

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,

Appellant,

vs.

ETHAN BRYAN; and NOLAN HAIRR,

Respondents.

No 83557

Electronically Filed
Oct 25 2021 01:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District County Eighth Department 27
County Clark Judge Nancy L. Allf
District Ct. Case No. A-14-700018-C

2. Attorney filing this docketing statement:

Attorney Daniel F. Polsenberg, Dan R. Waite, Abraham G. Smith, and Brian D. Blakley

Telephone 702-949-8200

Firm LEWIS ROCA ROTHGERBER CHRISTIE LLP

Address 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Client(s) Clark County School District

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Allen Lichtenstein Telephone (702) 433-2666

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Attorney John Houston Scott Telephone (415) 561-9601

Firm SCOTT LAW FIRM

Address 1388 Sutter Street, Suite 715
San Francisco, California 94109

Client(s) Ethan Bryan and Nolan Hairr

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Clark Cty. School Dist. v. Bryan, Case No. 73856

Clark Cty. School Dist. v. Bryan, Case No. 74566

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action arises under Title IX and 42 U.S.C. § 1983, based on allegations that two junior high school students bullied plaintiffs on the basis of sex. After a bench trial, the district court entered a decision in favor of plaintiffs, ruling that CCSD violated Title IX and that plaintiffs' substantive due process rights guaranteed by the Fourteenth

Amendment were violated. Defendant appealed from the decision and judgment and the subsequent attorneys' fees award. *See* consolidated case nos. 73856 and 74566.

The Supreme Court entered its published opinion reversing and remanding for additional findings as to whether the events following an October 2011 report constitute deliberate indifference. Following remand, the district court again found deliberate indifference and awarded each plaintiff damages in the amount of \$200,000 and attorney fees and costs in the amount of \$470,418.75. Defendant appealed.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether the district court applied the wrong standard for Title IX liability.
2. Whether the district court's finding that CCSD acted with deliberate indifference for Title IX purposes is supported by the evidence.
3. Whether the district court applied the wrong standard for deliberate indifference.
4. Whether the district court engaged in the additional fact finding required by this Court's prior opinion.
5. Whether the district court abused its discretion in awarding damages for physical and emotional distress.
6. Whether the district court abused its discretion in awarding fees and costs.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

This appeal raises the issue of what constitutes deliberate indifference when holding a school district liable under Title IX and the Due Process clause of the Fourteenth Amendment, where it allegedly failed to prevent student-on-student bullying.

13. Assignment to the Court of Appeals or Retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(11) and NRAP 17(a)(12).

14. Trial. If this action proceeded to trial, how many days did the trial last?

5 days

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 9/13/21
(Exhibit A)

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 9/14/21
(Exhibit A)

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

N/A

(c) Date written notice of entry of order resolving tolling motion was served

Was service by: N/A

- ☐ Delivery
☐ Mail/Electronic/Fax

19. Date notice of appeal filed 9/17/21 (Exhibit B)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

The time limit for filing the notice of appeal from a final judgment is governed by NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from the final judgment pursuant to NRAP 3A(b)(1).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Ethan Bryan
Nolan Hairr
Mary Bryan, mother of Ethan Bryan
Aimee Hairr, mother of Nolan Hairr

Clark County School District
CCSD Board of School Trustees
Erin A. Cranor
Linda E. Young
Patrice Tew
Stavan Corbett
Carolyn Edwards
Chris Garvey
Deanna Wright
Greenspun Junior High School
Warren P. McKay
Leonard DePiazza
Cheryl Winn
John Halpin
Robert Beasley
Nevada Equal Rights Commission
Kara Jenkins
Dennis Perea
Nevada Department of Employment, Training, and Rehabilitation

- (b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Greenspun Junior High School – “Order Granting in Part and Denying in Part Defendant Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Will, John Halpin and Robert Beasley’s Motion to Dismiss,” entered on September 10, 2014 (Exhibit C)

Pat Skarkowsky, CCSD Board of Trustees, Erin A. Cranor, Linda E. Young, Patrice Tew, Stavan Corbett, Carolyn Edwards, Chris Garvey and Deanna Wright – “Order Granting Defendants’ Rule 12 Motion to Dismiss Unserved Parties,” entered on December 2, 2015 (Exhibit D)

Warren P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin, and Robert Beasley – “Order Regarding (1) Defendants’ Motion for Summary Judgment, and (2) Defendants’ Motion for Leave to File Excess Pages,” entered July 26, 2016 (Exhibit E)

Nevada Equal Rights Commission, Kara Jenkins, Dennis Perea and the Nevada Department of Employment, Training, and Rehabilitation were named parties in plaintiffs’ complaint, filed on April 29, 2014. Plaintiffs amended their complaint on October 10, 2014, voluntarily choosing to drop them from the action (Exhibit F).

On April 22, 2021, the parties stipulated to substitute the respondents in place of their mothers (Exhibit G).

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs filed their "First Amended Complaint for Declaratory Relief, Injunctive Relief, and Damages" on October 10, 2014 for (1) negligence, (2) negligence per se, (3) violations of Title IX, 20 U.S.C. § 1681(A), (4) violations of state and federal equal protection guarantees 42 U.S.C. § 1983 and (5) violations of United States Constitution: substantive due process 42 U.S.C. § 1983 (Exhibit F).

The negligence and negligence per se claims (claims 1–2) are resolved by the "Decision and Order Granting in Part and Denying in Part Defendants' Motion to Dismiss and Denying Plaintiffs' Countermotion to Strike," entered on February 10, 2015 (Exhibit H).

The remaining claims (3–5) are resolved by the "Findings of Fact, Conclusions of Law and Judgment," entered on July 20, 2017 (Exhibit I). The Nevada Supreme Court reversed on the substantive due process claim, and thereby disposed of it, and it remanded the Title IX claim for further fact finding on deliberate indifference. See Case Nos. 73856 & 74566.

Following remand from the Supreme Court, the district court entered its "Order and Judgment" on September 13, 2021 (Exhibit A).

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following: N/A

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Clark County School District
Name of appellant

Brian D. Blakley
Name of counsel of record

October 25, 2021
Date

/s/ Brian D. Blakley
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that this “Docketing Statement” was filed electronically with the Nevada Supreme Court on the 25th day of October, 2021. Electronic service of the foregoing “Docketing Statement” shall be made in accordance with the Master Service List as follows:

ALLEN LICHTENSTEIN
ALLEN LICHTENSTEIN, LTD.
3315 Russell Road, No. 222
Las Vegas, Nevada 89120

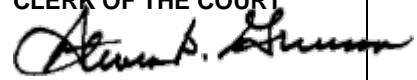
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

JOHN HOUSTON SCOTT
SCOTT LAW FIRM
1388 Sutter Street, Suite 715
San Francisco, California 94109

Dated this 25th day of October, 2021.

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A TO
DOCKETING
STATEMENT



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*Attorneys for Plaintiffs, Ethan Bryan,
and Nolan Hairr*

DISTRICT COURT
CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that an Order was entered on September 13, 2021 stating that Plaintiffs, Ethan Bryan and Nolan Hairr, having prevailed on their claim that Defendant violated their civil rights pursuant to 20 USC § 1681-1688 (Title IX of the Education Amendments of 1972), are each awarded damages in the amount of \$200,000 and attorney fees and costs in the amount of \$470,418.75.

Dated this 14th day of September 2021

Respectfully submitted by:

/s/Allen Lichtenstein

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10 SCOTT LAW FIRM
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13 Tel: 415.561.9601
14 john@scottlawfirm.net
15 *Attorneys for Plaintiffs, Ethan Bryan,*
16 *and Nolan Hairr*

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021, I served the foregoing Notice of Entry of Order
on all parties via the Court's electronic filing and service system.

Allen Lichtenstein

1 Allen Lichtenstein
NV State Bar No. 3992
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8 San Francisco, CA 94109
Tel: 415-561-9601
9 john@scottlawfirm.net

10 *Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,*
11 *Aimee Hairr and Nolan Hairr*

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 MARY BRYAN, mother of ETHAN BRYAN;
15 AIMEE HAIRR, mother of NOLAN HAIRR,
16 Plaintiffs,

17 vs.

18 CLARK COUNTY SCHOOL DISTRICT
(CCSD),
19 Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

ORDER AND JUDGMENT

20
21 It is hereby ordered that Plaintiffs, Ethan Bryan and Nolan Hairr, having prevailed on their
22 claim that Defendant violated their civil rights pursuant to 20 USC § 1681-1688 (Title IX, of the
23 Education Amendments of 1972). Each Plaintiff is awarded damages in the amount of \$200,000
24 In addition the Court also awards Plaintiffs attorney fees and costs in the amount of \$470,418.75.

25 IT IS SO ORDERED
Dated this 13th day of September, 2021

26 Dated this 13 day of September 2021


District Court Judge

TW

27 EAB 501 96E2 2189
Nancy Allf
28 District Court Judge

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Respectfully submitted by:

/s/Allen Lichtenstein
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*Attorneys for Plaintiffs, Ethan Bryan,
and Nolan Hairr*

Approved as to form by:

Attorney for CCSD

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Mary Bryan, Plaintiff(s)

CASE NO: A-14-700018-C

7 vs.

DEPT. NO. Department 27

8 Clark County School District, et
9 al, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Judgment was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/13/2021

15 Allen Lichtenstein .

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16 Annette Jaramillo .

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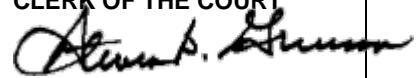
John Scott

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John Scott

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EXHIBIT B TO
DOCKETING
STATEMENT



1 **NOAS**
2 DANIEL F. POLSENBERG (SBN 2376)
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13 *Attorneys for Defendant Clark County School District (CCSD)*

14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

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ETHAN BRYAN; and NOLAN HAIRR,
Plaintiffs,
vs.
CLARK COUNTY SCHOOL DISTRICT,
Defendant.

Case No. A-14-700018-C

Dept. No. XXVII

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. "Order and Judgment," filed on September 13, 2021, notice of entry of which was served electronically on September 14, 2021 (Exhibit A); and
3. All rulings and interlocutory orders made appealable by any of the foregoing.

Dated this 17th day of September, 2021.

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 13250)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Defendant

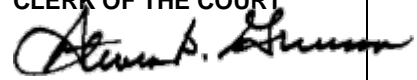
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Dated this 17th day of September, 2021.

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A



Allen Lichtenstein (State Bar No. 3992)
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Admitted Pro Hac Vice
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*Attorneys for Plaintiffs, Ethan Bryan,
and Nolan Hairr*

DISTRICT COURT
CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that an Order was entered on September 13, 2021 stating that Plaintiffs, Ethan Bryan and Nolan Hairr, having prevailed on their claim that Defendant violated their civil rights pursuant to 20 USC § 1681-1688 (Title IX of the Education Amendments of 1972), are each awarded damages in the amount of \$200,000 and attorney fees and costs in the amount of \$470,418.75.

Dated this 14th day of September 2021

Respectfully submitted by:

/s/Allen Lichtenstein

1 Allen Lichtenstein (State Bar No. 3992)
2 ALLEN LICHTENSTEIN, LTD.
3 3315 Russell Road, No. 222
4 Las Vegas, NV 89120
5 Tel: 702.433.2666
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13 Tel: 415.561.9601
14 john@scottlawfirm.net
15 *Attorneys for Plaintiffs, Ethan Bryan,*
16 *and Nolan Hairr*

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021, I served the foregoing Notice of Entry of Order
on all parties via the Court's electronic filing and service system.

Allen Lichtenstein

1 Allen Lichtenstein
NV State Bar No. 3992
2 ALLEN LICHTENSTEIN, LTD.
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3 Las Vegas, NV 89120
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8 San Francisco, CA 94109
Tel: 415-561-9601
9 john@scottlawfirm.net

10 *Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,*
11 *Aimee Hairr and Nolan Hairr*

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

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

16 Plaintiffs,

17 vs.

18 CLARK COUNTY SCHOOL DISTRICT
(CCSD),

19 Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

ORDER AND JUDGMENT

20
21 It is hereby ordered that Plaintiffs, Ethan Bryan and Nolan Hairr, having prevailed on their
22 claim that Defendant violated their civil rights pursuant to 20 USC § 1681-1688 (Title IX, of the
23 Education Amendments of 1972). Each Plaintiff is awarded damages in the amount of \$200,000
24 In addition the Court also awards Plaintiffs attorney fees and costs in the amount of \$470,418.75.

25 IT IS SO ORDERED
Dated this 13th day of September, 2021

26 Dated this 13 day of September 2021


District Court Judge

TW

27 EAB 501 96E2 2189
Nancy Allf
28 District Court Judge

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Respectfully submitted by:

/s/Allen Lichtenstein
Allen Lichtenstein (State Bar No. 3992)
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1388 Sutter Street, Suite 715
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Tel: 415.561.9601
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*Attorneys for Plaintiffs, Ethan Bryan,
and Nolan Hairr*

Approved as to form by:

Attorney for CCSD

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Mary Bryan, Plaintiff(s)

CASE NO: A-14-700018-C

7 vs.

DEPT. NO. Department 27

8 Clark County School District, et
9 al, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Judgment was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/13/2021

15 Allen Lichtenstein .

allaw@lvcoxmail.com

16 Annette Jaramillo .

ajaramillo@lrrc.com

17 Brian D. Blakley .

bblakley@lrrc.com

18 Dan R. Waite .

DWaite@lrrc.com

19 Dana Provost .

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20 Eva Martinez .

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21 Jessie Helm .

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22 Luz Horvath .

LHorvath@lrrc.com

23 Maria Makarova .

mmakarova@lrrc.com

24 Matt Park .

mpark@lrrc.com

25 Phillip Lewis .

plewis@lrrc.com

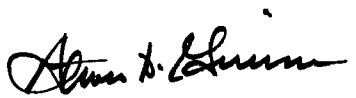
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John Scott
John Scott

john@scottlawfirm.net
john@scottlawfirm.net

EXHIBIT C TO
DOCKETING
STATEMENT


CLERK OF THE COURT

1 **NEO**

2 Daniel F. Polsenberg (Bar No. 2376)
3 Dan R. Waite (State Bar No. 004078)
4 LEWIS ROCA ROTHGERBER LLP
5 3993 Howard Hughes Pkwy, Suite 600
6 Las Vegas, NV 89169-5996
7 Tel: 702.949.8200
8 Fax: 702.949.8398
9 DPolsenberg@lrrlaw.com
10 DWaite@lrrlaw.com

11 *Attorneys for Defendants CLARK COUNTY SCHOOL*
12 *DISTRICT (CCSD), Warren P. McKay, Leonard DePiazza,*
13 *Cheryl Winn, John Halpin, Robert Beasley*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

18 Plaintiffs,

19 vs.

20 CLARK COUNTY SCHOOL DISTRICT
21 (CCSD); Pat Skorkowsky, in his official
22 capacity as CCSD superintendent; CCSD
23 BOARD OF SCHOOL TRUSTEES; Erin A.
24 Cranor, Linda E. Young, Patrice Tew, Stavan
25 Corbett, Carolyn Edwards, Chris Garvey,
26 Deanna Wright, in their official capacities as
27 CCSD BOARD OF SCHOOL TRUSTEES;
28 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),

Defendants.

