

Case No. 83557

In the Supreme Court of Nevada

CLARK COUNTY SCHOOL DISTRICT,
Appellant,

vs.

ETHAN BRYAN; and NOLAN HAIRR,
Respondents.

Electronically Filed
Jun 02 2022 01:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable NANCY ALLF, District Judge
District Court Case No. A-14-700018-C

**APPELLANT'S APPENDIX
VOLUME 1
PAGES 1-250**

DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
BRIAN D. BLAKLEY (SBN 13,074)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellant

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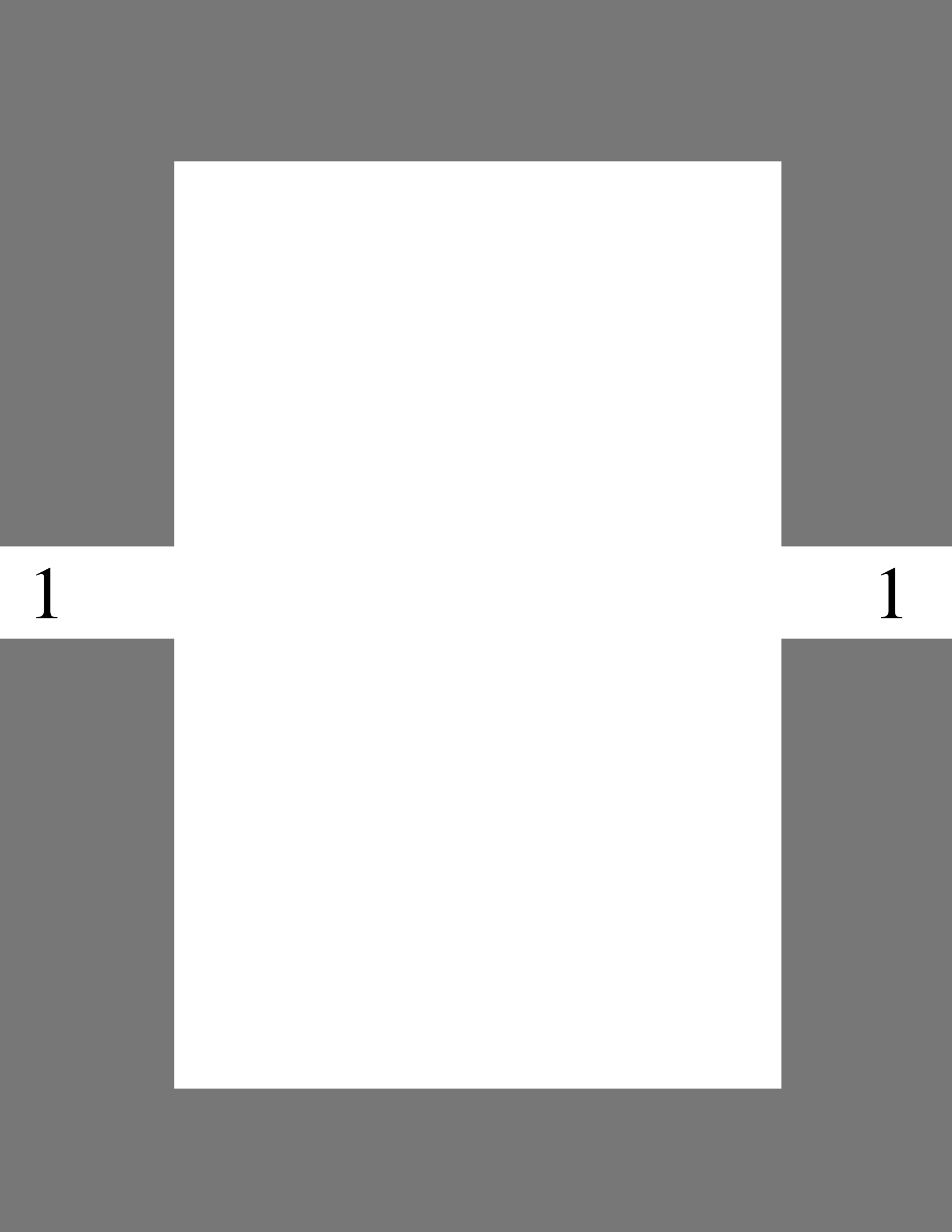
CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2022, I submitted the foregoing “Appellant’s Appendix” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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

Attorneys for Respondent

/s/ Cynthia Kelley
An Employee of Lewis Roca Rothgerber Christie LLP



1

1

CIVIL COVER SHEET

Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information

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

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

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

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

Attorney (name/address/phone): Unknown

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

☐ **Arbitration Requested**

Civil Cases

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

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

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

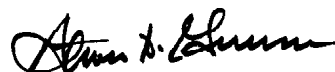
- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input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

4/29/14
Date

Allen L. Shaw
Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
04/29/2014 11:30:05 AM



CLERK OF THE COURT

COMP

Amanda Morgan, Esq.
Nevada Bar No. 13200
morgan@aclunv.org

Staci Pratt, Esq.
Nevada Bar No. 12630
pratt@aclunv.org

Allen Lichtenstein, Esq.
Nevada Bar No. 3992
allenaclunv@lvcoxmail.com

American Civil Liberties Union of Nevada
601 S. Rancho Drive, Suite B-11
Las Vegas, NV 89106
Telephone (702) 366-1536
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

Case No.: A-14-700018-C

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

**JURY TRIAL DEMANDED
EXEMPT FROM ARBITRATION**

DEPT - XXVII

1 as counselor at GJHS; Robert Beasley, in his
2 individual and official capacity as instructor at
3 GJHS; NEVADA EQUAL RIGHTS
4 COMMISSION (NERC); Kara Jenkins in her
5 individual and official capacity as Commission
6 Administrator of NERC; Dennis Perea, in his
7 official capacity as Deputy Director of the
8 NEVADA DEPARTMENT OF
9 EMPLOYMENT, TRAINING, AND
10 REHABILITATION (DETR).

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

22 Plaintiffs also seek damages under 42 U.S.C. § 1983 for harm suffered as a result of
23 CCSD Defendant's failure to maintain and follow a policy that prevents harassment and
24 discrimination. Plaintiffs maintain claims for violation of Plaintiffs' rights under the equal
25 protection clauses of the Nevada Constitution, Article 4, § 21, and the Fourteenth Amendment of
26 the United States Constitution; for discrimination based on perceived sexual orientation as
27 prohibited by N.R.S. § 651.070; the U.S. Constitution's Substantive Due Process Clause of the
28

1 Fourteenth Amendment; sex discrimination under Title IX; for negligence; as well as for denying
2 Plaintiffs a safe and respectful learning environment free from harassment and discrimination.

3
4 In addition, Plaintiffs seek declaratory and injunctive relief ordering NERC, Commission
5 Administrator Jenkins, and DETR Deputy Director Perea (hereinafter NERC Defendants) to
6 speedily and effectively investigate and issue a final decision on Plaintiffs' complaints and to
7 adopt, implement, and ensure compliance with policy and practices for addressing public school
8 complaints. Plaintiffs seek damages for the prejudice suffered due to NERC Defendants'
9 unreasonable delay amounting to a dismissal or denial of Plaintiffs complaints. NERC's
10 behavior is arbitrary and capricious in violation of N.R.S. § 233B.135(3),(a)-(f), and fails to
11 comply with NERC's statutory obligation to "protect the welfare, prosperity, health and peace of
12 all the people of the State, and to foster the right of all persons to seek and be granted the
13 services in places of public accommodation without discrimination, distinction, or restriction
14 because of [perceived] sexual orientation..." N.R.S. § 233.010(2) (2011).
15
16

17
18 **STATEMENT OF THE CASE**

19
20 1. As alleged in greater particularity below, Plaintiffs assert that CCSD failed to ensure a
21 safe and respectful learning environment, free from discrimination, harassment, and violence, for
22 Ethan Bryan and Nolan Hairr, two 13-year-old students attending Greenspun JHS. Despite
23 numerous attempts by Plaintiffs to contact and request the CCSD Defendants to end the
24 persistent sexual and physical assaults, harassment, and discrimination based on perceived sexual
25 orientation, to develop a safety plan to ensure students could benefit from the "full and equal
26 enjoyment of the goods, services, facilities, privileges, advantages, and accommodations" of
27 their public school, (See N.R.S. § 651.110), they did not do so.
28

2. During a nearly six month period, Ethan and Nolan endured severe and pervasive discriminatory name-calling, such as “faggot,” “fucking faggot,” “fucking fat faggot,” “gay wad,” “gay,” “gay boyfriend,” “a big fat ass,” “dumbass,” and “tattle-tale,” a stabbing in the genitals, and such alienation that one boy planned suicide to escape the suffering. Plaintiffs further allege violations by NERC Defendants of the Administrative Procedure Act (APA). NERC has failed in its obligation to address discrimination based on perceived sexual orientation in places of public accommodation, which includes public schools. N.R.S. § 651.110. NERC’s failure to act within nearly a two-year time period amounts to an unreasonable delay – which can only be characterized a final decision which is “arbitrary or capricious or characterized as an abuse of discretion.” N.R.S. § 233B.135(f). NERC has failed to complete an investigation, respond to requests for information, or even supply a timeline for an anticipated completion of the case. As a result, Plaintiffs have no assurance that the discrimination they faced at Greenspun JHS and CCSD have been or will ever be remedied.

JURISDICTIONAL STATEMENT

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

PARTIES

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

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

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

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

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

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

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

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

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

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

1 16. Defendant NERC is the Nevada agency tasked with addressing discrimination in
2 employment, housing, and public accommodations.

3 17. Defendant Kara Jenkins is the Commission Administrator of NERC, and is responsible
4 for overseeing the agency.

5
6 18. Defendant Dennis Perea, Deputy Director for the DETR, is responsible for executive
7 oversight of NERC.

8
9 **STATUTE OF LIMITATIONS AND TOLLING**

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

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

21
22 **FACTUAL BACKGROUND**

23
24 21. On August 27, 2011, Plaintiffs began the sixth grade at Greenspun Junior High School.

25 22. From August 27, 2011 until or about February 9, 2012, several Greenspun students
26 discriminated against and harassed both Plaintiffs based on their “perceived sexual orientation.”
27
28

1 calling students slurs such as “faggot,” “fucking faggot,” “fucking fat faggot,” “gay wad,” “gay,”
2 “gay boyfriend,” “a big fat ass,” “dumbass,” and “tattle-tale.”

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

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

7 25. From approximately late August to mid-September, Nolan was subjected to most of the
8 harassment and was assaulted several times, including unwanted touching, hair pulling,
9 elbowing, and pushing, by C.L. Nolan persistently asked his perpetrator to stop. C.L. refused to
10 stop, causing Nolan to be deeply troubled. Ethan was also verbally harassed during this time.
11

12 26. Defendant Instructor Beasley acknowledged the bullying, which occurred pervasively in
13 his band classroom, but would only request that C.L. and D.M stop. Nolan asked to be moved to
14 a seat away from his perpetrators, but Defendant Beasley refused to reseat him. It took three
15 months before Nolan was seated away from his perpetrators.
16

17 27. Despite a CCSD Policy requiring any employee who “witnesses, overhears, or receives a
18 report, formal or informal, written or oral, of bullying, cyberbullying, harassment, and/or
19 intimidation at school...” to report it to a principal or principal’s designee – no such report was
20 made.
21

22 28. On September 13, 2011, C.L. stabbed Nolan’s genitals with a pencil, which was
23 witnessed by Ethan. Nolan became increasingly terrified of C.L., and no longer wanted to
24 attend school. He was also afraid to report the event for fear of retaliation. He would ultimately
25 see a doctor for these injuries.
26
27
28

1 29. On or near September 15, 2011, Mrs. Bryan learned of the stabbing incident and the
2 pervasive bullying after overhearing Nolan and Ethan speak about it at her home. Mrs. Bryan
3 immediately reported the harassment and assault in an email to Defendants Principal McKay,
4 Counselor Halpin, and Teacher Beasley. She further identified C.L. and D.M. as the
5 perpetrators, and elaborated on the stabbing of Nolan's genitals and the pervasive harassment.
6 She also informed them of the incredible suffering being endured by Ethan and Nolan. She
7 asked that the school move perpetrators, so that Ethan and Nolan could "...learn properly and
8 have constructive school experiences." She urged the school to take swift action and for her
9 complaint to be taken seriously, and for the Nolan and Ethan to be moved to a different seat.
10

11 30. CCSD Policies describe bullying as "a deliberate or intentional behavior using words or
12 actions intended to cause fear, intimidation, or fear." CCSD, P-5137(II)(A). Further, CCSD's
13 policy specifically defines behavior motivated by distinguishable characteristics such as "sexual
14 orientation," as bullying. Id. The definition includes: physical acts, such as assaults, kicking, or
15 punching; "indirect acts," such as "spreading cruel rumors, intimidation through gestures, social
16 exclusion, or sending insulting messages or pictures...;" use of power imbalances, such as
17 physical or psychological dominance, or verbal threats such as "teasing and name calling,"
18 intimidation, punitive acts aimed at hurting or punishing a targeted individual, or repetitive,
19 systematic acts. CCSD, P-5137(II)(A)(1)-(6).
20

21 31. CCSD declares through its bullying policies that the district is "committed to providing a
22 safe, secure, and respectful learning environment for all students..." CCSD claims that it
23 "strives to consistently and vigorously address bullying, cyberbullying, harassment, and
24 intimidation so that there is no disruption to the learning environment and learning process."
25 CCSD, P-5137(I).
26
27
28

1 32. The school failed to respond to Mrs. Bryan. Nor did the school notify Mr. or Mrs. Hairr
2 of the pervasive bullying, harassment, and discrimination based on perceived sexual orientation
3 involving Nolan.

4 33. On September 16, 2011, Defendant Counselor Halpin met with Nolan to discuss the
5 ongoing harassment, discrimination, and assaults. Halpin offered no safety plan, and Nolan felt
6 Halpin simply “brush[ed]” off his complaints. Nolan did not feel safe going forward.
7

8 34. On September 19, 2011, Defendant Instructor Beasley moved Nolan’s seat. However,
9 instead of sitting next to C.L., Nolan was moved directly in front of C.L. C.L. continued to
10 harass and assault Nolan.

11 35. On September 21, 2011, Mrs. Bryan notified Mrs. Hairr of the bullying endured by Nolan
12 and Ethan. Mrs. Hairr learned for the first time that her son had been sexually assaulted, and had
13 endured other forms of harassment, discrimination, and assault. Nolan had been too ashamed to
14 report the incidents to her previously.
15

16
17 **Mrs. Hairr’s Contacts with Greenspun JHS Administrators**
18

19 36. The night of September 21, Mrs. Hairr spoke with Nolan regarding the ongoing
20 harassment, assaults, including the stabbing of his genitals, and discrimination based on his
21 perceived sexual orientation. Mrs. Hairr was grateful that Mrs. Bryan informed her of the
22 bullying, but was frustrated and perplexed as to why the school had failed to notify her of such
23 serious acts.
24

25 37. Mrs. Hairr called Greenspun JHS early the following morning to arrange a meeting
26 regarding the pervasive harassment, discrimination, and the stabbing of her son’s genitalia.
27
28

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

5 39. Mrs. Hairr called again to initiate her own complaint process, and was transferred to
6 Defendant Assistant Principal DePiazza. We offered no assistance to remedy the harassment,
7 discrimination, and assaults, and he provided no safety plan. He persistently emphasized that
8 Mrs. Hairr had "choices" in taking her son out of the school and enrolling him elsewhere. He
9 referred Mrs. Hairr to Defendant Dean Winn, and the tenor of the conversation left Mrs. Hairr
10 feeling helpless, in tears, and even more concerned for the safety of her son.
11

12 40. Later that day, Nolan and Mrs. Hairr met with Defendant Winn. Winn acknowledged
13 that Nolan was in fact a victim of "bullying" in the form of harassment, discrimination, and
14 physical assaults. Specifically, she was aware that Nolan had been stabbed in his genitals.
15 When discussing disciplinary action, Winn cited the "progressive disciplinary system," meaning
16 incidents would have to be documented, with disciplinary actions progressing gradually per each
17 incident.
18

19 41. Defendant Dean Winn did not provide any safety plan to ensure Nolan experienced a safe
20 and respectful learning environment, free of the harassment, assaults, and discrimination.
21

22 42. Mrs. Hairr did not feel comfortable with results of the conversation, but felt hopeful that
23 the school would take appropriate action now that the management-level staff at the school were
24 aware of her concerns. She did not file a police report at this time, assuming Greenspun JHS
25 would take the appropriate actions.
26
27
28

1 43. Shortly after the meeting, the harassment nearly ceased in the band class, but Nolan was
2 still pushed by C.L. as he would leave or return to the class, and called derogatory and
3 discriminatory names. The incidents continued elsewhere in the school. Nolan now reported all
4 incidents to his mother.

5 44. During approximately the last week of September, 2011, Mrs. Hairr continued to report
6 these instances of assaults, harassment, and discriminatory language to Defendant Halpin.
7

8 45. Shortly thereafter, Mrs. Hairr met with Defendants Counselor Halpin, Dean Wynn, and
9 Teacher Beasley. Defendants assured Mrs. Hairr that the "bullying" would cease. However, the
10 result was only a seating change in band class, which resulting in Ethan, the other known victim,
11 being placed close to C.L. while Nolan finally was seated further away.
12

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

15 47. The discrimination and harassment by C.L. and other students included, over the period
16 of several months, calling Plaintiffs a litany of homophobic and offensive slurs such as "faggot,"
17 "fucking faggot," "fucking fat faggot," "gay wad," "gay," "gay boyfriend," "a big fat ass,"
18 "dumbass," and "tattle-tale."
19

20 48. C.L. also accused the boys of "J.O. [jacking off] to each other," and that the boys would,
21 "Put stuff up each other's butts for pleasure."
22

23 49. In December, 2011, C.L. and his friends filmed Ethan while he ate during lunch hour,
24 calling Ethan names and filming his reaction. The perpetrators threatened to post the camera
25 phone video on Youtube.com. Ethan was deeply disturbed by the notion of the bullies
26 publicizing this humiliating taunting and harassment based on his perceived sexual orientation.
27
28

1 50. The incidents of harassment, discrimination, and assaults occurred during band class, in
2 hallways, the lunch room, and other areas of the school. Although Ethan was now the primary
3 target, Nolan was targeted too when he was present.

4 51. In December of 2011, Ethan and Nolan witnessed C.L. sexually assaulting another
5 student by groping the student's genitals in the hallway. Ethan and Nolan felt disturbed by the
6 pervasive culture of harassment and sexual assaults tolerated by the school.
7

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

9

10 52. Mrs. Bryan repeatedly e-mailed Greenspun administrators to ask for help addressing the
11 continued harassment of her son Ethan, but the school's response was tepid.
12

13 53. On October 18, 2011, C.L, still sitting next to Ethan, repeatedly hit Ethan in the legs with
14 a piece of his trombone while calling him "big fat ass." Mrs. Bryan informed the staff that the
15 physical and verbal assaults were affecting her son and had to stop.
16

17 54. On October 19, 2011, Mrs. Bryan attempted again to end the bullying by emailing
18 Defendants Principal McKay, Counselor Halpin, and other CCSD officials regarding the ongoing
19 bullying, harassment and assaults. She informed CCSD Defendants of the assault using the
20 trombone, and also that the name-calling has persisted. Mrs. Bryan sought confirmation that her
21 complaints were being addressed.
22

23 55. The next day, on October 20, 2011, Mrs. Bryan called the school and met with Defendant
24 Dean Winn face-to-face for the first time (after nearly two months of harassment had already
25 taken place): when Dean Winn left Mrs. Bryan with no satisfactory safety plan to prevent the
26 harassment, assaults, and discrimination based on perceived sexual orientation, Mrs. Bryan
27
28

1 ultimately asked to volunteer as a monitor to the students, for which Defendant Dean Winn
2 accepted.

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

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

9 58. A couple of days after this incident, Mrs. Bryan brought the harassment to the attention
10 of Defendant Dean Winn during an informal meeting. Mrs. Bryan summarized this and several
11 other incidents of harassment suffered by Ethan and Nolan. Mrs. Bryan explicitly asked
12 Defendant Dean Winn why the harassing students C.L. and D.M were not expelled from
13 Greenspun. Defendant Winn responded that she needed to keep documenting things so that those
14 students' discipline could progress under Greenspun's progressive disciplinary system.
15 Ultimately, Mrs. Bryan was concerned with the lack of a safety plan for Ethan, Nolan, and
16 others.
17

18 59. By January 11, 2012, Ethan had a final breakdown brought upon by the continuous
19 discrimination and harassment he had endured. Ethan had recurring nightmares and needed to
20 sleep with a night-light. Ethan admitted that he felt terrible and depressed, and revealed that he
21 had planned his suicide.
22

23 60. On or before February 7, 2012, Mrs. Bryan filed a formal complaint with the CCSD
24 Board of School Trustees regarding Greenspun's lack of effective response in addressing the
25
26
27
28

1 harassment, assaults, and discrimination based on perceived sexual orientation. Towards Ethan
2 and Nolan.

3 61. In retaliation, the next day Defendant Assistant Principal DePiazza physically ejected
4 Mrs. Bryan off of the campus when she arrived to assume her volunteer duties for the day and
5 told her she was not welcome there. The incident left Mrs. Bryan anxious, humiliated, ill, and no
6 longer with the ability to monitor the discrimination and harassment suffered by students at the
7 school.
8

9 62. Mrs. Bryan contacted Defendant Long, Academic Manager for Clark County School
10 District, who assured her that something would be done to address the lack of a safety plan. Mrs.
11 Bryan was given no indication that Mr. Long followed through with any action.
12

13 63. On February 9, 2012, Defendant Principal McKay called Mr. and Mrs. Bryan and left a
14 voicemail message requesting a meeting. This was the Defendant Principal McKay's first
15 attempt in contacting the Bryans since September when he was notified about Ethan and Nolan's
16 harassment. Defendant Principal McKay stated he thought the harassment had ended in October,
17 despite the persistent contact by Mrs. Bryan and Mrs. Hairr. Defendant McKay never followed
18 up with Ethan or the Bryans regarding Ethan's safety from October 2011 until February 2012.
19

20 64. CCSD Defendants consistently failed to remedy the pervasive perceived sexual
21 orientation discrimination, harassment, and physical and psychological pain Ethan and Nolan
22 suffered. Plaintiffs were depressed and no longer wanted to attend school. Their educational
23 outcomes began to suffer as a result.
24

25 65. The lack of a response that permeated Greenspun's administration and continued with the
26 no help from CCSD was a blatant disregard and violation of Nolan and Ethan's rights as students
27 in their school district.
28

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

3 67. By February, Mrs. Bryan had also removed her son, Ethan, from Greenspun JHS.
4

5 **Contacts with CCSD Police**

6
7 68. Near the end of January, 2012, Mrs. Hairr attempted to file a police report with CCSD
8 Police related to the pervasive harassment, assaults, and discrimination based on perceived
9 sexual orientation. Officers never showed up to their scheduled appointment with Mrs. Hairr.
10 CCSD Police followed up with a phone call discouraging Mrs. Hairr from filing a formal report.
11

12 69. On February 7, 2012, due to the numerous complaints of Mrs. Hairr and Mrs. Bryan,
13 Defendants Trustee Young and Academic Manager Long met with the Hairrs and Bryans
14 regarding the incidents. Long did not provide the Plaintiffs with the assurance of a safety plan or
15 a plan to end the pervasive discrimination, and otherwise provided no assistance to the families.
16 Long explained that Mrs. Hairr or Mrs. Bryan could still volunteer if they needed.
17

18 70. After this meeting, CCSD Defendants never followed up with Plaintiffs or offered any
19 support. When Plaintiffs attempted to reach Defendant Academic Manager Andre Long, they
20 were told he could no longer assist them.

21 71. On February 9, 2012, Mrs. Bryan, Mrs. Hairr, Ethan, Nolan, along with another victim
22 and mother, met with CCSD Police Officer Gervasi, to file a Crime Report. The officer
23 discouraged filing the report, but Plaintiffs insisted and filed a report detailing the incidents that
24 had occurred against Nolan and Ethan. CCSD Police indicated that the incidents were now part
25 of a criminal investigation and "further investigation is warranted."
26
27
28

1 72. The Crime Report detailed the bullying and discriminatory conduct and language. [See
2 Exhibit 1]. Plaintiffs detailed the sexual assault, harassment, inappropriate touching, and other
3 actions endured by Plaintiffs. Each victim completed their own statements. Nolan wrote of the
4 genital stabbing incident, him being called a “Fagot boy,” among other language, and other acts.
5 Nolan also detailed the many Greenspun JHS staff he reported to, but how the harassment did
6 not stop. Ethan spoke of his reporting a well, and the retaliation he faced, such as being stabbed
7 by C.L. with a trombone. He also reported being called “gay” among other names. He revealed
8 his desire to leave the school out of fear.
9

10 73. Officer Gervasi was dismissive to Plaintiffs, and commented, “If I had to file a report
11 every time a girl’s boob was grabbed, I’d be filing reports all day.”
12

13 74. CCSD Police responded to the report with no action. Plaintiffs again felt CCSD was
14 unwilling to take their complaints seriously.
15

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

17 75. In an effort to find a meaningful avenue of oversight, Plaintiffs approached NERC.
18

19 76. The legislature has declared a strong public policy towards the obligation of NERC to
20 “protect the welfare, prosperity, health and peace of all the people of the State, and to foster the
21 right of all persons to seek and be granted the services in places of public accommodation
22 without discrimination, distinction, or restriction because of [...] sexual orientation...” N.R.S. §
23 233.010(2). Sexual orientation is defined as “having or being perceived as having an orientation
24 of heterosexuality, homosexuality or bisexuality.” N.R.S. § 233.020(6).
25

26 77. In order to facilitate this public policy, NERC’s administrator is authorized to
27 “investigate tensions, practices of discrimination and acts of prejudice against any person or
28

1 group” because of sexual orientation. N.R.S. § 233.150(1)(a). Further, NERC has the authority
2 and obligation pursuant Nevada’s strong public policy to remedy discrimination to mediate
3 between parties, and in the course of an investigation or hearing, issue subpoenas to witnesses,
4 order the production of documents or other tangible evidence. N.R.S. § 233.150(2),(3).

5 78. NERC must accept “any complaint alleging unlawful discriminatory practice over which
6 it has jurisdiction...” N.R.S. § 233.157. NERC must also ensure that a process is in place to
7 address these complaints. Id.

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

12 80. Further, NERC may hold a public hearing if attempts to mediate or conciliate between
13 parties fail, and after such a hearing may order a party to cease and desist unlawful practices.
14 N.R.S. § 233.170 (3),(3)(b)(1). NERC has wide ranging authority in conducting such a hearing
15 to come to a determination or decision. This authority includes, but is not limited to, calling and
16 examining witnesses, issuing subpoenas (and applying to the district court for enforcement),
17 taking depositions and obtaining discovery, regulating the hearing itself, and holding
18 conferences. N.A.C. § 233.160

19 81. NERC regulations mandate a liberal construction of its rule of practice to secure just,
20 speedy and economical determination of all issues before it.” N.A.C. § 233.020(1) (emphasis
21 added).

1 82. According to the plain language of the NERC enabling statute and Nevada Supreme
2 Court's interpretation of N.R.S. § 651.050(3)(k), discrimination in public school is prohibited
3 because public schools are places of public accommodation.

4 83. The definition of "place of public accommodation" includes "[a]ny nursery, private
5 school or university or other place of education." N.R.S. § 651.050(3)(k) (emphasis added).
6 Public schools clearly qualify as a place of education based on a plain reading of the statute.
7

8 84. The Nevada Supreme Court has unequivocally determined that NERC's jurisdiction
9 extends to public schools in Clark County Sch. Dist. v. Buchanan, 924 P.2d 716 (1996). The
10 case specifically cites N.R.S. § 651.050(3)(k) in finding a public school (CCSD) is in fact a place
11 of public accommodation and therefore an individual in that setting was entitled to protections
12 under the statute. Id. at 719.
13

14 85. NERC's mandate extends to violations pursuant N.R.S. § 651.110, which states that
15 "[a]ny person who believes he or she has been denied full and equal enjoyment of the goods,
16 services, facilities, privileges, advantages and accommodations of any place of public
17 accommodation because of discrimination based on race, color, religion, national origin,
18 disability, sexual orientation, sex, gender identity or expression may file a complaint to that
19 equal effect with the Nevada Equal Rights Commission."
20

21 86. NERC has a responsibility to act as an avenue of redress for discrimination in public
22 accommodations. Thus, a student should be able to complain when he or she has been denied
23 full and equal enjoyment of goods, services, facilities, privileges, advantages and
24 accommodations of any place of public accommodation," such as public schools, "because of
25 discrimination or segregation based on race, color religion, national origin, disability, sexual
26 orientation, sex, gender identity or expression." N.R.S. § 651.110.
27
28

1 87. In a letter dated July 18, 2012, Plaintiffs detailed the discrimination endured at
2 Greenspun JHS, the non-responsiveness of CCSD Plaintiffs, and their desire to file a complaint
3 with NERC based on these events. The letter sought conformation that the case would be
4 accepted, and enclosed were Plaintiffs' "Charge of Public Accommodation Complaint Form[s]"
5 and a detailed outline of discriminatory acts and requests for assistance.
6

7 88. In letters dated August 31, 2012, NERC scheduled Nolan and Ethan for "In Person
8 appointment[s]": on Tuesday, September 18, 2012 for both Nolan and Ethan. The letters stated
9 this appointment was designed to "determine whether the allegations of your client's complaint
10 fall within the jurisdiction of the Commission." The letters further stated that, "[s]hould your
11 client's complaint be deemed non-jurisdictional, you will receive a dismissal letter."
12

13 89. Based on these September 18 meetings, NERC permitted Plaintiffs to officially file
14 complaints of public accommodation discrimination based on perceived sexual orientation.
15

16 90. In letters dated September 26, 2012, NERC provided copies of Plaintiffs' complaints
17 along with proposed remedies for Plaintiffs' signature. The complaints included the allegations
18 of public accommodation discrimination, including Greenspuns JHS and CCSD's failure to act.
19 The remedies included requests that respondents alter their procedural practices to comport with
20 existing state law and CCSD policy. Further, Plaintiffs requested specific changes to ensure
21 proper implementation, such as annual trainings by NERC, weekly meetings regarding
22 contemporaneous discrimination and harassment incidents, and annual meetings with Greenspun
23 JHS students to teach about bullying, harassment, and discrimination. The remedies also
24 included a request for actual damages, damages awarding costs related to litigation, attorney's
25 fees, and other monetary relief deemed appropriate pursuant N.R.S. § 651.090.
26

27 91. Plaintiffs timely signed the documents and returned to them NERC.
28

1 92. In letters dated October 15, 2012, NERC informed Plaintiffs of two scheduled "Informal
2 Settlement Meetings" [ISMs]. The letter in regards to Nolan's complaint scheduled the ISM for
3 8:30AM on Thursday, November 29th. The letter regarding Ethan's complaint scheduled his
4 ISM for 2PM that same day.

