

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LANARD GRAHAM, JR.,
WENONA GRAHAM, and
LANARD GRAHAM, SR.,
individuals,

CASE NO. 19-10804

Plaintiffs,

v.

GLEN SHILLING, an individual,
TIM BEARDON, an individual,
MARK BRAY, an individual, and,
DETROIT COUNTRY DAY SCHOOL, a
Michigan corporation,
jointly and severally,

Defendants.

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COMPLAINT AND JURY DEMAND

Plaintiffs, LANARD GRAHAM, JR., WENONA GRAHAM, and LANARD

GRAHAM, SR., by and through their attorneys, Detroit Legal Services, PLLC, by Nicole L. Thompson, and for their Complaint state as follows:

JURISDICTION AND PARTIES

1. This is an action for Plaintiff, LaNard Graham, JR., to enforce his civil rights, and for ancillary and derivative claims by himself and the other Plaintiffs relating to those civil rights violations and other tortious and illegal actions as described in detail in this Complaint.

2. This Court has jurisdiction pursuant to 42 U.S.C. §1983, 28 U.S.C. §1331 and 28 U.S.C. §1343.

3. Venue is proper in this Court because the events leading up to this lawsuit and the parties hereto are all, upon information and belief, residents of the State of Michigan, Eastern District, pursuant to 28 U.S.C. §1391.

4. This Court has pendant jurisdiction over the related state law claims herein pursuant to 28 U.S.C. §1367.

5. Plaintiff, LaNard Graham, JR., (hereinafter, “LaNard”), at all times relevant hereto, has been a resident of the City of Troy, County of Oakland, in the State of Michigan.

6. Plaintiff, LaNard Graham, Sr. (hereinafter, “Senior” or “Father”), at all times relevant hereto, has been a resident of the City of Troy, County of Oakland, in the State of Michigan.

7. Plaintiffs, Wenona Graham, (hereinafter, “Wenona”), at all times relevant hereto, has been a resident of the City of Troy, County of Oakland, in the State of Michigan.

8. Defendant, Detroit Country Day School, (hereafter, “DCDS”), is a Michigan school which claims to be a non-profit corporation, with its principal place of business in Oakland County¹.

9. Defendant, Mark Bray, (hereafter, “Bray”), at all times relevant hereto, has been, upon information and belief, employed by DCDS, in the County of Oakland, State of Michigan.

10. Defendant, Tim Beardon, (hereafter, “Beardon”), at all times relevant hereto, has been, upon information and belief, employed by DCDS, in the County of Oakland, State of Michigan.

11. Defendant, Glen Shilling, (hereafter, “Shilling”), at all times relevant hereto, has been, upon information and belief, employed by DCDS, in the County of Oakland, State of Michigan.

12. Shilling, Bray and Beardon are named in individual capacities.

GENERAL ALLEGATIONS

13. Upon information and belief, DCDS receives and/or benefits from federal funding assistance from the United States Department of Education.

¹ Allegations later in this Complaint will explain why the non-profit status does not apply in this case for the purpose of providing Defendant any relief or exemption from the law.

14. Further, DCDS failed to maintain a racially nondiscriminatory policy and operated in a discriminatory manner to African-American students, thus not complying with the requirements to be considered protected from suit by any “non-profit” status.

15. LaNard, while a student at DCDS, was at all times a good student, a leader, and until the event underlying this lawsuit, had never had any disciplinary actions or allegations of any behavioral issues at school.

16. At all times relevant hereto, Shilling, Bray and Beardon were acting individually and as agents on behalf of DCDS.

17. All actions of Shilling, Bray and Beardon were done within the scope of actual and/or implied agency powers given to them by DCDS.

18. DCDS knew and/or should have been aware of the actions by Shilling, Bray and Beardon as described in this Complaint.

19. DCDS is a place of public accommodation for purposes of the Elliott Larsen Civil Rights Act, MCL 37.2101, et seq.

20. DCDS is a “person” within the meaning of 14 U.S.C. §1983.

21. DCDS, Beardon, Bray and Shilling were acting under color of law when they deprived Plaintiff(s) of his/their civil rights and privileges, as set forth more fully below.

22. LaNard was a child in the care, custody and control of DCDS and its

agents/employees, were acting *in loco parentis*, at the time of the incidents alleged herein.