Case No. A-14-700018-C

Dept. No. XXVII

**NOTICE OF ENTRY OF 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**

1 PLEASE TAKE NOTICE that the Order Granting In Part and Denying In Part Defendants
2 Clark County School District, William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin
3 and Robert Beasley's Motion to Dismiss has been entered on September 10, 2014. A copy of said
4 Order is attached hereto.

5 DATED this 10th day of September, 2014.

6 LEWIS ROCA ROTHGERBER LLP

7
8 By: 

9 Daniel F. Polsenberg (State Bar No. 2376)
10 Dan R. Waite (State Bar No. 4078)
11 3993 Howard Hughes Pkwy, Suite 600
12 Las Vegas, NV 89169-5996
13 Tel: 702.949.8200
14 Fax: 702.949.8398

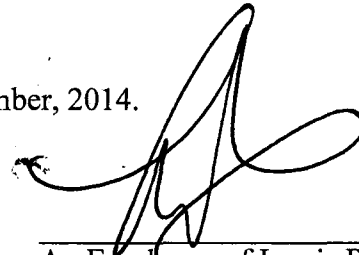
15 *Attorneys for Defendants CLARK COUNTY*
16 *SCHOOL DISTRICT (CCSD), Warren P.*
17 *McKay, Leonard DePiazza, Cheryl Winn, John*
18 *Halpin, Robert Beasley*

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Nev. R. Civ. P. 5, service of **Notice of Entry of 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** was made by depositing a copy for mailing, first-class mail, postage prepaid, to the following:

Staci Pratt, Esq.
Allen Lichtenstein, Esq.
ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.
3315 Russell Road, No. 222
Las Vegas, Nevada 89120
Attorneys for Plaintiffs

DATED this 10th day of September, 2014.



An Employee of Lewis Roca Rothgerber LLP

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

**LEWIS ROCA
ROTHGERBER**


CLERK OF THE COURT

ORD

Daniel F. Polsenberg (State Bar No. 2376)
Dan R. Waite (State Bar No. 4078)
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DWaite@lrrlaw.com

*Attorneys for Defendants CLARK COUNTY SCHOOL
DISTRICT (CCSD), Warren P. McKay, Leonard DePiazza,
Cheryl Winn, John Halpin, Robert Beasley*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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),

Defendants.

Case No. A-14-700018-C

Dept. No. XXVII

**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**

Date of Hearing: August 21, 2014

Time of Hearing: 10:00 a.m.

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

**LEWIS ROCA
| ROTHGERBER**

1 The motion to dismiss filed by Defendants Clark County School District ("CCSD"),
2 William P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin and Robert Beasley
3 (collectively, the "CCSD Defendants") (the "Motion to Dismiss") was heard on August 21, 2014.
4 Plaintiffs Mary Bryan and Aimee Hairr were personally present and represented by Allen
5 Lichtenstein and Staci J. Pratt of Allen Lichtenstein, Attorney at Law, Ltd. CCSD was present
6 through Donna Mendoza Mitchell and the CCSD Defendants were represented by Daniel F.
7 Polsenberg, Dan R. Waite and Matthew Park of Lewis Roca Rothgerber LLP.

8 The Court having considered the Motion to Dismiss and based upon the pleadings and
9 papers on file, the argument of counsel and good cause appearing, the motion is granted in part
10 and denied in part as follows:

11 1. The defendant identified as Greenspun Junior High School is not an entity capable
12 of being sued. Accordingly, Greenspun Junior High School is dismissed with prejudice from this
13 action as to all causes of action. The caption of this action shall be reformed to remove reference
14 to "GREENSPUN JUNIOR HIGH SCHOOL (GJHS)."

15 2. The Motion to Dismiss is GRANTED as to the First Cause of Action (Public
16 Accommodation Discrimination). While the Court does not find at this point that it is impossible
17 to state a claim for public accommodation discrimination, the Court expresses some doubt
18 regarding whether this cause of action exists under Nevada law. Accordingly, the First Cause of
19 Action is dismissed with leave to amend. Should Plaintiffs choose to amend, Plaintiffs are
20 directed to identify the alleged duty imposed upon the CCSD Defendants as it relates to student-
21 on-student discrimination.

22 3. The Motion to Dismiss is GRANTED as to the Second Cause of Action
23 (Negligence Per Se) with leave to amend. Should plaintiffs choose to amend, plaintiffs are
24 directed to identify the specific statute they allege was violated so the Court and defendants can
25 analyze such in connection with the cause of action.

26 4. The Motion to Dismiss is GRANTED as to the Third Cause of Action (Violations
27 of Title IX, 20 U.S.C. § 1681(A)) with leave to amend. Should plaintiffs choose to amend,
28 plaintiffs are directed to clarify the factual allegations of (a) CCSD's actual knowledge of

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

LEWIS ROCA
ROTHGERBER

1 discrimination against Ethan Bryan and Nolan Hairr on the basis of sex, and (b) that CCSD's
2 response constituted deliberate indifference to the known acts of discrimination.

3 5. The Motion to Dismiss is GRANTED as to the Fourth Cause of Action (Violations
4 of State and Federal Equal Protection Guarantees, 42 U.S.C. § 1983) with leave to amend. Should
5 plaintiffs choose to amend, plaintiffs are directed to clarify the factual allegations regarding
6 CCSD's deliberate indifference and how the acts of alleged discrimination resulted from such.

7 6. The Motion to Dismiss is DENIED as to the Fifth Cause of Action (Violations of
8 the United States Constitution: Substantive Due Process, 42 U.S.C. § 1983). Plaintiffs have
9 sufficiently pled deliberate inaction.

10 7. Any issues and arguments raised in the briefs and not addressed in this order are
11 denied without prejudice.

12 8. Plaintiffs shall file their amended complaint within 30 days from the date of notice
13 of entry of this order; otherwise, the action will proceed against the CCSD Defendants on
14 plaintiffs' Fifth Cause of Action only.

15 IT IS SO ORDERED.

16 DATED this 9 day of September, 2014.

17 By: Nancy L. Lipp
18 DISTRICT COURT JUDGE

19 *ck*

20 Respectfully submitted by:
21 LEWIS ROCA ROTHGERBER LLP

22 By: *[Signature]*
23 Daniel F. Polsenberg (State Bar No. 2376)
24 Dan R. Waite (State Bar No. 4078)
25 Matthew W. Park (State Bar No. 12062)
26 3993 Howard Hughes Pkwy, Suite 600
27 Las Vegas, NV 89169-5996
28 Tel: 702.949.8200
Fax: 702.949.8398

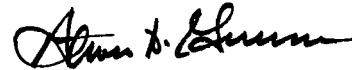
*Attorneys for Defendants CCSD, Warren P.
McKay, Leonard DePiazza, Cheryl Winn, John
Halpin, Robert Beasley*

Approved as to form and content:
ALLEN LICHTENSTEIN, ATTORNEY AT
LAW, LTD.

By: *[Signature]*
Allen Lichtenstein (State Bar No. 3992)
Staci J. Pratt (State Bar No. 12630)
3315 Russell Road, No. 222
Las Vegas, NV 89120
Tel: 702.433-2666
Fax: 702.433-2666

Attorneys for Plaintiffs

EXHIBIT D TO
DOCKETING
STATEMENT



CLERK OF THE COURT

1 **NEO**

2 Dan R. Waite (State Bar No. 004078)
3 Matthew W. Park (State Bar No. 12062)
4 Jennifer Hostetler (State Bar No. 11994)
5 LEWIS ROCA ROTHGERBER LLP
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10 DWaite@lrrlaw.com
11 MPark@lrrlaw.com
12 JHostetler@lrrlaw.com

13 *Attorneys for Defendants CLARK COUNTY SCHOOL*
14 *DISTRICT (CCSD), Warren P. McKay, Leonard DePiazza,*
15 *Cheryl Winn, John Halpin, Robert Beasley*

16 DISTRICT COURT
17 CLARK COUNTY, NEVADA

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

20 Plaintiffs,

21 vs.

22 CLARK COUNTY SCHOOL DISTRICT
23 (CCSD); Pat Skorkowsky, in his official
24 capacity as CCSD superintendent; CCSD
25 BOARD OF SCHOOL TRUSTEES; Erin A.
26 Cranor, Linda E. Young, Patrice Tew, Stavan
27 Corbett, Carolyn Edwards, Chris Garvey,
28 Deanna Wright, in their official capacities as
CCSD BOARD OF SCHOOL TRUSTEES;
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),

Defendants.

Case No. A-14-700018-C

Dept. No. XXVII

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' RULE 12
MOTION TO DISMISS UNSERVED
PARTIES**

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

**LEWIS ROCA
| ROTHGERBER**

1 NOTICE IS HEREBY GIVEN that an Order Granting Defendants' Rule 12 Motion to
2 Dismiss Unserved Parties was entered on December 1, 2015. A copy of the Order is attached
3 hereto.

4 DATED this 2nd day of December, 2015.

5 LEWIS ROCA ROTHGERBER LLP

6
7 By: 

8 Dan R. Waite (State Bar No. 004078)
9 Matthew W. Park (State Bar No. 12062)
10 Jennifer Hostetler (State Bar No. 11994)
11 3993 Howard Hughes Pkwy, Suite 600
12 Las Vegas, NV 89169-5996
13 Tel: 702.949.8200
14 Fax: 702.949.8398

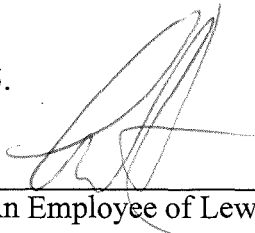
15 *Attorneys for Defendants CLARK COUNTY*
16 *SCHOOL DISTRICT (CCSD), Warren P.*
17 *McKay, Leonard DePiazza, Cheryl Winn, John*
18 *Halpin, Robert Beasley*

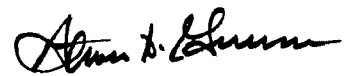
CERTIFICATE OF SERVICE

Pursuant to Rule 5(b), I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' RULE 12 MOTION TO DISMISS UNSERVED PARTIES** to be submitted electronically for filing and/or service with the Eighth Judicial District Court via Court's Electronic System and as stated below to the following:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHODS OF SERVICE
Allen Lichtenstein, Esq. Allaw@lvcoxmail.com Staci Pratt, Esq. Stacijpratt@gmail.com Allen Lichtenstein, Ltd. 3315 Russell Road, No. 222 Las Vegas, NV 89120	<i>Attorney for Plaintiffs</i>	Wiznet
John Houston Scott John@scottlawfirm.net Scott Law Firm 2587 35th Avenue San Francisco, CA 94116	<i>Attorney for Plaintiffs</i>	U.S. Mail

DATED this 2 day of December, 2015.


An Employee of Lewis Roca Rothgerber LLP



CLERK OF THE COURT

1 Dan R. Waite (State Bar No. 004078)
Matthew W. Park (State Bar No. 12062)
2 Brian D. Blakley (State Bar No. 13074)
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7 *Attorneys for Defendants Clark County School*
District (CCSD), Warren P. McKay, Leonard DePiazza,
8 *Cheryl Winn, John Halpin, Robert Beasley*

9 **DISTRICT COURT**
CLARK COUNTY, NEVADA

10 MARY BRYAN, mother of ETHAN
11 BRYAN; AIMEE HAIRR, mother of
12 NOLAN HAIRR,

13 Plaintiffs,

14 vs.

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

26 Defendants.
27
28

Case No. A-14-700018-C

Dept. No. XXVII

**ORDER GRANTING
DEFENDANTS' RULE 12
MOTION TO DISMISS
UNSERVED PARTIES**

Date of Hearing: November 19, 2015

Time of Hearing: 10:30 a.m.

(Hearing Vacated By Minute Order)

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

**LEWIS ROCA
| ROTHGERBER**

1 Defendants' (Warren P. McKay, Leonard DePiazza, Cheryl Winn, John
2 Halpin, and Robert Beasley, collectively, the "Moving Defendants") Rule 12
3 Motion To Dismiss Unserved Parties ("Motion to Dismiss Unserved Parties")
4 came before this Court.

5 Based on the papers and pleadings on file, the Court's review of the
6 motion, and good cause appearing, the Court hereby finds and concludes as
7 follows:

8 1. The Moving Defendants filed their Motion To Dismiss Unserved
9 Parties on October 8, 2015.

10 2. On October 8, 2015, the Motion To Dismiss Unserved Parties was
11 duly served on Plaintiffs' counsel Allen Lichtenstein, Esq., and Staci Pratt,
12 Esq., of Allen Lichtenstein Attorney at Law, Ltd, via Eighth Judicial District
13 Court Electronic Service and the Certificate of Service executed by an
14 employee of Lewis Roca Rothgerber LLP. The Certificate of Service was filed
15 with the Court on October 8, 2015.

16 3. Plaintiffs did not file an opposition brief or other response to the
17 Motion To Dismiss Unserved Parties.

18 4. Pursuant to EDCR 2.20(e), "[f]ailure of the opposing party to
19 serve and file written opposition may be construed as an admission that the
20 motion . . . is meritorious and a consent to granting the same."

21 5. The Court has reviewed the Motion to Dismiss Unserved Parties
22 and concludes it should be granted both because EDCR 2.20(e) is applicable
23 and, based on the Court's independent evaluation, the motion is meritorious.

24 Accordingly, IT IS HEREBY ORDERED that Defendants' Rule 12
25 Motion To Dismiss Unserved Parties is GRANTED. Therefore, Defendants
26 Pat Skorkowsky, the CCSD Board of School Trustees, Erin A Cranor, Linda
27 E. Young, Patrice Tew, Stavan Corbett, Carolyn Edwards, Chris Garvey and
28

1 Deanna Wright (collectively, the "Unserved Parties") are hereby dismissed
2 from this action.

3 IT IS FURTHER ORDERED that the hearing scheduled for November
4 19, 2015, at 10:30 a.m. is vacated.

5 Dated: ^{DEC} November 1, 2015

7 Nancy E. Allf
8 NANCY E. ALLF
9 District Court Judge

10 Respectfully Submitted By:
11 LEWIS ROCA ROTHGERBER LLP

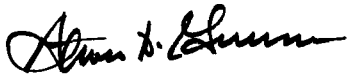
12 By: [Signature]
13 DANIEL F. POLSENBERG (SBN 2376)
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15 BRIAN D. BLAKLEY (SBN 13074)
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17 Las Vegas, Nevada 89169
18 (702) 949-8200

19 *Attorneys for Defendants*
20 *Clark County School District*
21 *(CCSD), Warren P. McKay,*
22 *Leonard DePiazza, Cheryl Winn,*
23 *John Halpin, and Robert Beasley*

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Las Vegas, NV 89169-5996

LEWIS ROCA
ROTHGERBER

EXHIBIT E TO
DOCKETING
STATEMENT



CLERK OF THE COURT

NEO
Daniel F. Polsenberg (State Bar No. 2376)
Dan R. Waite (State Bar No. 4078)
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*Attorneys for Defendants Clark County School
District (CCSD), Warren P. McKay, Leonard DePiazza,
Cheryl Winn, John Halpin, Robert Beasley*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

CLARK COUNTY SCHOOL
DISTRICT (CCSD); *et al.*,

Defendants.