5 93. NERC cancelled Nolan's ISM. NERC stated that the meeting would be rescheduled for
6 December, 2012. They told Mrs. Hairr she would receive another notice letter with an exact date
7 and time of the rescheduled meeting.
8

9 94. Ethan's scheduled ISM did occur via telephone conference. The meeting included the
10 Dennis Maginot, NERC Commission Administrator, Scott Greenburg, Carlos McDade, CCSD
11 attorney, Mrs. Bryan and Ethan, and Katrina Rogers, staff attorney at ACLU of Nevada. Mr.
12 Maginot openly stated that NERC should and does have jurisdiction over the schools, but
13 hesitated to fully commit to a thorough investigation. This was very disheartening to Mrs. Bryan
14 and Ethan, who began to feel the agency would not adequately address their matter.
15

16 95. The ISM yielded no results, but NERC agreed to be continue to engage in settlement and
17 advised Plaintiffs to draft a proposed remedy.
18

19 96. Maginot stated that it would take **two to three months** before the case would be assigned
20 to an investigator, and approximately an additional **six months** to investigate. According to
21 NERC's representations, Plaintiffs expected a decision by September, 2013.
22

23 97. NERC never contacted Mrs. Hairr to reschedule their cancelled November 29 ISM.

24 98. In a letter dated February 13, 2013, Plaintiffs supplied proposed changes, at NERC's
25 request, to CCSD policies and implementation, along with new enforcement mechanisms to
26 remedy the failure of the part of school officials and the district to appropriately handle
27 Plaintiffs' complaints, and requested money damages.
28

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

5 100. The letters also summarized CCSD and GJHS' position. The district and school denied
6 the allegations of discrimination, and they stated they responded appropriately to both Nolan and
7 Ethan's incidents. They also stated that at no time were they aware of harassment discriminatory
8 in nature. Further, respondents attempted to draw a distinction between official reporting versus
9 more informal reporting. In sum, they attested that they had an effective bullying policy that was
10 implemented appropriately.
11

12 101. The response from CCSD and GJHS spanned about a page, with only conclusory
13 statements pointing to no wrongdoing – some of which were in direct contradiction to recorded
14 accounts.
15

16 102. NERC requested a detailed response from Plaintiffs and various documents, such as
17 telephone records spanning several months, all emails between Plaintiffs and school officials,
18 report cards, police reports, contact information for all witnesses, along with a summary of their
19 testimony, and any other relevant information.
20

21 103. NERC requested the information by June 25, 2013, only fifteen days from the date of the
22 letter.
23

24 104. In letters dated July 26, 2013, Plaintiffs responded to Greenspun JHS and CCSD's
25 position. In addition to providing NERC with all the requested documents, Plaintiffs detailed the
26 assaults, harassment, and discrimination faced by Nolan and Ethan, and they explained that the
27
28

1 lack of information claimed by the CCSD Defendants in their response illustrates the failed
2 reporting system and unwillingness to ensure a safe and respectful learning environment.

3 105. Further, Plaintiffs detailed CCSD's own bullying policy, which does not require formal
4 reporting, but instead states that any CCSD employee who "witnesses, overhears, or receives a
5 report, formal or informal, [...] shall report it to the principal or principal designee." See CCSD
6 Policy P-5137(IV)(A)(2).
7

8 106. Further, Plaintiffs detailed several communications with the school regarding the safety
9 of the students, and how many of these emails should have resulted in immediate involvement of
10 the principal, but did not.

11 107. Plaintiffs took issue with the enormous burden the respondent put on Ethan specifically
12 to report the sensitive and embarrassing harassment details, and essentially using this as a reason
13 not to investigate.
14

15 108. The responses also detailed the issues Plaintiffs faced when filing a police report,
16 reporting generally, retaliation faced by Mrs. Bryan, among other issues.
17

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

21 110. Plaintiffs requested, pursuant N.R.S. § 233.190(3)(a), that NERC ask for consent from
22 Greenspun JHS and CCSD to disclose information gathered in the course of investigation,
23 including records of communication at Greenspun JHS and CCSD regarding the bullying of
24 Ethan and Nolan, and Mrs. Bryan's ejection, all documentation related to the investigation, and
25 all documentation of meetings with Plaintiffs.
26
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1 111. Plaintiffs never received any response regarding their request for documents and
2 information gathered during the course of the investigation. Plaintiffs were never informed as to
3 whether CCSD and Greenspun JHS were asked or gave consent for the disclosure of these
4 materials.

5 112. Several months later, on November 5, 2013, Plaintiffs requested via email from NERC an
6 update on the status of the investigation. Specifically, Plaintiffs sought timelines for the
7 conclusion of the investigation and any remedial action. NERCS initial estimate for a final
8 decision of the case, September 2013, had passed. Plaintiffs were concerned that NERC had
9 failed to take any action, and Plaintiffs informed Ms. Vizcarra that they may need to evaluate
10 other forms of redress.
11

12 113. In an email dated the same day, Defendant Kara Jenkins, NERC Commission
13 Administrator, responded stating that Ms. Vizcarra was on leave and when she gets back in, "I
14 will get back to you first thing." No timeline was given as to when Ms. Vizcarra would return,
15 nor was any timeline or update given on the status of the case.
16

17 114. Further, Ms. Jenkins stated "You may still proceed to advocate for your clients; our
18 investigation is "not adversarial."
19

20 115. Troubled by this assertion, Plaintiffs responded via email later that same day. Plaintiffs
21 explained that although fact-finding should be inherently objective, NERC has not only the
22 authority, but the obligation, to address, remedy, and eliminate unlawful discrimination. To
23 respond to an email requesting an update on the timeline and the possibility of remedial
24 measures with an assertion that investigation are "not adversarial" raised flags about the
25 dedication of NERC to the Plaintiffs' complaint.
26
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1 116. Further, Plaintiffs reminded NERC that it was expressly created to prevent and address a
2 broad range of unlawful acts and practices. NERC has the authority and obligation to eliminate
3 discrimination in Nevada. N.R.S. § 233.010(2).

4 117. In addition to NERC's initial reluctance to acknowledge its jurisdiction over public
5 schools, the assertion that NERC was "non-adversarial," and the comments made by the Mr.
6 Maginot at Ethan's ISM regarding NERC's indicating a reluctance to deal with school
7 discrimination, Plaintiffs' suspicion regarding NERC's commitment to Nolan and Bryan were
8 confirmed in a call dated February 25, 2014. Plaintiffs again called NERC seeking an update on
9 the status of a case, and to request a timeline for a conclusion to the investigation.
10

11 118. Defendant Commission Administrator Jenkins stated that "just because Plaintiffs had
12 ACLU attorneys, that did not mean they would be given special treatment." She also felt that
13 Plaintiffs' emails that expressed frustration as to the lack of information and timeline, and
14 seemingly lack of commitment by NERC, were unwelcome
15

16 119. When asked about a timeline, she stated, "I need to manage your expectations. These
17 cases can take over two years." Plaintiffs attempted to affirm this timeline. Ms. Jenkins
18 promptly corrected herself stating that every case is different, and there is no guarantee this
19 investigation would be completed in two years. She said she would only say "the case is moving
20 forward," but all other information was confidential.
21

22 120. Most troubling, was her closing statement in which she said, "You have to understand,
23 NERC has a complicated relationship with CCSD."
24

25 121. Plaintiffs were forced to file the present action due to NERC's capricious unwillingness
26 to pursue the investigation of serious and pervasive harassment and discrimination of Ethan and
27 Nolan.
28

1 122. NERC took no action, issued no final decision, and failed to do anything to protect these
2 and other students over the course of nearly two years. As a result, Plaintiffs were forced to file
3 the present action.

4
5 **CLAIMS FOR RELIEF: CCSD DEFENDANTS**
6 **CLAIM FOR RELIEF I**
7 **PUBLIC ACCOMMODATION DISCRIMINATION**

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

9 124. N.R.S. § 651.070 provides in relevant part, “All persons are entitled to the full and equal
10 enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any
11 place public accommodation, without discrimination or segregation on the ground of [...] sexual
12 orientation....”

13 125. N.R.S. 651.050(3)(k) defines a “place of public accommodation” to mean any nursery,
14 private school or university or other place of education. In Clark County School Dist. v.
15 Buchanan, 924 P.2d 716, 719 (1996), the Nevada Supreme Court confirmed that the definition of
16 “other place of education” in the context of N.R.S. § 651.050(3)(k) includes public schools.

17 126. Given the facts detailed above, and given that Greenspun JHS is a public school, and
18 hence a place of “public accommodation,” Greenspun JHS violated N.R.S. § 651.070 in failing
19 to provide for Nolan and Ethan’s safety and well-being while they were pervasively harassed and
20 discriminated against by C.L. and other students.

21 127. N.R.S. § 651.090 provides in relevant part: “Any person who: (a) withholds,
22 denies, deprives or attempts to withhold, deny or deprive any other person of any right or
23 privilege secured by N.R.S. § 651.070 [...] is liable to the person whose rights pursuant to
24 N.R.S. § 651.070 [...] are affected for actual damages, to be recovered by a civil action in
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1 a court in and for the county in which the infringement of civil rights occurred or in
2 which the defendant resides.”

3 128. Ethan and Nolan were harassed and discriminated against based on their perceived sexual
4 orientations. They were thereby denied the full and equal enjoyment of the “goods, services,
5 privileges, advantages, and accommodations” of Greenspun, JHS.
6

7 129. Faced with the continued and knowing indifference of the CCSD Defendants, the parents
8 of Ethan and Nolan were forced to remove their children from Greenspun JHS. In the new
9 school, the young men were not able to engage in many of the activities they had enjoyed
10 previously, such as the robotics club.
11

12 130. In an action pursuant to N.R.S. § 651.090, a court may grant equitable relief and
13 award costs and reasonable attorneys’ fees.

14 **CLAIM FOR RELIEF II**
15 **NEGLIGENCE PER SE:**
16 **VIOLATIONS OF N.R.S. AND CCSD POLICIES**

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

18 132. Defendant’s failure to ensure the safety of Plaintiffs also violated statutes designed to
19 protect the class of individuals to which Ethan and Nolan belong, namely students in the public
20 school system. See N.R.S. Chapter 392 Pupils, et seq. The failure of CCSD Defendants to
21 implement appropriate disciplinary and safety strategies in protecting Ethan and Nolan, as
22 required by school and district policies, and regulations, and Nevada state law amounts to a
23 negligence per se.
24

25 133. In *Barnes v. Delta Lines*, 669 P.2d 709, 710 (1983), the Nevada Supreme Court held that
26 “when a defendant violates a statute which was designed to protect a class of persons to which
27
28

1 the plaintiff belongs, and thereby proximately causes injury to the plaintiff, such a violation
2 constitutes negligence per se.”

3 134. The legislature has declared, “[a] learning environment that is safe and respectful is
4 essential for the pupils enrolled in the public schools in this State to achieve academic success
5 and meet this State's high academic standards.” N.R.S. § 388.132(1). Further, it codified its
6 goals of maintaining “public schools [that] provide a safe and respectful learning environment in
7 which persons of differing beliefs, characteristics and backgrounds can realize their full
8 academic and personal potential; and that “[a]ll administrators, principals, teachers and other
9 personnel of the school districts and public schools [...] demonstrate appropriate behavior on the
10 premises of any public school by treating other persons, including, without limitation, pupils,
11 with civility and respect and by refusing to tolerate bullying...” N.R.S. § 388.132(4)(a),(b)
12 [emphasis added].

13
14
15 135. N.R.S. § 392.915 prohibits the use in public schools of language or other means to
16 knowingly threaten the use of bodily harm through with the intent to “[i]ntimidate, harass,
17 frighten, alarm or distress a pupil.”

18
19 136. N.R.S. § 392.910(1) prohibits any person from disturbing the peace in a public school
20 “by using vile or indecent language within the building or grounds of the school.” Further, it is
21 unlawful for a person to assault a pupil on school grounds pursuant this statute. N.R.S. 392.910
22 (2)(a).

23
24 137. N.R.S. § 392.4645 requires that a plan be developed which provides for the temporary
25 removal of a pupil if, in the judgment of a teacher, the pupil seriously interferes with the
26 teacher’s ability to teach or a student’s ability to learn
27
28

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

4 139. Clark County School District policy P-5137 prohibits violence, threats of violence, and
5 harassment, were not implemented. The policy states that such behaviors warrant permanent
6 expulsion.
7

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

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

18 142. The injuries suffered by Ethan and Nolan are of the very type the NRS Chapter 392
19 provisions were designed to prevent. See Vega v. Eastern Courtyard Associates, 24 P.3d 219,
20 221 (2001).

21 143. As a proximate result of CCSD Defendants negligence, practices, acts and omissions,
22 Ethan and Nolan suffered immediate and irreparable injury, including physical, psychological
23 and emotional injury.
24

25 **CCSD ONLY - CLAIM FOR RELIEF III**
26 **VIOLATIONS OF TITLE IX, 20 USC § 1681(A)**
27 **42 USC § 1983**
28

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

1 145. On information and belief, CCSD receives federal funds.

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

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

8 148. CCSD had actual knowledge of the sexual harassment endured by Nolan and Ethan.

9 149. The harassment was "severe, pervasive, and objectively offensive."
10

11 150. As a whole, and/or as individual school administrators, Defendants responded to the
12 harassment with deliberate indifference.
13

14 151. An implied private right of action exists to enforce Title IX mandates, through which a
15 Plaintiff may obtain both injunctive relief and damages. Cannon v. University of Chicago, 441
16 U.S. 677, 717 (1979); Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 76 (1992).
17

18 **CLAIM FOR RELIEF IV**
19 **VIOLATIONS OF STATE AND FEDERAL EQUAL PROTECTION GUARANTEES**
20 **42 U.S.C. § 1983**

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

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

24 154. Nevada looks to the federal equal protection clause for guidance on interpretation.
25 Laakonen v. Eighth Judicial Dist. Ct., 538 P. 2d 574 (1975).

26 155. Under the federal interpretation, an equal protection violation occurs when Defendants
27 "act[] under color of state law, discriminate[] against [plaintiffs] as members of an identifiable
28

1 class and [] the discrimination was intentional.” See *Flores v. Morgan Hill Unified School Dist.*,
2 324 F.3d 1130, 1134 (9th Cir. 2010) (students perceived as LGBT sued regarding school’s lack
3 of response to complaints of harassment).

4 156. Members of an identifiable class based on sexual orientation are protected from
5 discrimination under the Equal Protection Clause. *Id.*

6 157. When a Defendants treat complaints of harassment based on sexual orientation
7 differently than other complaints, for example by not following school district disciplinary anti-
8 harassment and anti-discrimination policies, plaintiffs can establish a violation of their rights
9 under the equal protection clause. *Id.*

10 158. As an independent equal protection challenge, Plaintiffs observe that Defendants
11 displayed deliberate indifference, which means defendants were “clearly unreasonable” in their
12 response to peer harassment. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 649, 119 S.Ct.
13 1661, 143 L.Ed.2d 839 (1999) (Fifth grade student sued school board under Title IX for failure
14 to address peer sexual harassment).

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

19 160. Defendants were deliberately indifferent to the harm suffered by Plaintiffs, and thus
20 violated Ethan and Nolan rights.

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

3 **CLAIM FOR RELIEF V**
4 **VIOLATIONS OF UNITED STATES CONSTITUTION:**
5 **SUBSTANTIVE DUE PROCESS**
6 **42 USC § 1983**

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

8 163. When a state actor engages in “affirmative conduct” that places a plaintiff in danger and
9 acts with “deliberate indifference” to a “known and obvious danger,” the state actor has violated
10 a plaintiff’s substantive due process right under the state created danger doctrine under the
11 Fourteenth Amendment Due Process Clause of the U.S. Constitution. *Patel v. Kent School Dist.*,
12 648 F.3d 965, 974 (9th Cir. 2011).

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

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

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

22 167. Further, by prohibiting Mrs. Bryan from volunteering, Defendants at Greenspun JHS
23 were aware of the immediate danger and were indifferent to parental efforts to mitigate it.
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1 168. Pursuant to 42 U.S.C. § 1983, a student may raise constitutional claims against a school
2 district, its governing board and superintendent, for an inadequate response to peer on peer
3 sexual harassment. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246 (2009).

4 **CLAIM FOR RELIEF VI: NERC DEFENDANTS**
5 **VIOLATION OF NEVADA'S ADMINISTRATIVE PROCEDURE ACT:**
6 **"Arbitrary and Capricious" Behavior & Unreasonable Delay**
7 **Petition for Judicial Review NRS § 233B.130, et seq.**

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

9 170. NRS § 233B.135(f) provides for judicial review of a final decision of an agency, which is
10 "arbitrary or capricious or characterized by abuse of discretion."

11 171. Plaintiffs filed a public accommodations complaint with NERC in July of 2012.
12 Approximately one year, and ten months have passed since this filing, and NERC still has not
13 provided a timeline for completion of their investigation. One wonders if Nolan and Ethan may
14 graduate from high school by the time NERC finally acts.

15 172. In a similar case, the Ninth Circuit Court of Appeals held that a 16 month delay in which
16 the Equal Employment Opportunity Commission (EEOC) failed to respond to a request for
17 administrative reconsideration of a claim requesting supplemental workforce training amounted
18 to a "dismissal" and "final agency action" permitting court review. *Houseton v. Nimmo*, 670
19 F.2d 1375, 1376 (1982). The Court observed, "This delay of 16 months is unreasonable. The
20 failure of the Government to act...causes plaintiff irreparable injury since she is not receiving the
21 training to which she is entitled."

22 173. The similar failure of the NERC Defendants to conclude their investigation within a
23 reasonable time amounts to the equivalent of a final decision.
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1 174. Where an agency unlawfully withholds or unreasonably delays an action, such failure to
2 act is, by its very nature, “arbitrary”, “capricious” and/or an “abuse of discretion.” See *In re Intl.*
3 *Chemical Workers Union*, 958 F. 2d 1144 (D.C. Cir. 1992)

4 175. Substantial rights of the Plaintiffs have been prejudiced because NERC’s inaction
5 violates constitutional and statutory provisions requiring the agency to protect Plaintiffs from
6 unlawful discrimination in a place of public accommodation, and obligating the agency to
7 provide a “secure, just, speedy and economical” determination of all issues before it. N.A.C. §
8 233.020(1).
9

10 176. In the face of this delay, Plaintiffs continue to suffer from the lack of access to a safe and
11 secure learning environment, with all its attendant advantages and privileges.
12

13 **PRAYER FOR RELIEF**

14 Wherefore Plaintiffs respectfully requests this Court:

- 15 a. Enter an order declaring CCSD Defendants’ conduct in violation of Chapter 392
16 of N.R.S. Pupils, and CCSD Policies;
- 17 b. Enter an order declaring CCSD Defendants’ conduct in violation of the Equal
18 Protection Clause of the Nevada Constitution, Art. 4, § 21.
- 19 c. Enter and order declaring CCSD Defendants’ conduct in violation of the
20 substantive due process under the Fourteenth Amendment of the U.S.
21 Constitution;
- 22 d. Enter an order declaring CCSD Defendants’ conduct in violation of the Equal
23 Protection Clause of the Fourteenth Amendment of the U.S. Constitution;
- 24 e. Enter a permanent injunction, on proper motion, requiring Defendant CCSD to
25 develop and administer a new policy around discrimination, harassment, and
26 assault, and to ensure proper and equal implementation;
27
28

- 1 f. Pursuant to N.R.S. § 651.090, Plaintiffs request actual damages, damages
2 awarding costs related to this litigation, attorneys' fees, and other monetary relief
3 as the court deems appropriate;
- 4 g. Award Plaintiffs' counsel reasonable attorneys' fees and costs pursuant to 42
5 U.S.C. § 1988 and any other applicable provisions of law;
- 6 h. Enter an order declaring NERC Defendants' conduct in violation of the Nevada
7 APA, as an unreasonable delay amounting to arbitrary or capricious agency action
8 or an abuse of discretion;
- 9 i. Enter an injunction requiring NERC to expeditiously process this investigation of
10 public accommodation discrimination in the public school setting;
- 11 j. Award Plaintiff compensatory damages and costs and attorneys' fees against the
12 NERC Defendants;
- 13 k. Grant to Plaintiffs such other and further relief as may be just and proper under
14 the circumstances, including but not limited to appropriate injunctive relief.
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Plaintiffs hereby demand that this matter be tried by a jury, pursuant the Seventh Amendment of the Constitution of the United States, as to all claims for damages.

Dated this 29th day of April 2014

Respectfully submitted by:

/s/ Amanda Morgan

Amanda Morgan

ACLU of Nevada
601 S. Rancho Blvd.
Las Vegas, Nevada 89106

000037

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT

STATEMENT REPORT

DR# 1202-0107

FOR OFFICIAL POLICE USE ONLY

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

Ident: (Number & Street)

 City: Henderson State: NV Zip Code: 89002

Last / First / Middle

van, Ethan GarrettDate of Birth: 06/1999

Social Security #

Race: WSex: M

Ht.

Wt.

Hair

Eyes

Business/School Name

Blue Grass

Residence Address: (Home)

City: Henderson State: NVRes. Phone: 5

Bus. 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 15 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

 (FOR JUVENILES, ALSO USE THE FOLLOWING JUVENILE MIRANDA PLUS)
 5. You have the right to have your parent or guardian present during questioning.

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].

 Location of Statement: (Number & Street) City: HND State: NV Zip Code: 89002 Month: 02 Day: 06 Year: 12 Time 24 HR: 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: P.O.

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT
CRIME REPORT

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<div style="display: flex; justify-content: space-between;"> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>Month</th><th>Day</th><th>Year</th><th>Time</th><th>Report Taken</th><th>Month</th><th>Day</th><th>Year</th><th>Day/Week</th><th>Time</th><th>P#</th><th>Report of Officer</th></tr> <tr> <td>09</td><td>Unk</td><td>2012</td><td>Unk</td><td>0000</td><td>02</td><td>08</td><td>2012</td><td>Wednesday</td><td>1800</td><td>509</td><td>Dave Wykry</td></tr> </table> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>Month</th><th>Day</th><th>Year</th><th>Time</th><th>Report Taken</th><th>Month</th><th>Day</th><th>Year</th><th>Day/Week</th><th>Time</th><th>P#</th><th>Report of Officer</th></tr> <tr> <td>02</td><td>02</td><td>2012</td><td>Thursday</td><td>1943</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> </table> </div>															Month	Day	Year	Time	Report Taken	Month	Day	Year	Day/Week	Time	P#	Report of Officer	09	Unk	2012	Unk	0000	02	08	2012	Wednesday	1800	509	Dave Wykry	Month	Day	Year	Time	Report Taken	Month	Day	Year	Day/Week	Time	P#	Report of Officer	02	02	2012	Thursday	1943							
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<div style="display: flex; justify-content: space-between;"> Continuing Reports Officers report, Supplemental report, Statements (x3) </div>																																																														
<div style="display: flex; justify-content: space-between;"> Was there a witness? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Can suspect be identified? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>																																																														
<div style="display: flex; justify-content: space-between;"> Can suspect be named? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Is case properly traceable? Identifiable? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>																																																														
<div style="display: flex; justify-content: space-between;"> Can suspect be located? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Is there physical evidence present? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>																																																														
<div style="display: flex; justify-content: space-between;"> Can suspect be described? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Is there a significant M.O.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>																																																														
<div style="display: flex; justify-content: space-between;"> Can suspect be identified? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Crime statistics work performed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>																																																														
<div style="display: flex; justify-content: space-between;"> PERSON CODES: <input checked="" type="checkbox"/> VICTIM <input checked="" type="checkbox"/> WITNESS <input checked="" type="checkbox"/> PR-PERSON REPORTING <input checked="" type="checkbox"/> SUSPECT <input checked="" type="checkbox"/> WITNESS VICTIM OF FIRST </div>																																																														
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COPY

OCSDPD
RECORDS

UCR CODE	A Cash/Coins/Casino Chips, etc.
CATEGORIES	B Jewelry & Precious Metals
	C Clothing & Furs
SPD-H120 (Rev. 12-79)	

E Office Equip (Incl. Computers)
F TVs/Stereo/Cameras/NCRs
G Firearms (NOT BB, pellet, or gas powered)

H House - old Goods/ Appliances
1 Consumable Goods (Food, Drugs)
3 Excesses (NOT Domestic)

14. Other CELL PHONES

Page 4 of 4

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT

CCSD
CLARK COUNTY
SCHOOL DISTRICT

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)		City		State		Zip Code	
[REDACTED]		Henderson		NV		89014	
Name (Last / First / Middle)							
Holtzman, Michael							
Date of Birth	Social Security #	Race	Sex	HT.	WT.	Hair	Eyes
7-12-00		White	M			Blond	Green
Business/School Name		Greenspun					
Residence Address (Number & Street)		Bldg./Apt.#	City		State	Zip Code	Home Phone:
Five			Henderson		NV		
City			Henderson		NV		
Bus. Phone:		ext.		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/Jabbing with finger and trombone
2. Hair pulling and touching
3. Stabbed with pencil in genitals
4. Name calling
5. Harassing
6. Teasing

COPY

Statement	Location of Statement: (Number & Street)	City	State	Zip Code	Month	Day	Year	Time 24 HR.
1	[REDACTED]	Hnd	NV	[REDACTED]	02	06	12	2230

I have read this statement consisting of _____ 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.

Nolan Holman
Signature of Person Giving Voluntary Statement

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:

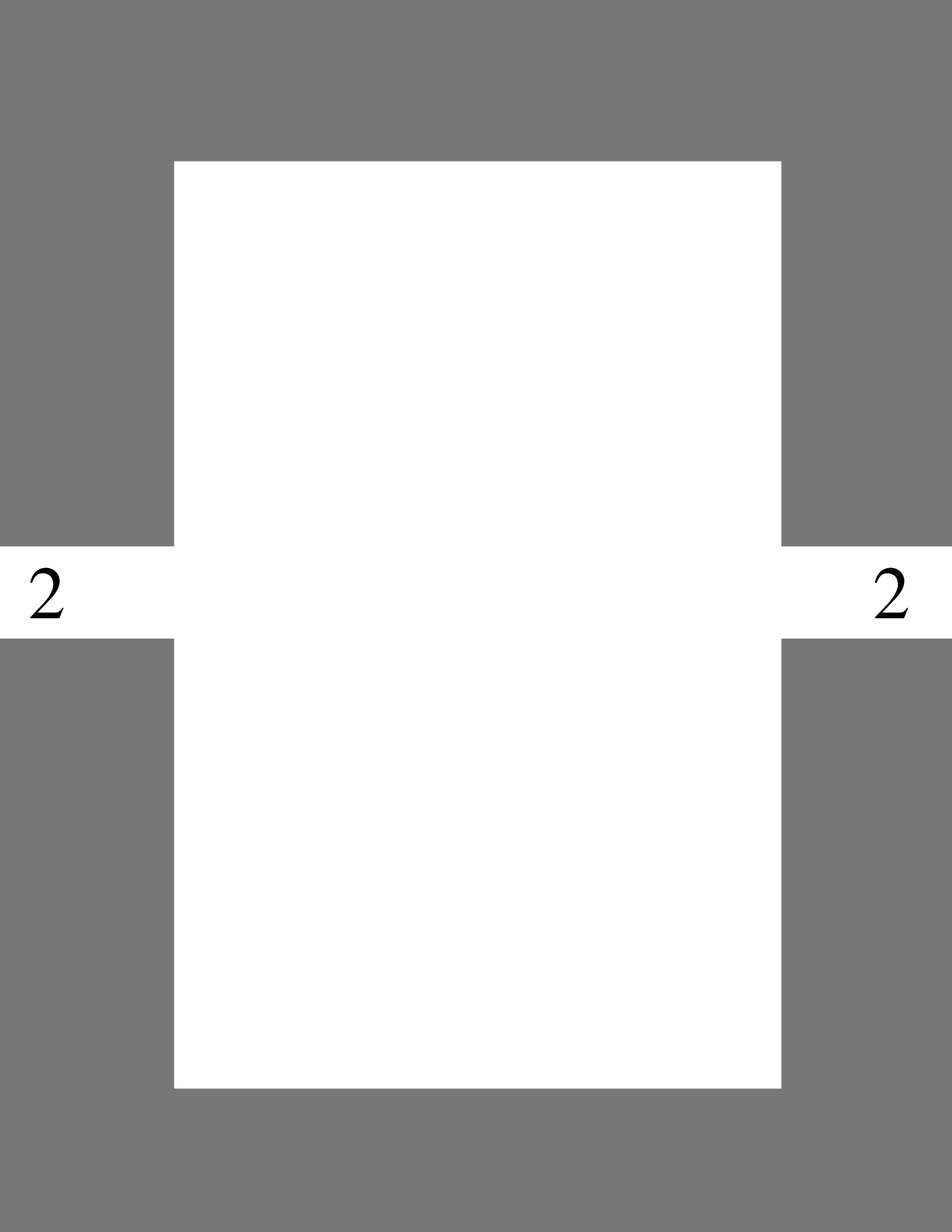
On 02/02/2012 at or about 1943 Hrs a suspicious incident was reported to police by a concerned parent at Greenspun M.S., regarding student grabbing at other students. The incident occurred in Sept of 2011. The parent of the alleged victim reported the situation to school administration however they did 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 stater 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.

 COPY

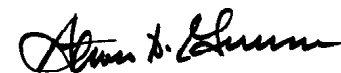


2

2

Electronically Filed
06/06/2014 02:06:14 PM

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY



CLERK OF THE COURT

MARY BRYAN, ET AL

Plaintiff,

Case No:A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CARSON CITY

ss.:



WADE MORLAN, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET, on 05/15/2014 and served the same on 05/16/2014 at 10:55 AM by delivering and leaving a copy with:

AMANDA WHITE, OF THE OFFICE OF THE ATTORNEY GENERAL who stated he/she is authorized to accept service on behalf of KARA JENKINS IN HER INDIVIDUAL AND OFFICIAL CAPACITY AS COMMISSION ADMINISTRATOR OF NERC.

