

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DARUL AMAANAH ACADEMY,)
TAHSIYN ISMAA'EEL, IMAN)
ISMAA'EEL, individually and for the)
benefit of her minor children, MIA)
MILLER, individually and for the benefit of)
her minor children, DAEWANNA WORD,)
individually and for the benefit of her minor)
child, BAHJEH RIZEQ, individually and for)
the benefit of her minor child and TIANA)
RUSSELL, individually and for the benefit)
of her minor child,)

Plaintiffs,)

v.)

C.A. No. 2018-____-____)

CITY OF WILMINGTON, WILMINGTON)
DEPARTMENT OF PARKS AND)
RECREATION, MAYOR MICHAEL S.)
PURZYCKI, in his official and personal)
capacities and KEVIN F. KELLEY, SR., in)
his official and personal capacities,)

Defendants.)

VERIFIED COMPLAINT

Plaintiffs Darul Amaanah Academy (“Darul Amaanah”); Tahsiyn Ismaa’eel; Iman Ismaa’eel on behalf of herself and for the benefit of her minor children W.B. and M.B.; Mia Miller on behalf of herself and for the benefit of her minor children Y.A.M.-W. and Y.K.M.-W.; Daewanna Word on behalf of herself and for the benefit of her minor child S.W.T.; Bahjeh Rizeq on behalf of herself and for the benefit of her minor child M.A. and Tiana Russell on behalf of herself

and for the benefit of her minor child S.J. (collectively, “Plaintiffs”), by and through their undersigned attorneys, hereby bring this Verified Complaint against the City of Wilmington (the “City”), the Wilmington Department of Parks and Recreation (the “Parks Department”), Mayor Michael S. Purzycki (“Mayor Purzycki”) and Director of the Wilmington Department of Parks and Recreation Kevin F. Kelley, Sr. (“Director Kelley” and, with the City, the Parks Department and Mayor Purzycki, “Defendants”). Plaintiffs allege, upon personal knowledge and upon information and belief, including the investigation of counsel and review of publicly available information, as follows:

NATURE OF THE PROCEEDINGS

1. Each summer, children across the country spend fun, carefree days at their local swimming pools and water parks. Yet, for a community of Muslim children in Wilmington, Delaware, this summer has been drastically different. Instead of enjoying time at the pool with their family and friends, they have been subjected to a pattern of discriminatory treatment by municipal employees of the City working at public pools.

2. Over twenty years ago, the predominately African-American Muslim community in Wilmington founded Darul Amaanah, a nonprofit organization that strives to teach local children basic life skills and instill them with pride in their culture and faith. Every year, Darul Amaanah holds its eagerly anticipated

summer camp, an educational program through which the children can make new friends, meet positive role models, and enjoy fun summer activities, including swimming in local pools.

3. The City, Mayor Purzycki, the Parks Department and Director Kelley are responsible for the operation and supervision of a number of swimming pools that are open and available to the public during the summer. The staff of Darul Amaanah's summer camp regularly takes its students, who are between five and twelve years old, to the City's public pools, including the Foster M. Brown Community Pool ("Foster Brown"), which is directly adjacent to Darul Amaanah's facility. In fact, Foster Brown is located so close to Darul Amaanah – less than 50 yards¹ away – that its staff and children can see and hear patrons splashing and enjoying the water from the facility's classrooms.

4. Many of the children at Darul Amaanah, consistent with their sincerely held religious beliefs, wear modest clothing that covers different parts of their bodies when out in public, including while at the pool. For years, these children have swum at the City's public pools, including Foster Brown, without issue. But in the 2018 summer season, without justification, Defendants and their

¹ A July 17, 2018 article published by the Delaware News Journal is attached hereto as Exhibit A. The photograph featured on the first page of that article demonstrates the proximity of Foster Brown to Darul Amaanah's facility, a cream-colored building with blue doors.

employees have denied these children access to the pools and subjected them to discriminatory and harassing conduct, simply on account of the Darul Amaanah children's efforts to adhere to their religious beliefs.

5. Defendants' only excuse for the unjust treatment of the children at Darul Amaanah – many of whom are preschool age – is that they are enforcing a policy that prohibits individuals from wearing cotton-based clothing in public pools. The reality is that children in public swimming pools across the City have long worn cotton-based clothing. For many local children, these items are the only garments that they can afford. And although many children wear cotton clothing in the City's pools, only one group has been repeatedly targeted through the City's purported "no cotton" policy – the children of Darul Amaanah, whose clothing differs from that of other children's only in that Defendants' employees know the children wear it because of their religious beliefs.

6. State regulations do not prohibit cotton clothing in public swimming pools. Nor does the current signage posted at City pools, which states that patrons must wear "proper attire" at the pools and that "cutoff jeans" are prohibited.

7. Throughout the summer, the staff of Darul Amaanah, along with the parents of the children against whom the City has discriminated, have raised concerns and sent complaints to Defendants and other City employees about their mistreatment. Those concerns have largely gone unaddressed. Instead, Plaintiffs

have received ever-shifting explanations about the purported “no cotton” policy and why it is being used against them, and the City has expressed outright support for one pool manager in particular who repeatedly discriminated against the children at Darul Amaanah. As public outcry about the treatment of these young children mounted, Mayor Purzycki’s office publicly issued a press release containing an “apology.” Yet, he never met with the children or their families, and privately continued to condone and attempt to justify the City’s ongoing discriminatory conduct.

8. In the summer of 2018, Wilmington city pools were open to the public at large from June 24 to August 18, three weekdays per week. Of the 24 potential pool days at Foster Brown, the children at Darul Amaanah enjoyed only *one* harassment free day the entire summer.

9. Foster Brown staff forced the children to leave or denied them entry outright for about half of the pool season. During the last *fourteen* days of the season, the children did not dare return to Foster Brown, despite seeing the pool’s cool blue waters each day of summer camp from Darul Amaanah’s classrooms and backyard, because they knew they would be turned away or face discrimination if they tried. Defendants’ wrongful discriminatory conduct stole the entire 2018 swim season from these children. 2018 is a summer the children will always remember, but for the wrong reasons.