Case No. A-14-700018-C

Dept. No. XXVII

**NOTICE OF ENTRY OF
ORDER REGARDING (1)
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, AND
(2) DEFENDANTS' MOTION
FOR LEAVE TO FILE EXCESS
PAGES**

NOTICE IS GIVEN that an Order Regarding (1) Defendants' Motion for
Summary Judgment, and (2) Defendants' Motion for Leave to File Excess
Pages was entered on July 25, 2016. A copy of said Order is attached hereto.

Dated this 26th of July, 2016

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: 

DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
BRIAN D. BLAKLEY (SBN 13074)
3993 Howard Hughes Parkway, Suite 600
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Attorneys for Defendants

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**Lewis Roca
ROTHGERBER CHRISTIE**

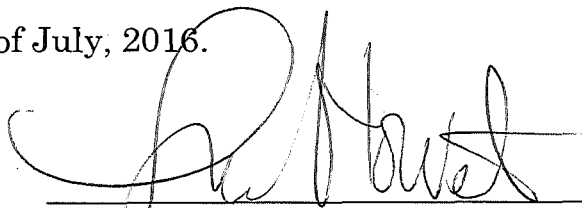
1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev.R.Civ. Rule 5(b) and E.D.C.R. 8.05, I certify that I am
3 an employee of Lewis Roca Rothgerber Christie LLP, and that on this day, I
4 caused a true and correct copy of **Notice of Entry of Order Regarding (1)**
5 **Defendants' Motion for Summary Judgment and (2) Defendants'**
6 **Motion for Leave to File Excess Pages** to be served via Court's electronic
7 filing and U.S. mail, postage prepaid, on all interested parties in the above-
8 referenced matter.

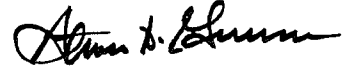
9
10 Allen Lichtenstein, Esq.
11 Staci Pratt, Esq.
12 ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.
13 3315 Russell Road, No. 222
14 Las Vegas, Nevada 89120
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16 *Attorneys for Plaintiffs*

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

24 DATED this 26th day of July, 2016.

25
26
27
28


An Employee of Lewis Roca Rothgerber
Christie LLP



CLERK OF THE COURT

1 **ORDR**
Daniel F. Polsenberg (State Bar No. 2376)
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6 *Attorneys for Defendants Clark County School*
7 *District (CCSD), Warren P. McKay, Leonard DePiazza,*
8 *Cheryl Winn, John Halpin, Robert Beasley*

9 **DISTRICT COURT**
CLARK COUNTY, NEVADA

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

12 Plaintiffs,

13 vs.

14 CLARK COUNTY SCHOOL
DISTRICT (CCSD); *et al.*,

15 Defendants.

Case No. A-14-700018-C

Dept. No. XXVII

ORDER REGARDING (1)
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, AND
(2) DEFENDANTS' MOTION
FOR LEAVE TO FILE EXCESS
PAGES

Date of Hearing: April 21, 2016

Time of Hearing: 10:30 a.m.

16
17
18
19
20 Defendants' Motion for Summary Judgment and Defendants' Motion
21 for Leave to File Excess Pages came before this Court on April 21, 2016.
22 Plaintiffs were represented by Allen K. Lichtenstein, Esq., and defendants
23 were represented by Daniel F. Polsenberg, Esq., and Dan R. Waite, Esq., of
24 Lewis Roca Rothgerber Christie LLP. Based on the papers and pleadings on
25 file, the Court's review of the motions, and good cause appearing, the Court
26 rules as follows:

27 A. Defendants' Motion for Leave to File Excess Pages is GRANTED
28 as unopposed, and

1 B. Defendants' Motion for Summary Judgment is GRANTED IN
2 PART and DENIED IN PART based on the following findings of fact,
3 conclusions of law and order:

4 Findings of Fact:

- 5 1. Plaintiffs' First Amended Complaint asserts claims for
6 (a) Negligence (designated as Claim for Relief I),
7 (b) Negligence Per Se (designated as Claim for Relief II),
8 (c) Violations of Title IX (designated as Claim for Relief III and
9 referred to herein as the "Title IX Claims"),
10 (d) Violations of State and Federal Equal Protection
11 Guarantees under 42 U.S.C. § 1983 (designated as Claim
12 for Relief IV and referred to herein as the "§ 1983 Equal
13 Protection Claims"), and
14 (e) Violations of United States Constitution: Substantive Due
15 Process under 42 U.S.C. § 1983 (designated as Claim for
16 Relief V and referred to herein as the "§ 1983 Substantive
17 Due Process Claims").

18 2. On February 10, 2015, this Court dismissed plaintiffs' Claims for
19 Relief I (negligence) and II (negligence per se).

20 3. Thus, as plead and in its present procedural posture, this case
21 arises under Title IX and 42 U.S.C. § 1983, based on allegations that two
22 students (C.L. and D.M.) verbally and physically mistreated the plaintiffs
23 based on sex, as defined by Title IX.

24 4. Defendants' Motion for Summary Judgment challenged the three
25 remaining claims on various grounds and alternatively sought summary
26 judgment on plaintiffs' request for punitive damages.

27 5. During the briefing on the Motion for Summary Judgment,
28 plaintiffs abandoned their § 1983 Equal Protection Claims.

1 6. Plaintiffs' Title IX Claims are asserted against defendant CCSD
2 only.

3 7. Issues of fact remain for resolution at trial precluding summary
4 judgment on the Title IX and the § 1983 Substantive Due Process Claims,
5 including as follows:

6 Conclusions of Law:

7 1. "[A]n official capacity suit is, in all respects other than name, to
8 be treated as a suit against the entity. . . . [T]he real party in interest is the
9 entity." *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). Thus, plaintiffs' §
10 1983 Substantive Due Process Claims against CCSD and the individual
11 defendants (i.e., Warren P. McKay, Leonard DePiazza, Cheryl Winn, John
12 Halpin and Robert Beasley), sued in their official capacities, is redundant.

13 2. The individual defendants sued in their individual capacities are
14 covered by qualified immunity, shielding their acts or failures to act from
15 liability on plaintiffs' § 1983 Substantive Due Process Claims. *See Ashcroft*
16 *v. al-Kidd*, 131 S. Ct. 2074, 2085 (2011); *Wood v. Strickland*, 420 U.S. 308
17 (1975).

18 3. Punitive damages are not available under Title IX against a
19 federal funding recipient. *See Barnes v. Gorman*, 536 U.S. 181 (2002).
20 Therefore, punitive damages are not available under Title IX against CCSD.

21 4. Punitive damages are not available under § 1983 against CCSD
22 and the official capacity defendants. *See e.g., Kentucky v. Graham*, 473 U.S.
23 159, 167 n.13 (1985) ("punitive damages are not available under § 1983 from
24 a municipality"); *Beem v. Kansas*, 2012 WL 1534592 n.1 (D. Kan. 2012)
25 ("[u]nder § 1983, punitive damages are not available against . . . individuals
26 sued in their official capacities").

27 5. While punitive damages are available under § 1983 against
28 individual capacity defendants, the defendants sued here in their individual

1 capacities are entitled to qualified immunity and therefore cannot be liable
2 for punitive damages.

3 Order:

4 Based on the foregoing, it is hereby ordered, adjudged and decreed as
5 follows:

6 1. The Motion for Summary Judgment is DENIED as to plaintiffs'
7 Claim for Relief III, i.e., the Title IX Claims. The Title IX Claims remain
8 pending against, but only against, defendant CCSD.

9 2. The Motion for Summary Judgment is GRANTED as to plaintiffs'
10 Claim for Relief IV, i.e., the § 1983 Equal Protection Claims. The § 1983
11 Equal Protection Claims are no longer a part of this action.

12 3. Regarding plaintiffs' § 1983 Substantive Due Process Claims, the
13 Motion for Summary Judgment is DENIED as to defendant CCSD and
14 GRANTED as to defendants Warren P. McKay, Leonard DePiazza, Cheryl
15 Winn, John Halpin and Robert Beasley, in both their official and individual
16 capacities. Warren P. McKay, Leonard DePiazza, Cheryl Winn, John Halpin
17 and Robert Beasley are no longer parties to this action in any capacity. The §
18 1983 Substantive Due Process Claims remain pending against, but only
19 against, defendant CCSD.

20 4. The Motion for Summary Judgment is GRANTED as to plaintiffs'
21 requests for punitive damages. Punitive damages are no longer a part of this
22 action.

23 Dated: ^{July}~~May~~ 27 2016

24
25 Nancy L. Allf
26 NANCY L. ALLF
27 District Court Judge
28

1 Respectfully Submitted By:
2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3 By: _____
4 DANIEL F. POLSENBERG (SBN 2376)
5 DAN R. WAITE (SBN 4078)
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7 *Attorneys for Defendants*
8
9

10 Approved as to form and content:

11 ALLEN LICHTENSTEIN, LTD.

12 By: /s/Allen Lichtenstein
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15 *Attorneys for Plaintiffs*
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EXHIBIT F TO
DOCKETING
STATEMENT

COMP

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Attorneys for the Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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.

Case No.:

**FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND
DAMAGES**

**JURY TRIAL DEMANDED
EXEMPT FROM ARBITRATION**

1 Come now Plaintiffs, by and through the undersigned attorneys, and file this Complaint
2 for declaratory and injunctive relief ordering Defendants CCSD, Superintendent Skorkowski,
3 CCSD Board of School Trustees, Trustee Cranor, Trustee Young, Trustee Tew, Trustee Corbett,
4 Trustee Edwards, Trustee Garvey, Trustee Wright, Greenspun JHS, Principal McKay, Assistant
5 Principal DePiazza, Dean Winn, Counselor Halpin, and Instructor Beasley (hereinafter "CCSD
6 Defendants") to adopt, implement, and ensure compliance with policies and practices that ensure
7 the safety of students faced with harassment and discrimination. These policies and practices
8 include development of a safety plan, appropriate and timely investigations, timely and effective
9 notice, independent monitoring of school officials, instituting an appeals process for parents and
10 students who feel a school's actions to do not ensure a safe and respectful learning environments,
11 and instituting disciplinary action against school officials who do not comply.
12
13

14 Plaintiffs also seek damages under 42 U.S.C. § 1983 for harm suffered as a result of
15 CCSD Defendant's failure to maintain and follow a policy that prevents harassment and
16 discrimination. Plaintiffs maintain claims for violation of Plaintiffs' rights under the equal
17 protection clauses of the Nevada Constitution, Article 4, § 21, and the Fourteenth Amendment of
18 the United States Constitution; for deliberate indifference to peer on peer sexual harassment as
19 prohibited by the U.S. Constitution's Substantive Due Process Clause of the Fourteenth
20 Amendment; sex discrimination under Title IX; for negligence; for negligence per se, as well as
21 for denying Plaintiffs a safe and respectful learning environment free from harassment and
22 discrimination.
23
24
25

26 **STATEMENT OF THE CASE**

27
28

1 1. As alleged in greater particularity below, Plaintiffs assert that CCSD failed to ensure a
2 safe and respectful learning environment, free from discrimination, harassment, and violence, for
3 Ethan Bryan and Nolan Hairr, two 13-year-old students attending Greenspun JHS. Despite
4 numerous attempts by Plaintiffs to contact and request the CCSD Defendants to end the
5 persistent sexual and physical assaults, harassment, and discrimination based on perceived sexual
6 orientation, to develop a safety plan to ensure students could benefit from the "full and equal
7 enjoyment of the goods, services, facilities, privileges, advantages, and accommodations" of
8 their public school, (See N.R.S. § 651.110), they did not do so.

10
11 2. During a nearly six month period, Ethan and Nolan endured severe and pervasive
12 discriminatory name-calling, such as "faggot," "fucking faggot," "fucking fat faggot," "gay
13 wad," "gay," "gay boyfriend," "a big fat ass," "dumbass," and "tattle-tale," a stabbing in the
14 genitals, and such alienation that one boy planned suicide to escape the suffering.

15 **JURISDICTIONAL STATEMENT**

16
17 3. This action arises under the N.R.S., the Nevada State Constitution, and the U.S.
18 Constitution, specifically the equal protection and substantive due process clauses, 42 U.S.C. §
19 1983. Nevada District Courts have general jurisdiction in civil matters. N.R.S. Const. Art 6, §

20 **PARTIES**

21
22 4. Plaintiff Ethan Bryan is a student at CCSD, and a former student at Greenspun Middle
23 School. Mary Bryan is his mother.

24 5. Plaintiff Nolan Hairr is a student at CCSD, and a former student at Greenspun Middle
25 School. Aimee Hairr is his mother.

26
27 6. Defendant CCSD is the district that encompasses all public schools in Las Vegas, Nevada
28 and surrounding areas, including Greenspun Junior High School (Greenspun JHS).

1 7. Defendant Pat Skorkowsky is the current superintendent of CCSD and is responsible for
2 overseeing school district staff.

3 8. Defendant CCSD Board of School Trustees is the organization that oversees all schools
4 part of CCSD.

5 9. Defendants Erin A. Cranor, Linda E. Young, Patrice Tew, Stavan Corbett, Carolyn
6 Edwards, Chris Garvey, Deanna Wright are currently members of CCSD Board of School
7 Trustees, and responsible for overseeing CCSD schools.

8 10. Defendant Warren P. McKay is the principal at Greenspun JHS, and is responsible for
9 overseeing the staff and students at the school.
10

11 11. Defendant Leonard DePiazza is the assistant principal at Greenspun JHS and is
12 responsible for overseeing staff and students at the school, and reporting to the principal.
13

14 12. Defendant Cheryl Winn is the Dean at Greenspun JHS, and is responsible for overseeing
15 students and disciplinary matters at the school.

16 13. Defendant John Halpin is the guidance counselor at Greenspun JHS, and is responsible
17 for overseeing students and ensuring their safety and success at the school.
18

19 14. Defendant Robert Beasley is an instructor of band class at Greenspun JHS, and is
20 responsible for overseeing students in his class and ensuring a positive and safe learning
21 environment.
22

23 15. Defendant Andre Long is the Academic Manager for the area of CCSD that incorporates
24 Greenspun JHS. He is responsible for overseeing activities at the school and others within his
25 area boundary.
26

27 **STATUTE OF LIMITATIONS AND TOLLING**
28

1 16. Pursuant N.R.S. § 651.120, the statute of limitations for a civil action sounding in
2 discrimination in a place of public accommodation is tolled during the pendency of a complaint
3 filed with NERC. Any complaint filed within one year of the date of the occurrence is tolled
4 during the pendency of the complaint. N.R.S. § 651.120. The “date of occurrence” is deemed
5 any day up until the discrimination has concluded. NERC has yet to issue a final decision, so the
6 complaint is still pending. N.A.C. § 233.050. A complaint is pending until times for an appeal
7 of a final decision expires, or in a review until proceedings are complete. *Id.*

9 17. Each Plaintiff’s complaint was timely filed in July 2012 with NERC, for discrimination
10 that occurred up until February of 2012. The principals of equity support the tolling of all
11 claims, therefore, these claims are timely.
12

13 **FACTUAL BACKGROUND**

14

15 18. On August 27, 2011, Plaintiffs began the sixth grade at Greenspun Junior High School.