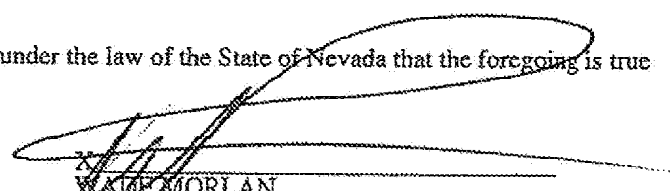
Service address: 100 N. CARSON ST NEVADA ATTORNEY GENERAL'S OFFICE CARSON CITY, NV 89705

A description of AMANDA WHITE is as follows:

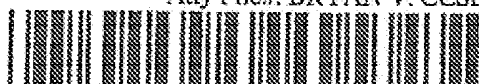
Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Blonde	20-30	5ft 6in	141-150lbs
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/19/2014
by WADE MORLAN


WADE MORLAN
Registration#: R-006823
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49261



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

Gregory Smith
Chief of Staff

TO: Wayne Howie, Solicitor General, BGA Entered into DB _____ DB No. _____

DATE RECEIVED: 5/16/14 REVIEWER: A. White

CASE NAME: Mary B. Galt, Ethel B. Galt, Anna Marie, Nelson Haver

v. Clark County, Nevada, et al., Pet. for Writ of Habeas Corpus

CASE NUMBER: 14-70018-C COURT: 8th Judicial District

RECEIVED FROM:

Process Server VON M. MURKIN (REMS)
(Name and Company of process server)

ProLaw _____

DOCUMENT(S) RECEIVED: 3 copies (1 copy sent in)

DOCUMENTS RECEIVED FOR:

NOTICE

NRS 41.031(2) provides in part that, in any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the state whose actions are the basis for the suit. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, at the Office of the Attorney General in Carson City and upon the person serving in the office of administrative head of the named agency. Service on the Attorney General or designee does not constitute service on any individual or administrative head.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 41.031(2)(a). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

Receipt of a subpoena by the Office of the Attorney General does not constitute valid service of the subpoena upon any individual or upon any state agency, except the Office of the Attorney General. Receipt of summons and complaint or any other process by the Attorney General or designee does not constitute service upon any individual, nor does it constitute service upon the administrative head of an agency pursuant to NRS 41.031(2)(b).

Int. for Copy given to person delivering document(s)? Yes C

Telephone 775-684-1100 Fax 775-684-1108 • www.ag.state.nv.us • E-mail aginfo@ag.state.nv.us

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

MARY BRYAN, ET AL

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on **05/15/2014** and served the same on **05/15/2014** at **4:45 PM** by delivering and leaving a copy with:

JOAN MORTIMER, PARALEGAL who stated he/she is authorized to accept service on behalf of **CLARK COUNTY SCHOOL DISTRICT (CCSD)**.

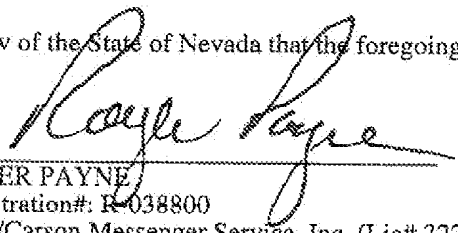
Service address: **CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS VEGAS, NV 89146**

A description of **JOAN MORTIMER** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	N/A	40's	5'8"	130 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/18/2014
by **ROGER PAYNE**

X 
ROGER PAYNE
Registration#: R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: **BRYAN V. CCSD**

No Notary is Required per NRS 53.045



49247

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

MARY BRYAN, ET AL

Plaintiff,

Case No:A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014 and served the same on 05/15/2014 at 4:45 PM by delivering and leaving a copy with:

JOAN MORTIMER, PARALEGAL who stated he/she is authorized to accept service on behalf of STAVAN CORBETT, IN HIS OFFICIAL CAPACITY AS CCSD BOARD OF SCHOOL TRUSTEE.

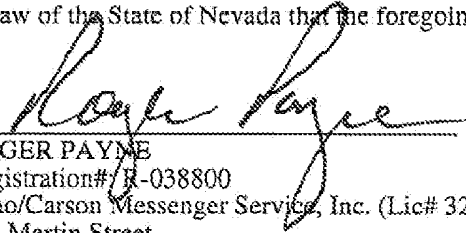
Service address: CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS VEGAS, NV 89146

A description of JOAN MORTIMER is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian		40's	5'8"	130 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/18/2014
by ROGER PAYNE

X 
ROGER PAYNE
Registration# R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty Filc#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49248

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

1 MARY BRYAN, ET AL

2 Plaintiff,

Case No:A-14-700018-C

3 vs.

4 CLARK COUNTY SCHOOL DISTRICT
5 (CCSD); ET AL

6 Defendant

7 **AFFIDAVIT OF SERVICE**

8
9 STATE OF NEVADA
10 COUNTY OF CLARK

ss.:



11 **ROGER PAYNE**, being duly sworn says: That at all times herein affiant was and is a citizen of
12 the United States over 18 years of age, not a party to nor interested in the proceedings in which
this affidavit is made.

13 The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY**
14 **RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014
and served the same on 05/15/2014 at 4:45 PM by delivering and leaving a copy with:

15 **JOAN MORTIMER, PARALEGAL** who stated he/she is authorized to accept service on behalf
16 of **ERIN A CRANOR, IN HER OFFICIAL CAPACITY AS CCSD BOARD OF SCHOOL**
TRUSTEE.

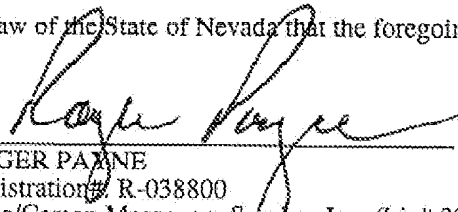
17 Service address: CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS
18 VEGAS, NV 89146

A description of **JOAN MORTIMER** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian		40's	5'8"	130 LBS.
Other Features:					

21
22 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
23 and correct.

24 Executed on: 05/18/2014
25 by ROGER PAYNE

X 
ROGER PAYNE
Registration# R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49258

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

1 MARY BRYAN, ET AL

2 Plaintiff,

Case No:A-14-700018-C

3 vs.

4 CLARK COUNTY SCHOOL DISTRICT
5 (CCSD); ET AL

6 Defendant

7 **AFFIDAVIT OF SERVICE**

8
9 STATE OF NEVADA
10 COUNTY OF CLARK

ss.:



11 **ROGER PAYNE**, being duly sworn says: That at all times herein affiant was and is a citizen of
12 the United States over 18 years of age, not a party to nor interested in the proceedings in which
this affidavit is made.

13 The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY**
14 **RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014
and served the same on 05/15/2014 at 4:45 PM by delivering and leaving a copy with:

15 **JOAN MORTIMER, PARALEGAL** who stated he/she is authorized to accept service on behalf
16 of **PATRICE TEW, IN HER OFFICIAL CAPACITY AS CCSD BOARD OF SCHOOL**
TRUSTEE.

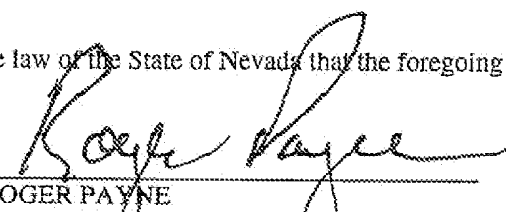
17 Service address:CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS
18 VEGAS, NV 89146

A description of **JOAN MORTIMER** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	N/A	40's	5'8"	130 LBS.
Other Features:					

22 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
23 and correct.

24 Executed on: 05/18/2014
25 by ROGER PAYNE

X 
ROGER PAYNE
Registration# R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49254

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

MARY BRYAN, ET AL

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET, on 05/15/2014 and served the same on 05/15/2014 at 4:45 PM by delivering and leaving a copy with:

JOAN MORTIMER, PARALEGAL who stated he/she is authorized to accept service on behalf of DEANNA WRIGHT, IN HER OFFICIAL CAPACITY AS CCSD BOARD OF SCHOOL TRUSTEE.

Service address: CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS VEGAS, NV 89146

A description of JOAN MORTIMER is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	N/A	40's	5'8"	130 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/20/2014
by ROGER PAYNE

X

ROGER PAYNE
Registration#: R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49258

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

1 MARY BRYAN, ET AL

2 Plaintiff,

Case No:A-14-700018-C

3 vs.

4 CLARK COUNTY SCHOOL DISTRICT
5 (CCSD); ET AL

6 Defendant

7 **AFFIDAVIT OF SERVICE**

8
9 STATE OF NEVADA
10 COUNTY OF CLARK

ss.:



11 **ROGER PAYNE**, being duly sworn says: That at all times herein affiant was and is a citizen of
12 the United States over 18 years of age, not a party to nor interested in the proceedings in which
this affidavit is made.

13 The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY**
14 **RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014
and served the same on 05/15/2014 at 4:45 PM by delivering and leaving a copy with:

15 **JOAN MORTIMER, PARALEGAL** who stated he/she is authorized to accept service on behalf
16 of **CHRIS GARVEY, IN HIS OFFICIAL CAPACITY AS CCSD BOARD OF SCHOOL**
TRUSTEE.

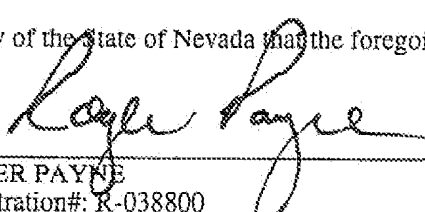
17 Service address: CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS
18 VEGAS, NV 89146

A description of **JOAN MORTIMER** is as follows:

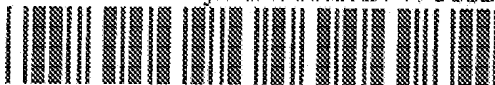
Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	N/A	40's	5'8"	130 LBS.
Other Features:					

22 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
23 and correct.

24 Executed on: 05/18/2014
25 by ROGER PAYNE

X 
ROGER PAYNE
Registration#: R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49246

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

MARY BRYAN, ET AL

Plaintiff,

Case No:A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET, on 05/15/2014 and served the same on 05/15/2014 at 4:45 PM by delivering and leaving a copy with:

JOAN MORTIMER, PARALEGAL who stated he/she is authorized to accept service on behalf of LINDA E. YOUNG, IN HER OFFICIAL CAPACITY AS CCSD BOARD OF SCHOOL TRUSTEE.

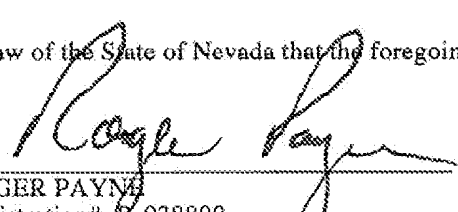
Service address:CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS VEGAS, NV 89146

A description of JOAN MORTIMER is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	N/A	40's	5'8"	130 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/18/2014
by ROGER PAYNE

X 
ROGER PAYNE
Registration#: R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno,NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49255

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

MARY BRYAN, ET AL

Plaintiff,

Case No:A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014 and served the same on 05/15/2014 at 4:45 PM by delivering and leaving a copy with:

JOAN MORTIMER, PARALEGAL who stated he/she is authorized to accept service on behalf of **PAT SKORKOWSKY, IN HIS OFFICIAL CAPACITY AS CCSD SUPERINTENDENT.**

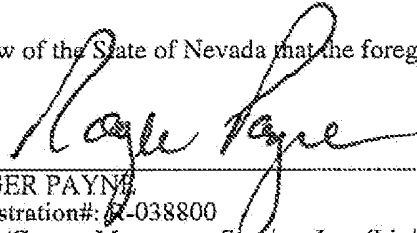
Service address:CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS VEGAS, NV 89146

A description of **JOAN MORTIMER** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian		40's	5'8"	130 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/18/2014
by ROGER PAYNE

X 
ROGER PAYNE
Registration#: 038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno,NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49256

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

MARY BRYAN, ET AL

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014 and served the same on 05/15/2014 at 4:45 PM by delivering and leaving a copy with:

JOAN MORTIMER, PARALEGAL who stated he/she is authorized to accept service on behalf of **CAROLYN EDWARDS, IN HER OFFICIAL CAPACITY AS CCSD BOARD OF SCHOOL TRUSTEE.**

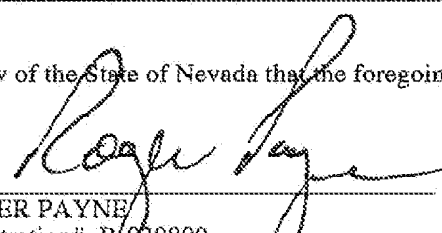
Service address: CCSD DISTRICT OFFICES 5100 W. SAHARA AVE., 3RD FLOOR LAS VEGAS, NV 89146

A description of **JOAN MORTIMER** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	N/A	40's	5'8"	130 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/18/2014
by ROGER PAYNE

X 
ROGER PAYNE/
Registration#: R6038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49249

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

MARY BRYAN, ET AL

Plaintiff,

Case No:A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014 and served the same on 05/16/2014 at 10:20 AM by delivering and leaving a copy with:

SUSAN M. SMITH, SCHOOL PRINCIPAL who stated he/she is authorized to accept service on behalf of **GREENSPUN JUNIOR HIGH SCHOOL (GJHS)**.

Service address: GREENSPUN MIDDLE SCHOOL 140 N. VALLE VERDE DRIVE
HENDERSON, N 89074

A description of **SUSAN M. SMITH** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	BLONDE	40's	5'10"	150 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/18/2014
by ROGER PAYNE

X

Roger Payne

ROGER PAYNE
Registration#: R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49252

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

MARY BRYAN, ET AL

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL
DISTRICT (CCSD); ET AL

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

That affiant received copy(ies) of the SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET, on 05/15/2014 and served the same on 05/16/2014 at 10:20 AM by delivering and leaving a copy with:

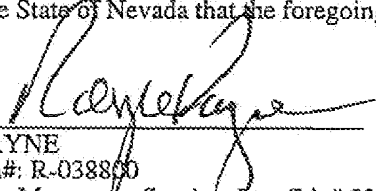
**JOHN HALPIN, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY AS COUNSELOR
AT GJHS at GREENSPUN MIDDLE SCHOOL, 140 N. VALLE VERDE DRIVE,
HENDERSON, NV 89074**

A description of the Recipient, or other person served on behalf of the Recipient is as follows:

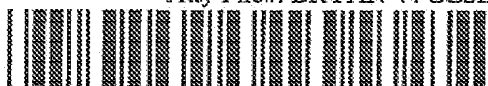
Sex	Color of skin/race	Color of hair	Age	Height	Weight
Male	Caucasian	N/A	40's	5'10"	160 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/20/2014
by ROGER PAYNE

X 
ROGER PAYNE
Registration#: R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49251

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

MARY BRYAN, ET AL

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL
DISTRICT (CCSD); ET AL

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

That affiant received copy(ies) of the SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET, on 05/15/2014 and served the same on 05/16/2014 at 10:20 AM by delivering and leaving a copy with:

ROBERT BEASLEY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY AS INSTRUCTOR AT GJHS at GREENSPUN MIDDLE SCHOOL, 140 N. VALLE VERDE DRIVE, HENDERSON, NV 89074

A description of the Recipient, or other person served on behalf of the Recipient is as follows:

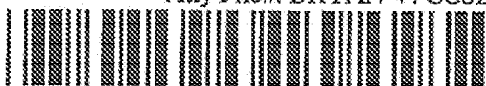
Sex	Color of skin/race	Color of hair	Age	Height	Weight
Male	Caucasian	N/A	40's	5'8"	150 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/20/2014
by ROGER PAYNE

X
ROGER PAYNE
Registration#: R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49259

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

MARY BRYAN, ET AL

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL
DISTRICT (CCSD); ET AL

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

That affiant received copy(ies) of the SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET, on 05/15/2014 and served the same on 05/16/2014 at 10:20 AM by delivering and leaving a copy with:

CHERYL WINN, IN HER INDIVIDUAL AND OFFICIAL CAPACITY AS DEAN AT GJHS at GREENSPUN MIDDLE SCHOOL, 140 N. VALLE VERDE DRIVE, HENDERSON, N 89074

A description of the Recipient, or other person served on behalf of the Recipient is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	N/A	50's	5'7"	140 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/20/2014
by ROGER PAYNE

X

Roger Payne

ROGER PAYNE
Registration#: R-038800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49253

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

MARY BRYAN, ET AL.

Plaintiff,

Case No:A-14-700018-C

vs.

CLARK COUNTY SCHOOL
DISTRICT (CCSD); ET AL

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

That affiant received copy(ies) of the SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET, on 05/15/2014 and served the same on 05/16/2014 at 11:30 AM by delivering and leaving a copy with:

PRINCIPAL WARREN P. MCKAY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY
AS PRINCIPAL OF GJHS at HELEN C. CANNON JUNIOR HIGH SCHOOL, 5850
SOUTH EUCLID STREET, LAS VEGAS, NV 89120

A description of the Recipient, or other person served on behalf of the Recipient is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Male	Caucasian	N/A	40's	6'0"	180 LBS.
Other Features:					

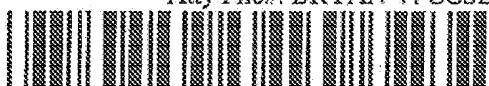
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/20/2014
by ROGER PAYNE

X

Roger Payne
ROGER PAYNE
Registration#: R-036800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49257

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

MARY BRYAN, ET AL

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL
DISTRICT (CCSD); ET AL

Defendant

Declaration of Service

STATE OF NEVADA
COUNTY OF CLARK

ss.:



ROGER PAYNE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

That affiant received copy(ies) of the SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET, on 05/15/2014 and served the same on 05/16/2014 at 10:45 AM by delivering and leaving a copy with:

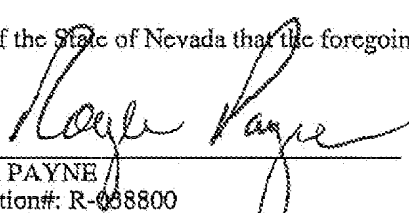
LEONARD DEPIAZZA, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY AS ASSISTANT PRINCIPAL AT GJHS at FRANCIS H. CORTNEY MIDDLE SCHOOL, 5301 E. HACIENDA AVENUE, LAS VEGAS, NV 89122

A description of the Recipient, or other person served on behalf of the Recipient is as follows:

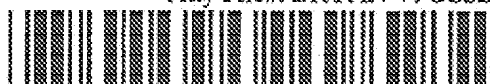
Sex	Color of skin/race	Color of hair	Age	Height	Weight
Male	Caucasian	N/A	40's	5'8"	160 LBS.
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/20/2014
by ROGER PAYNE

X 
ROGER PAYNE
Registration#: R-068800
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49268

ORIGINAL

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

MARY BRYAN, ET AL.

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CARSON CITY ss.:



WADE MORLAN, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014 and served the same on 05/16/2014 at 10:55 AM by delivering and leaving a copy with:

AMANDA WHITE, OF THE OFFICE OF THE ATTORNEY GENERAL who stated he/she is authorized to accept service on behalf of **KARA JENKINS IN HER INDIVIDUAL AND OFFICIAL CAPACITY AS COMMISSION ADMINISTRATOR OF NERC.**

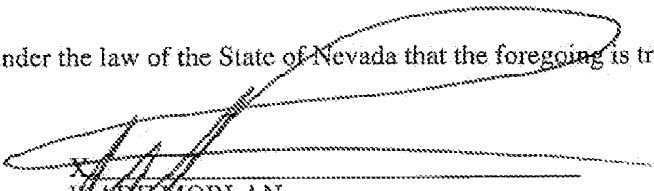
Service address: 100 N. CARSON ST NEVADA ATTORNEY GENERAL'S OFFICE CARSON CITY, NV 89705

A description of **AMANDA WHITE** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Blonde	20-30	5ft 6in	141-150lbs
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/19/2014
by **WADE MORLAN**


WADE MORLAN
Registration#: R-006823
Reno Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49261

EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

MARY BRYAN, ET AL

Plaintiff,

Case No: A-14-700018-C

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); ET AL

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CARSON CITY ss.:



WADE MORLAN, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014 and served the same on 05/16/2014 at 10:55 AM by delivering and leaving a copy with:

AMANDA WHITE, OF THE OFFICE OF THE ATTORNEY GENERAL who stated he/she is authorized to accept service on behalf of NEVADA EQUAL RIGHTS COMMISSION (NERC).

Service address: 100 N. CARSON ST NEVADA ATTORNEY GENERAL'S OFFICE CARSON CITY, NV 89705

A description of AMANDA WHITE is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Blonde	20-30	5ft 6in	141-150lbs
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 05/19/2014
by WADE MORLAN

X
WADE MORLAN
Registration#: R-006823
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: BRYAN V. CCSD

No Notary is Required per NRS 53.045



49263

**EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY**

1 MARY BRYAN, ET AL

2 Plaintiff,

Case No:A-14-700018-C

3 vs.

4 CLARK COUNTY SCHOOL DISTRICT
5 (CCSD); ET AL

6 Defendant

7 **AFFIDAVIT OF SERVICE**

8
9 STATE OF NEVADA
COUNTY OF CARSON CITY ss.:



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11 the United States over 18 years of age, not a party to nor interested in the proceedings in which
12 this affidavit is made.

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RELIEF, INJUNCTIVE RELIEF, AND DAMAGES; CIVIL COVER SHEET**, on 05/15/2014
14 and served the same on 05/16/2014 at 10:55 AM by delivering and leaving a copy with:

15 **AMANDA WHITE, OF THE OFFICE OF THE ATTORNEY GENERAL** who stated he/she
is authorized to accept service on behalf of **DENNIS PEREA, IN HIS OFFICIAL CAPACITY
AS DEPUTY DIRECTOR OF THE NEVADA DEPARTMENT OF EMPLOYMENT,
16 TRAINING, AND REHABILITATION (DETR).**

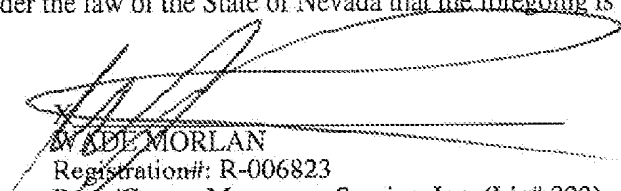
17 Service address: 100 N. CARSON ST NEVADA ATTORNEY GENERAL'S OFFICE CARSON
CITY, NV 89705

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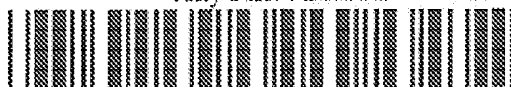
Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Blonde	20-30	5ft 6in	141-150lbs
Other Features:					

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20
21
22 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
23 and correct.

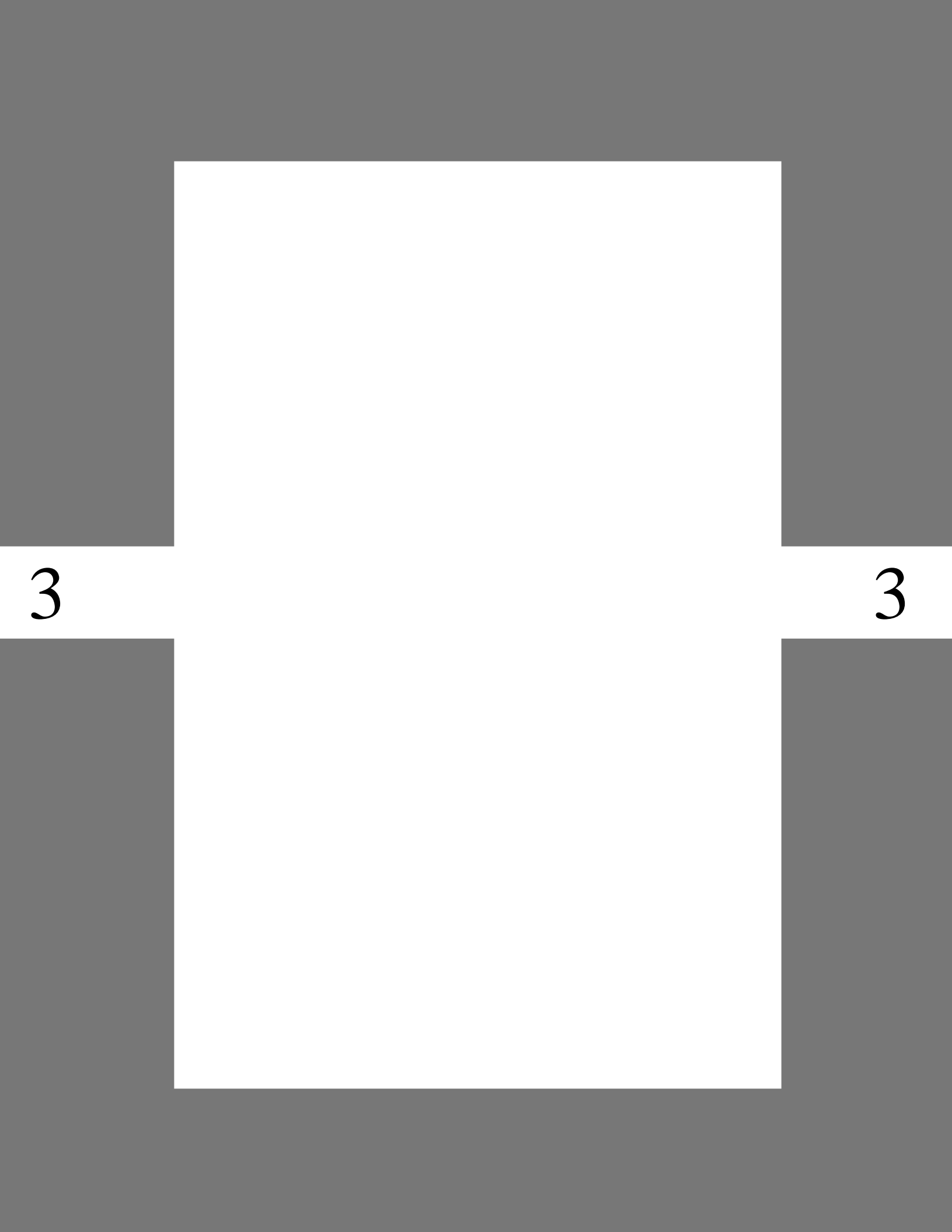
24 Executed on: 05/19/2014
25 by WADE MORLAN


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49262



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CLERK OF THE COURT

NEO
Daniel F. Polsenberg (Bar No. 2376)
Dan R. Waite (State Bar No. 004078)
LEWIS ROCA ROTHGERBER LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398
DPolsenberg@lrrlaw.com
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

**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**

000062
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
**LEWIS ROCA
| ROTHGERBER**

000062

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*

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LEWIS ROCA
|
ROTHGERBER

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

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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:

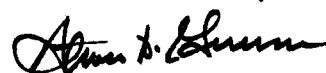
Staci Pratt, Esq.
Allen Lichtenstein, Esq.
ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.
3315 Russell Road, No. 222
Las Vegas, Nevada 89120
Attorneys for Plaintiffs

DATED this 10th day of September, 2014.

ber, 2014.

An Employee of Lewis Roca Rothgerber LLP

Electronically Filed
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CLERK OF THE COURT

ORD

Daniel F. Polsenberg (State Bar No. 2376)

Dan R. Waite (State Bar No. 4078)

LEWIS ROCA ROTHGERBER LLP

3993 Howard Hughes Pkwy, Suite 600

Las Vegas, NV 89169-5996

Tel: 702.949.8200

Fax: 702.949.8398

DPolsenberg@lrrlaw.com

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.

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(CCSD); Pat Skorkowsky, in his official
capacity as CCSD superintendent; CCSD
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Cranor, Linda E. Young, Patrice Tew, Stavan
Corbett, Carolyn Edwards, Chris Garvey,
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CCSD BOARD OF SCHOOL TRUSTEES;
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individual and official capacity as principal of
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Cheryl Winn, in her individual and official
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individual and official capacity as counselor at
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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

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

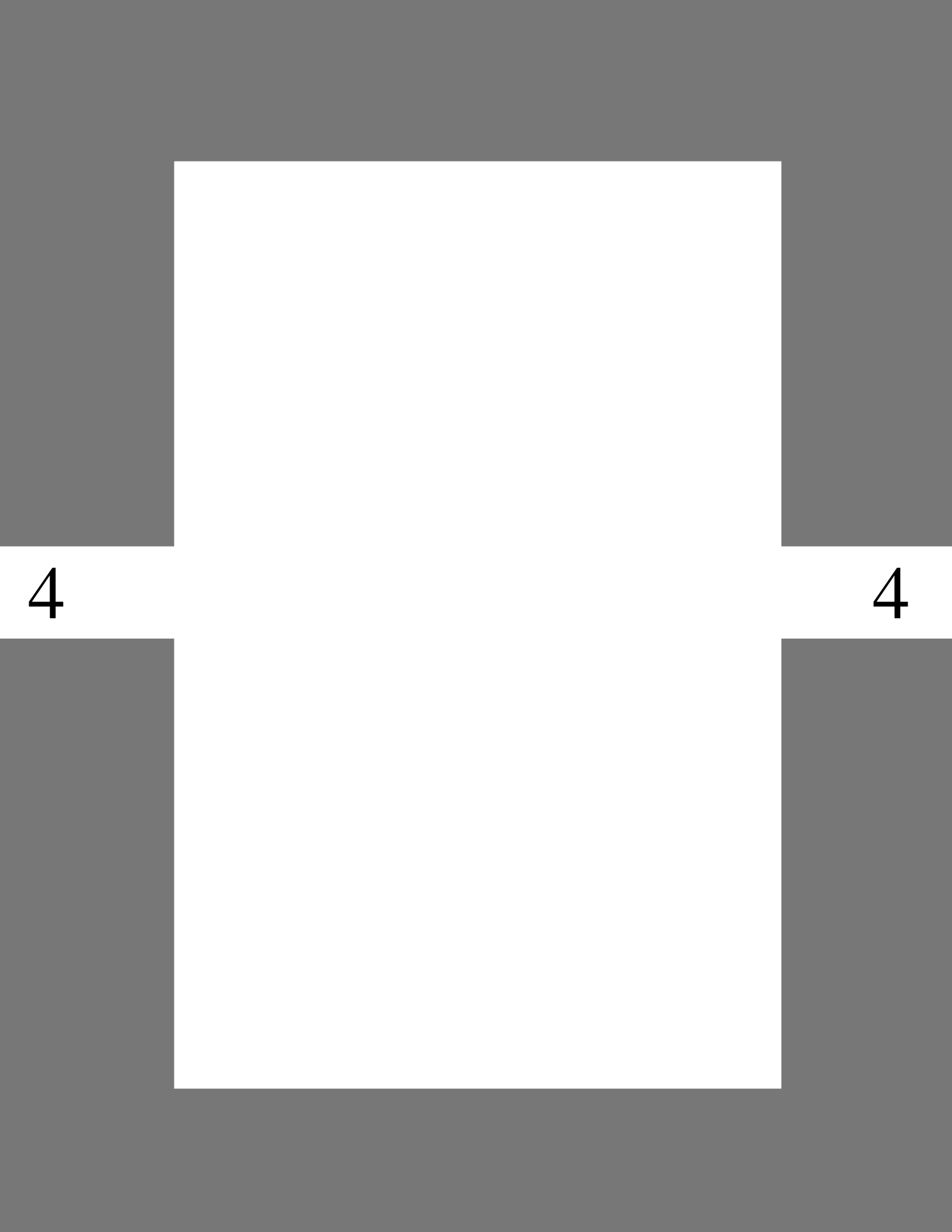
22 By: *[Signature]*
23 Daniel F. Polsenberg (State Bar No. 2376)
24 Dan R. Waite (State Bar No. 4078)
25 Matthew W. Park (State Bar No. 12062)
26 3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

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

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

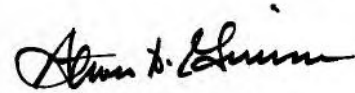
By: *[Signature]*
Allen Lichtenstein (State Bar No. 3992)
Staci J. Pratt (State Bar No. 12630)
3315 Russell Road, No. 222
Las Vegas, NV 89120
Tel: 702.433-2666
Fax: 702.433-2666

Attorneys for Plaintiffs



4

4



CLERK OF THE COURT

COMP

Allen Lichtenstein, Esq.
Nevada Bar No. 3992
Staci Pratt, Esq.
Nevada Bar 12630
Allen Lichtenstein, Ltd.
3315 Russell Road, No. 222
Las Vegas, NV 89120
Tel: 702-433-2666
Fax: 702-433-9591
allaw@lvcoxmail.com
stacijpratt@gmail.com

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.
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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
16 **JURISDICTIONAL STATEMENT**

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

21 **PARTIES**

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

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

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

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

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

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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.