10. The experiences of this summer have shaken the Darul Amaanah community to its core. The central mission of Darul Amaanah is to affirm its students' religious and cultural identities, a task undermined by Defendants' patterns of discriminatory conduct and behavior. As a result of their treatment at Foster Brown, many of the children have come home in tears, shattered by their treatment by City employees and questioning whether their Islamic faith makes them unwelcomed and unwanted. Some of the children no longer wish to wear their religious clothing – including their headscarves – because they are afraid the City will continue to discriminate against them.

11. These events have been emotionally and psychologically damaging to the children and their families, not only because of the discriminatory treatment against them but also because of Defendants' ongoing failure to meaningfully respond to their complaints. Indeed, even after Mayor Purzycki's office finally issued a statement of general apology when one of these incidents went public, the discrimination against Darul Amaanah persisted. In fact, the Foster Brown staff once again prohibited the children from using the pool just two days after this "apology." Defendants have given Plaintiffs every reason to believe that they will experience the exact same treatment once the pool season begins again next year.

12. Plaintiffs call upon this Court's proud history of remedying civil rights violations and ask it to ensure that these children will not be subjected to

unequal accommodation at the City's public pools again. *See Belton v. Gebhart*, 87 A.2d 862 (Del. Ch. 1952), *aff'd*, 91 A.2d 137 (Del. 1952), *aff'd sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).

13. Plaintiffs bring this action to remedy the continuing violation of their civil rights secured by Article I, Section 1 of the Delaware Constitution; the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983; and Titles II and VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(a) and (d). Simply put, Plaintiffs demand that these children get the fair and equal opportunity to enjoy the City's pools, free from harassment and discrimination on the basis of their religion and race, as guaranteed to them by the constitutions of this state and nation.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the state and federal constitutional violations alleged herein under 10 *Del. C.* § 341.

15. As detailed herein, the harm Plaintiffs face – namely, the repeated violation of their state and federal constitutional rights, and the resulting psychological and emotional trauma Defendants' discriminatory conduct has caused these young children – is irreparable and can be adequately remedied only through injunctive relief.

16. This Court has concurrent jurisdiction with the federal courts to hear claims involving violations of the U.S. Constitution under 42 U.S.C. § 1983.

17. All of the events giving rise to the claims alleged herein arose in Wilmington, Delaware. Venue is therefore proper in this Court.

PARTIES

18. Plaintiff Darul Amaanah Academy is a nonprofit organization founded in 1997 and based in Wilmington, Delaware. It provides Islamic classes for children, including Arabic literacy courses. For the past three years, Darul Amaanah has conducted a youth summer camp aimed at connecting the children with other young local Muslims, engaging them in fun summer activities, and surrounding them with positive role models.

19. Plaintiff Tahsiyn Ismaa'eel is a resident of Wilmington, Delaware. She is an African American Muslim and serves as the principal of the Darul Amaanah Academy and director of its youth summer camp. In accordance with her religious beliefs, Tahsiyn Ismaa'eel wears a headscarf with a partial covering of her face.

20. Plaintiff Iman Ismaa'eel is a resident of Wilmington, Delaware. Iman Ismaa'eel has two children, W.B., who is twelve years old, and M.B., who is nine years old. Iman Ismaa'eel and her children are African American Muslims, and

her children attend Darul Amaanah's summer camp. Iman Ismaa'eel brings this action individually and for the benefit of her minor children W.B. and M.B.

21. Plaintiff Mia Miller is a resident of Wilmington, Delaware. Ms. Miller has two daughters, Y.A.M.-W., who is six years old, and Y.K.M.-W., who is five years old. Ms. Miller and her children are African American Muslims, and her children attend Darul Amaanah's summer camp. Ms. Miller brings this action individually and for the benefit of her minor children Y.A.M.-W. and Y.K.M.-W.

22. Plaintiff Daewanna Word is a resident of Wilmington, Delaware. Ms. Word has a daughter, S.W.T., who is ten years old. Ms. Word and her daughter are both African American Muslims, and her daughter attends Darul Amaanah's summer camp. Ms. Word brings this action individually and for the benefit of her minor child S.W.T.

23. Plaintiff Bahjeh Rizeq is a resident of Delaware County, Pennsylvania. Ms. Rizeq has a daughter, M.A., who is five years old. Ms. Rizeq and her daughter are Muslim women of Arab descent, and her daughter attends Darul Amaanah's summer camp. Ms. Rizeq brings this action individually and for the benefit of her minor child M.A.

24. Plaintiff Tiana Russell is a resident of Wilmington, Delaware. Ms. Russell has a daughter, S.J., who is twelve years old. Ms. Russell and her daughter are both African American Muslims, and her daughter attends Darul Amaanah's

summer camp. Tiana brings this action individually and for the benefit of her minor child S.J.

25. Defendant City of Wilmington is a municipal corporation or political subdivision organized and existing under the laws of the State of Delaware. Upon information and belief, the City is a recipient of federal financial assistance.

26. Defendant Wilmington Department of Parks and Recreation is a division of the City of Wilmington.

27. Defendant Michael S. Purzycki is the Mayor of the City of Wilmington, with supervisory authority over the Parks Department. He is sued in his official and personal capacities.

28. Defendant Kevin F. Kelley, Sr. is the Director of the Parks Department, with supervisory authority over all of the officers and operations of the Parks Department. He is sued in his official and personal capacities.

FACTUAL ALLEGATIONS

A. Darul Amaanah And Its Summer Youth Camp Foster Pride In Its Students' Culture And Islamic Faith.

29. Founded in 1997, Darul Amaanah is a nonprofit organization based in Wilmington, Delaware. Darul Amaanah's mission is to teach local children basic life skills and instill them with pride in their culture and faith. To that end, Darul Amaanah enrolls students from preschool to high school and provides classes in both standard curriculum subjects and Islamic studies.

30. While Darul Amaanah is open to children of all races, religions and genders, it primarily serves the local African American Muslim community. As such, in addition to providing these children with a safe and positive learning environment, Darul Amaanah encourages its students to cherish their own cultural values and heritage and works to instill them with positive self-esteem. Students are also taught to develop critical thinking skills and encouraged to become contributing members of their larger Wilmington community.

