciplined by school officials, as admitted by defendants' counsel at oral argument. See *Texas v. Johnson,* 491 U.S. 397, 408-16 (1989). Therefore, the test set out in *United States v. O'Brien,* which permits restrictions on speech where the government motivation is not directly related to the content of the speech, cannot apply here. Further, defendants' argument that the school's policy is a content-neutral regulation of speech is without merit because, as has been discussed, the school is prohibiting the plaintiff from wearing clothes a biological female would be allowed to wear. Therefore, the plaintiff has a likelihood of fulfilling the *Texas v. Johnson* test that her speech conveyed a particularized message understood by others and that the defendants' conduct was meant to suppress that speech.

3. Plaintiff's Conduct is not Disruptive

This court also must consider if the plaintiff's speech "materially and substantially interferes with the work of the school." *Tinker v. Des Moines Community School Dist., supra.* Defendants argue that they are merely preventing disruptive conduct on the part of the plaintiff by restricting her attire at school. Their argument is unpersuasive. Given the state of the record thus far, the plaintiff has demonstrated a likelihood of proving that defendants, rather than attempting to restrict plaintiff's wearing of distracting items of clothing, are seeking to ban her from donning apparel that can be labeled "girls' clothes" and to encourage more conventional, male-oriented attire. Defendants argue that any other student who came to school dressed in distracting clothing would be disciplined as the plaintiff was. However, defendants overlook the fact that, if a female student came to school in a frilly dress or blouse, make-up, or padded bra, she would go, and presumably has gone, unnoticed by school officials. Defendants do not find plaintiff's clothing distracting *per se,* but, essentially, distracting simply because plaintiff is a biological male.

***5** In addition to the expression of her female gender identity through dress, however, plaintiff has engaged in behavior in class and towards other students that can be seen as detrimental to the learning process. This deportment, however, is separate from plaintiff's dress. Defendants vaguely cite instances when the principal became aware of threats by students to beat up the "boy who dressed like a girl" to support the notion that plaintiff's dress alone is disruptive. To rule in defendants' favor in this regard, however, would grant those contentious students a "heckler's veto." See *Fricke v. Lynch,* 491 F.Sup. 381, 387 (D .R.I.1980). The majority of defendants' evidence of plaintiff's disruption is based on plaintiff's actions as distinct from her mode of dress. Some of these acts may be a further expression of gender identity, such as applying make-up in class; but many are instances of misconduct for which any student would be punished. Regardless of plaintiff's gender identity, any student should be punished for engaging in harassing behavior towards classmates. Plaintiff is not immune from such punishment but, by the same token, should not be punished on the basis of dress alone.

Plaintiff has framed this issue narrowly as a question of whether or not it is appropriate for defendants to restrict the manner in which she can dress. Defendants, on the other hand, appear unable to distinguish between instances of conduct connected to plaintiff's expression of her female gender identity, such as the wearing of a wig or padded bra, and separate from it, such as grabbing a male student's buttocks or blowing kisses to a male student. The line between expression and flagrant behavior can blur, thereby rendering this case difficult for the court. It seems, however, that expression of gender identity through dress can be divorced from conduct in school that warrants punishment, regardless of the gender or gender identity of the offender. Therefore, a school should not be allowed to bar or discipline a student because of gender-identified dress but should be permitted to ban clothing that would be inappropriate if worn by any student, such as a theatrical costume, and to punish conduct that would be deemed offensive if committed by any student, such as harassing, threatening, or obscene behavior. See *Bethel v. Fraser,* 478 U.S. 675 (1986).

B. G.L. c. 71, § 82

Defendants argue that G.L. c. 71, § 82 is inapplicable because the statute only applies to secondary school; and South Junior High has been designated a primary school. Therefore, plaintiff will probably fail in this claim if defendants can substantiate their assertion. Nevertheless, the Supreme Court's constitutional analysis in *Tinker,* which was codified by G.L. c. 71, § 82, see *Pyle v. School Committee of South Hadley,* 423 Mass. 283, 286 (1996), remains applicable in this case and implicates the same principles. As

discussed, plaintiff has demonstrated a likelihood of success on the merits in her common law freedom of expression claim.

C. Liberty Interest in Appearance Massachusetts Declaration of Rights Article I and X

***6** Plaintiff is also likely to prevail in this claim. A liberty interest under the First Amendment has been recognized to protect a male student's right to wear his hair as he wishes. See *Richards v. Thurston,* 424 F.2d 1281 (1st Cir.1970), cited with approval *Bd. of Selectmen of Framingharn v. Civil Service Commission,* 366 Mass. 547, 556 (1974). The question in liberty interest cases is whether the government's interest in restricting liberty is strong enough to overcome that liberty interest. Given that plaintiff has a likelihood of success in proving that her attire is not distracting, as discussed above, she is likely to prove that defendants' interests do not overcome the recognized liberty interest in appearance.