16 19. From August 27, 2011 until or about February 9, 2012, several Greenspun students
17 discriminated against and harassed both Plaintiffs based on their “perceived sexual orientation,”
18 calling students slurs such as “faggot,” “fucking faggot,” “fucking fat faggot,” “gay wad,” “gay,”
19 “gay boyfriend,” “a big fat ass,” “dumbass,” and “tattle-tale.”
20

21 20. The main perpetrator was C.L., but Plaintiffs were also harassed and discriminated
22 against by C.L.’s friend D.M., and other Greenspun students who were friends of C.L.
23

24 21. Initially Nolan bore the brunt of the harassment from C.L., but Ethan began being
25 harassed when he attempted to verbally defend Nolan from C.L.

26 22. From approximately late August to mid-September, Nolan was subjected to most of the
27 harassment and was assaulted several times, including unwanted touching, hair pulling,
28

1 elbowing, and pushing, by C.L. Nolan persistently asked his perpetrator to stop. C.L. refused to
2 stop, causing Nolan to be deeply troubled. Ethan was also verbally harassed during this time.

3 23. Defendant Instructor Beasley acknowledged the bullying, which occurred pervasively in
4 his band classroom, but would only request that C.L. and D.M stop. Nolan asked to be moved to
5 a seat away from his perpetrators, but Defendant Beasley refused to reseal him. It took three
6 months before Nolan was seated away from his perpetrators.
7

8 24. Despite a CCSD Policy requiring any employee who “witnesses, overhears, or receives a
9 report, formal or informal, written or oral, of bullying, cyberbullying, harassment, and/or
10 intimidation at school...” to report it to a principal or principal’s designee – no such report was
11 made.
12

13 25. On September 13, 2011, C.L. stabbed Nolan’s genitals with a pencil, which was
14 witnessed by Ethan. Nolan became increasingly terrified of C.L., and no longer wanted to
15 attend school. He was also afraid to report the event for fear of retaliation. He would ultimately
16 see a doctor for these injuries.
17

18 26. On or near September 15, 2011, Mrs. Bryan learned of the stabbing incident and the
19 pervasive bullying after overhearing Nolan and Ethan speak about it at her home. Mrs. Bryan
20 immediately reported the harassment and assault in an email to Defendants Principal McKay,
21 Counselor Halpin, and Teacher Beasley. She further identified C.L. and D.M. as the
22 perpetrators, and elaborated on the stabbing of Nolan’s genitals and the pervasive harassment.
23 She also informed them of the incredible suffering being endured by Ethan and Nolan. She
24 asked that the school move perpetrators, so that Ethan and Nolan could “...learn properly and
25 have constructive school experiences.” She urged the school to take swift action and for her
26 complaint to be taken seriously, and for the Nolan and Ethan to be moved to a different seat.
27
28

1 27. CCSD Policies describe bullying as “a deliberate or intentional behavior using words or
2 actions intended to cause fear, intimidation, or fear.” CCSD, P-5137(II)(A). Further, CCSD’s
3 policy specifically defines behavior motivated by distinguishable characteristics such as “sexual
4 orientation,” as bullying. *Id.* The definition includes: physical acts, such as assaults, kicking, or
5 punching; “indirect acts,” such as “spreading cruel rumors, intimidation through gestures, social
6 exclusion, or sending insulting messages or pictures...;” use of power imbalances, such as
7 physical or psychological dominance, or verbal threats such as “teasing and name calling,”
8 intimidation, punitive acts aimed at hurting or punishing a targeted individual, or repetitive,
9 systematic acts. CCSD, P-5137(II)(A)(1)-(6).
10

11 28. CCSD declares through its bullying policies that the district is “committed to providing a
12 safe, secure, and respectful learning environment for all students...” CCSD claims that it
13 “strives to consistently and vigorously address bullying, cyberbullying, harassment, and
14 intimidation so that there is no disruption to the learning environment and learning process.”
15 CCSD, P-5137(I).
16

17 29. The school failed to respond to Mrs. Bryan. Nor did the school notify Mr. or Mrs. Hairr
18 of the pervasive bullying, harassment, and discrimination based on perceived sexual orientation
19 involving Nolan.
20

21 30. On September 16, 2011, Defendant Counselor Halpin met with Nolan to discuss the
22 ongoing harassment, discrimination, and assaults. Halpin offered no safety plan, and Nolan felt
23 Halpin simply “brush[ed]” off his complaints. Nolan did not feel safe going forward.
24

25 31. On September 19, 2011, Defendant Instructor Beasley moved Nolan’s seat. However,
26 instead of sitting next to C.L., Nolan was moved directly in front of C.L. C.L. continued to
27 harass and assault Nolan.
28

1 32. On September 21, 2011, Mrs. Bryan notified Mrs. Hairr of the bullying endured by Nolan
2 and Ethan. Mrs. Hairr learned for the first time that her son had been sexually assaulted, and had
3 endured other forms of harassment, discrimination, and assault. Nolan had been too ashamed to
4 report the incidents to her previously.
5

6 **Mrs. Hairr's Contacts with Greenspun JHS Administrators**

7

8 33. The night of September 21, Mrs. Hairr spoke with Nolan regarding the ongoing
9 harassment, assaults, including the stabbing of his genitals, and discrimination based on his
10 perceived sexual orientation. Mrs. Hairr was grateful that Mrs. Bryan informed her of the
11 bullying, but was frustrated and perplexed as to why the school had failed to notify her of such
12 serious acts.
13

14 34. Mrs. Hairr called Greenspun JHS early the following morning to arrange a meeting
15 regarding the pervasive harassment, discrimination, and the stabbing of her son's genitalia.
16

17 35. After receiving no response, Mrs. Hairr called Greenspun JHS again, and requested to
18 speak directly with the Defendant Principal McKay regarding the treatment of her son and the
19 administrators failed response to the situation. She was told to leave a message for Defendant
20 Principal McKay, but her call was never returned.

21 36. Mrs. Hairr called again to initiate her own complaint process, and was transferred to
22 Defendant Assistant Principal DePiazza. We offered no assistance to remedy the harassment,
23 discrimination, and assaults, and he provided no safety plan. He persistently emphasized that
24 Mrs. Hairr had "choices" in taking her son out of the school and enrolling him elsewhere. He
25 referred Mrs. Hairr to Defendant Dean Winn, and the tenor of the conversation left Mrs. Hairr
26 feeling helpless, in tears, and even more concerned for the safety of her son.
27
28

1 37. Later that day, Nolan and Mrs. Hairr met with Defendant Winn. Winn acknowledged
2 that Nolan was in fact a victim of "bullying" in the form of harassment, discrimination, and
3 physical assaults. Specifically, she was aware that Nolan had been stabbed in his genitals.
4 When discussing disciplinary action, Winn cited the "progressive disciplinary system," meaning
5 incidents would have to be documented, with disciplinary actions progressing gradually per each
6 incident.
7

8 38. Defendant Dean Winn did not provide any safety plan to ensure Nolan experienced a safe
9 and respectful learning environment, free of the harassment, assaults, and discrimination.

10 39. Mrs. Hairr did not feel comfortable with results of the conversation, but felt hopeful that
11 the school would take appropriate action now that the management-level staff at the school were
12 aware of her concerns. She did not file a police report at this time, assuming Greenspun JHS
13 would take the appropriate actions.
14

15 40. Shortly after the meeting, the harassment nearly ceased in the band class, but Nolan was
16 still pushed by C.L. as he would leave or return to the class, and called derogatory and
17 discriminatory names. The incidents continued elsewhere in the school. Nolan now reported all
18 incidents to his mother.
19

20 41. During approximately the last week of September, 2011, Mrs. Hairr continued to report
21 these instances of assaults, harassment, and discriminatory language to Defendant Halpin.
22

23 42. Shortly thereafter, Mrs. Hairr met with Defendants Counselor Halpin, Dean Wynn, and
24 Teacher Beasley. Defendants assured Mrs. Hairr that the "bullying" would cease. However, the
25 result was only a seating change in band class, which resulting in Ethan, the other known victim,
26 being placed close to C.L. while Nolan finally was seated further away.
27
28

1 43. After the seat change, from about late-September to December 2011, Ethan began
2 receiving most of the harassment, discrimination, and unwanted touching.

3 44. The discrimination and harassment by C.L. and other students included, over the period
4 of several months, calling Plaintiffs a litany of homophobic and offensive slurs such as "faggot,"
5 "fucking faggot," "fucking fat faggot," "gay wad," "gay," "gay boyfriend," "a big fat ass,"
6 "dumbass," and "tattle-tale."
7

8 45. C.L. also accused the boys of "J.O. [jacking off] to each other," and that the boys would,
9 "Put stuff up each other's butts for pleasure."

10 46. In December 2011, C.L. and his friends filmed Ethan while he ate during lunch hour,
11 calling Ethan names and filming his reaction. The perpetrators threatened to post the camera
12 phone video on Youtube.com. Ethan was deeply disturbed by the notion of the bullies
13 publicizing this humiliating taunting and harassment based on his perceived sexual orientation.
14

15 47. The incidents of harassment, discrimination, and assaults occurred during band class, in
16 hallways, the lunch room, and other areas of the school. Although Ethan was now the primary
17 target, Nolan was targeted too when he was present.
18

19 48. In December of 2011, Ethan and Nolan witnessed C.L. sexually assaulting another
20 student by groping the student's genitals in the hallway. Ethan and Nolan felt disturbed by the
21 pervasive culture of harassment and sexual assaults tolerated by the school.
22

23 **Mrs. Bryan's Additional Contacts with Greenspun JHS Administrators**

24

25 49. Mrs. Bryan repeatedly e-mailed Greenspun administrators to ask for help addressing the
26 continued harassment of her son Ethan, but the school's response was tepid.
27
28

1 50. On October 18, 2011, C.L. still sitting next to Ethan, repeatedly hit Ethan in the legs with
2 a piece of his trombone while calling him "big fat ass." Mrs. Bryan informed the staff that the
3 physical and verbal assaults were affecting her son and had to stop.

4 51. On October 19, 2011, Mrs. Bryan attempted again to end the bullying by emailing
5 Defendants Principal McKay, Counselor Halpin, and other CCSD officials regarding the ongoing
6 bullying, harassment and assaults. She informed CCSD Defendants of the assault using the
7 trombone, and also that the name-calling has persisted. Mrs. Bryan sought confirmation that her
8 complaints were being addressed.
9

10 52. The next day, on October 20, 2011, Mrs. Bryan called the school and met with Defendant
11 Dean Winn face-to-face for the first time (after nearly two months of harassment had already
12 taken place): when Dean Winn left Mrs. Bryan with no satisfactory safety plan to prevent the
13 harassment, assaults, and discrimination based on perceived sexual orientation, Mrs. Bryan
14 ultimately asked to volunteer as a monitor to the students, for which Defendant Dean Winn
15 accepted.
16

17 53. From October 20, 2011 to December 12, 2011, however, Ethan's situation with C.L. did
18 not improve: instead the harassment in band class occurred almost every day, and Ethan was
19 beginning to be greatly affected by the tormenting by C.L. and his friends.
20

21 54. On December 16, 2011, Ethan witnessed D.M. pulling a Santa Claus hat off of another
22 student. D.M. proceeded to slap the student in the head and threw the student's school materials
23 all over the hallway floor, leaving the student teary-eyed and humiliated.
24

25 55. A couple of days after this incident, Mrs. Bryan brought the harassment to the attention
26 of Defendant Dean Winn during an informal meeting. Mrs. Bryan summarized this and several
27 other incidents of harassment suffered by Ethan and Nolan. Mrs. Bryan explicitly asked
28

1 Defendant Dean Winn why the harassing students C.L. and D.M were not expelled from
2 Greenspun. Defendant Winn responded that she needed to keep documenting things so that those
3 students' discipline could progress under Greenspun's progressive disciplinary system.
4 Ultimately, Mrs. Bryan was concerned with the lack of a safety plan for Ethan, Nolan, and
5 others.

6
7 56. By January 11, 2012, Ethan had a final breakdown brought upon by the continuous
8 discrimination and harassment he had endured. Ethan had recurring nightmares and needed to
9 sleep with a night-light. Ethan admitted that he felt terrible and depressed, and revealed that he
10 had planned his suicide.

11
12 57. On or before February 7, 2012, Mrs. Bryan filed a formal complaint with the CCSD
13 Board of School Trustees regarding Greenspun's lack of effective response in addressing the
14 harassment, assaults, and discrimination based on perceived sexual orientation. Towards Ethan
15 and Nolan.

16
17 58. In retaliation, the next day Defendant Assistant Principal DePiazza physically ejected
18 Mrs. Bryan off of the campus when she arrived to assume her volunteer duties for the day and
19 told her she was not welcome there. The incident left Mrs. Bryan anxious, humiliated, ill, and no
20 longer with the ability to monitor the discrimination and harassment suffered by students at the
21 school.

22
23 59. Mrs. Bryan contacted Defendant Long, Academic Manager for Clark County School
24 District, who assured her that something would be done to address the lack of a safety plan. Mrs.
25 Bryan was given no indication that Mr. Long followed through with any action.

26
27 60. On February 9, 2012, Defendant Principal McKay called Mr. and Mrs. Bryan and left a
28 voicemail message requesting a meeting. This was the Defendant Principal McKay's first

1 attempt in contacting the Bryans since September when he was notified about Ethan and Nolan's
2 harassment. Defendant Principal McKay stated he thought the harassment had ended in October,
3 despite the persistent contact by Mrs. Bryan and Mrs. Hairr. Defendant McKay never followed
4 up with Ethan or the Bryans regarding Ethan's safety from October 2011 until February 2012.

5 61. CCSD Defendants consistently failed to remedy the pervasive perceived sexual
6 orientation discrimination, harassment, and physical and psychological pain Ethan and Nolan
7 suffered. Plaintiffs were depressed and no longer wanted to attend school. Their educational
8 outcomes began to suffer as a result.

9 62. The lack of a response that permeated Greenspun's administration and continued with the
10 no help from CCSD was a blatant disregard and violation of Nolan and Ethan's rights as students
11 in their school district.

12 63. On January 12, 2012, Mrs. Hairr decided to remove Nolan from Greenspun JHS. Only
13 Defendant Dean Winn apologized for the suffering endured by Nolan.

14 64. By February, Mrs. Bryan had also removed her son, Ethan, from Greenspun JHS.

15 16 17 18 **Contacts with CCSD Police**

19 65. Near the end of January, 2012, Mrs. Hairr attempted to file a police report with CCSD
20 Police related to the pervasive harassment, assaults, and discrimination based on perceived
21 sexual orientation. Officers never showed up to their scheduled appointment with Mrs. Hairr.
22 CCSD Police followed up with a phone call discouraging Mrs. Hairr from filing a formal report.