31. As part of its goal of instilling confidence and knowledge in its students, Darul Amaanah actively works with its students to educate them about their Islamic faith and strives to create a safe and comfortable environment where they can express their religious beliefs.

32. For many of Darul Amaanah's students and their parents, one of the core principles of their Islamic religious beliefs is modesty. That core belief has implications for all aspects of their lives, and they express this modesty by exhibiting humility and respect for others both through their interpersonal interactions and by dressing in a certain manner. Out of adherence to their religious beliefs, many students at Darul Amaanah wear modest clothing that covers different parts of their bodies in public. For some students, this may mean covering their legs by wearing pants or leggings, or covering their arms by wearing a long-sleeve shirt. For others, it means covering their hair with a headscarf.

33. For over a decade, Darul Amaanah's members have staunchly advocated for civil rights in Wilmington. They have volunteered to teach Islamic studies in local prisons, provided free clothing and food to those in need and, for a time, offered transitional housing to women recently released from prison. As part of its efforts, Darul Amaanah has conducted a youth summer camp since 2015. The camp aims to connect the children with other young local Muslims, engage them in fun summer activities, and surround them with positive role models. Many of the children look forward to this camp all year and view it as the highlight of their summer. Both the parents and children love having a safe and fun environment where the students can learn, play and receive positive reinforcement about who they are and what they believe.

34. This year, the Darul Amaanah youth summer camp began on June 11, 2018. Approximately 25 children, ages five to twelve years old, attended the summer camp.

35. Tahsiyn Ismaa'eel currently serves as the principal of Darul Amaanah and director of its annual youth summer camp. In that capacity, she is responsible for overseeing the camp's programming and working with the students enrolled in the program, as well as with their parents. In accordance with her religious beliefs, Tahsiyn Ismaa'eel wears a headscarf with a partial covering of her face.

B. The Students Of Darul Amaanah Have Been Repeatedly Subjected To Discriminatory Treatment At Local Swimming Pools.

36. Foster Brown is located immediately adjacent to and less than 50 yards away from Darul Amaanah's facility. Students at Darul Amaanah need only walk out the door and around a chain-link fence to enter the front gate of Foster Brown. They do not even need to cross the street.

37. For the past three years, Tahsiyn Ismaa'eel has taken the students at Darul Amaanah's annual youth summer camp to local swimming pools operated and maintained by the City, including Foster Brown. The pools are staffed by Red Cross-certified lifeguards, and can be accessed without cost during public swimming hours. The City's website lists the location and hours of operation of five "public swimming pools operated by the City of Wilmington's Parks and Recreation Department."

38. The summer 2018 swim season lasts approximately eight weeks, beginning on June 24 and ending on August 18, 2018. During the week, Foster Brown is open to the general public – including Darul Amaanah staff and students – on Mondays, Thursdays and Fridays. Accordingly, students at Darul Amaanah should have been permitted to enjoy the pool at Foster Brown no fewer than 24 weekdays during the 2018 swim season.

39. The time spent at the City's pools is an integral part of the Darul Amaanah summer camp: the students enjoy their time at the pools, and Tahsiyn Ismaa'eel and the other staff rely on the pools as a low-cost, enjoyable activity for the students that provides them with critical water safety skills. Other summer camps do the same thing.

40. When the students of Darul Amaanah visit the City's swimming pools, many of them dress modestly, as required by their religious beliefs. Specifically, some of the students cover their legs by wearing pants or leggings, some of them cover their arms with t-shirts or long-sleeved shirts, and some of them cover their hair with a headscarf. Such clothing does not interfere with the students' ability to swim safely in the pools.²

41. During each of the past three years when Darul Amaanah visited Foster Brown and other City pools dressed in their modest attire, the children swam and enjoyed the facilities without incident. Many other patrons, including non-Muslim individuals, who swam at Foster Brown and other City pools wear similar clothing items such as t-shirts, tank tops, cutoff jeans and hand-me-downs, which are often more affordable than traditional swimwear. Until this summer, Tahsiyn Ismaa'eel and the other Darul Amaanah staff were not aware of

² Photographs of the type of clothing worn by Darul Amaanah's students at the pool are attached hereto as Exhibit B.

employees at Foster Brown complaining about what the children – Muslim or otherwise – were wearing.

42. However, suddenly and without notice, that changed. During the course of this summer, the students of Darul Amaanah have been subjected to discriminatory treatment at City pools simply because of their religion.

C. The First Incident at Foster Brown.

43. At approximately 3:00 p.m. on June 25, 2018, the very first weekday of the 2018 swim season, Tahsiyn Ismaa'eel and her staff left the Darul Amaanah facility with a group of seventeen students to swim at Foster Brown.

44. Within minutes of their arrival, the Foster Brown manager, Glenda Pinkett, began to harass the children from Darul Amaanah. Ms. Pinkett approached a group of four five- and six-year-old girls wearing headscarves; two of whom were wearing specially tailored Islamic swimwear made of a stretchy synthetic material. Tahsiyn Ismaa'eel, who wears a headscarf with a partial covering of her face, was supervising the girls. In a hostile manner and with a raised voice, Ms. Pinkett told the girls to leave the pool immediately because of “what they were wearing.” When a Darul Amaanah staff member asked Ms. Pinkett what she meant, Ms. Pinkett pointed specifically at the girls wearing headscarves and said “they can’t wear all that.”

45. Tahsiyn Ismaa'eel explained to Ms. Pinkett that the children were wearing a combination of t-shirts, leggings and headscarves in accordance with their religious beliefs, but that she would inform their parents of Ms. Pinkett's concerns. Tahsiyn Ismaa'eel informed Ms. Pinkett that the children of Darul Amaanah had worn such clothing for years at Foster Brown without issue. She also observed that many of the children at the pool who were not with Darul Amaanah were wearing similar clothing like t-shirts, leggings and cutoff jeans, but were not disturbed by the Foster Brown staff or asked to exit the pool as a result of their clothing.

