

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

TERRY HOTCHKISS and  
MARY HOTCHKISS, as  
Co-guardians to J. T., a minor,

Case No.: 11-

Plaintiffs,

v

Honorable Thomas L. Ludington

CHRISTINE GARNO, Individually and in Her  
Official Capacity, AND  
MERRILL COMMUNITY SCHOOLS,

Defendants.

\_\_\_\_\_/

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There is no other civil action between these parties arising out of the same transaction or occurrences as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.

COMPLAINT AND JURY DEMAND

NOW COMES Terry Hotchkiss and Mary Hotchkiss, as co-guardians for J. T., a minor, and for his complaint state as follows:

## INTRODUCTION

This is a civil action for damages and such other relief as the law and this Court shall deem permissible, to redress the deprivation of the constitutional rights of the minor Plaintiff, J. T., United States Citizen, who was subjected to unconstitutional strip searches and other unlawful discrimination based upon his race and in violation of his right to full and equal benefit of the law while a student at Merrill Community Schools. This action seeks damages against Christine Garno, Principal of Merrill Community Schools, who implemented the illegal strip searches in her official and individual capacities, under color of law. Merrill Community Schools is joined due to their negligent hiring, failure to take corrective action against employees with a known propensity to implement strip searches, and with a known propensity to engage in unlawful discrimination based upon race. Merrill Community Schools is also joined as a result of their improper policy and/or lack of policy for preventing unconstitutional strip searches of students and unconstitutional discrimination of students based upon race. Merrill Community Schools failed to implement an appropriate policy to prevent unconstitutional strip searches and discrimination based on race, despite the obvious need for such a policy, constituting their intentional and/or extremely recklessness and gross negligence, and deliberate indifference for the constitutional rights of its students.

## JURISDICTION AND VENUE

1. This action is brought pursuant to Article I of the Michigan Constitution, Title 42 U.S.C. § 1983, Title 42 U.S.C. § 1981 and the laws of the State of Michigan.
2. Jurisdiction is proper pursuant to MCLA § 600.605.
3. The amount in controversy exceeds FIFTY THOUSAND (\$50,000) DOLLARS.
4. All events, transactions or occurrences pertinent to this action transpired within the City of Merrill, County of Saginaw, State of Michigan, unless specifically alleged otherwise.

## THE PARTIES

5. Paragraphs 1 through 4 are hereby incorporated by reference.

6. Plaintiff J. T. is a resident of the township of St. Charles, County of Saginaw, State of Michigan. J. T. resides with his grandparents Terry Hotchkiss and Mary Hotchkiss, who were duly appointed co-guardians of J. T. by the Saginaw Probate Court on June 8, 2004.
7. During the events subsequently described in this complaint, Defendant Christine Garno [hereinafter "Garno"] was the principal of Merrill Community Schools and was acting in the capacities of agent, employee, and servant of Merrill Community Schools. Garno is sued in her individual and official capacities.
8. Defendant Merrill Community Schools [hereinafter "Merrill"], is a chartered public school existing by virtue of the constitution and laws of the State of Michigan.

#### STATEMENT OF FACTS

9. Paragraphs 1 through 8 are hereby incorporated by reference.
10. On October 13, 2010, J. T. was a 12 year old, seventh grade student attending Merrill.
11. Following classes on October 13, 2010, J. T. was scheduled to attend football practice at Merrill.
12. At said time, Merrill was hosting a girls' volleyball game in the Merrill gymnasium, at which time, the visiting girls' volleyball team used the Merrill girls' locker room, and the Merrill girls' volleyball team used the Merrill boys' locker room.
13. At said time, volleyball players reported they were missing certain electronic items such as an iPod and an mp3 player.
14. During football practice, J. T. was called from the field by Garno and Garno took J. T. to the teachers' lounge.
15. In the teachers' lounge, Garno instructed J. T. to strip his football jersey, shoulder pads, and over J. T.'s further objection, instructed J.T. to

remove his football pants and girdle, thereby requiring J. T. to expose his genitals.

