

DISTRICT COURT
CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN BRYAN;
AIMEE HAIRR, mother of NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT IN FAVOR OF
PLAINTIFFS**

I. Introduction

On June 29, 2017, the Court issued its Decision and Order in favor of Plaintiffs Ethan Bryan and Nolan Hairr and against Defendant Clark County School District (CCSD) on the claims that Defendant violated Plaintiffs' rights under Title IX, 20 USC § 1681(A) and Plaintiffs' rights to Substantive Due Process under the Fourteenth Amendment to the United States Constitution and pursuant to 42 U.S.C. 1983. The Court also ruled that, "Plaintiffs are entitled to a judgment for all damages sought under these two claims asserted in the Complaint, and proven at trial."

II. Procedural History

Plaintiffs filed their Amended Complaint on October 10, 2014 against Defendants: Clark County School District (CCSD), Pat Skorkowsky, in his official capacity as CCSD

1 Superintendent; CCSD Board of School Trustees; Erin A. Cranor, Linda E. Young, Patrice Tew,
2 Stavan Corbett, Carolyn Edwards, Chris Garvey, Deanna Wright, in their official capacities as
3 CCSD Board of School Trustees, Greenspun Jr. High School (GJHS); Principal Warren P.
4 McKay, in his individual and official capacity as principal of GJHS; Leonard DePiazza, in his
5 individual and official capacity as assistant principal at GJHS; Cheryl Winn, in her individual and
6 official capacity as Dean at GJHS; John Halpin, in his individual and official capacity
7 as counselor at GJHS; Robert Beasley, in his individual and official capacity as instructor at
8 GJHS. The Amended Complaint listed five claims for relief: 1) Negligence; 2) Negligence Per
9 Se; 3) Violation of Title IX; 4) Violation of the Right to Equal Protection; 5) Violation of
10 Substantive Due Process.
11

12 In its February 5, 2015 Order, the Court Dismissed Plaintiffs' Claims for Relief No. 1,
13 Negligence, and No. 2, Negligence Per Se. Plaintiffs abandoned their Fourth Claim for Relief,
14 Equal Protection, leaving the Third Claim for Relief, Title IX, and Fifth Claim for Relief,
15 Substantive Due Process, for trial. Defendants filed their Answer on February 25, 2015.
16

17 On March 1, 2016, Defendants filed a Motion for Summary Judgment, which was granted
18 in part and denied in part by the Court in its July 22, 2016 Order. The Court denied Defendants'
19 Motion to dismiss Plaintiffs' Title IX claim against Defendant CCSD. It dismissed the 42 USC
20 1983 Equal Protection claims, which had been abandoned by Plaintiffs. The Court granted
21 Defendants' Motion to dismiss all Defendants except CCSD from the 42 USC 1983 Substantive
22 Due Process claim. Overall, the Court ruled the two remaining claims against CCSD, 1) Title IX;
23 and 2) Substantive Due Process would proceed to trial.
24

25 On or about March 20, 2016, Discovery Commissioner Bulla denied Defendants' Motion
26 to Compel Damages Categories and Calculations, allowing such calculations to be determined by
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1 the Court at trial. The Discovery Commissioner's Report and Recommendations were affirmed
2 and adopted by the Court on April 6, 2016.

3 On August 5, 2016, Defendant CCSD filed a Motion for Partial Reconsideration, or in the
4 Alternative, Motion for Relief Pursuant to NRCP 59(E), 60(A) and 60(B), or Motion in Limiting.
5 On October 26, 2016 the Court denied Defendant's Motion.

6
7 On November 15, 2016, a five-day bench trial was held in Department 27 before the
8 Honorable Judge Nancy L. Alf. Allen Lichtenstein, Esq. and John Houston Scott, Esq. appeared
9 for and on behalf of Plaintiffs Mary Bryan ("Mrs. Bryan") and Aimee Hairr ("Mrs. Hairr"),
10 (collectively Plaintiffs"). Daniel Polsenberg, Esq., Dan Waite, Esq., and Brian D. Blakley, Esq.
11 appeared for and on behalf of Defendant CCSD, ("Defendant") on the Title IX and 42 USC 1983
12 Substitute Due Process claims. Testimony was given by: Nolan Hairr, Ethan Bryan, Aimee Hairr,
13 Mary Bryan, Principal Warren McKay, Vice Principal Leonard DePiazza, Dean Cheryl Winn,
14 Counselor John Halpin and band teacher Robert Beasely. Although neither one of the alleged
15 bullies testified, CL's deposition was introduced into evidence. (For privacy purposes, only the
16 initials of CL and DM are used.)

17
18 Closing arguments were done via written briefs. Briefing was completed on May 26, 2017.
19 On June 29, 2017, the Court issued its Decision and Order, concluding that Defendant CCSD
20 violated both Title IX of the Civil Rights Act and also violated Plaintiffs' Substantive Due Process
21 rights as guaranteed by the Fourteenth Amendment to the United States Constitution pursuant to
22 42 USC 1983. The Court further ordered that after review, "Judgment shall be entered in favor of
23 Plaintiffs Mary Bryan, on behalf of Ethan Bryan and Aimee Hairr on behalf of Nolan Hairr, and
24 that Plaintiffs are entitled to a judgment for all damages sought under these two claims asserted in
25 the Complaint, and proven at trial."
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1 **III. Findings of Fact**

2 **A. Ethan Bryan and Nolan Hairr started being bullied almost from the time**
3 **they began attending Greenspun Jr. High School.**

4 In late August 2011, two friends, Ethan Bryan and Nolan Hairr began sixth grade at
5 Greenspun Jr. High School. Both Ethan and Nolan enrolled in Mr. Beasley's third period band
6 class in the trombone section.

7 Almost from the beginning of the school year, Ethan and Nolan began to be bullied by two
8 other trombone students, CL and DM. In sixth grade, at age 11, Nolan was small for his age with
9 long blonde hair. CL and DM taunted him with names like gay and faggot, and called him a girl.
10 CL also touched, pulled, ran his fingers through Nolan's hair and blew in Nolan's face.
11

12 Nolan, following what he believed was proper procedure, went to the Dean's office and
13 filled out a complaint report. He was, however, too embarrassed to mention the homophobic and
14 sexual content of the slurs that he was enduring. Nolan was subsequently called into the Dean's
15 office and met with Dean Winn. He did not feel that she was either sympathetic or even interested,
16 and therefore was reluctant to discuss the homophobic sexually-oriented nature of the bullying.
17

18 Within a day or two of Nolan's meeting with the Dean, on or about September 13, 2011,
19 CL, who was sitting next to Nolan in band class, reached over and stabbed Nolan in the groin
20 with the sharpened end of the pencil. CL said he wanted to see if Nolan was a girl, and also
21 referred to Nolan as a tattletale. Nolan took the tattletale reference as a sign that the stabbing was,
22 at least in part, retaliation for Nolan complaining about the bullying. Because of this fear of
23 retaliation, Nolan decided not to tell any adults about any further bullying directed at him, and
24 instead, to endure the torment in silence.
25

26 A day or two after the stabbing incident, while Nolan was at Ethan's house, Ethan's
27 mother, Mary Bryan overheard Ethan and Nolan talking about some problem taking place at
28 school. After Nolan had gone home, Mary Bryan confronted her son and questioned him

1 concerning what Ethan and Nolan had been discussing. Ethan described to his mother the incident
2 where CL stabbed Nolan in the groin with a pencil, and about the overall bullying occurring in Mr.
3 Beasley's band class.

4 **B. Mary Bryan's September 15, 2011 email**

5 In response, Mary Bryan decided to contact the school officials to report the bullying in
6 general and the stabbing in particular.
7

8 On September 15, 2011, she attempted to telephone Greenspun Principal Warren P.
9 McKay. However, she could not reach him by telephone and was only able to talk to a junior high
10 student volunteer. Mary did not want to leave such a sensitive message with a junior high student
11 and was not transferred to Principal McKay's voicemail. Mary then decided she would email
12 the Principal and got an email address for him from the student volunteer.
13

14 On September 15, 2011, Mary Bryan sent an email to three people: 1) Principal Warren
15 McKay; 2) band teacher Robert Beasley; and 3) school counselor John Halpin, complaining about
16 the bullying and specifically about the stabbing. Both Mr. Beasley and Mr. Halpin acknowledged
17 receiving the September 15, 2011 email from Mary Bryan. Principal McKay said he did not
18 receive it because the email address for him (which Mary Bryan obtained from his own office)
19 was incorrect.
20

21 Both Mr. Beasley and Mr. Halpin were, in 2011, mandatory reporters who were required to
22 report any information concerning bullying, to either the Principal or one of his designees,
23 pursuant to NRS 3.88.1351 (1). In 2011, Principal McKay's designees at Greenspun were Vice
24 Principal Leonard DePiazza and Dean Cheryl Winn.

25 Neither Mr. Beasley nor Mr. Halpin fulfilled their statutory duty to report Mary Bryan's
26 September 15, 2011 email concerning bullying, explaining that because they saw Principal
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1 McKay's name in the address line, they assumed, without verifying, that Dr. McKay, and through
2 him Vice Principal DePiazza and Dean Winn were aware of the situation.

3 These assumptions by Mr. Beasley and Mr. Halpin were incorrect. Moreover, by relying
4 on their assumptions, rather than adhering to the statutory requirement to report any information
5 concerning bullying they received, they both violated the explicit requirements of NRS
6 388.1351(1).
7

8 In response to the September 15, 2011 email, Mr. Beasley changed the seating
9 arrangements in the trombone section of his class. While before, Nolan had been sitting next to
10 Connor, after the change, Nolan set directly in front of CL.

11 While Mr. Beasley attempted to keep an eye on both bullies and the bullied students, he
12 admitted that he was unable to constantly watch them and still teach his class. Mr. Beasley said
13 that he made the decisions concerning the seating arrangements on his own without consultation
14 with anyone else. This testimony conflicted with that of Dean Winn, who stated that she was
15 involved in the decision.
16

17 The bullying continued. For Ethan Bryan, at the beginning of the school year, most of the
18 taunts at him by CL and DM had to do with his size. He was large for his age and overweight.

19 After the incident where CL stabbed Ethan's friend Nolan with a pencil, the bullying of
20 Ethan began to change. It not only escalated but also shifted from being mostly about his size and
21 weight to also involve homophobic slurs and vile and graphic innuendos concerning sexual
22 relations between Ethan and Nolan.
23

24 Like his friend Nolan, Ethan also chose not to report the bullying that he was enduring for
25 fear of retaliation, and lack of any real interest on the part of Greenspun school officials. Mary
26 Bryan, believing that the school would contact Nolan's parents after Mary sent them the
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1 September 15, 2011 email about the stabbing of Nolan, did not directly inform Nolan's parents
2 herself.

3 **C. Aimee Hairr's September 22, 2011 phone conversation with Vice Principal**
4 **DePiazza and September 23, 2011 phone call with Counselor Halpin**

5 On or about September 21, 2011, while Mary Bryan and Nolan's mother Aimee Hairr were
6 at a birthday party for another of Mary's children, Mary casually asked Aimee about the school's
7 response to the September 15, 2011 email. Aimee responded that she had received no
8 communication from the school, and that she had no knowledge or information about the bullying
9 of her son occurring in Mr. Beasley's band class.

10
11 After talking to Mary, Nolan's parents then confronted him about the bullying. Nolan
12 verified the veracity of the substance of the contents of the September 15, 2011 email. He also
13 admitted to the stabbing incident.

14 On September 22, 2011, Nolan's mother made several phone calls to various school
15 officials in an attempt to contact the school regarding the September 15, 2011 email about the
16 stabbing of their son. She left several messages for different school officials. Finally, Aimee Hairr
17 was able to reach Vice Principal DePiazza, and had a phone conversation with him in which she
18 described the September 15, 2011 email, and the stabbing, including the comment by CL that he
19 did it to see if Nolan was a girl.
20

21 Mr. DePiazza told Aimee Hairr that there were a few options for Nolan, all involving
22 Nolan either transferring out of band class into another class at Greenspun, or transferring out of
23 Greenspun to a different school entirely.

24 Aimee found these so-called solutions to be both inadequate and inappropriate because if
25 anyone were to be moved, it should be the perpetrator of the bullying who assaulted her son not
26 the victim, Nolan.
27
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1 Vice Principal DePiazza denied that he ever had a phone conversation with Aimee Hairr.
2 According to his version of events, some time in either September or October 2011 (he could not
3 remember when) there was a meeting in his office attended by Aimee Hairr, Dean Cheryl Winn
4 and possibly Nolan Hairr. Mr. DePiazza claimed that while there was some generalized discussion
5 about the "situation" in the band room, nothing specific about the stabbing or the September 15,
6 2011 email was ever mentioned. Neither Aimee Hairr, Nolan Hairr nor Cheryl Winn corroborated
7 Mr. DePiazza's version of events about this supposed meeting, or even that it took place.
8

9 On or about September 23, 2011, Mrs. Hairr received a return phone call from counselor
10 John Halpin. Aimee knew Mr. Halpin because she was his dental hygienist. Mr. Halpin told her he
11 had received this September 15, 2011 email and was aware of its contents. He said he had
12 previously spoken to Nolan and would do so again to make sure that Nolan made a formal
13 complaint about the stabbing to the Dean. He said he believed that Dean Winn knew about it, but
14 wanted to make sure.
15

16 Later that day, Nolan met with Mr. Halpin. Both agreed that the counselor wanted Nolan to
17 go to the Dean's office to fill out an incident report. Mr. Halpin said that he accompanied Nolan to
18 Ms. Winn's office, while Nolan said he was sent there and went by himself. Mr. Halpin also said
19 that since the Dean was not in the office, he left a message for Dean Winn with Harriet Clark, her
20 secretary, recounting the stabbing incident and the bullying. He gave that message to the Dean's
21 secretary with instructions to relay that message to Dean Winn. The Dean did not report receiving
22 Mr. Halpin's message from her secretary.
23

24 Nolan, still trying to "tough it out" and not make more trouble for himself by complaining
25 and thereby risking further retaliation, wrote a bland and rather innocuous version of what he was
26 enduring in band class. He did not mention the stabbing nor the homophobic, sexually-oriented
27 slurs.
28

1 Dean Winn said she could not remember whether she met with Nolan on or after
2 September 22, 2011. Nolan said that no such meeting took place on or after September 22, 2011.
3 Aimee Hairr said she never had a meeting with Dean Winn.

4 Dean Winn said testified did not learn of the stabbing incident until the following year,
5 February 2012.
6

7 **D. Mary Bryan's October 19, 2011 email to school officials and October 19,**
8 **2011 meeting with Dean Winn**

9 On or about October 19, 2011, Mary Bryan noticed that Ethan had come home from school
10 with scratches on his leg. When she confronted him about the scratches, he told her that at the end
11 of band class, while Mr. Beasley was out of the room, one of the bullies who was behind Ethan,
12 removed a rubber stopper out of a piece of his trombone and started hitting Ethan in the legs with
13 the remaining sharp piece of the instrument.

14 Upon questioning by his parents, Ethan also disclosed that CL and DM continued to make
15 lewd sexual comments including calling both Ethan and Nolan gay, faggots and other similar
16 names, and also talked about Ethan and Nolan jerking each other off and otherwise engaging in
17 homosexual acts with each other.
18

19 Ethan's parents, enraged that this was going on -- particularly after the September 15, 2011
20 email -- decided to confront school officials. On October 19, 2011 Mary Bryant sent a second
21 email addressed to Principal McKay, Mr. Beasley, and Mr. Halpin, describing the continuing
22 bullying and also the hitting scratching of Ethan's leg.

23 Mr. and Mrs. Bryan met with Dean Winn at the Dean's office on October 19, 2011. They
24 described the bullying endured by both Ethan and Nolan, specifically mentioning the physical
25 assaults as well as the vile homophobic slurs that both boys were subjected to by CL and DM. The
26 Bryans made it clear that they would not tolerate a continuation of this bullying.
27
28

1 Dean Winn denied the occurrence of this meeting. She also denied that she knew anything
2 about the, emails, the physical assaults and the homophobic slurs in October 2011. She said she
3 only learned of the October 19, 2011 email the following year, in February 2012.

4 **E. The October 19, 2011 Administrator's meeting where John Halpin informed**
5 **Principal McKay and Vice Principal DePiazza of Mary Bryan's emails**

6 Mr. Halpin, who was a recipient of the October 19, 2011 email, said he forwarded that
7 email to Dean Winn to make sure she was aware of the situation. Dean Winn denied having
8 received the October 19, 2011 email from Mr. Halpin.

9
10 Also on October 19, 2011, Mr. Halpin attended a weekly administrators meeting. Principal
11 McKay and Vice Principal DePiazza were at that meeting. Dean Winn, who was a regular
12 participant in those weekly meetings, did not attend that day.

13 Mr. Halpin said that he reported on the bullying that was occurring in Mr. Beasley's band
14 class in considerable detail to both Principal McKay and Vice Principal DePiazza. He also stated
15 that everyone at that meeting knew about the two emails that had been sent by Mary Bryan. He
16 also made it clear that the two assaults were perpetrated by the same two bullies against the same
17 two bullied students. Mr. Halpin specifically recalled Principal McKay telling Vice Principal
18 DePiazza to take care of the matter.

19
20 Dr. McKay stated his recollections from the October 19, 2011, administrators meeting
21 differently. McKay recalled Mr. Halpin bringing up the subject of bullying in Mr. Beasley's class,
22 but without mentioning many specifics. For reasons he did not disclose, McKay stated that he
23 really was not interested in the details of such matters and left it to his subordinates to address the
24 issue.

25
26 Dr. McKay stated that he told Mr. DePiazza and Mr. Halpin to handle the situation. Dr.
27 McKay also stated that he subsequently did not ask the Vice Principal about how the investigation
28 was going or what DePiazza had found out until February 2012.

1 Principal McKay only took action in February 2012 because it was then that he was
2 ordered by his supervisor at the district level and the Assistant Superintendent to investigate the
3 bullying of Ethan and Nolan.

4 Vice Principal DePiazza stated a vague memory of the October 19, 2011 administrative
5 meeting. He recalled that there may have been some discussion about bullying but didn't really
6 remember much. His position was that he definitely did not remember being told by Dr. McKay to
7 conduct an investigation into the bullying reports on October 19, 2011.

9 Principal McKay stated that in 2011 while he never asked his Vice Principal about the
10 bullying investigation, he did, at some point, have a casual discussion with Dean Winn about the
11 matter. He asked her how the investigation was going. Dean Winn replied that she was having
12 trouble getting corroborating statements from other students.

13 Dean Winn's testimony contradicted the Principal's statements by claiming that she did
14 not undertake any investigation of the bullying because she was specifically told by Dr. McKay
15 that it was all being handled by Vice Principal DePiazza. Dr. McKay testified that Dean Winn told
16 him she was investigating by trying to get statements from other students.

18 **F. Although by October 19, 2011, all members of the Greenspun Junior High**
19 **School administration were aware of physical, and discriminatory bullying that**
20 **Ethan and Nolan were experiencing, no investigation was conducted until February**
21 **2012, after both boys had left the school.**

22 Although the school officials all pointed fingers at each other, the one thing that they all
23 agreed upon is that contrary to Nevada statutes, no investigation of the reports of bullying,
24 described in the September 15, 2011, and October 19, 2011 emails from Mary Bryan and the
25 September 22, 2011 phone conversation between Aimee Hairr and Vice Principal DePiazza, the
26 September 23, 2011 phone conversation between Aimee Hairr and Mr. Halpin, and the October
27 19, 2011 meeting between Mr. and Mrs. Bryan and Dean Winn, ever occurred in 2011.

1 Throughout the rest of 2011, the bullying of Ethan and Nolan by CL and DM continued
2 out of the sight of Mr. Beasley.

3 Ethan and Nolan continued to employ the strategy of trying to ignore the problem, feeling
4 that any further complaints would just lead to greater retaliation.

5 When Ethan and Nolan came back to Greenspun for in January 2012, their resolve began
6 to waver. Each boy tried to avoid band class or even school altogether. Ethan feigned illness, and
7 even tried to make himself sick by eating cardboard. Nolan would hang out in the library or in the
8 halls. By the middle of January, both boys had essentially stopped going to school in order to
9 avoid further bullying.
10

11 In January 2012, Ethan Bryan was prevented from attempting to commit suicide by
12 drinking household chemicals, because of a fortuitous intervention from his mother. Ethan's
13 parents refused to send him back to Greenspun after that.
14

15 On or around January 21, 2012 Nolan had, what his mother described as something close
16 to a breakdown because of the bullying that he and others were enduring at Greenspun. Mrs. Hairr
17 decided to pull Nolan out of the school at that time. She also made a report to the police.

18 By early February 2012, both Ethan and Nolan had been removed from Greenspun Jr.
19 High School.
20

21 Subsequent to the removal of Ethan and Nolan from Greenspun, and also subsequent to the
22 filing of the police report, Principal McKay, on or about February 7, 2012, was contacted by
23 officials from the school district, specifically his direct supervisor Andre Long and the Assistant
24 Superintendent Jolene Wallace. He was ordered by Ms. Wallace to conduct an investigation into
25 the bullying of Ethan Bryan and Nolan Hairr.

26 Because he was ordered by his superiors to investigate, Principal McKay directed Vice
27 Principal DePiazza to conduct a "second" investigation.
28

1 This was, in fact, the only investigation done at Greenspun into the bullying of Ethan and
2 Nolan. At trial, no one from the school or the school district testified to seeing any results of any
3 earlier investigation. Nor was any evidence obtained from any earlier investigation introduced.
4 Contrary to the responsibilities under Nevada law, no investigation ever took place while Ethan
5 and Nolan were attending Greenspun Junior High School.
6

7 **IV. Conclusions of Law**

8 **A. The Evidence and Testimony at Trial shows a Title IX Violation.**

9 **1. Title IX Standards**

10 Section 901(a) of Title IX provides, “No person in the United States shall, on the basis of
11 sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination
12 under any education program or activity receiving Federal financial assistance.” 20 USC §
13 1681(a). Based on the receipt of federal funds, CCSD is subject to Title IX requirements. 20 USC
14 § 1681(a). Under Title IX, student on student harassment and bullying based upon perceived
15 sexual orientation is actionable.
16

17 For liability under Title IX for student on student sexual harassment: (1) the school district
18 “must exercise substantial control over both the harasser and the context in which the known
19 harassment occurs”, (2) the plaintiff must suffer “sexual harassment ... that is so severe, pervasive,
20 and objectively offensive that it can be said to deprive the victims of access to the educational
21 opportunities or benefits provided by the school”, (3) the school district must have “actual
22 knowledge of the harassment”, and (4) the school district’s “deliberate indifference subjects its
23 students to harassment”. *Reese v. Jefferson School District No. 14J*, 208 F.3d 736, 739 (9th Cir.
24 2000) (quoting *Davis*, 526 U.S. 629, 119 S. Ct. 1661, 1675 (1999)). See also, *Henkle v. Gregory*,
25 150 F.Supp.2d 1067, 1077-1078 (D. Nev. 2001). The Ninth Circuit defines deliberate indifference
26 as “the conscious or reckless disregard of the consequences of one’s acts or omissions,” *Henkle v.*
27
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1 *Gregory*, 150 F.Supp. 2d 1067,1077-78 (D. Nev. 2001); See also 9th Cir. Civ. Jury Instr. 11.3.5
2 (1997)(citing *Redman v. County of San Diego*, 942 F.2d 1435, 1442 (9th Cir. 1991), *cert. denied*,
3 502 U.S. 1074 (1992). A Plaintiff bringing a claim under Title IX must prove his or her claim by a
4 preponderance of the evidence. Whether conduct rises to the level of actionable "harassment"
5 thus "depends on a constellation of surrounding circumstances, expectations, and
6 relationships," *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 82 (1998).
7

8 In the instant case, the testimony at trial showed that: 1) Greenspun Junior High School
9 exercised substantial control over both the students involved in the bullying and the context in
10 which the harassment occurred; 2) both Ethan and Nolan were bullied at school; 3) the harassment
11 they endured was sexual in nature; 4) the harassment was so severe, pervasive, and objectively
12 offensive that it deprived Ethan and Nolan of access to the educational opportunities and benefits
13 provided by the school; 5) the appropriate school officials had actual knowledge of the bullying
14 and sexual discrimination suffered by Ethan and Nolan; and, 6) the appropriate school officials
15 demonstrated deliberate indifference to the bullying endured by Ethan and Nolan.
16

17 **2. Ethan and Nolan were bullied in Mr. Beasley's band class.**

18 Ethan and Nolan were bullied in Mr. Beasley's band class by two other students. They
19 were not only called names, but both were physically assaulted by the bullies. On September 13,
20 2011, CL stabbed Nolan in the groin with a pencil during Mr. Beasley's band class. On October
21 18, 2011 Ethan was physically assaulted by one of the bullies at the end of band class by having
22 his legs hit and scratched with a trombone from which the rubber stopper had been removed.
23

24 **3. The bullying was sexual in nature.**

25 From the very beginning of the school year Nolan was called names such as "faggot,
26 fucking fat faggot, fucking faggot, gay, gay boyfriend, cunt." This began when he was 11 years
27 old at the beginning of sixth grade. Nolan was a small child who had blonde hair down to his
28 shoulders.

1 While Ethan had been bullied by CL and DM from the beginning of the school year, their
2 comments had started off being directed at his size and weight, after the stabbing incident, the
3 bullies also began directing their homophobic slurs against Ethan as well. The bullies continuously
4 taunted Ethan and Nolan with homophobic slurs and innuendo, and specifically made statements
5 concerning homosexual relations and explicit sexual acts between Ethan and Nolan in vile and
6 graphic terms.
7

8 **4. The bullying of Ethan and Nolan was severe, pervasive, and objectively**
9 **unreasonable, and deprived them of significant educational opportunities.**

10 The nature of the bullying was severe, pervasive, and objectively unreasonable. It involved
11 verbal abuse of a sexual and homophobic nature beginning from the start of the school year and
12 only ceased when Ethan and Nolan were forced to stop attending Greenspun. Both boys suffered
13 so severely from the bullying that they did whatever they could to not attend school in order to
14 avoid the bullying. In January 2012, Ethan feigned illness in order to stay home from school. He
15 would eat paper in order to make himself sick. For Ethan, the bullying was so severe and
16 pervasive that he saw suicide as his only way out. Fortunately, he was prevented from doing so
17 by his mother's intervention. At that point, she was forced to take him out of Greenspun.
18

19 In January 2012, Nolan stopped going to band class in order to avoid the bullying by CL.
20 Nolan then had a breakdown due to the constant bullying that forced his parents also to remove
21 him from Greenspun. The creation of a sufficiently hostile environment forced Ethan and Nolan's
22 parents to remove them from Greenspun Jr. High School and thus deprived them of educational
23 opportunities.
24

25 The severity of the hostile environment forced both Nolan and Ethan to quit Greenspun to
26 escape both verbal and sometimes physical harassment from CL and DM that school officials were
27 aware of, and allowed to continue. This was clearly a loss of educational opportunity.
28

1 **5. Appropriate school officials had actual notice of the existence and the**
2 **discriminatory nature of the bullying.**

3 Appropriate school officials had notice of the existence and nature of the bullying suffered
4 by Ethan and Nolan. *See, Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998).

5 [In cases like this one that do not involve official policy of the recipient entity, we
6 hold that a damages remedy will not lie under Title IX unless an official who at a
7 minimum has authority to address the alleged discrimination and to institute
8 corrective measures on the recipient's behalf has actual knowledge of
9 discrimination in the recipient's programs and fails adequately to respond.

10 524 U.S. at 290.

11 The Court in *Warren v. Reading Sch. Dist.*, 278 F.3d 163 (3rd Cir. 2002) stated that the
12 school principal was the appropriate person for Title IX purposes, while in *Murrell v. Sch. Dist.*
13 *No. 1*, 186 F.3d 1238, 1247 (10th Cir. 1999) the Court considered an individual who exercises
14 substantial control, for Title IX purposes, to be anyone with the authority to take remedial action.
15 Several Greenspun personnel had authority to take remedial disciplinary actions when appropriate,
16 including, band teacher Beasley, Principal McKay, Vice Principal DePiazza, and Dean Winn.
17 Both Mr. Beasley and Mr. Halpin admitted to receiving Mary Bryan's September 15, 2011 and
18 October 19, 2011 emails.

19 Five separate contacts by Ethan or Nolan's parents to Greenspun personnel put the school
20 on actual notice of the verbal, physical and sexual nature of the bullying. On September 15, 2011,
21 Mary Bryan sent an email to Dr. McKay, Mr. Halpin and Mr. Beasley concerning the stabbing of
22 Nolan. On September 22, Aimee Hairr spoke to Mr. DePiazza about the general bullying and the
23 assault on her son. She spoke to Mr. Halpin by phone the next day.

24 On October 19, 2011, Mary Bryan sent another email to Dr. McKay, Mr. Halpin and Mr.
25 Beasley, this time regarding the assault on Ethan. The same day, she and her husband met with
26 Dean Winn to discuss the bullying of Ethan and Nolan, and particularly about its sexual,
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1 homophobic nature. All of these parental contacts gave the school actual notice to appropriate
2 persons of the existence and nature of the bullying of both Ethan and Nolan.