46. In response, Ms. Pinkett continued to insist that the children would have to leave the pool while in "those clothes." Tahsiyn Ismaa'eel asked Ms. Pinkett and the other Foster Brown staff if they could identify any specific policy banning such clothing and requiring the children's removal from the pool. When they could not, Tahsiyn Ismaa'eel noted to Ms. Pinkett that no such policy was included in the rules posted publicly at Foster Brown.

47. During the incident, Plaintiff Bahjeh Rizeq, whose daughter M.A. was forced to leave the pool, also asked Ms. Pinkett why her child was being targeted. Ms. Pinkett informed Ms. Rizeq that it was "because of what she's wearing" and "clothes like that," pointing to her headscarf. When Ms. Rizeq informed Ms. Pinkett that her daughter wore those clothes out of her religious beliefs and had

never had problems with wearing them at Foster Brown over the years, Ms. Pinkett responded, “Not anymore. I’m the new manager now.”

48. After demanding that the girls leave the pool, Ms. Pinkett continued to patrol the outside of the pool and to speak loudly to other patrons about the children’s clothing, pointing to the Darul Amaanah students. Ms. Pinkett referred to the students as “the Muslims,” made derogatory comments about them to other patrons and gestured with her hands around her face and head to mimic their headscarves.

49. Five to ten minutes after Ms. Pinkett asked the Darul Amaanah girls to exit the pool, the Foster Brown staff contacted a Wilmington police officer sitting in a patrol car outside of Foster Brown and requested her assistance. Although police officers frequently patrol the vicinity around City pools, they rarely exit their patrol vehicles or enter pool facilities.

50. The uniformed police officer then entered the facility and asked a member of Darul Amaanah’s staff when their group would be leaving. The officer also informed Tahsiyn Ismaa’eel that “there are people waiting to get in and waiting for you to leave.” Tahsiyn Ismaa’eel found the officer’s behavior upsetting and puzzling because, as she noted to her, another group of young campers had been at Foster Brown for a longer period of time and were not asked

to leave. Further, Foster Brown did not appear overcrowded, and it did not appear that another group of patrons was waiting to enter.

51. Upon information and belief, neither the police officer nor Foster Brown staff asked any other patrons to exit the pool that day during its operational hours. In addition, another patron at Foster Brown noted to a staff member of Darul Amaanah that when she was at Foster Brown the day before, swimmers were allowed to swim in whatever clothing they wanted.

52. Deeply upset by how they were being treated and feeling like they had no other choice, Tahsiyn Ismaa'eel, her staff and the Darul Amaanah students felt compelled to leave Foster Brown around 3:45 p.m., just 45 minutes after arriving. Many of the children who witnessed these events were also upset and confused. The four students forced out of the pool included Y.A.M.-W. and Y.K.M.-W., both of whom are preschool-aged African American Muslim girls, and M.A., who is a five-year old Muslim girl of Arab descent.

D. Complaints About The First Incident Go Unresolved.

53. The night of June 25, Tahsiyn Ismaa'eel emailed Director Kelley about Darul Amaanah's experience at Foster Brown. Director Kelley telephoned Tahsiyn Isma'eel and told her that he would get it "straightened out."

54. The next day, on June 26, Tahsiyn Ismaa'eel sent a follow-up email to Director Kelley describing the June 25, 2018 incident. Her complaint stated, in part:

I'm writing to express our concern over the unprofessional way our camp was treated by Ms. Glenda Pinkett at Brown pool Monday June 25th. Ms. Pinkett harassed my staff from the time we entered the pool until we finally left. In fact, the unprofessional way in which our group was talked about to other patrons at the pool made me so uncomfortable that, I decided to cut our outing short and leave all together.

We have been utilizing Brown pool for four years. We have never experienced staff that was as rude and unprofessional as Ms. Pinkett. No one should be made to feel unwelcomed at a City owned public facility.

I personally feel that our campers were discriminated against because the entire time that Ms. Pinkett harassed us, another camp was allowed to enjoy the pool area freely without being talked about or harassed.³

55. Additionally, Plaintiff Daewanna Word, whose ten-year old daughter S.W.T. was present at Foster Brown the day before, sent an email to the City about her concerns over the June 25 incident. Her email, which had the subject line "Discrimination," stated:

I'm writing this formal complaint on behalf of Duraal Ameenah Islamic Summer Camp located at People Settlement on 8th and Lomabard St. My 10 year old Daughter who attends the camp for the summer had experience discrimination along with the other campers , when they went for a swim at Fletcher Brown Swimming Pool located

³ A copy of this email is attached hereto as Exhibit C.

on 7th and Lombard on Monday June 25,2018. The swimmers were told they could not wear their attire inside the pool or nothing but a bathing suit. As Muslim women , girls we cover our body's no matter what activities we are engaging in , and it should be an except religion wise that Muslims be allowed to wear covering inside the pool. For example tights , shorts , head covering , and long sleeve shirt should be permissible for people with religion reasons. No one should feel like the can't still be themselves when visiting a public pool. Our children should not have to be force to wear a bathing suit which is not permissible for our girls religion wise . Our campers we also asked numerous times when were they leaving though out their time swimming. For my ten year old to come home and tell me that the people at the pool didn't like them because they were Muslim is unexpectable. I'm very upset along with other parents and feel as if our children should be treated the same as everyone else who wants to come swim at a public city pool . I look forward to hearing from you and hope we can resolve this issue without having take it any further.⁴

56. Ms. Word was asked to provide a contact number because “Director Kelley would like to speak with you,” which she provided, but Ms. Word never heard from Director Kelley or anyone else from the City concerning the June 25 incident.

E. The Second Incident at Foster Brown.

57. The June 25 incident was not an isolated occurrence.

58. June 28, 2018 was the very next day that Foster Brown was open to the public and Darul Amaanah for swimming. That day, Tahsiyn Ismaa'eel again took a group of students to Foster Brown to go swimming in the afternoon.

⁴ A copy of this email is attached hereto as Exhibit D.

However, shortly after their arrival, and just as Darul Amaanah students were beginning to enter the pool, Ms. Pinkett again approached a group of four five- and six-year old girls in the water, who were being supervised by Tahsiyn Ismaa'eel. This time, however, Ms. Pinkett reached around Tahsiyn Ismaa'eel to tap the young students on the shoulders and rudely informed them that they had to get out of the pool. Tahsiyn Ismaa'eel felt physically intimidated and the entire group left the pool shortly thereafter.