16. At all times during the search, Garno and J. T. were alone in the teachers' lounge.
17. J. T. is the only African American player on the football team and no other football player was subjected to a strip search.
18. The strip search of J. T. under all the circumstances was unreasonable.
19. The search of J. T. was unreasonable at its inception for the following reasons:
  - a. Other football team players had been in and out of the boys locker room before football practice and J. T. was the only player called from the practice field to be strip searched without legitimate individualized suspicion and while he was the only African American player on the football team.
  - b. It was unreasonable to subject J. T. to a strip search pursuant to which he was required to strip his football gear and clothing and expose his genitals without first attempting to search gym bags, and/or other lockers or containers in which the football team was storing its street clothes during the practice.
  - c. It was unreasonable to not ask the male coach to stop practice and conduct a less intrusive search or inquiry of the entire football team.
20. The strip search of J. T. was not reasonably related in scope to the circumstances justifying the search for the following reasons:
  - a. No drugs or weapons were the object of the search.
  - b. It is very unreasonable to believe that delicate electronic items such as an mp3 player and iPod would be secreted beneath football gear and/or clothing during football practice, since this would inherently destroy the value of any such item.

- c. J. T. was forced to remove his football girdle, thereby exposing his genitals.
- d. J. T. was a 12 year old boy in the early stages of puberty and was subjected to a strip search by his female principal while no other person was present in the room.
- e. It could have been reasonably ascertained by visual inspection that neither an mp3 player nor an iPod was under J. T.'s girdle and it was unreasonable and unnecessary to direct J. T. to remove his girdle, exposing his genitals.
- f. On a prior incident, when J. T. was in the sixth grade and while he was a spectator at a girl's basketball game at the Merrill gymnasium, Garno instituted illegal searches of J. T., while she was looking for a red dot laser pointer.

At that time, another spectator took the laser out of J. T.'s backpack, activated the laser during the game and then put the item back in J. T.'s backpack. J. T. was called from the bleachers to the main office at which time Garno instructed J. T. to take off his shoes, after he did this she proceeded to search his hoodie, hood and pockets. She then did a pat down search of J. T.'s front and back pants pockets. She then went through J. T.'s backpack and found the laser.

Garno then informed J. T. that he was not in any trouble. However, she subsequently enrolled him in the one day in school suspension program for the laser incident.

The seventh grade search of J. T., wherein he was forced to expose his genitals is objectively ascertained as an unreasonable and strange progression of unconstitutional searches, in an attempt to humiliate and control J. T. or for other unjust motives.

COUNT I

VIOLATIONS OF THE MICHIGAN CONSTITUTION BY GARNO'S STRIP SEARCHES

21. Paragraphs 1 through 20 are hereby incorporated by reference.
22. Through the conduct described, Garno deprived J. T. of his clearly established constitutional protected by the Michigan Constitution, including but not limited to:
  - a. His right to be free from unreasonable search and seizures, as protected by Article 1, section 11;
  - b. His right to due process and to be free form intrusions upon his liberty and bodily integrity as protected by Article 1 section 17;
23. The search was objectively unreasonable in light of the circumstances described.
24. The conduct of Garno was sufficiently extreme and outrageous as to shock the conscience of this Court and of society.
25. As a direct and proximate result of the conduct of Garno as complained herein, J. T. has suffered damages and injuries including but not limited to:
  - a. J. T.'s loss of his right to be free from unreasonable search and seizures,
  - b. J. T.'s loss of his right to be free from deprivation of his liberty without due process of law,
  - c. Extreme humiliation, shock, fear, anxiety, and mental anguish.

WHEREFORE Plaintiff requests judgment against Defendant Garno in excess of FIFTY THOUSAND (\$50,000) DOLLARS together with costs, interest, and attorney fees, in accordance with the law.

COUNT II

VIOLATIONS OF THE 42 U.S.C. § 1983 BY GARNO'S STRIP SEARCHES

26. Paragraphs 1 through 25 are hereby incorporated by reference.
27. Through the conduct described, and while acting under Color of Law, Garno violated 42 U.S.C. § 1983 by depriving J. T. of his Fourth Amendment Constitutional rights to be free from unreasonable searches and seizures.
28. The conduct of Garno was sufficiently extreme and outrageous as to shock the conscience of this Court and of society.
29. As a direct and proximate result of the conduct of Garno as complained herein, J. T. has suffered damages and injuries including but not limited to:
  - a. J. T.'s loss of his right to be free from unreasonable search and seizures,
  - b. J. T.'s loss of his right to be free from deprivation of his liberty without due process of law,
  - c. Extreme humiliation, shock, fear, anxiety, and mental anguish.