3 **6. Greenspun school officials acted with deliberate indifference for Title**
4 **IX violation purposes.**

5 Deliberate indifference is “the conscious or reckless disregard of the consequences of one’s
6 acts or omissions.” *Henkle v. Gregory*, 150 F. Supp. 2d at 1078. Deliberate indifference occurs
7 where the recipient’s response to the harassment or lack thereof is clearly unreasonable in light of
8 the known circumstances. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736, 739 (9th Cir.
9 2000). It must, at a minimum, “cause students to undergo harassment or make them liable or
10 vulnerable to it.” *Id.*, citing *Davis*, 526 U.S. at 645. “[I]f an institution either fails to act, or acts in
11 a way which could not have reasonably been expected to remedy the violation, then the institution
12 is liable for what amounts to an official decision not to end discrimination.” *Gebser v. Lago Vista*
13 *Ind. School Dist.*, 524 U.S. 274, 290 (1998); *See, Jane Doe A v. Green*, 298 F. Supp.2d 1025, 1035
14 (D. Nev. 2004). Greenspun officials’ failure to take further action once they received actual notice
15 of the bullying and its nature showed deliberate indifference. *See, Flores v. Morgan Hill Unified*
16 *School Dist.*, 324 F.3d 1130, 1136 (9th Cir. 2003), *Vance v. Spencer County Public School Dist.*,
17 231 F.3d 253 (6th Cir. 2000).

18 Even though NRS 3.88.1351 (1) requires that once a report of bullying is received, the
19 Principal or his or her designee begin an immediate investigation, no investigation, much less one
20 conforming to statute, was ever undertaken in 2011. The only time an investigation occurred was
21 in February 2012, when it was ordered by the District. This, however, occurred well after both
22 Ethan and Nolan had been removed from Greenspun, and a police report had been filed. This
23 constituted deliberate indifference on the part of school officials who had actual notice of the
24 physical and homophobic bullying to which Ethan and Nolan were subjected.

25 **B. The Evidence and Testimony at Trial shows a Substantive Due Process**
26 **Violation.**

27 Under *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189
28 (1989), the Due Process Clause of the United States Constitution does not require state actors to

1 protect private citizens from harm inflicted by other private citizens. *DeShaney*, however, is
2 inapplicable because of the state created danger exception.

3 **1. Plaintiffs had a constitutionally protected interest in their safety and in**
4 **their education.**

5 State law can create a liberty or property interest. *Vitek v Jones*, 445 U.S. 480 (1980);
6 *Carlo v. City of Chino*, 105 F.3d 493 (9th Cir. 1997). The Supreme Court stated in *Goss v. Lopez*,
7 419 U.S. 565, 576 (1975), that a student's right to a public education is a property interest
8 protected by the Due Process Clause. See also, *Henry A. v. Willden*, 678 F.3d 991 (9th Cir. 2012).

9
10 **2. Defendant acted with deliberate indifference for substantive due**
11 **process violation purposes.**

12 The "state-created danger exception" — when "the state affirmatively places the Plaintiff
13 in danger by acting with 'deliberate indifference' to a 'known and obvious danger,'" is manifested
14 here. The standard for deliberate indifference does not vary between Title IX and 42 USC 1983
15 cases. *Doe A. v. Green*, 298 F.Supp.2d 1025, 1035 (D.Nev., 2004) see also *Willden, supra*.
16 Deliberate indifference consists of deliberate action or deliberate inaction. *Wereb v. Maui County*,
17 727 F.Supp.2d 898, 921 (D. Haw., 2010) citing, *Long v. County of Los Angeles*, 442 F.3d 1178,
18 1185 (9th Cir., 2006); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

19 In other cases, Defendants have been "charged with knowledge" of unconstitutional
20 conditions when they persistently violated a statutory duty to inquire about such conditions and to
21 be responsible for them. *Wright v. McMann*, 460 F.2d 126 (2nd Cir. 1972); *United States ex rel.*
22 *Larkins v. Oswald*, 510 F.2d 583 (2nd Cir. 1975); *Doe v. N.Y.C. Dep't of Soc. Servs.*, 649 F.2d 134
23 (2nd Cir. 1981). The failure to investigate the reported physical, sexual, and other verbal bullying,
24 in the face of clear statutory mandates to do so is significant evidence of an overall posture of
25 deliberate indifference toward Ethan's and Nolan's welfare.

26 **3. CCSD is subject to Monell liability.**

27 In *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005), the Ninth Circuit stated
28 that there are three distinct alternative theories of municipal liability, by showing: (1) a

1 longstanding practice or custom which constitutes the 'standard operating procedure' of the local
2 government entity; (2) that the decision-making official was, as a matter of state law, a final
3 policymaking authority whose edicts or acts may fairly be said to represent official policy in the
4 area of decision; or (3) that an official with final policymaking authority either delegated that
5 authority to, or ratified the decision of, a subordinate. *See also, Trevino v. Gates*, 99 F.3d 911, 918
6 (9th Cir. 1996).

8 Liability can be established by the existence of a government policy or custom that leads
9 to a constitutional deprivation. *Monell v. Department of Social Services of New York*, 436 U.S.
10 658, 694 (1978); *Ulrich v. City and County of San Francisco*, 308 F.3d 968, 983 (9th Cir. 2002);
11 *Weiner v. San Diego County*, 210 F.3d 1025, 1028 (9th Cir. 2000). The other two theories of
12 municipal liability attach when a final policymaker for the government acts in a manner that can
13 fairly be said to represent official action. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, (1988);
14 *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479-80 (1986).

16 Liability may attach either when the final policymaker is a final policymaking authority
17 who made the allegedly unconstitutional action, or when that action is ratified, or delegated to a
18 subordinate. *Menotti*, 409 F.3d at 1147; *Ulrich*, 308 F.3d at 984-85. A policy includes "a course
19 of action tailored to a particular situation and not intended to control decisions in later situations."
20 *Pembaur*, 475 U.S. at 481. When determining whether an individual has final policymaking
21 authority, the pertinent query is whether he or she has authority "in a particular area, or on a
22 particular issue." *McMillian v. Monroe County*, 520 U.S. 781 (1997). The individual must be in a
23 position of authority to the extent that a final decision by that person may appropriately be
24 attributed to the District. *Lytle v. Carl*, 382 F.3d 978, 983 (9th Cir. 2004); *see also, Christie v. Iopa*,
25 176 F.3d 1231, 1235 (9th Cir. 1999). A government entity can be liable for an isolated
26 constitutional violation. *Id.*

1 Principals can act as final policymakers for the purposes of *Monell* liability with respect to
2 student discipline issues. *Williams v. Fulton Cnty. Sch. Dist.*, 181 F. Supp. 3d 1089, 1126-27 (N.D.
3 Ga. 2016), *citing*, *Holloman v. Harland*, 370 F.3d 1252, 1293 (11th Cir. 2004); *see also*, *Bowen v.*
4 *Watkins*, 669 F.2d 979 (5th Cir. 1982); *Rabideau v. Beekmantown Cent. Sch. Dist.*, 89 F. Supp. 2d
5 263, 268 (N.D.N.Y. 2000), *citing* *Luce v. Board of Educ.*, 2 A.D.2d 502, 505, 157 N.Y.S.2d 123,
6 127 (3d Dep't 1956), *aff'd*, 3 N.Y.2d 792, 143 N.E.2d 797, 164 N.Y.S.2d 43 (1957).

8 **4. NRS 388.1351(2) specifically tasks the school Principal with**
9 **responsibility for investigating reports of bullying.**

10 The question of whether a particular individual has policymaking authority is a question of
11 state law. *Pembaur, supra*, 475 U.S. at 483; *St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988);
12 *Lytle*, 382 F.3d at 982-83. NRS 388.1351(2) required that once a report of bullying is received,
13 the Principal or his or her designee shall initiate an investigation not later than one day after
14 receiving notice of the violation, and that the investigation must be completed within 10 days after
15 the date on which the investigation is initiated.

16 The legislature explicitly gave a statutory mandate to investigate reports of bullying in
17 school to the school "Principal or his or her designee." There is absolutely no legislative authority
18 for the CCSD to designate somebody else at the District level to override the delegation of
19 responsibility and authority. Thus, under the NRS 388.1351(2), because the final policymaker
20 relating to the failure of Principal McKay or any of his designees to conduct the requisite
21 investigation on the reports of the bullying of Ethan and Nolan, was the Principal himself,
22 Defendant CCSD is liable for the substantive due process violation under *Monell*.

24 **V. Damages**

25 In its June 29, 2017 Decision and Order, the Court ruled that "Plaintiffs are entitled to a
26 judgment for all damages sought under these two claims asserted in the Complaint, and proven at
27 trial." On April 6, 2016, Discovery Commissioner Bulla denied Defendants' Motion to Compel
28

1 Damages Categories and Calculations, thus allowing these calculations to be determined by the
2 Court at trial. The Discovery Commissioner's Report and Recommendations were affirmed and
3 adopted by the Court. Plaintiffs Mary Bryan and Aimee Hairr testified that their out of pocket
4 expenses for schooling for Ethan and Nolan outside of CCSD is approximately ten thousand
5 dollars (\$10,000) per year starting in eighth grade, or approximately fifty thousand dollars
6 (\$50,000) total for each child to date.

8 Beyond these out of pocket expenses both Ethan and Nolan suffered from physical attacks
9 and relentless homophobic slurs. A seminal Nevada case can serve as a guideline for damages in
10 similar school bullying cases. In *Henkel*, (150 F. Supp. 2d at 1069), "during school hours and on
11 school property, he endured constant harassment, assaults, intimidation, and discrimination by
12 other students because he is gay and male and school officials, after being notified of the
13 continuous harassment, failed to take any action." The Washoe County School District agreed to
14 pay Mr. Henkel four hundred, fifty-one thousand (\$451,000) dollars as damages. Using *Henkel* as
15 a guidepost, the \$451,000 award in 2001 would be equivalent to approximately \$625,000 in
16 today's dollars. Therefore, awards of six hundred thousand dollars (\$600,000), apiece to each
17 Plaintiff, Mary Bryan on behalf of Ethan Bryan and Aimee Hairr on behalf of Nolan Hairr, is
18 appropriate.

20 VI. Judgment

21 Judgment is hereby entered in favor of Plaintiffs Mary Bryan on behalf of Ethan Bryan and
22 Aimee Hairr on behalf of Nolan Hairr, and against Defendant Clark County School District on the
23 Title IX and Substantive Due Process claims. It is further ordered that Defendant shall pay to each
24 Plaintiff, Ethan Bryan and Nolan Hairr, the sum of ^{two M's} ~~six~~ hundred thousand dollars ^{\$200,000} ~~(\$600,000)~~ for ^{M.A.}
25 physical and emotional distress damages and costs for alternative schooling. These awards are
26 exclusive of any costs or attorneys fees accrued.

1 Dated this 20 day of July 2007

Nancy L. Allf
NANCY L. ALLF
District Court Judge

2
3 Respectfully submitted by:

4 Allen Lichtenstein
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19 *Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,*
20 *Aimee Hairr and Nolan Hairr*
21
22
23
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28


1
2 **CERTIFICATE OF SERVICE**
3

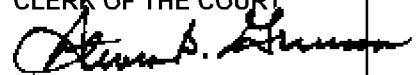
4 I hereby certify that on or about the date signed I caused the foregoing document to be
5 electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial
6 District Court's electronic filing system, with the date and time of the electronic service
substituted for the date and place of deposit in the mail and/or by email to:

7 Allen Lichtenstein, Esq.
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Aimee Hairr and Nolan Hairr*

DISTRICT COURT
CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN BRYAN;
AIMEE HAIRR, mother of NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
JUDGMENT IN FAVOR OF
PLAINTIFFS**

TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF

RECORD

Please take notice that Findings of Fact, Conclusions of Law and Judgment in Favor of
Plaintiffs were entered in this case, a copy of which is attached..

Dated this 15th day of August 2017,

Respectfully submitted by:

/s/Allen Lichtenstein

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17 *Aimee Hairr and Nolan Hairr*

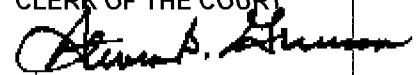
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that I served the following Notice of Findings of Fact, Conclusions of Law
20 and Judgment in Favor of Plaintiffs via Court's electronic filing and service system and/or United
21 States Mail and/or e-mail on the 15th day of August 2017, to:

22 Dan Waite
23 Lewis Rocha Rothgerber Christie
24 3993 Howard Hughes Pkwy., Suite 600
25 Las Vegas, NV 89169-5996

26 DWaite@lrrc.com

27 /s/ Allen Lichtenstein



DISTRICT COURT
CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN BRYAN;
AIMEE HAIRR, mother of NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT IN FAVOR OF
PLAINTIFFS**

I. Introduction

On June 29, 2017, the Court issued its Decision and Order in favor of Plaintiffs Ethan Bryan and Nolan Hairr and against Defendant Clark County School District (CCSD) on the claims that Defendant violated Plaintiffs' rights under Title IX, 20 USC § 1681(A) and Plaintiffs' rights to Substantive Due Process under the Fourteenth Amendment to the United States Constitution and pursuant to 42 U.S.C. 1983. The Court also ruled that, "Plaintiffs are entitled to a judgment for all damages sought under these two claims asserted in the Complaint, and proven at trial."

II. Procedural History

Plaintiffs filed their Amended Complaint on October 10, 2014 against Defendants: Clark County School District (CCSD), Pat Skorkowsky, in his official capacity as CCSD

1 Superintendent; CCSD Board of School Trustees; Erin A. Cranor, Linda E. Young, Patrice Tew,
2 Stavan Corbett, Carolyn Edwards, Chris Garvey, Deanna Wright, in their official capacities as
3 CCSD Board of School Trustees, Greenspun Jr. High School (GJHS); Principal Warren P.
4 McKay, in his individual and official capacity as principal of GJHS; Leonard DePiazza, in his
5 individual and official capacity as assistant principal at GJHS; Cheryl Winn, in her individual and
6 official capacity as Dean at GJHS; John Halpin, in his individual and official capacity
7 as counselor at GJHS; Robert Beasley, in his individual and official capacity as instructor at
8 GJHS. The Amended Complaint listed five claims for relief: 1) Negligence; 2) Negligence Per
9 Se; 3) Violation of Title IX; 4) Violation of the Right to Equal Protection; 5) Violation of
10 Substantive Due Process.
11

12 In its February 5, 2015 Order, the Court Dismissed Plaintiffs' Claims for Relief No. 1,
13 Negligence, and No. 2, Negligence Per Se. Plaintiffs abandoned their Fourth Claim for Relief,
14 Equal Protection, leaving the Third Claim for Relief, Title IX, and Fifth Claim for Relief,
15 Substantive Due Process, for trial. Defendants filed their Answer on February 25, 2015.
16

17 On March 1, 2016, Defendants filed a Motion for Summary Judgment, which was granted
18 in part and denied in part by the Court in its July 22, 2016 Order. The Court denied Defendants'
19 Motion to dismiss Plaintiffs' Title IX claim against Defendant CCSD. It dismissed the 42 USC
20 1983 Equal Protection claims, which had been abandoned by Plaintiffs. The Court granted
21 Defendants' Motion to dismiss all Defendants except CCSD from the 42 USC 1983 Substantive
22 Due Process claim. Overall, the Court ruled the two remaining claims against CCSD, 1) Title IX;
23 and 2) Substantive Due Process would proceed to trial.
24

25 On or about March 20, 2016, Discovery Commissioner Bulla denied Defendants' Motion
26 to Compel Damages Categories and Calculations, allowing such calculations to be determined by
27
28

1 the Court at trial. The Discovery Commissioner's Report and Recommendations were affirmed
2 and adopted by the Court on April 6, 2016.

3 On August 5, 2016, Defendant CCSD filed a Motion for Partial Reconsideration, or in the
4 Alternative, Motion for Relief Pursuant to NRCP 59(E), 60(A) and 60(B), or Motion in Limiting.
5 On October 26, 2016 the Court denied Defendant's Motion.

6
7 On November 15, 2016, a five-day bench trial was held in Department 27 before the
8 Honorable Judge Nancy L. Alf. Allen Lichtenstein, Esq. and John Houston Scott, Esq. appeared
9 for and on behalf of Plaintiffs Mary Bryan ("Mrs. Bryan") and Aimee Hairr ("Mrs. Hairr"),
10 (collectively Plaintiffs"). Daniel Polsenberg, Esq., Dan Waite, Esq., and Brian D. Blakley, Esq.
11 appeared for and on behalf of Defendant CCSD, ("Defendant") on the Title IX and 42 USC 1983
12 Substitute Due Process claims. Testimony was given by: Nolan Hairr, Ethan Bryan, Aimee Hairr,
13 Mary Bryan, Principal Warren McKay, Vice Principal Leonard DePiazza, Dean Cheryl Winn,
14 Counselor John Halpin and band teacher Robert Beasely. Although neither one of the alleged
15 bullies testified, CL's deposition was introduced into evidence. (For privacy purposes, only the
16 initials of CL and DM are used.)

17
18 Closing arguments were done via written briefs. Briefing was completed on May 26, 2017.
19 On June 29, 2017, the Court issued its Decision and Order, concluding that Defendant CCSD
20 violated both Title IX of the Civil Rights Act and also violated Plaintiffs' Substantive Due Process
21 rights as guaranteed by the Fourteenth Amendment to the United States Constitution pursuant to
22 42 USC 1983. The Court further ordered that after review, "Judgment shall be entered in favor of
23 Plaintiffs Mary Bryan, on behalf of Ethan Bryan and Aimee Hairr on behalf of Nolan Hairr, and
24 that Plaintiffs are entitled to a judgment for all damages sought under these two claims asserted in
25 the Complaint, and proven at trial."
26
27
28

1 **III. Findings of Fact**

2 **A. Ethan Bryan and Nolan Hairr started being bullied almost from the time**
3 **they began attending Greenspun Jr. High School.**

4 In late August 2011, two friends, Ethan Bryan and Nolan Hairr began sixth grade at
5 Greenspun Jr. High School. Both Ethan and Nolan enrolled in Mr. Beasley's third period band
6 class in the trombone section.

7 Almost from the beginning of the school year, Ethan and Nolan began to be bullied by two
8 other trombone students, CL and DM. In sixth grade, at age 11, Nolan was small for his age with
9 long blonde hair. CL and DM taunted him with names like gay and faggot, and called him a girl.
10 CL also touched, pulled, ran his fingers through Nolan's hair and blew in Nolan's face.
11

12 Nolan, following what he believed was proper procedure, went to the Dean's office and
13 filled out a complaint report. He was, however, too embarrassed to mention the homophobic and
14 sexual content of the slurs that he was enduring. Nolan was subsequently called into the Dean's
15 office and met with Dean Winn. He did not feel that she was either sympathetic or even interested,
16 and therefore was reluctant to discuss the homophobic sexually-oriented nature of the bullying.
17

18 Within a day or two of Nolan's meeting with the Dean, on or about September 13, 2011,
19 CL, who was sitting next to Nolan in band class, reached over and stabbed Nolan in the groin
20 with the sharpened end of the pencil. CL said he wanted to see if Nolan was a girl, and also
21 referred to Nolan as a tattletale. Nolan took the tattletale reference as a sign that the stabbing was,
22 at least in part, retaliation for Nolan complaining about the bullying. Because of this fear of
23 retaliation, Nolan decided not to tell any adults about any further bullying directed at him, and
24 instead, to endure the torment in silence.
25

26 A day or two after the stabbing incident, while Nolan was at Ethan's house, Ethan's
27 mother, Mary Bryan overheard Ethan and Nolan talking about some problem taking place at
28 school. After Nolan had gone home, Mary Bryan confronted her son and questioned him

1 concerning what Ethan and Nolan had been discussing. Ethan described to his mother the incident
2 where CL stabbed Nolan in the groin with a pencil, and about the overall bullying occurring in Mr.
3 Beasley's band class.

4 **B. Mary Bryan's September 15, 2011 email**

5 In response, Mary Bryan decided to contact the school officials to report the bullying in
6 general and the stabbing in particular.
7

8 On September 15, 2011, she attempted to telephone Greenspun Principal Warren P.
9 McKay. However, she could not reach him by telephone and was only able to talk to a junior high
10 student volunteer. Mary did not want to leave such a sensitive message with a junior high student
11 and was not transferred to Principal McKay's voicemail. Mary then decided she would email
12 the Principal and got an email address for him from the student volunteer.
13

14 On September 15, 2011, Mary Bryan sent an email to three people: 1) Principal Warren
15 McKay; 2) band teacher Robert Beasley; and 3) school counselor John Halpin, complaining about
16 the bullying and specifically about the stabbing. Both Mr. Beasley and Mr. Halpin acknowledged
17 receiving the September 15, 2011 email from Mary Bryan. Principal McKay said he did not
18 receive it because the email address for him (which Mary Bryan obtained from his own office)
19 was incorrect.
20

21 Both Mr. Beasley and Mr. Halpin were, in 2011, mandatory reporters who were required to
22 report any information concerning bullying, to either the Principal or one of his designees,
23 pursuant to NRS 3.88.1351 (1). In 2011, Principal McKay's designees at Greenspun were Vice
24 Principal Leonard DePiazza and Dean Cheryl Winn.

25 Neither Mr. Beasley nor Mr. Halpin fulfilled their statutory duty to report Mary Bryan's
26 September 15, 2011 email concerning bullying, explaining that because they saw Principal
27
28

1 McKay's name in the address line, they assumed, without verifying, that Dr. McKay, and through
2 him Vice Principal DePiazza and Dean Winn were aware of the situation.

3 These assumptions by Mr. Beasley and Mr. Halpin were incorrect. Moreover, by relying
4 on their assumptions, rather than adhering to the statutory requirement to report any information
5 concerning bullying they received, they both violated the explicit requirements of NRS
6 388.1351(1).
7

8 In response to the September 15, 2011 email, Mr. Beasley changed the seating
9 arrangements in the trombone section of his class. While before, Nolan had been sitting next to
10 Connor, after the change, Nolan set directly in front of CL.

11 While Mr. Beasley attempted to keep an eye on both bullies and the bullied students, he
12 admitted that he was unable to constantly watch them and still teach his class. Mr. Beasley said
13 that he made the decisions concerning the seating arrangements on his own without consultation
14 with anyone else. This testimony conflicted with that of Dean Winn, who stated that she was
15 involved in the decision.
16

17 The bullying continued. For Ethan Bryan, at the beginning of the school year, most of the
18 taunts at him by CL and DM had to do with his size. He was large for his age and overweight.

19 After the incident where CL stabbed Ethan's friend Nolan with a pencil, the bullying of
20 Ethan began to change. It not only escalated but also shifted from being mostly about his size and
21 weight to also involve homophobic slurs and vile and graphic innuendos concerning sexual
22 relations between Ethan and Nolan.
23

24 Like his friend Nolan, Ethan also chose not to report the bullying that he was enduring for
25 fear of retaliation, and lack of any real interest on the part of Greenspun school officials. Mary
26 Bryan, believing that the school would contact Nolan's parents after Mary sent them the
27
28

1 September 15, 2011 email about the stabbing of Nolan, did not directly inform Nolan's parents
2 herself.

3 **C. Aimee Hairr's September 22, 2011 phone conversation with Vice Principal**
4 **DePiazza and September 23, 2011 phone call with Counselor Halpin**

5 On or about September 21, 2011, while Mary Bryan and Nolan's mother Aimee Hairr were
6 at a birthday party for another of Mary's children, Mary casually asked Aimee about the school's
7 response to the September 15, 2011 email. Aimee responded that she had received no
8 communication from the school, and that she had no knowledge or information about the bullying
9 of her son occurring in Mr. Beasley's band class.

10
11 After talking to Mary, Nolan's parents then confronted him about the bullying. Nolan
12 verified the veracity of the substance of the contents of the September 15, 2011 email. He also
13 admitted to the stabbing incident.

14 On September 22, 2011, Nolan's mother made several phone calls to various school
15 officials in an attempt to contact the school regarding the September 15, 2011 email about the
16 stabbing of their son. She left several messages for different school officials. Finally, Aimee Hairr
17 was able to reach Vice Principal DePiazza, and had a phone conversation with him in which she
18 described the September 15, 2011 email, and the stabbing, including the comment by CL that he
19 did it to see if Nolan was a girl.
20

21 Mr. DePiazza told Aimee Hairr that there were a few options for Nolan, all involving
22 Nolan either transferring out of band class into another class at Greenspun, or transferring out of
23 Greenspun to a different school entirely.

24
25 Aimee found these so-called solutions to be both inadequate and inappropriate because if
26 anyone were to be moved, it should be the perpetrator of the bullying who assaulted her son not
27 the victim, Nolan.
28

1 Vice Principal DePiazza denied that he ever had a phone conversation with Aimee Hairr.
2 According to his version of events, some time in either September or October 2011 (he could not
3 remember when) there was a meeting in his office attended by Aimee Hairr, Dean Cheryl Winn
4 and possibly Nolan Hairr. Mr. DePiazza claimed that while there was some generalized discussion
5 about the "situation" in the band room, nothing specific about the stabbing or the September 15,
6 2011 email was ever mentioned. Neither Aimee Hairr, Nolan Hairr nor Cheryl Winn corroborated
7 Mr. DePiazza's version of events about this supposed meeting, or even that it took place.
8

9 On or about September 23, 2011, Mrs. Hairr received a return phone call from counselor
10 John Halpin. Aimee knew Mr. Halpin because she was his dental hygienist. Mr. Halpin told her he
11 had received this September 15, 2011 email and was aware of its contents. He said he had
12 previously spoken to Nolan and would do so again to make sure that Nolan made a formal
13 complaint about the stabbing to the Dean. He said he believed that Dean Winn knew about it, but
14 wanted to make sure.
15

16 Later that day, Nolan met with Mr. Halpin. Both agreed that the counselor wanted Nolan to
17 go to the Dean's office to fill out an incident report. Mr. Halpin said that he accompanied Nolan to
18 Ms. Winn's office, while Nolan said he was sent there and went by himself. Mr. Halpin also said
19 that since the Dean was not in the office, he left a message for Dean Winn with Harriet Clark, her
20 secretary, recounting the stabbing incident and the bullying. He gave that message to the Dean's
21 secretary with instructions to relay that message to Dean Winn. The Dean did not report receiving
22 Mr. Halpin's message from her secretary.
23

24 Nolan, still trying to "tough it out" and not make more trouble for himself by complaining
25 and thereby risking further retaliation, wrote a bland and rather innocuous version of what he was
26 enduring in band class. He did not mention the stabbing nor the homophobic, sexually-oriented
27 slurs.
28

1 Dean Winn said she could not remember whether she met with Nolan on or after
2 September 22, 2011. Nolan said that no such meeting took place on or after September 22, 2011.
3 Aimee Hairr said she never had a meeting with Dean Winn.

4 Dean Winn said testified did not learn of the stabbing incident until the following year,
5 February 2012.
6

7 **D. Mary Bryan's October 19, 2011 email to school officials and October 19,**
8 **2011 meeting with Dean Winn**

9 On or about October 19, 2011, Mary Bryan noticed that Ethan had come home from school
10 with scratches on his leg. When she confronted him about the scratches, he told her that at the end
11 of band class, while Mr. Beasley was out of the room, one of the bullies who was behind Ethan,
12 removed a rubber stopper out of a piece of his trombone and started hitting Ethan in the legs with
13 the remaining sharp piece of the instrument.

14 Upon questioning by his parents, Ethan also disclosed that CL and DM continued to make
15 lewd sexual comments including calling both Ethan and Nolan gay, faggots and other similar
16 names, and also talked about Ethan and Nolan jerking each other off and otherwise engaging in
17 homosexual acts with each other.
18

19 Ethan's parents, enraged that this was going on -- particularly after the September 15, 2011
20 email -- decided to confront school officials. On October 19, 2011 Mary Bryant sent a second
21 email addressed to Principal McKay, Mr. Beasley, and Mr. Halpin, describing the continuing
22 bullying and also the hitting scratching of Ethan's leg.

23 Mr. and Mrs. Bryan met with Dean Winn at the Dean's office on October 19, 2011. They
24 described the bullying endured by both Ethan and Nolan, specifically mentioning the physical
25 assaults as well as the vile homophobic slurs that both boys were subjected to by CL and DM. The
26 Bryans made it clear that they would not tolerate a continuation of this bullying.
27
28

1 Dean Winn denied the occurrence of this meeting. She also denied that she knew anything
2 about the, emails, the physical assaults and the homophobic slurs in October 2011. She said she
3 only learned of the October 19, 2011 email the following year, in February 2012.

4 **E. The October 19, 2011 Administrator's meeting where John Halpin informed**
5 **Principal McKay and Vice Principal DePiazza of Mary Bryan's emails**

6 Mr. Halpin, who was a recipient of the October 19, 2011 email, said he forwarded that
7 email to Dean Winn to make sure she was aware of the situation. Dean Winn denied having
8 received the October 19, 2011 email from Mr. Halpin.

9 Also on October 19, 2011, Mr. Halpin attended a weekly administrators meeting. Principal
10 McKay and Vice Principal DePiazza were at that meeting. Dean Winn, who was a regular
11 participant in those weekly meetings, did not attend that day.

12 Mr. Halpin said that he reported on the bullying that was occurring in Mr. Beasley's band
13 class in considerable detail to both Principal McKay and Vice Principal DePiazza. He also stated
14 that everyone at that meeting knew about the two emails that had been sent by Mary Bryan. He
15 also made it clear that the two assaults were perpetrated by the same two bullies against the same
16 two bullied students. Mr. Halpin specifically recalled Principal McKay telling Vice Principal
17 DePiazza to take care of the matter.

18 Dr. McKay stated his recollections from the October 19, 2011, administrators meeting
19 differently. McKay recalled Mr. Halpin bringing up the subject of bullying in Mr. Beasley's class,
20 but without mentioning many specifics. For reasons he did not disclose, McKay stated that he
21 really was not interested in the details of such matters and left it to his subordinates to address the
22 issue.

23 Dr. McKay stated that he told Mr. DePiazza and Mr. Halpin to handle the situation. Dr.
24 McKay also stated that he subsequently did not ask the Vice Principal about how the investigation
25 was going or what DePiazza had found out until February 2012.

1 Principal McKay only took action in February 2012 because it was then that he was
2 ordered by his supervisor at the district level and the Assistant Superintendent to investigate the
3 bullying of Ethan and Nolan.