59. Tahsiyn Ismaa'eel then called Director Kelley and reported that Darul Amaanah was being harassed yet again at Foster Brown. Shortly after, Director Kelley and Shawn Baker, program director of the Parks Department, arrived at Foster Brown. After a discussion with Foster Brown staff and Tahsiyn Ismaa'eel, Director Kelley said that "the kids can swim today." Director Kelley told Darul Amaanah that his office would schedule a parent meeting in the coming days.

60. As Darul Amaanah prepared to leave Foster Brown for the day, a lifeguard whom Tahsiyn Ismaa'eel has known for years told her that the students were being removed from the pool "because the cotton" they were wearing "clogs the filtration system." This was the first time that Tahsiyn Ismaa'eel or the Darul Amaanah staff had been told that the "cotton" the students were wearing was an issue.

F. The Third Incident at Foster Brown.

61. After receiving assurance from Director Kelley that Darul Amaanah students could swim at Foster Brown, Darul Amaanah staff and students arrived at Foster Brown the very next day for an afternoon swim. But again, the Foster Brown staff targeted children at Darul Amaanah for wearing “cotton” clothing, while leaving other swimmers wearing cotton undisturbed. An email from Tahsiyn Ismaa’eel to Director Kelley described an increasingly tense and hostile confrontation:

Ms. Pinkett appeared to be antagonistic as she walked very close to me between myself and campers several times early in our visit to the pool. Then as we began to leave the pool, Ms. Pinkett approached me to reiterate that the City would be enforcing the “No cotton” rule for swim wear in the pool. When I casually informed her that you were meeting with the parents that evening, she became irritated. She, once again, more forcefully, repeated that swimmers would no longer be allowed to get in the pool while wearing cotton. I once again reiterated that this is a matter for the parents. She got louder. At this point I asked her, ‘Can’t we just be professional about this?’ She belligerently responded, ‘We can be professional, we can talk like grown women!’ Feeling shocked and threatened, I said, ‘Please don’t talk to me.’ At this point, Ms. Pinkett got in my face and more loudly stated, ‘I can talk to you if I want to.’ It was at this point, feeling more afraid, I quickly gathered my campers and left the pool grounds. Still feeling uneasy about the harassment I had just suffered for a third time in less than two weeks, I complained to you in the meeting with the parents.⁵

⁵ A copy of this email is attached hereto as Exhibit E.

62. Despite Tahsiyn Ismaa'eel's attempts to deescalate the situation and shield her campers from any hostility she received from Ms. Pinkett, a group of young campers witnessed this exchange and became fearful. Yet again, Darul Amaanah staff felt forced to gather the students and leave the pool.

G. Director Kelley Doubles Down On The City's Purported "No Cotton" Policy.

63. After receiving numerous phone calls and emails from Darul Amaanah staff and parents, Director Kelley and Mr. Baker finally agreed to meet with some of the parents on June 29, 2018. That night, Director Kelley and Mr. Baker met with Darul Amaanah staff and parents at the Darul Amaanah facility. At the meeting, the parents explained that the clothing their children wore was to comply with their religious beliefs. The parents stated that they had visited Foster Brown and other City pools for years and had never heard of a "no cotton" policy. The parents noted that there were many other children wearing cotton-based clothing, including prohibited cutoff jeans, and the pool staff had not removed those children from the pool. They also expressed their fears for the safety of their children at Foster Brown, particularly given the escalating hostility from the staff.

64. In response, Director Kelley and Mr. Baker repeatedly praised Ms. Pinkett as an "excellent" employee. Director Kelley also refused to address any of the specific incidents raised by the Darul Amaanah staff and parents, including Ms.

Pinkett's hostile behavior. Director Kelley doubled down on the "no cotton" policy, contending that cotton-based clothing affects the pool's filtration system and presents a safety issue because "the fabric could become heavy and make the hijab [headscarf] unsafe."

65. When pushed by Darul Amaanah staff and parents, Director Kelley conceded that the City does not have a written "no cotton" policy. Rather, at the meeting, Director Kelley presented a sign identical to those posted at all City pools, which stated that patrons must wear "proper attire," and that "cutoff jeans" are prohibited.

66. At the conclusion of the meeting, Director Kelley agreed to let the Darul Amaanah students wear cotton-based clothing until he formally "updated" the policy to reflect the "no cotton" policy in writing.

67. July 2, 2018 was the next weekday that Foster Brown was open to the public following the meeting with Director Kelley and Mr. Baker. The children went to the pool that day and swam. It was the only day throughout the entire 2018 pool season that the Darul Amaanah children swam at Foster Brown without incident.

H. The Fourth Incident at Foster Brown.

68. On July 5, 2018, Tahsiyn Ismaa'eel and the children of Darul Amaanah returned to the pool. Incredibly, Ms. Pinkett again informed Tahsiyn Ismaa'eel that the children at Darul Amaanah could not swim due to their clothing.

69. The following day, Tahsiyn Ismaa'eel emailed Director Kelley.⁶ Director Kelley responded that until new signs are installed, the children could swim.

I. The Fifth Incident at Foster Brown.

70. Only four days later, on July 9, 2018, Foster Brown staff yet again raised the purported “no cotton” policy as soon as the children of Darul Amaanah arrived at the pool. That day, the City’s aquatics director – who rarely visits City pools – was at Foster Brown when Darul Amaanah arrived. The aquatics director informed the group that the “no cotton” policy would continue to be enforced going forward.

71. That evening, Tahsiyn Ismaa'eel sent another email to Director Kelley.⁷ Tahsiyn Ismaa'eel’s email noted, “Unfortunately, in spite of your assurance that swimmers could swim in cotton for now ... we were harassed again today regarding two of our preschoolers wearing cotton in the pool. ... I hope we

⁶ See Exhibit E.

⁷ A copy of this email is attached hereto as Exhibit F.

can get to the bottom of this ongoing harassment.” Director Kelley did not respond to Tahsiyn Ismaa’eel’s email.