WHEREFORE Plaintiff requests judgment against Defendant Garno in excess of FIFTY THOUSAND (\$50,000) DOLLARS together with costs, interest, and attorney fees, in accordance with the law.

COUNT III

VIOLATION OF TITLE 42 U.S.C. § 1981 BY GARNO

30. Paragraphs 1 through 29 are hereby incorporated by reference.
31. Through the conduct described, Garno, while acting under Color of Law, deprived J. T. of his right to the full and equal benefit of the law under 42 U.S.C. § 1981.
32. The conduct of Garno was sufficiently extreme and outrageous as to shock the conscience of this Court and society.
33. As a direct and proximate result of the conduct of Garno as complained herein, J. T. has suffered damages and injuries including but not limited to:
  - a. J. T.'s loss of his right to full and equal benefit of the law under 42 U.S.C. § 1981.
  - b. Extreme humiliation, shock, fear, anxiety, and mental anguish.

WHEREFORE Plaintiff requests judgment against Defendant Garno in excess of FIFTY THOUSAND (\$50,000) DOLLARS together with costs, interest, and attorney fees, in accordance with the law.

COUNT IV

VILATIONS OF THE STATE OF MICHIGAN'S CONSTITUTION AND  
VIOLATIONS OF TITLES 42 U.S.C. § 1983 AND 42 U.S.C. § 1981 BY  
MERRILL COMMUNITY SCHOOL

34. Paragraphs 1 through 33 are hereby incorporated by reference.
35. Merrill, under Color of Law, practiced and tolerated policies and customs which demonstrated deliberate indifference to violations of the Constitutional Rights of its students. In other instances, Merrill promoted and fostered policies and customs which violated the Constitutional Rights of students. These policies and customs included:
  - a. Negligent hiring of employees;
  - b. Failure to train teachers and principals to protect the Constitutional Rights of students.
  - c. Failure to train teachers and principals regarding appropriate and reasonable searches of students.
  - d. Failure to train teachers and principals to refrain from strip searches of students.
  - e. Failure to train teachers and principals to assure that African American students are provided full and equal benefit of the law.
  - f. Failure to train teachers, principals, and other school disciplinary officials to not unfairly discriminate against African American students based upon their race.
  - g. Promoting, encouraging, fostering, and or allowing an unfair and unconstitutional disciplinary system within the school system. Pursuant to this system, under Color of Law, African American students like J. T. and his sibling were punished more harshly than Caucasian students who were involved in the same incident as the African American student; and while the Caucasian students were equally or more culpable than the African American student, in

violation of the Michigan Constitution, 42 U.S.C. § 1983 and 42 U.S.C. § 1983. As a direct and proximate result of Merrill's conduct, Plaintiff has suffered damages and injuries, including:

- a. Loss of right to be free from unreasonable searches as guaranteed by the Michigan Constitution and the United States Constitution.
  - b. Loss of Right to full and equal benefit of the law as guaranteed by the Constitution of Michigan and the Constitution of the United States.
  - c. Humiliation, shame, and other mental anguish, past, present, and future.
36. Merrill's customs, policies and deliberate indifference toward J. T.'s Constitutional Rights and infringement upon same, was sufficiently extreme and outrageous to shock the conscience of this Court and of society.
39. Plaintiff further requests actual compensation and punitive and/or exemplary damages as to both Defendants.

WHEREFORE, Plaintiff requests Judgment against Defendants in excess of FIFTY THOUSAND (\$50,000) DOLLARS, together with costs, interest and attorney fees, in accordance with the law.

Dated: June 9, 2011

/S/ \_\_\_\_\_  
JAMES HESSION (P42387)

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DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff Terry Hotchkiss and Mary Hotchkiss, as co-guardians to J. T., a minor, and hereby demand trial by jury.

Dated: June 9, 2011

/S/ \_\_\_\_\_  
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