D. Sex Discrimination G.L. c. 76, § 5 and Article I and XIV of the Massachusetts Declaration of Rights

G.L. c. 76, § 5 states that "Every person shall have the right to attend the public schools of the town where he actually resides ... No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and course of study of such public school on account of race, color, sex, religion, national origin or sexual orientation." G.L. c. 76, § 5 (2000). Federal cases have recognized the impropriety of discriminating against a person for failure to conform with the norms of' their biological gender. See *Price Waterhouse v. Hopkins,* 490 U.S. 228, 250 (1989) (sex stereotyping occurred when members of an accounting firm denied female associate promotion because she failed to walk, talk, and dress femininely); *Rosa v. Park West Bank,* 214 F.3d 213 (1st Cir .2000) (claim of sex discrimination may be sustained when cross-dressing man was denied a loan application until he went home to change clothes). This court finds plaintiff's reliance on such cases persuasive and the cases cited by defendants distinguishable, as discussed below.

Plaintiff contends that defendants' action constitute sex discrimination because defendants prevented plaintiff from attending school in clothing associated with the female gender solely because plaintiff is male. Defendants counter that, since a female student would be disciplined for wearing distracting items of men's clothing, such as a fake beard, the dress code is gender-neutral. Defendants' argument does not frame the issue properly. Since plaintiff identifies with the female gender, the right question is whether a female student would be disciplined for wearing items of clothes plaintiff chooses to wear. If the answer to that question is no, plaintiff is being discriminated against on the basis of her sex, which is biologically male. [FN5] Therefore, defendants' reliance on cases holding that discrimination on the basis of sexual orientation, transsexualism, and transvestism are not controlling in this case because plaintiff is being discriminated against because of her gender. See *Ulane v. Eastern Airlines,* 742 F.2d 1081 (7th Cir.1984).[FN6] Furthermore, such cases have been criticized and distinguished under both Title VII and the First and Fourteenth Amendments. See *Quinn v. Nassau County Police Dept.,* 53 F.Sup.2d 347 (E.D.N.Y.1999); *Blozis v. Mike Raisor Ford, Inc.,* 896 F.Sup. 805 (N.D.Ind.1995); *Schwenk v. Hartford,* 204 F.3d 1187 (9th Cir.2000).

FN5. This case is distinguishable from *Harper v. Edgewood Bd. of Education,* 655 F.Sup. 1353 (S.D.Ohio 1987). In *Harper,* the court granted summary judgment in favor of the defendants, who prevented two students dressed in clothing of the opposite gender from attending the prom against a claim that the plaintiffs' First Amendment rights were violated. The court found the school's action permissible because it fostered community values and maintained discipline. Plaintiff in this case, however, is not merely engaging in rebellious acts to demonstrate a willingness to violate community norms; plaintiff is expressing her personal identity, which cannot be suppressed by the school merely because it departs from community standards.

FN6. *LaFleur v. Bird-Johnson Co.,* 1994 W.L. 878831 (Mass.Super. Nov. 3, 1994) [3 Mass.L.Rptr. 196], is also distinguishable. *LaFleur* was decided after *Price Waterhouse v. Hopkins* but recognized the Supreme Judicial Court's holding in *Macauley v. MCAD,* 379 Mass. 279 (1979), that transsexual discrimination is not within the scope of this state's sexual discrimination law.

> However, the case at hand differs from *LaFleur,* where the plaintiff claimed she was discriminated against in the employment context because she was a transvestite, because the instant plaintiff is likely to establish that defendants have discriminated against her on the basis of sex by applying the dress code against her in a manner in which it would not be applied to female students.

***7** In support of their argument, defendants cite cases in which gender-specific school dress codes have been upheld in the face of challenges based on gender discrimination and equal protection because the codes serve important governmental interests, such as fostering conformity with community standards. See *Jones v. W.T. Henning Elementary School,* 721 So.2d 530 (La.App.3rd Cir1998); *Hines v. Caston School Corp.,* 651 N.E.2d 330, 335 (Ind.App.1995); *Harper v. Edgewood Board of Education.* 655 F.Sup. 1353 (S.D.Ohio 1987). Such cases are not binding on this court. This court cannot allow the stifling of plaintiff's selfhood merely because it causes some members of the community discomfort. "Our constitution ... neither knows nor tolerates classes among citizens." *Plessy v. Ferguson,* 163 U.S. 537, 539 (1896) (dissenting opinion of Harlan, J.). Thus, plaintiff in this case is likely to establish that the dress code of South Junior High, even though it is gender-neutral, is being applied to her in a gender discriminatory manner.