13 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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 **Contacts with CCSD Police**

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

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

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

17 115. Defendant Commission Administrator Jenkins stated that “just because Plaintiffs had
18 ACLU attorneys, that did not mean they would be given special treatment.” She also felt that
19 Plaintiffs’ emails that expressed frustration as to the lack of information and timeline, and
20 seemingly lack of commitment by NERC, were unwelcome
21

22 116. When asked about a timeline, she stated, “I need to manage your expectations. These
23 cases can take over two years.” Plaintiffs attempted to affirm this timeline. Ms. Jenkins
24 promptly corrected herself stating that every case is different, and there is no guarantee this
25 investigation would be completed in two years. She said she would only say “the case is moving
26 forward,” but all other information was confidential.
27
28

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
11 **CLAIMS FOR RELIEF: CCSD DEFENDANTS**

12 **CLAIM FOR RELIEF I**
13 **NEGLIGENCE**

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

15 121. The standards to establish a negligence claim were set forth by the Nevada
16 Supreme Court in, *Foster v. Costco Wholesale Corp.*, 291 P.3d 150 (2012); *DeBoer v. Sr.*
17 *Bridges of Sparks Fam. Hosp.*, 282 P.3d 727, 732 (2012); see also, *Scialabba v. Brandise*
18 *Const. Co.*, 921 P.2d 928, 930 (Nev.1996). [A] plaintiff must demonstrate that (1) the defendant
19 owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the
20 legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages.
21

22 122. The Nevada Supreme Court has expressly stated that a special duty exists between
23 teachers and students in *Lee v. GNLV Corp.*, 117 Nev. 291, 22 P.3d 209 (2001).
24

25 In Nevada, as under the common law, strangers are generally under no duty to aid
26 those in peril. See *Sims v. General Telephone & Electronics*, 107 Nev. 516, 525,
27 815 P.2d 151, 157 (1991) (overruled on other grounds in *Tucker v. Action*
28 *Equipment and Scaffold Co., Inc.*, 113 Nev. 1349, 951 P.2d 1027 (Nev. 1997)).
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
10 In addition, a school district and its employees have a special relationship with the
11 district's pupils, a relationship arising from the mandatory character of school
12 attendance and the comprehensive control over students exercised by school
13 personnel, "analogous in many ways to the relationship between parents and their
14 children .- (Hoff v. Vacaville Unified School Dist. (1998) 19 Cal.4th 925, 935, 80
15 Cal.Rptr.2d 811, 968 P.2d 522, see M.W. v. Panama Buena Vista Union School
16 Dist. (2003) 110 Cal.App.4th 508, 517, 1 Cal.Rptr.3d 673; Leger v. Stockton
17 Unified School Dist., (1988) 202 Cal.App.3d at 1448,1458-1459, 249 Cal.Rptr.
18 688.) Because of this special relationship, imposing obligations beyond what each
19 person generally owes others under Civil Code section 1714, the duty of care
20 owed by school personnel includes the duty to use reasonable measures to protect
21 students from foreseeable injury at the hands of third parties acting negligently or
22 intentionally.FN3 This principle has been applied in cases of employees' alleged
23 negligence resulting in injury to a student by another student (J.H. v. Los Angeles
24 Unified School Dist. (2010) 183 Cal.App.4th 123, 128-129, 141-148, . . .

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

27 124. The William S. Hart Union High School Dist. Court explained that the special
28 duty to students at school stated that the duty is in accord with public policy set forth in, Cal.
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

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

26 (b) All administrators, principals, teachers and other personnel of the school districts
27 and public schools in this State demonstrate appropriate behavior on the premises of any
28 public school by treating other persons, including, without limitation, pupils, with civility
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.

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

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

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

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

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

20 142. No such committee was established in the case of the bullying of Ethan and
21 Nolan.
22
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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.

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

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

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

17 148. As a proximate result of CCSD Defendants negligence, practices, acts and
18 omissions, Ethan and Nolan suffered immediate and irreparable injury, including physical,
19 psychological and emotional injury.

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

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27 **CCSD ONLY - CLAIM FOR RELIEF III**
28 **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 20 USC § 1681(a).

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

9 20 USC § 1681(a).

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

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

22 156. Deliberate indifference is "the conscious or reckless disregard of the
23 consequences of ones acts or omissions." Henkle v. Gregory, 150 F.Supp.2 at 1078.
24
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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 *Laakonen v. Eighth Judicial Dist. Ct.*, 538 P. 2d 574 (1975).

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

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

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

19 171. Ethan and Nolan were students at Greenspun Junior High School, who were
20 entitled to the same level of protection from bullying and harassment as all other children
21 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.

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

19 177. As an independent equal protection challenge, Plaintiffs observe that Defendants
20 displayed deliberate indifference, which means defendants were "clearly unreasonable" in their
21 response to peer harassment. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 649, 119 S.Ct.
22 1661, 143 L.Ed.2d 839 (1999) (Fifth grade student sued school board under Title IX for failure
23 to address peer sexual harassment).

25 178. Despite a complete and thorough record of notice, Defendants failed to follow-up
26 and investigate the incidents. They did not follow their own District policies, nor state law
27
28

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

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

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

11 182. Pursuant to 42 U.S.C. § 1983, a student may raise constitutional claims against a
12 school district, its governing board and superintendent, for an inadequate response to peer on
13 peer sexual harassment. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246 (2009). The
14 42 U.S.C. § 1983 claims are applicable to the federal claims.
15

16 183. Deliberate indifference is established when a state actor “disregarded a known or
17 obvious consequence of his action.” *Patel*, 648 F.3d at 974, quoting *Bryan Cnty. v. Brown*, 520
18 U.S. 397, 410, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997).
19

20 184. On numerous and documented occasions, Defendants were notified as to the
21 harassment and injuries endured by the Plaintiffs. By forcing Nolan and Ethan to sit next to their
22 harasser, and otherwise not developing a safety plan to ensure the safety of Plaintiffs, Defendants
23 were deliberately indifferent to the risk and knew the result would be further harassment and
24 physical harm.
25

26 185. Because of this disparate treatment, Defendants violated Plaintiffs’ rights to equal
27 protection under both Nevada and the United States Constitutions.
28

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).

Wherefore Plaintiffs respectfully requests this Court:

- JURY TRIAL DEMAND**

Dated this 10th day of October 2014

Respectfully submitted by:

Attorneys for Plaintiffs

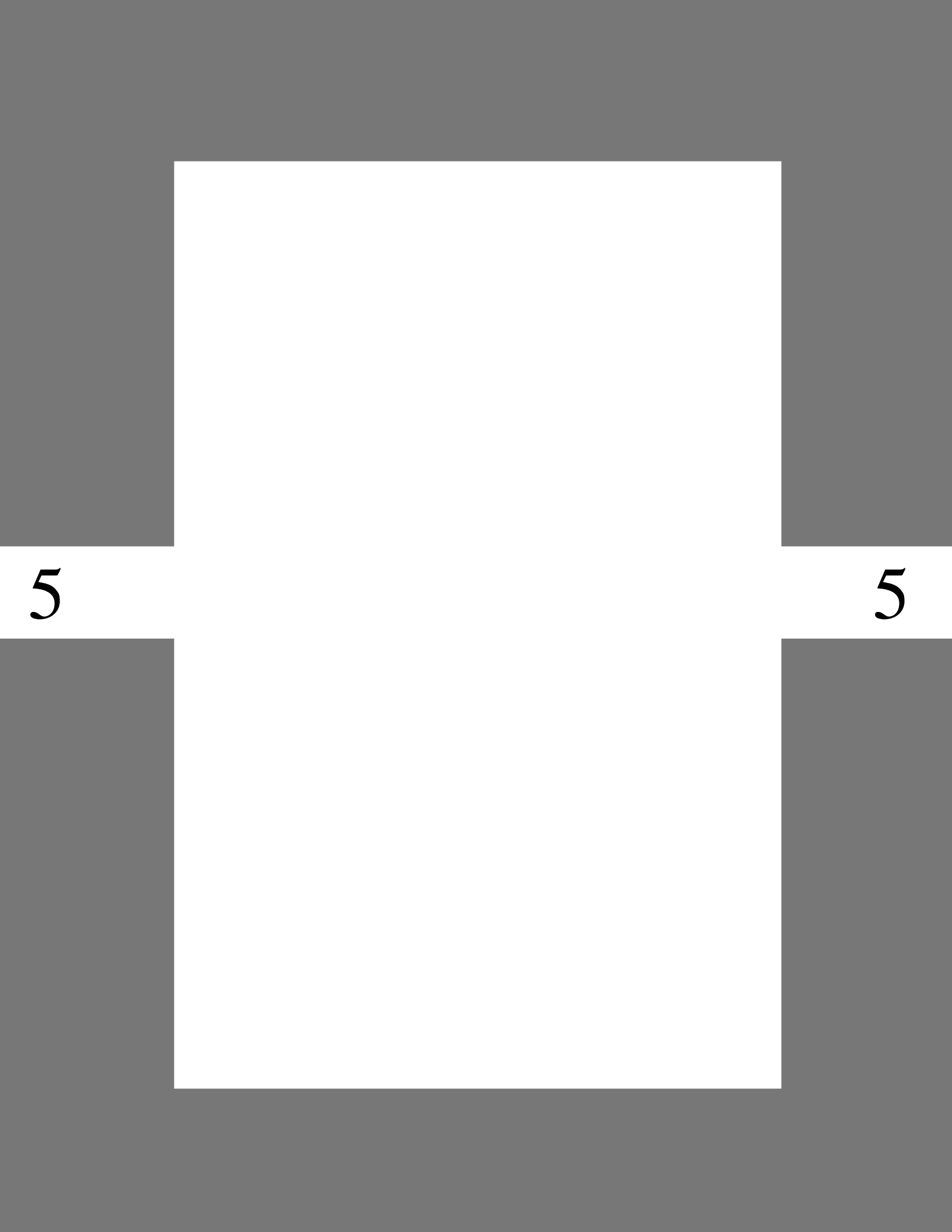
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2
3 **CERTIFICATE OF SERVICE**
4

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

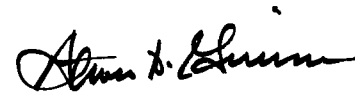
13 /s/ Allen Lichtenstein
14
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000103



5

5



CLERK OF THE COURT

EXH

Allen Lichtenstein, Esq.
Nevada Bar No. 3992
Staci Pratt, Esq.
Nevada Bar 12630
Allen Lichtenstein, Ltd.
3315 Russell Road, No. 222
Las Vegas, NV 89120
Tel: 702-433-2666
Fax: 702-433-9591
allaw@lvcoxmail.com
stacijpratt@gmail.com

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.: A-14-700018-C

**EXHIBIT TO 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 Exhibit to
2 the Amended Complaint.

3
4 Dated this 10th day of October 2014

5 Respectfully submitted by:

6
7
8 /s/ Allen Lichtenstein
9 Allen Lichtenstein, Esq.
10 Nevada Bar No. 3992
11 Staci Pratt, Esq.
12 Nevada Bar No. 12630
13 Allen Lichtenstein, Ltd.
14 3315 Russell Road, No. 222
15 Las Vegas, NV 89120
16 Tel: 702-433-2666
17 Fax: 702-433-9591
18 allaw@lvcoxmail.com
19 staci.pratt@gmail.com

20 Attorneys for Plaintiffs

21
22 **CERTIFICATE OF SERVICE**

23 I hereby certify that I served the foregoing Exhibit to the Amended Complaint to the
24 following, via email and United States Mail, postage prepaid from Las Vegas, Nevada, on this
25 10th day of October 2014.

26 Daniel Polsenberg, Esq.
27 Lewis Roca Rothgerber, LLP
28 3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996

/s/ Allen Lichtenstein

EXHIBIT 1

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT

STATEMENT REPORT

DR# 1202-0107

FOR OFFICIAL POLICE USE ONLY

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

Ident (Number & Street)

City

State

Zip Code

Last / First / Middle

Van, Ethen Garrett

Date of Birth

Social Security #

Race

Sex

Ht.

Wt.

Hair

Eyes

Business/School Name

Residence Address: (Num)

Bldg/Apt.#

City

State

Code

Res. Phone:

5

Business/School Address: #

City

State

Code

Bus. Phone:

Occupation:

☐ CCSD Employee☒ Student

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

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.

6. Anything you say can and will be used against you in Juvenile Court.

7. If 18 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.(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.
11. [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].
19. [redacted]

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:

Page 1 of 2

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT

CRIME REPORT

CCSD V. 10/10/07 DR# 1202-01070

Specific Crime

Battery (NRS 200.481)

Location of Crime (Local or Street)

Greenspun M.S. 140 N Valle Verde Dr.

City Henderson

State NV

Zip Code

Occurrence On	Month	Day	Year	Day/Week	Time	Report Taken	Month	Day	Year	Day/Week	Time	P#	Reporting Officer
09	Unk	2012	Unk	0000		02	08	2012	Wednesday	1800	509		Dave Wykry
Continued On	Month	Day	Year	Day/Week	Time	Report Taken	Month	Day	Year	Day/Week	Time	P#	Reporting Officer
02	02	2012	Thursday	1943									

Was there a witness?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	Can suspect vehicle be identified?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	BIAS CRIME	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)	LAURENCE CLASSIFICATION	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)	ASSAULT & BATTERY DATA	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)
Can suspect be named?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	Is crime property traceable? Identifiable?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	GANG-RELATED	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)	Purse Snatching	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)	Substantial Injury	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)
Can suspect be described?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	Is there physical evidence present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	Substance Abuse	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)	Threat of Strokes	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)	Threat to Life	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)
Can suspect be identified?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	Is there a significant M.O.?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	Threat to Property	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)	Threat to Vehicle	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)	Threat to Vehicle (Parts & Acc.)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)
		Can statistics work performed?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> (line)	Threat to Vending Machine	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Other <input type="checkbox"/> (line)				

PERSON CODES: V - VICTIM, W - WITNESS, R - PERSON REPORTING, S - SUSPECT, ALWAYS AS VICTIM OR FIRST

Pers #	Code	Ver #	Statement Obtained	Name (Last / First / Middle) OR Business Name	Monitors
1	V		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Greenspun M.S.	
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89014	

Business/School Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Occupation
140 N. Valle Verde Dr.		Henderson	NV	89074	Student
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	5-0	108
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89074	

Pers #	Code	Ver #	Statement Obtained	Name (Last / First / Middle) OR Business Name	Monitors
2	V		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Greenspun M.S.	
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	5-0	108
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89074	

Business/School Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Occupation
140 N. Valle Verde Dr.		Henderson	NV	89074	Student
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	5-0	108
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89074	

Pers #	Code	Ver #	Statement Obtained	Name (Last / First / Middle) OR Business Name	Monitors
3	V		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Hairr, Nolan M.	
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
07/12/2000		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89014	

Business/School Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Occupation
140 N. Valle Verde Dr.		Henderson	NV	89074	Student
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89074	

Pers #	Code	Ver #	Statement Obtained	Name (Last / First / Middle) OR Business Name	Monitors
4	S		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Greenspun M.S.	
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89014	

Business/School Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Occupation
140 N. Valle Verde Dr.		Henderson	NV	89074	Student
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89074	

Pers #	Code	Ver #	Statement Obtained	Name (Last / First / Middle) OR Business Name	Monitors
4	S		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Greenspun M.S.	
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89014	

Business/School Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Occupation
140 N. Valle Verde Dr.		Henderson	NV	89074	Student
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89074	

Pers #	Code	Ver #	Statement Obtained	Name (Last / First / Middle) OR Business Name	Monitors
4	S		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Greenspun M.S.	
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89014	

Business/School Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Occupation
140 N. Valle Verde Dr.		Henderson	NV	89074	Student
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89074	

Pers #	Code	Ver #	Statement Obtained	Name (Last / First / Middle) OR Business Name	Monitors
4	S		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Greenspun M.S.	
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89014	

Business/School Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Occupation
140 N. Valle Verde Dr.		Henderson	NV	89074	Student
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89074	

Pers #	Code	Ver #	Statement Obtained	Name (Last / First / Middle) OR Business Name	Monitors
4	S		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Greenspun M.S.	
Date of Birth	Social Security No	Race	Sex	Ht.	Wt.
		W	M	Unk	Unk
Residence Address (Number & Street)	Bldg/Apt #	City	State	Zip Code	Res Phone
		Henderson	NV	89014	

CCSDPD
RECORDS

UCR CODE CATEGORIES: A Cash Notes/Coin/Cheque/etc. B Jewelry & Precious Metals C Clothing & Purses E Office Equip. (incl. Computers) F TVs/Stereos/Cameras/VCRs G Firearms (NOT BB, pellet, air, gas powered) H House-hold Goods/Appliances I Consumable Goods (incl. Drugs) J Explosives (NOT Domestic) K Mechanism (incl. Bicycles, Air, Motor, Bridges, CELL PHONES, etc.)

Page 4 of 4

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT

CCSD
CLARK COUNTY
SCHOOL DISTRICT

STATEMENT REPORT

DR#

1202-01078

FOR OFFICIAL POLICE USE ONLY

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

Location of Incident: (Number & Street)				City		State		Zip Code	
[REDACTED]				Henderson		NV		89014	
Name (Last / First / Middle)									
Harris, Nolan Michael									
Date of Birth	Social Security #	Race	Sex	HL	Wt.	Hair	Eyes	Business/School Name	
7-12-00		White	M			Blond	Green	Greenspun	
Residence Address: (Number & Street)			Bldg./Apt. #	City		State		Zip Code	
Five				Henderson		NV			
				Henderson		NV			
A. Phone:								ext.	
Bus. Phone:									
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. Anything you say can and will be used against you in Juvenile Court.
6. (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.

(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. Poking/Tapping with finger and trombone
2. Hair pulling and touching
3. Stabbed with pencil ~~in~~ in genitals
4. Name calling
5. Harrasing
6. Teasing

COPY

Statement Taken	Location of Statement: (Number & Street)	City	State	Zip Code	Month	Day	Year	Time 24 HR.
	[REDACTED]	HND	NV	[REDACTED]	02	06	12	2230

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.

Nolan Harris

Signature of Person Giving Voluntary Statement

WITNESS:

L. Dore #277

(School Police Officer Only)

TITLE:

P.O.

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 _____ and _____.
Suspect _____ is a Greenspun student. All three victims completed stater _____ and alleged that the suspect in this case poked/jabbed at them, pulled hair, harassed and teased them as well as stabbed them _____ 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.

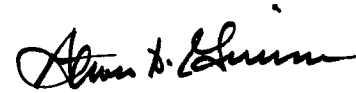
Based on the statements provided by the victims in this case, further investigation is warranted. Due to the length of time in reporting this incident no surveillance cameras were reviewed at the school. The suspect in this case has not yet been interviewed. Note: Per the parent of victim Hairr, her 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.



COPY

6

6



CLERK OF THE COURT

COMP

Allen Lichtenstein, Esq.
Nevada Bar No. 3992
Staci Pratt, Esq.
Nevada Bar 12630
Allen Lichtenstein, Ltd.
3315 Russell Road, No. 222
Las Vegas, NV 89120
Tel: 702-433-2666
Fax: 702-433-9591
allaw@lvcoxmail.com
stacijpratt@gmail.com

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.

Case No.:

ERRATA

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;
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.

Dated this 11th day of November 2014

1 Please note the following Errata have been corrected in the First Amended Complaint.
2 Identified page and line numbers refer to cite locations in the First Amended Complaint, as filed
3 on October 10, 2014.
4

- 5 1. Greenspun Junior High School has been removed from the caption as a named
6 Defendant. (1: 21-22).
- 7 2. The phrase "including her own death," has been deleted from paragraph 126 of the
8 Complaint. (25: 13).
- 9 3. "Boy" has been corrected to read "boys" in paragraph 125 of the Complaint. (25: 6)
10 In the same paragraph, "she" has been corrected to read "they." (25: 9)
11
- 12 4. The reference to "Truman White Middle School" in paragraph 125 of the Complaint
13 has been corrected to reference "Greenspun Junior High School." (25: 9).
- 14 5. The verb "is" contained in paragraph 158 of the Complaint has been corrected to
15 "was." (30: 3).
16

17 Dated this 14th day of November 2014
18

19 Respectfully submitted by:
20

21 /s/ Allen Lichtenstein
22 Allen Lichtenstein, Esq.
23 Nevada Bar No. 3992
24 Staci Pratt, Esq.
25 Nevada Bar No. 12630
26 Allen Lichtenstein, Ltd.
27 3315 Russell Road, No. 222
28 Las Vegas, NV 89120
Tel: 702-433-2666
Fax: 702-433-9591
allaw@lvcoxmail.com
stacijpratt@gmail.com

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Amended Complaint to the following, via email and United States Mail, postage prepaid from Las Vegas, Nevada, on this 14th day of November 2014.

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

/s/ Allen Lichtenstein

000113

COMP

Allen Lichtenstein, Esq.
 Nevada Bar No. 3992
 Staci Pratt, Esq.
 Nevada Bar 12630
 Allen Lichtenstein, Ltd.
 3315 Russell Road, No. 222
 Las Vegas, NV 89120
 Tel: 702-433-2666
 Fax: 702-433-9591
 allaw@lvcoxmail.com
 stacijpratt@gmail.com

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;
 Principal Warren P. McKay, in his individual
 and official capacity as principal of Greenspun
 Junior High School (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 (WITH ERRATA)**

**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
16 **JURISDICTIONAL STATEMENT**

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

21 **PARTIES**

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

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

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

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

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

22
23
24
25
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.

13 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

14 97. The letters also summarized CCSD and GJHS' position. The district and school denied
15 the allegations of discrimination, and they stated they responded appropriately to both Nolan and
16 Ethan's incidents. They also stated that at no time were they aware of harassment discriminatory
17 in nature. Further, respondents attempted to draw a distinction between official reporting versus
18 more informal reporting. In sum, they attested that they had an effective bullying policy that was
19 implemented appropriately.
20

21 98. The response from CCSD and GJHS spanned about a page, with only conclusory
22 statements pointing to no wrongdoing – some of which were in direct contradiction to recorded
23 accounts.
24

25 99. NERC requested a detailed response from Plaintiffs and various documents, such as
26 telephone records spanning several months, all emails between Plaintiffs and school officials,
27
28

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

17 115. Defendant Commission Administrator Jenkins stated that “just because Plaintiffs had
18 ACLU attorneys, that did not mean they would be given special treatment.” She also felt that
19 Plaintiffs’ emails that expressed frustration as to the lack of information and timeline, and
20 seemingly lack of commitment by NERC, were unwelcome
21

22 116. When asked about a timeline, she stated, “I need to manage your expectations. These
23 cases can take over two years.” Plaintiffs attempted to affirm this timeline. Ms. Jenkins
24 promptly corrected herself stating that every case is different, and there is no guarantee this
25 investigation would be completed in two years. She said she would only say “the case is moving
26 forward,” but all other information was confidential.
27
28

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
11 **CLAIMS FOR RELIEF: CCSD DEFENDANTS**

12 **CLAIM FOR RELIEF I**
13 **NEGLIGENCE**

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

15 121. The standards to establish a negligence claim were set forth by the Nevada
16 Supreme Court in, *Foster v. Costco Wholesale Corp.*, 291 P.3d 150 (2012); *DeBoer v. Sr.*
17 *Bridges of Sparks Fam. Hosp.*, 282 P.3d 727, 732 (2012); see also, *Scialabba v. Brandise*
18 *Const. Co.*, 921 P.2d 928, 930 (Nev.1996). [A] plaintiff must demonstrate that (1) the defendant
19 owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the
20 legal cause of the plaintiff’s injuries, and (4) the plaintiff suffered damages.
21

22 122. The Nevada Supreme Court has expressly stated that a special duty exists between
23 teachers and students in *Lee v. GNLV Corp.*, 117 Nev. 291, 22 P.3d 209 (2001).
24

25 In Nevada, as under the common law, strangers are generally under no duty to aid
26 those in peril. See *Sims v. General Telephone & Electronics*, 107 Nev. 516, 525,
27 815 P.2d 151, 157 (1991) (overruled on other grounds in *Tucker v. Action*
28 *Equipment and Scaffold Co., Inc.*, 113 Nev. 1349, 951 P.2d 1027 (Nev. 1997)).
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
10 In addition, a school district and its employees have a special relationship with the
11 district's pupils, a relationship arising from the mandatory character of school
12 attendance and the comprehensive control over students exercised by school
13 personnel, "analogous in many ways to the relationship between parents and their
14 children .- (Hoff v. Vacaville Unified School Dist. (1998) 19 Cal.4th 925, 935, 80
15 Cal.Rptr.2d 811, 968 P.2d 522, see M.W. v. Panama Buena Vista Union School
16 Dist. (2003) 110 Cal.App.4th 508, 517, 1 Cal.Rptr.3d 673; Leger v. Stockton
17 Unified School Dist., (1988) 202 Cal.App.3d at 1448,1458-1459, 249 Cal.Rptr.
18 688.) Because of this special relationship, imposing obligations beyond what each
19 person generally owes others under Civil Code section 1714, the duty of care
20 owed by school personnel includes the duty to use reasonable measures to protect
21 students from foreseeable injury at the hands of third parties acting negligently or
22 intentionally.FN3 This principle has been applied in cases of employees' alleged
23 negligence resulting in injury to a student by another student (J.H. v. Los Angeles
24 Unified School Dist. (2010) 183 Cal.App.4th 123, 128-129, 141-148, . . .

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

27 124. The William S. Hart Union High School Dist. Court explained that the special
28 duty to students at school stated that the duty is in accord with public policy set forth in, Cal.
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 boys had endured and were enduring, thereby
6 depriving them of a safe and respectful learning environment; by failing to adequately
7 investigate the bullying they endured, and by failing to adequately address the discrimination,
8 harassment, and pervasive bullying Ethan and Nolan faced at Greenspun Junior High School.
9

10 126. As a proximate result of CCSD Defendants' negligence, practices, acts and
11 omissions, Ethan and Nolan suffered immediate and irreparable injury, including physical,
12 psychological and emotional injury.
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
11 131. In NRS § 388.132, entitled “Legislative declaration concerning safe and
12 respectful learning environment” the Legislature declared that:

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

26 (b) All administrators, principals, teachers and other personnel of the school districts
27 and public schools in this State demonstrate appropriate behavior on the premises of any
28 public school by treating other persons, including, without limitation, pupils, with civility
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.

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

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

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

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

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

20 142. No such committee was established in the case of the bullying of Ethan and
21 Nolan.

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.

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

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

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

17 148. As a proximate result of CCSD Defendants negligence, practices, acts and
18 omissions, Ethan and Nolan suffered immediate and irreparable injury, including physical,
19 psychological and emotional injury.

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

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27 **CCSD ONLY - CLAIM FOR RELIEF III**
28 **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
16 155. Liability under Title IX for student-student sexual harassment: (1) the school
17 district “must exercise substantial control over both the harasser and the context in which the
18 known harassment occurs”, (2) the plaintiff must suffer “sexual harassment ... that is so severe,
19 pervasive, and objectively offensive that it can be said to deprive the victims of access to the
20 educational opportunities or benefits provided by the school”, (3) the school district must have
21 “actual knowledge of the harassment”, and (4) the school district’s “deliberate indifference
22 subjects its students to harassment”. See, Henkle v. Gregory, 150 F.Supp.2d 1067, 107701978
23 (D. Nev. 2001).

24
25 156. Deliberate indifference is “the conscious or reckless disregard of the
26 consequences of ones acts or omissions.” Henkle v. Gregory, 150 F.Supp.2 at 1078.
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 was 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 *Laakonen v. Eighth Judicial Dist. Ct.*, 538 P. 2d 574 (1975).

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

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

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

19 171. Ethan and Nolan were students at Greenspun Junior High School, who were
20 entitled to the same level of protection from bullying and harassment as all other children
21 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.

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

19 177. As an independent equal protection challenge, Plaintiffs observe that Defendants
20 displayed deliberate indifference, which means defendants were “clearly unreasonable” in their
21 response to peer harassment. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 649, 119 S.Ct.
22 1661, 143 L.Ed.2d 839 (1999) (Fifth grade student sued school board under Title IX for failure
23 to address peer sexual harassment).

25 178. Despite a complete and thorough record of notice, Defendants failed to follow-up
26 and investigate the incidents. They did not follow their own District policies, nor state law
27
28

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

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

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

11 182. Pursuant to 42 U.S.C. § 1983, a student may raise constitutional claims against a
12 school district, its governing board and superintendent, for an inadequate response to peer on
13 peer sexual harassment. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246 (2009). The
14 42 U.S.C. § 1983 claims are applicable to the federal claims.
15

16 183. Deliberate indifference is established when a state actor “disregarded a known or
17 obvious consequence of his action.” *Patel*, 648 F.3d at 974, quoting *Bryan Cnty. v. Brown*, 520
18 U.S. 397, 410, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997).
19

20 184. On numerous and documented occasions, Defendants were notified as to the
21 harassment and injuries endured by the Plaintiffs. By forcing Nolan and Ethan to sit next to their
22 harasser, and otherwise not developing a safety plan to ensure the safety of Plaintiffs, Defendants
23 were deliberately indifferent to the risk and knew the result would be further harassment and
24 physical harm.
25

26 185. Because of this disparate treatment, Defendants violated Plaintiffs’ rights to equal
27 protection under both Nevada and the United States Constitutions.
28

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).

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- Plaintiffs hereby demand that this matter be tried by a jury, pursuant the Seventh Amendment of the Constitution of the United States, as to all claims for damages.