FACTUAL ALLEGATIONS

23. On November 7, 2016, at approximately 4:40pm, LaNard Graham Jr., John Doe 1, and John Doe 2, (both John Does as they were minors at the time upon information and belief; Defendant is aware of their identities), were in a parked car and were approached by Beardon, the DCDS Upper School Director.

24. According to Beardon, he approached the car due to smoke being present.

25. Before approaching the vehicle, however, Beardon and Dan Luft (DCDS Assistant Athletic Director) called the Beverly Hills police department.

26. At approximately 4:49pm Wenona (LaNard's mother) was contacted by Beardon and advised that LaNard had been found "getting high", though there was no evidence that LaNard had done so.

27. Upon information and belief, Beardon made the phone call to Wenona in front of third parties who were not involved in the incident, were not employees of DCDS, and who should not have been present for the publication of such defamatory statements.

28. Beardon's stories about what happened during and around the aforementioned incident on November 7, 2016 changed multiple times following

the incident, upon information and belief.

29. LaNard immediately advised Beardon that he had not smoked any marijuana in any form.

30. Beardon interrogated LaNard and despite LaNard's repeated denials, Beardon continued to badger LaNard to say that he had smoked marijuana.

31. LaNard was given a home drug test and was then taken to the hospital where he underwent a drug test (by urine) within hours of the incident, both tests demonstrating that LaNard had not smoked any form of marijuana.

32. On November 8, 2016, a meeting took place between Beardon and the Graham family in which Beardon informed the family that John Doe 2 admitted the marijuana substance was his and that he had been smoking it.

33. Later that day of November 8, 2016, Beardon called the Grahams and informed them that LaNard would be expelled from school.

34. On November 9, 2016, a meeting took place between Shilling, (DCDS Headmaster), and the Graham family in which Shilling said that he would re-examine the facts of the case and make a determination on what the appropriate punishment would be, and that he would get back to the family to advise of his determination.

35. Shilling stated specifically at the November 9, 2016 meeting that he was unaware of several of the facts that the Graham's supplied and would

reconsider the circumstances.

36. After the meeting with Shilling, the Grahams were given the choice of having LaNard expelled or withdrawing him from school.

37. The Grahams withdrew LaNard from school “under protest” given the options stated in paragraph thirty-six, above.

38. After LaNard left school, the following continued to happen at DCDS:

(a) Dan MacLean informed a sport’s recruiter interested in scouting LaNard that LaNard was expelled even though he was not;

(b) Mark Bray berating LaNard’s brother over not wanting to play basketball and stating he and his family were “quitters”;

(c) a portrait of LaNard at the school was repeatedly being torn down by Bray;

(d) Bray repeatedly called out LaNard’s name during roll call even though he was aware that LaNard was not in school;

(e) Shilling discussed LaNard and the situation underlying this case with other families from DCDS outside the school setting; and,

(f) Bray repeatedly made rude and inappropriate “jokes” about LaNard.

39. Ultimately, the hostile environment, harassment and discrimination that the Plaintiff and his family endured at the hands of DCDS forced the Grahams to withdraw their other two sons from DCDS.

40. DCDS is known as an exclusive school, offering distinct advantages due to a perception of an elite education and prestige, which are not easily replaced in any other school.

41. DCDS is also known as, and often attended by athletes for the reason that, it is a well-known, and regularly active, recruiting ground for college athletic departments.

42. On numerous other occasions temporally close to the relevant time period, there were similar instances at DCDS of students being accused of vaping, doing drugs, smoking and/or drinking on school property, and even stealing, and white students subject to those accusations were repeatedly treated less harshly by DCDS than their African-American counterparts (including LaNard), with a clear and significant pattern emerging of disparate treatment.

43. African-Americans are a minority in the white-majority DCDS.

44. LaNard is African-American.

COUNT I – VIOLATION OF 42 U.S.C.A. §1983 – (as to LaNard, only)

45. Plaintiffs hereby fully incorporate the preceding paragraphs one through forty-four as though fully re-stated herein.

46. Defendants are persons within the meaning of 42 U.S.C.A. §1983, (hereafter CRA).

47. At all times and circumstances pertinent hereto, Defendants were

acting under color of state law and, upon information and belief, DCDS receives benefits from the State of Michigan.

48. At all times and circumstances pertinent hereto, Defendants failed to protect LaNard from racial discrimination and defamation.

49. Further, Defendants subjected LaNard to blatant racial discrimination which resulted in a forced withdrawal from his school of choice, embarrassment, emotional trauma and distress, humiliation, anxiety, depression, loss of opportunities (educational and athletic), and other losses.