23 66. On February 7, 2012, due to the numerous complaints of Mrs. Hairr and Mrs. Bryan,
24 Defendants Trustee Young and Academic Manager Long met with the Hairrs and Bryans
25 regarding the incidents. Long did not provide the Plaintiffs with the assurance of a safety plan or
26
27
28

1 a plan to end the pervasive discrimination, and otherwise provided no assistance to the families.
2 Long explained that Mrs. Hairr or Mrs. Bryan could still volunteer if they needed.

3 67. After this meeting, CCSD Defendants never followed up with Plaintiffs or offered any
4 support. When Plaintiffs attempted to reach Defendant Academic Manager Andre Long, they
5 were told he could no longer assist them.
6

7 68. On February 9, 2012, Mrs. Bryan, Mrs. Hairr, Ethan, Nolan, along with another victim
8 and mother, met with CCSD Police Officer Gervasi, to file a Crime Report. The officer
9 discouraged filing the report, but Plaintiffs insisted and filed a report detailing the incidents that
10 had occurred against Nolan and Ethan. CCSD Police indicated that the incidents were now part
11 of a criminal investigation and "further investigation is warranted."
12

13 69. The Crime Report detailed the bullying and discriminatory conduct and language. [See
14 Exhibit 1]. Plaintiffs detailed the sexual assault, harassment, inappropriate touching, and other
15 actions endured by Plaintiffs. Each victim completed their own statements. Nolan wrote of the
16 genital stabbing incident, him being called a "Fagot boy," among other language, and other acts.
17 Nolan also detailed the many Greenspun JHS staff he reported to, but how the harassment did
18 not stop. Ethan spoke of his reporting a well, and the retaliation he faced, such as being stabbed
19 by C.L. with a trombone. He also reported being called "gay" among other names. He revealed
20 his desire to leave the school out of fear.
21

22 70. Officer Gervasi was dismissive to Plaintiffs, and commented, "If I had to file a report
23 every time a girl's boob was grabbed, I'd be filing reports all day."
24

25 71. CCSD Police responded to the report with no action. Plaintiffs again felt CCSD was
26 unwilling to take their complaints seriously.
27

28 **Contacts with Nevada Equal Rights Commission (NERC)**

1 72. In an effort to find a meaningful avenue of oversight, Plaintiffs approached NERC.

2 73. The legislature has declared a strong public policy towards the obligation of NERC to
3 “protect the welfare, prosperity, health and peace of all the people of the State, and to foster the
4 right of all persons to seek and be granted the services in places of public accommodation
5 without discrimination, distinction, or restriction because of [...] sexual orientation...” N.R.S. §
6 233.010(2). Sexual orientation is defined as “having or being perceived as having an orientation
7 of heterosexuality, homosexuality or bisexuality.” N.R.S. § 233.020(6).
8

9 74. In order to facilitate this public policy, NERC’s administrator is authorized to
10 “investigate tensions, practices of discrimination and acts of prejudice against any person or
11 group” because of sexual orientation. N.R.S. § 233.150(1)(a). Further, NERC has the authority
12 and obligation pursuant Nevada’s strong public policy to remedy discrimination to mediate
13 between parties, and in the course of an investigation or hearing, issue subpoenas to witnesses,
14 order the production of documents or other tangible evidence. N.R.S. § 233.150(2),(3).
15

16 75. NERC must accept “any complaint alleging unlawful discriminatory practice over which
17 it has jurisdiction...” N.R.S. § 233.157. NERC must also ensure that a process is in place to
18 address these complaints. *Id.*
19

20 76. When attempting to mediate after an investigation and finding of probable cause, NERC
21 must hold a meeting between parties to attempt to achieve a resolution, and ensure the
22 respondent will cease the discriminatory activity. N.A.C. § 233.130(1). This must be followed
23 by a disposition of the case in writing, and notice to all parties involved. *Id.*
24

25 77. Further, NERC may hold a public hearing if attempts to mediate or conciliate between
26 parties fail, and after such a hearing may order a party to cease and desist unlawful practices.
27 N.R.S. § 233.170 (3),(3)(b)(1). NERC has wide ranging authority in conducting such a hearing
28

1 to come to a determination or decision. This authority includes, but is not limited to, calling and
2 examining witnesses, issuing subpoenas (and applying to the district court for enforcement),
3 taking depositions and obtaining discovery, regulating the hearing itself, and holding
4 conferences. N.A.C. § 233.160

5 78. NERC regulations mandate a liberal construction of its rule of practice to *secure just*,
6 *speedy and economical* determination of all issues before it.” N.A.C. § 233.020(1) (emphasis
7 added).
8

9 79. According to the plain language of the NERC enabling statute and Nevada Supreme
10 Court’s interpretation of N.R.S. § 651.050(3)(k), discrimination in public school is prohibited
11 because public schools are places of public accommodation.
12

13 80. The definition of “place of public accommodation” includes “[a]ny nursery, private
14 school or university or *other place of education*.” N.R.S. § 651.050(3)(k) (emphasis added).
15 Public schools clearly qualify as a place of education based on a plain reading of the statute.
16

17 81. The Nevada Supreme Court has unequivocally determined that NERC’s jurisdiction
18 extends to public schools in *Clark County Sch. Dist. v. Buchanan*, 924 P.2d 716 (1996). The
19 case specifically cites N.R.S. § 651.050(3)(k) in finding a public school (CCSD) is in fact a place
20 of public accommodation and therefore an individual in that setting was entitled to protections
21 under the statute. *Id.* at 719.
22

23 82. NERC’s mandate extends to violations pursuant N.R.S. § 651.110, which states that
24 “[a]ny person who believes he or she has been denied full and equal enjoyment of the goods,
25 services, facilities, privileges, advantages and accommodations of any place of public
26 accommodation because of discrimination based on race, color, religion, national origin,
27
28

1 disability, sexual orientation, sex, gender identity or expression may file a complaint to that
2 equal effect with the Nevada Equal Rights Commission.”

3 83. NERC has a responsibility to act as an avenue of redress for discrimination in public
4 accommodations. Thus, a student should be able to complain when he or she has been denied
5 full and equal enjoyment of goods, services, facilities, privileges, advantages and
6 accommodations of any place of public accommodation,” such as public schools, “because of
7 discrimination or segregation based on race, color religion, national origin, disability, sexual
8 orientation, sex, gender identity or expression.” N.R.S. § 651.110.
9

10 84. In a letter dated July 18, 2012, Plaintiffs detailed the discrimination endured at
11 Greenspun JHS, the non-responsiveness of CCSD Plaintiffs, and their desire to file a complaint
12 with NERC based on these events. The letter sought confirmation that the case would be
13 accepted, and enclosed were Plaintiffs’ filled-out “Charge of Public Accommodation Complaint
14 Form[s]” and a detailed outline of discriminatory acts and requests for assistance.
15

16 85. In letters dated August 31, 2012, NERC scheduled Nolan and Ethan for “In Person
17 appointment[s]”: on Tuesday, September 18, 2012 for both Nolan and Ethan. The letters stated
18 this appointment was designed to “determine whether the allegations of your client’s complaint
19 fall within the jurisdiction of the Commission.” The letters further stated that, “[s]hould your
20 client’s complaint be deemed non-jurisdictional, you will receive a dismissal letter.”
21

22 86. Based on these September 18 meetings, NERC accepted Plaintiffs filed complaints of
23 public accommodation discrimination based on perceived sexual orientation.
24

25 87. In letters dated September 26, 2012, NERC provided copies of Plaintiffs’ complaints
26 along with proposed remedies for Plaintiffs’ signature. The complaints included the allegations
27 of public accommodation discrimination, including Greenspuns JHS and CCSD’s failure to act.
28

1 The remedies included requests that respondents alter their procedural practices to comport with
2 existing state law and CCSD policy. Further, Plaintiffs requested specific changes to ensure
3 proper implementation, such as annual trainings by NERC, weekly meetings regarding
4 contemporaneous discrimination and harassment incidents, and annual meetings with Greenspun
5 JHS students to teach about bullying, harassment, and discrimination. The remedies also
6 included a request for actual damages, damages awarding costs related to litigation, attorney's
7 fees, and other monetary relief deemed appropriate pursuant N.R.S. § 651.090.
8

9 88. Plaintiffs timely signed the documents and returned to them NERC.

10 89. In letters dated October 15, 2012, NERC informed Plaintiffs of two scheduled "Informal
11 Settlement Meetings" [ISMs]. The letter in regards to Nolan's complaint scheduled the ISM for
12 8:30AM on Thursday, November 29th. The letter regarding Ethan's complaint scheduled his
13 ISM for 2PM that same day.
14

15 90. NERC cancelled Nolan's ISM. NERC stated that the meeting would be rescheduled for
16 December, 2012. They told Mrs. Hairr she would receive another notice letter with an exact date
17 and time of the rescheduled meeting.
18

19 91. Ethan's scheduled ISM did occur via telephone conference. The meeting included the
20 Dennis Maginot, NERC Commission Administrator, Scott Greenburg, Carlos McDade, CCSD
21 attorney, Mrs. Bryan and Ethan, and Katrina Rogers, staff attorney at ACLU of Nevada. Mr.
22 Maginot openly stated that NERC should and does have jurisdiction over the schools, but
23 hesitated to fully commit to a thorough investigation. This was very disheartening to Mrs. Bryan
24 and Ethan, who began to feel the agency would not adequately address their matter.
25

26 92. The ISM yielded no results, but NERC agreed to be continue to engage in settlement and
27 advised Plaintiffs to draft a proposed remedy.
28

1 93. Maginot stated that it would take **two to three months** before the case would be assigned
2 to an investigator, and approximately an additional **six months** to investigate. According to
3 NERC's representations, Plaintiffs expected a decision by September, 2013.

4 94. NERC never contacted Mrs. Hairr to reschedule their cancelled November 29 ISM.

5 95. In a letter dated February 13, 2013, Plaintiffs supplied proposed changes, at NERC's
6 request, to CCSD policies and implementation, along with new enforcement mechanisms to
7 remedy the failure of the part of school officials and the district to appropriately handle
8 Plaintiffs' complaints, and requested money damages.

9 96. In June 10, 2013, NERC responded that the since the informal settlement conferences
10 yielded no result (even though Mrs. Hairr and Nolan never participated in an ISM), an
11 investigator, Lila Vizcarra, would now be assigned to an investigation. (NERC's original two to
12 three month timeline to assign an investigator had been extended to **over six months**).

13 97. The letters also summarized CCSD and GJHS' position. The district and school denied
14 the allegations of discrimination, and they stated they responded appropriately to both Nolan and
15 Ethan's incidents. They also stated that at no time were they aware of harassment discriminatory
16 in nature. Further, respondents attempted to draw a distinction between official reporting versus
17 more informal reporting. In sum, they attested that they had an effective bullying policy that was
18 implemented appropriately.

19 98. The response from CCSD and GJHS spanned about a page, with only conclusory
20 statements pointing to no wrongdoing – some of which were in direct contradiction to recorded
21 accounts.

22 99. NERC requested a detailed response from Plaintiffs and various documents, such as
23 telephone records spanning several months, all emails between Plaintiffs and school officials,
24
25
26
27
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1 report cards, police reports, contact information for all witnesses, along with a summary of their
2 testimony, and any other relevant information.

3 100. NERC requested the information by June 25, 2013, only fifteen days from the date of the
4 letter.

5 101. In letters dated July 26, 2013, Plaintiffs responded to Greenspun JHS and CCSD's
6 position. In addition to providing NERC with all the requested documents, Plaintiffs detailed the
7 assaults, harassment, and discrimination faced by Nolan and Ethan, and they explained that the
8 lack of information claimed by the CCSD Defendants in their response illustrates the failed
9 reporting system and unwillingness to ensure a safe and respectful learning environment.
10

11 102. Further, Plaintiffs detailed CCSD's own bullying policy, which does not require formal
12 reporting, but instead states that any CCSD employee who "witnesses, overhears, or receives a
13 report, formal or informal, [...] shall report it to the principal or principal designee." See CCSD
14 Policy P-5137(IV)(A)(2).
15

16 103. Further, Plaintiffs detailed several communications with the school regarding the safety
17 of the students, and how many of these emails *should have* resulted in immediate involvement of
18 the principal, but did not.
19

20 104. Plaintiffs took issue with the enormous burden the respondent put on Ethan specifically
21 to report the sensitive and embarrassing harassment details, and essentially using this as a reason
22 not to investigate.
23

24 105. The responses also detailed the issues Plaintiffs faced when filing a police report,
25 reporting generally, retaliation faced by Mrs. Bryan, among other issues.
26
27
28

1 106. Further, the responses detailed several remedies the Plaintiffs expected – including a
2 reference to the New Jersey Anti-Bullying Act as a model to highlight deficiencies in CCSD's
3 current policies and procedures.

4 107. Plaintiffs requested, pursuant N.R.S. § 233.190(3)(a), that NERC ask for consent from
5 Greenspun JHS and CCSD to disclose information gathered in the course of investigation,
6 including records of communication at Greenspun JHS and CCSD regarding the bullying of
7 Ethan and Nolan, and Mrs. Bryan's ejection, all documentation related to the investigation, and
8 all documentation of meetings with Plaintiffs.
9

10 108. Plaintiffs never received any response regarding their request for documents and
11 information gathered during the course of the investigation. Plaintiffs were never informed as to
12 whether CCSD and Greenspun JHS were asked or gave consent for the disclosure of these
13 materials.
14

15 109. Several months later, on November 5, 2013, Plaintiffs requested via email from NERC an
16 update on the status of the investigation. Specifically, Plaintiffs sought timelines for the
17 conclusion of the investigation and any remedial action. NERC's initial estimate for a final
18 decision of the case, September 2013, had passed. Plaintiffs were concerned that NERC had
19 failed to take any action, and Plaintiffs informed Ms. Vizcarra that they may need to evaluate
20 other forms of redress.
21

22 110. In an email dated the same day, Defendant Kara Jenkins, NERC Commission
23 Administrator, responded stating that Ms. Vizcarra was on leave and when she gets back in, "I
24 will get back to you first thing." No timeline was given as to when Ms. Vizcarra would return,
25 nor was any timeline or update given on the status of the case.
26
27
28

1 111. Further, Ms. Jenkins stated "You may still proceed to advocate for your clients; our
2 investigation is "not adversarial."

3 112. Troubled by this assertion, Plaintiffs responded via email later that same day. Plaintiffs
4 explained that although fact-finding should be inherently objective, NERC has not only the
5 authority, but the obligation, to address, remedy, and eliminate unlawful discrimination. To
6 respond to an email requesting an update on the timeline and the possibility of remedial
7 measures with an assertion that investigation are "not adversarial" raised flags about the
8 dedication of NERC to the Plaintiffs' complaint.
9

10 113. Further, Plaintiffs reminded NERC that it was expressly created to prevent and address a
11 broad range of unlawful acts and practices. NERC has the authority and obligation to eliminate
12 discrimination in Nevada. N.R.S. § 233.010(2).
13

14 114. In a call dated February 25, 2014, Plaintiffs again sought an update from NERC on the
15 status of a case, and requested a timeline for a conclusion to the investigation.