Respectfully submitted by:

Attorneys for Plaintiffs

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3 **CERTIFICATE OF SERVICE**
4

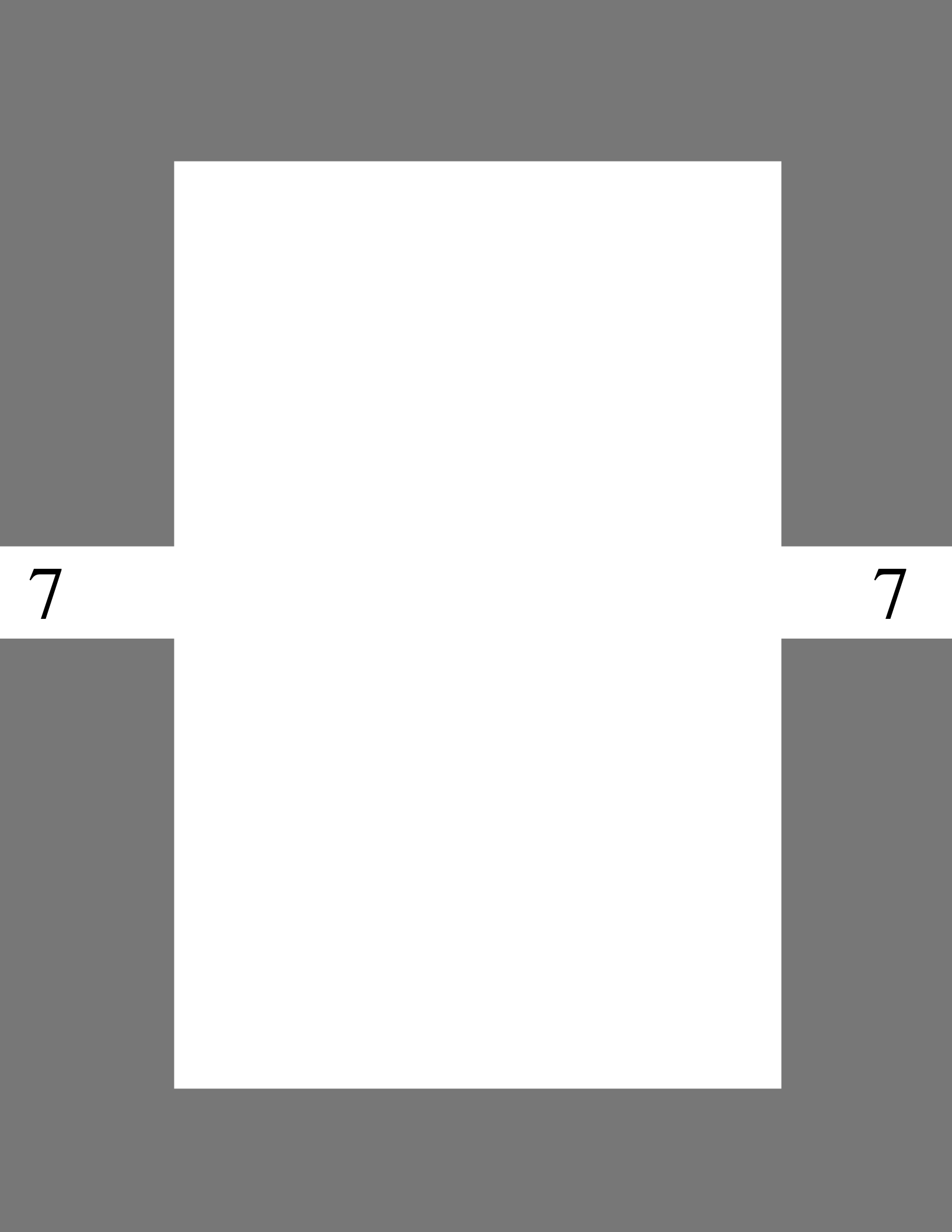
5 I hereby certify that I served the foregoing Amended Complaint to the following, via
6 email and United States Mail, postage prepaid from Las Vegas, Nevada, on this 10th day of
7 October 2014.

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
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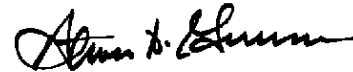
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1 ORDR



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

DEPARTMENT 27

9 v.

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

26 Defendants.

27 **DECISION AND ORDER GRANTING IN PART AND DENYING IN PART**
28 **DEFENDANTS' MOTION TO DISMISS AND DENYING PLAINTIFFS'**
COUNTERMOTION TO STRIKE

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

CLERK OF THE COURT
RECEIVED
FEB - 9 2015
9

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
27
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1
2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that on or about the date signed I caused the foregoing document to be
5 electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial
6 District Court's electronic filing system, with the date and time of the electronic service
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@lrrlaw.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
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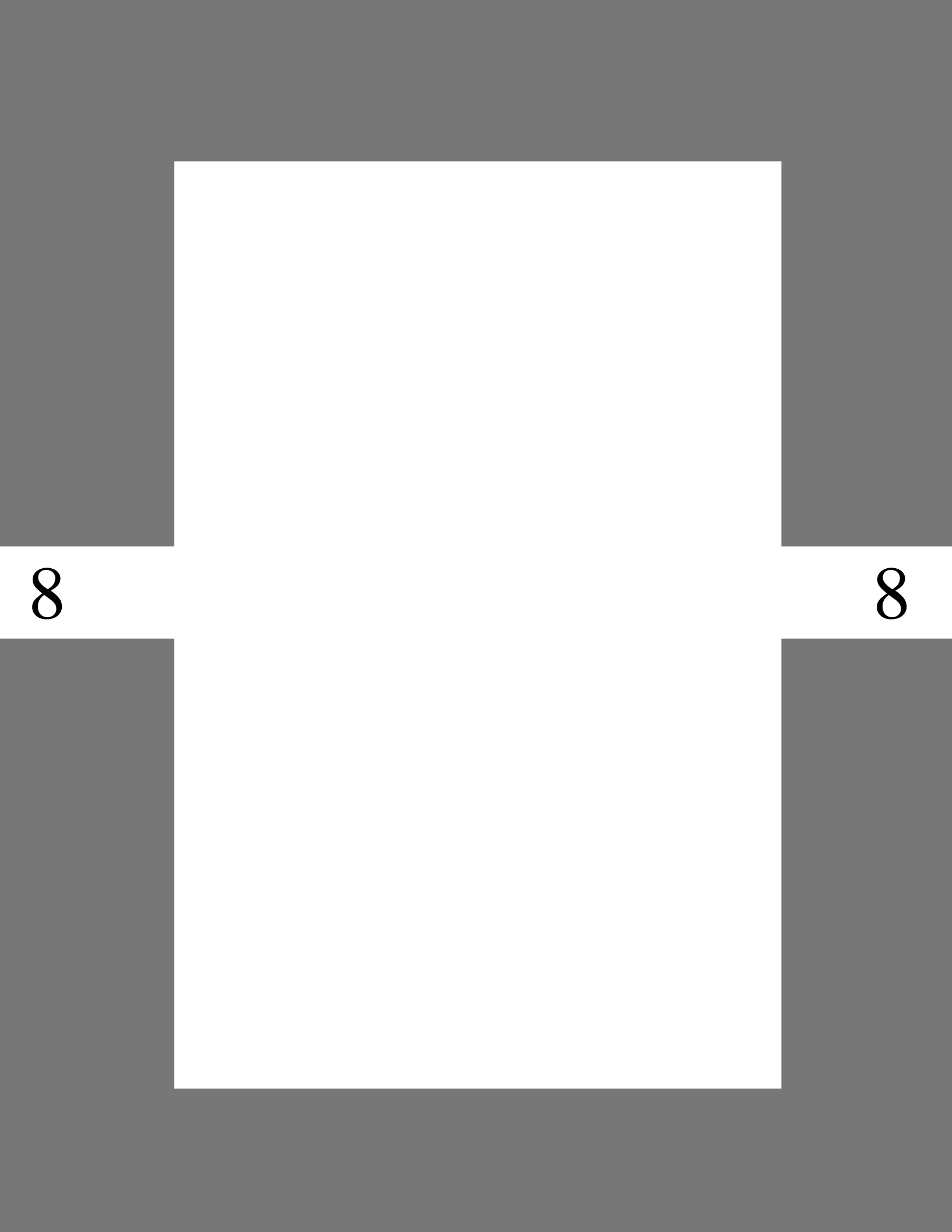
TO: Daniel Polsenberg, Esq. FAX: 702-949-8398

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

FROM: DEPARTMENT 27

DATE: February 6, 2015

PAGES: (Including cover page: 5



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CLERK OF THE COURT

1 ANS

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
6 3993 Howard Hughes Pkwy, Suite 600
7 Las Vegas, NV 89169-5996
8 Tel: 702.949.8200
9 Fax: 702.949.8398
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,

Case No. A-14-700018-C

Dept. No. XXVII

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
29 CCSD BOARD OF SCHOOL TRUSTEES;
30 GREENSPUN JUNIOR HIGH SCHOOL
31 (GJHS); Principal Warren P. McKay, in his
32 individual and official capacity as principal of
33 GJHS; Leonard DePiazza, in his individual and
34 official capacity as assistant principal at GJHS;
35 Cheryl Winn, in her individual and official
36 capacity as Dean at GJHS; John Halpin, in his
37 individual and official capacity as counselor at
38 GJHS; Robert Beasley, in his individual and
39 official capacity as instructor at GJHS

40 Defendants.

41 **DEFENDANTS CCSD, WARREN P.**
42 **MCKAY, LEONARD DEPIAZZA,**
43 **CHERYL WINN, JOHN HALPIN AND**
44 **ROBERT BEASLEY'S ANSWER TO**
45 **PLAINTIFFS' FIRST AMENDED**
46 **COMPLAINT FOR DECLARATORY**
47 **RELIEF, INJUNCTIVE RELIEF, AND**
48 **DAMAGES (WITH ERRATA)**

49 The Clark County School District ("CCSD"), Principal Warren P. McKay, Leonard
50 DePiazza, Cheryl Winn, John Halpin, and Robert Beasley (collectively the "Defendants"), by and

1 through their undersigned counsel, answer Plaintiffs' First Amended Complaint (the "Amended
2 Complaint") as follows:

3 **STATEMENT OF THE CASE**

4 1. Answering paragraph 1 of Plaintiffs' Amended Complaint, this paragraph states
5 legal conclusions to which no response is required. To the extent a response is required,
6 Defendants deny the allegations contained therein.

7 2. Answering paragraph 2, Defendants lack sufficient knowledge or information to
8 form a belief as to the truth of the allegations contained therein and therefore deny them.

9 **JURISDICTIONAL STATEMENT**

10 3. Answering paragraph 3, this paragraph states legal conclusions to which no
11 response is required. To the extent a response is required, Defendants deny the allegations
12 contained therein.

13 **PARTIES**

14 4. Answering paragraph 4, Defendants admit that "Plaintiff Ethan Bryan is a student
15 at CCSD, and a former student at Greenspun Middle School." Defendants lack sufficient
16 knowledge or information to form a belief as to the truth of the remaining allegations and
17 therefore denies the remaining allegations.

18 5. Answering paragraph 5, Defendants admit that "Plaintiff Nolan Hairr is a student at
19 CCSD, and a former student at Greenspun Middle School." Defendants lack sufficient knowledge
20 or information to form a belief as to the truth of the remaining allegations and therefore denies
21 the remaining allegations.

22 6. Answering paragraph 6, Defendants admit that CCSD is a political subdivision of
23 the State of Nevada, and it encompasses the public schools in Clark County, Nevada, including
24 Greenspun Junior High School ("GJHS").

25 7. Answering paragraph 7, Defendants admit the allegations contained therein.

26 8. Answering paragraph 8, Defendants admit the allegations contained therein.

1 9. Answering paragraph 9, Defendants admit the allegations contained therein except
2 the allegation that Stavan Corbett is currently a member of the CCSD Board of Trustees, which
3 allegation is denied.

4 10. Answering paragraph 10, Defendants deny the allegations contained therein.

5 11. Answering paragraph 11, Defendants deny the allegations contained therein.

6 12. Answering paragraph 12, Defendants admit that Cheryl Winn is a Dean at GJHS,
7 and is responsible for overseeing students and disciplinary matters at the school.

8 13. Answering paragraph 13, Defendants admit that John Halpin is a guidance
9 counselor at GJHS, and is responsible for overseeing 7th grade students and ensuring their safety
10 and success at the school.

11 14. Answering paragraph 14, Defendants admit the allegations contained therein.

12 15. Answering paragraph 15, Defendants deny the allegations contained therein.

13 **STATUTE OF LIMITATIONS AND TOLLING**

14 16. Answering paragraph 16, this paragraph states legal conclusions to which no
15 response is required. To the extent a response is required, Defendants deny the allegations
16 contained therein.

17 17. Answering paragraph 17, this paragraph states legal conclusions to which no
18 response is required. To the extent a response is required, Defendants deny the allegations
19 contained therein.

20 **FACTUAL BACKGROUND**

21 18. Answering paragraph 18, Defendants lack sufficient knowledge or information to
22 form a belief as to the truth of the allegations contained therein and therefore deny them.

23 19. Answering paragraph 19, Defendants lack sufficient knowledge or information to
24 form a belief as to the truth of the allegations contained therein and therefore deny them.

25 20. Answering paragraph 20, Defendants lack sufficient knowledge or information to
26 form a belief as to the truth of the allegations contained therein and therefore deny them.

27 21. Answering paragraph 21, Defendants lack sufficient knowledge or information to
28 form a belief as to the truth of the allegations contained therein and therefore deny them.

1 22. Answering paragraph 22, Defendants lack sufficient knowledge or information to
2 form a belief as to the truth of the allegations contained therein and therefore deny them.

3 23. Answering paragraph 23, Defendants lack sufficient knowledge or information to
4 form a belief as to the truth of the allegations contained therein and therefore deny them.

5 24. Answering paragraph 24, Defendants admit that CCSD Policy P-5137(IV)(B)
6 requires employees to report incidents of bullying as defined in the Policy. Defendants deny all
7 remaining allegations in this paragraph.

8 25. Answering paragraph 25, Defendants lack sufficient knowledge or information to
9 form a belief as to the truth of the allegations contained therein and therefore deny them.

10 26. Answering paragraph 26, Defendants lack sufficient knowledge or information to
11 form a belief as to the truth of the allegations contained therein and therefore deny them.

12 27. Answering paragraph 27, Defendants deny that the allegations accurately quote
13 current CCSD Policy P-5137. Defendants deny all remaining allegations in this paragraph.

14 28. Answering paragraph 28, Defendants admit that “CCSD declares through its
15 bullying policies [e.g., CCSD Policy P-5137] that the district ‘is committed to providing a safe,
16 secure, and respectful learning environment for all students...’” but that paragraph 28 is an
17 incomplete quotation of that Policy. Defendants deny all remaining allegations in this paragraph.

18 29. Answering paragraph 29, Defendants deny the allegations contained therein.

19 30. Answering paragraph 30, Defendants lack sufficient knowledge or information to
20 form a belief as to the truth of the allegations contained therein and therefore deny them.

21 31. Answering paragraph 31, Defendants lack sufficient knowledge or information to
22 form a belief as to the truth of the allegation that the described events occurred “[o]n September
23 19, 2011,” and therefore deny them. Defendants admit that Defendant Beasley moved Nolan’s
24 seat. Defendants lack sufficient knowledge or information to form a belief as to the truth of the
25 remaining allegations contained therein and therefore deny them.

26 32. Answering paragraph 32, Defendants lack sufficient knowledge or information to
27 form a belief as to the truth of the allegations contained therein and therefore deny them.
28

1 33. Answering paragraph 33, Defendants lack sufficient knowledge or information to
2 form a belief as to the truth of the allegations contained therein and therefore deny them.

3 34. Answering paragraph 34, Defendants lack sufficient knowledge or information to
4 form a belief as to the truth of the allegations contained therein and therefore deny them.

5 35. Answering paragraph 35, Defendants lack sufficient knowledge or information to
6 form a belief as to the truth of the allegations contained therein and therefore deny them.

7 36. Answering paragraph 36, Defendants lack sufficient knowledge or information to
8 form a belief as to the truth of the allegations contained therein and therefore deny them.

9 37. Answering paragraph 37, Defendants lack sufficient knowledge or information to
10 form a belief as to the truth of the allegations contained therein and therefore deny them.

11 38. Answering paragraph 38, Defendants deny the allegations contained therein.

12 39. Answering paragraph 39, Defendants lack sufficient knowledge or information to
13 form a belief as to the truth of the allegations contained therein and therefore deny them.

14 40. Answering paragraph 40, Defendants lack sufficient knowledge or information to
15 form a belief as to the truth of the allegations contained therein and therefore deny them.

16 41. Answering paragraph 41, Defendants deny the allegations contained therein.

17 42. Answering paragraph 42, Defendants lack sufficient knowledge or information to
18 form a belief as to the truth of the allegations contained therein and therefore deny them.

19 43. Answering paragraph 43, Defendants lack sufficient knowledge or information to
20 form a belief as to the truth of the allegations contained therein and therefore deny them.

21 44. Answering paragraph 44, Defendants lack sufficient knowledge or information to
22 form a belief as to the truth of the allegations contained therein and therefore deny them.

23 45. Answering paragraph 45, Defendants lack sufficient knowledge or information to
24 form a belief as to the truth of the allegations contained therein and therefore deny them.

25 46. Answering paragraph 46, Defendants lack sufficient knowledge or information to
26 form a belief as to the truth of the allegations contained therein and therefore deny them.

27 47. Answering paragraph 47, Defendants lack sufficient knowledge or information to
28 form a belief as to the truth of the allegations contained therein and therefore deny them.

1 48. Answering paragraph 48, Defendants deny there was a “pervasive culture of
2 harassment and sexual assaults tolerated by the school.” Defendants lack sufficient knowledge or
3 information to form a belief as to the truth of the remaining allegations contained therein and
4 therefore deny them.

5 49. Answering paragraph 49, Defendants deny the allegations contained therein.

6 50. Answering paragraph 50, Defendants lack sufficient knowledge or information to
7 form a belief as to the truth of the allegations contained therein and therefore deny them.

8 51. Answering paragraph 51, Defendants admit Ms. Bryan sent an email dated October
9 19, 2011. Defendants lack sufficient knowledge or information to form a belief as to the truth of
10 the remaining allegations contained therein and therefore deny them.

11 52. Answering paragraph 52, Defendants admit that “Mrs. Bryan ultimately asked to
12 volunteer as a monitor to the students.” Defendants deny “for which Defendant Dean Winn
13 accepted.” Defendants lack sufficient knowledge or information to form a belief as to the truth of
14 the remaining allegations contained therein and therefore deny them.

15 53. Answering paragraph 53, Defendants lack sufficient knowledge or information to
16 form a belief as to the truth of the allegations contained therein and therefore deny them.

17 54. Answering paragraph 54, Defendants lack sufficient knowledge or information to
18 form a belief as to the truth of the allegations contained therein and therefore deny them.

19 55. Answering paragraph 55, Defendants lack sufficient knowledge or information to
20 form a belief as to the truth of the allegations contained therein and therefore deny them.

21 56. Answering paragraph 56, Defendants lack sufficient knowledge or information to
22 form a belief as to the truth of the allegations contained therein and therefore deny them.

23 57. Answering paragraph 57, Defendants lack sufficient knowledge or information to
24 form a belief as to the truth of the allegations contained therein and therefore deny them.

25 58. Answering paragraph 58, Defendants deny that “[i]n retaliation, the next day
26 Defendant Assistant Principal DePiazza physically ejected Mrs. Bryan off of the campus when she
27 arrived to assume her volunteer duties for the day and told her she was not welcome there.”
28

1 Defendants lack sufficient knowledge or information to form a belief as to the truth of the
2 remaining allegations contained therein and therefore deny them.

3 59. Answering paragraph 59, Defendants deny that Long is a Defendant in this case.
4 Defendants lack sufficient knowledge or information to form a belief as to the truth of the
5 remaining allegations contained therein and therefore deny them.

6 60. Answering paragraph 60, Defendants lack sufficient knowledge or information to
7 form a belief as to the truth of the allegations contained therein and therefore deny them.

8 61. Answering paragraph 61, Defendants deny that “CCSD Defendants consistently
9 failed to remedy the pervasive perceived sexual orientation discrimination, harassment, and
10 physical and psychological pain Ethan and Nolan suffered.” Defendants lack sufficient knowledge
11 or information to form a belief as to the truth of the remaining allegations contained therein and
12 therefore deny them.

13 62. Answering paragraph 62, Defendants deny the allegations contained therein.

14 63. Answering paragraph 63, Defendants lack sufficient knowledge or information to
15 form a belief as to the truth of the allegations contained therein and therefore deny them.

16 64. Answering paragraph 64, Defendants admit the allegations contained therein.

17 65. Answering paragraph 65, Defendants lack sufficient knowledge or information to
18 form a belief as to the truth of the allegations contained therein and therefore deny them.

19 66. Answering paragraph 66, Defendants lack sufficient knowledge or information to
20 form a belief as to the truth of the allegations contained therein and therefore deny them.

21 67. Answering paragraph 67, Defendants lack sufficient knowledge or information to
22 form a belief as to the truth of the allegations contained therein and therefore deny them.

23 68. Answering paragraph 68, Defendants lack sufficient knowledge or information to
24 form a belief as to the truth of the allegations contained therein and therefore deny them.

25 69. Answering paragraph 69, Defendants lack sufficient knowledge or information
26 sufficient to form a belief as to the truth of the allegations contained therein and therefore deny
27 them. To the extent paragraph 69 attempts to describe the contents of Exhibit 1 attached to the
28 Amended Complaint, that document speaks for itself.

1 154. Answering paragraph 154, this paragraph states legal conclusions to which no
 2 response is required. To the extent a response is required, Defendants deny the allegations
 3 contained therein. However, the following citations contradict Plaintiffs' legal conclusions:
 4 *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1090 (D. Minn. 2000) (misquoted
 5 by Plaintiffs, holding "the Court concludes that, to the extent that plaintiff asserts Title IX claims
 6 based on discrimination due to his sexual orientation or perceived sexual orientation, these claims
 7 are not actionable and must be dismissed"); *see also Hoffman v. Saginaw Pub. Sch.*, 2012 WL
 8 2450805, at *13 (E.D. Mich. June 27, 2012) (stating that perceived sexual orientation is not a basis
 9 for a Title IX claim, rather, plaintiff must specifically claim they do not meet stereotyped
 10 expectations of masculinity or femininity); *Tyrrell v. Seaford Union Free School Dist.*, 792 F.
 11 Supp. 2d 601, 622, 273 Ed. Law Rep. 230 (E.D. N.Y. 2011) ("harassment or discrimination based
 12 upon [perceived] sexual orientation is not prohibited under Title VII or IX"); *Rodriguez v. Alpha*
 13 *Institute of South Florida, Inc.*, 2011 WL 5103950, *5 (S.D. Fla. 2011) (summary judgment
 14 granted to the defendant on Title IX claim because most of harassing comments made to plaintiff
 15 were about his sexual orientation and "sexual orientation is not protected under Title IX"); *Roe ex*
 16 *rel. Callahan v. Gustine Unified School Dist.*, 678 F. Supp. 2d 1008, 1026, 254 Ed. Law Rep. 774
 17 (E.D. Cal. 2009) ("use of gender-based or sexually loaded insults such as 'fag' or 'homo' can
 18 certainly be indicative of animus on the basis of gender, but the use of such terms without more is
 19 not necessarily sufficient to establish gender discrimination").

20 155. Answering paragraph 155, this paragraph states legal conclusions to which no
 21 response is required. To the extent a response is required, Defendants deny the allegations
 22 contained therein. However, the following citations contradict Plaintiffs' legal conclusions: Title
 23 IX requires the actionable behavior be "on the basis of sex," and "not merely tinged with offensive
 24 sexual connotations." *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 66 (1st Cir. 2002);
 25 *Patterson v. Hudson Area Schools*, 724 F.Supp.2d 682, 692 (E.D. Mich. 2010) (student called
 26 "gay," "fag," "queer," and "man boobs," but such did not violate Title IX because it was not due
 27 to his "sex, sexual orientation, or perceived sexual orientation"); Courts have found "the conduct
 28 that allegedly put the administration on notice and the conduct ultimately at issue in the litigation

1 must be sufficiently similar....” *Bliss v. Putnam Valley Cent. School Dist.*, 2011 WL 1079944, *6
 2 (S.D. N.Y. 2011) (explaining actual notice); *see, e.g., Tyrrell v. Seaford Union Free Sch. Dist.*,
 3 792 F.Supp.2d 601, 625 (E.D.N.Y. 2011) (finding school district lacked actual notice where
 4 record was “bereft” of any evidence that district knew of “similar harassment towards other
 5 students thereby indicating some degree of risk that plaintiff would be subjected to similar
 6 conduct.”).

7 156. Answering paragraph 156, this paragraph states legal conclusions to which no
 8 response is required. To the extent a response is required, Defendants deny the allegations
 9 contained therein. However, the following citations contradict Plaintiffs’ legal conclusions: *Doe*
 10 *on Behalf of Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 219 (5th Cir. 1998) (“[t]he deliberate
 11 indifference standard is a high one. Actions and decisions by officials that are merely inept,
 12 erroneous, ineffective, or negligent do not amount to deliberate indifference”); *Fitzgerald v.*
 13 *Barnstable School Comm.*, 504 F.3d 165 (1st Cir. 2007), *rev’d on other grounds*, 555 U.S. 246
 14 (2009) (Title IX does not require a school district to take heroic measures, to perform flawless
 15 investigations, to craft perfect solutions, or to adopt strategies advocated by parents); *Hawkins v.*
 16 *Sarasota Cnty. Sch. Bd.*, 322 F.3d 1279, 1288 (11th Cir. 2003) (“The real world of school
 17 discipline is a rough-and-tumble place where students practice newly learned vulgarities, erupt
 18 with anger, tease and embarrass each other, share offensive notes, flirt, push and shove in the
 19 halls, grab and offend”); *Wilson v. Beaumont Indep. Sch. Dist.*, 144 F. Supp. 2d 690, 694 (E.D.
 20 Tex. 2001) (“Even assuming, however, that Defendants could have taken swifter and more
 21 appropriate action, there is no legal requirement of perfection.”)

22 157. Answering paragraph 157, Defendants deny the allegations contained therein.

23 158. Answering paragraph 158, Defendants deny the allegations contained therein.

24 159. Answering paragraph 159, Defendants deny the allegations contained therein.

25 160. Answering paragraph 160, Defendants deny the allegations contained therein.

26 161. Answering paragraph 161, Defendants deny the allegations contained therein.

1 162. Answering paragraph 162, this paragraph states legal conclusions to which no
2 response is required. To the extent a response is required, Defendants deny the allegations
3 contained therein.

4 163. Answering paragraph 163, this paragraph states legal conclusions to which no
5 response is required. To the extent a response is required, Defendants deny the allegations
6 contained therein. However, the following citations contradict Plaintiffs' legal conclusions: *Alston*
7 *v. N. Carolina A & T State Univ.*, 304 F. Supp. 2d 774, 784 (M.D.N.C. 2004) ("punitive damages
8 are not an available remedy under Title IX"); *E.N. v. Susquehanna Twp. Sch. Dist.*, 2010 WL
9 4853700, at *20–21, (M.D. Pa. 2010) (holding that punitive damages were not available against a
10 school district in private actions to enforce Title IX); *see also Dawn L. v. Grater Johnstown Sch.*
11 *Dist.*, 586 F. Supp. 2d 332, 383 (W.D. Pa. 2008) (punitive damages not available for violations of
12 Title IX);¹ *Doe 20 v. Bd. of Educ. of Cmty Unit Sch. Dist. No. 5*, 680 F. Supp. 2d 957, 995 (C.D.
13 Ill. 2010) (same); *Hooper v. North Carolina*, 379 F. Supp. 2d 804, 811 (M.D.N.C. 2005) (same);
14 *See, e.g., Landon v. Oswego Unit School Dist. No. 308*, 143 F. Supp. 2d 1011 (N.D. Ill. 2001)
15 (citing *Barnes v. Gorman*, 536 U.S. 181, 122 S.Ct. 2097, 2100 (2002), holding that punitive
16 damages are not available against a school district under Title IX).

17 **CLAIM FOR RELIEF IV**

18 **Violations of State and Federal Equal Protection Guarantees 42 USC § 1983**

19 164. Answering paragraph 164, Defendants expressly incorporate by reference all prior
20 responses as if fully set forth herein.

21 165. Answering paragraph 165, this paragraph states legal conclusions to which no
22 response is required. To the extent a response is required, Defendants state that the quoted citation
23 to N.R.S. Const. Art. 4 § 21 is accurate but very incomplete.

24
25
26
27 ¹ Title IX legislation is viewed "much in the nature of a contract: in return for federal funds, the
28 [recipients] agree to comply with federally imposed conditions," therefore "even though Title IX 'contains
no express remedies,' compensatory damages and injunctive relief, which are traditional remedies for
breach of contract, are nonetheless available. By contrast, punitive damages, which are not traditionally
available in cases of breach of contract and, moreover, are of 'indeterminate magnitude,' i.e., unpredictable,
are also not available for violations of Title IX." *Id.* at 383 (citing *Barnes*, 536 U.S. at 187).

1 166. Answering paragraph 166, this paragraph states legal conclusions to which no
2 response is required. To the extent a response is required, Defendants deny the allegations
3 contained therein.

4 167. Answering paragraph 167, this paragraph states legal conclusions to which no
5 response is required. To the extent a response is required, Defendants deny the allegations
6 contained therein.

7 168. Answering paragraph 168, this paragraph states legal conclusions to which no
8 response is required. To the extent a response is required, Defendants deny the allegations
9 contained therein. However, the following citations contradict Plaintiffs' legal conclusions:
10 "Although the Equal Protection Clause ensures similarly situated persons are treated alike, it does
11 not ensure absolute equality." *See Bruce v. Ylst*, 351 F.3d 1283, 1288 (9th Cir. 2003). "To
12 establish a § 1983 equal protection violation...plaintiff[s] must show that the defendants, acting
13 under color of state law, discriminated against [Ethan and Nolan] as members of an identifiable
14 class and that the discrimination was intentional" or resulted from "deliberate indifference."
15 *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003). A showing of
16 "deliberate indifference, however, still requires that Plaintiffs demonstrate that the school acted
17 with a discriminatory intent when it failed to respond to student-on-student harassment." *Vidovic*
18 *v. Mentor City Sch. Dist.*, 921 F. Supp. 2d 775, 794 (N.D. Ohio 2013) (*citing Williams v. Port*
19 *Huron Sch. Dist.*, 455 Fed. App'x. 612, 618 (6th Cir. 2012)).

20 169. Answering paragraph 169, this paragraph states legal conclusions to which no
21 response is required. To the extent a response is required, Defendants deny the allegations
22 contained therein.

23 170. Answering paragraph 170, this paragraph states legal conclusions to which no
24 response is required. To the extent a response is required, Defendants deny the allegations
25 contained therein.

26 171. Answering paragraph 171, Defendants admit that Ethan and Nolan were students at
27 GJHS. The remaining allegations in paragraph 171 state legal conclusions to which no response is
28 required. To the extent a response is required, Defendants deny the allegations contained therein.

1 172. Answering paragraph 172, this paragraph states legal conclusions to which no
2 response is required. To the extent a response is required, Defendants deny the allegations
3 contained therein.