4 Vice Principal DePiazza stated a vague memory of the October 19, 2011 administrative
5 meeting. He recalled that there may have been some discussion about bullying but didn't really
6 remember much. His position was that he definitely did not remember being told by Dr. McKay to
7 conduct an investigation into the bullying reports on October 19, 2011.

9 Principal McKay stated that in 2011 while he never asked his Vice Principal about the
10 bullying investigation, he did, at some point, have a casual discussion with Dean Winn about the
11 matter. He asked her how the investigation was going. Dean Winn replied that she was having
12 trouble getting corroborating statements from other students.

13 Dean Winn's testimony contradicted the Principal's statements by claiming that she did
14 not undertake any investigation of the bullying because she was specifically told by Dr. McKay
15 that it was all being handled by Vice Principal DePiazza. Dr. McKay testified that Dean Winn told
16 him she was investigating by trying to get statements from other students.

18 **F. Although by October 19, 2011, all members of the Greenspun Junior High**
19 **School administration were aware of physical, and discriminatory bullying that**
20 **Ethan and Nolan were experiencing, no investigation was conducted until February**
21 **2012, after both boys had left the school.**

22 Although the school officials all pointed fingers at each other, the one thing that they all
23 agreed upon is that contrary to Nevada statutes, no investigation of the reports of bullying,
24 described in the September 15, 2011, and October 19, 2011 emails from Mary Bryan and the
25 September 22, 2011 phone conversation between Aimee Hairr and Vice Principal DePiazza, the
26 September 23, 2011 phone conversation between Aimee Hairr and Mr. Halpin, and the October
27 19, 2011 meeting between Mr. and Mrs. Bryan and Dean Winn, ever occurred in 2011.

1 Throughout the rest of 2011, the bullying of Ethan and Nolan by CL and DM continued
2 out of the sight of Mr. Beasley.

3 Ethan and Nolan continued to employ the strategy of trying to ignore the problem, feeling
4 that any further complaints would just lead to greater retaliation.

5 When Ethan and Nolan came back to Greenspun for in January 2012, their resolve began
6 to waver. Each boy tried to avoid band class or even school altogether. Ethan feigned illness, and
7 even tried to make himself sick by eating cardboard. Nolan would hang out in the library or in the
8 halls. By the middle of January, both boys had essentially stopped going to school in order to
9 avoid further bullying.
10

11 In January 2012, Ethan Bryan was prevented from attempting to commit suicide by
12 drinking household chemicals, because of a fortuitous intervention from his mother. Ethan's
13 parents refused to send him back to Greenspun after that.
14

15 On or around January 21, 2012 Nolan had, what his mother described as something close
16 to a breakdown because of the bullying that he and others were enduring at Greenspun. Mrs. Hairr
17 decided to pull Nolan out of the school at that time. She also made a report to the police.

18 By early February 2012, both Ethan and Nolan had been removed from Greenspun Jr.
19 High School.
20

21 Subsequent to the removal of Ethan and Nolan from Greenspun, and also subsequent to the
22 filing of the police report, Principal McKay, on or about February 7, 2012, was contacted by
23 officials from the school district, specifically his direct supervisor Andre Long and the Assistant
24 Superintendent Jolene Wallace. He was ordered by Ms. Wallace to conduct an investigation into
25 the bullying of Ethan Bryan and Nolan Hairr.

26 Because he was ordered by his superiors to investigate, Principal McKay directed Vice
27 Principal DePiazza to conduct a "second" investigation.
28

1 This was, in fact, the only investigation done at Greenspun into the bullying of Ethan and
2 Nolan. At trial, no one from the school or the school district testified to seeing any results of any
3 earlier investigation. Nor was any evidence obtained from any earlier investigation introduced.
4 Contrary to the responsibilities under Nevada law, no investigation ever took place while Ethan
5 and Nolan were attending Greenspun Junior High School.
6

7 **IV. Conclusions of Law**

8 **A. The Evidence and Testimony at Trial shows a Title IX Violation.**

9 **1. Title IX Standards**

10 Section 901(a) of Title IX provides, “No person in the United States shall, on the basis of
11 sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination
12 under any education program or activity receiving Federal financial assistance.” 20 USC §
13 1681(a). Based on the receipt of federal funds, CCSD is subject to Title IX requirements. 20 USC
14 § 1681(a). Under Title IX, student on student harassment and bullying based upon perceived
15 sexual orientation is actionable.
16

17 For liability under Title IX for student on student sexual harassment: (1) the school district
18 “must exercise substantial control over both the harasser and the context in which the known
19 harassment occurs”, (2) the plaintiff must suffer “sexual harassment ... that is so severe, pervasive,
20 and objectively offensive that it can be said to deprive the victims of access to the educational
21 opportunities or benefits provided by the school”, (3) the school district must have “actual
22 knowledge of the harassment”, and (4) the school district’s “deliberate indifference subjects its
23 students to harassment”. *Reese v. Jefferson School District No. 14J*, 208 F.3d 736, 739 (9th Cir.
24 2000) (quoting *Davis*, 526 U.S. 629, 119 S. Ct. 1661, 1675 (1999)). See also, *Henkle v. Gregory*,
25 150 F.Supp.2d 1067, 1077-1078 (D. Nev. 2001). The Ninth Circuit defines deliberate indifference
26 as “the conscious or reckless disregard of the consequences of one’s acts or omissions,” *Henkle v.*
27
28

1 *Gregory*, 150 F.Supp. 2d 1067,1077-78 (D. Nev. 2001); See also 9th Cir. Civ. Jury Instr. 11.3.5
2 (1997)(citing *Redman v. County of San Diego*, 942 F.2d 1435, 1442 (9th Cir. 1991), *cert. denied*,
3 502 U.S. 1074 (1992). A Plaintiff bringing a claim under Title IX must prove his or her claim by a
4 preponderance of the evidence. Whether conduct rises to the level of actionable "harassment"
5 thus "depends on a constellation of surrounding circumstances, expectations, and
6 relationships," *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 82 (1998).
7

8 In the instant case, the testimony at trial showed that: 1) Greenspun Junior High School
9 exercised substantial control over both the students involved in the bullying and the context in
10 which the harassment occurred; 2) both Ethan and Nolan were bullied at school; 3) the harassment
11 they endured was sexual in nature; 4) the harassment was so severe, pervasive, and objectively
12 offensive that it deprived Ethan and Nolan of access to the educational opportunities and benefits
13 provided by the school; 5) the appropriate school officials had actual knowledge of the bullying
14 and sexual discrimination suffered by Ethan and Nolan; and, 6) the appropriate school officials
15 demonstrated deliberate indifference to the bullying endured by Ethan and Nolan.
16

17 **2. Ethan and Nolan were bullied in Mr. Beasley's band class.**

18 Ethan and Nolan were bullied in Mr. Beasley's band class by two other students. They
19 were not only called names, but both were physically assaulted by the bullies. On September 13,
20 2011, CL stabbed Nolan in the groin with a pencil during Mr. Beasley's band class. On October
21 18, 2011 Ethan was physically assaulted by one of the bullies at the end of band class by having
22 his legs hit and scratched with a trombone from which the rubber stopper had been removed.
23

24 **3. The bullying was sexual in nature.**

25 From the very beginning of the school year Nolan was called names such as "faggot,
26 fucking fat faggot, fucking faggot, gay, gay boyfriend, cunt." This began when he was 11 years
27 old at the beginning of sixth grade. Nolan was a small child who had blonde hair down to his
28 shoulders.

1 While Ethan had been bullied by CL and DM from the beginning of the school year, their
2 comments had started off being directed at his size and weight, after the stabbing incident, the
3 bullies also began directing their homophobic slurs against Ethan as well. The bullies continuously
4 taunted Ethan and Nolan with homophobic slurs and innuendo, and specifically made statements
5 concerning homosexual relations and explicit sexual acts between Ethan and Nolan in vile and
6 graphic terms.
7

8 **4. The bullying of Ethan and Nolan was severe, pervasive, and objectively**
9 **unreasonable, and deprived them of significant educational opportunities.**

10 The nature of the bullying was severe, pervasive, and objectively unreasonable. It involved
11 verbal abuse of a sexual and homophobic nature beginning from the start of the school year and
12 only ceased when Ethan and Nolan were forced to stop attending Greenspun. Both boys suffered
13 so severely from the bullying that they did whatever they could to not attend school in order to
14 avoid the bullying. In January 2012, Ethan feigned illness in order to stay home from school. He
15 would eat paper in order to make himself sick. For Ethan, the bullying was so severe and
16 pervasive that he saw suicide as his only way out. Fortunately, he was prevented from doing so
17 by his mother's intervention. At that point, she was forced to take him out of Greenspun.
18

19 In January 2012, Nolan stopped going to band class in order to avoid the bullying by CL.
20 Nolan then had a breakdown due to the constant bullying that forced his parents also to remove
21 him from Greenspun. The creation of a sufficiently hostile environment forced Ethan and Nolan's
22 parents to remove them from Greenspun Jr. High School and thus deprived them of educational
23 opportunities.
24

25 The severity of the hostile environment forced both Nolan and Ethan to quit Greenspun to
26 escape both verbal and sometimes physical harassment from CL and DM that school officials were
27 aware of, and allowed to continue. This was clearly a loss of educational opportunity.
28

1 **5. Appropriate school officials had actual notice of the existence and the**
2 **discriminatory nature of the bullying.**

3 Appropriate school officials had notice of the existence and nature of the bullying suffered
4 by Ethan and Nolan. *See, Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998).

5 [In cases like this one that do not involve official policy of the recipient entity, we
6 hold that a damages remedy will not lie under Title IX unless an official who at a
7 minimum has authority to address the alleged discrimination and to institute
8 corrective measures on the recipient's behalf has actual knowledge of
9 discrimination in the recipient's programs and fails adequately to respond.

10 524 U.S. at 290.

11 The Court in *Warren v. Reading Sch. Dist.*, 278 F.3d 163 (3rd Cir. 2002) stated that the
12 school principal was the appropriate person for Title IX purposes, while in *Murrell v. Sch. Dist.*
13 *No. 1*, 186 F.3d 1238, 1247 (10th Cir. 1999) the Court considered an individual who exercises
14 substantial control, for Title IX purposes, to be anyone with the authority to take remedial action.
15 Several Greenspun personnel had authority to take remedial disciplinary actions when appropriate,
16 including, band teacher Beasley, Principal McKay, Vice Principal DePiazza, and Dean Winn.
17 Both Mr. Beasley and Mr. Halpin admitted to receiving Mary Bryan's September 15, 2011 and
18 October 19, 2011 emails.

19 Five separate contacts by Ethan or Nolan's parents to Greenspun personnel put the school
20 on actual notice of the verbal, physical and sexual nature of the bullying. On September 15, 2011,
21 Mary Bryan sent an email to Dr. McKay, Mr. Halpin and Mr. Beasley concerning the stabbing of
22 Nolan. On September 22, Aimee Hairr spoke to Mr. DePiazza about the general bullying and the
23 assault on her son. She spoke to Mr. Halpin by phone the next day.

24 On October 19, 2011, Mary Bryan sent another email to Dr. McKay, Mr. Halpin and Mr.
25 Beasley, this time regarding the assault on Ethan. The same day, she and her husband met with
26 Dean Winn to discuss the bullying of Ethan and Nolan, and particularly about its sexual,
27
28

1 homophobic nature. All of these parental contacts gave the school actual notice to appropriate
2 persons of the existence and nature of the bullying of both Ethan and Nolan.

3 **6. Greenspun school officials acted with deliberate indifference for Title**
4 **IX violation purposes.**

5 Deliberate indifference is “the conscious or reckless disregard of the consequences of one’s
6 acts or omissions.” *Henkle v. Gregory*, 150 F. Supp. 2d at 1078. Deliberate indifference occurs
7 where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of
8 the known circumstances. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736, 739 (9th Cir.
9 2000). It must, at a minimum, “cause students to undergo harassment or make them liable or
10 vulnerable to it.” *Id.*, citing *Davis*, 526 U.S. at 645. “[I]f an institution either fails to act, or acts in
11 a way which could not have reasonably been expected to remedy the violation, then the institution
12 is liable for what amounts to an official decision not to end discrimination.” *Gebser v. Lago Vista*
13 *Ind. School Dist.*, 524 U.S. 274, 290 (1998); *See, Jane Doe A v. Green*, 298 F. Supp.2d 1025, 1035
14 (D. Nev. 2004). Greenspun officials’ failure to take further action once they received actual notice
15 of the bullying and its nature showed deliberate indifference. *See, Flores v. Morgan Hill Unified*
16 *School Dist.*, 324 F.3d 1130, 1136 (9th Cir. 2003), *Vance v. Spencer County Public School Dist.*,
17 231 F.3d 253 (6th Cir. 2000).

18 Even though NRS 3.88.1351 (1) requires that once a report of bullying is received, the
19 Principal or his or her designee begin an immediate investigation, no investigation, much less one
20 conforming to statute, was ever undertaken in 2011. The only time an investigation occurred was
21 in February 2012, when it was ordered by the District. This, however, occurred well after both
22 Ethan and Nolan had been removed from Greenspun, and a police report had been filed. This
23 constituted deliberate indifference on the part of school officials who had actual notice of the
24 physical and homophobic bullying to which Ethan and Nolan were subjected.

25 **B. The Evidence and Testimony at Trial shows a Substantive Due Process**
26 **Violation.**

27 Under *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189
28 (1989), the Due Process Clause of the United States Constitution does not require state actors to

1 protect private citizens from harm inflicted by other private citizens. *DeShaney*, however, is
2 inapplicable because of the state created danger exception.

3 **1. Plaintiffs had a constitutionally protected interest in their safety and in**
4 **their education.**

5 State law can create a liberty or property interest. *Vitek v Jones*, 445 U.S. 480 (1980);
6 *Carlo v. City of Chino*, 105 F.3d 493 (9th Cir. 1997). The Supreme Court stated in *Goss v. Lopez*,
7 419 U.S. 565, 576 (1975), that a student's right to a public education is a property interest
8 protected by the Due Process Clause. See also, *Henry A. v. Willden*, 678 F.3d 991 (9th Cir. 2012).

9
10 **2. Defendant acted with deliberate indifference for substantive due**
11 **process violation purposes.**

12 The "state-created danger exception" — when "the state affirmatively places the Plaintiff
13 in danger by acting with 'deliberate indifference' to a 'known and obvious danger,'" is manifested
14 here. The standard for deliberate indifference does not vary between Title IX and 42 USC 1983
15 cases. *Doe A. v. Green*, 298 F.Supp.2d 1025, 1035 (D.Nev., 2004) see also *Willden, supra*.
16 Deliberate indifference consists of deliberate action or deliberate inaction. *Wereb v. Maui County*,
17 727 F.Supp.2d 898, 921 (D. Haw., 2010) citing, *Long v. County of Los Angeles*, 442 F.3d 1178,
18 1185 (9th Cir., 2006); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

19 In other cases, Defendants have been "charged with knowledge" of unconstitutional
20 conditions when they persistently violated a statutory duty to inquire about such conditions and to
21 be responsible for them. *Wright v. McMann*, 460 F.2d 126 (2nd Cir. 1972); *United States ex rel.*
22 *Larkins v. Oswald*, 510 F.2d 583 (2nd Cir. 1975); *Doe v. N.Y.C. Dep't of Soc. Servs.*, 649 F.2d 134
23 (2nd Cir. 1981). The failure to investigate the reported physical, sexual, and other verbal bullying,
24 in the face of clear statutory mandates to do so is significant evidence of an overall posture of
25 deliberate indifference toward Ethan's and Nolan's welfare.

26 **3. CCSD is subject to Monell liability.**

27 In *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005), the Ninth Circuit stated
28 that there are three distinct alternative theories of municipal liability, by showing: (1) a

1 longstanding practice or custom which constitutes the 'standard operating procedure' of the local
2 government entity; (2) that the decision-making official was, as a matter of state law, a final
3 policymaking authority whose edicts or acts may fairly be said to represent official policy in the
4 area of decision; or (3) that an official with final policymaking authority either delegated that
5 authority to, or ratified the decision of, a subordinate. *See also, Trevino v. Gates*, 99 F.3d 911, 918
6 (9th Cir. 1996).

8 Liability can be established by the existence of a government policy or custom that leads
9 to a constitutional deprivation. *Monell v. Department of Social Services of New York*, 436 U.S.
10 658, 694 (1978); *Ulrich v. City and County of San Francisco*, 308 F.3d 968, 983 (9th Cir. 2002);
11 *Weiner v. San Diego County*, 210 F.3d 1025, 1028 (9th Cir. 2000). The other two theories of
12 municipal liability attach when a final policymaker for the government acts in a manner that can
13 fairly be said to represent official action. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, (1988);
14 *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479-80 (1986).

16 Liability may attach either when the final policymaker is a final policymaking authority
17 who made the allegedly unconstitutional action, or when that action is ratified, or delegated to a
18 subordinate. *Menotti*, 409 F.3d at 1147; *Ulrich*, 308 F.3d at 984-85. A policy includes "a course
19 of action tailored to a particular situation and not intended to control decisions in later situations."
20 *Pembaur*, 475 U.S. at 481. When determining whether an individual has final policymaking
21 authority, the pertinent query is whether he or she has authority "in a particular area, or on a
22 particular issue." *McMillian v. Monroe County*, 520 U.S. 781 (1997). The individual must be in a
23 position of authority to the extent that a final decision by that person may appropriately be
24 attributed to the District. *Lytle v. Carl*, 382 F.3d 978, 983 (9th Cir. 2004); *see also, Christie v. Iopa*,
25 176 F.3d 1231, 1235 (9th Cir. 1999). A government entity can be liable for an isolated
26 constitutional violation. *Id.*

1 Principals can act as final policymakers for the purposes of *Monell* liability with respect to
2 student discipline issues. *Williams v. Fulton Cnty. Sch. Dist.*, 181 F. Supp. 3d 1089, 1126-27 (N.D.
3 Ga. 2016), *citing*, *Holloman v. Harland*, 370 F.3d 1252, 1293 (11th Cir. 2004); *see also*, *Bowen v.*
4 *Watkins*, 669 F.2d 979 (5th Cir. 1982); *Rabideau v. Beekmantown Cent. Sch. Dist.*, 89 F. Supp. 2d
5 263, 268 (N.D.N.Y. 2000), *citing* *Luce v. Board of Educ.*, 2 A.D.2d 502, 505, 157 N.Y.S.2d 123,
6 127 (3d Dep't 1956), *aff'd*, 3 N.Y.2d 792, 143 N.E.2d 797, 164 N.Y.S.2d 43 (1957).

8 **4. NRS 388.1351(2) specifically tasks the school Principal with**
9 **responsibility for investigating reports of bullying.**

10 The question of whether a particular individual has policymaking authority is a question of
11 state law. *Pembaur, supra*, 475 U.S. at 483; *St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988);
12 *Lytle*, 382 F.3d at 982-83. NRS 388.1351(2) required that once a report of bullying is received,
13 the Principal or his or her designee shall initiate an investigation not later than one day after
14 receiving notice of the violation, and that the investigation must be completed within 10 days after
15 the date on which the investigation is initiated.

16 The legislature explicitly gave a statutory mandate to investigate reports of bullying in
17 school to the school "Principal or his or her designee." There is absolutely no legislative authority
18 for the CCSD to designate somebody else at the District level to override the delegation of
19 responsibility and authority. Thus, under the NRS 388.1351(2), because the final policymaker
20 relating to the failure of Principal McKay or any of his designees to conduct the requisite
21 investigation on the reports of the bullying of Ethan and Nolan, was the Principal himself,
22 Defendant CCSD is liable for the substantive due process violation under *Monell*.

24 **V. Damages**

25 In its June 29, 2017 Decision and Order, the Court ruled that "Plaintiffs are entitled to a
26 judgment for all damages sought under these two claims asserted in the Complaint, and proven at
27 trial." On April 6, 2016, Discovery Commissioner Bulla denied Defendants' Motion to Compel
28

1 Damages Categories and Calculations, thus allowing these calculations to be determined by the
2 Court at trial. The Discovery Commissioner's Report and Recommendations were affirmed and
3 adopted by the Court. Plaintiffs Mary Bryan and Aimee Hairr testified that their out of pocket
4 expenses for schooling for Ethan and Nolan outside of CCSD is approximately ten thousand
5 dollars (\$10,000) per year starting in eighth grade, or approximately fifty thousand dollars
6 (\$50,000) total for each child to date.

8 Beyond these out of pocket expenses both Ethan and Nolan suffered from physical attacks
9 and relentless homophobic slurs. A seminal Nevada case can serve as a guideline for damages in
10 similar school bullying cases. In *Henkel*, (150 F. Supp. 2d at 1069), "during school hours and on
11 school property, he endured constant harassment, assaults, intimidation, and discrimination by
12 other students because he is gay and male and school officials, after being notified of the
13 continuous harassment, failed to take any action." The Washoe County School District agreed to
14 pay Mr. Henkel four hundred, fifty-one thousand (\$451,000) dollars as damages. Using *Henkel* as
15 a guidepost, the \$451,000 award in 2001 would be equivalent to approximately \$625,000 in
16 today's dollars. Therefore, awards of six hundred thousand dollars (\$600,000), apiece to each
17 Plaintiff, Mary Bryan on behalf of Ethan Bryan and Aimee Hairr on behalf of Nolan Hairr, is
18 appropriate.

20 VI. Judgment

21 Judgment is hereby entered in favor of Plaintiffs Mary Bryan on behalf of Ethan Bryan and
22 Aimee Hairr on behalf of Nolan Hairr, and against Defendant Clark County School District on the
23 Title IX and Substantive Due Process claims. It is further ordered that Defendant shall pay to each
24 Plaintiff, Ethan Bryan and Nolan Hairr, the sum of ^{two M's} ~~six~~ hundred thousand dollars ^{\$200,000} ~~(\$600,000)~~ for ^{M.A.}
25 physical and emotional distress damages and costs for alternative schooling. These awards are
26 exclusive of any costs or attorneys fees accrued.

1 Dated this 20 day of July 2007

Nancy L. Allf
NANCY L. ALLF
District Court Judge

2
3 Respectfully submitted by:

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20 *Aimee Hairr and Nolan Hairr*
21
22
23
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28


1
2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that on or about the date signed I caused the foregoing document to be
5 electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial
6 District Court's electronic filing system, with the date and time of the electronic service
substituted for the date and place of deposit in the mail and/or by email to:

7 Allen Lichtenstein, Esq.
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9 Dan R. Waite, Esq.
10 DWaite@lrrc.com

11 Daniel F. Polsenberg, Esq.
12 DPolsenberg@LRRRC.com

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14 Karen Lawrence
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

August 21, 2014

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

August 21, 2014	10:00 AM	Motion to Dismiss	Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin And Robert Beasley's Motion To Dismiss
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HEARD BY: Allf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Andrea Natali

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT:	Lichtenstein, Allen	Attorney
	Mendoza-Mitchell, Donna M.	Attorney
	Park, Matthew W.	Attorney
	Polsenberg, Daniel F.	Attorney
	Waite, Dan R	Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Staci Pratt, Esq. on behalf of Plaintiffs.

Following the Court's disclosure about a donation she had made to the ACLU, Mr. Lichtenstein stated there was no opposition to the court presiding over this matter. Matter TRAILED for Mr. Polsenberg to confer with his client regarding the Court's disclosure.

Matter RECALLED. Mr. Polsenberg agreed to move forward with today's matter. There being no

opposition, COURT ORDERED, Greenspun Junior High is DISMISSED as not being a proper party. Court summarized her understanding of the motion and opposition. Argument by Mr. Polsenberg in support of the motion regarding whether the specified causes of action should be dismissed or allowed to be re-plead. COURT NOTED she consistently allows pleadings to be amended at this stage. Further, argument by Mr. Polsenberg regarding: whether the pleadings were wrong under the facts plead, strict liability, immunity, discretionary function, negligence, statute of limitation, and sexual discrimination. Opposition by Mr. Lichtenstein regarding: whether the motion to dismiss was appropriate, whether duty existed, negligence, discretionary function, public accommodations, sexual discrimination, and whether there was a time bar. Further, argument by Mr. Polsenberg. COURT stated FINDINGS and, ORDERED, motion GRANTED IN PART and DENIED IN PART in that any part of the complaint that was dismissed is with leave to amend and no limitation on the leave to amend. FURTHER ORDERED, the first cause of action is DISMISSED with leave to amend and plaintiff must find a way to plead duty; as to second cause of action the motion is GRANTED with leave to amend and the specific statute has to be contained; as to the third cause of action, it can exist but must be re-plead; therefore, is GRANTED leave to amend; as to the fourth cause of action is GRANTED with leave to amend; as to the fifth cause of action is DENIED. FURTHER, Plaintiff has 30 days to amend. Mr. Polsenberg to prepare the order and provide to opposing counsel for approval of form and contact.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

January 29, 2015

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

January 29, 2015 10:30 AM All Pending Motions

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT: Lichtenstein, Allen Attorney
 Polsenberg, Daniel F. Attorney
 Waite, Dan R Attorney

JOURNAL ENTRIES

- DEFENDANTS CLARK COUNTY SCHOOL DISTRICT, WILLIAM P. MCKAY, LEONARD DEPIAZZA, CHERYL WINN, JOHN HALPIN AND ROBERT BEASLEY'S MOTION TO DISMISS FIRST AMENDED COMPLAINT...PLAINTIFF'S RESPON TO DEFENDANTS MOTION TO DISMISS AND PLAINTIFF'S COUNTERMOTION TO STRIKE PORTION OF DEFENDANT'S MOTION

Arguments by Mr. Polsenberg and Mr. Lichtenstein regarding the merits of the motions and opposition. COURT ORDERED, motions TAKEN UNDER SUBMISSION and CONTINUED to chambers calendar for a written decision.

2/10/2015 (CHAMBERS) STATUS CHECK: WRITTEN DECISION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

July 07, 2015

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

**July 07, 2015 3:00 AM Motion to Associate
Counsel**

HEARD BY: Allf, Nancy **COURTROOM:**

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that Plaintiffs Mary Bryan and Aimee Hairr filed a Motion to Associate Counsel, John H. Scott, Esq. on June 4, 2015, with a hearing set for Chambers Calendar on July 7, 2015. COURT FURTHER FINDS after review the Motion is in compliance with SCR 42 and no opposition has been filed.

COURT ORDERS for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and a consent to granting the same, Plaintiffs Motion to Associate Counsel GRANTED; Hearing on CHAMBERS CALENDAR on July 7, 2015 is VACATED; Movant to prepare the appropriate Order.

CLERK'S NOTE: A copy of this minute order was faxed to: Allen Lichtenstein (702-433-9591) and Dan R. Waite, Esq. (702-949-8398)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

November 18, 2015

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

November 18, 2015 3:00 AM Minute Order

HEARD BY: Allf, Nancy **COURTROOM:**

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that Defendants filed a Rule 12 Motion to Dismiss Unserved Parties (Motion) on October 8, 2015 and the matter was set for Hearing on Motions Calendar on November 19, 2015 at 10:30 a.m.

COURT FURTHER FINDS after review the Motion was served on Plaintiffs counsel Allen Lichtenstein, Esq. and Staci Pratt, Esq. of Allen Lichtenstein Attorney at Law, LTD via Eighth Judicial District Court Electronic Service and the Certificate of Service was executed by an employee of Lewis Roca Rothgerber LLP on October 8, 2015. COURT FURTHER FINDS after review the Motion and Certificate of Service was filed with the Court on October 8, 2015. The Motion has not been opposed.

COURT ORDERS for good cause appearing and after review, pursuant to EDCR 2.20(e), failure to file an opposition may be construed as an admission that the motion is meritorious and a consent to granting the same. COURT ORDERS for good cause appearing and after review, Defendants Motion is GRANTED. The Court has reviewed the motion, which provides cause for the granting of this motion; hearing set for MOTIONS CALENDAR on November 19, 2015, VACATED; Movant to prepare the appropriate Order.

CLERK'S NOTE: A copy of this minute order was faxed to: Allen Lichtenstein (702-433-9591) and

Dan R. Waite, Esq. (702-949-8398)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

January 22, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

January 22, 2016

3:00 AM

Minute Order

**Minute Order:
Motion to Compel
Rule 35 Examination
Rescheduled by
Stipulation to be
Heard by Dept. 27**

HEARD BY: Alf, Nancy

COURTROOM:

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on January 5, 2016 Defendants filed a Motion to Compel Rule 35 Examinations (Motion) and the Hearing was set for February 10, 2016 at 9:00 a.m. before Department 27. COURT FURTHER FINDS after review on January 21, 2016 Defendants obtained an Order Shortening Time on Defendants Motion with the Discovery Commissioner, and the Hearing was set for February 3, 2016 at 9:30 a.m. in front of the Discovery Commissioner.

COURT FURTHER FINDS after review on January 22, 2016 it received correspondence from Defendants wherein Defendants represented that the parties had agreed to have the Motion heard by Department 27 and requested that the Hearing be set back to the original date which was February 10, 2016 at 9:00 a.m.

COURT ORDERS for good cause appearing and after review the Hearing on Defendants Motion to Compel Rule 35 Examinations is set for MOTIONS CALENDAR on February 10, 2016 at 9:00 a.m.

before Department 27.

CLERK'S NOTE: A copy of this minute order was faxed to: Dan Waite, Esq., (702-949-8398) and Allen Lichtenstein, Esq., (702-433-2666) and e-mailed to John Houston Scott, Esq., (john@scottlawfirm.net).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

February 10, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

February 10, 2016 9:00 AM Motion to Compel

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- John Houston Scott, Pro Hac Vice, also present.