E. Disability Discrimination Article CXIV of the Massachusetts Declaration of Rights

Plaintiff does not have a likelihood of success in proving that the defendants' conduct constituted disability discrimination. Analysis of federal discrimination law is instructive in construing state disability discrimination law. See *Cox v. New England Tel. & Tel. Co.,* 414 Mass. 375 (1993). The federal Americans with Disabilities Act expressly excludes "transvestism, transsexualism ... [and] gender identity disorders not resulting from physical impairments ..." 42 U.S.C. 12211(b) (2000). While noting that the courts of this state can, and often do, provide more protection than its federal counterpart, there is no authority to support the notion that Gender Identity Disorder is a protected disability under the Massachusetts Declaration of Rights of laws of this state.

F. Due Process G.L. c. 76, § 17

Plaintiff does not have a likelihood of success on the merits of this claim because, as defendants correctly point out, the plaintiff has not been expelled from school. Therefore, no process was due the plaintiff.

G. G.L. c. 71, § 83

Defendants again are correct in asserting that this section, which protects a student's right to personal dress, is a local option statute which applies only to jurisdictions that have chosen to adopt it. G.L. c. 71, § 86. Therefore, the plaintiff has not demonstrated a likelihood of success on the merits of this claim.

II. Irreparable Harm

The party seeking an injunction bears the burden of establishing irreparable harm, i.e., that it may suffer a loss of rights that cannot be vindicated should it prevail after a full hearing on the merits. *GTE Products Corp. v. Stewart, supra* at 726. Plaintiff in this case has met the burden of establishing irreparable harm. The plaintiff is currently being home schooled because the defendants will not allow her to attend school in girls' attire. Therefore, plaintiff is being denied the benefits of attending school with her peers, learning in an interactive environment, and developing socially. See *McLaughlin v. Boston School Committee,* 938 F.Sup. 1001, 1011-12 (D.Mass.1994). Such harm is further exacerbated by the fact that the plaintiff has been the subject of much controversy over the past two years and now is noticeably absent from school. Defendants argue that any harm to the plaintiff is self-induced because plaintiff has chosen not to attend school under the conditions the defendants have put on her attire. This contention is without merit. Defendants are essentially prohibiting the plaintiff from expressing her gender identity and, thus, her quintessence, at school. Their actions have forced plaintiff to submit to home schooling. However, "in the field of public education the doctrine of 'separate but equal' has no place." *Brown v. Board of Education of Topeka,* 347 U.S. 483, 495 (1954).

III. The Balance of the Equities

***8** The balance of the equities tips in favor of plaintiff in his case. The plaintiff attended South Junior High School for two academic years; and the school and its students, with the exception of new students entering this year, are accustomed to inter-

acting with plaintiff and, thus, are capable of doing so again. Because the school is empowered to discipline plaintiff for conduct for which any other student would be disciplined, the harm to the school in readmitting plaintiff is minimal. On the other hand, if plaintiff is barred from school, the potential harm to plaintiff's sense of self-worth and social development is irreparable. Defendants cite cases that stand for the proposition that a school's interest in disciplining students by barring them from school outweigh the harm to the student. See *Katchak v. Glasgow Independent School District,* 690 F.Sup. 580, 583 (W.D.Ky.1988). In this case, however, the school is not disciplining the plaintiff for certain conduct. The school is barring her from school on account of the expression of her very identity. Defendants maintain that plaintiff is free to enroll in school as long as she complies with the stated dress code. This is not entirely true because the defendants have placed specific restrictions on plaintiff's dress that may not be placed on other female students. This court does take note of the fact that defendants made efforts to accommodate the plaintiff's desire to dress in girl's clothes for over a year. However, their proscription of the items of clothing that can be worn by plaintiff is likely to be impermissible. Therefore, the harm to plaintiff by the actions of the defendants outweigh the harm to the defendants in granting this injunction.

IV. The Harm to the Public Interest

Defendants have not made a showing that the granting of this injunction will harm the public interest. Although defendants contend that plaintiff's dress is disruptive to the learning process, the workings of the school will not be disrupted if they are permitted to discipline plaintiff according to normal procedures for truly disruptive attire and inappropriate behavior. Furthermore, this court trusts that exposing children to diversity at an early age serves the important social goals of increasing their ability to tolerate such differences and teaching them respect for everyone's unique personal experience in that “Brave New World” out there.

ORDER

For all the foregoing reasons, plaintiff's motion for preliminary injunction is *ALLOWED;* and it is hereby *ORDERED THAT:*

1. Defendants are preliminarily enjoined from preventing plaintiff from wearing any clothing or accessories that any other male or female student could wear to school without being disciplined.

2. Defendants are further preliminarily enjoined from disciplining plaintiff for any reason for which other students would not be disciplined.

3. If defendants do seek to discipline plaintiff in conformance with this order, they must do so according to the school's standing policies and procedures.

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