4 173. Answering paragraph 173, Defendants deny the allegations contained therein.

5 174. Answering paragraph 174, this paragraph states legal conclusions to which no
6 response is required. To the extent a response is required, Defendants deny the allegations
7 contained therein. However, the following citations contradict Plaintiffs' legal conclusions: There
8 is no allegation that a "policy, custom, or practice" caused a violation of Plaintiffs' constitutional
9 rights. *See Skinner v. Clark Cnty. Sch. Dist.*, No. 2:12-CV-1730 JCM NJK, 2013 WL 1501460, at
10 *2 (D. Nev. Apr. 10, 2013) (dismissing a plaintiff's § 1983 claims against the Clark County
11 School District where the plaintiff failed to identify any policy that caused a violation of the
12 plaintiff's constitutional rights).

13 175. Answering paragraph 175, Defendants deny the allegations contained therein.

14 176. Answering paragraph 176, this paragraph states legal conclusions to which no
15 response is required. To the extent a response is required, Defendants deny the allegations
16 contained therein. However, the following citations contradict Plaintiffs' legal conclusions: *Flores*
17 *v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1137 (9th Cir. 2003) (the Equal Protection
18 Clause is implicated only where "defendants treat plaintiffs' complaints of harassment differently
19 from other types of harassment") (emphasis added). "[T]he guarantee of equal protection . . .
20 requires the defendants to enforce District policies in cases of peer harassment of homosexual
21 students in the same way that they enforce those policies in cases of peer harassment of
22 heterosexual students." *See Flores*, 324 F.3d at 1137.

23 177. Answering paragraph 177, this paragraph states legal conclusions to which no
24 response is required. To the extent a response is required, Defendants deny the allegations
25 contained therein. However, the following citations contradict Plaintiffs' legal conclusions: "[T]he
26 guarantee of equal protection does not itself prescribe specific duties. It requires the defendants to
27 enforce District policies in cases of peer harassment of homosexual students in the same way that
28

1 they enforce those policies in cases of peer harassment of heterosexual students” – not according
 2 to the preferences of each parent. *See Flores, 324 F.3d at 1137.*

3 178. Answering paragraph 178, Defendants deny the allegations contained therein.

4 179. Answering paragraph 179, Defendants deny the allegations contained therein.

5 180. Answering paragraph 180, Defendants deny the allegations contained therein.

6 181. Answering paragraph 181, Defendants deny the allegations contained therein.

7 182. Answering paragraph 182, this paragraph states legal conclusions to which no
 8 response is required. To the extent a response is required, Defendants deny the allegations
 9 contained therein.

10 183. Answering paragraph 183, this paragraph states legal conclusions to which no
 11 response is required. To the extent a response is required, Defendants deny the allegations
 12 contained therein. However, the following citations contradict Plaintiffs’ legal conclusions:
 13 Deliberate indifference is a “stringent standard of fault” which requires a showing that a state actor
 14 “recognizes an unreasonable risk and actually intends to expose the plaintiff to such risks without
 15 regard to the consequences to the plaintiff.” *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir.
 16 2011) (*quoting L.W. v. Grubbs*, 92 F.3d 894, 899 (9th Cir.1996)). The standard is “higher than
 17 gross negligence” and “requires a culpable mental state.” *Id.* In the specific context of a school
 18 administrator’s failure to investigate or discipline harassment at school, a defendant acts with
 19 deliberate indifference when he or she responds to known harassment in a manner that is clearly
 20 unreasonable. *Flores*, 324. F.3d at 1135. *See also Vidovic v. Mentor City Sch. Dist.*, 921 F. Supp.
 21 2d 775, 794 (N.D. Ohio 2013) (*citing Williams v. Port Huron Sch. Dist.*, 455 Fed. App’x. 612, 618
 22 (6th Cir. 2012)) (explaining that “deliberate indifference . . . still requires that Plaintiffs
 23 demonstrate that the school acted with a discriminatory intent when it failed to respond to student-
 24 on-student harassment”).

25 184. Answering paragraph 184, Defendants deny the allegations contained therein.

26 185. Answering paragraph 185, Defendants deny the allegations contained therein.

CLAIM FOR RELIEF V

Violations of United States Constitution: Substantive Due Process 42 USC § 1983

186. Answering paragraph 186, Defendants expressly incorporate by reference all prior responses as if fully set forth herein.

187. Answering paragraph 187, this paragraph states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained therein. However, the following citations contradict Plaintiffs' legal conclusions: "[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 195 (1989) (emphasis added). In other words, the purpose of substantive due process is "to protect the people from the State, not to ensure that the State protected them from each other." 489 U.S. at 196. "As a general matter, then, we conclude that a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." 489 U.S. at 197 (emphasis added); *accord, L.W. v. Grubbs*, 974 F.2d 119, 121 (9th Cir. 1992) ("As a general rule, members of the public have no constitutional right to sue state employees who fail to protect them against harm inflicted by third parties."). In order to prove a state-created danger existed, plaintiff must demonstrate the state actor's affirmative conduct "left the person in a situation that was more dangerous than the one in which they found him." *Kennedy v. City of Ridgefield*, 439 F.3d 1035, 1062-63 (9th Cir. 2006); *Munger v. City of Glasgow Police Dept.*, 227 F.3d 1082, 1086 (9th Cir. 2000). "In other words, a state actor cannot affirmatively place an individual in danger merely by failing to act, regardless of how reprehensible that failure may be; substantive due process is violated only when a state actor engages in affirmative conduct that enhances the danger to which an individual . . . is exposed." *J.K. v. Arizona Board of Regents*, 2008 WL 4446712 *5 (D. Ariz. 2008).

188. Answering paragraph 188, this paragraph states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained therein. However, the following citations contradict Plaintiffs' legal conclusions: "[A] state actor [violates] a plaintiff's substantive due process right under the state created danger

doctrines under the Fourteenth Amendment” 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’.” (Emphasis added (citing *Patel v. Kent School Dist.*, 648 F.3d 965, 974 (9th Cir. 2011)). Deliberate indifference alone is not sufficient to state a claim under the state-created danger exception. *Id.*

189. Answering paragraph 189, Defendants deny the allegations contained therein.

190. Answering paragraph 190, Defendants deny the allegations contained therein.

191. Answering paragraph 191, Defendants deny the allegations contained therein.

192. Answering paragraph 192, this paragraph states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained therein.

GENERAL DENIAL

193. Any allegations of any paragraph in the Amended Complaint which are not specifically admitted above are expressly denied. Defendants reserve the right to amend these responses to conform to the evidence as it becomes known through the discovery process.

ANSWER TO PLAINTIFFS’ PRAYER FOR RELIEF

194. To the extent that the allegations contained in Plaintiffs’ Prayer for Relief require a response, Defendants deny that they should be liable for any damages in this matter, and therefore deny the allegations in each paragraph. With respect to Plaintiffs’ prayer for punitive damages, Defendants affirmatively state: The United States Supreme Court definitively declared in *Kentucky v. Graham*, 473 U.S. 159, 167 n.13 (1985) that “punitive damages are not available under § 1983 from a municipality, but are available in a suit against an official personally.” Punitive damages are also not available against governmental officials sued in their official capacity and many federal courts have so ruled. *See, e.g., Beem v. Kansas*, 2012 WL 1534592 n.1 (D. Kan. 2012) (“under § 1983, punitive damages are not available against governmental authorities or individuals sued in their official capacities.”); *DeBellis v. Kulp*, 166 F. Supp. 2d at 255, 281-82 (E.D. Pa. 2001) (“Punitive damages are also not available under Section 1983 against

1 local officials in their official capacity.”). Furthermore, CCSD, and all Defendants acting in their
2 official capacities, are immune from state tort claim punitive damages via NRS 41.035(1).

3 **AFFIRMATIVE DEFENSES**

4 Defendants assert the following defenses without admitting any obligations concerning
5 the burden of proof:

6 **FIRST AFFIRMATIVE DEFENSE**

7 Plaintiffs’ claims are barred by the applicable statute of limitations.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Plaintiffs have failed to state a legal claim upon which relief may be granted.

10 **THIRD AFFIRMATIVE DEFENSE**

11 Plaintiffs’ injuries and damages, if any, were caused in whole or in part by persons or
12 entities other than Defendants, who were not acting on behalf of Defendants and over whom
13 Defendants had no control.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 Any damage claims by Plaintiffs are speculative, not supported by proof and not
16 compensable as a matter of law.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 Plaintiffs’ claims may be barred in whole or in part by the doctrines of estoppel, release,
19 waiver, and/or preemption.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiffs’ state law claims are barred by the doctrine of discretionary immunity, and
22 Plaintiffs’ federal law claims are barred by the doctrine of qualified immunity.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 To the extent Plaintiffs seek prospective relief, each and every cause of action is moot such
25 that it is not justiciable.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 Plaintiffs’ injuries and damages, if any, may have been the result, in whole or in part, of
28 Plaintiffs’ own acts, including but not limited to failure to mitigate their damages, and Plaintiffs

1 recovery, if any, should be barred or reduced thereby.

2 **NINTH AFFIRMATIVE DEFENSE**

3 If Plaintiffs experienced any damages or loss, which allegation is expressly denied, then
4 the damages or losses were caused by and attributed to superseding and/or intervening causes,
5 events, facts, occurrences or conditions which were not caused by Defendants and for which
6 Defendants are not responsible.

7 **TENTH AFFIRMATIVE DEFENSE**

8 Defendants deny that they are liable at all, but if a court or jury determines otherwise,
9 each Defendant is only severally liable for the fault imputed to him/her by a judge or jury
10 pursuant to NRS 41.141.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 Defendants affirmatively state and allege that if Plaintiffs suffered damages, the same
13 were caused by another's negligent acts and/or omissions, who were not agents, servants or
14 otherwise acting for Defendants, and no damage or injury was caused by the acts or omissions of
15 the Defendants.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 At all times relevant herein, Defendants acted diligently and with due care in the
18 performance of any duty owed to Plaintiffs, if any.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 Defendants were not the proximate cause of the alleged injuries or damages, if any,
21 sustained by Plaintiffs.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 Defendants deny any conduct for which punitive or exemplary damages could or should
24 be awarded and denies that Plaintiffs have produced evidence sufficient to support or sustain the
25 imposition of punitive damages against Defendants pursuant to the applicable standard(s) of
26 proof.

27 **FIFTEENTH AFFIRMATIVE DEFENSE**

28 Permitting recovery of punitive or exemplary damages in this case would be

1 unconstitutionally vague and/or overbroad and would violate Defendants' constitutional rights as
2 secured by the Fifth and Seventh Amendments to the United States Constitution, would violate
3 their rights to due process and equal protection under the Fourteenth Amendment of the United
4 States Constitution and the prohibition against excessive fines in the United States Constitution,
5 and would contravene other provisions of the United States and Nevada Constitutions.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 Plaintiffs cannot recover punitive or exemplary damages against Defendants because
8 such an award, which is penal in nature, would violate Defendants' constitutional rights under
9 the United States Constitution and State of Nevada constitution, unless Defendants are afforded
10 the same procedural safeguards as are criminal defendants including, but not limited to, the right
11 to avoid self-incrimination, the right to forego production and disclosure of incriminating
12 documents and the right to the requirement of a level of proof beyond a reasonable doubt.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 Any award of punitive or exemplary damages against Defendants is barred to the extent
15 that it is inconsistent with the standards and limitations set forth by the United States Supreme
16 Court.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 No act or omission of Defendants caused or contributed to Plaintiff's alleged injuries or
19 damages. Further, no act or omission of Defendants was fraudulent, oppressive, or malicious. No
20 act or omission of Defendants was made with actual malicious, gross negligence, or willful,
21 wanton, or reckless disregard for the safety of others, or an evil mind. Therefore, Plaintiffs'
22 Complaint fails to state a claim upon which relief can be granted for punitive or exemplary
23 damages. Plaintiffs' Complaint seeks damages in excess of those permitted by law. Defendants
24 assert any statutory or judicial protection from punitive or exemplary damages that is available
25 under the applicable law, and any award of punitive or exemplary damages is barred.

26 **NINETEENTH AFFIRMATIVE DEFENSE**

27 Defendants incorporate by reference each and every affirmative defense set forth in
28 NRCF 8(c) as if fully set forth herein.

RESERVATION OF RIGHTS

All possible affirmative defenses may not have been alleged herein insofar as sufficient information was not available upon reasonable inquiry at the time of filing this answer. Defendants reserve the right to amend its Answer to allege additional affirmative defenses if subsequent investigation warrants, as permitted by the Nevada Rules of Civil Procedure.

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiffs take nothing by reason of the Complaint on file herein;
2. Dismiss Plaintiffs' action in its entirety with prejudice;
3. Award Defendants their costs, attorneys' fees and expenses of suit; and
4. Award such other and further relief as this Court deems just and reasonable.

DATED this 25th day of February, 2015.

LEWIS ROCA ROTHGERBER LLP

By: /s/ Matthew W. Park

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

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

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

**LEWIS ROCA
 ROTHGERBER**

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. Rule 5(b) and E.D.C.R. 8.05, I certify that I am an employee of Lewis Roca Rothgerber LLP, and that on this day, I caused a true and correct copy of the foregoing: **DEFENDANTS CCSD, WARREN P. MCKAY, LEONARD DEPIAZZA, CHERYL WINN, JOHN HALPIN AND ROBERT BEASLEY'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES (WITH ERRATA)** to be served via the Court's E-Filing System DAP/Wiznet, on all interested parties in the above-referenced matter. The date and time of the electronic service is in place of the date and place of deposit in the mail.

Allen Lichtenstein, Esq.

Staci Pratt, Esq.

ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.

3315 Russell Road, No. 222

Las Vegas, Nevada 89120

Attorneys for Plaintiffs

DATED this 25th day of February, 2015.

/s/ Annette Jaramillo

An Employee of Lewis Roca Rothgerber LLP

9

9

CLERK OF THE COURT

JCCR

Dan R. Waite (State Bar No. 004078)

Matthew W. Park (State Bar No. 12062)

LEWIS ROCA ROTHGERBER LLP

3993 Howard Hughes Pkwy, Suite 600

Las Vegas, NV 89169-5996

Tel: 702.949.8200

Fax: 702.949.8398

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

Allen Lichtenstein (State Bar No. 3992)

Staci Pratt (State Bar No. 12630)

ALLEN LICHTENSTEIN, LTD.

3315 Russell Road, No. 222

Las Vegas, NV 89120

Tel: 702.433.2666

Fax: 702.433.2666

allaw@lvcoxmail.comstaciipratt@gmail.com*Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,**Aimee Hairr and Nolan Hairr*

John Houston Scott (CA Bar No. 72578)

Admitted Pro Hac Vice

SCOTT LAW FIRM

1388 Sutter Street, Suite 715

San Francisco, CA 94109

Tel: 415.561.9601

john@scottlawfirm.net*Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,**Aimee Hairr and Nolan Hairr***DISTRICT COURT****CLARK COUNTY, NEVADA**MARY BRYAN, mother of ETHAN BRYAN;
AIMEE HAIRR, mother of NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT
(CCSD); 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;
Principal Warren P. McKay, in his individual

Case No. A-14-700018-C

Dept. No. XXVII

JOINT CASE CONFERENCE REPORT

1 and official capacity as principal of GJHS;
 2 Leonard DePiazza, in his individual and official
 3 capacity as assistant principal at GJHS; Cheryl
 4 Winn, in her individual and official capacity as
 5 Dean at GJHS; John Halpin, in his individual
 6 and official capacity as counselor at GJHS;
 7 Robert Beasley, in his individual and official
 8 capacity as instructor at GJHS

Defendants.

DISPUTE RESOLUTION CONFERENCE REQUIRED:

REQUESTED: YES _____ NO X

SETTLEMENT CONFERENCE REQUIRED:

REQUESTED: YES _____ NO X

DISCOVERY PLANNING/DISPUTE

REQUESTED: YES _____ NO X

COMES NOW the parties, by and through the undersigned attorneys and file this Case
 Conference Report, pursuant to NRCP 16.1

I. PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

- | | | |
|-----------|---|-------------------|
| A. | Date of filing of and service Amended Complaint: | November 17, 2014 |
| B. | Date of decision on Defendants' Motion to Dismiss: | February 10, 2015 |
| C. | Date of filing and service of Answer: | February 25, 2015 |
| F. | Date of Early Case Conference: | March 19, 2015 |
| G. | Date of Service of Discovery Commissioner's | |
| | Decision on Request for Exemption from Arbitration: | May 24, 2015 |

**II. A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH
 CLAIM FOR RELIEF OR DEFENSE**

- A.** Plaintiff's claims: Plaintiffs assert that Defendants failed to ensure a safe and respectful learning environment, free from discrimination, harassment, and violence, for Ethan Bryan and Nolan Hairr, two 13-year-old students attending Greenspun JHS. Despite numerous attempts by Plaintiffs to contact and request the CCSD Defendants to end the persistent sexual and physical assaults, harassment,

1 and discrimination based on perceived sexual orientation, to develop a safety plan
 2 to ensure students could benefit from the “full and equal enjoyment of the goods,
 3 services, facilities, privileges, advantages, and accommodations” of their public
 4 school, (*See* N.R.S. § 651.110), they did not do so. Plaintiffs seek damages,
 5 declaratory and injunctive relief.

6 **B.** Existing claims are for: 1) negligence and, 2) substantive due process pursuant to
 7 the Fourteenth Amendment to the United States Constitution and 42 USC 1983.

8 **C.** Defenses: Defendants generally and specifically deny Plaintiffs’ claims and
 9 allegations in their entirety. Specifically, Defendants state that Plaintiffs have sued everyone with
 10 any connection to Ethan Bryan and Nolan Hairr, except for the students who were allegedly the
 11 source of the unkind words. In all circumstances, Defendants acted appropriately in investigating,
 12 and responding to, any allegations of harassment of which they had knowledge.

13 In addition to denying all of Plaintiffs’ claims, Defendants have asserted the following
 14 affirmative defenses:

15 **FIRST AFFIRMATIVE DEFENSE**

16 Plaintiffs' claims are barred by the applicable statute of limitations.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Plaintiffs have failed to state a legal claim upon which relief may be granted.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Plaintiffs' injuries and damages, if any, were caused in whole or in part by persons or
 21 entities other than Defendants, who were not acting on behalf of Defendants and over whom
 22 Defendants had no control.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Any damage claims by Plaintiffs are speculative, not supported by proof and not
 25 compensable as a matter of law.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Plaintiffs' claims may be barred in whole or in part by the doctrines of estoppel, release,
 28 waiver, and/or preemption.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' state law claims are barred by the doctrine of discretionary immunity, and Plaintiffs' federal law claims are barred by the doctrine of qualified immunity.

SEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs seek prospective relief, each and every cause of action is moot such that it is not justiciable.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' injuries and damages, if any, may have been the result, in whole or in part, of Plaintiffs' own acts, including but not limited to failure to mitigate their damages, and Plaintiffs unconstitutionally vague and/or overbroad and would violate Defendants' constitutional rights as secured by the Fifth and Seventh Amendments to the United States Constitution, would violate their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution and the prohibition against excessive fines in the United States Constitution, and would contravene other provisions of the United States and Nevada Constitutions. recovery, if any, should be barred or reduced thereby.

NINTH AFFIRMATIVE DEFENSE

If Plaintiffs experienced any damages or loss, which allegation is expressly denied, then the damages or losses were caused by and attributed to superseding and/or intervening causes, events, facts, occurrences or conditions which were not caused by Defendants and for which Defendants are not responsible.

TENTH AFFIRMATIVE DEFENSE

Defendants deny that they are liable at all, but if a court or jury determines otherwise, each Defendant is only severally liable for the fault imputed to him/her by a judge or jury pursuant to N.R.S. 41.141.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants affirmatively state and allege that if Plaintiffs suffered damages, the same were caused by another's negligent acts and/or omissions, who were not agents, servants or

1 otherwise acting for Defendants, and no damage or injury was caused by the acts or omissions of
2 the Defendants.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 At all times relevant herein, Defendants acted diligently and with due care III the
5 performance of any duty owed to Plaintiffs, if any.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 Defendants were not the proximate cause of the alleged injuries or damages, if any,
8 sustained by Plaintiffs.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 Defendants deny any conduct for which punitive or exemplary damages could or should be
11 awarded and denies that Plaintiffs have produced evidence sufficient to support or sustain the
12 imposition of punitive damages against Defendants pursuant to the applicable standard(s) of
13 proof.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 Permitting recovery of punitive or exemplary damages in this case would be
16 unconstitutionally vague and/or overbroad and would violate Defendants' constitutional rights as
17 secured by the Fifth and Seventh Amendments to the United States Constitution, would violate
18 their rights to due process and equal protection under the Fourteenth Amendment of the United
19 States Constitution and the prohibition against excessive fines in the United States Constitution,
20 and would contravene other provisions of the United States and Nevada Constitutions.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 Plaintiffs cannot recover punitive or exemplary damages against Defendants because such
23 an award, which is penal in nature, would violate Defendants' constitutional rights under the
24 United States Constitution and State of Nevada constitution, unless Defendants are afforded the
25 same procedural safeguards as are criminal defendants including, but not limited to, the right to
26 avoid self-incrimination, the right to forego production and disclosure of incriminating documents
27 and the right to the requirement of a level of proof beyond a reasonable doubt.
28

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 Any award of punitive or exemplary damages against Defendants is barred to the extent
3 that it is inconsistent with the standards and limitations set forth by the United States Supreme
4 Court.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 No act or omission of Defendants caused or contributed to Plaintiff's alleged injuries or
7 damages. Further, no act or omission of Defendants was fraudulent, oppressive, or malicious. No
8 act or omission of Defendants was made with actual malicious, gross negligence, or willful,
9 wanton, or reckless disregard for the safety of others, or an evil mind. Therefore, Plaintiffs'
10 Complaint fails to state a claim upon which relief can be granted for punitive or exemplary
11 damages. Plaintiffs' Complaint seeks damages in excess of those permitted by law. Defendants
12 assert any statutory or judicial protection from punitive or exemplary damages that is available
13 under the applicable law, and any award of punitive or exemplary damages is barred.

14 **NINETEENTH AFFIRMATIVE DEFENSE**

15 Defendants incorporate by reference each and every affirmative defense set forth in NRCP
16 8(c) as if fully set forth herein.

17 **III. LIST OF DOCUMENTS PRODUCED, DATA COMPILATIONS AND TANGIBLE**
18 **THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY**
19 **WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE**
20 **CONFERENCE OR AS A RESULT THEREOF**

21 **A. Plaintiffs:**

22 1. Material related to the Complaint made to the Nevada Commission of Equal
23 Rights (NERC) by Mary Bryan on behalf of her son, Ethan Bryan, Bates Nos. 00001 through
24 000052.

25 2. Material related to the Complaint made to the Nevada Commission of Equal
26 Rights (NERC) by Aimee Hairr on behalf of her son, Nolan Hairr, Bates Nos. 000053 through
27 000100.
28

1 3. Mary Bryan e-mail communications with CCSD personnel. Bates Nos.
2 000101 through 000128.

3 4. Media coverage /articles. Bates Nos. 000129 through 000136.

4 **B. Defendants:**

5 1. Email to Beasley, Halpin & McKay regarding concerned parent, dated
6 9/15/2011. Bates No. CCSDDEF000001 – CCSDDEF000002.

7 2. Nolan Hairr regarding GJHS Voluntary Incident Report, dated 09/22/2011.
8 Bates No. CCSDDEF000003.

9 3. Ethan Bryan regarding GJHS Voluntary Incident Report, dated 10/19/2011.
10 Bates No. CCSDDEF000004.

11 4. Email from Bryan to McKay regarding very concerned parent, dated
12 10/19/2011. Bates No. CCSDDEF000005 – CCSDDEF000006.

13 5. Email from Halpin to Winn regarding very concerned parent, dated
14 10/19/2011. Bates No. CCSDDEF000007 – CCSDDEF000008.

15 6. Email from Bryan to Winn regarding very concerned parent, dated
16 10/19/2011. Bates No. CCSDDEF000009 – CCSDDEF000010.

17 7. Ethan Bryan regarding GJHS Deans' Detention Notice, dated 10/19/2011.
18 Bates No. CCSDDEF000011.

19 8. Ethan Bryan regarding GJHS Deans' Tardy Policy, dated 10/19/2011.
20 Bates No. CCSDDEF000012.

21 9. Ethan Bryan regarding GJHS Deans' Detention Notice, dated 10/11/2011.
22 Bates No. CCSDDEF000013.

23 10. Ethan Bryan regarding GJHS Deans' Tardy Policy, dated 10/19/2011.
24 Bates No. CCSDDEF000014 (duplicate of Bates No. CCSDDEF000012).

25 11. Nolan Hairr regarding GJHS Deans' Tardy Policy, dated 9/22/2011. Bates
26 No. CCSDDEF000015.

27 12. Ethan Bryan regarding GJHS Deans' Tardy Policy, dated 9/30/2011. Bates
28 No. CCSDDEF000016.

1 13. Ethan Bryan regarding GJHS Deans' Tardy Policy, dated 9/19/2011. Bates
2 No. CCSDDEF000017.

3 14. Nolan Hairr regarding GJHS Deans' Tardy Policy, dated 9/13/2011. Bates
4 No. CCSDDEF000018.

5 15. Nolan Hairr regarding GJHS Deans' Tardy Policy, dated 9/15/2011. Bates
6 No. CCSDDEF000019.

7 16. Nolan Hairr regarding Note Excuse from Aimee Hairr, dated 9/15/2011.
8 Bates No. CCSDDEF000020.

9 17. Nolan Hairr regarding GJHS Deans' Tardy Policy, dated 10/31/2011. Bates
10 No. CCSDDEF000021.

11 18. Ethan Bryan regarding GJHS Deans' Detention Notice, dated 11/1/2011.
12 Bates No. CCSDDEF000022.

13 19. Ethan Bryan regarding GJHS Deans' Tardy Policy, dated 11/1/2011. Bates
14 No. CCSDDEF000023.

15 20. Ethan Bryan regarding GJHS Deans' Detention Notice, dated 11/3/2011.
16 Bates No. CCSDDEF000024.

17 21. Nolan Hairr regarding GJHS Deans' Detention Notice, dated 10/31/2011.
18 Bates No. CCSDDEF000025.

19 22. Nolan Hairr regarding GJHS Deans' Detention Notice, dated 10/31/2011.
20 Bates No. CCSDDEF000026.

21 23. Nolan Hairr regarding GJHS Deans' Tardy Policy, dated 10/24/2011. Bates
22 No. CCSDDEF000027.

23 24. Nolan Hairr regarding GJHS Deans' Detention Notice, dated 11/3/2011.
24 Bates No. CCSDDEF000028.

25 25. Ethan Bryan regarding GJHS Deans' Tardy Policy, dated 11/4/2011. Bates
26 No. CCSDDEF000029.

27 26. Nolan Hairr regarding GJHS Deans' Tardy Policy, dated 1/24/2012. Bates
28 No. CCSDDEF000030.

1 27. Letter from Winn to Parent or Guardian of Ethan Bryan regarding Notice of
2 Truancy, dated 1/18/2012. Bates No. CCSDDEF000031.

3 28. Ethan Bryan CCSD Notice of Required Parent Conference Temporary
4 Removal from School, dated 11/15/2011. Bates No. CCSDDEF000032.

5 29. Ethan Bryan CCSD Notice of Required Parent Conference Temporary
6 Removal from School, dated 11/4/2011. Bates No. CCSDDEF000033.

7 30. Email from Bryan to Various CCSD, parents & Bryan regarding Very
8 Concerned Parents!!!, dated 2/7/2012. Bates No. CCSDDEF000034 – CCSDDEF000037.

9 31. J.A. regarding GJHS Voluntary Incident Report, dated 2/8/2012. Bates No.
10 CCSDDEF000038.

11 32. R.H. regarding GJHS Voluntary Incident Report, dated 2/8/2012. Bates No.
12 CCSDDEF000039.

13 33. Email from Long, Wright, Bryan to Stoudt & Wallace regarding GJHS
14 Harassment Complaint, dated 2/8/2012. Bates No. CCSDDEF000040 – CCSDDEF000041.

15 34. Email from Fox, Jones, Young to Area Service Center regarding Tracking
16 #8 Very Concerned Parents!!!, dated 2/9/2012. Bates No. CCSDDEF000042 –
17 CCSDDEF000058.

18 35. Email from Bryan to Long regarding Greenspun Meeting regarding Ethan
19 and Nolan, dated 2/9/2012. Bates No. CCSDDEF000059.

20 36. Email from Long to Stoudt & Wallace regarding Greenspun Meeting
21 regarding Dallin, Ethan and Nolan, dated 2/9/2012. Bates No. CCSDDEF000060 –
22 CCSDDEF000061.

23 37. Email from McKay & Bryan to Greenspun Administrative Team regarding
24 Kyle & Bryan, dated 2/12/2012. Bates No. CCSDDEF000062 – CCSDDEF000069.

25 38. R.P. regarding GJHS Voluntary Incident Report, dated 2/13/2012. Bates
26 No. CCSDDEF000070.

27 39. E.K. regarding GJHS Voluntary Incident Report, dated 2/13/2012. Bates
28 No. CCSDDEF000071.

- 1 40. L.F. regarding GJHS Voluntary Incident Report, dated 2/14/2012. Bates
- 2 No. CCSDDEF000072.
- 3 41. C.B. regarding GJHS Voluntary Incident Report, dated 2/19/2012. Bates
- 4 No. CCSDDEF000073.
- 5 42. M.S. regarding GJHS Voluntary Incident Report, dated 2/14/2012. Bates
- 6 No. CCSDDEF000074.
- 7 43. D.M. regarding GJHS Voluntary Incident Report, dated 2/16/2012. Bates
- 8 No. CCSDDEF000075.
- 9 44. CCSDPD Officer's Report, dated 2/6/2012. Bates No. CCSDDEF000076 –
- 10 CCSDDEF000086.
- 11 45. C.L. regarding GJHS Voluntary Incident Report, dated 7/15/2012. Bates
- 12 No. CCSDDEF000087.
- 13 46. Ethan Bryan regarding GJHS Chronological of Behavior, dated 8/6/2012.
- 14 Bates No. CCSDDEF000088 – CCSDDEF000090.
- 15 47. Nolan Hairr regarding GJHS Chronological of Behavior, dated 8/6/2012.
- 16 Bates No. CCSDDEF000091 – CCSDDEF000092.
- 17 48. S.H. regarding GJHS Voluntary Incident Report, dated September. Bates
- 18 No. CCSDDEF000093.
- 19 49. N.B. regarding GJHS Voluntary Incident Report, undated. Bates No.
- 20 CCSDDEF000094.
- 21 50. G.B. regarding GJHS Voluntary Incident Report, undated. Bates No.
- 22 CCSDDEF000095.
- 23 51. C.K. regarding GJHS Voluntary Incident Report, undated. Bates No.
- 24 CCSDDEF000096.
- 25 52. E.G. regarding GJHS Voluntary Incident Report, undated. Bates No.
- 26 CCSDDEF000097.
- 27 53. A.C. regarding GJHS Voluntary Incident Report, undated. Bates No.
- 28 CCSDDEF000098.