Arguments by Mr. Park and Mr. Lichtenstein regarding the merits of and opposition to the motion. Upon inquiry by the Court, Mr. Lichtenstein stated both young men have been deposed, Defendant had a chance to explore the anxiety and depression, and he plans on asking for damages according to proof and the determination of the trier of fact of what that would be worth. Court stated its findings and ORDERED, Defendant's motion to Compel Rule 35 Examinations DENIED, Court will limit the proof at the time of trial to those statements made in August 2011 through February 2012 with regard to anxiety and depression related only to those things alleged in the complaint. Mr. Lichtenstein to prepare the order and provide it to opposing counsel for approval. Upon inquiry by the Court regarding the motions next week set before Commissioner Bulla and if it necessary to go forward on, Mr. Park stated they still have a question as to their general damages. Colloquy regarding trial stack. Court stated if counsel and parties can agree on trial dates they can contact Court's Judicial Executive Assistant for dates certain.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

February 17, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

February 17, 2016 9:00 AM All Pending Motions

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: Lichtenstein, Allen Attorney
Park, Matthew W. Attorney

JOURNAL ENTRIES

- Motion to Compel Damages Categories and Calculations from Plaintiff Aimee Hairr Motion to Compel Damages Categories and Calculations from Plaintiff Mary Bryan on OST

Counsel Stipulated to a resolution. Pltf stated special damages, however, Mr. Lichtenstein will not state a particular number for general damages, and Judge Allf limited scope of general damages to the timeframe of actions in question. Colloquy re: special damages and expert disclosure may be needed to calculate damages. Mr. Lichtenstein is not planning to ask for a number from the Judge or Jury. Arguments by counsel.

COMMISSIONER RECOMMENDED, Motions to Compel Damages are DENIED on general damages, however, Commissioner will not prohibit counsel from asking for a specific number at Trial.

Mr. Lichienstein to prepare the Report and Recommendations, and Mr. Park to approve as to form

and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Lichienstein to appear at status check hearing to report on the Report and Recommendations.

3/18/16 11:00 a.m. Status Check: Compliance

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

April 21, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

April 21, 2016 10:30 AM All Pending Motions

HEARD BY: Alf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT: Lichtenstein, Allen Attorney
Polenberg, Daniel F. Attorney
Waite, Dan R Attorney

JOURNAL ENTRIES

- There being no opposition, COURT ORDERED, Defendants' Motion for Leave to File Excess Pages GRANTED. Arguments by counsel regarding the merits of and opposition to the motion for summary judgment. Court stated its findings and ORDERED, Defendants' Motion for Summary Judgment GRANTED IN PART, DENIED IN PART; with regard to title nine claims, the individuals will be dismissed; as to the due process allegations, the motion for summary judgment is DENIED; with regard to the punitive damage claims, the title nine claims will be dismissed, except for the 1983 claims; and the Plaintiffs' equal protection claims will be dismissed without opposition, Mr. Polenberg to prepare the order and submit to opposing counsel for approval. Court directed counsel to agree in the pretrial memorandum as to all issues left in the case, what the standard of proof is, and what the elements are for each cause of action. Colloquy regarding the qualified immunity and if it applies to the section 1983 claims. Court stated it was its intention to dismiss the individuals from all causes of action as the entity, if liable, is liable based upon the acts of those individuals. Court directed counsel to make sure they specify very clearly the remaining issues, the standard, and the elements in their pretrial memorandum.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

August 31, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

**August 31, 2016 9:30 AM Motion For
Reconsideration**

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT: Lichtenstein, Allen Attorney
 Polsenberg, Daniel F. Attorney
 Waite, Dan R Attorney

JOURNAL ENTRIES

- Arguments by counsel regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Defendants' Motion for Partial Reconsideration, on in the Alternative, Motion for Relief Pursuant to NRCP 59 (E), 60(A) and 60(B) or Motion in Limine DENIED. Mr. Lichtenstein to prepare the order and provide to opposing counsel for approval.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

November 03, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

November 03, 2016 10:30 AM Pretrial/Calendar Call

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT: Lichtenstein, Allen Attorney
 Polsenberg, Daniel F. Attorney
 Waite, Dan R Attorney

JOURNAL ENTRIES

- Counsel stated they are ready for trial. Colloquy regarding schedule and trial dates. Matter concluded.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

November 15, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

November 15, 2016 10:00 AM Bench Trial - FIRM

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT:	Beasley, Robert	Defendant
	Bryan, Ethan	Plaintiff
	Bryan, Mary	Plaintiff
	Hairr, Aimee	Plaintiff
	Hairr, Nolan	Plaintiff
	Lichtenstein, Allen	Attorney
	Polsenberg, Daniel F.	Attorney
	Waite, Dan R	Attorney

JOURNAL ENTRIES

- John Scott, Pro Hac Vice, present on behalf of Plaintiffs.

Colloquy regarding if Plaintiff filed a trial brief. Mr. Scott stated he understood it was discretionary and not obligatory, however the opposition he file to the summary judgment would be Plaintiff's trial brief. Exclusionary rule invoked by Mr. Scott. Opening statements by Mr. Scott and Mr. Polsenberg. Testimony and exhibits presented (see worksheets.) Deposition of Nolan Michael Hairr was PUBLISHED and FILED IN OPEN COURT. Deposition of Ethan Bryan was PUBLISHED and FILED IN OPEN COURT. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 11/16/2016 1:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

November 16, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

November 16, 2016 1:00 PM Bench Trial - FIRM

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT:	Beasley, Robert	Defendant
	Bryan, Ethan	Plaintiff
	Bryan, Mary	Plaintiff
	DePiazza, Leonard	Defendant
	Hairr, Aimee	Plaintiff

JOURNAL ENTRIES

- John Scott, Pro Hac Vice, present on behalf of Plaintiffs.

Testimony and exhibits presented (see worksheets). Deposition of Leonard Depiazza was PUBLISHED and FILED IN OPEN COURT. Colloquy regarding scheduling. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 11/17/2016 12:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

November 17, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

November 17, 2016 12:30 AM Bench Trial - FIRM

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT:	Beasley, Robert	Defendant
	Bryan, Mary	Plaintiff
	Hairr, Aimee	Plaintiff
	Lichtenstein, Allen	Attorney
	Polsenberg, Daniel F.	Attorney
	Waite, Dan R	Attorney

JOURNAL ENTRIES

- John Scott, Pro Hac Vice, present on behalf of Plaintiffs.

Testimony and exhibits presented (see worksheets.) Deposition of Mary Bryan was PUBLISHED and FILED IN OPEN COURT. Deposition of John Edwin Halpin was PUBLISHED and FILED IN OPEN COURT. Mr. Polsenberg requested to file a notice of unavailability Dr. Farrow, the treating doctor, and use the deposition. Mr. Scott stated they withdrew the medical expenses claim and the treating doctor is not a relevant witness. Arguments by counsel. Colloquy regarding trial schedule. Court stated it was inclined to disallow the request and directed counsel to confer regarding the issue which will be addressed in the morning. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 11/18/2016 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

November 18, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

November 18, 2016 9:30 AM Bench Trial - FIRM

HEARD BY: Alf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- John Scott, Pro Hac Vice, present on behalf of Plaintiffs.

Mr. Polsenberg moved for Court declare Dr. Morrow as unavailable and to use the deposition Mr. Polsenberg further moved to use the Deposition of Connor Luehers as they believe his is out of stated and they have been unable to serve him. Mr. Scott stated if there is due diligence and he is unavailable then Court could consider at least portions of the deposition. Court stated it would need to review the brief and the matter could be taken up on the lunch break. Testimony and exhibits presented (see worksheets). Deposition of Robert Beasley was PUBLISHED and FILED IN OPEN COURT. Colloquy regarding scheduling, ordering transcripts and closing arguments or closing briefs. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 11/22/2016 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

November 22, 2016

A-14-700018-C Mary Bryan, Plaintiff(s)
 vs.
 Clark County School District, et al, Defendant(s)

November 22, 2016 9:30 AM Bench Trial - FIRM

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT:	Bryan, Mary	Plaintiff
	Hairr, Aimee	Plaintiff
	Lichtenstein, Allen	Attorney
	Polsenberg, Daniel F.	Attorney
	Waite, Dan R	Attorney

JOURNAL ENTRIES

- John Scott, Pro Hac Vice, present on behalf of Plaintiffs.

Testimony and exhibits presented (see worksheets). Deposition of Aimee Olivia Hairr was PUBLISHED and FILED IN OPEN COURT. Mr. Scott requested to read into the record a portion of Cheryl Winn's deposition. Mr. Polsenberg stated Cheryl Winn is not a party. Court directed counsel he could include that as part of his closing. Plaintiff rests. Mr. Polsenberg moved to for a 50(a) or 41(b) motion in particular on the title nine claims. Court stated it was not its inclination to determine the case at this time. Mr. Polsenberg stated he would take it up when he briefed the issues. Colloquy regarding publishing and designated portion of depositions. COURT ORDERED, Deposition of Connor Luehrs was PUBLISHED and FILED IN OPEN COURT and designated portions are noted for the record. Court FINDS the deposition of the doctor is not relevant to claims by Plaintiff and will be marked as a Court's exhibits. Court noted that Court Clerk has advised the deposition of Cheryl Winn was not published. Mr. Scott moved to publish the deposition. Opposition by Mr. Polsenberg. COURT ORDERED, Deposition of Cheryl Winn was PUBLISHED and FILED IN OPEN COURT and

Court will consider only those portions brought up in the cross examination. Objections made at the bench placed on the record. Colloquy regarding briefing schedule for closing briefs. Plaintiff's closing brief due January 23, 2017, Defendant's closing brief due February 23, 2017, Plaintiff's reply due March 23, 2017. COURT ORDERED matter SET for status check to beginning reviewing briefs, if briefs are filed earlier then counsel can notify the Court to advance review. Court thanked counsel and matter concluded.

3/28/2017 (CHAMBERS) STATUS CHECK: BRIEFING AND REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

July 19, 2017

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

July 19, 2017 9:00 AM Motion to Strike

HEARD BY: Alf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn Griffiths

REPORTER:

PARTIES

PRESENT: Lichtenstein, Allen Attorney

JOURNAL ENTRIES

- Court noted Defense counsel not present. Upon inquiry by the Court if Mr. Lichtenstein would like to continue the hearing or argue it, Mr. Lichtenstein stated he submitted findings of fact and conclusions of law and he would like to go forward today. Arguments by Mr. Lichtenstein. Court stated its findings and ORDERED, CCSD's Motion to Strike Portions of Plaintiffs' Closing Rebuttal Brief DENIED. Mr. Lichtenstein to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

July 21, 2017

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

**July 21, 2017 3:00 AM Minute Order Minute Order:
CCSD's Motion to
Strike Portions of
Plaintiffs' Closing
Rebuttal Brief set
7/19/2017**

HEARD BY: Alf, Nancy

COURTROOM:

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that Defendant Clark County School District (Motion) filed a Motion to Strike Portions of Plaintiffs Closing Rebuttal Brief on June 2, 2017 and a hearing was set on Motions Calendar on July 19, 2017 at 9:00 a.m.

COURT FURTHER FINDS after review that the hearing appeared to be vacated in the system so the Court placed the Motion back on for a hearing on July 19, 2017 at 9:00 a.m.

COURT FURTHER FINDS after review that the hearing was vacated in error and that the Defendants were not noticed that the hearing was reset. If the Defendants wish to argue the Motion, they may contact the Court and the matter will be placed on calendar for a hearing.

CLERK'S NOTE: A copy of this minute order was faxed to: Lewis Roca Rothgerger Christie LLP (702-949-8398) and Allen K. Lichenstein, Esq. (702-433-9591)

EXHIBIT(S) LIST

Case No.: A700018

Hearing / Trial Date: 11/15/2016

Dept. No.: 27

Judge: Nancy Allif

Plaintiff: Mary Bryan

Court Clerk: Nicole McDevitt

Recorder / Reporter: Traci Rawlinson

Counsel for Plaintiff: Allen Lichenstein

vs.

Defendant: Clark County School District

John Scott (Pro Hac Vice)

Counsel for Defendant: Dan R. Waite

Daniel F. Polsenberg

HEARING / TRIAL BEFORE THE COURT

Plaintiff's EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Photos	11/15/16	obj	11/15/16
2	2011 NV Revised Statutes Chapter 358 Bullying Defined			
3	Clark County School District Policy P-5157	11/16/16	no obj	11-16-16
4	9-15-11 email from Mary Bryan to Mr. Beasley	11/15/16	stip	11/15/16
5	Greenspan Junior High - Chronological of Behavior ^{Hairr}	11/15/16	stip	11/15/16
6	Greenspan Junior High - Chronological of Behavior ^{Bryan}	11/15/16	stip	11/15/16
7	Greenspan Junior High - Chronological of Behavior	11/15/16	stip	11/15/16
8	9-15-11 email from Mary Bryan to Mr. Beasley	11/15/16	stip	11/15/16
9	Greenspan Junior High Incident Report	11/15/16	stip	11/15/16
10	Greenspan Junior High Incident Report	11/15/16	stip	11/15/16

EXHIBIT(S) LIST

Case No.: A700018

Hearing / Trial Date: 11-15-16

Dept. No.: 27

Judge: Nancy Allif

Court Clerk: Nicole McDevitt

Plaintiff: Mary Bryan

Recorder / Reporter: Traei Rawlinson

Counsel for Plaintiff: Allen Lichenstein

John Scott (Pro Hac Vice)

vs.

Defendant: Clark County School District

Counsel for Defendant: Dan R. Waite

Daniel F. Polsenberg

HEARING / TRIAL BEFORE THE COURT

Defendant's EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
500	2011 NRS Chapter 388 Statute	11-15-16	Stip	11-15-16
501	Attachment C			
502	Attachment D			
503	medical Records			
504	9/11/15 email from Mary Bryant to Mr. Beasley	11-15-16	Stip	11-15-16
505	Greenspun Junior High Incident report	11-15-16	Stip	11-15-16
506	Greenspun Junior High Incident report	11-15-16	Stip	11-15-16
507	10/19/11 email from Mary Bryan	11-15-16	Stip	11-15-16
508	3/2/12 email from Mary Bryan	11-15-16	Stip	11-15-16
509	Greenspun Junior High Dean's Detention ^{Notice}	11-15-16	Stip	11-15-16
510	Greenspun Junior High Dean's Detention notice	11-15-16	Stip	11-15-16
511	Greenspun Junior High tardy policy	11-15-16	Stip	11-15-16
512	Greenspun Junior High tardy policy	11-15-16	Stip	11-15-16
513	Greenspun Junior High tardy Policy	11-15-16	Stip	11-15-16
514	9/15/11 letter from Aimee Hain	11-15-16	Stip	11-15-16
515	Greenspun Junior High tardy policy	11-15-16	Stip	11-15-16
516	Greenspun Junior High tardy policy	11-15-16	Stip	11-15-16

EXHIBIT(S) LIST

Case No: A700018

Mary Bryan

VS. Clark County School District

Defendant's EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
517	Greenspun Junior High Detention Notice	11-15-16	Stip	11-15-16
518	Greenspun Junior High Detention Notice	11-15-16	Stip	11-15-16
519	Greenspun Junior High School tardy policy	11-15-16	Stip	11-15-16
520	Greenspun Junior High School tardy policy	11-15-16	Stip	11-15-16
521	Greenspun Junior High School tardy policy	11-15-16	Stip	11-15-16
522	^{11/18/2012} Letter from CCSD to parent of Ethan Bryan	11-15-16	Stip	11-15-16
523	11/15/11 Notice of required parent Conference	11-15-16	Stip	11-15-16
524	11/4/11 Notice of required parent Conference	11-15-16	Stip	11-15-16
525	2/7/12 email from Mary Bryan	11-15-16	Stip	11-15-16
526	Greenspun Junior High Incident report			
527	2/8/12 email from Andre Long	11-15-16	Stip	11-15-16
528	2/9/12 email from Maureen Fox	11-15-16	Stip	11-15-16
529	2/9/12 email from Mary Bryan	11-15-16	Stip	11-15-16
530	2/9/12 email from Andre Long	11-15-16	Stip	11-15-16
531	2/13/11 email from Warren McKay			
532	Greenspun Junior High incident report			
533	Greenspun Junior High incident report			
534	Greenspun Junior High incident report			
535	CCSD officer's report			
536	CCSD crime report			
537	CCSD officer report			
538	CCSD officer report			
539	traffic misdemeanor citation			
540	Greenspun Junior High Incident report			
541	Greenspun Junior High Chronological of Behavior	11-15-16	Stip	11-15-16

EXHIBIT(S) LIST

Case No: A700018

Mary Bryan

vs. Clark County School District

Defendants

EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
542	^{Junior High} Greenspun Chronological of behavior	11-15-16	Stip	11-15-16
543	Greenspun Junior High incident report			
544	CCSD nine month school calendar ²⁰¹¹⁻ 2012	11-15-16	Stip	11-15-16
545	Greenspun Junior High incident report			
546	volunteer log	11-15-16	Stip	11-15-16
547	2/7/12 letter from Nolan Hairr	11-15-16	Stip	11-15-16
548	Greenspun Junior High Chronological ^{of behavior}	11-15-16	Stip	11-15-16
549	Charge of Public Accomodation Discrimination			
550	Behavior Guidelines for Secondary Students	11-15-16	Stip	11-15-16
551	CCSD Bullying, Cyber Bullying, Harrassment	11-15-16	Stip	11-15-16
552	2011-12 Greenspun Junior High Agenda	11-15-16	Stip	11-15-16
553	2011-12 Back to school recorder			
554	Greenspun Junior High ^{Chronological of Behavior}			
555	Ethan Bryan Grades 11/21/12	11-15-16	Stip	11-15-16
556	Ethan Bryan Period Attendance 11/21/12	11-15-16	Stip	11-15-16
557	Green spun Junior High tardy policy	11-15-16	Stip	11-15-16
558	CCSD SASI enrollment Information			
559	CCSD SASI enrollment Information	11-15-16	Stip	11-15-16
560	11/21/12 Grades Nolan Hairr	11-15-16	Stip	11-15-16
561	11/21/12 Nolan M. Hairr period Attendance	11-15-16	Stip	11-15-16
562	Nolan M Hairr Student information	11-15-16	Stip	11-15-16
563	Ethan Bryan Student information	11-15-16	Stip	11-15-16
564	Greenspun Junior High ^{Chronological of Behavior}	11-15-16	Stip	11-15-16
565	letter from Doug Beasley			
566	9/23/11 email from Warren McKay			

EXHIBIT(S) LIST

Case No: A700018

Mary Bryan

VS. Clark County School District

Defendant's

EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
567	⁹⁻¹¹⁻¹² Greenspan Junior High progressive Discipline	11-15-16	Stip	11-15-16
568	3/7/12 email from Kristin G Ulrich			
569	Ethan Garrett Office Visit Summary			
570	Nolan Hairr Office Visit Summary			
571	^{Cherry Wilson} CCSD Professional Development Participation	11-15-16	Stip	11-15-16
572	^{John Halpin} CCSD Professional Development Participation	11-15-16	Stip	11-15-16
573	^{Leonard Depiazza} CCSD Professional Development Participation	11-15-16	Stip	11-15-16
574	^{Robert D. Beasley} CCSD Professional Development Participation	11-15-16	Stip	11-15-16
575	^{Warren P. McKay} CCSD Professional Development Participation	11-15-16	Stip	11-15-16
576	Bullying Prevention lesson #2			
577	CCSD Regulation 5141.2	11-15-16	Stip	11-15-16
578	2/8/2012 email from Kyle & Mary Bryan	11-15-16	Stip	11-15-16
579	2/8/2012 email from Mary Bryan	11-15-16	Stip	11-15-16
580	2/8/2012 email from Deanna Wright	11-15-16	Stip	11-15-16
581	2/9/2012 email from Deanna Wright	11-15-16	Stip	11-15-16
582	CCSD SASI Student Demographics			
583	^{Nolan Hairr} NV Learning Academy 2015-16			
584	Nolan Hairr Student test Scores Detail			
585	Nolan Hairr Academic History			
586	Nolan Hairr Student release & transfer			
587	Nolan Hairr CCSD 6th grade data record			
588	Nolan Hairr CCSD current data record			
589	Nolan Hairr CCSD current data record			
590	Nolan Hairr CCSD current data record			
591	Nolan Hairr CCSD current data record			

EXHIBIT(S) LIST

Case No: A700018

Mary Bryan

vs. Clark County School District

Defendants

EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
592	Nolan Hair CCSD current Data record			
593	Nolan Hair CCSP current Data record			
594	Nolan Hairr CCSD current Data record			
595	2010-2011 Nevada Criterion-Referenced test			
596	Nolan Hairr CCSD Health Card			
597	Nolan Hairr Nurses' Service Record			
598	Nolan Hair Immunizations			
599	Birth Certificate Nolan Hair			
600	CCSD gifted & ^{Nolan Hairr} talented education program			
601	Nolan Hairr English language learner			
602	Nolan Hairr English language learner			
603	Nolan Hairr English language Learner			
604	Nolan Hairr authorization for Electronic ^{transfer}			
605	2012-13 Nevada Criterion-Referenced ^{test}			
606	Declaration			
607	Declaration			
608	Declaration			
609	1/12/2016 letter from Dan White			
610	Declaration of Custodian of Records			
611	Nolan Hairr Lake Mead Christian Academy ^{grades}			
612	Nolan Hairr medical records			
613	Declaration of custodian records			
614	Declaration of custodian records			
615	Ethan Bryan - medical records			
616	Ethan Bryan - medical Records			

EXHIBIT(S) LIST

Case No: A700018

Mary Bryan

VS.

vs. Clark County School District

Defendant's

EXHIBITS

[illegible]

EXHIBIT(S) LIST

Case No.: A700018

Dept. No.: 27

Plaintiff: Mary Bryan

vs.

Defendant: Clark County
School District

Hearing / Trial Date: 11/15/16

Judge: Nancy Allif

Court Clerk: Nicole McDevitt

Recorder / Reporter: Traci Rawlinson

Counsel for Plaintiff: Allen Lichenstein

John Scott (Pro Vice)

Counsel for Defendant: Dan R. Waite

Daniel F. Polensky

HEARING / TRIAL BEFORE THE COURT

EXHIBITS

Court

[illegible]



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

DANIEL F. POLSENBERG
3993 HOWARD HUGHES PKWY., STE 600
LAS VEGAS, NV 89169

DATE: August 25, 2017
CASE: A-14-700018-C

RE CASE: MARY BRYAN; ETHAN BRYAN; AIMEE HAIRR; NOLAN HAIRR vs. CLARK COUNTY SCHOOL DISTRICT; PRINCIPAL WARREN P. MCKAY; PAT SKORKOWSKY; ERIN A. CRANOR; LINDA E. YOUNG; PATRICE TEW; STAVAN CARBETT; CAROLYN EDWARDS; CHRIS GARVEY; DEANNA WRIGHT; LEONARD DEPIAZZA; CHERYL WINN; JOHN HALPIN; ROBERT BEASLEY

NOTICE OF APPEAL FILED: August 23, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order (*Decision and Order filed on June 29, 2017*)

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT IN FAVOR OF PLAINTIFFS''; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT IN FAVOR OF PLAINTIFFS; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

MARY BRYAN; ETHAN BRYAN; AIMEE
HAIRR; NOLAN HAIRR,

Plaintiff(s),

vs.

CLARK COUNTY SCHOOL DISTRICT;
PRINCIPAL WARREN P. MCKAY; PAT
SKORKOWSKY; ERIN A. CRANOR; LINDA
E. YOUNG; PATRICE TEW; STAVAN
CARBETT; CAROLYN EDWARDS; CHRIS
GARVEY; DEANNA WRIGHT; LEONARD
DEPIAZZA; CHERYL WINN; JOHN HALPIN;
ROBERT BEASLEY,

Defendant(s),

Case No: A-14-700018-C

Dept No: XXVII

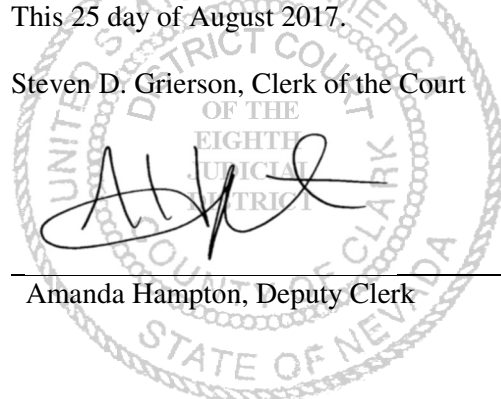
now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 25 day of August 2017.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk



LEWIS ROCA ROTHGERBER CHRISTIE LLP

CHECK NO: 176459

REF #	INVOICE #	DATE	DESCRIPTION	AMOUNT PAID
735431	CF4512	08-24-17	147866-00008 Appeal Filing Fee	250.00

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ROTHGERBER CHRISTIE201 E Washington Street-Suite 1200
Phoenix, Arizona 85004-2595
Telephone (602) 262-5311

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Phoenix, Arizona

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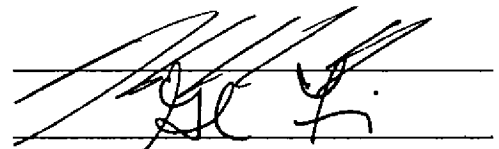
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PAY
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ORDER OF

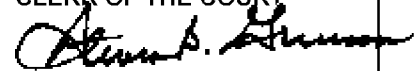
Supreme Court of Nevada



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Electronically Filed
Aug 29 2017 02:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
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*Attorneys for Defendants Clark County School
District (CCSD)*

DISTRICT COURT

CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN
BRYAN; AIMEE HAIR, mother of
NOLAN HAIR,

Case No. A-14-700018-C

Dept. No. XXVII

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); PRINCIPAL WARREN P.
MCKAY, in his individual and official
capacity as principal of GJHS;
LEONARD DEPIAZZA, in his individual
and official capacity as assistant
principal at GJHS; CHERYL WINN, in
her individual and official capacity as
Dean at GJHS; JOHN HALPIN, in his
individual and official capacity as
counselor at GJHS; ROBERT BEASLEY,
in his individual and official capacity
as instructor at GJHS,

Defendants.

NOTICE OF APPEAL

Please take notice that defendant Clark County School District hereby
appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Decision and Order," filed on June 29, 2017 (Exhibit A);

3. “Findings of Fact, Conclusions of Law and Judgment in Favor of Plaintiffs,” filed July 20, 2017, notice of entry of which was served electronically on August 15, 2017 (Exhibit B); and

4. All rulings and interlocutory orders made appealable by any of the foregoing.

Dated this 23rd day of August, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith

DANIEL F. POLSENBERG (SBN 2376)

DAN R. WAITE (SBN 4078)

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Attorneys for Defendants

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Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Roca
3 Rothgerber Christie LLP, and that on this day, I caused a true and correct
4 copy of the "Notice of Appeal" to be filed, via the Court's E-Filing System, and
5 served on all interested parties via U.S. Mail, postage pre-paid and courtesy
6 email.

7
8 Allen Lichtenstein, Esq.
9 Staci Pratt, Esq.
10 ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.
11 3315 Russell Road, No. 222
12 Las Vegas, Nevada 89120
13 allaw@lvcoxmail.com
14 *Attorneys for Plaintiffs*

15 John Houston Scott, Esq.
16 SCOTT LAW FIRM
17 1388 Sutter Street, Suite 715
18 San Francisco, CA 94109
19 john@scottlawfirm.net
20 *Attorneys for Plaintiffs*
21 *(Admitted Pro Hac Vice)*

22
23 Dated this 23rd day of August, 2017
24
25
26
27
28

29 /s/ Luz Horvath
30 An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A

Alison L. Hemin
CLERK OF THE COURT

1 **ORDER**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 * * * * *

6 **MARY BRYAN**, mother of **ETHAN BRYAN**;
7 **AIMEE HAIRR**, mother of **NOLAN HAIRR**,

8 **Plaintiffs,**

CASE NO: A-14-700018

9 **v.**

DEPARTMENT 27

10 **CLARK COUNTY SCHOOL DISTRICT**
11 **(CCSD); Pat Skorkowsky**, in his official
12 **capacity as CCSD superintendent; CCSD**
13 **BOARD OF SCHOOL TRUSTEES; Erin A.**
14 **Cranor, Linda E. Young, Patrice Tew, Stavan**
15 **Corbett, Carolyn Edwards, Chris Garvey,**
16 **Deanna Wright**, in their official capacities as
17 **CCSD BOARD OF SCHOOL TRUSTEES;**
18 **GREENSPUN JUNIOR HIGH SCHOOL**
19 **(GJHS); Principal Warren P. McKay**, in his
20 **individual and official capacity as principal of**
21 **GJHS; Leonard DePiazza**, in his individual and
22 **official capacity as assistant principal at GJHS;**
23 **Cheryl Winn**, in her individual and official
24 **capacity as Dean at GJHS; John Halpin**, in his
25 **individual and official capacity as counselor at**
26 **GJHS; Robert Beasley**, in his individual and
27 **official capacity as instructor at GJHS;**

28 **Defendants.**

DECISION AND ORDER

29 This case arises under Title IX and 42 U.S.C. § 1983, based on allegations that
30 two students (C.L. and D.M.) verbally and physically mistreated Ethan Bryan and Nolan
31 Hairr, sons of the Plaintiffs, based on sex, as defined by Title IX. On November 15,
32 2016, a five-day bench trial commenced in Department 27 before the Honorable Judge
33 Nancy L. Alf. Allen Lichtenstein, Esq. and John Houston Scott, Esq. appeared for and
34 on behalf of Plaintiffs Mary Bryan ("Mrs. Bryan") and Aimee Hairr ("Mrs. Hairr"),

(collectively "Plaintiffs"). Daniel Polsenberg, Esq., Dan Waite, Esq., and Brian D. Blakley, Esq. appeared for and on behalf of Defendant Clark County School District (CCSD), ("Defendant").

At trial, Plaintiffs' case was narrowed to two separate claims for relief (1) a violation of Title IX of the Civil Rights Act, and (2) a violation of Plaintiffs' substantive due process rights as guaranteed by the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983. To prevail, the claims require a showing that the Defendant was aware of the bullying and that CCSD officials, who were required to respond to reports of bullying pursuant to NRS Chapter 388, failed to act in manner that equates to deliberate indifference.