J. The Sixth Incident at Foster Brown.

72. Later that week, the Darul Amaanah students were temporarily permitted to swim at Foster Brown. One of the children from Darul Amaanah, a five-year old girl, was struggling to swim in the pool as some older kids splashed her with water. Despite her cries for help, the lifeguard on duty initially refused to intervene. After several minutes, the lifeguard jumped into the water to help her. Darul Amaanah staff later heard the lifeguard complaining to another patron that she “had to jump in to get one of *their* kids,” referring to and gesturing toward Darul Amaanah.

73. Upset about this continuous mistreatment from the staff and no longer feeling safe, the Darul Amaanah group gathered their belongings and left the pool.

K. Mayor Purzycki Issues a Public Statement.

74. On July 14, 2018 – after receiving multiple written complaints from Darul Amaanah staff and parents reporting the discriminatory treatment the group received at Foster Brown – Mayor Michael Purzycki finally issued a written

statement through his deputy chief of staff for policy and communication, John Rago.⁸

75. Like Director Kelley, Mayor Purzycki's statement defended the "no cotton" policy, noting that cotton garments are a safety concern because cotton is absorbent and can become heavy when it gets wet. The statement stated, in part, that "[t]here are city rules and regulations designed to ensure the safety of those who use the pools. One of the rules requires that all swimmers wear proper swimming attire." Mayor Purzycki's statement also noted that cotton is harmful to pool filtration systems. According to Mr. Rago, new signage at the pool will read: "Swimmers must wear proper swimwear (swimwear composed of Nylon, Lycra, Spandex, and Polyester is permitted, but cotton and wool clothes are not permitted)." After the statement was issued, Mayor Purzycki's office declined to be interviewed by the press about the incidents at Foster Brown.

76. In response to escalating public outcry about the treatment of the children at Darul Amaanah, Mayor Purzycki's office issued a follow-up statement later that day.⁹ The press release conceded that the City used poor judgment in its reaction to the incidents at Foster Brown and that the City should be held accountable for what happened. Specifically, the statement admitted that "[w]e

⁸ See Exhibit A.

⁹ A copy of the press release is attached hereto as Exhibit G.

should be held accountable for what happened and how poorly we assessed this incident,” and acknowledged that the children’s clothing stemmed from their religious beliefs, and that the “vaguely-worded pool policies” to which his office had previously referred had been used to justify “our poor judgment.”

77. Despite receiving numerous written complaints from Darul Amaanah staff and parents, Defendants have never issued a personal apology to Plaintiffs.

L. The Seventh Incident at Foster Brown.

78. On July 16, 2018, just two days after Mayor Purzycki’s office issued a public statement purporting to “reaffirm[] the City’s long-standing policy that all people are welcome at city pools,” Foster Brown staff again prevented the children of Darul Amaanah from accessing the pool.

79. That day, as Tahsiyn Ismaa’eel walked up to the pool with the Darul Amaanah students, a Foster Brown staff member ran to close the gate. The staff member informed Tahsiyn Ismaa’eel that the pool was “at capacity” and that her group could not enter. Although she had never heard of this happening to any other group, Tahsiyn Ismaa’eel tried to be accommodating and said she and the children would wait outside until other patrons left. After several minutes, approximately five patrons exited, and the entire Darul Amaanah group (which exceeded five people) was allowed to enter the facility. Yet, as soon as they

entered and before they could get in the water, pool staff announced that Foster Brown was closed due to a “medical emergency.”

80. As patrons were leaving, one individual told Tahsiyn Ismaa’eel that “we all have to leave because of you guys.” Another patron, a school-aged boy, was overheard saying that he was angry that the pool had been closed “because the Muslims came in.” Feeling humiliated and hurt, Tahsiyn Ismaa’eel gathered her children and left. A patron who stayed at the pool informed Tahsiyn Ismaa’eel later that Foster Brown reopened moments after the Darul Amaanah children left.

81. Tahsiyn Ismaa’eel’s husband subsequently received a phone call from Mr. Rago to discuss the July 16, 2018 incident. During their discussion, Mr. Rago told Tahsiyn Ismaa’eel’s husband that the pool had been closed for cleaning. Mr. Rago did not mention any “medical emergency” at Foster Brown on July 16, 2018.

82. Although the children at Darul Amaanah see Foster Brown from its classrooms and backyard every day of camp, the group has not returned to that pool since July 16, 2018 because they fear further harassment and discrimination against them.

M. Defendants Fail To Meaningfully Respond Or Take Steps To Address The Discrimination.

83. As explained above, from June 25 to the present, the staff and parents of Darul Amaanah have repeatedly raised their concerns with senior City officials

concerning the mistreatment the group received at Foster Brown. Indeed, after the incidents, Darul Amaanah staff and parents sent written complaints to Mayor Purzycki, the City's Parks Department and Director Kelley. Each of these complaints explained that the children at Darul Amaanah were being targeted for the clothing required of them by their religious beliefs and denied equal access to the City's public swimming pools.

84. Despite Plaintiffs' repeated pleas for help, Defendants have consistently failed to meaningfully respond to or remedy their mistreatment of the children at Darul Amaanah. Instead, Defendants have provided shifting and plainly pretextual explanations for the purported "no cotton" policy, while also offering sweeping support for both the discriminatory application of the vaguely-worded pool rules and the derogatory behavior of Foster Brown's staff.

85. Moreover, even after some Darul Amaanah parents tried to accommodate Foster Brown's "concerns" by dressing their children in clothing made of synthetic materials like Spandex, Foster Brown staff informed the students that they could not be in the pool "dressed like that" and ordered them to immediately get out of the pool.

86. Further still, Foster Brown staff continued to maintain support for the purported "no cotton" policy after Mayor Purzycki's office issued its apology statements on July 14, 2018. On July 16, 2018, Ms. Pinkett told the Delaware

News Journal, “Nobody was discriminated. ... They have a group of young girls that was dressed in inappropriate attire, covered. You can be covered. That’s fine. You just can’t wear cotton.” While she “acknowledged there is no written policy against wearing cotton in public pools,” Ms. Pinkett reiterated that she would still enforce it anyway.