16 115. Defendant Commission Administrator Jenkins stated that "just because Plaintiffs had
17 ACLU attorneys, that did not mean they would be given special treatment." She also felt that
18 Plaintiffs' emails that expressed frustration as to the lack of information and timeline, and
19 seemingly lack of commitment by NERC, were unwelcome
20

21 116. When asked about a timeline, she stated, "I need to manage your expectations. These
22 cases can take over two years." Plaintiffs attempted to affirm this timeline. Ms. Jenkins
23 promptly corrected herself stating that every case is different, and there is no guarantee this
24 investigation would be completed in two years. She said she would only say "the case is moving
25 forward," but all other information was confidential.
26
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1 117. Most troubling, was her closing statement in which she said, "You have to understand,
2 NERC has a complicated relationship with CCSD."

3 118. Plaintiffs were forced to file the present action due to NERC's capricious unwillingness
4 to pursue the investigation of serious and pervasive harassment and discrimination of Ethan and
5 Nolan.

6 119. NERC took no action, issued no final decision, and failed to do anything to protect these
7 and other students over the course of nearly two years. As a result, Plaintiffs were forced to file
8 the present action.
9

10 CLAIMS FOR RELIEF: CCSD DEFENDANTS

11 CLAIM FOR RELIEF I 12 NEGLIGENCE

13 120. All allegations set forth in this Complaint are hereby incorporated by reference.

14 121. The standards to establish a negligence claim were set forth by the Nevada
15 Supreme Court in, *Foster v. Costco Wholesale Corp.*, 291 P.3d 150 (2012); *DeBoer v. Sr.*
16 *Bridges of Sparks Fam. Hosp.*, 282 P.3d 727, 732 (2012); *see also, Scialabba v. Brandise*
17 *Const. Co.*, 921 P.2d 928, 930 (Nev.1996). [A] plaintiff must demonstrate that (1) the defendant
18 owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the
19 legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages.
20

21 122. The Nevada Supreme Court has expressly stated that a special duty exists between
22 teachers and students in *Lee v. GNLV Corp.*, 117 Nev. 291, 22 P.3d 209 (2001).
23

24 In Nevada, as under the common law, strangers are generally under no duty to aid
25 those in peril. *See Sims v. General Telephone & Electronics*, 107 Nev. 516, 525,
26 815 P.2d 151, 157 (1991) (*overruled* on other grounds in *Tucker v. Action*
27 *Equipment and Scaffold Co., Inc.*, 113 Nev. 1349, 951 P.2d 1027 (Nev. 1997)).
28 This court, however, has stated that, **where a special relationship exists between the parties, such as with an innkeeper-guest, teacher-student or**

1 employer-employee, an affirmative duty to aid others in peril is imposed by law.
2 See *Sims*, at 526, 815 P.2d at 157-58 (citing W. Page Keeton et al., Prosser and
3 Keeton on the Law of Torts, § 56, at 376).

4 v. at 296, 22 P.3d at 212. See also, *Beckman v. Match.com*, No. 2:13 CV 97 JCM NJK.2013 WL
5 2355512 at *8 (D.Nev., May 29, 2013).

6 123. In our sister state, the California Supreme Court explained the rationale behind
7 the special teacher-student relationship, and basis for the duty of schools, school districts and
8 school personnel to protect students placed in their care.

9 In addition, a school district and its employees have a special relationship with the
10 district's pupils, a relationship arising from the mandatory character of school
11 attendance and the comprehensive control over students exercised by school
12 personnel, "analogous in many ways to the relationship between parents and their
13 children .- (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 935, 80
14 Cal.Rptr.2d 811, 968 P.2d 522, see *M.W. v. Panama Buena Vista Union School*
15 *Dist.* (2003) 110 Cal.App.4th 508, 517, 1 Cal.Rptr.3d 673; *Leger v. Stockton*
16 *Unified School Dist.*, (1988) 202 Cal.App.3d at 1448,1458-1459, 249 Cal.Rptr.
17 688.) Because of this special relationship, imposing obligations beyond what each
18 person generally owes others under Civil Code section 1714, the duty of care
19 owed by school personnel includes the duty to use reasonable measures to protect
20 students from foreseeable injury at the hands of third parties acting negligently or
21 intentionally.FN3 This principle has been applied in cases of employees' alleged
22 negligence resulting in injury to a student by another student (*J.H. v. Los Angeles*
23 *Unified School Dist.* (2010) 183 Cal.App.4th 123, 128-129, 141-148, . . .

24 C.A. v. *William S. Hart Union High School Dist.*, 53 Cal.4th 861, 270 P.3d 699 (2012), 53
25 Cal.4th at 869-870, 270 P. 2d at 704-705.

26 124. The *William S. Hart Union High School Dist.* Court explained that the special
27 duty to students at school stated that the duty is in accord with public policy set forth in, Cal.
28 Const., art. I, § 28, subd. (a)(7) (students have the right to be safe and secure in their persons);
and Cal. Ed.Code, §§ 32228-32228.5, 35294.10-35294.15 (establishing various school safety and
violence prevention programs). 53 Cal.4th at 870, 270 P. 2d at 705. In Nevada, the statutory
parallel appears in NRS Chapter 388. In both Nevada and California, the legislatures have made

1 a clear and unmistakable statement that school districts have an unequivocal responsibility to
2 protect the students placed in their care, particularly when they have been made aware of a
3 specific danger to specific students.

4 125. Defendants breached their duty to Ethan and Nolan by failing to adequately
5 protect them after they learned of the bullying the boy had endured and were enduring, thereby
6 depriving them of a safe and respectful learning environment; by failing to adequately
7 investigate the bullying she endured, and by failing to adequately address the discrimination,
8 harassment, and pervasive bullying Ethan and Nolan faced at Truman White Middle School.
9

10 126. As a proximate result of CCSD Defendants' negligence, practices, acts and
11 omissions, Ehan and Nolan suffered immediate and irreparable injury, including physical,
12 psychological and emotional injury, including her own death.
13

14 127. As a proximate result of CCSD Defendants' negligence, practices, acts and
15 omissions, Ethan and Nolan suffered immediate and irreparable injury, including physical,
16 psychological and emotional injury.
17

18
19 **CLAIM FOR RELIEF II**
20 **NEGLIGENCE PER SE:**
21 **VIOLATIONS OF N.R.S. AND CCSD POLICIES**

22 128. All allegations set forth in this Complaint are hereby incorporated by
23 reference.

24 129. Defendant's failure to ensure the safety of Plaintiffs also violated statutes
25 designed to protect the class of individuals to which Ethan and Nolan belong, namely students in
26 the public school system. *See* N.R.S. Chapter 392 Pupils, et seq. The failure of CCSD
27 Defendants to implement appropriate disciplinary and safety strategies in protecting Ethan and
28

1 Nolan, as required by school and district policies, and regulations, and Nevada state law amounts
2 to a negligence per se.

3 130. In *Barnes v. Delta Lines*, 669 P.2d 709, 710 (1983), the Nevada Supreme Court
4 held that “when a defendant violates a statute which was designed to protect a class of persons to
5 which the plaintiff belongs, and thereby proximately causes injury to the plaintiff, such a
6 violation constitutes negligence per se.” See also, *Brannan v. Nevada Rock & Sand Co.*, 108
7 Nev. 23, 27, 823 P.2d 291, 293 (1992); *Atkinson v. MGM Grand Hotel*, 120 Nev. 639, 643 98
8 P.3d 678, 680 (2004).
9

10 131. In NRS § 388.132, entitled “Legislative declaration concerning safe and
11 respectful learning environment” the Legislature declared that:
12

13 1. A learning environment that is safe and respectful is essential **for the pupils enrolled**
14 **in the public schools** in this State to achieve academic success and meet this State’s high
15 academic standards;

16 2. Any form of bullying or cyber-bullying seriously interferes with the ability of teachers
17 to teach in the classroom and the **ability of pupils** to learn; (emphasis added)

18 132. As pupils enrolled in the CCSD school system, Ethan and Nolan fit squarely
19 within the class that the NRS § 388.132 was designed to protect.

20 133. NRS § 388.132 (4) states that:

21 The intended goal of the Legislature is to ensure that:

22 (a) The public schools in this State provide a safe and respectful learning environment
23 in which persons of differing beliefs, characteristics and backgrounds can realize their
24 full academic and personal potential;

25 (b) All administrators, principals, teachers and other personnel of the school districts
26 and public schools in this State demonstrate appropriate behavior on the premises of any
27 public school by treating other persons, including, without limitation, pupils, with civility
28 and respect **and by refusing to tolerate bullying** and cyber-bullying; (emphasis added)

134. Defendants did not “refuse to tolerate” the bullying of Ethan and Nolan.

1 135. This failure to "refuse to tolerate" the bullying that they were well aware of,
2 proximately caused continued injury to Ethan and Nolan.

3 136. Defendants' violation of NRS § 388.132 through the failure to adequately act to protect
4 Ethan and Nolan, thus allowing the harassment and discrimination to continue, constitutes
5 negligence per se.
6

7 137. N.R.S. § 392.915 prohibits the use in public schools of language or other means to
8 knowingly threaten the use of bodily harm through with the intent to "[i]ntimidate, harass,
9 frighten, alarm or distress a pupil."

10 138. N.R.S. § 392.910(1) prohibits any person from disturbing the peace in a public
11 school "by using vile or indecent language within the building or grounds of the school."
12 Further, it is unlawful for a person to assault a pupil on school grounds pursuant this statute.
13 N.R.S. 392.910 (2)(a).
14

15 139. N.R.S. § 392.4645 requires that a plan be developed which provides for the
16 temporary removal of a pupil if, in the judgment of a teacher, the pupil seriously interferes with
17 the teacher's ability to teach or a student's ability to learn.
18

19 140. No such plan was developed in the case of the bullying of Ethan and Nolan.

20 141. N.R.S. § 392.4647 requires the establishment of a committee, consisting of the
21 school principal and two teachers who are selected for membership by a majority of the school's
22 teachers, in order to review the temporary alternative placement of pupils.
23

24 142. No such committee was established in the case of the bullying of Ethan and
25 Nolan.
26
27
28

1 143. The injuries suffered by Ethan and Nolan are of the very type the NRS Chapter
2 392 provisions were designed to prevent. *See Vega v. Eastern Courtyard Associates*, 24 P.3d
3 219, 221 (2001).

4 144. Defendants' violation of the aforementioned provisions of NRS § Chapter 291,
5 through the failure to take the proper steps to protect Ethan and Nolan, thus allowing the
6 harassment and discrimination to continue, constitutes negligence per se.
7

8 145. Clark County School District policy P-5137 prohibits violence, threats of
9 violence, and harassment, were not implemented.

10 146. The failure of the CCSD Defendants to provide a safe and respectful learning
11 environment for all students, regardless of their "perceived sexual orientation," constitutes a
12 violation of their statutory duties. Further, their inaction, resulted in a school setting that more
13 than tolerated bullying.
14

15 147. CCSD Defendants failed to train and/or require the training of CCSD personnel,
16 failed to review associated policies, failed to enforce statutory and school district policies related
17 to securing a safe and respectful learning environment, or take other actions that could have
18 avoided the injuries to Ethan and Nolan.
19

20 148. As a proximate result of CCSD Defendants negligence, practices, acts and
21 omissions, Ethan and Nolan suffered immediate and irreparable injury, including physical,
22 psychological and emotional injury.
23

24 149. Defendants' violation of the aforementioned CCSD policies resulting in the
25 failure to adequately act to protect Ethan and Nolan, thus allowing the harassment and
26 discrimination to continue, constitutes negligence per se.
27

28 **CCSD ONLY - CLAIM FOR RELIEF III**
VIOLATIONS OF TITLE IX, 20 USC § 1681(A)

1 150. All allegations set forth in this Complaint are hereby incorporated by reference.

2 151. CCSD receives federal funds

3 152. Based on the receipt of federal funds, CCSD is subject to Title IX requirements.
4
5 20 USC § 1681(a).

6 153. Section 901(a) of Title IX provides, "No person in the United States shall, on the
7 basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to
8 discrimination under any education program or activity receiving Federal financial assistance."
9
10 20 USC § 1681(a).

11 154. Under Title IX, student on student harassment and bullying based upon perceived
12 sexual orientation is actionable. *See, Ray v. Antioch School District*, 107 F.Supp.2d 1165, 1170
13 (N.D.Cal. 2000); *Montgomery v. Independent School Dist. No. 709*, 109 F.Supp.2d 10811090-
14 1091 (D.Minn. 2000).

15 155. Liability under Title IX for student-student sexual harassment: (1) the school
16 district "must exercise substantial control over both the harasser and the context in which the
17 known harassment occurs", (2) the plaintiff must suffer "sexual harassment ... that is so severe,
18 pervasive, and objectively offensive that it can be said to deprive the victims of access to the
19 educational opportunities or benefits provided by the school", (3) the school district must have
20 "actual knowledge of the harassment", and (4) the school district's "deliberate indifference
21 subjects its students to harassment". *See, Henkle v. Gregory*, 150 F.Supp.2d 1067, 107701978
22 (D. Nev. 2001).

23 156. Deliberate indifference is "the conscious or reckless disregard of the
24 consequences of ones acts or omissions." *Henkle v. Gregory*, 150 F.Supp.2 at 1078.
25
26
27
28

1 157. Defendants exercised substantial control over both the harassers of Ethan and
2 Nolan, as well as the context in which the known harassment occurred.

3 158. The harassment of Ethan and Nolan is so severe, pervasive, and objectively
4 offensive that it can be said to deprive the victims of access to the educational opportunities or
5 benefits provided by the school", as evidenced by physical , psychological injuries that required
6 them both to be transferred to a different school in order to escape the bullying.
7

8 159. CCSD had actual knowledge of the sexual harassment endured by Ethan and
9 Nolan, as evidenced by the numerous complaints and contacts made to Defendants by Ethan and
10 Nolan's parents.

11 160. The harassment was "severe, pervasive, and objectively offensive."
12

13 161. As a whole, and/or as individual school administrators, Defendants responded to
14 the harassment with deliberate indifference, as they demonstrated "the conscious or reckless
15 disregard" of the consequences of their acts or omissions in the form of a failure to take the
16 necessary steps to end the bullying, and to adhere to the requirements of statute and of CCSD's
17 own policies.
18

19 162. An implied private right of action exists to enforce Title IX mandates, through
20 which a Plaintiff may obtain both injunctive relief and damages. *Cannon v. University of*
21 *Chicago*, 441 U.S. 677, 717 (1979); *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60,
22 76 (1992).
23

24 163. Punitive damages may be warranted for a Title XI violation. *Henkle v. Gregory*,
25 150 F.Supp.2 at 1078.

26 **CLAIM FOR RELIEF IV**
27 **VIOLATIONS OF STATE AND FEDERAL EQUAL PROTECTION GUARANTEES**
28 **42 U.S.C. § 1983**

1 164. All allegations set forth in this Complaint are hereby incorporated by reference.

2 165. N.R.S. Const. Art. 4, § 21 states that "...all laws shall be general and of uniform
3 operation throughout the State."