The Court having heard arguments of counsel, testimony, and being fully briefed on the matter finds as follows:

BACKGROUND

Ethan Bryan and Nolan Hairr entered the sixth grade at Greenspun Jr. High School in August of 2011. Both students were enrolled in Mr. Beasley's third period band class in the trombone section. Nolan, eleven years old, reported being small for his age and wore long blonde hair. From almost the outset of their enrollment, both boys began to be bullied by C.L. and D.M. On numerous occasions, C.L. and D.M. taunted Nolan with homophobic slurs and sexual expletives, touching, pulling, and running their fingers through Nolan's hair and blowing in his face. Nolan reported the behavior by filling out a complaint report at the Dean's office. However, at this time, Nolan did not mention the homophobic and sexual content of the slurs that he was enduring and a subsequent meeting with Dean Winn did not proffer resolution.

1 On or about September 13, 2011, C.L., who was sitting next to Nolan in band
2 class, reached over and stabbed Nolan in the groin with the sharpened end of the pencil
3 (the "September 13th Incident"). C.L. remarked that he did so to see if Nolan was a girl
4 and also referred to Nolan as a tattletale. Nolan took the tattletale reference as a sign that
5 the stabbing was, at least in part, retaliation for Nolan filing a complaint report.
6

7 On or about September 15, 2011, while Nolan was at Ethan's house, Mrs. Bryan
8 overheard Ethan and Nolan talking about an issue that took place at school. After Nolan
9 went home, Mrs. Bryan questioned Ethan about what the two boys had been discussing.
10 In response, Ethan described to his mother the incident where C.L. stabbed Nolan in the
11 groin and about the overall bullying occurring in Mr. Beasley's band class. This
12 conversation sparked a series of complaints and reports that is the foundation for the
13 claims asserted against CCSD.
14

15 The first parental complaint occurred via email on September 15, 2011
16 ("September 15th Email") from Mrs. Bryan, addressed to Nolan's band teacher, Mr.
17 Beasley, Counselor Halpin, and Principal McKay—all of whom were mandatory
18 reporters under N.R.S. § 388.1351. The September 15th Email identified C.L. and D.M.
19 by name and described the physical assaults and verbal abuse. Both Mr. Beasley and
20 Counselor Halpin acknowledged receiving the September 15, 2011 Email. However,
21 Principal McKay's email address was incorrect, so he did not receive the original
22 complaint contained within the September 15th Email. While Mr. Beasley and Counselor
23 Halpin admitted that neither of them followed up on the September 15th Email, this Court
24 does not find this failure alone deliberately indifferent. However, actual knowledge of
25 the bullying was triggered upon the receipt of the September 15th Email.
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1 In response to the September 15th Email, Mr. Beasley changed the arrangements
2 in the trombone section of his band class so that Nolan sat in front of C.L. and not next to
3 him. Mr. Beasley made this decision without consulting with anyone else, especially
4 Principal McKay.

5 Like Nolan, Ethan was also subjected to bullying by C.L. and D.M. After the
6 September 13th Incident, the bullying escalated where C.L. and D.M. taunted him about
7 his weight and made homophobic slurs and vile and graphic innuendos concerning sexual
8 relations between Ethan and Nolan.

9 The second parental complaint occurred on September 22, 2011 from Mrs. Hairt,
10 via a telephone conversation with Vice Principal DePiazza. During this conversation,
11 Mrs. Hairt told Vice Principal DePiazza about the stabbing of Nolan's genitals by another
12 student in band class.

13 On or about October 19, 2011, Ethan told his mother that C.L. and D.M. had
14 removed the rubber stopper out of a piece of his trombone and repeatedly hit Ethan in the
15 legs with the remaining sharp piece of the instrument leaving scratch marks on his legs.
16 Ethan also informed his mother that C.L. and D.M. continued to make lewd sexual
17 comments including calling both Ethan and Nolan "gay," "faggots," and made references
18 about the two boys engaging in gay sex together.

19 On or about October 19, 2011, Mrs. Bryan sent a second email ("October 19th
20 Email") addressed to the same three individuals as the September 15th Email. Mr.
21 Beasley and Counselor Halpin both acknowledged receipt of this email, but because it
22 was addressed to the same email addresses, Principal McKay did not receive it. Later
23 that day, on October 19, 2011, Mrs. Bryan and her husband went to the school where they
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1 met with Dean Winn for approximately one hour to discuss the bullying, specifically the
2 physical assaults and homophobic slurs.

3 On or about October 19, 2011, Counselor Halpin attended a weekly
4 administrators meeting with Principal McKay and Vice Principal DePiazza. Counselor
5 Halpin testified that he reported the bullying that was occurring in Mr. Beasley's band
6 class in considerable detail and disclosed the September 15th Email and the October 19th
7 Email. Counselor Halpin specifically recalled Principal McKay directing Vice Principal
8 DePiazza to take care of the matter. Principal McKay testified that he was not interested
9 in the details of such matters and left it to his subordinates to address the issue. Principal
10 McKay further testified that he did not follow up with Vice Principal DePiazza about
11 how the investigation was going or what the investigation uncovered until February 2012.
12 All of the school officials had conflicting testimony about who was tasked with the
13 investigation into the bullying, but all testified that no investigation into the bullying was
14 conducted until February 2012.
15

16 The bullying and harassment continued throughout the fall and into early 2012.
17 Both boys avoided band class and school altogether. Ethan faked illness to avoid class
18 and Nolan would try to avoid C.J. and D.M. by lingering in the halls and in the library.
19 By the middle of January, both boys had almost completely stopped going to school
20 altogether to avoid the continuous bullying.
21

22 Mrs. Bryan pulled Ethan out of Greenspun Jr. High in January 2012 after Ethan
23 contemplated suicide. On or about January 21, 2012, Mrs. Hair pulled Nolan out of
24 Greenspun Jr. High after Nolan had an emotional breakdown because of the bullying.
25 Mrs. Hair filed a police report, reporting the bullying and harassment.
26
27
28

1 On or about February 7, 2012, Mrs. Bryan and Mrs. Hair removed the boys from
2 Greenspun Jr. High. Subsequently, Assistant Superintendent Jolene Wallace and
3 Principal McKay's direct supervisor, ordered Principal McKay to conduct an
4 investigation into the bullying of Ethan and Nolan. This is the only investigation that
5 took place into the bullying of the Ethan and Nolan.

6 DISCUSSION

7 **A. Legal Standard - Title IX of the Civil Rights Act**

8
9 Title IX of the Civil Rights Act of 1964 provides, in part, "[n]o person in the
10 United States shall, on the basis of sex, be excluded from participation in, be denied the
11 benefits of, or be subjected to discrimination under any education program or activity
12 receiving Federal financial assistance." 20 U.S.C § 1681(a). A school district in receipt
13 of federal funds is liable for monetary damages for violations of Title IX. *Davis Next*
14 *Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 642, 119 S. Ct. 1661,
15 1671, 143 L. Ed. 2d 839 (1999) ("we concluded that *Pennhurst* does not bar a private
16 damages action under Title IX where the funding recipient engages in intentional conduct
17 that violates the clear terms of the statute.").

18
19 In *Reese v. Jefferson School District No. 141*, the Ninth Circuit adopted the
20 framework set out in *Davis* and set forth four requirements for imposition of school
21 district liability under Title IX for student-student sexual harassment: (1) the school
22 district "must exercise substantial control over both the harasser and the context in which
23 the known harassment occurs," (2) the plaintiff must suffer "sexual harassment ... that is
24 so severe, pervasive, and objectively offensive that it can be said to deprive the victims of
25 access to the educational opportunities or benefits provided by the school," (3) the school
26 district must have "actual knowledge of the harassment," and (4) the school district's
27
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1 “deliberate indifference subjects its students to harassment.” 208 F.3d 736, 739 (9th Cir.
2 2000) (quoting *Davis*, 119 S. Ct. 1661, 1675 (1999)).

3 The Ninth Circuit defines deliberate indifference as “the conscious or reckless
4 disregard of the consequences of ones acts or omissions.” *Henkle v. Gregory*, 150 F.
5 Supp. 2d 1067, 1077–78 (D. Nev. 2001); *See also* 9th Cir. Civ. Jury Instr. 11.3.5 (1997)
6 (citing *Redman v. County of San Diego*, 942 F.2d 1435, 1442 (9th Cir.1991), cert. denied,
7 502 U.S. 1074, 112 S.Ct. 972, 117 L.Ed.2d 137 (1992)). A plaintiff bringing a claim
8 under Title IX must prove her claim by a preponderance of the evidence.
9

10 **B. Legal Standard - 42 U.S.C. § 1983**

11 A student’s right to a public education is a property interest protected by the Due
12 Process Clause. *Goss v. Lopez*, 419 U.S. 565, 573, 95 S. Ct. 729, 735, 42 L. Ed. 2d 725
13 (1975) (“Here, on the basis of state law, appellees plainly had legitimate claims of
14 entitlement to a public education . . .”). As a general matter, the Fourteenth Amendment
15 to the United States Constitution does not “require[] the State to protect the life, liberty,
16 and property of its citizens against invasion by private actors.” *DeShaney v. Winnebago*
17 *County Dep’t of Social Servs.*, 489 U.S. 189, 195, 109 S.Ct. 998, 103 L.Ed.2d 249
18 (1989). In fact, “the Fourteenth Amendment’s Due Process Clause . . . does not confer
19 any affirmative right to governmental aid and typically does not impose a duty on the
20 state to protect individuals from third parties.” *Henry A. v. Willden*, 678 F.3d 991, 998
21 (9th Cir.2012) (quotations and citation omitted).
22
23

24 This rule, however, is subject to two specific exceptions: (1) the special
25 relationship exception, and (2) the state-created danger exception. *Id.* at 998. Under the
26 special relationship exception, the government may be liable for its failure to protect if a
27 “special relationship” exists between it and the plaintiff such that the government has
28

1 assumed "some responsibility for the plaintiff's safety and well-being." *Id.* Under the
2 state-created danger exception, the government may be liable for its failure to protect
3 where "the state affirmatively places the plaintiff in danger by acting with 'deliberate
4 indifference' to a 'known and obvious danger[.]' " *Id.* In determining whether the state-
5 created exception applies, the Court assesses: "(1) whether any affirmative actions of the
6 official placed the individual in danger he otherwise would not have faced; (2) whether
7 the danger was known or obvious; and (3) whether the officer acted with deliberate
8 indifference to that danger." *Id.* at 1002. Under either exception, the government's
9 failure to protect renders it liable under a § 1983 claim. *Id.*

11 **C. Nevada law mandates public school officials to report bullying and**
12 **harassment**

13 Nevada Revised Statute § 388.135 provide that:

14 " [a] member of the board of trustees of a school
15 district, any employee of the board of trustees, including,
16 without limitation, an administrator, *principal, teacher or*
17 *other staff member . . . or any pupil shall not* engage in
18 bullying or cyber-bullying on the premises of any public
19 school, at an activity sponsored by a public school or on
20 any school bus."

21
22 (Emphasis added).

23 Furthermore, Nevada Revised Statute § 388.135(1) provides that:

24 "[a] teacher . . . principal . . . or other staff member who
25 witnesses a violation of NRS 388.135 or receives
26 information that a violation of NRS 388.135 has occurred
27 shall report the violation to the principal . . . as soon as
28

1 practicable, but not later than a time during the same day on
2 which [they] witnessed the violation or received
3 information regarding the occurrence of a violation.”

4 (Emphasis added).

5 Nevada statutes make it clear that any public school employee who either
6 witnesses bullying or is informed that bullying has occurred or is occurring, is obligated
7 by statute to report the bullying to the principal of the public school. Upon information
8 that bullying has occurred or is occurring, Nevada Revised Statute § 388.1351(2)
9 mandate that “the principal or designee *shall* immediately take any necessary action to
10 stop the bullying . . . and ensure the safety and well-being of the reported victim or
11 victims . . . and shall begin an investigation into the report.” N.R.S. § 388.1351(1)(2).
12 (emphasis added).
13

14 **D. CCSD Officials’ conduct was deliberately indifferent.**
15

16 Through the testimony presented at trial, Plaintiffs have satisfied the four
17 requirements of the Davis framework for imposition of school district liability under Title
18 IX for student-student sexual harassment. First, CCSD, as a public high school,
19 exercised substantial control over both the harassers and the context in which the known
20 harassments occurs. In this case, C.L. and D.M. engaged in excessive and continuous
21 homophobic slurs and sexual expletives directed at Nolan and Ethan in the band class
22 classroom. C.L. and D.M.’s daily references to Nolan and Ethan as “faggot, fucking fat
23 faggot, fucking faggot, gay, gay boyfriend, and cunt” were so severe, pervasive, and
24 objectively offensive that it deprived the boys of access to school’s educational
25 opportunities and benefits available to students. Testimony revealed that the bullying
26 was so severe that the boys had to avoid going to band class altogether just to avoid the
27
28

1 victimization. Moreover, Ethan contemplated suicide as a result of months of bullying
2 and harassment, and Nolan had an emotional breakdown—both of these events triggered
3 the parents to withdraw their children from Greenspun Jr. High. Nolan and Ethan were
4 unable to take advantage of the educational opportunities provided by the school and
5 being accessed by students not subjected to bullying and harassment.
6

7 The third requirement of the Davis framework requires the school to have actual
8 knowledge of the harassment. There were three separate parental complaints, all of
9 which should have prompted a mandatory investigation under N.R.S. § 388.1351(1)(2).
10 The September 15th Email, October 19th Email, and the October 19th meeting with Dean
11 Winn, each put the school officials responsible for reporting the information to the
12 Principal McKay on notice that bullying had occurred and was continuing to occur on
13 campus. Counselor Halpin, Mr. Beasley, and Dean Winn all failed to immediately report
14 the complaints to Principal McKay. Notwithstanding, Counselor Halpin did inform
15 Principal McKay of the complaints and the bullying at the October 19th administrative
16 meeting and yet CCSD offered zero evidence to indicate that an investigation was ever
17 conducted in 2011.
18

19 The fourth requirement of the Davis framework requires the school to have acted
20 with “deliberate indifference” that subjects its students to the harassment. As federal
21 funding recipients, CCSD officials had a duty under Title IX, and under Nevada law, to
22 follow up and investigate any reports of bullying and harassment occurring on school
23 property. CCSD’s failure to conduct any type of investigation after three separate
24 complaints of bullying and an administrative meeting discussing the bullying, constitutes
25 at the very least, reckless disregard of the consequences of its acts or omissions.
26 Accordingly, CCSD’s failure to timely investigate and take any type of remedial action
27
28

1 constitutes deliberate indifference. This deliberate indifference was the causation that led
2 to the escalation of the bullying and harassment endured by the Plaintiffs' children.
3 Therefore, Plaintiffs have proven their Title IX claim by a preponderance of the evidence
4 submitted at trial.

5 **E. CCSD created the dangerous environment**

6
7 CCSD's deliberate indifference to the numerous complaints of bullying forced
8 Nolan and Ethan to remain in a known and obviously dangerous environment, which
9 further subjected them to severe and pervasive bullying and harassment that was
10 objectively offensive. For CCSD to be liable under the state-created exception, this
11 Court asked: (1) whether any affirmative actions of the official placed the individual in
12 danger he otherwise would not have faced; (2) whether the danger was known or
13 obvious; and (3) whether the officer acted with deliberate indifference to that danger."
14 *Henry A.* at 1002. This Court finds in the affirmative to all three inquiries.
15

16 Here, the first inquiry does not require CCSD to do more than "expose the
17 plaintiff to a danger that already existed." *Id.* To the contrary, a test such as this would
18 render the state-created doctrine futile. In *Henry A.*, the Ninth Circuit explained that "by
19 its very nature, the doctrine only applies in situations where the plaintiff was directly
20 harmed *by a third party*—a danger that, in every case, could be said to have 'already
21 existed.' " *Id.* (internal citations omitted). It follows that to be liable under the state-
22 created exception, CCSD was not required to take an affirmative action that made the
23 bullying and harassment worse. Instead it was CCSD's failure to take affirmative action
24 that subjected Nolan and Ethan to further bullying and harassment. Thus, this Court finds
25 the first inquiry is satisfied.
26
27
28

1 The second and third inquiries are more easily ascertainable in this case. CCSD
2 knew of the danger because of the three separate parental complaints from the Plaintiffs.
3 Complaints CCSD officials admitted to receiving and testified that they did not inform
4 Principal McKay. Each of the complaints gave CCSD officials sufficient details
5 necessary to put them on notice of the dangers Nolan and Ethan were exposed to.
6 Finally, as stated above, CCSD's failure to conduct any type of investigation after three
7 separate complaints of bullying and an administrative meeting discussing the bullying,
8 constitutes deliberate indifference.
9

10 Accordingly, the Plaintiffs have proven their 42 U.S.C. § 1983 claim by a
11 preponderance of the evidence submitted at trial. Nolan and Ethan had a constitutional
12 right to a public education, and CCSD is liable under 42 U.S.C. § 1983 for its failure to
13 protect Nolan and Ethan by acting with deliberate indifference to the known dangers that
14 existed in Mr. Beasley's band class. CCSD's deliberate indifference deprived Nolan and
15 Ethan of these educational rights secured by Fourteenth Amendment Due Process Clause
16 of the United States Constitution.
17

18 CONCLUSION

19 **COURT ORDERS** for good cause appearing and after review, Defendant CCSD
20 violated Title IX of the Civil Rights Act.
21

22 **COURT FURTHER ORDERS** for good cause appearing and after review,
23 violated Plaintiffs' substantive due process rights as guaranteed by the Fourteenth
24 Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983.

25 **COURT FURTHER ORDERS** for good cause appearing and after review
26 Judgment shall be entered in favor of Plaintiffs Mary Bryan, on behalf of Ethan Bryan,
27
28

1 and Aimee Hairr, on behalf of Nolan Hairr. Plaintiffs are entitled to a judgment for all
2 damages sought under these two claims asserted in the Complaint, and proven at trial.

3 **COURT FURTHER ORDERS** for good cause appearing and after review that
4 Plaintiffs shall prepare Findings of Fact, Conclusions of Law and a Judgment consistent
5 with this Decision, and submit it the Court for review. They may include all factual
6 findings contained in Plaintiffs' post trial briefs. At the time of submission to the Court,
7 copies shall be transmitted to Defendant's counsel.
8

9
10 Dated: June 27, 2017


11 NANCY ALLF
12 DISTRICT COURT JUDGE

13 **CERTIFICATE OF SERVICE**

14
15 I hereby certify that on or about the date signed I caused the foregoing document to be
16 electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial
17 District Court's electronic filing system, with the date and time of the electronic service
substituted for the date and place of deposit in the mail and/or by email to:

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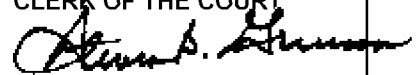
26 
27 Mary Ann Cornell
28 Judicial/Executive Assistant

EXHIBIT B

EXHIBIT B



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16 *Aimee Hairr and Nolan Hairr*

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 MARY BRYAN, mother of ETHAN BRYAN;
20 AIMEE HAIRR, mother of NOLAN HAIRR,

21 Plaintiffs,

22 vs.

23 CLARK COUNTY SCHOOL DISTRICT
24 (CCSD)

25 Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
JUDGMENT IN FAVOR OF
PLAINTIFFS**

26 TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF

27 RECORD

28 Please take notice that Findings of Fact, Conclusions of Law and Judgment in Favor of
Plaintiffs were entered in this case, a copy of which is attached..

Dated this 15th day of August 2017,

Respectfully submitted by:

/s/Allen Lichtenstein

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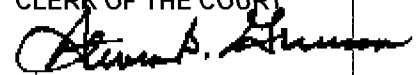
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CERTIFICATE OF SERVICE

I hereby certify that I served the following Notice of Findings of Fact, Conclusions of Law and Judgment in Favor of Plaintiffs via Court's electronic filing and service system and/or United States Mail and/or e-mail on the 15th day of August 2017, to:

Dan Waite
Lewis Rocha Rothgerber Christie
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169-5996

DWaite@lrrc.com

/s/ Allen Lichtenstein



DISTRICT COURT
CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN BRYAN;
AIMEE HAIRR, mother of NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT IN FAVOR OF
PLAINTIFFS**

I. Introduction

On June 29, 2017, the Court issued its Decision and Order in favor of Plaintiffs Ethan Bryan and Nolan Hairr and against Defendant Clark County School District (CCSD) on the claims that Defendant violated Plaintiffs' rights under Title IX, 20 USC § 1681(A) and Plaintiffs' rights to Substantive Due Process under the Fourteenth Amendment to the United States Constitution and pursuant to 42 U.S.C. 1983. The Court also ruled that, "Plaintiffs are entitled to a judgment for all damages sought under these two claims asserted in the Complaint, and proven at trial."

II. Procedural History

Plaintiffs filed their Amended Complaint on October 10, 2014 against Defendants: Clark County School District (CCSD), Pat Skorkowsky, in his official capacity as CCSD

1 Superintendent; CCSD Board of School Trustees; Erin A. Cranor, Linda E. Young, Patrice Tew,
2 Stavan Corbett, Carolyn Edwards, Chris Garvey, Deanna Wright, in their official capacities as
3 CCSD Board of School Trustees, Greenspun Jr. High School (GJHS); Principal Warren P.
4 McKay, in his individual and official capacity as principal of GJHS; Leonard DePiazza, in his
5 individual and official capacity as assistant principal at GJHS; Cheryl Winn, in her individual and
6 official capacity as Dean at GJHS; John Halpin, in his individual and official capacity
7 as counselor at GJHS; Robert Beasley, in his individual and official capacity as instructor at
8 GJHS. The Amended Complaint listed five claims for relief: 1) Negligence; 2) Negligence Per
9 Se; 3) Violation of Title IX; 4) Violation of the Right to Equal Protection; 5) Violation of
10 Substantive Due Process.
11

12 In its February 5, 2015 Order, the Court Dismissed Plaintiffs' Claims for Relief No. 1,
13 Negligence, and No. 2, Negligence Per Se. Plaintiffs abandoned their Fourth Claim for Relief,
14 Equal Protection, leaving the Third Claim for Relief, Title IX, and Fifth Claim for Relief,
15 Substantive Due Process, for trial. Defendants filed their Answer on February 25, 2015.
16

17 On March 1, 2016, Defendants filed a Motion for Summary Judgment, which was granted
18 in part and denied in part by the Court in its July 22, 2016 Order. The Court denied Defendants'
19 Motion to dismiss Plaintiffs' Title IX claim against Defendant CCSD. It dismissed the 42 USC
20 1983 Equal Protection claims, which had been abandoned by Plaintiffs. The Court granted
21 Defendants' Motion to dismiss all Defendants except CCSD from the 42 USC 1983 Substantive
22 Due Process claim. Overall, the Court ruled the two remaining claims against CCSD, 1) Title IX;
23 and 2) Substantive Due Process would proceed to trial.
24

25 On or about March 20, 2016, Discovery Commissioner Bulla denied Defendants' Motion
26 to Compel Damages Categories and Calculations, allowing such calculations to be determined by
27
28

1 the Court at trial. The Discovery Commissioner's Report and Recommendations were affirmed
2 and adopted by the Court on April 6, 2016.

3 On August 5, 2016, Defendant CCSD filed a Motion for Partial Reconsideration, or in the
4 Alternative, Motion for Relief Pursuant to NRCP 59(E), 60(A) and 60(B), or Motion in Limiting.
5 On October 26, 2016 the Court denied Defendant's Motion.

6
7 On November 15, 2016, a five-day bench trial was held in Department 27 before the
8 Honorable Judge Nancy L. Alf. Allen Lichtenstein, Esq. and John Houston Scott, Esq. appeared
9 for and on behalf of Plaintiffs Mary Bryan ("Mrs. Bryan") and Aimee Hairr ("Mrs. Hairr"),
10 (collectively Plaintiffs"). Daniel Polsenberg, Esq., Dan Waite, Esq., and Brian D. Blakley, Esq.
11 appeared for and on behalf of Defendant CCSD, ("Defendant") on the Title IX and 42 USC 1983
12 Substitute Due Process claims. Testimony was given by: Nolan Hairr, Ethan Bryan, Aimee Hairr,
13 Mary Bryan, Principal Warren McKay, Vice Principal Leonard DePiazza, Dean Cheryl Winn,
14 Counselor John Halpin and band teacher Robert Beasely. Although neither one of the alleged
15 bullies testified, CL's deposition was introduced into evidence. (For privacy purposes, only the
16 initials of CL and DM are used.)

17
18 Closing arguments were done via written briefs. Briefing was completed on May 26, 2017.
19 On June 29, 2017, the Court issued its Decision and Order, concluding that Defendant CCSD
20 violated both Title IX of the Civil Rights Act and also violated Plaintiffs' Substantive Due Process
21 rights as guaranteed by the Fourteenth Amendment to the United States Constitution pursuant to
22 42 USC 1983. The Court further ordered that after review, "Judgment shall be entered in favor of
23 Plaintiffs Mary Bryan, on behalf of Ethan Bryan and Aimee Hairr on behalf of Nolan Hairr, and
24 that Plaintiffs are entitled to a judgment for all damages sought under these two claims asserted in
25 the Complaint, and proven at trial."
26
27
28

1 **III. Findings of Fact**

2 **A. Ethan Bryan and Nolan Hairr started being bullied almost from the time**
3 **they began attending Greenspun Jr. High School.**

4 In late August 2011, two friends, Ethan Bryan and Nolan Hairr began sixth grade at
5 Greenspun Jr. High School. Both Ethan and Nolan enrolled in Mr. Beasley's third period band
6 class in the trombone section.

7 Almost from the beginning of the school year, Ethan and Nolan began to be bullied by two
8 other trombone students, CL and DM. In sixth grade, at age 11, Nolan was small for his age with
9 long blonde hair. CL and DM taunted him with names like gay and faggot, and called him a girl.
10 CL also touched, pulled, ran his fingers through Nolan's hair and blew in Nolan's face.
11

12 Nolan, following what he believed was proper procedure, went to the Dean's office and
13 filled out a complaint report. He was, however, too embarrassed to mention the homophobic and
14 sexual content of the slurs that he was enduring. Nolan was subsequently called into the Dean's
15 office and met with Dean Winn. He did not feel that she was either sympathetic or even interested,
16 and therefore was reluctant to discuss the homophobic sexually-oriented nature of the bullying.
17

18 Within a day or two of Nolan's meeting with the Dean, on or about September 13, 2011,
19 CL, who was sitting next to Nolan in band class, reached over and stabbed Nolan in the groin
20 with the sharpened end of the pencil. CL said he wanted to see if Nolan was a girl, and also
21 referred to Nolan as a tattletale. Nolan took the tattletale reference as a sign that the stabbing was,
22 at least in part, retaliation for Nolan complaining about the bullying. Because of this fear of
23 retaliation, Nolan decided not to tell any adults about any further bullying directed at him, and
24 instead, to endure the torment in silence.
25

26 A day or two after the stabbing incident, while Nolan was at Ethan's house, Ethan's
27 mother, Mary Bryan overheard Ethan and Nolan talking about some problem taking place at
28 school. After Nolan had gone home, Mary Bryan confronted her son and questioned him

1 concerning what Ethan and Nolan had been discussing. Ethan described to his mother the incident
2 where CL stabbed Nolan in the groin with a pencil, and about the overall bullying occurring in Mr.
3 Beasley's band class.

4 **B. Mary Bryan's September 15, 2011 email**

5 In response, Mary Bryan decided to contact the school officials to report the bullying in
6 general and the stabbing in particular.
7

8 On September 15, 2011, she attempted to telephone Greenspun Principal Warren P.
9 McKay. However, she could not reach him by telephone and was only able to talk to a junior high
10 student volunteer. Mary did not want to leave such a sensitive message with a junior high student
11 and was not transferred to Principal McKay's voicemail. Mary then decided she would email
12 the Principal and got an email address for him from the student volunteer.
13

14 On September 15, 2011, Mary Bryan sent an email to three people: 1) Principal Warren
15 McKay; 2) band teacher Robert Beasley; and 3) school counselor John Halpin, complaining about
16 the bullying and specifically about the stabbing. Both Mr. Beasley and Mr. Halpin acknowledged
17 receiving the September 15, 2011 email from Mary Bryan. Principal McKay said he did not
18 receive it because the email address for him (which Mary Bryan obtained from his own office)
19 was incorrect.
20

21 Both Mr. Beasley and Mr. Halpin were, in 2011, mandatory reporters who were required to
22 report any information concerning bullying, to either the Principal or one of his designees,
23 pursuant to NRS 3.88.1351 (1). In 2011, Principal McKay's designees at Greenspun were Vice
24 Principal Leonard DePiazza and Dean Cheryl Winn.

25 Neither Mr. Beasley nor Mr. Halpin fulfilled their statutory duty to report Mary Bryan's
26 September 15, 2011 email concerning bullying, explaining that because they saw Principal
27
28

1 McKay's name in the address line, they assumed, without verifying, that Dr. McKay, and through
2 him Vice Principal DePiazza and Dean Winn were aware of the situation.

3 These assumptions by Mr. Beasley and Mr. Halpin were incorrect. Moreover, by relying
4 on their assumptions, rather than adhering to the statutory requirement to report any information
5 concerning bullying they received, they both violated the explicit requirements of NRS
6 388.1351(1).
7

8 In response to the September 15, 2011 email, Mr. Beasley changed the seating
9 arrangements in the trombone section of his class. While before, Nolan had been sitting next to
10 Connor, after the change, Nolan set directly in front of CL.

11 While Mr. Beasley attempted to keep an eye on both bullies and the bullied students, he
12 admitted that he was unable to constantly watch them and still teach his class. Mr. Beasley said
13 that he made the decisions concerning the seating arrangements on his own without consultation
14 with anyone else. This testimony conflicted with that of Dean Winn, who stated that she was
15 involved in the decision.
16

17 The bullying continued. For Ethan Bryan, at the beginning of the school year, most of the
18 taunts at him by CL and DM had to do with his size. He was large for his age and overweight.