50. The discrimination against LaNard was on the basis of his race.

51. The discrimination against LaNard was part of a policy and regular practice by DCDS, and the individual defendants, to discriminate against African American students.

52. LaNard was not afforded by Defendants proper notice and an opportunity to be heard in a non-discriminatory forum, in violation of his procedural due process rights.

53. LaNard's substantive right to due process, with regard to his Constitutional right to an education, was violated by the Defendants on the basis of racial discrimination.

53. LaNard was subject to a failure to protect against racial discrimination by the Defendants (who instead were the perpetrators).

54. LaNard was deprived by Defendants of his right to an equal educational opportunity for reasons of racial discrimination, which right is codified in the Equal Education Opportunities Act of 1974 (20 U.S.C. §1203(f)).

55. The aforementioned actions of the Defendants were intentional and were the sole cause of the losses suffered by Plaintiff LaNard and enumerated above.

WHEREFORE, Plaintiff, LaNard Graham, respectfully requests this Honorable Court enter Judgment in his favor and against Defendants, jointly and severally, for all compensatory and non-compensatory damages, punitive damages, attorney fees, costs, interest and any other and further relief in favor of Plaintiff which the Court deems appropriate and just.

COUNT II – RACIAL DISCRIMINATION IN VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT (LaNard, only)

56. Plaintiffs hereby fully incorporate the preceding paragraphs one through fifty-five as though fully re-stated herein.

57. Plaintiff LaNard's race was a/an factor that made the difference in LaNard being forced to leave DCDS and being subject to harassing and defamatory conduct by DCDS, and its representatives, including, but not limited to, the individual Defendants herein.

58. At all times pertinent hereto, the Defendants had actual notice of their

own discriminatory behavior and actual and/or constructive notice of other racial discrimination within the school and the discrimination to which LaNard was subject.

59. At all times pertinent hereto, Defendants had the opportunity to stop the discriminatory actions and harassment but failed to do so.

60. Instead Defendants have continued in a pattern and in the espousment of an environment of racial discrimination which is still ongoing, upon information and belief, and which caused a forced withdrawal from his school of choice, embarrassment, emotional trauma and distress, loss of reputation, humiliation, anxiety, depression, loss of opportunities (educational and athletic), and other losses.

61. At best, some Defendants were at the very least deliberately indifferent to the discrimination and resultant harm described herein which they knew was happening.

WHEREFORE, Plaintiff, LaNard Graham, respectfully requests this Honorable Court enter Judgment in his favor and against Defendants, jointly and severally, for all compensatory and non-compensatory damages, punitive damages, attorney fees, costs, interest and any other and further relief in favor of Plaintiff which the Court deems appropriate and just.

COUNT III – RACIAL DISCRIMINATION UNDER THE ELLIOT-LARSEN CIVIL RIGHTS ACT (LaNard, only)

62. Plaintiffs hereby fully incorporate the preceding paragraphs one through sixty-one as though fully re-stated herein.

63. Defendants denied LaNard the full and equal enjoyment of the facilities, privileges, advantages, or accommodations of his school, as described in more fully above.

64. The Defendants denied LaNard as set forth in the preceding paragraph on the basis of his race; at the very least LaNard's race was a factor in the decision to subject LaNard to the wrongful and discriminatory treatment described in this Complaint and otherwise.

65. Defendants, whether individually or by their agents, representatives, and/or employees, was predisposed to discriminate on the basis of race and acted in accordance with that predisposition.

66. Defendant's actions were intentional, and with reckless indifference to Plaintiff's rights and sensibilities.

67. As a direct and proximate result of the Defendants' wrongful acts and omissions, Plaintiff has endured, and continues to suffer as a result of, forced withdrawal from his school of choice, embarrassment, emotional trauma and distress, loss of reputation, humiliation, anxiety, depression, loss of opportunities (educational and athletic), and other losses.

WHEREFORE, Plaintiff, LaNard Graham, respectfully requests this Honorable Court enter Judgment in his favor and against Defendants, jointly and severally, for all compensatory and non-compensatory damages, punitive damages, attorney fees, costs, interest and any other and further relief in favor of Plaintiff which the Court deems appropriate and just.

COUNT IV – DEFAMATION PER SE (LaNard, only)

68. Plaintiffs hereby fully incorporate the preceding paragraphs one through sixty-seven as though fully re-stated herein.