4 166. The standard for testing claims made under N.R.S. Const. Art. 4, § 21 is the same
5 as under the Equal Protection Clause of the Fourteenth Amendment to the United States
6 Constitution. *See, In re Candelaria*, 245 P.3d 518, 523 (2010).

7 167. Nevada looks to the federal equal protection clause for guidance on interpretation.
8
9 *Laakonen v. Eighth Judicial Dist. Ct.*, 538 P. 2d 574 (1975).

10 168. Under the federal interpretation, an equal protection violation occurs when
11 Defendants "act[] under color of state law, discriminate[] against [plaintiffs] as members of an
12 identifiable class and [] the discrimination was intentional." *See Flores v. Morgan Hill Unified*
13 *School Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2010) (students perceived as LGBT sued regarding
14 school's lack of response to complaints of harassment).

15 169. "Equal Protection allows different classifications of treatment, but the
16 classifications must be reasonable." *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502,
17 520, 217 P.3d 546, 558 (2009).

18 170. Members of an identifiable class based on sexual orientation are protected from
19 discrimination under the Equal Protection Clause. *Id.*

20 171. Ethan and Nolan were students at Greenspun Junior High School, who were
21 entitled to the same level of protection from bullying and harassment as all other children
22 attending school within the Clark County School District.
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1 172. Classifications on the basis of sexual orientation are subject to heightened
2 scrutiny under the Equal Protection Clause. *See, Latta v. Otter*, ___ F.3d ___, Nos. 14-35420,
3 14-35421, 12-17668, 2014 WL 4977682 at *4 (9th Cir. Oct. 7 2014).

4 173. The disparate treatment of Ethan and Nolan being bullied based on perceived
5 sexual orientation, and Defendants allowing the bullying in school to continue unabated, until
6 their parents finally removed them from the school, in order to insure their safety, resulted in
7 different treatment based on a suspect class.

9 174. The standard and requisite actions that a school personnel is mandated to take is
10 set forth in the District's policies concerning matters of bullying of students, as set forth above.

11 175. Such normal and mandated procedures were not followed in the case of Ethan and
12 Nolan.

13 176. When a Defendants treat complaints of harassment based on sexual orientation
14 differently than other complaints, for example by not following school district disciplinary anti-
15 harassment and anti-discrimination policies, plaintiffs can establish a violation of their rights
16 under the equal protection clause. *Flores*, 324 F.3d at 1134.

17 177. As an independent equal protection challenge, Plaintiffs observe that Defendants
18 displayed deliberate indifference, which means defendants were "clearly unreasonable" in their
19 response to peer harassment. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 649, 119 S.Ct.
20 1661, 143 L.Ed.2d 839 (1999) (Fifth grade student sued school board under Title IX for failure
21 to address peer sexual harassment).

22 178. Despite a complete and thorough record of notice, Defendants failed to follow-up
23 and investigate the incidents. They did not follow their own District policies, nor state law
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1 related to discrimination and harassment at public schools. They further prohibited Mrs. Bryan
2 from volunteering and monitoring the harassment herself.

3 179. Defendants were deliberately indifferent to the harm suffered by Plaintiffs, and
4 thus violated Ethan and Nolan rights. Defendants were aware of the continuing nature of the
5 bullying and harassment of Ethan and Nolan.

6 180. Yet Defendants did not physically separate Ethan and Nolan from their
7 tormentors, even though it would have been easy for Defendants to do.

8 181. Defendants also chose not to develop safety plans, but instead left withdrawal
9 from school as the only safe alternative.

10 182. Pursuant to 42 U.S.C. § 1983, a student may raise constitutional claims against a
11 school district, its governing board and superintendent, for an inadequate response to peer on
12 peer sexual harassment. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246 (2009). The
13 42 U.S.C. § 1983 claims are applicable to the federal claims.

14 183. Deliberate indifference is established when a state actor “disregarded a known or
15 obvious consequence of his action.” *Patel*, 648 F.3d at 974, quoting *Bryan Cnty. v. Brown*, 520
16 U.S. 397, 410, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997).

17 184. On numerous and documented occasions, Defendants were notified as to the
18 harassment and injuries endured by the Plaintiffs. By forcing Nolan and Ethan to sit next to their
19 harasser, and otherwise not developing a safety plan to ensure the safety of Plaintiffs, Defendants
20 were deliberately indifferent to the risk and knew the result would be further harassment and
21 physical harm.

22 185. Because of this disparate treatment, Defendants violated Plaintiffs’ rights to equal
23 protection under both Nevada and the United States Constitutions.

CLAIM FOR RELIEF V
VIOLATIONS OF UNITED STATES CONSTITUTION:
SUBSTANTIVE DUE PROCESS
42 USC § 1983

186. All allegations set forth in this Complaint are hereby incorporated by reference.

187. When a state actor engages in “affirmative conduct” that places a plaintiff in danger and acts with “deliberate indifference” to a “known and obvious danger,” the state actor has violated a plaintiff’s substantive due process right under the state created danger doctrine under the Fourteenth Amendment Due Process Clause of the U.S. Constitution. *Patel v. Kent School Dist.*, 648 F.3d 965, 974 (9th Cir. 2011).

188. Deliberate indifference is established when a state actor “disregarded a known or obvious consequence of his action.” *Patel*, 648 F.3d at 974, quoting *Bryan Cnty. v. Brown*, 520 U.S. 397, 410, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997).

189. On numerous and documented occasions, Defendants were notified as to the harassment and injuries endured by the Plaintiffs.

190. By forcing Nolan and Ethan to sit next to their harasser, and otherwise not developing a safety plan to ensure the safety of Plaintiffs, Defendants CCSD, Trustees, and Greenspun JHS were deliberately indifferent to the risk and knew the result would be further harassment and physical harm.

191. Further, by prohibiting Mrs. Bryan from volunteering, Defendants at Greenspun JHS were aware of the immediate danger and were indifferent to parental efforts to mitigate it.

192. Pursuant to 42 U.S.C. § 1983, a student may raise constitutional claims against a school district, its governing board and superintendent, for an inadequate response to peer on peer sexual harassment. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246 (2009).

1
2
3 **CERTIFICATE OF SERVICE**
4

5 I hereby certify that I served the foregoing Amended Complaint to the following, via
6 email and United States Mail, postage prepaid from Las Vegas, Nevada, on this 10th day of
7 October 2014.

8 Daniel Polsenberg, Esq.
9 Lewis Roca Rothgerber, LLP
10 3993 Howard Hughes Parkway, Suite 600
11 Las Vegas, NV 89169-5996
12

13 /s/ Allen Lichtenstein
14
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28

EXHIBIT 1

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT

STATEMENT REPORT

DR# 1202-0107

FOR OFFICIAL POLICE USE ONLY

VICTIM

WITNESS

SUSPECT — If checked, Warning & Waiver below must be completed

Ident: (Number & Street)

City

State

Zip Code

Henderson

Henderson

NV

Last / First / Middle

van, Ethan Garrett

Date of Birth

Social Security #

Race

Sex

Ht.

Wt.

Hair

Eyes

Business/School Name

10/1/99

W

M

Blue

Henderson

Residence Address: (Num)

Bldg/Apt. #

City

State

Code

Res. Phone:

5

Business/School Address: (Num)

City

State

Code

Res. Phone:

Occupation:

CCSD Employee

Student

WARNING: BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS

I am,

of the Clark County School District Police Department and inform you that:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to speak to any attorney and have her present with you while you are being questioned.
4. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you wish one.

5. Anything you say can and will be used against you in Juvenile Court.
6. If you are 15 years of age or older and accused of a felony, you may be certified as an adult and tried in Adult Criminal Court. Any statement you make can and will be used against you in Adult Court.

WAIVER: 1. I understand each of these rights as explained to me.
2. Having these rights in mind, I wish to make a statement to you now.

(FOR JUVENILES, ALSO USE THE FOLLOWING JUVENILE MIRANDA PLUS)

5. You have the right to have your parent or guardian present during questioning.

Signature

1. In the month of September my friend Nolan was stabbed in his genitals.
2. I was frightened so I went home and told my mom and then she notified the school to assist, the school moved Nolan to a different spot in the room. The boy who stabbed Nolan (with a pencil) in his genitals is named [redacted]. After Nolan was moved, [redacted] figured that someone had told on him, since I was the closest one to [redacted] so he might have figured it was me. Soon after the incident [redacted] came to me with his trombone, took off the rubber part of the bottom of the trombone & underneath that there was a sharp round piece of metal and stabbed my legs several times.
3. [redacted] I told the dean about all this but nothing happened except that they moved me to a different seat which made me more of a target. After the incident [redacted] would follow me & Nolan around calling us gay and he would call me fat often. The trouble never stopped so my parents eventually moved me to a different school. I told my parents I wanted to move schools because I was afraid of [redacted].

Statement Taken

Location of Statement: (Number & Street)

City

State

Zip Code

Month

Day

Year

Time 24 HR.

[redacted]

HND

NV

[redacted]

02

06

12

2245

I have read this statement consisting of 1 page(s), and I affirm to the truth and accuracy of the facts contained herein. I understand that knowingly making false statements may subject me to appropriate criminal action as provided by law.

Signature of Person Giving Voluntary Statement

WITNESS:

(School Police Officer Only)

TITLE:

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT
CRIME REPORT

CCSD Form 100-100 1202-01070

Specific Crime: **Battery (NRS 200.481)**

Location of Crime (Location Number & Street): **Greenspun M.S. 140 N Valle Verde Dr.**

City: **Henderson** State: **NV** Zip Code: **89014**

Occurred On: **09** Month: **Unk** Year: **2012** Day: **Unk** Time: **0000** Report Taken: **02** Month: **08** Day: **2012** Day of Week: **Wednesday** Page: **509** Reporter: **Dave Wykry**

Between: **02** Month: **02** Year: **2012** Day: **Thursday** Year: **1943** Connecting Reports: **163** Officers report, Supplemental report, Statements (x3)

Was there a witness? ☒ Yes ☐ No ☐ Unk Can suspect be named? ☒ Yes ☐ No ☐ Unk Can suspect be located? ☒ Yes ☐ No ☐ Unk Can suspect be described? ☒ Yes ☐ No ☐ Unk Can suspect be identified? ☒ Yes ☐ No ☐ Unk

Can suspect be described? ☒ Yes ☐ No ☐ Unk Can suspect be identified? ☒ Yes ☐ No ☐ Unk

Can suspect be described? ☒ Yes ☐ No ☐ Unk Can suspect be identified? ☒ Yes ☐ No ☐ Unk

PERSON CODES: V = VICTIM W = WITNESS PR = PERSON REPORTING S = SUSPECT (ALWAYS LIST VICTIM(S) FIRST)

Para # **1** Code **V** Name (Last / First / Middle) OR Business Name: **Greenspun M.S.**

Date of Birth: **Unk** Sex: **Unk** Race: **Unk** Height: **Unk** Weight: **Unk** Hair: **Unk** Eyes: **Blue** Business/School Name: **Greenspun M.S.**

Residence Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89014**

Business/School Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89074**

Para # **2** Code **V** Name (Last / First / Middle) OR Business Name: **Greenspun M.S.**

Date of Birth: **Unk** Sex: **Unk** Race: **Unk** Height: **Unk** Weight: **Unk** Hair: **Unk** Eyes: **Unk** Business/School Name: **Greenspun M.S.**

Residence Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89014**

Business/School Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89074**

Para # **3** Code **V** Name (Last / First / Middle) OR Business Name: **Hairr, Nolan M.**

Date of Birth: **07/12/2000** Sex: **M** Race: **Unk** Height: **Unk** Weight: **Unk** Hair: **Blond** Eyes: **Green** Business/School Name: **Former Greenspun M.S.**

Residence Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89014**

Business/School Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89074**

Para # **4** Code **S** Name (Last / First / Middle) OR Business Name: **Greenspun M.S.**

Date of Birth: **Unk** Sex: **Unk** Race: **Unk** Height: **Unk** Weight: **Unk** Hair: **Unk** Eyes: **Unk** Business/School Name: **Greenspun M.S.**

Residence Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89014**

Business/School Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89074**

Para # **5** Code **S** Name (Last / First / Middle) OR Business Name: **Greenspun M.S.**

Date of Birth: **Unk** Sex: **Unk** Race: **Unk** Height: **Unk** Weight: **Unk** Hair: **Unk** Eyes: **Unk** Business/School Name: **Greenspun M.S.**

Residence Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89014**

Business/School Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89074**

Para # **6** Code **S** Name (Last / First / Middle) OR Business Name: **Greenspun M.S.**

Date of Birth: **Unk** Sex: **Unk** Race: **Unk** Height: **Unk** Weight: **Unk** Hair: **Unk** Eyes: **Unk** Business/School Name: **Greenspun M.S.**

Residence Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89014**

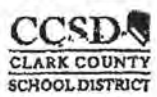
Business/School Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89074**

Para # **7** Code **S** Name (Last / First / Middle) OR Business Name: **Greenspun M.S.**

Date of Birth: **Unk** Sex: **Unk** Race: **Unk** Height: **Unk** Weight: **Unk** Hair: **Unk** Eyes: **Unk** Business/School Name: **Greenspun M.S.**

Residence Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89014**

Business/School Address (Number & Street): **140 N. Valle Verde Dr.** City: **Henderson** State: **NV** Zip Code: **89074**



STATEMENT REPORT

DR# 1202-01070

FOR OFFICIAL POLICE USE ONLY

CHECK ONE: ☐ VICTIM ☐ WITNESS ☐ SUSPECT — If checked, Warning & Waiver below must be completed

Location of Incident: (Number & Street) <u>[REDACTED]</u>						City <u>Henderson</u>	State <u>NV</u>	Zip Code <u>89014</u>
Name (Last / First / Middle) <u>Holman, Michael</u>								
Date of Birth <u>7-12-00</u>	Social Security # <u>[REDACTED]</u>	Race <u>White</u>	Sex <u>M</u>	Ht. <u>[REDACTED]</u>	Wt. <u>[REDACTED]</u>	Hair <u>Blond</u>	Eyes <u>Green</u>	Business/School Name <u>Greenspun</u>
Residence Address: (Number & Street) <u>Five</u>		Bldg./Apt.# <u>[REDACTED]</u>	City <u>Henderson</u>		State <u>NV</u>	Zip Code <u>[REDACTED]</u>	Home Phone: <u>[REDACTED]</u> Bus. Phone: <u>[REDACTED]</u> Occupation: <input type="checkbox"/> CCSD Employee <input checked="" type="checkbox"/> Student	

WARNING: BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS

I am _____ of the Clark County School District Police Department and inform you that:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to speak to any attorney and have him/her present with you while you are being questioned.
4. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you wish one.
5. (FOR JUVENILES, ALSO USE THE FOLLOWING JUVENILE MIRANDA PLUS) You have the right to have your parent or guardian present during questioning.
6. Anything you say can and will be used against you in Juvenile Court.
7. (If 16 years or older and accused of a felony) you may be certified as an adult and tried in Adult Criminal Court. Any statement you make can and will be used against you in Adult Court.

WAIVER: 1. I understand each of these rights as explained to me.
2. Having these rights in mind, I wish to make a statement to you now.