87. On July 19, 2018, as a result of Defendants’ lack of meaningful response, Darul Amaanah, through its counsel, sent a letter to Mayor Purzycki and Director Kelley highlighting the ongoing discrimination at Foster Brown and calling on them to initiate an investigation, enact written policies with training protocols to ensure that all City employees do not engage in further discriminatory conduct and immediately remedy the harm to the Darul Amaanah community.¹⁰ The letter requested that Mayor Purzycki and Director Kelley respond by July 27, 2018.

88. On July 20, 2018, Mayor Purzycki’s office released another public statement about the incidents at Foster Brown, stating that his office was taking the allegations and the cease-and-desist letter “very seriously,” and the City had already launched an investigation into the incidents.

89. Neither Mayor Purzycki nor Director Kelley directly responded to Darul Amaanah or their counsel on or before July 27, 2018. Rather, on July 31,

¹⁰ A copy of this letter is attached hereto as Exhibit H.

2018, the City’s Senior Assistant City Solicitor sent a two-sentence acknowledgment of the letter’s receipt.¹¹

90. Finally, on August 14, 2018, counsel for Plaintiffs contacted Mayor Purzycki’s office, offering to meet with Mayor Purzycki in advance of filing this lawsuit.¹² The Mayor’s office did not accept Plaintiffs’ counsel’s offer for a meeting or provide a substantive response to any of the concerns Plaintiffs had raised. Instead, the Mayor’s office responded that an investigation “related to the use of Dr. Foster M. Brown Community Pool” was “underway” but “not yet complete,” and that “[a]fter the conclusion of the investigation and before the next outdoor swim season, the City intends to review its practices and policies for its pools and will notify the public accordingly.”

91. Thus, Defendants continue to fail to provide any meaningful response to the repeated complaints about discriminatory treatment by the Darul Amaanah staff and parents.

N. Plaintiffs Have Suffered Significant Harm As A Result Of Defendants’ Discrimination.

92. For the children of Darul Amaanah, summer camp is special. All year, the children look forward to this opportunity to make new friends, learn new

¹¹ A copy of this response is attached hereto as Exhibit I.

¹² A copy of this email is attached hereto as Exhibit J.

things and enjoy fun activities together. Their parents also look forward to this unique chance for their children to socialize with other young Muslims and grow in both their faith and self-respect. Defendants' pattern of hostility and discriminatory treatment, which fits into a long history of discrimination at swimming pools, has ruined this experience.

93. Defendants' actions have compromised Plaintiff Darul Amaanah's ability to successfully organize its annual summer camp and to assist its students to grow in their faith. The Darul Amaanah students' self-esteem has been compromised. Members of the Darul Amaanah staff have been emotionally and psychologically harmed not only by the mistreatment they have suffered at the hands of the municipal staff at Foster Brown, but also by Defendants' failure to meaningfully respond to their numerous complaints and grievances.

94. The parents of the Darul Amaanah students have also been harmed by Defendants' actions. For example, Plaintiff Bahjeh Rizeq, the mother of five-year old M.A., has for years driven her daughter from their home, located 45 minutes away, to Darul Amaanah's summer camp so that M.A. will have the opportunity to be in an environment where she can feel safe and proud to express herself fully, including in her religious identity. Yet, because of Defendants' actions, Ms. Rizeq has been unable to restore her daughter's shaken self-confidence.

95. Plaintiff Mia Miller, the mother of Y.A.M.-W. and Y.K.M.-W., remains worried about the impact that Defendants' conduct has had on her children, who still get scared and upset when talking about the pool. She is also worried that her daughters, both of whom have special needs, will not learn critical water safety skills.

96. Plaintiff Iman Ismaa'eel, the mother of twelve-year old W.B. and nine-year old M.B., grew up in Wilmington and spent her own childhood going to the City's public pools and covering herself according to her religious beliefs without any issue. She is greatly pained and saddened that her own children are unable to enjoy the same experiences at Foster Brown.

97. Iman Ismaa'eel has expressed that Defendants have made her and her community feel "small, unimportant and paranoid." As contributing members of the Wilmington community, this is unacceptable.

98. The harm the children have faced is even greater. For example, Y.A.M.-W. and Y.K.M.-W., who are six and five years old, respectively, are scared to go back to the pool. Although summer camp is typically their favorite part of the year – they particularly love playing with friends and learning new activities and skills – they now ask their mother, Plaintiff Mia Miller, if they will be forced to leave if they go back to the pool and cry when they remember how they were targeted by City employees.

99. Other children at Darul Amaanah have expressed similar concerns. M.A., who is five years old and was prohibited from swimming at Foster Brown because she was wearing a t-shirt, tights, and headscarf over her bathing suit, has repeatedly told her mother, Plaintiff Bahjeh Rizeq, that she and her friends cannot go back to the pool because “they don’t like Muslims.”

100. Similarly, S.W.T., the ten-year old daughter of Plaintiff Daewanna Word, remains fearful about returning to the pool, and has told her mother that she is scared to go back because “can’t they just put us out again?”

101. As a result of this discrimination, ever since June 25, a number of Darul Amaanah’s young girls have stopped wearing their headscarves when they go to other pools to swim. Although they used to be proud to wear their headscarves at all times, they have told Tahsiyn Ismaa’eel and their parents that they have stopped covering their heads “so they could go in the pool.” The Darul Amaanah children should not be forced to choose between complying with their religious beliefs and swimming with their friends. And no child should be made to feel shame for his or her religious beliefs.

102. In short, Defendants’ discriminatory conduct has deprived the children at Darul Amanaah of access to the pool for an entire summer. These children deserve better and to be made whole.

CLAIMS FOR RELIEF

COUNT I

Delaware Constitution, Art. 1 § 1 (Violation of the Free Exercise Clause Against All Defendants)

103. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

104. Article 1 Section 1 of the Delaware Constitution provides:

[N]o person shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his or her own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience, *in the free exercise of religious worship*, nor a preference given by law to any religious societies, denominations, or modes of worship.

(emphasis added).

105. Defendants' policy of harassing and prohibiting individuals who are Muslim from freely exercising their religion violates Plaintiffs' rights under Article 1 Section 1 of the Delaware Constitution.