69. As described in the preceding “general allegations”, Beardon had an audience of non-involved bystanders, upon information and belief, before whom he announced to Wenona that LaNard was “high”.

70. LaNard in fact was not “high”, as proven by the drug testing.

71. There was no privilege allowing Beardon to make such a statement in front of third parties.

72. Further, not only was the statement made by Beardon false, but he either knew or should have known that it was false at the time that he made it (but instead he pronounced it prior to obtaining any proof).

73. Because LaNard being “high” would be illegal, Beardon, (whose actions have been condoned and are part of DCDS policy as described above), this is a case of defamation per se under Michigan law.

74. As a direct and proximate result of this defamation, LaNard has suffered and continues to suffer embarrassment, emotional trauma and distress, loss of reputation, humiliation, anxiety, depression, loss of opportunities (educational and athletic), and other losses.

WHEREFORE, Plaintiff, LaNard Graham, respectfully requests this Honorable Court enter Judgment in his favor and against Defendant Beardon and DCDS, jointly and severally, for all compensatory and non-compensatory damages, punitive damages, treble damages, attorney fees, costs, interest and any other and further relief in favor of Plaintiff which the Court deems appropriate and just.

COUNT V – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

75. Plaintiffs hereby fully incorporate the preceding paragraphs one through seventy-four as though fully re-stated herein.

76. The actions of the Defendants described herein were extreme and outrageous, well beyond the expectations of behavior in civilized society, and particularly so when directing this behavior at a child in their care, who turned out to be innocent.

77. The conduct of the Defendants set forth within this Complaint was intentional and/or reckless by each of the Defendants, and either was known to DCDS or should have been known.

78. The conduct caused the Plaintiff to suffer severe emotional distress.

79. As a direct and proximate result of the horrific way in which Defendants treated him, Plaintiff suffered severe emotional distress for which he has sought treatment.

WHEREFORE, Plaintiff, LaNard Graham, respectfully requests this Honorable Court enter Judgment in his favor and against Defendants, jointly and severally, for all compensatory and non-compensatory damages, punitive damages, attorney fees, costs, interest and any other and further relief in favor of Plaintiff which the Court deems appropriate and just.

COUNT VI – BREACH OF CONTRACT

80. Plaintiffs hereby fully incorporate the preceding paragraphs one through seventy-nine as though fully re-stated herein.

81. Plaintiffs and DCDS contracted on or about June 21, 2016 for LaNard and his brothers to attend school there.

82. At the time of the incident, ample consideration had been paid by Plaintiffs to Defendants, all tuition was paid up to date and LaNard had followed all school rules, keeping Plaintiffs' part of the bargain.

83. The contract includes, among other things, the DCDS Student-Parent Handbook.

84. Defendant was constructively expelled on the basis of false and

misleading information of illegal activity which was easily disproven by medical evidence.

85. Defendants unilaterally breached the contract by providing disparate treatment to LaNard and harassment of the family, and wrongfully expelling him from school, even though tuition was paid and he was punished on the basis of a false accusation, which was known, or should have been known, by Defendants to be false.

WHEREFORE, Plaintiffs respectfully request a Judgment against Defendants, any and all compensatory and non-compensatory relief due to them for breach of the contract and loss of the benefits thereof, and any other and further relief in their favor which the Court deems appropriate and just.

COUNT VII – LOSS OF CONSORTIUM (Wenona and LaNard, Sr., only)

86. Plaintiffs hereby fully incorporate the preceding paragraphs one through eighty-five as though fully re-stated herein.

87. Prior to the subject incident, LaNard's family, including particularly his mother and father, Wenona and LaNard Sr., enjoyed and took comfort in their son LaNard's companionship and affection.

88. At the time of the incident and during much of the aftermath thereof, LaNard was a minor.

89. Following the incident, LaNard became more withdrawn and Wenona

and LaNard, Sr., suffered the loss of the consortium they formerly shared with their son LaNard.

90. This loss of consortium is the direct and proximate result of the incident and the effects thereof, emotional and personal, upon LaNard, resulting in loss of consortium, companionship, affection and emotional support.

WHEREFORE, Plaintiffs Wenona Graham and LaNard Graham, Sr., respectfully request a Judgment against Defendants for any and all compensatory and non-compensatory damages and any other or further relief in their favor which the Court deems appropriate and just.

Dated: March 19, 2019

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JURY DEMAND

The Plaintiffs request a jury trial on all questions of fact raised by the Complaint.