1 54. H.S. regarding GJHS Voluntary Incident Report, undated. Bates No.
2 CCSDDEF000099.

3 55. Nine Month School Calendar, dated 2011-2012. Bates No.
4 CCSDDEF000100.

5 56. Ethan Bryan regarding GJHS Voluntary Incident Report, dated 10/19/2011.
6 Bates No. CCSDDEF000101.

7 57. Mary Bryan regarding Check-in and Check-out Times, dated 2011-2012.
8 Bates No. CCSDDEF000102.

9 58. Nolan Hairr regarding Bulling Experience at GJHS, dated 2/8/2012. Bates
10 No. CCSDDEF000103 – CCDDEF000104.

11 59. C.L. regarding GJHS Chronological of Behavior, dated 2/7/2012. Bates
12 No. CCSDDEF000105 – CCSDDEF000106.

13 60. NERC Charge #1008-12-0475LPA, dated 10/08/2012. Bates No.
14 CCSDDEF000107.

15 61. CCSD Behavior Guidelines for Secondary Students, dated September 2011.
16 Bates No. CCSDDEF000108 – CCSDDEF000132.

17 62. Greenspun – Catch The Wave, dated 2011-2012. Bates No.
18 CCSDDEF000133 – CCSDDEF000136.

19 63. CCSD Back to School Reporter – Vol. 13 – Issue 1, dated August 2011.
20 Bates No. CCSDDEF000136 – CCSDDEF000168.

21 C. Documents requested but not provided: None

22 **IV. LIST OF NAMES OF PERSONS EXCHANGED AT CASE CONFERENCE**
23 **ALONG WITH LOCATION OF PERSON AND A GENERAL DESCRIPTION OF**
24 **THE SUBJECT MATTER OF THAT PERSON'S TESTIMONY**

25 **A. Plaintiffs:**

26 1. Mary Bryan, c/o Allen Lichtenstein, Attorney at Law, Ltd., 3315 Russell
27 Road, No. 222, Las Vegas, NV 89120, (Phone) (702) 433-2666; (Fax) (702) 433-9591; (e-mail)
28

1 allaw@lvcoxmaio.com. It is anticipated that this witness will testify to matters and circumstances
2 concerning allegations and defenses in this case.

3 2. Ethan Bryan, c/o Allen Lichtenstein, Attorney at Law, Ltd., 3315 Russell
4 Road, No. 222, Las Vegas, NV 89120, (Phone) (702) 433-2666; (Fax) (702) 433-9591; (e-mail)
5 allaw@lvcoxmaio.com. It is anticipated that this witness will testify to matters and circumstances
6 concerning allegations and defenses in this case.

7 3. Aimee Hairr, c/o Allen Lichtenstein, Attorney at Law, Ltd., 3315 Russell
8 Road, No. 222, Las Vegas, NV 89120, (Phone) (702) 433-2666; (Fax) (702) 433-9591; (e-mail)
9 allaw@lvcoxmaio.com. It is anticipated that this witness will testify to matters and circumstances
10 concerning allegations and defenses in this case.

11 4. Nolan Hairr, c/o Allen Lichtenstein, Attorney at Law, Ltd., 3315 Russell
12 Road, No. 222, Las Vegas, NV 89120, (Phone) (702) 433-2666; (Fax) 702 433-9591; (e-mail)
13 allaw@lvcoxmaio.com. It is anticipated that this witness will testify to matters and circumstances
14 concerning allegations and defenses in this case.

15 **B. Defendants:**

16 1. Mary Bryan c/o Allen Lichtenstein, Ltd., 3315 Russell Road, No. 222, Las
17 Vegas, NV 89120, (Phone) (702) 433-2666; (Fax) (702) 433-9591; (e-mail)
18 allaw@lvcoxmaio.com. Plaintiff is believed to have knowledge regarding the facts and
19 circumstances surrounding this litigation, including, without limitation the facts and
20 circumstances alleged in the complaint concerning allegations of bullying.

21 2. Aimee Hairr c/o Allen Lichtenstein, Ltd. c/o Allen Lichtenstein, Ltd., 3315
22 Russell Road, No. 222, Las Vegas, NV 89120, (Phone) (702) 433-2666; (Fax) (702) 433-9591;
23 (e-mail) allaw@lvcoxmaio.com. Plaintiff is believed to have knowledge regarding the facts and
24 circumstances surrounding this litigation, including, without limitation the facts and
25 circumstances alleged in the complaint concerning allegations of bullying.

26 3. Kyle Bryan, 1708 Sequoia Drive, Henderson, NV 89014. This witness is
27 believed to have knowledge regarding the facts and circumstances surrounding this litigation,
28 including, without limitation the facts and circumstances alleged in the complaint concerning

1 bullying allegations regarding his son, Ethan.

2 4. Heath Hairr, 2402 Viewpoint Drive, Henderson, NV 89014. This witness
3 is believed to have knowledge regarding the facts and circumstances surrounding this litigation,
4 including, without limitation the facts and circumstances alleged in the complaint concerning
5 bullying allegations regarding his son, Nolan.

6 5. Nolan Hairr c/o Allen Lichtenstein, Ltd. c/o Allen Lichtenstein, Ltd., 3315
7 Russell Road, No. 222, Las Vegas, NV 89120, (Phone) (702) 433-2666; (Fax) (702) 433-9591;
8 (e-mail) allaw@lvcoxmaio.com. Plaintiff is believed to have knowledge regarding the facts and
9 circumstances surrounding this litigation, including, without limitation the facts and
10 circumstances alleged in the complaint.

11 6. Ethan Bryan c/o Allen Lichtenstein, Ltd. c/o Allen Lichtenstein, Ltd., 3315
12 Russell Road, No. 222, Las Vegas, NV 89120, (Phone) (702) 433-2666; (Fax) (702) 433-9591;
13 (e-mail) allaw@lvcoxmaio.com. Plaintiff is believed to have knowledge regarding the facts and
14 circumstances surrounding this litigation, including, without limitation the facts and
15 circumstances alleged in the complaint.

16 7. Principal Warren P. McKay, Greenspun Junior High School Principal c/o
17 Lewis Roca Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169,
18 (Phone) (702) 949-8200; (Fax) (702) 949-8398. Mr. McKay was the Principal at Greenspun
19 Junior High School and is expected to testify regarding the facts and circumstances surrounding
20 this litigation.

21 8. Leonard DePiazza, Greenspun Junior High School Assistant Principal c/o
22 Lewis Roca Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169,
23 (Phone) (702) 949-8200; (Fax) (702) 949-8398. Mr. DePiazza was the Assistant Principal at
24 Greenspun Junior High School and is expected to testify regarding the facts and circumstances
25 surrounding this litigation.

26 9. Cheryl Winn, Greenspun Junior High School Dean c/o Lewis Roca
27 Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169, (Phone)
28 (702) 949-8200; (Fax) (702) 949-8398. Ms. Winn is a Dean at Greenspun Junior High School

1 and is expected to testify regarding the facts and circumstances surrounding this litigation.

2 10. John Halpin, Greenspun Junior High School Counselor c/o Lewis Roca
3 Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169, (Phone)
4 (702) 949-8200; (Fax) (702) 949-8398. Mr. Halpin is a Counselor at Greenspun Junior High
5 School and is expected to testify regarding the facts and circumstances surrounding this
6 litigation.

7 11. Robert Beasley, Greenspun Junior High School Instructor c/o Lewis Roca
8 Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169, (Phone)
9 (702) 949-8200; (Fax) (702) 949-8398. Mr. Beasley is an Instructor at Greenspun Junior High
10 School and is expected to testify regarding the facts and circumstances surrounding this
11 litigation.

12 12. Andre Long, Greenspun Junior High School former Academic Manager
13 c/o Lewis Roca Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV
14 89169, (Phone) (702) 949-8200; (Fax) (702) 949-8398. Mr. Long was the Academic Manager
15 over Greenspun Junior High School and is expected to testify regarding his knowledge of the
16 facts and circumstances surrounding this litigation.

17 13. Person(s) Most Knowledgeable for CCSD c/o Lewis Roca Rothgerber,
18 LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169, (Phone) (702) 949-
19 8200; (Fax) (702) 949-8398. This witness (these witnesses) will testify regarding various matters
20 relevant to the claims and defenses in this lawsuit.

21 14. Officer G. Abbott #199, CCSD Police Department c/o Lewis Roca
22 Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169, (Phone)
23 (702) 949-8200; (Fax) (702) 949-8398. This witness is an officer with the CCSD Police
24 Department and is expected to testify as to the facts and circumstances surrounding the Plaintiffs'
25 police report.

26 15. Officer R. Dove #277, CCSD Police Department c/o Lewis Roca
27 Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169, (Phone)
28 (702) 949-8200; (Fax) (702) 949-8398. This witness is an officer with the CCSD Police

1 Department and is expected to testify as to the facts and circumstances surrounding the Plaintiffs'
2 police report.

3 16. Officer Markiewiez #530, CCSD Police Department c/o Lewis Roca
4 Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169, (Phone)
5 (702) 949-8200; (Fax) (702) 949-8398. This witness is an officer with the CCSD Police
6 Department and is expected to testify as to the facts and circumstances surrounding the Plaintiffs'
7 police report.

8 17. Officer Wykry #509, CCSD Police Department c/o Lewis Roca
9 Rothgerber, LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169, (Phone)
10 (702) 949-8200; (Fax) (702) 949-8398. This witness is an officer with the CCSD Police
11 Department and is expected to testify as to the facts and circumstances surrounding the Plaintiffs'
12 police report.

13 18. As yet unidentified classmates of Ethan Bryan and Nolan Hairr are
14 expected to testify as to the facts and circumstances surrounding Plaintiffs' allegations that
15 bullying occurred in school.

16 19. Defendants reserve the right to call any and all witnesses identified and
17 listed by any other party.

18 20. Any and all medical providers who have treated the Plaintiffs' alleged
19 injuries as a result of this incident.

20 21. Defendants reserve the right to call an Independent Medical Examiner not
21 yet ascertained who is expected to testify regarding an independent medical evaluation and/or
22 records review of Plaintiffs.

23 22. Defendants reserve the right to designate expert(s) on liability and
24 damages and to provide information which will assist Defendants in the resolution of this matter.

25 23. Defendants reserve the right to supplement this list of witnesses and
26 production of documents as discovery continues.

27 24. Numerous students and former students of Greenspun Junior High School
28 (and some of their parents or guardians), whose addresses are presently unknown and/or are not

specifically produced here in a good faith effort to avoid violating the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g. These witnesses may testify regarding their communications, observations, and interactions with Ethan Bryan and Nolan Hairr. These witnesses may testify regarding their communications, observations, and interactions with Ms. Bryan.

V. DISCOVERY PLAN AGREED TO BY THE PARTIES [16.1(b)(2) and 16.1(c)(2)]

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. Plaintiff's view: None.
2. Defendant's view: None.

When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiff's disclosures: **June 22, 2015**
2. Defendant's disclosures: **April 2, 2015**

B. Subjects on which discovery may be needed:

1. Plaintiff's view: All claims and defenses listed in the complaint and answer.
2. Defendant's view: All claims and defenses listed in the complaint and

answer.

C. Should discovery be conducted in phases or limited to or focused upon particular issues?

1. Plaintiff's view: No
2. Defendant's view: Possible bifurcation of *Monell* discovery and liability claims.

D. What changes, if any, should be made in limitations on discovery imposed under these rules and what, if any, other limitations should be imposed?

1. Plaintiff's view: The expanded discovery cut-off date.
2. Defendant's view: The expanded discovery cut-off date.

E. What, if any, other orders should be entered by court under Rule 26(c) or Rule 16(b) and (c):

1. Plaintiff's view: None.
2. Defendant's view: Confidentiality and Protective Order, including provision for FERPA records.

F. Estimated time for trial:

1. Plaintiff's view: 14 court days.
2. Defendant's view: 14 court days.

VI. **DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]**

A. Dates agreed by the parties:

1. Close of discovery: February 16, 2016
2. Final date to file motions to amend pleadings or add parties (without a further court order): November 18, 2015
enter calendar date
(Not later than 90 days before close of discovery)
3. Final dates for expert disclosures:
 - i. initial disclosure: November 18, 2015
enter calendar date
(Not later than 90 days before discovery cut-off date)
 - ii. rebuttal disclosures: December 18, 2015
enter calendar date
(Not later than 30 days after initial disclosure of experts)
4. Final date to file dispositive motions: March 17, 2016
enter calendar date
(Not later than 30 days after discovery cut-off date)

Failure to agree on the calendar dates in this subdivision shall result in a discovery planning conference.

VII. **JURY DEMAND [16.1(c)(10)]**

A jury demand has been filed: Yes.

1 **VIII. INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]**

2 Similar to Fed. R. Evid. 502, the Parties hereby enter into a “clawback” agreement to
3 expedite and facilitate the production of electronic and hard copy data, information and
4 documents, and to protect against inadvertent disclosure of attorney-client privileged
5 communications or work product materials. The inadvertent disclosure or production of any
6 information or document that is subject to an objection on the basis of attorney-client privilege or
7 work-product protection, will not be deemed to waive a party’s claim to any claim of privilege,
8 protected nature, or estop that party or the privilege holder from designating the information or
9 document as attorney-client privileged or subject to the work product doctrine at a later date. Any
10 party receiving any such information or document shall return it upon request from the producing
11 party. Upon receiving a request as to specific information or documents, the receiving party shall
12 return all copies of the information or documents to the producing party within five (5) business
13 days, and shall destroy any notes, work product or electronic files reflecting the contents of such
14 material, regardless of whether the receiving party agrees with the claim of privilege and/or work-
15 product protection. This agreement shall not be deemed to prevent any party from seeking an order
16 compelling production of any document or information.
17

18
19 Furthermore, no privilege log is required for privileged communications that occurred after
20 the date the Complaint was filed in this action.
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1 **IX. CONCLUSION**

2 This report is signed in accordance with rule 26(g)(1) of the Nevada Rules of Civil
3 Procedure. Each signature constitutes a certification that to the best of the signer's knowledge,
4 information and belief, formed after a reasonable inquiry, the disclosures made by the signer are
5 complete and correct as of this time.

6 Dated: July 27, 2015

Dated: July 27, 2015

7 ALLEN LICHTENSTEIN, LTD.

LEWIS ROCA ROTHGERBER LLP

9 By: /s/ Allen Lichtenstein

By: /s/ Matthew W. Park

10 Allen Lichtenstein (SBN 3992)
11 Staci Pratt (SBN 12630)
3315 Russell Road, No. 222
Las Vegas, NV 89120

Dan R. Waite (State Bar No. 4078)
Matthew W. Park (State Bar No. 12062)
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169-5996

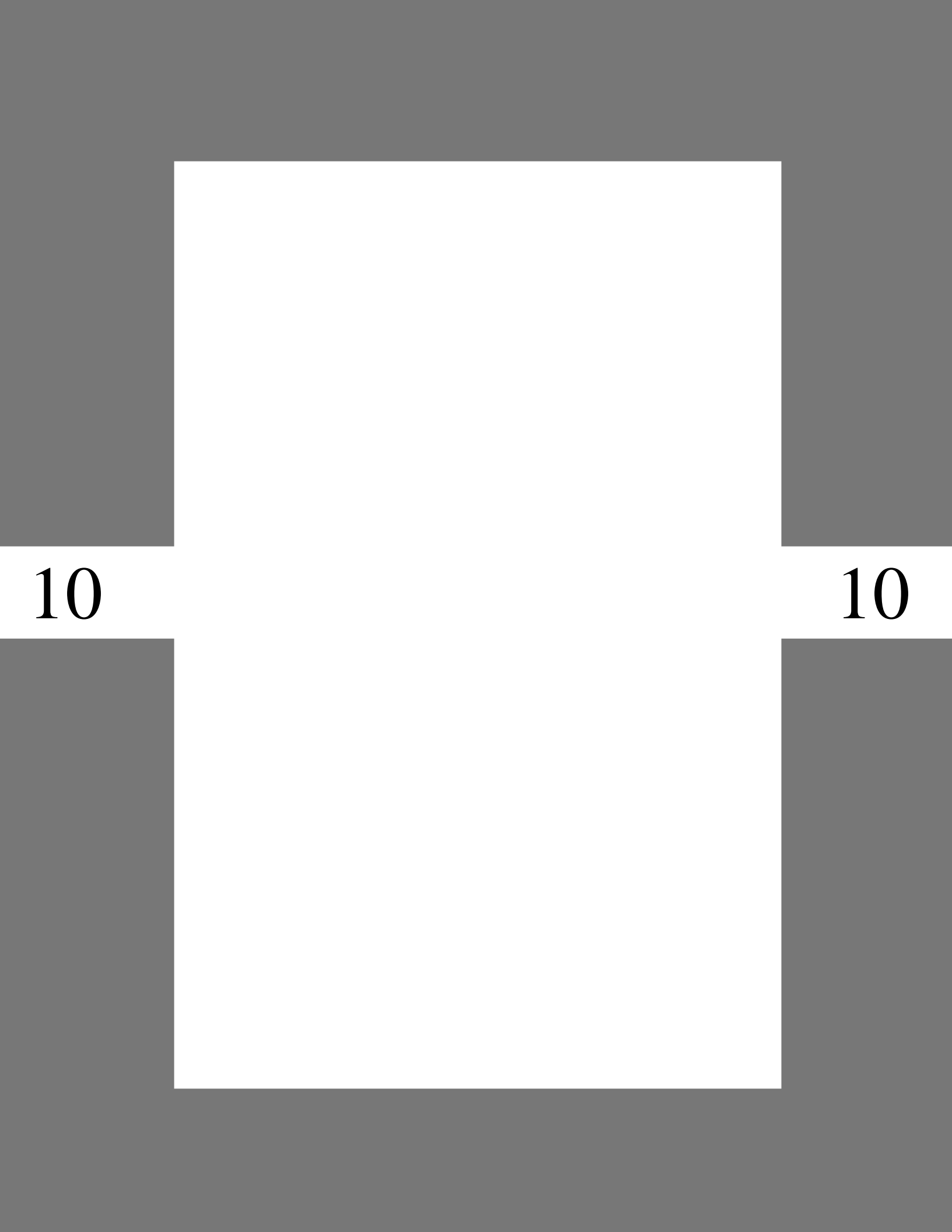
12 John Houston Scott (SBN 72578)
13 Admitted Pro Hac Vice
14 SCOTT LAW FIRM
1388 Sutter Street, Suite 715
15 San Francisco, CA 94109

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

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

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

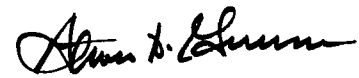
LEWIS ROCA
|
ROTHGERBER



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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

CASE NO. A700018
DEPT NO. XXVII

v.

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, et al.,

Defendants.

SCHEDULING ORDER

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Declaratory relief**DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **7/27/15**TIME REQUIRED FOR TRIAL: **14 days**DATES FOR SETTLEMENT CONFERENCE: **None Requested**

Counsel for Plaintiffs:

Allen Lichtenstein, Esq.

. . .

DISCOVERY
COMMISSIONEREIGHTH JUDICIAL
DISTRICT COURT

000196 RECEIVED

AUG 31 2015

CLERK OF THE COURT

000196

1 Counsel for Defendants CCSD/PRINCIPAL WARREN P. MCKAY/LEONARD
2 DEPIAZZA/CHERYL WINN/JOHN HALPIN/ROBERT BEASLEY:

3 **Matthew W. Park, Esq., Lewis Roca Rothgerber**

4 Counsel representing all parties have been heard and after
5 consideration by the Discovery Commissioner,

6 IT IS HEREBY ORDERED:

7 1. all parties shall complete discovery on or before
8 2/16/16.

9 2. all parties shall file motions to amend pleadings or
10 add parties on or before 11/18/15.

11 3. all parties shall make initial expert disclosures
12 pursuant to N.R.C.P. 16.1(a)(2) on or before 11/18/15.

13 4. all parties shall make rebuttal expert disclosures
14 pursuant to N.R.C.P. 16.1(a)(2) on or before 12/18/15.

15 5. all parties shall file dispositive motions on or
16 before 3/17/16.

17
18 Certain dates from your case conference report(s) may have
19 been changed to bring them into compliance with N.R.C.P. 16.1.


20 Within 60 days from the date of this Scheduling Order, the
21 Court shall notify counsel for the parties as to the date of
22 trial, as well as any further pretrial requirements in addition
23 to those set forth above.

24 Unless otherwise directed by the court, all pretrial
25 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at
26 least 30 days before trial.
27 . . .

1 Motions for extensions of discovery shall be made to the
2 Discovery Commissioner in strict accordance with E.D.C.R. 2.35.
3 Discovery is completed on the day responses are due or the day
4 a deposition begins.

5 Unless otherwise ordered, all discovery disputes (except
6 disputes presented at a pre-trial conference or at trial) must
7 first be heard by the Discovery Commissioner.

8 Dated this 28 day of August, 2015.

9
10
11 
12 _____
13 DISCOVERY COMMISSIONER

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on the date filed, I placed a copy
16 of the foregoing DISCOVERY SCHEDULING ORDER in the attorney
17 folder(s), mailed or e-served as follows:

18 Allen Lichtenstein, Esq.
19 Matthew W. Park, Esq.

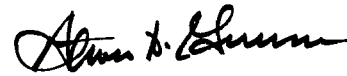
20
21 
22 _____
23 COMMISSIONER DESIGNEE
24
25
26
27
28

11

11

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
 6 3993 Howard Hughes Pkwy, Suite 600
 7 Las Vegas, NV 89169-5996
 8 Tel: 702.949.8200
 9 Fax: 702.949.8398
 10 DWaite@lrrlaw.com
 11 MPark@lrrlaw.com
 12 JHostetler@lrrlaw.com



CLERK OF THE COURT

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,

Case No. A-14-700018-C

Dept. No. XXVII

Plaintiffs,

12 vs.

13 **NOTICE OF ENTRY OF ORDER**
 14 **GRANTING DEFENDANTS' RULE 12**
 15 **MOTION TO DISMISS UNSERVED**
 16 **PARTIES**

17 CLARK COUNTY SCHOOL DISTRICT
 18 (CCSD); Pat Skorkowsky, in his official
 19 capacity as CCSD superintendent; CCSD
 20 BOARD OF SCHOOL TRUSTEES; Erin A.
 21 Cranor, Linda E. Young, Patrice Tew, Stavan
 22 Corbett, Carolyn Edwards, Chris Garvey,
 23 Deanna Wright, in their official capacities as
 24 CCSD BOARD OF SCHOOL TRUSTEES;
 25 Principal Warren P. McKay, in his individual
 26 and official capacity as principal of GJHS;
 27 Leonard DePiazza, in his individual and official
 28 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.

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*

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

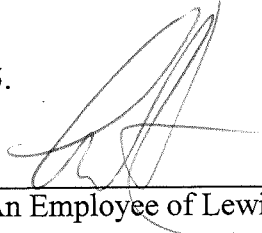
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|
ROTHGERBER

CERTIFICATE OF SERVICE

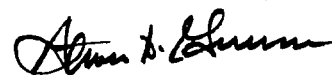
Pursuant to Rule 5(b), I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' RULE 12 MOTION TO DISMISS UNSERVED PARTIES** to be submitted electronically for filing and/or service with the Eighth Judicial District Court via Court's Electronic System and as stated 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 21 day of December, 2015.


 An Employee of Lewis Roca Rothgerber LLP

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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)
LEWIS ROCA ROTHGERBER LLP
3 3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
4 Tel: 702.949.8200
Fax: 702.949.8398
5 DWaite@lrrlaw.com
MPark@lrrlaw.com
6 BBlakley@lrrlaw.com

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
capacity as principal of GJHS;
21 Leonard DePiazza, in his individual
and official capacity as assistant
22 principal at GJHS; Cheryl Winn, in
her individual and official capacity as
23 Dean at GJHS; John Halpin, in his
individual and official capacity as
24 counselor at GJHS; Robert Beasley,
in his individual and official capacity
25 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 L. Alf
8 NANCY L. ALF
9 District Court Judge

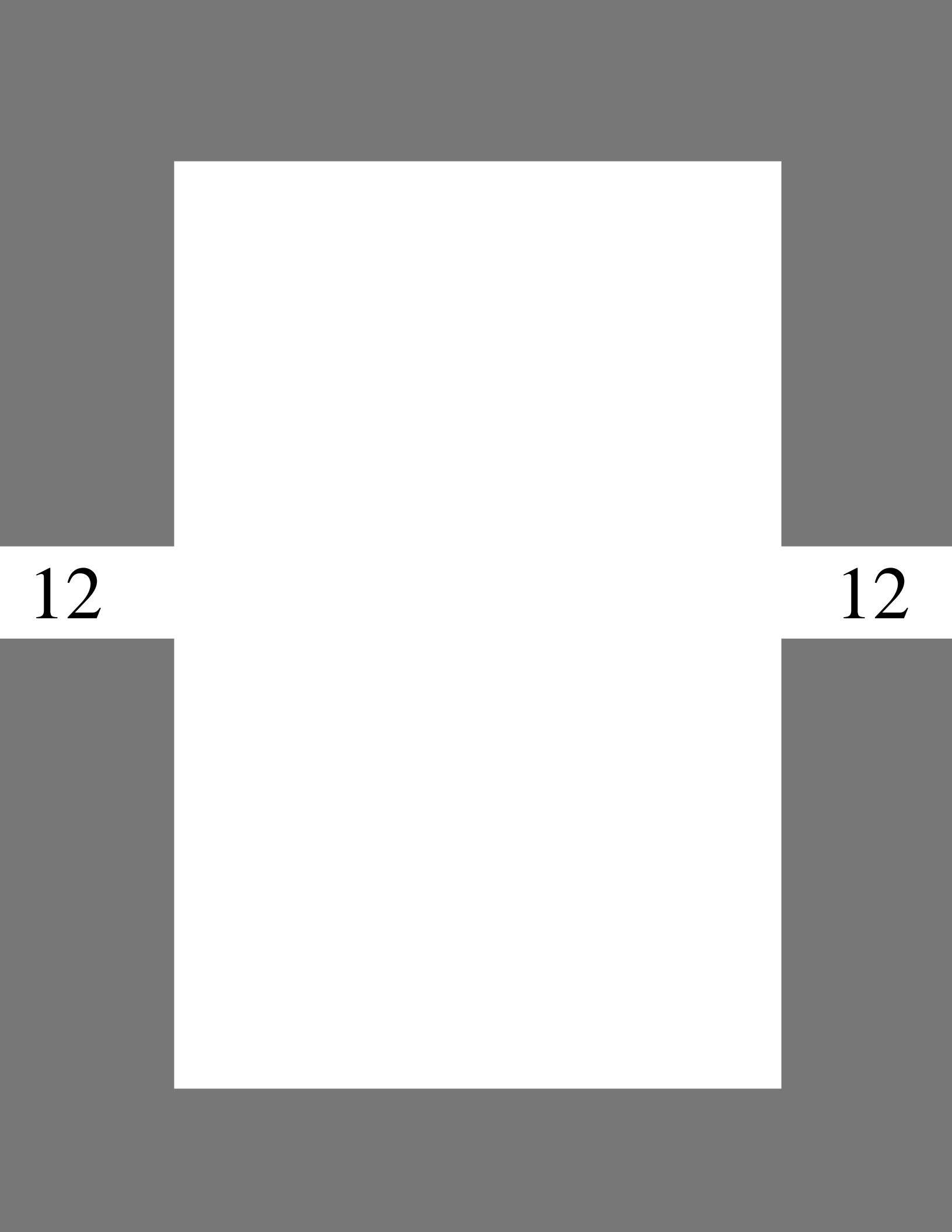
10 Respectfully Submitted By:
11 LEWIS ROCA ROTHGERBER LLP

12 By: [Signature]
13 DANIEL F. POLSENBERG (SBN 2376)
14 DAN R. WAITE (SBN 4078)
15 BRIAN D. BLAKLEY (SBN 13074)
16 3993 Howard Hughes Parkway, Suite 600
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*

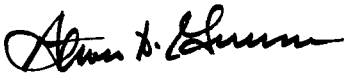
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

LEWIS ROCA
ROTHGERBER



12

12


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)
LEWIS ROCA ROTHGERBER LLP
3 3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
4 Tel: 702.949.8200
Fax: 702.949.8398
5 DWaite@lrrlaw.com
MPark@lrrlaw.com
6 BBlakley@lrrlaw.com
7 *Attorneys for Defendants Clark County School*
District (CCSD), Warren P. McKay, Leonard DePiazza,
8 *Cheryl Winn, John Halpin, Robert Beasley*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

13 Plaintiffs,

14 vs.

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

24 Defendants.

Case No. A-14-700018-C

Dept. No. XXVII

STIPULATED PROTECTIVE ORDER

25 The "Litigation" shall mean the above-captioned case, *Mary Bryan, mother of Ethan*
26 *Bryan, et al. v. Clark County School District, et al.*, in the District Court Case No. A-14-700018-
27 C. The above-captioned parties (collectively, the "Parties," or singularly, a "Party") understand
28 that this Litigation will involve the production and use of protected health information ("PHI").

1 Accordingly, pursuant to NRCP 26(c), the Court finds good cause for entering the following
 2 Protective Order ("Protective Order") governing the handling of PHI.

3 1. **Definition of PHI.** PHI includes Plaintiff Nolan Hairr's and Plaintiff Ethan
 4 Bryan's individually identifiable physical and mental health information, and is strictly limited to
 5 information regarding (1) the past, present or future physical or mental condition of either
 6 Plaintiff; and (2) the provision of care to either Plaintiff. Any such information created by or
 7 obtained from health care providers is initially considered PHI per se ("Per Se PHI").¹ In addition,
 8 any Party may designate other information as PHI by notifying the other Parties in writing within
 9 15 days of the designating Party's receipt of the information, but must have a good faith basis to
 10 so designate ("Designated PHI"). Any Party may make a good faith objection to the Designated
 11 PHI. Upon objection to the Designated PHI, the designating Party, must move to confirm the
 12 protected PHI classification with the Court, within 14 days of said objection. If no motion is filed
 13 with the Court, the objection stands and the information is no longer considered PHI. Any Party
 14 may move at any time to remove a confidential designation of either Per Se or Designated PHI.

15 2. **Purpose of the Protective Order.** The disclosure of PHI outside the scope of the
 16 Litigation could result in significant injury to the privacy interests of individual patients. The
 17 Court enters this Protective Order to prevent the disclosures and use of either Plaintiffs' PHI
 18 except as set forth below.