19 After the incident where CL stabbed Ethan's friend Nolan with a pencil, the bullying of
20 Ethan began to change. It not only escalated but also shifted from being mostly about his size and
21 weight to also involve homophobic slurs and vile and graphic innuendos concerning sexual
22 relations between Ethan and Nolan.
23

24 Like his friend Nolan, Ethan also chose not to report the bullying that he was enduring for
25 fear of retaliation, and lack of any real interest on the part of Greenspun school officials. Mary
26 Bryan, believing that the school would contact Nolan's parents after Mary sent them the
27
28

1 September 15, 2011 email about the stabbing of Nolan, did not directly inform Nolan's parents
2 herself.

3 **C. Aimee Hairr's September 22, 2011 phone conversation with Vice Principal**
4 **DePiazza and September 23, 2011 phone call with Counselor Halpin**

5 On or about September 21, 2011, while Mary Bryan and Nolan's mother Aimee Hairr were
6 at a birthday party for another of Mary's children, Mary casually asked Aimee about the school's
7 response to the September 15, 2011 email. Aimee responded that she had received no
8 communication from the school, and that she had no knowledge or information about the bullying
9 of her son occurring in Mr. Beasley's band class.

10
11 After talking to Mary, Nolan's parents then confronted him about the bullying. Nolan
12 verified the veracity of the substance of the contents of the September 15, 2011 email. He also
13 admitted to the stabbing incident.

14 On September 22, 2011, Nolan's mother made several phone calls to various school
15 officials in an attempt to contact the school regarding the September 15, 2011 email about the
16 stabbing of their son. She left several messages for different school officials. Finally, Aimee Hairr
17 was able to reach Vice Principal DePiazza, and had a phone conversation with him in which she
18 described the September 15, 2011 email, and the stabbing, including the comment by CL that he
19 did it to see if Nolan was a girl.
20

21 Mr. DePiazza told Aimee Hairr that there were a few options for Nolan, all involving
22 Nolan either transferring out of band class into another class at Greenspun, or transferring out of
23 Greenspun to a different school entirely.

24 Aimee found these so-called solutions to be both inadequate and inappropriate because if
25 anyone were to be moved, it should be the perpetrator of the bullying who assaulted her son not
26 the victim, Nolan.
27
28

1 Vice Principal DePiazza denied that he ever had a phone conversation with Aimee Hairr.
2 According to his version of events, some time in either September or October 2011 (he could not
3 remember when) there was a meeting in his office attended by Aimee Hairr, Dean Cheryl Winn
4 and possibly Nolan Hairr. Mr. DePiazza claimed that while there was some generalized discussion
5 about the "situation" in the band room, nothing specific about the stabbing or the September 15,
6 2011 email was ever mentioned. Neither Aimee Hairr, Nolan Hairr nor Cheryl Winn corroborated
7 Mr. DePiazza's version of events about this supposed meeting, or even that it took place.
8

9 On or about September 23, 2011, Mrs. Hairr received a return phone call from counselor
10 John Halpin. Aimee knew Mr. Halpin because she was his dental hygienist. Mr. Halpin told her he
11 had received this September 15, 2011 email and was aware of its contents. He said he had
12 previously spoken to Nolan and would do so again to make sure that Nolan made a formal
13 complaint about the stabbing to the Dean. He said he believed that Dean Winn knew about it, but
14 wanted to make sure.
15

16 Later that day, Nolan met with Mr. Halpin. Both agreed that the counselor wanted Nolan to
17 go to the Dean's office to fill out an incident report. Mr. Halpin said that he accompanied Nolan to
18 Ms. Winn's office, while Nolan said he was sent there and went by himself. Mr. Halpin also said
19 that since the Dean was not in the office, he left a message for Dean Winn with Harriet Clark, her
20 secretary, recounting the stabbing incident and the bullying. He gave that message to the Dean's
21 secretary with instructions to relay that message to Dean Winn. The Dean did not report receiving
22 Mr. Halpin's message from her secretary.
23

24 Nolan, still trying to "tough it out" and not make more trouble for himself by complaining
25 and thereby risking further retaliation, wrote a bland and rather innocuous version of what he was
26 enduring in band class. He did not mention the stabbing nor the homophobic, sexually-oriented
27 slurs.
28

1 Dean Winn said she could not remember whether she met with Nolan on or after
2 September 22, 2011. Nolan said that no such meeting took place on or after September 22, 2011.
3 Aimee Hairr said she never had a meeting with Dean Winn.

4 Dean Winn said testified did not learn of the stabbing incident until the following year,
5 February 2012.
6

7 **D. Mary Bryan's October 19, 2011 email to school officials and October 19,**
8 **2011 meeting with Dean Winn**

9 On or about October 19, 2011, Mary Bryan noticed that Ethan had come home from school
10 with scratches on his leg. When she confronted him about the scratches, he told her that at the end
11 of band class, while Mr. Beasley was out of the room, one of the bullies who was behind Ethan,
12 removed a rubber stopper out of a piece of his trombone and started hitting Ethan in the legs with
13 the remaining sharp piece of the instrument.

14 Upon questioning by his parents, Ethan also disclosed that CL and DM continued to make
15 lewd sexual comments including calling both Ethan and Nolan gay, faggots and other similar
16 names, and also talked about Ethan and Nolan jerking each other off and otherwise engaging in
17 homosexual acts with each other.
18

19 Ethan's parents, enraged that this was going on -- particularly after the September 15, 2011
20 email -- decided to confront school officials. On October 19, 2011 Mary Bryant sent a second
21 email addressed to Principal McKay, Mr. Beasley, and Mr. Halpin, describing the continuing
22 bullying and also the hitting scratching of Ethan's leg.

23 Mr. and Mrs. Bryan met with Dean Winn at the Dean's office on October 19, 2011. They
24 described the bullying endured by both Ethan and Nolan, specifically mentioning the physical
25 assaults as well as the vile homophobic slurs that both boys were subjected to by CL and DM. The
26 Bryans made it clear that they would not tolerate a continuation of this bullying.
27
28

1 Dean Winn denied the occurrence of this meeting. She also denied that she knew anything
2 about the, emails, the physical assaults and the homophobic slurs in October 2011. She said she
3 only learned of the October 19, 2011 email the following year, in February 2012.

4 **E. The October 19, 2011 Administrator's meeting where John Halpin informed**
5 **Principal McKay and Vice Principal DePiazza of Mary Bryan's emails**

6 Mr. Halpin, who was a recipient of the October 19, 2011 email, said he forwarded that
7 email to Dean Winn to make sure she was aware of the situation. Dean Winn denied having
8 received the October 19, 2011 email from Mr. Halpin.

9 Also on October 19, 2011, Mr. Halpin attended a weekly administrators meeting. Principal
10 McKay and Vice Principal DePiazza were at that meeting. Dean Winn, who was a regular
11 participant in those weekly meetings, did not attend that day.

12 Mr. Halpin said that he reported on the bullying that was occurring in Mr. Beasley's band
13 class in considerable detail to both Principal McKay and Vice Principal DePiazza. He also stated
14 that everyone at that meeting knew about the two emails that had been sent by Mary Bryan. He
15 also made it clear that the two assaults were perpetrated by the same two bullies against the same
16 two bullied students. Mr. Halpin specifically recalled Principal McKay telling Vice Principal
17 DePiazza to take care of the matter.

18 Dr. McKay stated his recollections from the October 19, 2011, administrators meeting
19 differently. McKay recalled Mr. Halpin bringing up the subject of bullying in Mr. Beasley's class,
20 but without mentioning many specifics. For reasons he did not disclose, McKay stated that he
21 really was not interested in the details of such matters and left it to his subordinates to address the
22 issue.

23 Dr. McKay stated that he told Mr. DePiazza and Mr. Halpin to handle the situation. Dr.
24 McKay also stated that he subsequently did not ask the Vice Principal about how the investigation
25 was going or what DePiazza had found out until February 2012.

1 Principal McKay only took action in February 2012 because it was then that he was
2 ordered by his supervisor at the district level and the Assistant Superintendent to investigate the
3 bullying of Ethan and Nolan.

4 Vice Principal DePiazza stated a vague memory of the October 19, 2011 administrative
5 meeting. He recalled that there may have been some discussion about bullying but didn't really
6 remember much. His position was that he definitely did not remember being told by Dr. McKay to
7 conduct an investigation into the bullying reports on October 19, 2011.

9 Principal McKay stated that in 2011 while he never asked his Vice Principal about the
10 bullying investigation, he did, at some point, have a casual discussion with Dean Winn about the
11 matter. He asked her how the investigation was going. Dean Winn replied that she was having
12 trouble getting corroborating statements from other students.

13 Dean Winn's testimony contradicted the Principal's statements by claiming that she did
14 not undertake any investigation of the bullying because she was specifically told by Dr. McKay
15 that it was all being handled by Vice Principal DePiazza. Dr. McKay testified that Dean Winn told
16 him she was investigating by trying to get statements from other students.

18 **F. Although by October 19, 2011, all members of the Greenspun Junior High**
19 **School administration were aware of physical, and discriminatory bullying that**
20 **Ethan and Nolan were experiencing, no investigation was conducted until February**
21 **2012, after both boys had left the school.**

22 Although the school officials all pointed fingers at each other, the one thing that they all
23 agreed upon is that contrary to Nevada statutes, no investigation of the reports of bullying,
24 described in the September 15, 2011, and October 19, 2011 emails from Mary Bryan and the
25 September 22, 2011 phone conversation between Aimee Hairr and Vice Principal DePiazza, the
26 September 23, 2011 phone conversation between Aimee Hairr and Mr. Halpin, and the October
27 19, 2011 meeting between Mr. and Mrs. Bryan and Dean Winn, ever occurred in 2011.

1 Throughout the rest of 2011, the bullying of Ethan and Nolan by CL and DM continued
2 out of the sight of Mr. Beasley.

3 Ethan and Nolan continued to employ the strategy of trying to ignore the problem, feeling
4 that any further complaints would just lead to greater retaliation.

5 When Ethan and Nolan came back to Greenspun for in January 2012, their resolve began
6 to waver. Each boy tried to avoid band class or even school altogether. Ethan feigned illness, and
7 even tried to make himself sick by eating cardboard. Nolan would hang out in the library or in the
8 halls. By the middle of January, both boys had essentially stopped going to school in order to
9 avoid further bullying.
10

11 In January 2012, Ethan Bryan was prevented from attempting to commit suicide by
12 drinking household chemicals, because of a fortuitous intervention from his mother. Ethan's
13 parents refused to send him back to Greenspun after that.
14

15 On or around January 21, 2012 Nolan had, what his mother described as something close
16 to a breakdown because of the bullying that he and others were enduring at Greenspun. Mrs. Hairr
17 decided to pull Nolan out of the school at that time. She also made a report to the police.

18 By early February 2012, both Ethan and Nolan had been removed from Greenspun Jr.
19 High School.

20 Subsequent to the removal of Ethan and Nolan from Greenspun, and also subsequent to the
21 filing of the police report, Principal McKay, on or about February 7, 2012, was contacted by
22 officials from the school district, specifically his direct supervisor Andre Long and the Assistant
23 Superintendent Jolene Wallace. He was ordered by Ms. Wallace to conduct an investigation into
24 the bullying of Ethan Bryan and Nolan Hairr.
25

26 Because he was ordered by his superiors to investigate, Principal McKay directed Vice
27 Principal DePiazza to conduct a "second" investigation.
28

1 This was, in fact, the only investigation done at Greenspun into the bullying of Ethan and
2 Nolan. At trial, no one from the school or the school district testified to seeing any results of any
3 earlier investigation. Nor was any evidence obtained from any earlier investigation introduced.
4 Contrary to the responsibilities under Nevada law, no investigation ever took place while Ethan
5 and Nolan were attending Greenspun Junior High School.
6

7 **IV. Conclusions of Law**

8 **A. The Evidence and Testimony at Trial shows a Title IX Violation.**

9 **1. Title IX Standards**

10 Section 901(a) of Title IX provides, “No person in the United States shall, on the basis of
11 sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination
12 under any education program or activity receiving Federal financial assistance.” 20 USC §
13 1681(a). Based on the receipt of federal funds, CCSD is subject to Title IX requirements. 20 USC
14 § 1681(a). Under Title IX, student on student harassment and bullying based upon perceived
15 sexual orientation is actionable.
16

17 For liability under Title IX for student on student sexual harassment: (1) the school district
18 “must exercise substantial control over both the harasser and the context in which the known
19 harassment occurs”, (2) the plaintiff must suffer “sexual harassment ... that is so severe, pervasive,
20 and objectively offensive that it can be said to deprive the victims of access to the educational
21 opportunities or benefits provided by the school”, (3) the school district must have “actual
22 knowledge of the harassment”, and (4) the school district’s “deliberate indifference subjects its
23 students to harassment”. *Reese v. Jefferson School District No. 14J*, 208 F.3d 736, 739 (9th Cir.
24 2000) (quoting *Davis*, 526 U.S. 629, 119 S. Ct. 1661, 1675 (1999)). See also, *Henkle v. Gregory*,
25 150 F.Supp.2d 1067, 1077-1078 (D. Nev. 2001). The Ninth Circuit defines deliberate indifference
26 as “the conscious or reckless disregard of the consequences of one’s acts or omissions,” *Henkle v.*
27
28

1 *Gregory*, 150 F.Supp. 2d 1067,1077-78 (D. Nev. 2001); See also 9th Cir. Civ. Jury Instr. 11.3.5
2 (1997)(citing *Redman v. County of San Diego*, 942 F.2d 1435, 1442 (9th Cir. 1991), *cert. denied*,
3 502 U.S. 1074 (1992). A Plaintiff bringing a claim under Title IX must prove his or her claim by a
4 preponderance of the evidence. Whether conduct rises to the level of actionable "harassment"
5 thus "depends on a constellation of surrounding circumstances, expectations, and
6 relationships," *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 82 (1998).
7

8 In the instant case, the testimony at trial showed that: 1) Greenspun Junior High School
9 exercised substantial control over both the students involved in the bullying and the context in
10 which the harassment occurred; 2) both Ethan and Nolan were bullied at school; 3) the harassment
11 they endured was sexual in nature; 4) the harassment was so severe, pervasive, and objectively
12 offensive that it deprived Ethan and Nolan of access to the educational opportunities and benefits
13 provided by the school; 5) the appropriate school officials had actual knowledge of the bullying
14 and sexual discrimination suffered by Ethan and Nolan; and, 6) the appropriate school officials
15 demonstrated deliberate indifference to the bullying endured by Ethan and Nolan.
16

17 **2. Ethan and Nolan were bullied in Mr. Beasley's band class.**

18 Ethan and Nolan were bullied in Mr. Beasley's band class by two other students. They
19 were not only called names, but both were physically assaulted by the bullies. On September 13,
20 2011, CL stabbed Nolan in the groin with a pencil during Mr. Beasley's band class. On October
21 18, 2011 Ethan was physically assaulted by one of the bullies at the end of band class by having
22 his legs hit and scratched with a trombone from which the rubber stopper had been removed.
23

24 **3. The bullying was sexual in nature.**

25 From the very beginning of the school year Nolan was called names such as "faggot,
26 fucking fat faggot, fucking faggot, gay, gay boyfriend, cunt." This began when he was 11 years
27 old at the beginning of sixth grade. Nolan was a small child who had blonde hair down to his
28 shoulders.

1 While Ethan had been bullied by CL and DM from the beginning of the school year, their
2 comments had started off being directed at his size and weight, after the stabbing incident, the
3 bullies also began directing their homophobic slurs against Ethan as well. The bullies continuously
4 taunted Ethan and Nolan with homophobic slurs and innuendo, and specifically made statements
5 concerning homosexual relations and explicit sexual acts between Ethan and Nolan in vile and
6 graphic terms.
7

8 **4. The bullying of Ethan and Nolan was severe, pervasive, and objectively**
9 **unreasonable, and deprived them of significant educational opportunities.**

10 The nature of the bullying was severe, pervasive, and objectively unreasonable. It involved
11 verbal abuse of a sexual and homophobic nature beginning from the start of the school year and
12 only ceased when Ethan and Nolan were forced to stop attending Greenspun. Both boys suffered
13 so severely from the bullying that they did whatever they could to not attend school in order to
14 avoid the bullying. In January 2012, Ethan feigned illness in order to stay home from school. He
15 would eat paper in order to make himself sick. For Ethan, the bullying was so severe and
16 pervasive that he saw suicide as his only way out. Fortunately, he was prevented from doing so
17 by his mother's intervention. At that point, she was forced to take him out of Greenspun.
18

19 In January 2012, Nolan stopped going to band class in order to avoid the bullying by CL.
20 Nolan then had a breakdown due to the constant bullying that forced his parents also to remove
21 him from Greenspun. The creation of a sufficiently hostile environment forced Ethan and Nolan's
22 parents to remove them from Greenspun Jr. High School and thus deprived them of educational
23 opportunities.
24

25 The severity of the hostile environment forced both Nolan and Ethan to quit Greenspun to
26 escape both verbal and sometimes physical harassment from CL and DM that school officials were
27 aware of, and allowed to continue. This was clearly a loss of educational opportunity.
28

1 **5. Appropriate school officials had actual notice of the existence and the**
2 **discriminatory nature of the bullying.**

3 Appropriate school officials had notice of the existence and nature of the bullying suffered
4 by Ethan and Nolan. *See, Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998).

5 [In cases like this one that do not involve official policy of the recipient entity, we
6 hold that a damages remedy will not lie under Title IX unless an official who at a
7 minimum has authority to address the alleged discrimination and to institute
8 corrective measures on the recipient's behalf has actual knowledge of
9 discrimination in the recipient's programs and fails adequately to respond.

10 524 U.S. at 290.

11 The Court in *Warren v. Reading Sch. Dist.*, 278 F.3d 163 (3rd Cir. 2002) stated that the
12 school principal was the appropriate person for Title IX purposes, while in *Murrell v. Sch. Dist.*
13 *No. 1*, 186 F.3d 1238, 1247 (10th Cir. 1999) the Court considered an individual who exercises
14 substantial control, for Title IX purposes, to be anyone with the authority to take remedial action.
15 Several Greenspun personnel had authority to take remedial disciplinary actions when appropriate,
16 including, band teacher Beasley, Principal McKay, Vice Principal DePiazza, and Dean Winn.
17 Both Mr. Beasley and Mr. Halpin admitted to receiving Mary Bryan's September 15, 2011 and
18 October 19, 2011 emails.

19 Five separate contacts by Ethan or Nolan's parents to Greenspun personnel put the school
20 on actual notice of the verbal, physical and sexual nature of the bullying. On September 15, 2011,
21 Mary Bryan sent an email to Dr. McKay, Mr. Halpin and Mr. Beasley concerning the stabbing of
22 Nolan. On September 22, Aimee Hairr spoke to Mr. DePiazza about the general bullying and the
23 assault on her son. She spoke to Mr. Halpin by phone the next day.

24 On October 19, 2011, Mary Bryan sent another email to Dr. McKay, Mr. Halpin and Mr.
25 Beasley, this time regarding the assault on Ethan. The same day, she and her husband met with
26 Dean Winn to discuss the bullying of Ethan and Nolan, and particularly about its sexual,
27
28

1 homophobic nature. All of these parental contacts gave the school actual notice to appropriate
2 persons of the existence and nature of the bullying of both Ethan and Nolan.

3 **6. Greenspun school officials acted with deliberate indifference for Title**
4 **IX violation purposes.**

5 Deliberate indifference is “the conscious or reckless disregard of the consequences of one’s
6 acts or omissions.” *Henkle v. Gregory*, 150 F. Supp. 2d at 1078. Deliberate indifference occurs
7 where the recipient’s response to the harassment or lack thereof is clearly unreasonable in light of
8 the known circumstances. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736, 739 (9th Cir.
9 2000). It must, at a minimum, “cause students to undergo harassment or make them liable or
10 vulnerable to it.” *Id.*, citing *Davis*, 526 U.S. at 645. “[I]f an institution either fails to act, or acts in
11 a way which could not have reasonably been expected to remedy the violation, then the institution
12 is liable for what amounts to an official decision not to end discrimination.” *Gebser v. Lago Vista*
13 *Ind. School Dist.*, 524 U.S. 274, 290 (1998); *See, Jane Doe A v. Green*, 298 F. Supp.2d 1025, 1035
14 (D. Nev. 2004). Greenspun officials’ failure to take further action once they received actual notice
15 of the bullying and its nature showed deliberate indifference. *See, Flores v. Morgan Hill Unified*
16 *School Dist.*, 324 F.3d 1130, 1136 (9th Cir. 2003), *Vance v. Spencer County Public School Dist.*,
17 231 F.3d 253 (6th Cir. 2000).

18 Even though NRS 3.88.1351 (1) requires that once a report of bullying is received, the
19 Principal or his or her designee begin an immediate investigation, no investigation, much less one
20 conforming to statute, was ever undertaken in 2011. The only time an investigation occurred was
21 in February 2012, when it was ordered by the District. This, however, occurred well after both
22 Ethan and Nolan had been removed from Greenspun, and a police report had been filed. This
23 constituted deliberate indifference on the part of school officials who had actual notice of the
24 physical and homophobic bullying to which Ethan and Nolan were subjected.

25 **B. The Evidence and Testimony at Trial shows a Substantive Due Process**
26 **Violation.**

27 Under *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189
28 (1989), the Due Process Clause of the United States Constitution does not require state actors to

1 protect private citizens from harm inflicted by other private citizens. *DeShaney*, however, is
2 inapplicable because of the state created danger exception.

3 **1. Plaintiffs had a constitutionally protected interest in their safety and in**
4 **their education.**

5 State law can create a liberty or property interest. *Vitek v Jones*, 445 U.S. 480 (1980);
6 *Carlo v. City of Chino*, 105 F.3d 493 (9th Cir. 1997). The Supreme Court stated in *Goss v. Lopez*,
7 419 U.S. 565, 576 (1975), that a student's right to a public education is a property interest
8 protected by the Due Process Clause. See also, *Henry A. v. Willden*, 678 F.3d 991 (9th Cir. 2012).

9
10 **2. Defendant acted with deliberate indifference for substantive due**
11 **process violation purposes.**

12 The "state-created danger exception" — when "the state affirmatively places the Plaintiff
13 in danger by acting with 'deliberate indifference' to a 'known and obvious danger,'" is manifested
14 here. The standard for deliberate indifference does not vary between Title IX and 42 USC 1983
15 cases. *Doe A. v. Green*, 298 F.Supp.2d 1025, 1035 (D.Nev., 2004) see also *Willden, supra*.
16 Deliberate indifference consists of deliberate action or deliberate inaction. *Wereb v. Maui County*,
17 727 F.Supp.2d 898, 921 (D. Haw., 2010) citing, *Long v. County of Los Angeles*, 442 F.3d 1178,
18 1185 (9th Cir., 2006); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

19 In other cases, Defendants have been "charged with knowledge" of unconstitutional
20 conditions when they persistently violated a statutory duty to inquire about such conditions and to
21 be responsible for them. *Wright v. McMann*, 460 F.2d 126 (2nd Cir. 1972); *United States ex rel.*
22 *Larkins v. Oswald*, 510 F.2d 583 (2nd Cir. 1975); *Doe v. N.Y.C. Dep't of Soc. Servs.*, 649 F.2d 134
23 (2nd Cir. 1981). The failure to investigate the reported physical, sexual, and other verbal bullying,
24 in the face of clear statutory mandates to do so is significant evidence of an overall posture of
25 deliberate indifference toward Ethan's and Nolan's welfare.

26 **3. CCSD is subject to Monell liability.**

27 In *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005), the Ninth Circuit stated
28 that there are three distinct alternative theories of municipal liability, by showing: (1) a

1 longstanding practice or custom which constitutes the 'standard operating procedure' of the local
2 government entity; (2) that the decision-making official was, as a matter of state law, a final
3 policymaking authority whose edicts or acts may fairly be said to represent official policy in the
4 area of decision; or (3) that an official with final policymaking authority either delegated that
5 authority to, or ratified the decision of, a subordinate. *See also, Trevino v. Gates*, 99 F.3d 911, 918
6 (9th Cir. 1996).

8 Liability can be established by the existence of a government policy or custom that leads
9 to a constitutional deprivation. *Monell v. Department of Social Services of New York*, 436 U.S.
10 658, 694 (1978); *Ulrich v. City and County of San Francisco*, 308 F.3d 968, 983 (9th Cir. 2002);
11 *Weiner v. San Diego County*, 210 F.3d 1025, 1028 (9th Cir. 2000). The other two theories of
12 municipal liability attach when a final policymaker for the government acts in a manner that can
13 fairly be said to represent official action. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, (1988);
14 *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479-80 (1986).

16 Liability may attach either when the final policymaker is a final policymaking authority
17 who made the allegedly unconstitutional action, or when that action is ratified, or delegated to a
18 subordinate. *Menotti*, 409 F.3d at 1147; *Ulrich*, 308 F.3d at 984-85. A policy includes "a course
19 of action tailored to a particular situation and not intended to control decisions in later situations."
20 *Pembaur*, 475 U.S. at 481. When determining whether an individual has final policymaking
21 authority, the pertinent query is whether he or she has authority "in a particular area, or on a
22 particular issue." *McMillian v. Monroe County*, 520 U.S. 781 (1997). The individual must be in a
23 position of authority to the extent that a final decision by that person may appropriately be
24 attributed to the District. *Lytle v. Carl*, 382 F.3d 978, 983 (9th Cir. 2004); *see also, Christie v. Iopa*,
25 176 F.3d 1231, 1235 (9th Cir. 1999). A government entity can be liable for an isolated
26 constitutional violation. *Id.*

1 Principals can act as final policymakers for the purposes of *Monell* liability with respect to
2 student discipline issues. *Williams v. Fulton Cnty. Sch. Dist.*, 181 F. Supp. 3d 1089, 1126-27 (N.D.
3 Ga. 2016), *citing*, *Holloman v. Harland*, 370 F.3d 1252, 1293 (11th Cir. 2004); *see also*, *Bowen v.*
4 *Watkins*, 669 F.2d 979 (5th Cir. 1982); *Rabideau v. Beekmantown Cent. Sch. Dist.*, 89 F. Supp. 2d
5 263, 268 (N.D.N.Y. 2000), *citing* *Luce v. Board of Educ.*, 2 A.D.2d 502, 505, 157 N.Y.S.2d 123,
6 127 (3d Dep't 1956), *aff'd*, 3 N.Y.2d 792, 143 N.E.2d 797, 164 N.Y.S.2d 43 (1957).

8 **4. NRS 388.1351(2) specifically tasks the school Principal with**
9 **responsibility for investigating reports of bullying.**

10 The question of whether a particular individual has policymaking authority is a question of
11 state law. *Pembaur, supra*, 475 U.S. at 483; *St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988);
12 *Lytle*, 382 F.3d at 982-83. NRS 388.1351(2) required that once a report of bullying is received,
13 the Principal or his or her designee shall initiate an investigation not later than one day after
14 receiving notice of the violation, and that the investigation must be completed within 10 days after
15 the date on which the investigation is initiated.

16 The legislature explicitly gave a statutory mandate to investigate reports of bullying in
17 school to the school "Principal or his or her designee." There is absolutely no legislative authority
18 for the CCSD to designate somebody else at the District level to override the delegation of
19 responsibility and authority. Thus, under the NRS 388.1351(2), because the final policymaker
20 relating to the failure of Principal McKay or any of his designees to conduct the requisite
21 investigation on the reports of the bullying of Ethan and Nolan, was the Principal himself,
22 Defendant CCSD is liable for the substantive due process violation under *Monell*.

24 **V. Damages**

25 In its June 29, 2017 Decision and Order, the Court ruled that "Plaintiffs are entitled to a
26 judgment for all damages sought under these two claims asserted in the Complaint, and proven at
27 trial." On April 6, 2016, Discovery Commissioner Bulla denied Defendants' Motion to Compel
28

1 Damages Categories and Calculations, thus allowing these calculations to be determined by the
2 Court at trial. The Discovery Commissioner's Report and Recommendations were affirmed and
3 adopted by the Court. Plaintiffs Mary Bryan and Aimee Hairr testified that their out of pocket
4 expenses for schooling for Ethan and Nolan outside of CCSD is approximately ten thousand
5 dollars (\$10,000) per year starting in eighth grade, or approximately fifty thousand dollars
6 (\$50,000) total for each child to date.

8 Beyond these out of pocket expenses both Ethan and Nolan suffered from physical attacks
9 and relentless homophobic slurs. A seminal Nevada case can serve as a guideline for damages in
10 similar school bullying cases. In *Henkel*, (150 F. Supp. 2d at 1069), "during school hours and on
11 school property, he endured constant harassment, assaults, intimidation, and discrimination by
12 other students because he is gay and male and school officials, after being notified of the
13 continuous harassment, failed to take any action." The Washoe County School District agreed to
14 pay Mr. Henkel four hundred, fifty-one thousand (\$451,000) dollars as damages. Using *Henkel* as
15 a guidepost, the \$451,000 award in 2001 would be equivalent to approximately \$625,000 in
16 today's dollars. Therefore, awards of six hundred thousand dollars (\$600,000), apiece to each
17 Plaintiff, Mary Bryan on behalf of Ethan Bryan and Aimee Hairr on behalf of Nolan Hairr, is
18 appropriate.

20 VI. Judgment

21 Judgment is hereby entered in favor of Plaintiffs Mary Bryan on behalf of Ethan Bryan and
22 Aimee Hairr on behalf of Nolan Hairr, and against Defendant Clark County School District on the
23 Title IX and Substantive Due Process claims. It is further ordered that Defendant shall pay to each
24 Plaintiff, Ethan Bryan and Nolan Hairr, the sum of ^{two M's} ~~six~~ hundred thousand dollars ^{\$200,000} ~~(\$600,000)~~ for ^{M.A.}
25 physical and emotional distress damages and costs for alternative schooling. These awards are
26 exclusive of any costs or attorneys fees accrued.