COUNT II

42 U.S.C. § 1983

(Violation of the Free Exercise Clause of the First Amendment Against All Defendants)

106. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

107. The actions taken by Defendants under the color of state law had the effect of knowingly depriving Plaintiffs the rights secured to them under the First Amendment by prohibiting them from the free exercise of their religion.

108. Despite receiving multiple complaints from Plaintiffs about their inability to use the pool on the basis of their religion, Defendants failed to properly train, supervise and discipline its employees, amounting to deliberate indifference to the violation of Plaintiffs' federally protected rights.

109. Defendants' restrictions on Plaintiffs' ability to exercise their religion is not narrowly tailored to further a compelling government interest. Nor is there a rational basis upon which Defendants may justify their conduct, especially given that Muslims have been wearing cotton-based clothing in City pools for years without incident.

COUNT III
42 U.S.C. § 1983
(Violation of the Equal Protection Clause of the Fourteenth Amendment
Against All Defendants)

110. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

111. The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees the people equal protection of the laws.

112. Acting under color of state law, Defendants have deprived Plaintiffs of their rights to equal protection of the laws on the basis of Plaintiffs' race, religion and national origin.

113. These constitutional abuses are directly and proximately caused by Defendants' policies, practices and/or customs, including: (a) targeting Plaintiffs for discriminatory treatment at Foster Brown on the basis of Plaintiffs' race, religion and/or national origin, (b) the discriminatory failure to adequately and properly screen, train, support and/or supervise City employees working at Foster Brown and other City pools and (c) the discriminatory failure to adequately and properly respond and investigate concerns raised by Plaintiffs and other members of the Wilmington community.

114. As a direct and proximate result of Defendants' practices, Plaintiffs have been deprived of their right to Equal Protection of the law under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

COUNT IV
Title II, 42 U.S.C. § 2000a
(Discrimination in Public Accommodations – Individual Plaintiffs Against
Defendants City and Parks Department)

115. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

116. Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, provides: “All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation ... without discrimination or segregation on the ground of race, color, religion or national origin.”

117. The public swimming pools operated by Defendants City and Parks Department, including, but not limited to, Foster Brown, are places of public accommodation under Title II of the Civil Rights.

118. Upon information and belief, Defendant Foster Brown is an entity that affects interstate commerce.

119. Plaintiffs are African Americans and Arab Americans. They are also Muslim and, as part of their religious beliefs, cover portions of their body and face when in public.

120. Acting under color of state law, Defendants have deprived Plaintiffs of their rights to the full enjoyment of a place of public accommodation on the basis of Plaintiffs’ race, religion and national origin.

121. This discriminatory treatment is directly and proximately caused by Defendants’ policies, practices and/or customs, including: (a) targeting Plaintiffs for discriminatory treatment at Foster Brown on the basis of Plaintiffs’ race, religion and/or national origin, (b) the discriminatory failure to adequately and

properly screen, train, support and/or supervise City employees working at Foster Brown and other City pools and (c) the discriminatory failure to adequately and properly respond and investigate concerns raised by Plaintiffs and other members of the Wilmington community.

122. As a direct and proximate result of Defendants' practices, Plaintiffs have been deprived of their rights in violation of Title II.

COUNT V
Title VI, 42 U.S.C. § 2000d
(Intentional Race Discrimination in
Federally Funded Programs – Individual Plaintiffs Against Defendants City
and Parks Department)

123. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs.

124. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

125. Upon information and belief, Defendants City and Parks Department are recipients of federal financial assistance.

126. By being repeatedly denied equal access to the pool on the basis of their race, national origin and religion, Plaintiffs were treated less favorably than other pool patrons.

127. Despite knowledge of the discrimination against Plaintiffs and adequate opportunity to remedy it, Defendant Parks Department adopted and approved the acts, omissions and misconduct of the Foster Brown staff that led to discrimination against Plaintiffs.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that the Court enter an order:

A. Declaring that Defendants' conduct has deprived Plaintiffs of their rights under Article I of the Delaware Constitution, the First and Fourteenth Amendments to the United States Constitution and Titles II and VI of the Civil Rights Act of 1964, §§ 2000(a) and (d);

B. Extending the 2019 pool season at all Wilmington public pools to begin by June 1, 2019 and end no earlier than September 1, 2019, and requiring Foster Brown to be open each weekday to the children of Darul Amaanah to compensate the children of Darul Amaanah for the time lost in the pool during the 2018 pool season as a result of Defendants' discriminatory conduct;

C. Preliminarily and permanently enjoining Defendants from adopting, implementing, enforcing or applying, in a discriminatory manner, any formal or

informal rule or policy that prohibits Plaintiffs and any other patrons from wearing cotton-based clothing in Wilmington public pools, unless there is an explicit exception for attire of any material worn for religious reasons, including headscarves or any clothing worn for modesty;

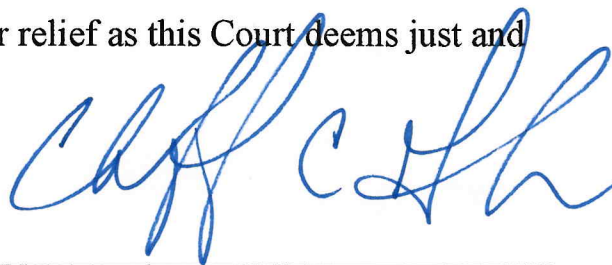
D. Requiring Defendants to adopt and implement a training program for all employees of Wilmington public pools to educate such employees regarding any and all formal and informal rules or policies in place and any necessary exceptions to such rules or policies for religious reasons, and to provide appropriate supervision of such program;

E. Requiring Defendants to post conspicuous signs at all Wilmington public pools stating that Defendants and employees of all Wilmington public pools are not permitted to engage in discriminatory and/or harassing conduct on the basis of religion;

F. Awarding damages to Plaintiffs as a remedy for all harm resulting from Defendants' actions;

G. Awarding Plaintiffs' counsel reasonable attorneys' fees and litigation costs, including, but not limited to, fees, costs and disbursements under 42 U.S.C. § 1988; and

H. Granting such other and further relief as this Court deems just and equitable.



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