Signature _____

- 1. Poking/Tapping with finger and trombone
- 2. Hair pulling and touching
- 3. Stabed with pencil ~~in~~ in genitals
- 4. Name calling
- 5. Harassing
- 6. Teasing
- 7. [REDACTED]
- 8. [REDACTED]
- 9. [REDACTED]
- 10. [REDACTED]
- 11. [REDACTED]
- 12. [REDACTED]
- 13. [REDACTED]
- 14. [REDACTED]
- 15. [REDACTED]
- 16. [REDACTED]
- 17. [REDACTED]
- 18. [REDACTED]
- 19. [REDACTED]

COPY

Statement Taken	Location of Statement: (Number & Street) <u>[REDACTED]</u>	City <u>HND</u>	State <u>NV</u>	Zip Code <u>[REDACTED]</u>	Month <u>02</u>	Day <u>06</u>	Year <u>12</u>	Time 24 HR. <u>2230</u>
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I have read this statement consisting of 1 page(s), and I affirm to the truth and accuracy of the facts contained herein. I understand that knowingly making false statements may subject me to appropriate criminal action as provided by law.

Signature of Person Giving Voluntary Statement: Nolan Holman
WITNESS: L. Dove #277 TITLE: P.O.
(School Police Officer Only)

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT
CRIME REPORT - NARRATIVE

Page

2 2

DR#

1202-01070

Narrative:

On 02/02/2012 at or about 1943 Hrs a suspicious incident was reported to police by a concerned parent at Greenspun M.S., regarding student grabbing at other students. The incident occurred in Sept of 2011. The parent of the alleged victim reported the situation to school administration however they did not report the incident to police. Mrs. Hairr did not wish to have a crime report filed in this matter until she had talked to her husband. SEE OFFICERS REPORT WITH SAME DR# 1202-01070.

Due to new information that has come to light, this incident has now become a criminal investigation with the following having been recently reported.

On 02/06/2012 at or about 2230 Hrs, Officer Dove P# 277 and Officer Markiewicz P# 530 responded to McDaniel E.S. and were contacted by three students from Greenspun M.S. and their parents. All three students (Victims) (Bryan, and Hairr) told responding officers that they had been bullied and or battered by another student named Suspect s is a Greenspun student. All three victims completed statement and alleged that the suspect in this case poked/jabbed at them, pulled hair, harassed and teased them as well as stabbed them with a pencil in their genitals. All victims indicated that this activity of bullying has been occurring from the middle part of September 2011. SEE SUPPLEMENTAL REPORT BY OFFICER DOVE AND STATEMENTS.

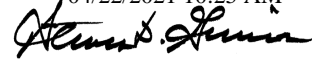
Based on the statements provided by the victims in this case, further investigation is warranted. Due to the length of time in reporting this incident no surveillance cameras were reviewed at the school. The suspect in this case has not yet been interviewed. Note: Per the parent of victim Hairr, her primary concern before filing a police report was that the staff at Greenspun M.S. would not tell her what actions they were taking regarding the juvenile suspect in this case. Based on all evidence provided this report is to be forwarded to CCSD Police Detective unit for follow-up investigation and possible charging of the alleged suspect. End of report.

NARRATIVE



COPY

EXHIBIT G TO
DOCKETING
STATEMENT


CLERK OF THE COURT

1 **SAO**

DANIEL F. POLSENBERG (SBN 2376)

2 DAN R. WAITE (SBN 4078)

BRIAN D. BLAKLEY (SBN 13074)

3 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Pkwy, Suite 600

4 Las Vegas, NV 89169-5996

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5 Fax: 702.949.8398

DPolsenberg@lrrc.com

6 DWaite@lrrc.com

BBlakley@lrrc.com

7 *Attorneys for CCSD*

8 DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No.: A-14-700018-C

11 Plaintiffs,

Dept. No.: 27

12 vs.

13 CLARK COUNTY SCHOOL DISTRICT
14 (CCSD)

Defendant.

**STIPULATION AND ORDER TO
SUBSTITUTE PARTIES**

15
16 **STIPULATION**

17 Plaintiffs Mary Bryan, mother of Ethan Bryan, and Aimee Hairr, mother of Nolan Hairr,
18 and Defendant Clark County School District (CCSD) hereby stipulate as follows:

19 1. Ethan Bryan and Nolan Hairr are no longer minor children, and they are the real
20 parties/plaintiffs in interest in this action.

21 2. Pursuant to NRCP 17, and subject to this Court's approval, they shall be substituted in—in
22 place of their mothers—as the plaintiffs in this action.
23
24
25
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3. The caption in this action shall be amended to reflect that Ethan Bryan and Nolan Hairr are the plaintiffs in this action.

SO STIPULATED:

Dated this 21st day of March, 2021.

Dated this 21st day of March, 2021.

ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /S/ Allen Lichtenstein

By: /s/ Brian D. Blakley

ALLEN LICHTENSTEIN (SBN 3992)
3315 Russell Road, No. 222
Las Vegas, Nevada 89120
Attorney for Plaintiffs

DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
BRIAN D. BLAKLEY (SBN 13074)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169

Attorneys for Defendant CCSD

JOHN HOUSTON SCOTT
SCOTT LAW FIRM
1388 Sutter Street, Suite 715
San Francisco, CA 94109
(Admitted Pro Hac Vice)
Attorney for Plaintiffs

PLAINTIFFS ETHAN BRYAN AND NOLAN HAIRR:



ETHAN BRYAN



NOLAN HAIRR

ORDER

Based upon the foregoing stipulation and good cause, it is:

HEREBY ORDERED THAT Ethan Bryan and Nolan Hairr, who are no longer minors, are the real parties/plaintiffs in interest in this action, and they shall be substituted—in place of their mothers—as the plaintiffs in this action.

IT IS FURTHER ORDERED THAT the clerk of this Court shall amend the caption on this court's docket to substantially conform to the following:

ETHAN BRYAN AND NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD),

Defendant.

Case No.: A-14-700018-C

Dept. No.: XXVII

IT IS SO ORDERED.

April 22, 2021

Dated this 22nd day of April, 2021

Nancy L Allf

NB

**F3A DB2 4432 0C01
Nancy Allf
District Court Judge**

Respectfully Submitted By:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By:

[Signature]

Daniel F. Polsenberg (SBN 2376)
Dan R. Waite (SBN 4078)
BRIAN D. BLAKLEY (SBN 13074)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Attorneys for Defendants

From: allaw@lvcoxmail.com
Sent: Thursday, April 22, 2021 8:42 AM
To: Waite, Dan R.; Blakley, Brian
Cc: Jaramillo, Annette; Helm, Jessica; Horvath, Luz; Polsenberg, Daniel F.
Subject: Re: Bryan/Hairr – FFCL and Stip to substitute parties

[EXTERNAL]

You have permission to file

On Apr 21, 2021, at 5:04 PM, Blakley, Brian <BBlakley@lewisroca.com> wrote:

Thanks, Allen. I'll get this submitted. Just to confirm, do I have your permission to insert today's date above your signature?

Best,

Brian

Brian D. Blakley, Esq.

<image001.png>

bblakley@lewisroca.com
Direct: 702.474.2687

3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Mary Bryan, Plaintiff(s)

CASE NO: A-14-700018-C

7 vs.

DEPT. NO. Department 27

8 Clark County School District, et
9 al, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/22/2021

15 Allen Lichtenstein .

allaw@lvcoxmail.com

16 Annette Jaramillo .

ajaramillo@lrrc.com

17 Brian D. Blakley .

bblakley@lrrc.com

18 Dan R. Waite .

DWaite@lrrc.com

19 Dana Provost .

dprovost@lrrc.com

20 Eva Martinez .

emartinez1@interact.ccsd.net

21 Jessie Helm .

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22 Luz Horvath .

LHorvath@lrrc.com

23 Maria Makarova .

mmakarova@lrrc.com

24 Matt Park .

mpark@lrrc.com

25 Phillip Lewis .

plewis@lrrc.com

26
27
28

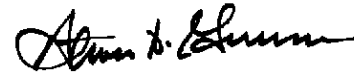
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John Scott
John Scott

john@scottlawfirm.net
john@scottlawfirm.net

EXHIBIT H TO
DOCKETING
STATEMENT

1 ORDR



CLERK OF THE COURT

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.

29 **DECISION AND ORDER GRANTING IN PART AND DENYING IN PART**
30 **DEFENDANTS' MOTION TO DISMISS AND DENYING PLAINTIFFS'**
31 **COUNTERMOTION TO STRIKE**

32 These matters having come on for hearing before Judge Allf on the 29th day of
33 January, 2015; Allen Lichtenstein, Esq. appearing for and on behalf of Plaintiffs Mary
34 Bryan and Aimee Hairr, (hereinafter "Plaintiffs"); Daniel Polsenberg, Esq., Dan Waite,
35 Esq., and Carlos McDade, Esq. appearing for and on behalf of Defendants Clark County
36 School District (CCSD), Warren P. McKay, Leonard DePiazza, Cheryl Winn, John
37 Halpin and Robert Beasley (hereinafter "Defendants"); and the Court having heard
38 arguments of counsel, and being fully advised in the premises:

1 **COURT FINDS** after review Nevada is a notice pleading jurisdiction, and “[t]he
2 test for determining whether the allegations of a cause of action are sufficient to assert a
3 claim for relief is whether the allegations give fair notice of the nature of the basis of the
4 claim and the relief requested.” Ravera v. City of Reno, 100 Nev. 68,70, 675 P.2d 407,
5 408 (1984). When considering a Motion to Dismiss under NRCP 12(b)(5), the Court
6 should not test the quality of the facts, only determine whether a relief can be pled.
7 Dismissal is only appropriate when “it appears beyond a doubt that [the plaintiffs] could
8 prove no set of facts, which, if true, would entitle [the plaintiffs] to relief.” Buzz Stew,
9 LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

11 **COURT FURTHER FINDS** after review discretionary immunity limits tort
12 liability against political subdivisions and their officers, so long as the alleged torts arise
13 within the scope of a person’s public duties. NRS 41.0337. This covers both actions and
14 inaction by individuals. NRS 41.032. To determine whether discretionary immunity
15 applies to a particular set of facts, the court must look first to whether the decision
16 involved an element of individual judgment or choice and then whether the decision was
17 based on consideration of social, economic, or political policy. Martinez v. Maruszczak,
18 123 Nev. 433, 446-47, 168 P.3d 720, 729 (2007). Here, the Defendants’ actions involved
19 an element of individual judgment when they chose how to respond to information
20 provided to them by Plaintiffs; they had discretion, within the policies and procedures of
21 CCSD to act, or choose not to act. These actions were governed by considerations
22 relating to the management of the school, and balancing of the needs of the entire student
23 population. As such, the First Cause of Action, Negligence, and the Second Cause of
24 Action, Negligence Per Se, are covered under the Martinez standard for discretionary
25 immunity and must be dismissed.
26
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COURT FURTHER FINDS after review of the pleadings that Plaintiffs have pled sufficient facts so that it is legally possible to put Defendants on notice of discrimination based on perceived sexual orientation. Under the Buzz Stew standard, the Third and Fourth causes of action are sufficiently pled to state a cause of action.

COURT FURTHER FINDS after review that the court previously decided on August 21, 2014, the Plaintiffs have pled sufficient facts to support the fifth cause of action.

COURT ORDERS for good cause appearing and after review the Motion to Dismiss as to the First and Second causes of actions is GRANTED because the acts or failure to act were covered by discretionary immunity.

COURT FURTHER ORDERS for good cause appearing and after review the Motion to Dismiss as to the Third and Fourth causes of action is **DENIED**.

COURT FURTHER ORDERS for good cause appearing and after review of the additional arguments set forth by Defendants, the Motion to Dismiss the Fifth cause of action is **DENIED** because the court had already determined the Fifth cause of action was sufficiently pled.

COURT FURTHER ORDERS for good cause appearing and after review the Countermotion to Strike is **DENIED** without prejudice.

Dated: February 5, 2015


Nancy L Allf
NANCY ALLF
DISTRICT COURT JUDGE

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
7 substituted for the date and place of deposit in the mail and by Fax transmission to:

8 Lewis Roca Rothergerber LLP - Daniel Polsenberg, Esq. - dpolsenberg@lrllaw.com
9 FAX: 702-949-8398

10 Allen Lichtenstein, Esq. - allaw@lvcoxmail.com
11 FAX: 702-433-2666

12 
13 Karen Lawrence
14 Judicial Executive Assistant
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TRANSMISSION VERIFICATION REPORT

TIME : 02/06/2015 16:19
NAME : DC 27
FAX : 7023661404
TEL : 7026713629
SER. # : U63274E4J696965

DATE, TIME	02/06 16:18
FAX NO. / NAME	7029498398
DURATION	00:00:44
PAGE(S)	05
RESULT	OK
MODE	STANDARD
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FACSIMILE COVER SHEET

TO: Daniel Polsenberg, Esq. FAX: 702-949-8398

Allen Lichtenstein, Esq. FAX: 702-433-2666

FROM: DEPARTMENT 27

DATE: February 6, 2015

PAGES: (Including cover page: 5

TRANSMISSION VERIFICATION REPORT

TIME : 02/06/2015 16:23
NAME : DC 27
FAX : 7023661404
TEL : 7026713629
SER.# : U63274E4J696965

DATE, TIME	02/06 16:22
FAX NO./NAME	7024339591
DURATION	00:01:15
PAGE(S)	05
RESULT	OK
MODE	STANDARD
	ECM

FACSIMILE COVER SHEET

TO: Daniel Polsenberg, Esq. FAX: 702-949-8398

Allen Lichtenstein, Esq. FAX: 702-433-2666

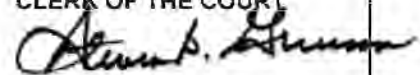
959 /

FROM: DEPARTMENT 27

DATE: February 6, 2015

PAGES: (Including cover page: 5

EXHIBIT I TO
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STATEMENT



1 Allen Lichtenstein (NV State Bar No. 3992)
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4 Las Vegas, NV 89120
5 Tel: 702.433-2666
6 Fax: 702.433-9591
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8 John Houston Scott (CA Bar No. 72578)
9 Admitted Pro Hac Vice
10 SCOTT LAW FIRM
11 1388 Sutter Street, Suite 715
12 San Francisco, CA 94109
13 Tel: 415.561-9601
14 john@scottlawfirm.net

15 *Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,*
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

Allen Lichtenstein
Nevada Bar No. 3992
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*Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,
Aimee Hairr and Nolan Hairr*

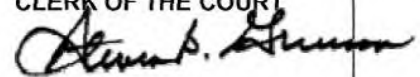
CERTIFICATE OF SERVICE

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

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
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 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 N/A} ~~six~~ hundred thousand dollars ^{\$200,000 w/ N/A} (\$600,000) for
25 physical and emotional distress damages and costs for alternative schooling. These awards are
26 exclusive of any costs or attorneys fees accrued.
27
28

1 Dated this 20 day of July 2007


NANCY L. ALLF
District Court Judge

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3 Respectfully submitted by:

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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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