1 Dated this 20 day of July 2007

Nancy L. Allf
NANCY L. ALLF
District Court Judge

2
3 Respectfully submitted by:

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21
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1
2 **CERTIFICATE OF SERVICE**
3

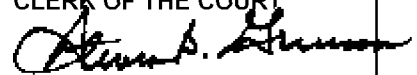
4 I hereby certify that on or about the date signed I caused the foregoing document to be
5 electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial
6 District Court's electronic filing system, with the date and time of the electronic service
substituted for the date and place of deposit in the mail and/or by email to:

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15 *District (CCSD)*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 MARY BRYAN, mother of ETHAN
19 BRYAN; AIMEE HAIRR, mother of
20 NOLAN HAIRR,

21 Plaintiffs,

22 vs.

23 CLARK COUNTY SCHOOL DISTRICT
24 (CCSD); PRINCIPAL WARREN P.
25 MCKAY, in his individual and official
26 capacity as principal of GJHS;
27 LEONARD DEPIAZZA, in his individual
28 and official capacity as assistant
principal at GJHS; CHERYL WINN, in
her individual and official capacity as
Dean at GJHS; JOHN HALPIN, in his
individual and official capacity as
counselor at GJHS; ROBERT BEASLEY,
in his individual and official capacity
as instructor at GJHS,

Defendants.

Case No. A-14-700018-C

Dept. No. XXVII

CASE APPEAL STATEMENT

CASE APPEAL STATEMENT

1.
2.
3. Name of appellants filing this case appeal statement:

4. Defendant Clark County School District

5. 2. Identify the judge issuing the decision, judgment, or order appealed from:

6. The Honorable Nancy L. Allf

7. 3. Identify each appellant and the name and address of counsel for each appellant:

8. *Attorneys for Appellant Clark County School District*

9. Daniel F. Polsenberg
10. Dan R. Waite
11. Brian D. Blakley
12. Abraham G. Smith
13. LEWIS ROCA ROTHGERBER CHRISTIE LLP
14. 3993 Howard Hughes Parkway, Suite 600
15. Las Vegas, Nevada 89169
16. (702) 949-8200

17. 4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

18. *Attorneys for Respondents Mary Bryan, Ethan Bryan, Aimee Hairr and Nolan Hairr*

19. Allen Lichtenstein
20. ALLEN LICHTENSTEIN, LTD.
21. 3315 Russell Road, No. 222
22. Las Vegas, Nevada 89120
23. (702) 433-2666

24. John Houston Scott
25. SCOTT LAW FIRM
26. 1388 Sutter Street, Suite 715
27. San Francisco, California 94109
28. (415) 561-9601

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

John Houston Scott is not licensed to practice in Nevada. A copy of the minute order granting him permission to appear is attached hereto as Exhibit A.

- 1 6. Indicate whether appellant was represented by appointed or retained
2 counsel in the district court:
3 Retained counsel
- 4 7. Indicate whether appellant is represented by appointed or retained
5 counsel on appeal:
6 Retained counsel
- 7 8. Indicate whether appellant was granted leave to proceed in forma
8 pauperis, and the date of entry of the district court order granting such
9 leave:
10 N/A
- 11 9. Indicate the date the proceedings commenced in the district court, *e.g.*,
12 date complaint, indictment, information, or petition was filed:
13 "Complaint," filed April 29, 2014
- 14 10. Provide a brief description of the nature of the action and result in the
15 district court, including the type of judgment or order being appealed
16 and the relief granted by the district court:
17 This action arises under Title IX and 42 U.S.C. § 1983, based
18 on allegations that two junior high school students bullied
19 plaintiffs on the basis of sex. After a bench trial, the district court
20 entered a decision in favor of plaintiffs, ruling that CCSD violated
21 Title IX and that plaintiffs' substantive due process rights
22 guaranteed by the Fourteenth Amendment were violated.
23 Defendant appeals from the decision and judgment.
- 24 11. Indicate whether the case has previously been the subject of an appeal
25 or an original writ proceeding in the Supreme Court and, if so, the
26 caption and Supreme Court docket number of the prior proceeding.
27 N/A
- 28 12. Indicate whether this appeal involves child custody or visitation:
This case does not involve child custody or visitation.
13. If this is a civil case, indicate whether this appeal involves the possibility
of settlement:
Undersigned counsel is not aware of any circumstances that
make settlement impossible.

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Dated this 23rd day of August, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
BRIAN D. BLAKLEY (SBN 13074)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Attorneys for Defendants

1 CERTIFICATE OF SERVICE

2 Pursuant to Nev.R.Civ. Rule 5(b), I certify that I am an employee of
3 Lewis Roca Rothgerber Christie LLP, and that on this day, I caused a true and
4 correct copy of the "Case Appeal Statement" to be filed, via the Court's E-
5 Filing System, and served on all interested parties via U.S. Mail, postage pre-
6 paid and courtesy email.

7
8 Allen Lichtenstein, Esq.
9 Staci Pratt, Esq.
10 ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.
11 3315 Russell Road, No. 222
12 Las Vegas, Nevada 89120
13 allaw@lvcoxmail.com
14 *Attorneys for Plaintiffs*

15 John Houston Scott, Esq.
16 SCOTT LAW FIRM
17 1388 Sutter Street, Suite 715
18 San Francisco, CA 94109
19 john@scottlawfirm.net
20 *Attorneys for Plaintiffs*
21 *(Admitted Pro Hac Vice)*

22
23 Dated this 23rd day of August, 2017
24
25
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29 /s/ Luz Horvath
30 An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

July 07, 2015

A-14-700018-C	Mary Bryan, Plaintiff(s) vs. Clark County School District, et al, Defendant(s)
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July 07, 2015	3:00 AM	Motion to Associate Counsel
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HEARD BY: Allf, Nancy

COURTROOM:

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that Plaintiffs Mary Bryan and Aimee Hairr filed a Motion to Associate Counsel, John H. Scott, Esq. on June 4, 2015, with a hearing set for Chambers Calendar on July 7, 2015. COURT FURTHER FINDS after review the Motion is in compliance with SCR 42 and no opposition has been filed.

COURT ORDERS for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and a consent to granting the same, Plaintiffs Motion to Associate Counsel GRANTED; Hearing on CHAMBERS CALENDAR on July 7, 2015 is VACATED; Movant to prepare the appropriate Order.

CLERK'S NOTE: A copy of this minute order was faxed to: Allen Lichtenstein (702-433-9591) and Dan R. Waite, Esq. (702-949-8398)

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

§
§
§
§
§

Location: **Department 27**
Judicial Officer: **Allf, Nancy**
Filed on: **04/29/2014**
Case Number History:
Cross-Reference Case Number: **A700018**

CASE INFORMATION

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Arbitration Exemption Granted

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-14-700018-C
Court	Department 27
Date Assigned	01/12/2017
Judicial Officer	Allf, Nancy

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Bryan, Ethan	Lichtenstein, Allen <i>Retained</i> 7024332666(W)
	Bryan, Mary	Lichtenstein, Allen <i>Retained</i> 7024332666(W)
	Hairr, Aimee	Lichtenstein, Allen <i>Retained</i> 7024332666(W)
	Hairr, Nolan	Lichtenstein, Allen <i>Retained</i> 7024332666(W)
Defendant	Beasley, Robert	Waite, Dan R <i>Retained</i> 702-949-8200(W)
	Clark County School District, et al	Polsenberg, Daniel F. <i>Retained</i> 702-949-8200(W)
	Corbett, Stavan	
	Cranor, Erin A	
	DePiazza, Leonard	Waite, Dan R <i>Retained</i> 702-949-8200(W)
	Edwards, Carolyn	
	Garvey, Chris	
	Halpin, John	Waite, Dan R

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

Retained
702-949-8200(W)

McKay, Warren P

Waite, Dan R
Retained
702-949-8200(W)

Skorkowsky, Pat










Tew, Patrice

Winn, Cheryl











Waite, Dan R
Retained
702-949-8200(W)

Wright, Deanna






Young, Linda E

DATE	EVENTS & ORDERS OF THE COURT	INDEX
04/29/2014	 Complaint Filed By: Plaintiff Bryan, Mary <i>Complaint</i>	
04/29/2014	Case Opened	
04/30/2014	 Initial Appearance Fee Disclosure Filed By: Plaintiff Bryan, Mary <i>Initial Appearance Courtesy Copy</i>	
06/06/2014	 Affidavit of Service Filed By: Plaintiff Bryan, Mary <i>Affidavit of Service</i>	
06/30/2014	 Motion Filed By: Defendant Clark County School District, et al <i>Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin And Robert Beasley's Motion To Dismiss</i>	
07/01/2014	 Notice of Hearing Filed By: Defendant Clark County School District, et al <i>Notice of Hearing</i>	
07/22/2014	 Opposition to Motion Filed By: Plaintiff Bryan, Mary <i>Plaintiffs' Opposition to Motion to Dismiss</i>	
07/24/2014	 Notice of Withdrawal of Attorney Filed by: Plaintiff Bryan, Mary <i>Notice of Withdrawal of Appearance</i>	
07/31/2014	 Motion for Substitution Filed By: Plaintiff Bryan, Mary <i>Plaintiffs' Substitution of Attorneys</i>	
07/31/2014	 Substitution of Attorney Filed by: Plaintiff Bryan, Mary <i>Substitution of Attorneys (Hairr)</i>	

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C













08/01/2014	 Stipulation and Order Filed by: Defendant Clark County School District, et al <i>Stipulation and Order to Continue the July 31, 2014 Hearing on "Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Motion to Dismiss"</i>
08/01/2014	 Notice of Entry of Order Filed By: Defendant Clark County School District, et al <i>Notice Of Entry Of Order To Continue The July 31, 2014 Hearing On "Defendants Clark County School District, William P. McKay, Leonard Depiazza, Cheryl Winn, John Halpin And Robert Beasley's Motion To Dismiss"</i>
08/07/2014	 Reply in Support Filed By: Defendant Clark County School District, et al <i>Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin And Robert Beasley's Reply In Support Of Their Motion To Dismiss</i>
08/21/2014	 Motion to Dismiss (10:00 AM) (Judicial Officer: Alf, Nancy) <i>Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin And Robert Beasley's Motion To Dismiss</i>
08/22/2014	 Recorders Transcript of Hearing <i>Recorder's Partial Transcript of Proceedings: Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Motion to Dismiss - Hearing August 21, 2014</i>
09/10/2014	 Order Filed By: Defendant Clark County School District, et al <i>Order Granting In Part and Denying In Part Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Motion to Dismiss</i>
09/10/2014	 Notice of Entry of Order Filed By: Defendant Clark County School District, et al <i>Notice of Entry Of Order Granting In Part and Denying In Part Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Win, John Halpin and Robert Beasley's Motion to Dismiss</i>
09/10/2014	Order of Dismissal (Judicial Officer: Alf, Nancy) Debtors: Mary Bryan (Plaintiff), Aimee Hairr (Plaintiff), Ethan Bryan (Plaintiff), Nolan Hairr (Plaintiff) Creditors: Clark County School District, et al (Defendant) Judgment: 09/10/2014, Docketed: 09/19/2014 Comment: Certain Causes
10/10/2014	 Amended Complaint Filed By: Plaintiff Bryan, Mary <i>First Amended Complaint for Declaratory Relief, Injunctive Relief, and Damages</i>
10/15/2014	 Exhibits Filed By: Plaintiff Bryan, Mary <i>Exhibit to First Amended Complaint for Declaratory Relief, Injunctive Relief, and Damages</i>
11/17/2014	 Errata Filed By: Plaintiff Bryan, Mary <i>Errata to First Amended Complaint</i>

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C













11/18/2014	 Motion to Dismiss Filed By: Defendant Clark County School District, et al <i>Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Motion to Dismiss First Amended Complaint</i>
11/20/2014	 Notice of Hearing Filed By: Defendant Clark County School District, et al <i>Notice of Hearing</i>
12/09/2014	 Stipulation and Order Filed by: Defendant Clark County School District, et al <i>Stipulation and Order to Continue the Hearing on Defendants Clark County School District, William P McKay, Leonard Depiazza, Cheryl Winn, John Halpin and Robert Beasley's Motion to Dismiss First Amended Complaint</i>
12/10/2014	 Notice of Entry of Order Filed By: Defendant Clark County School District, et al <i>Notice of Entry of Order to Continue the Hearing on Defendants' Motion to Dismiss First Amended Complaint</i>
12/31/2014	 Opposition Filed By: Plaintiff Bryan, Mary <i>Plaintiff's Response to Opposition to Defendants Motion to Dismiss and Countermotion to Strike</i>
01/15/2015	 Reply in Support Filed By: Defendant Clark County School District, et al <i>Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Reply in Support of Motion to Dismiss First Amended Complaint</i>
01/27/2015	 Stipulation and Order Filed by: Defendant Clark County School District, et al <i>Stipulation and Order to Continue the Hearing on Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Motion to Dismiss First Amended Complaint</i>
01/27/2015	 Notice of Entry of Stipulation and Order Filed By: Defendant Clark County School District, et al <i>Notice of Entry of Stipulation and Order to Continue the Hearing on Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Motion to Dismiss First Amended Complaint</i>
01/29/2015	Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy) Events: 11/18/2014 Motion to Dismiss <i>Defendants Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Motion to Dismiss First Amended Complaint</i>
01/29/2015	Countermotion (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Plaintiff's Response to Defendants Motion to Dismiss and Plaintiff's Countermotion to Strike Portion of Defendant's Motion</i>
01/29/2015	 All Pending Motions (10:30 AM) (Judicial Officer: Allf, Nancy)
02/10/2015	CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i>

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C













Status Check: Written Decision

02/10/2015	 Decision and Order <i>Decision and Order Granting In Part and Denying In Part Defendants' Motion to Dismiss and Denying Plaintiffs' Countermotion to Strike.</i>
02/10/2015	Order of Dismissal (Judicial Officer: Allf, Nancy) Debtors: Mary Bryan (Plaintiff), Aimee Hairr (Plaintiff), Ethan Bryan (Plaintiff), Nolan Hairr (Plaintiff) Creditors: Clark County School District, et al (Defendant) Judgment: 02/10/2015, Docketed: 02/18/2015 Comment: Certain Causes
02/25/2015	 Answer Filed By: Defendant Clark County School District, et al <i>Defendants CCSD, Warren P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley's Answer to Plaintiffs' First Amended Complaint for Declaratory Relief, Injunctive Relief, and Damages (With Errata)</i>
05/21/2015	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption</i>
05/29/2015	 Arbitration File <i>Arbitration File</i>
06/04/2015	 Motion to Associate Counsel Filed By: Plaintiff Bryan, Mary <i>Plaintiffs' Motion to Associate Counsel</i>
07/07/2015	 Motion to Associate Counsel (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Plaintiffs' Motion to Associate Counsel</i>
07/27/2015	 Joint Case Conference Report Filed By: Plaintiff Bryan, Mary <i>Joint Case Conference Report</i>
08/31/2015	 Scheduling Order <i>Scheduling Order</i>
09/25/2015	 Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial, Pre-Trial/Calendar Call</i>
10/08/2015	 Motion to Dismiss Filed By: Defendant Clark County School District, et al <i>Defendants' Rule 12 Motion to Dismiss Unserved Parties</i>
11/18/2015	 Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy)
11/19/2015	CANCELED Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - Previously Decided</i> <i>Defendants' Rule 12 Motion to Dismiss Unserved Parties</i>
12/02/2015	 Notice of Entry Filed By: Defendant Clark County School District, et al <i>Notice of Entry of Order Granting Defendants' Rule 12 Motion to Dismiss Unserved Parties</i>

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

12/02/2015	 Order Granting Filed By: Defendant Clark County School District, et al <i>Order Granting Defendants' Rule 12 Motion to Dismiss Unserved Parties</i>
12/14/2015	 Stipulated Protective Order Filed By: Defendant Clark County School District, et al <i>Stipulated Protective Order</i>
01/05/2016	 Motion to Compel Filed By: Defendant Clark County School District, et al <i>Motion to Compel Rule 35 Examinations</i>
01/05/2016	 Notice of Firm Name Change Filed By: Defendant Clark County School District, et al <i>Notice of Change of Firm Name and Email Address</i>
01/05/2016	 Stipulation and Order Filed by: Defendant Clark County School District, et al <i>Stipulation and Order to Extend Time for Defendants to Make Initial Expert Disclosures</i>
01/11/2016	 Motion to Compel Filed By: Defendant Clark County School District, et al <i>Motion to Compel Damages Categories and Calculations from Plaintiff Aimee Hairr</i>
01/13/2016	 Notice of Entry of Stipulation and Order Filed By: Defendant Clark County School District, et al <i>Notice of Entry of Stipulation and Order to Extend Time for Defendants to Make Initial Expert Disclosures</i>
01/19/2016	 Response Filed by: Plaintiff Bryan, Mary <i>Plaintiffs' Response to Defendants' Motion to Compel a Rule 35 Examination</i>
01/21/2016	 Order Shortening Time Filed By: Defendant Clark County School District, et al <i>Order Shortening Time for "Motion to Compel Rule 35 Examinations"</i>
01/22/2016	 Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Minute Order: Motion to Compel Rule 35 Examination Rescheduled by Stipulation to be Heard by Dept. 27</i>
01/27/2016	 Reply in Support Filed By: Defendant Clark County School District, et al <i>Defendants' Reply in Support of "Motion to Compel Rule 35 Examinations"</i>
01/31/2016	 Opposition to Motion to Compel Filed By: Plaintiff Bryan, Mary <i>Opposition to Defendants' Motion to Compel (Discovery)</i>
02/09/2016	 Reply in Support Filed By: Defendant Clark County School District, et al <i>Defendants' Reply in Support of Their Motion to Compel Damages Categories and Calculations from Plaintiff Aimee Hairr</i>

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

02/10/2016	 Motion to Compel (9:00 AM) (Judicial Officer: Allf, Nancy) <i>Def't's Motion to Compel Rule 35 Examinations</i>
02/11/2016	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>Order Setting Civil Jury Trial, Pre-Trial/Calendar Call</i>
02/12/2016	 Motion to Compel Filed By: Defendant Clark County School District, et al <i>Motion to Compel Damages Categories and Calculations from Plaintiff Mary Bryan on Order Shortening Time</i>
02/12/2016	 Receipt of Copy Filed by: Defendant Clark County School District, et al <i>Receipt of Copy</i>
02/17/2016	Motion to Compel (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Motion to Compel Damages Categories and Calculations from Plaintiff Aimee Hairr</i>
02/17/2016	Motion to Compel (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Motion to Compel Damages Categories and Calculations from Plaintiff Mary Bryan on OST</i>
02/17/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Motion to Compel Damages Categories and Calculations from Plaintiff Aimee Hairr</i> <i>Motion to Compel Damages Categories and Calculations from Plaintiff Mary Bryan on OST</i>
02/23/2016	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings: Defendants' Motion to Compel Rule 35 Examinations - February 10, 2016</i>
03/01/2016	 Motion for Summary Judgment Filed By: Defendant Clark County School District, et al <i>Defendants' Motion for Summary Judgment</i>
03/01/2016	 Certificate of Service Filed by: Defendant Clark County School District, et al <i>Certificate of Service</i>
03/01/2016	 Appendix Filed By: Defendant Clark County School District, et al <i>Appendix of Exhibits in Support of Defendants' Motion for Summary Judgment</i>
03/01/2016	 Motion for Leave to File Party: Defendant Clark County School District, et al <i>Defendants' Motion for Leave to File Excess Pages</i>
03/18/2016	CANCELED Status Check: Compliance (11:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Vacated - per Commissioner</i>
03/21/2016	 Order Filed By: Plaintiff Bryan, Mary <i>Order Regarding Defendants' Motion to Compel a Rule 35 Examination</i>
03/23/2016	 Stipulation and Order Filed by: Defendant Clark County School District, et al

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

Stipulation and Order to Continue Trial; and to Continue the Hearing on Defendants' Motion for Summary Judgment and Motion for Leave to File Excess Pages

03/24/2016



Notice of Entry of Order

Filed By: Defendant Clark County School District, et al
Notice of Entry of Stipulation and Order to Continue Trial and to Continue the Hearing on Defendants' Motion for Summary Judgment and Motion for Leave to File Excess Pages

03/24/2016



Notice of Entry of Order

Filed By: Defendant Clark County School District, et al
Notice of Entry of Order Re: Defendants' Motion to Compel a Rule 35 Examination

03/25/2016



Order Setting Civil Bench Trial

Order Setting Firm Civil Bench Trial, Ore-Trial/Calendar Call

03/28/2016



Motion to Disqualify Attorney

Filed By: Plaintiff Bryan, Mary
Plaintiffs' Motion to Disqualify Counsel for Defendants Warren P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley

04/01/2016



Opposition to Motion For Summary Judgment

Filed By: Plaintiff Bryan, Mary
Plaintiffs' Response to Defendants' Summary Judgment Motion

04/06/2016



Stipulation and Order

Filed by: Defendant Clark County School District, et al
Stipulation and Order to Continue Hearing on "Plaintiffs' Motion to Disqualify Counsel for Defendants Warren P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley"

04/07/2016



Notice of Entry of Stipulation and Order

Filed By: Defendant Clark County School District, et al
Notice of Entry of Stipulation and Order to Continue Hearing on Plaintiffs' Motion to Disqualify Counsel for Defendants Warren P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley

04/07/2016

CANCELED Pretrial/Calendar Call (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated

04/11/2016

CANCELED Jury Trial (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - per Stipulation and Order

04/14/2016



Opposition to Motion

Filed By: Defendant Clark County School District, et al
Defendants' Opposition to Plaintiffs' Motion to Disqualify Counsel for Defendants Warren P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley

04/18/2016



Reply in Support

Filed By: Defendant Clark County School District, et al
Defendants' Reply in Support of Motion for Summary Judgment

04/20/2016



Discovery Commissioners Report and Recommendations












Filed By: Plaintiff Bryan, Mary
Discovery Commissioner's Report and Recommendation

04/21/2016















Motion for Leave (10:30 AM) (Judicial Officer: Allf, Nancy)

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C











Defendants' Motion for Leave to File Excess Pages

04/21/2016	Motion for Summary Judgment (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Defendants' Motion for Summary Judgment</i>
04/21/2016	 All Pending Motions (10:30 AM) (Judicial Officer: Allf, Nancy)
04/26/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Defendants' Motion for Summary Judgment; Defendants' Motion for Leave to File Excess Pages - April 21, 2016</i>
05/13/2016	 Notice Filed By: Defendant Clark County School District, et al <i>Notice of Proposed Order Regarding Defendants' Motion for Summary Judgment (Granting in Part and Denying in Part)</i>
05/16/2016	 Notice <i>Notice of Vacating Hearing</i>
05/17/2016	 Objection Filed By: Plaintiff Bryan, Mary <i>Plaintiffs' Objection to Defendants' Proposed Order re: Summary Judgment</i>
05/17/2016	 Reply in Support Filed By: Defendant Clark County School District, et al <i>Defendants' Reply In Support of Proposed Order Regarding Defendants' Motion for Summary Judgment</i>
05/19/2016	CANCELED Motion to Disqualify Attorney (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - per Attorney or Pro Per</i> <i>Plaintiffs' Motion to Disqualify Counsel for Defendants Warren P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley</i>
07/25/2016	 Order Filed By: Defendant Clark County School District, et al <i>Order Regarding (1) Defendants' Motion for Summary Judgment and (2) Defendants' Motion for Leave to File Excess Pages</i>
07/26/2016	 Notice of Entry of Order Filed By: Defendant Clark County School District, et al <i>Notice of Entry of Order Regarding (1) Defendants' Motion for Summary Judgment, and (2) Defendants' Motion for Leave to File Excess Pages</i>
08/05/2016	 Motion Filed By: Defendant Clark County School District, et al <i>Defendants' Motion for Partial Reconsideration, or in the Alternative, Motion for Relief Pursuant to NRCp 59(E), 60(A) and 60(B), or Motion in Limine</i>
08/11/2016	 Order Shortening Time Filed By: Defendant Clark County School District, et al <i>Defendants' Ex Parte Application for Oral Argument on an Order Shortening Time</i>
08/22/2016	 Response Filed by: Plaintiff Bryan, Mary <i>Plaintiffs' Response to Defendants' Motion</i>









DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

08/30/2016	 Reply in Support Filed By: Defendant Clark County School District, et al <i>Defendants' Reply in Support of Their Motion for Partial Reconsideration, or in the Alternative, Motion for Relief Pursuant to NRCP 59(E), 60(A) and 60(B), or Motion in Limine</i>
08/31/2016	 Motion For Reconsideration (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Defendants' Motion for Partial Reconsideration, or in the Alternative, Motion for Relief Pursuant to NRCP 59(E), 60(A) and 60(B), or Motion in Limine</i>
10/26/2016	 Order Denying Motion Filed By: Plaintiff Bryan, Mary <i>Order denying Defendants' Motion for Reconsideration</i>
11/03/2016	 Pretrial/Calendar Call (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Pre Trial / Calendar Call</i>
11/07/2016	 Pre-trial Memorandum Filed by: Defendant Clark County School District, et al <i>CCSD's Individual Pretrial Memorandum</i>
11/08/2016	 Pre-trial Memorandum Filed by: Plaintiff Bryan, Mary <i>Plaintiffs' Pre-Trial Memorandaum</i>
11/10/2016	 Brief Filed By: Defendant Clark County School District, et al <i>Defendants' Trial Brief</i>
11/14/2016	 Notice Filed By: Defendant Clark County School District, et al <i>Defendants' Notice of Designation of Deposition Testimony for Trial</i>
11/15/2016	 Bench Trial - FIRM (10:00 AM) (Judicial Officer: Allf, Nancy) 11/15/2016-11/18/2016, 11/22/2016
11/15/2016	 Media Request and Order Party: Plaintiff Bryan, Mary <i>Media Request And Order Allowing Camera Access To Court Proceedings.</i>
11/17/2016	 Media Request and Order Party: Plaintiff Bryan, Mary <i>Media Request And Order Allowing Camera Access To Court Proceedings.</i>
11/22/2016	 Media Request and Order <i>Media Request And Order Allowing Camera Access to Court Proceedings</i>
01/02/2017	Case Reassigned to Department 29 <i>Case reassigned from Judge Nancy Allf Dept 27</i>
01/23/2017	 Stipulation and Order Filed by: Plaintiff Bryan, Mary <i>Stipulation and Order</i>
01/23/2017	 Notice of Entry of Order












DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

	Filed By: Plaintiff Bryan, Mary <i>Notice of Entry of Order</i>
02/16/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Bench Trial Day 1 - November 15, 2016</i>
02/16/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Bench Trial Day 2 - November 16, 2016</i>
02/16/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Bench Trial Day 3 - November 17, 2016</i>
02/16/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Bench Trial Day 4 - November 18, 2016</i>
02/16/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Bench Trial Day 5 - November 22, 2016</i>
02/28/2017	CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> STATUS CHECK
03/20/2017	 Memorandum Filed By: Plaintiff Bryan, Mary <i>Plaintiffs' Closing Argument Memorandum</i>
03/21/2017	CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - Moot</i> <i>Status Check: IN HOUSE - Plaintiff to file closing brief by 3/20/17</i>
03/28/2017	CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - per Stipulation and Order</i> <i>Status Check: Briefing and Review</i>
04/20/2017	 Stipulation and Order Filed by: Defendant Clark County School District, et al <i>Stipulation and Order to Extend Deadline for CCSD to File Its Post-Trial Closing Argument Brief</i>
04/21/2017	 Notice of Entry of Order Filed By: Defendant Clark County School District, et al <i>Notice of Entry of Stipulation and Order to Extend Deadline for CCSD to File its Post-Trial Closing Argument Brief</i>
04/26/2017	 Brief Filed By: Defendant Clark County School District, et al <i>Defendant CCSD's Closing Arguments</i>
05/02/2017	CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>IN HOUSE -Defendant to file closing brief by 4/19/17</i>
05/26/2017	 Memorandum Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Plaintiffs' Closing Argument Rebuttal Brief</i>

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

05/30/2017	CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Status Check: IN HOUSE - transcripts received 2/16/17 - Plaintiff to file closing brief by 3/20/17; Defendant to file closing brief by 4/19/17; Plaintiff to file reply brief by May 19, 2017</i>
06/02/2017	 Motion to Strike Filed By: Defendant Clark County School District, et al <i>CCSD's Motion to Strike Portions of Plaintiffs' Closing Rebuttal Brief</i>
06/13/2017	CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - per Order</i> <i>Status Check: Decision</i>
06/15/2017	 Opposition to Motion Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Plaintiffs' Opposition to Defendant's Motion to Strike Plaintiffs' Closing Rebuttal Brief</i>
06/29/2017	 Decision and Order
07/05/2017	Order (Judicial Officer: Allf, Nancy) Debtors: Clark County School District, et al (Defendant) Creditors: Mary Bryan (Plaintiff), Aimee Hairr (Plaintiff), Ethan Bryan (Plaintiff), Nolan Hairr (Plaintiff) Judgment: 07/05/2017, Docketed: 07/06/2017
07/06/2017	 Reply in Support Filed By: Defendant Clark County School District, et al <i>CCSD's Reply In Support of Its Motion to Strike Portions of Plaintiffs' Closing Rebuttal Brief</i>
07/19/2017	 Motion to Strike (9:00 AM) (Judicial Officer: Allf, Nancy) <i>CCSD's Motion to Strike Portions of Plaintiffs' Closing Rebuttal Brief</i>
07/20/2017	 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact, Conclusions of Law, and Judgment in Favor of Plaintiffs</i>
07/20/2017	Judgment (Judicial Officer: Allf, Nancy) Debtors: Clark County School District, et al (Defendant) Creditors: Mary Bryan (Plaintiff), Ethan Bryan (Plaintiff) Judgment: 07/20/2017, Docketed: 07/27/2017 Total Judgment: 200,000.00 Debtors: Clark County School District, et al (Defendant) Creditors: Aimee Hairr (Plaintiff), Nolan Hairr (Plaintiff) Judgment: 07/20/2017, Docketed: 07/27/2017 Total Judgment: 200,000.00
07/21/2017	 Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Minute Order: CCSD's Motion to Strike Portions of Plaintiffs' Closing Rebuttal Brief set 7/19/2017</i>
07/27/2017	 Memorandum of Costs and Disbursements Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Plaintiffs' Verified Memorandum of Costs and Disbursements</i>
07/31/2017	

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

	 Motion to Retax Filed By: Defendant Clark County School District, et al <i>CCSD's Motion to Retax Memorandum of Costs and Disbursements</i>
08/03/2017	CANCELED Motion to Strike (10:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - per Attorney or Pro Per</i> <i>CCSD's Motion to Strike Plaintiff's Closing Rebuttal Brief</i>
08/07/2017	 Order Denying Motion Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Order Denying Defendant's Motion to Strike Parts of Plaintiffs' Rebuttal</i>
08/09/2017	 Motion for Attorney Fees and Costs Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Plaintiffs' Motion for Attorneys Fees and Costs</i>
08/10/2017	 Errata Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Plaintiffs' Errata to Plaintiffs' August 9, 2017 Motion for Fees and Costs (Notice of Motion Added)</i>
08/10/2017	 Notice of Hearing Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Notice of Hearing (Plaintiffs' Motion for Attorneys Fees and Costs)</i>
08/14/2017	 Response Filed by: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Plaintiffs' Response to Defendants' Motion to Retax Costs</i>
08/15/2017	 Errata Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Errata to Plaintiffs' Response to Defendants' Motion to Retax Costs</i>
08/15/2017	 Notice of Entry of Judgment Filed By: Plaintiff Bryan, Mary; Plaintiff Hairr, Aimee; Plaintiff Bryan, Ethan; Plaintiff Hairr, Nolan <i>Notice of Findings of Fact, Conclusions of Law and Judgment</i>
08/16/2017	 Motion to Stay Filed By: Defendant Clark County School District, et al <i>CCSD's Motion to Stay Execution and Enforcement of Judgment Pending Appeal</i>
08/23/2017	 Notice of Appeal Filed By: Defendant Clark County School District, et al <i>Notice of Appeal</i>
08/23/2017	 Case Appeal Statement Filed By: Defendant Clark County School District, et al <i>Case Appeal Statement</i>

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-700018-C

09/06/2017	Motion to Retax (9:00 AM) (Judicial Officer: Allf, Nancy) <i>CCSD's Motion to Retax Memorandum of Costs and Disbursements</i>
09/13/2017	Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Allf, Nancy) <i>Notice of Motion</i>
09/20/2017	Motion to Stay (9:00 AM) (Judicial Officer: Allf, Nancy) <i>CCSD's Motion to Stay Execution and Enforcement of Judgment Pending Appeal</i>

DATE	FINANCIAL INFORMATION
	Defendant Clark County School District, et al Total Charges 223.50 Total Payments and Credits 223.50 Balance Due as of 8/25/2017 0.00
	Plaintiff Bryan, Mary Total Charges 280.50 Total Payments and Credits 280.50 Balance Due as of 8/25/2017 0.00
	Plaintiff Hairr, Aimee Total Charges 30.00 Total Payments and Credits 30.00 Balance Due as of 8/25/2017 0.00
	Defendant Clark County School District, et al Appeal Bond Balance as of 8/25/2017 500.00

CIVIL COVER SHEET

Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Mary Bryan, mother of Ethan Bryan and Aimee Hairr, mother of Nolan Hairr

Attorney (name/address/phone): ACLU of Nevada

601 South Rancho Dr. Suite B-11, Las Vegas, NV 89106

Defendant(s) (name/address/phone): CLARK COUNTY SCHOOL DISTRICT (CCSD); Pat Skorkowsky, in his official capacity as CCSD superintendent; CCSD BOARD OF SCHOOL TRUSTEES; Erin A. Cranor, Linda E. Young, Patrice Tew, Stavan Corbett, Carolyn Edwards, Chris Garvey, Deanna Wright, in their official capacities as CCSD BOARD OF SCHOOL TRUSTEES; GREENSPUN JUNIOR HIGH SCHOOL (GJHS); Principal Warren P. McKay, in his individual and official capacity as principal of GJHS; Leonard DePiazza, in his individual and official capacity as assistant principal at GJHS; Cheryl Winn, in her individual and official capacity as Dean at GJHS; John Halpin, in his individual and official capacity as counselor at GJHS; Robert Beasley, in his individual and official capacity as instructor at GJHS; NEVADA EQUAL RIGHTS COMMISSION (NERC); Kara Jenkins in her individual and official capacity as Commission Administrator of NERC; Dennis Perea, in his official capacity as Deputy Director of the NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING, AND REHABILITATION (DETR).

Attorney (name/address/phone): Unknown

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability
<input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance		<input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights
<input type="checkbox"/> Condemnation/Eminent Domain		<input type="checkbox"/> Employment Torts (Wrongful termination)
<input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning		<input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate	Other Civil Filing Types	
<p>Estimated Estate Value: _____</p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside Estates</p> <p><input type="checkbox"/> Trust/Conservatorships</p> <p style="margin-left: 20px;"><input type="checkbox"/> Individual Trustee</p> <p style="margin-left: 20px;"><input type="checkbox"/> Corporate Trustee</p> <p><input type="checkbox"/> Other Probate</p>	<p><input type="checkbox"/> Construction Defect</p> <p style="margin-left: 20px;"><input type="checkbox"/> Chapter 40</p> <p style="margin-left: 20px;"><input type="checkbox"/> General</p> <p><input type="checkbox"/> Breach of Contract</p> <p style="margin-left: 20px;"><input type="checkbox"/> Building & Construction</p> <p style="margin-left: 20px;"><input type="checkbox"/> Insurance Carrier</p> <p style="margin-left: 20px;"><input type="checkbox"/> Commercial Instrument</p> <p style="margin-left: 20px;"><input type="checkbox"/> Other Contracts/Acct/Judgment</p> <p style="margin-left: 20px;"><input type="checkbox"/> Collection of Actions</p> <p style="margin-left: 20px;"><input type="checkbox"/> Employment Contract</p> <p style="margin-left: 20px;"><input type="checkbox"/> Guarantee</p> <p style="margin-left: 20px;"><input type="checkbox"/> Sale Contract</p> <p style="margin-left: 20px;"><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Civil Petition for Judicial Review</p> <p style="margin-left: 20px;"><input type="checkbox"/> Foreclosure Mediation</p> <p style="margin-left: 20px;"><input type="checkbox"/> Other Administrative Law</p> <p style="margin-left: 20px;"><input type="checkbox"/> Department of Motor Vehicles</p> <p style="margin-left: 20px;"><input type="checkbox"/> Worker's Compensation Appeal</p>	<p><input type="checkbox"/> Appeal from Lower Court <i>(also check applicable civil case box)</i></p> <p style="margin-left: 20px;"><input type="checkbox"/> Transfer from Justice Court</p> <p style="margin-left: 20px;"><input type="checkbox"/> Justice Court Civil Appeal</p> <p><input type="checkbox"/> Civil Writ</p> <p style="margin-left: 20px;"><input type="checkbox"/> Other Special Proceeding</p> <p><input type="checkbox"/> Other Civil Filing</p> <p style="margin-left: 20px;"><input type="checkbox"/> Compromise of Minor's Claim</p> <p style="margin-left: 20px;"><input type="checkbox"/> Conversion of Property</p> <p style="margin-left: 20px;"><input type="checkbox"/> Damage to Property</p> <p style="margin-left: 20px;"><input type="checkbox"/> Employment Security</p> <p style="margin-left: 20px;"><input type="checkbox"/> Enforcement of Judgment</p> <p style="margin-left: 20px;"><input type="checkbox"/> Foreign Judgment – Civil</p> <p style="margin-left: 20px;"><input type="checkbox"/> Other Personal Property</p> <p style="margin-left: 20px;"><input type="checkbox"/> Recovery of Property</p> <p style="margin-left: 20px;"><input type="checkbox"/> Stockholder Suit</p> <p style="margin-left: 20px;"><input checked="" type="checkbox"/> Other Civil Matters</p>

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|-----------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

4/29/14

Date

Allen L. Shaw

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Lemin
CLERK OF THE COURT

ORDR

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * * *

MARY BRYAN, mother of ETHAN BRYAN;
AIMEE HAIRR, mother of NOLAN HAIRR,

Plaintiffs,

CASE NO: A-14-700018

v.

DEPARTMENT 27

CLARK COUNTY SCHOOL DISTRICT
(CCSD); Pat Skorkowsky, in his official
capacity as CCSD superintendent; CCSD
BOARD OF SCHOOL TRUSTEES; Erin A.
Cranor, Linda E. Young, Patrice Tew, Stavan
Corbett, Carolyn Edwards, Chris Garvey,
Deanna Wright, in their official capacities as
CCSD BOARD OF SCHOOL TRUSTEES;
GREENSPUN JUNIOR HIGH SCHOOL
(GJHS); Principal Warren P. McKay, in his
individual and official capacity as principal of
GJHS; Leonard DePiazza, in his individual and
official capacity as assistant principal at GJHS;
Cheryl Winn, in her individual and official
capacity as Dean at GJHS; John Halpin, in his
individual and official capacity as counselor at
GJHS; Robert Beasley, in his individual and
official capacity as instructor at GJHS;

Defendants.

DECISION AND ORDER

This case arises under Title IX and 42 U.S.C. § 1983, based on allegations that two students (C.L. and D.M.) verbally and physically mistreated Ethan Bryan and Nolan Hairr, sons of the Plaintiffs, based on sex, as defined by Title IX. On November 15, 2016, a five-day bench trial commenced in Department 27 before the Honorable Judge Nancy L. Allf. Allen Lichtenstein, Esq. and John Houston Scott, Esq. appeared for and on behalf of Plaintiffs Mary Bryan ("Mrs. Bryan") and Aimee Hairr ("Mrs. Hairr"),

1 (collectively "Plaintiffs"). Daniel Polsenberg, Esq., Dan Waite, Esq., and Brian D.
2 Blakley, Esq. appeared for and on behalf of Defendant Clark County School District
3 (CCSD), ("Defendant").

4 At trial, Plaintiffs' case was narrowed to two separate claims for relief—(1) a
5 violation of Title IX of the Civil Rights Act, and (2) a violation of Plaintiffs' substantive
6 due process rights as guaranteed by the Fourteenth Amendment to the United States
7 Constitution pursuant to 42 U.S.C. § 1983. To prevail, the claims require a showing that
8 the Defendant was aware of the bullying and that CCSD officials, who were required to
9 respond to reports of bullying pursuant to NRS Chapter 388, failed to act in manner that
10 equates to deliberate indifference.
11

12 The Court having heard arguments of counsel, testimony, and being fully briefed
13 on the matter finds as follows:
14

15 BACKGROUND

16 Ethan Bryan and Nolan Hairr entered the sixth grade at Greenspun Jr. High
17 School in August of 2011. Both students were enrolled in Mr. Beasley's third period
18 band class in the trombone section. Nolan, eleven years old, reported being small for his
19 age and wore long blonde hair. From almost the outset of their enrollment, both boys
20 began to be bullied by C.L. and D.M. On numerous occasions, C.L. and D.M. taunted
21 Nolan with homophobic slurs and sexual expletives, touching, pulling, and running their
22 fingers through Nolan's hair and blowing in his face. Nolan reported the behavior by
23 filling out a complaint report at the Dean's office. However, at this time, Nolan did not
24 mention the homophobic and sexual content of the slurs that he was enduring and a
25 subsequent meeting with Dean Winn did not proffer resolution.
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1 On or about September 13, 2011, C.L., who was sitting next to Nolan in band
2 class, reached over and stabbed Nolan in the groin with the sharpened end of the pencil
3 (the "September 13th Incident"). C.L. remarked that he did so to see if Nolan was a girl
4 and also referred to Nolan as a tattletale. Nolan took the tattletale reference as a sign that
5 the stabbing was, at least in part, retaliation for Nolan filing a complaint report.
6

7 On or about September 15, 2011, while Nolan was at Ethan's house, Mrs. Bryan
8 overheard Ethan and Nolan talking about an issue that took place at school. After Nolan
9 went home, Mrs. Bryan questioned Ethan about what the two boys had been discussing.
10 In response, Ethan described to his mother the incident where C.L. stabbed Nolan in the
11 groin and about the overall bullying occurring in Mr. Beasley's band class. This
12 conversation sparked a series of complaints and reports that is the foundation for the
13 claims asserted against CCSD.
14

15 The first parental complaint occurred via email on September 15, 2011
16 ("September 15th Email") from Mrs. Bryan, addressed to Nolan's band teacher, Mr.
17 Beasley, Counselor Halpin, and Principal McKay—all of whom were mandatory
18 reporters under N.R.S. § 388.1351. The September 15th Email identified C.L. and D.M.
19 by name and described the physical assaults and verbal abuse. Both Mr. Beasley and
20 Counselor Halpin acknowledged receiving the September 15, 2011 Email. However,
21 Principal McKay's email address was incorrect, so he did not receive the original
22 complaint contained within the September 15th Email. While Mr. Beasley and Counselor
23 Halpin admitted that neither of them followed up on the September 15th Email, this Court
24 does not find this failure alone deliberately indifferent. However, actual knowledge of
25 the bullying was triggered upon the receipt of the September 15th Email.
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1 In response to the September 15th Email, Mr. Beasley changed the arrangements
2 in the trombone section of his band class so that Nolan sat in front of C.L. and not next to
3 him. Mr. Beasley made this decision without consulting with anyone else, especially
4 Principal McKay.

5 Like Nolan, Ethan was also subjected to bullying by C.L. and D.M. After the
6 September 13th Incident, the bullying escalated where C.L. and D.M. taunted him about
7 his weight and made homophobic slurs and vile and graphic innuendos concerning sexual
8 relations between Ethan and Nolan.
9

10 The second parental complaint occurred on September 22, 2011 from Mrs. Hairr,
11 via a telephone conversation with Vice Principal DePiazza. During this conversation,
12 Mrs. Hairr told Vice Principal DePiazza about the stabbing of Nolan's genitals by another
13 student in band class.
14

15 On or about October 19, 2011, Ethan told his mother that C.L. and D.M. had
16 removed the rubber stopper out of a piece of his trombone and repeatedly hit Ethan in the
17 legs with the remaining sharp piece of the instrument leaving scratch marks on his legs.
18 Ethan also informed his mother that C.L. and D.M. continued to make lewd sexual
19 comments including calling both Ethan and Nolan "gay," "faggots," and made references
20 about the two boys engaging in gay sex together.
21

22 On or about October 19, 2011, Mrs. Bryan sent a second email ("October 19th
23 Email") addressed to the same three individuals as the September 15th Email. Mr.
24 Beasley and Counselor Halpin both acknowledged receipt of this email, but because it
25 was addressed to the same email addresses, Principal McKay did not receive it. Later
26 that day, on October 19, 2011, Mrs. Bryan and her husband went to the school where they
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1 met with Dean Winn for approximately one hour to discuss the bullying, specifically the
2 physical assaults and homophobic slurs.

3 On or about October 19, 2011, Counselor Halpin attended a weekly
4 administrators meeting with Principal McKay and Vice Principal DePiazza. Counselor
5 Halpin testified that he reported the bullying that was occurring in Mr. Beasley's band
6 class in considerable detail and disclosed the September 15th Email and the October 19th
7 Email. Counselor Halpin specifically recalled Principal McKay directing Vice Principal
8 DePiazza to take care of the matter. Principal McKay testified that he was not interested
9 in the details of such matters and left it to his subordinates to address the issue. Principal
10 McKay further testified that he did not follow up with Vice Principal DePiazza about
11 how the investigation was going or what the investigation uncovered until February 2012.
12 All of the school officials had conflicting testimony about who was tasked with the
13 investigation into the bullying, but all testified that no investigation into the bullying was
14 conducted until February 2012.
15

16 The bullying and harassment continued throughout the fall and into early 2012.
17 Both boys avoided band class and school altogether. Ethan faked illness to avoid class
18 and Nolan would try to avoid C.L. and D.M. by lingering in the halls and in the library.
19 By the middle of January, both boys had almost completely stopped going to school
20 altogether to avoid the continuous bullying.
21

22 Mrs. Bryan pulled Ethan out of Greenspun Jr. High in January 2012 after Ethan
23 contemplated suicide. On or about January 21, 2012, Mrs. Hair pulled Nolan out of
24 Greenspun Jr. High after Nolan had an emotional breakdown because of the bullying.
25 Mrs. Hair filed a police report, reporting the bullying and harassment.
26
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1 On or about February 7, 2012, Mrs. Bryan and Mrs. Hairr removed the boys from
2 Greenspun Jr. High. Subsequently, Assistant Superintendent Jolene Wallace and
3 Principal McKay's direct supervisor, ordered Principal McKay to conduct an
4 investigation into the bullying of Ethan and Nolan. This is the only investigation that
5 took place into the bullying of the Ethan and Nolan.
6

7 DISCUSSION

8 **A. Legal Standard - Title IX of the Civil Rights Act**

9 Title IX of the Civil Rights Act of 1964 provides, in part, "[n]o person in the
10 United States shall, on the basis of sex, be excluded from participation in, be denied the
11 benefits of, or be subjected to discrimination under any education program or activity
12 receiving Federal financial assistance." 20 U.S.C § 1681(a). A school district in receipt
13 of federal funds is liable for monetary damages for violations of Title IX. *Davis Next*
14 *Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 642, 119 S. Ct. 1661,
15 1671, 143 L. Ed. 2d 839 (1999) ("we concluded that *Pennhurst* does not bar a private
16 damages action under Title IX where the funding recipient engages in intentional conduct
17 that violates the clear terms of the statute.").

19 In *Reese v. Jefferson School District No. 14J*, the Ninth Circuit adopted the
20 framework set out in *Davis* and set forth four requirements for imposition of school
21 district liability under Title IX for student-student sexual harassment: (1) the school
22 district "must exercise substantial control over both the harasser and the context in which
23 the known harassment occurs," (2) the plaintiff must suffer "sexual harassment ... that is
24 so severe, pervasive, and objectively offensive that it can be said to deprive the victims of
25 access to the educational opportunities or benefits provided by the school," (3) the school
26 district must have "actual knowledge of the harassment," and (4) the school district's
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1 “deliberate indifference subjects its students to harassment.” 208 F.3d 736, 739 (9th Cir.
2 2000) (quoting *Davis*, 119 S. Ct. 1661, 1675 (1999)).

3 The Ninth Circuit defines deliberate indifference as “the conscious or reckless
4 disregard of the consequences of ones acts or omissions.” *Henkle v. Gregory*, 150 F.
5 Supp. 2d 1067, 1077–78 (D. Nev. 2001); *See also* 9th Cir. Civ. Jury Instr. 11.3.5 (1997)
6 (citing *Redman v. County of San Diego*, 942 F.2d 1435, 1442 (9th Cir.1991), cert. denied,
7 502 U.S. 1074, 112 S.Ct. 972, 117 L.Ed.2d 137 (1992)). A plaintiff bringing a claim
8 under Title IX must prove her claim by a preponderance of the evidence.
9

10 **B. Legal Standard - 42 U.S.C. § 1983**

11 A student’s right to a public education is a property interest protected by the Due
12 Process Clause. *Goss v. Lopez*, 419 U.S. 565, 573, 95 S. Ct. 729, 735, 42 L. Ed. 2d 725
13 (1975) (“Here, on the basis of state law, appellees plainly had legitimate claims of
14 entitlement to a public education . . .”). As a general matter, the Fourteenth Amendment
15 to the United States Constitution does not “require[] the State to protect the life, liberty,
16 and property of its citizens against invasion by private actors.” *DeShaney v. Winnebago*
17 *County Dep’t of Social Servs.*, 489 U.S. 189, 195, 109 S.Ct. 998, 103 L.Ed.2d 249
18 (1989). In fact, “the Fourteenth Amendment’s Due Process Clause . . . does not confer
19 any affirmative right to governmental aid and typically does not impose a duty on the
20 state to protect individuals from third parties.” *Henry A. v. Willden*, 678 F.3d 991, 998
21 (9th Cir.2012) (quotations and citation omitted).
22
23

24 This rule, however, is subject to two specific exceptions; (1) the special
25 relationship exception, and (2) the state-created danger exception. *Id.* at 998. Under the
26 special relationship exception, the government may be liable for its failure to protect if a
27 “special relationship” exists between it and the plaintiff such that the government has
28

1 assumed "some responsibility for the plaintiff's safety and well-being." *Id.* Under the
2 state-created danger exception, the government may be liable for its failure to protect
3 where "the state affirmatively places the plaintiff in danger by acting with 'deliberate
4 indifference' to a 'known and obvious danger[.]' " *Id.* In determining whether the state-
5 created exception applies, the Court assesses: "(1) whether any affirmative actions of the
6 official placed the individual in danger he otherwise would not have faced; (2) whether
7 the danger was known or obvious; and (3) whether the officer acted with deliberate
8 indifference to that danger." *Id.* at 1002. Under either exception, the government's
9 failure to protect renders it liable under a § 1983 claim. *Id.*

11 **C. Nevada law mandates public school officials to report bullying and**
12 **harassment**

13 Nevada Revised Statute § 388.135 provide that:

14 "[a] member of the board of trustees of a school
15 district, any employee of the board of trustees, including,
16 without limitation, an administrator, *principal, teacher or*
17 *other staff member . . . or any pupil shall not engage in*
18 *bullying or cyber-bullying on the premises of any public*
19 *school, at an activity sponsored by a public school or on*
20 *any school bus."*

21
22 (Emphasis added).

23 Furthermore, Nevada Revised Statute § 388.1351(1) provides that:

24 "[a] teacher . . . principal . . . or other staff member who
25 witnesses a violation of NRS 388.135 or receives
26 information that a violation of NRS 388.135 has occurred
27 *shall report the violation to the principal . . . as soon as*
28

1 practicable, but not later than a time during the same day on
2 which [they] witnessed the violation or received
3 information regarding the occurrence of a violation.”

4 (Emphasis added).

5 Nevada statutes make it clear that any public school employee who either
6 witnesses bullying or is informed that bullying has occurred or is occurring, is obligated
7 by statute to report the bullying to the principal of the public school. Upon information
8 that bullying has occurred or is occurring, Nevada Revised Statute § 388.1351(2)
9 mandate that “the principal or designee *shall* immediately take any necessary action to
10 stop the bullying . . . and ensure the safety and well-being of the reported victim or
11 victims . . . and shall begin an investigation into the report.” N.R.S. § 388.1351(1)(2).

12 (emphasis added).

13
14 **D. CCSD Officials’ conduct was deliberately indifferent.**

15
16 Through the testimony presented at trial, Plaintiffs have satisfied the four
17 requirements of the Davis framework for imposition of school district liability under Title
18 IX for student-student sexual harassment. First, CCSD, as a public high school,
19 exercised substantial control over both the harassers and the context in which the known
20 harassments occurs. In this case, C.L. and D.M. engaged in excessive and continuous
21 homophobic slurs and sexual expletives directed at Nolan and Ethan in the band class
22 classroom. C.L. and D.M.’s daily references to Nolan and Ethan as “faggot, fucking fat
23 faggot, fucking faggot, gay, gay boyfriend, and cunt” were so severe, pervasive, and
24 objectively offensive that it deprived the boys of access to school’s educational
25 opportunities and benefits available to students. Testimony revealed that the bullying
26 was so severe that the boys had to avoid going to band class altogether just to avoid the
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1 victimization. Moreover, Ethan contemplated suicide as a result of months of bullying
2 and harassment, and Nolan had an emotional breakdown—both of these events triggered
3 the parents to withdraw their children from Greenspun Jr. High. Nolan and Ethan were
4 unable to take advantage of the educational opportunities provided by the school and
5 being accessed by students not subjected to bullying and harassment.
6

7 The third requirement of the Davis framework requires the school to have actual
8 knowledge of the harassment. There were three separate parental complaints, all of
9 which should have prompted a mandatory investigation under N.R.S. § 388.1351(1)(2).
10 The September 15th Email, October 19th Email, and the October 19th meeting with Dean
11 Winn, each put the school officials responsible for reporting the information to the
12 Principal McKay on notice that bullying had occurred and was continuing to occur on
13 campus. Counselor Halpin, Mr. Beasley, and Dean Winn all failed to immediately report
14 the complaints to Principal McKay. Notwithstanding, Counselor Halpin did inform
15 Principal McKay of the complaints and the bullying at the October 19th administrative
16 meeting and yet CCSD offered zero evidence to indicate that an investigation was ever
17 conducted in 2011.
18

19 The fourth requirement of the Davis framework requires the school to have acted
20 with “deliberate indifference” that subjects its students to the harassment. As federal
21 funding recipients, CCSD officials had a duty under Title IX, and under Nevada law, to
22 follow up and investigate any reports of bullying and harassment occurring on school
23 property. CCSD’s failure to conduct any type of investigation after three separate
24 complaints of bullying and an administrative meeting discussing the bullying, constitutes
25 at the very least, reckless disregard of the consequences of its acts or omissions.
26 Accordingly, CCSD’s failure to timely investigate and take any type of remedial action
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1 constitutes deliberate indifference. This deliberate indifference was the causation that led
2 to the escalation of the bullying and harassment endured by the Plaintiffs' children.
3 Therefore, Plaintiffs have proven their Title IX claim by a preponderance of the evidence
4 submitted at trial.

5 **E. CCSD created the dangerous environment**

6
7 CCSD's deliberate indifference to the numerous complaints of bullying forced
8 Nolan and Ethan to remain in a known and obviously dangerous environment, which
9 further subjected them to severe and pervasive bullying and harassment that was
10 objectively offensive. For CCSD to be liable under the state-created exception, this
11 Court asked: (1) whether any affirmative actions of the official placed the individual in
12 danger he otherwise would not have faced; (2) whether the danger was known or
13 obvious; and (3) whether the officer acted with deliberate indifference to that danger."
14 *Henry A.* at 1002. This Court finds in the affirmative to all three inquiries.
15

16 Here, the first inquiry does not require CCSD to do more than "expose the
17 plaintiff to a danger that already existed." *Id.* To the contrary, a test such as this would
18 render the state-created doctrine futile. In *Henry A.*, the Ninth Circuit explained that "by
19 its very nature, the doctrine only applies in situations where the plaintiff was directly
20 harmed by a third party—a danger that, in every case, could be said to have 'already
21 existed.' " *Id.* (internal citations omitted). It follows that to be liable under the state-
22 created exception, CCSD was not required to take an affirmative action that made the
23 bullying and harassment worse. Instead it was CCSD's failure to take affirmative action
24 that subjected Nolan and Ethan to further bullying and harassment. Thus, this Court finds
25 the first inquiry is satisfied.
26
27
28

1 The second and third inquiries are more easily ascertainable in this case. CCSD
2 knew of the danger because of the three separate parental complaints from the Plaintiffs.
3 Complaints CCSD officials admitted to receiving and testified that they did not inform
4 Principal McKay. Each of the complaints gave CCSD officials sufficient details
5 necessary to put them on notice of the dangers Nolan and Ethan were exposed to.
6 Finally, as stated above, CCSD's failure to conduct any type of investigation after three
7 separate complaints of bullying and an administrative meeting discussing the bullying,
8 constitutes deliberate indifference.
9

10 Accordingly, the Plaintiffs have proven their 42 U.S.C. § 1983 claim by a
11 preponderance of the evidence submitted at trial. Nolan and Ethan had a constitutional
12 right to a public education, and CCSD is liable under 42 U.S.C. § 1983 for its failure to
13 protect Nolan and Ethan by acting with deliberate indifference to the known dangers that
14 existed in Mr. Beasley's band class. CCSD's deliberate indifference deprived Nolan and
15 Ethan of these educational rights secured by Fourteenth Amendment Due Process Clause
16 of the United States Constitution.
17

18 CONCLUSION

19 **COURT ORDERS** for good cause appearing and after review, Defendant CCSD
20 violated Title IX of the Civil Rights Act.
21

22 **COURT FURTHER ORDERS** for good cause appearing and after review,
23 violated Plaintiffs' substantive due process rights as guaranteed by the Fourteenth
24 Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983.

25 **COURT FURTHER ORDERS** for good cause appearing and after review
26 Judgment shall be entered in favor of Plaintiffs Mary Bryan, on behalf of Ethan Bryan,
27
28

1 and Aimee Hairr, on behalf of Nolan Hairr. Plaintiffs are entitled to a judgment for all
2 damages sought under these two claims asserted in the Complaint, and proven at trial.

3 **COURT FURTHER ORDERS** for good cause appearing and after review that
4 Plaintiffs shall prepare Findings of Fact, Conclusions of Law and a Judgment consistent
5 with this Decision, and submit it the Court for review. They may include all factual
6 findings contained in Plaintiffs' post trial briefs. At the time of submission to the Court,
7 copies shall be transmitted to Defendant's counsel.
8

9
10 Dated: June 27, 2017


11 NANCY ALLF
12 DISTRICT COURT JUDGE

13 **CERTIFICATE OF SERVICE**

14
15 I hereby certify that on or about the date signed I caused the foregoing document to be
16 electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial
17 District Court's electronic filing system, with the date and time of the electronic service
substituted for the date and place of deposit in the mail and/or by email to:

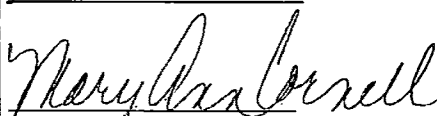
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