19 3. **Authorization to Disclose, Request and Receive PHI.** All health care providers
 20 and health care facilities are hereby authorized to disclose Nolan Hairr's and Ethan Bryan's PHI in
 21 response to discovery requests, subpoenas, deposition inquiries or patient authorization forms.
 22 These disclosures are subject to the limitations of the Nevada Rules of Civil Procedure, the
 23 discovery served in this Litigation, and the Orders of this Court. The Parties to this Litigation are
 24 hereby authorized to receive, subpoena, request and transmit PHI to comply with those same
 25 obligations. Any discovery served, and documents produced, related to PHI shall be consistent
 26

27
 28 ¹ Carved out from the Per Se PHI designation is a redacted version of the Children's Urology letter dated March 7, 2012, attached hereto as **Exhibit A**. The parties agree this redacted version of the March 7, 2012 letter does not constitute PHI.

1 with the Orders of this Court. Any Party reserves their right to object to any production of PHI
2 consistent with the Nevada Rules of Civil Procedure.

3 4. **Use of Medical Records or Information.** All documents containing PHI and the
4 PHI therein shall be used solely for the purpose of conducting this Litigation. Documents with
5 PHI and the PHI may be disclosed only to the following persons:

- 6
- 7 a. Attorneys of record for any Party to this action, and all legal support personnel, and
8 clerical employees working under the direct supervision of such counsel;
 - 9 b. The Parties to this action;
 - 10 c. The Court and its personnel;
 - 11 d. Witnesses, independent consultants, or experts retained by any of the Parties to this
12 Litigation to assist in the preparation and trial of this Litigation, who any of the
13 Parties, in good faith, determines need to view such documents for the purposes of
14 this Litigation;
 - 15 e. Any arbitrator or mediator designated in this Litigation;
 - 16 f. Any court reporter employed in connection with a deposition in this Litigation;

17 All persons reviewing or receiving copies of documents containing PHI are enjoined from
18 disclosing the contents thereof to any other person other than for the prosecution or defense of this
19 Litigation, except in conformity with this Protective Order, and hereby, by signing the declaration
20 attached hereto as **Exhibit B**, agree to subject themselves to the jurisdiction of the Court for the
21 purpose of any proceeding relating to the performance under, compliance with, or violation of this
22 Protective Order. The recipient of any PHI document shall maintain such information in a secure
23 and safe area.

24 5. **Custody and Reproduction of PHI.** During the pendency of the Litigation,
25 counsel shall retain custody of the PHI, except that individuals authorized to review or receive the
26 PHI pursuant to this Protective Order may retain custody of any copies or reproductions as
27 reasonably necessary for the Litigation and at the conclusion of the Litigation, including the
28 conclusion of all appeals, shall destroy all PHI that was provided to them within 45 days. No other
copies or reproduction of documents containing PHI shall be made.

6. **Continuing Obligations Under Protective Order.** The termination of this Litigation shall not relieve counsel or other persons obligated under this Protective Order from their responsibility to comply with this Protective Order, and the Court shall retain continuing jurisdiction to enforce the terms of this Protective Order.

7. **Modification.** The Parties or any Party may seek modification of this Order by the Court at any time, by stipulation or by motion for good cause.

IT IS SO STIPULATED

Dated this 1 day of December, 2015.

Dated this 1 day of December, 2015.

ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.

LEWIS ROCA ROTHGERBER LLP

By: 

By: 

ALLEN LICHTENSTEIN (SBN 3992)
3315 Russell Road, No. 222
Las Vegas, Nevada 89120
(702) 433-2666

Dan R. Waite (SBN 004078)
Matthew W. Park (SBN 12062)
Brian D. Blakley (SBN 13074)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169
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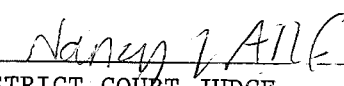
Attorneys for Plaintiffs

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

ORDER

IT IS SO ORDERED.

DATED: December 11, 2015.


DISTRICT COURT JUDGE

Submitted By:

LEWIS ROCA ROTHGERBER LLP

By: 

Matthew W. Park (SBN 12062)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

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

EXHIBIT B

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No. A-14-700018-C

Dept. No. XXVII

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; 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,

ACKNOWLEDGEMENT OF
PROTECTIVE ORDER AND
AGREEMENT TO BE BOUND

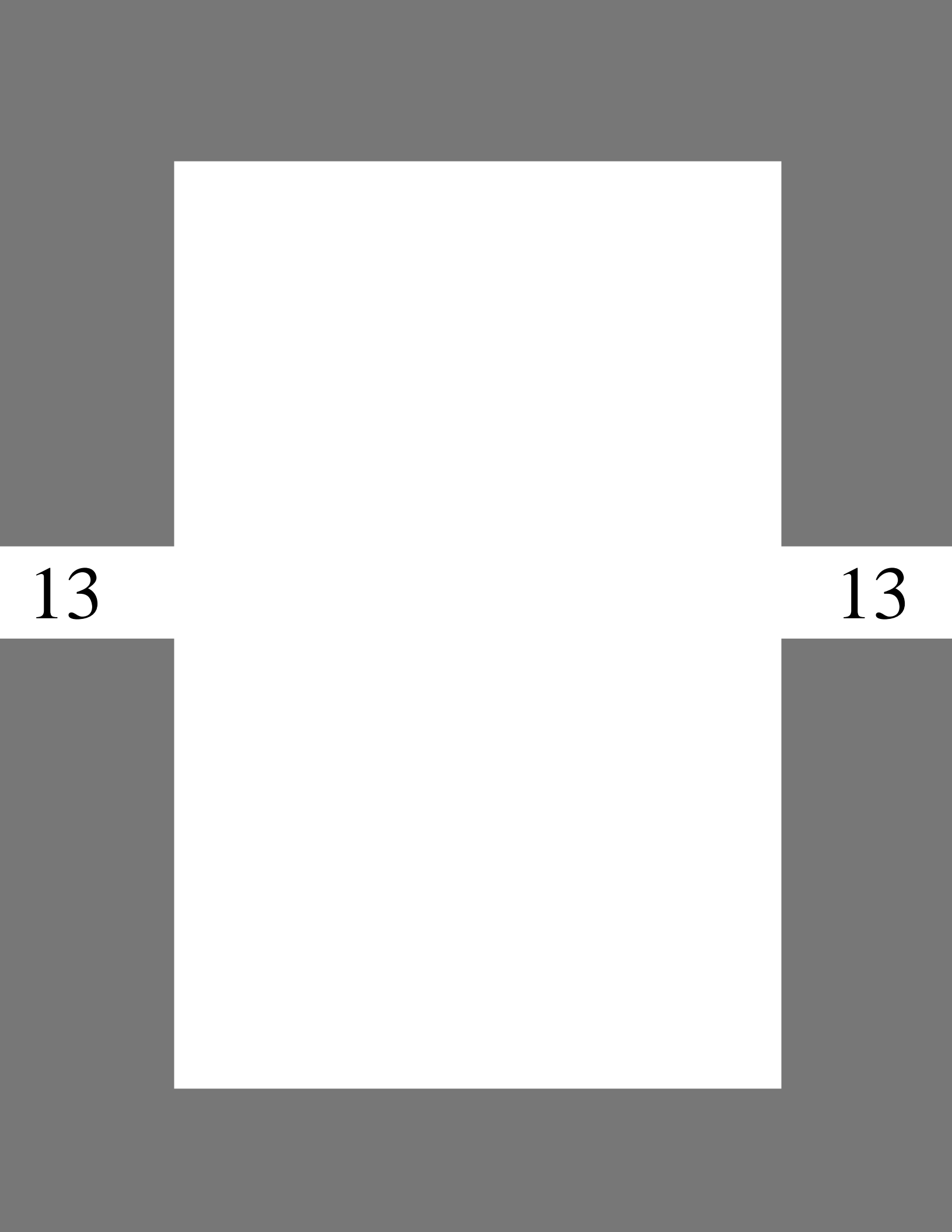
Defendants.

Under the penalty of perjury, I have read the Protective Order ("Order") in the above-captioned case. I understand the terms of the Order, I agree to be fully bound by the terms of the Order, and I hereby submit to the jurisdiction of Nevada's Eighth Judicial District Court for purposes of enforcement of the Order.

Date: _____

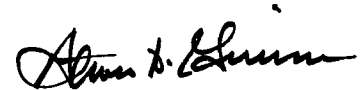
Signature: _____

Signatory's Name, Business Affiliation, and Business Address:



13

13



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

MARY BRYAN,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT,
ET AL,

Defendants.

CASE NO. A700018

DEPT. NO. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 10, 2016

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
DEFENDANTS' MOTION TO COMPEL RULE 35 EXAMINATIONS

APPEARANCES:

For the Plaintiffs:

ALLEN K. LICHTENSTEIN, ESQ.
JOHN H. SCOTT, ESQ.
Pro Hac Vice

For the Defendants:

MATTHEW W. PARK, ESQ.

RECORDED BY: TRACI RAWLINSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 10, 2016, 9:24 A.M.

2 THE COURT: Are the parties here on Bryan versus Clark County School
3 District? Appearances please.

4 MR. LICHTENSTEIN: Good morning Your Honor, Allen Lichtenstein for the
5 Plaintiff and co-counsel John Scott with me.

6 MR. SCOTT: Good morning, Your Honor.

7 THE COURT: Thank you. And for the Defendant.

8 MR. PARK: Good morning Your Honor, Matt Park for Defendants.

9 THE COURT: Thank you. This is the Defendants' motion to compel a Rule
10 35 examination.

11 MR. PARK: Correct, Your Honor. As you know this is a bullying case. We
12 filed a motion to compel a Rule 35 examination because the boys here they allege
13 they were bullied and then they moved to another school. But within those
14 allegations in their complaint they also allege that they were depressed, that they
15 had -- one of the boys had recurring nightmares and suicide ideation. The
16 subsequent medical records that we've received -- we've also seen a diagnosis of
17 anxiety and depression. Now in Plaintiffs' response to our motion they've gone
18 ahead and said they aren't claiming future emotional distress damages and they're
19 not claiming current emotional distress damages. So really the only issue before
20 the Court are the past emotional distress damages.

21 THE COURT: And that was August of 2011 until February of 2012?

22 MR. LICHTENSTEIN: Your Honor if I can see you speak I can hear you
23 better that's all

24 THE COURT: I am so sorry. You know, I wanted to have IT put the
25 microphone on but it was gonna delay the hearing.

1 MR. LICHTENSTEIN: It's okay. If I could stand and hear you I could actually
2 get your words better. So I apologize.

3 THE COURT: I'll give you a chance to respond; the dates.

4 MR. LICHTENSTEIN: I wasn't trying to I was just -- wanted to hear you.

5 THE COURT: I understand.

6 MR. PARK: That's my understanding, Your Honor, is the dates that would be
7 the past emotional distress would be from the time that they were in school to the
8 time they were moved from school but, you know, Mr. Lichtenstein can speak better
9 as to the timeframe that they're claiming concerning those past emotional distress
10 damages. In other words it's not current so I assume it would be prior to the filing of
11 the lawsuit to the time they were in school.

12 MR. LICHTENSTEIN: Yes.

13 THE COURT: And based on my calculations are they now seniors in high
14 school?

15 MR. PARK: I don't believe so, Your Honor. Seniors in high school Allen or --

16 MR. LICHTENSTEIN: Sophomores in high school.

17 MR. PARK: Sophomores.

18 THE COURT: Sophomores. Because they were in sixth grade in 2011; I
19 couldn't do the math, wasn't sure. Okay, good enough. So they're sophomores,
20 okay.

21 MR. PARK: Correct, Your Honor.

22 THE COURT: Anything further?

23 MR. PARK: Sure. And so our argument is, Your Honor, one that they are
24 asking for more than garden variety emotional distress. They are asking for
25 something that is -- even the past damages are severe and unusual because we're

1 talking about diagnosable emotional distress. We're talking about depression which
2 is diagnosable under the DSM. We're talking about anxiety which is diagnosable
3 under the DSM. We're talking about suicidal ideation which I think to anybody's,
4 you know, lay understanding would be an unusual and severe instance of emotional
5 distress, Your Honor. So all we're asking for is a Rule 35 examination to go into
6 those -- the past emotional distress issues and learn about them, learn more about
7 them. Learn about, you know, where did they come from; are they associated with
8 the bullying; are they not associated with the bullying; are they pre-existing? We
9 believe we have the right to do that under Rule 35.

10 THE COURT: Thank you. And the opposition please.

11 MR. LICHTENSTEIN: Yes. Mr. Park is asking for a Rule 35 for an analysis
12 of past emotional and psychological state. Rule 35 doesn't provide for that; it is for
13 current -- it's all in the present for current emotional state in a very unusual
14 circumstance. The *Turner* factors that really rule whether that is appropriate or not,
15 none of them exist here. There is no claim -- specific claim for emotional distress,
16 no allegation of specific mental distress. He can point to the complaint and in two
17 places it said the kids were depressed and didn't want to go to school. One kid was
18 depressed and started thinking about suicide.

19 So nothing now, we never brought it up, all of the things in terms of the
20 depositions, they're all theirs. They went for the medical records, we didn't. We're
21 not presenting any medical evidence. We're not making any claims for current or
22 future distress so that fact is not there and the distress we never claimed was
23 particularly unusual. Kids were bullied and got depressed. That was mentioned in
24 the fact pattern of the complaint, again nothing going forward. And we have no
25 expert testimony, we have no testimony. In fact had the Defendants not brought up

1 the question of emotional distress, had they not subpoenaed records from all of the
2 doctors, it wouldn't be an issue 'cause we never put this into consideration. That's
3 not our case.

4 The only purpose for this is to create extra stress on these kids who
5 have gone through enough already for a psychiatric examination that has nothing to
6 do with this case 'cause if someone comes back and says hey they're not suffering
7 anything at the moment, we never made that claim. As far as what happened in the
8 past, again Rule -- Mr. Park has been able to cite no case, zero legal authority that
9 suggests that Rule 35 is applicable to a situation that happened four and a half, five
10 years ago. That's not Rule 35. Rule 35 is are there particular circumstances now
11 that are relevant to the particular case, and that doesn't exist and there's no case
12 law to suggest that this court should be making new law and say yeah that can
13 ignore current situation and only do a psychological examination of what they were
14 feeling and thinking and experiencing four or five years ago. So this should really
15 be denied as inappropriate for Rule 35.

16 THE COURT: Have both of the young men been deposed?

17 MR. LICHTENSTEIN: Yes.

18 THE COURT: All right. And did the issue of the anxiety and depression
19 during the August 2011 through February 2012, did the Defendant have the chance
20 to explore that?

21 MR. LICHTENSTEIN: Yes.

22 THE COURT: All right. And how were you going to ask for damages?

23 MR. LICHTENSTEIN: Beg your pardon?

24 THE COURT: How are you going to ask for damages in this case for past
25 anxiety and depression?

1 MR. LICHTENSTEIN: Yeah, according to proof. This is a bench trial.
2 Ultimately it will be the finder of fact who makes that determination of what that
3 would be worth.

4 THE COURT: Okay. Thank you.

5 Mr. Park.

6 MR. PARK: Sure, Your Honor. You know, obviously we disagree with their
7 allegation that we're doing this just to harass the kids.

8 THE COURT: Of course.

9 MR. PARK: Really for us, Your Honor, it is a matter of, you know,
10 Mr. Lichtenstein was very careful I think in his discussion to gloss around the fact
11 that suicide ideation I mean that certainly is -- again it's a diagnosable emotional
12 distress issue and it's something that is severe. That's not garden variety, Your
13 Honor; depression, again, that's diagnosable, Your Honor. And where we are
14 talking about past emotional distress, there's nothing in Rule 35 that says you can't
15 have a Rule 35 examination for past emotional distress. It says if their mental state
16 is in controversy, Your Honor, and here it is. Here it is because they agree that
17 they will ask for past emotional distress damages according to proof, Your Honor.
18 That opens up the door for us to go and at least inquire into it.

19 And while we did have the opportunity to examine both boys via
20 deposition, unfortunately we aren't doctors, we aren't psychologists, we aren't
21 therapists. And so while we can ask questions we don't know what the appropriate
22 follow-up questions are, what may trigger an appropriate follow-up question for a
23 medical professional. And so we don't believe that's an adequate substitute for a
24 Rule 35 examination.

25 THE COURT: All right. And there's a discovery cutoff on March 1?

1 MR. PARK: Discovery cutoff in this case is actually February 16th, Your
2 Honor.

3 THE COURT: All right so next week.

4 MR. PARK: So we're coming up on it, yes ma'am.

5 THE COURT: Right and what about the date to designate experts? That has
6 already past?

7 MR. PARK: That's already past and we designated an expert, Your Honor.

8 THE COURT: In this area?

9 MR. PARK: In this case an initial expert, correct.

10 THE COURT: Good enough. You know, I -- it's a close call. I'm going to
11 deny the motion for the reason that the negligence claims have been dismissed. If
12 there were negligence claims I would have allowed an examination of the two
13 young men. I refuse to call them boys; they're young men; they're sophomores in
14 high school. Let me also caution the Plaintiff though, I'm going to limit your proof at
15 the time of trial to those statements made in August 2011 through February of 2012
16 with regard to anxiety and depression related only to those things alleged in the
17 complaint.

18 MR. LICHTENSTEIN: That was our intention from the very beginning.

19 THE COURT: All right. So the motion is denied. Mr. Lichtenstein is to
20 prepare the order. Mr. Park, do you wish to sign off on that?

21 MR. PARK: Yes please. I'd like to look at it.

22 THE COURT: Very good. Thank you.

23 MR. LICHTENSTEIN: Your Honor I just wanna --

24 THE COURT: You have a motion next week on a motion to compel
25 calculation of damages.

1 MR. LICHTENSTEIN: Correct, Your Honor.

2 THE COURT: Is that necessary to go forward on or was the reply to that
3 motion sufficient?

4 MR. PARK: It is, Your Honor, and I apologize I don't know that it's calendar
5 here or with the Discovery Commissioner.

6 THE COURT: It's in front of the Discovery Commissioner.

7 MR. PARK: It is and so Your Honor we still do have a question on their
8 general damages.

9 THE COURT: Good enough. I just wanted to hold you to that April bench
10 trial.

11 MR. PARK: Yes, understood.

12 MR. LICHTENSTEIN: If we could talk about that. There is a conflict on that
13 particular date.

14 THE COURT: It's a five week stack.

15 MR. SCOTT: Okay.

16 THE COURT: It's a five week stack.

17 MR. LICHTENSTEIN: Okay so --

18 THE COURT: So if you can stipulate to dates certain go ahead and do that
19 and contact my chambers to see if you can find dates certain that accommodate the
20 parties and the lawyers and the witnesses.

21 MR. LICHTENSTEIN: Uh-huh.

22 THE COURT: And I'll do my best to accommodate that.

23 MR. LICHTENSTEIN: Are there particular dates that are not available or is it
24 all --

25 THE COURT: You know, I don't really keep that calendar.

1 MR. LICHTENSTEIN: Okay.

2 THE COURT: But my JEA is great.

3 MR. LICHTENSTEIN: All right.

4 THE COURT: Mr. Park.

5 MR. PARK: And I think the reason why we were concerned or worried about
6 that is because in the scheduling order it didn't say five week stack and so we were
7 wondering whether we were set for a date certain.

8 THE COURT: It's a five week stack.

9 MR. PARK: Great. Thank you.

10 THE COURT: So, good enough. Confer among yourselves on the dates.

11 MR. LICHTENSTEIN: All right. We will certainly do that.

12 THE COURT: Very good.

13 MR. LICHTENSTEIN: Thank you.

14 PROCEEDING CONCLUDED AT 9:35 A.M.

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19 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
20 video recording of this proceeding in the above-entitled case.

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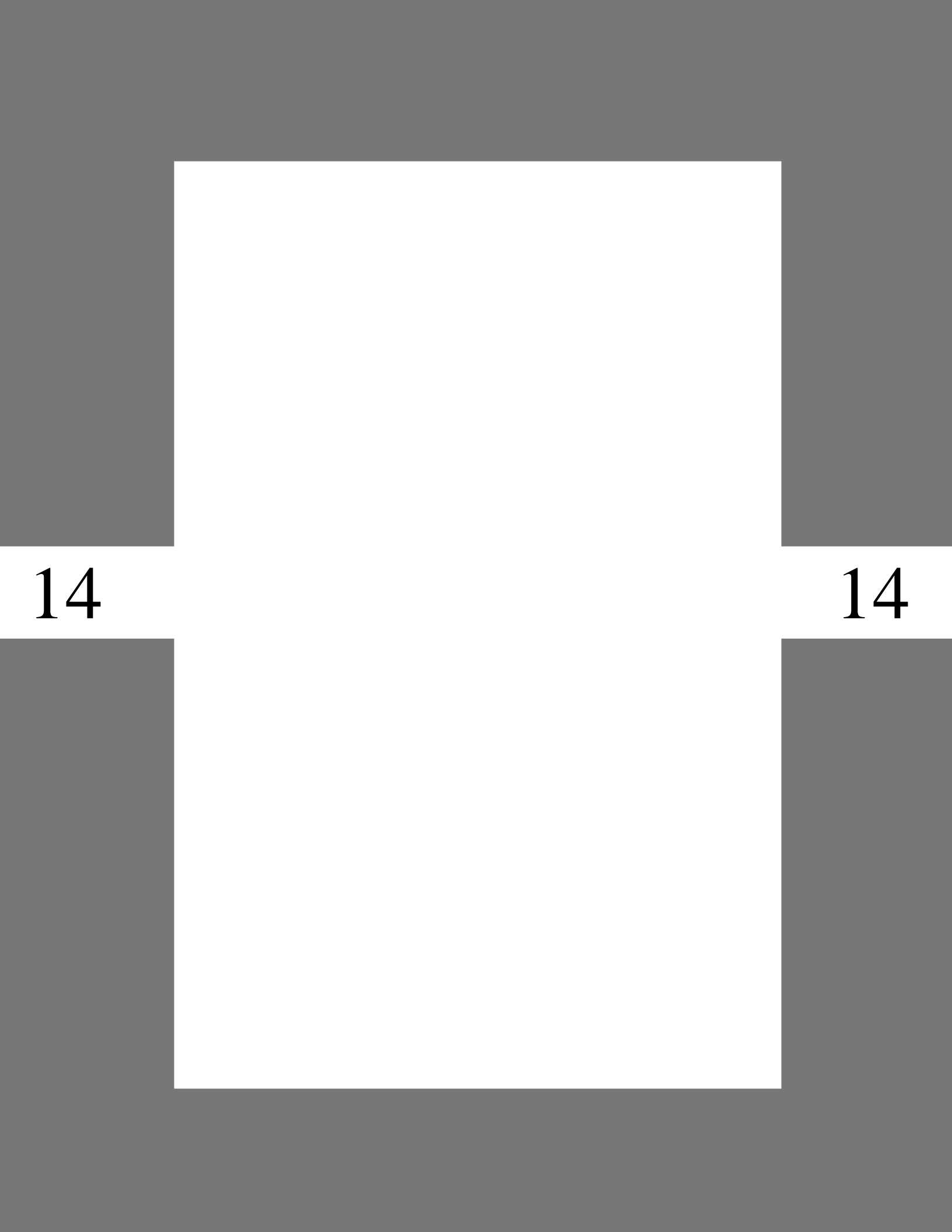
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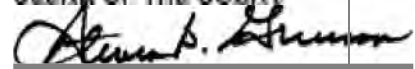

TRACI RAWLINSON
Court Recorder/Transcriber



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Steven D. Grierson
CLERK OF THE COURT



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

MARY BRYAN, ET AL.,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT,
ET AL.,

Defendants.

CASE NO. A-14-700018-C
SUPREME COURT NO. 73856

DEPT. XXVII

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER
WEDNESDAY, FEBRUARY 17, 2016

RECORDER'S TRANSCRIPT OF PROCEEDINGS

MOTION TO COMPEL DAMAGES CATEGORIES AND CALCULATIONS FROM
PLAINTIFF AIMEE HAIR; MOTION TO COMPEL DAMAGES CATEGORIES AND
CALCULATIONS FROM PLAINTIFF MARY BRYAN ON OST

APPEARANCES:

For the Plaintiffs:

ALLEN LICHTENSTEIN, ESQ.

For the Defendants:

MATTHEW W. PARK, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Wednesday, February 17, 2016, 9:04 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Bryan versus Clark County School District. Good
4 morning.

5 MR. LICHTENSTEIN: Good morning.

6 MR. PARK: Good morning.

7 DISCOVERY COMMISSIONER: Could everyone state your appearances, please?

8 MR. LICHTENSTEIN: Allen Lichtenstein, for Plaintiffs.

9 MR. PARK: And Matt Park, for the Defendants, Your Honor.

10 DISCOVERY COMMISSIONER: So I have two motions. I really think in the future
11 you could have filed one motion.

12 MR. PARK: The reason we didn't file one motion, Your Honor, is because we didn't
13 have discovery responses from the second, so once we got discovery responses on the
14 damages, then we filed the motion.

15 DISCOVERY COMMISSIONER: I see.

16 MR. PARK: But we have stipulated to a resolution.

17 DISCOVERY COMMISSIONER: Okay. Why don't you tell me what you've --
18 what agreement you've reached.

19 MR. LICHTENSTEIN: Well, the agreement is we have already stated for both
20 Plaintiffs the special damages, and there's no problem with that. As for the general damages,
21 we did not state a particular number. We will not state a particular number. We've made
22 that representation to Judge Allf, who said you're not going to be allowed to do that. So
23 there's really no issue here. She has limited the scope of the general damages to the time
24 frame of the actions in question so, because of that, I don't know if there's any conflict at all.

25 DISCOVERY COMMISSIONER: Is it permissible for me then to just take these

1 motions off calendar? We don't really need a Report and Recommendations if you've
2 reached an agreement.

3 You have to have special damages calculations, but those are somewhat limited
4 because you're looking at medical expenses or wage loss, and sometimes the information
5 cannot readily be given until the expert disclosures have been made because sometimes it
6 requires an expert analysis in order to be able to state, for example, future economic loss, in
7 which case you can't really complete your damages calculations till that time.

8 MR. PARK: Sure.

9 DISCOVERY COMMISSIONER: But I absolutely agree with Judge Allf, and the
10 commentary is very clear, that general damages, you don't have to tell the Defendant the
11 number you want to ask the Jury for at trial because, quite candidly, that number may
12 change, depending on how the case is presented.

13 MR. PARK: And so where we are, Your Honor, is discovery closed in this case
14 yesterday. We go to trial in approximately a month-and-a-half, two months. We've agreed
15 that he's not going to ask -- Plaintiff is not going to ask for a specific number to the Jury, and
16 we're fine with that, Your Honor. As long as they're not going to ask for a specific number
17 for the Jury, we're not going ask --

18 DISCOVERY COMMISSIONER: Well, wait a minute. I don't know what you're
19 talking about. Of course they're going to ask for a specific number. They're going to ask for
20 two, three, four, five, ten million dollars. I don't know how the case is going to come out.
21 They can ask the Jury for a specific number at trial. I don't know what you're talking about.

22 MR. LICHTENSTEIN: Well, number one, we don't have a Jury, so --

23 DISCOVERY COMMISSIONER: Or the Judge.

24 MR. LICHTENSTEIN: -- it's a bench trial. Yeah.

25 It was not something that we were planning on doing.

1 DISCOVERY COMMISSIONER: Well --

2 MR. LICHTENSTEIN: I think the commentary does say that we have a right to do
3 so, but that doesn't seem to be --

4 DISCOVERY COMMISSIONER: I don't even understand this. I'm not sure why
5 you're here before me today because it sounds to me like the damages, the special damages,
6 have been disclosed.

7 MR. LICHTENSTEIN: Correct.

8 MR. PARK: Correct, through the motion.

9 DISCOVERY COMMISSIONER: But of course going to ask --

10 MR. PARK: Sure.

11 DISCOVERY COMMISSIONER: -- a number from the Judge or from the Jury.
12 How are you going to be compensated, unless you ask for a number, like pain and suffering,
13 that's a number.

14 MR. PARK: Sure.

15 DISCOVERY COMMISSIONER: But they shouldn't be -- because they don't tell
16 you in advance does not mean they cannot ask the Judge for a number.

17 MR. PARK: Right.

18 DISCOVERY COMMISSIONER: Am I -- did I fall through the rabbit hole? Did
19 something change that --

20 MR. PARK: No. You're --

21 DISCOVERY COMMISSIONER: -- I'm not aware of?

22 MR. PARK: You're okay, Your Honor. Let me see if I can make this a little more
23 clear. So through the motion to compel they went ahead and categorized their special
24 damages. And that's fine, Your Honor. We have no, no issue with that.

25 DISCOVERY COMMISSIONER: That's what they're supposed to do under 16.1.

1 MR. PARK: Understood, yes, correct, so that's what they did.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. PARK: With respect to the pain and suffering, the general damages, Your
4 Honor, what we asked for in our motion was if you're going to ask for a number for the
5 Jury -- to the Jury, right, considering that we're done with all of the discovery --

6 DISCOVERY COMMISSIONER: Right.

7 MR. PARK: -- you should disclose that number --

8 DISCOVERY COMMISSIONER: Okay, and I --

9 MR. PARK: -- to us so we know how to --

10 DISCOVERY COMMISSIONER: -- completely disagree with you, and the case --

11 MR. PARK: Okay.

12 DISCOVERY COMMISSIONER: -- law should disagree with you because that's
13 work product.

14 You're going to get in there, and you're going to try your case, and you're not
15 going to necessarily know what number to ask for, even if it's a Judge trial. You may want
16 to see how the evidence comes on at the time of trial. You know, things may not always go
17 as well as you'd like, or they may go better.

18 MR. PARK: And I understand it can --

19 DISCOVERY COMMISSIONER: And you --

20 MR. PARK: -- change.

21 DISCOVERY COMMISSIONER: -- have to make that decision.

22 MR. PARK: Sure. And we understand it can change, Your Honor. What we're
23 saying is at the end of discovery either you have an idea or you don't, and if you're saying
24 it's so --

25 DISCOVERY COMMISSIONER: But that's --

1 MR. PARK: -- intangible, we just don't know, that's fine.

2 DISCOVERY COMMISSIONER: That's an attorney-client -- that's an attorney
3 work product, maybe even an attorney-client decision in consultation with the client during
4 the trial process. That is not something to disclose prior to trial. I'm sorry. I disagree with
5 that.

6 MR. PARK: And I understand that, Your Honor. You know, we --

7 DISCOVERY COMMISSIONER: Yeah. I don't even know where you get that --

8 MR. PARK: We cited case law --

9 DISCOVERY COMMISSIONER: -- from.

10 MR. PARK: -- Your Honor. There are several cases where they've said, listen, if
11 you're going to ask for a specific number from the Jury, you have to disclose. If you're not
12 going to, you say --

13 DISCOVERY COMMISSIONER: Okay. So --

14 MR. PARK: -- listen, just compensate us --

15 DISCOVERY COMMISSIONER: -- you need --

16 MR. PARK: -- reasonably. You certainly can do that, but, in absence of asking for a
17 specific number, or in absence of disclosing a specific number, Your Honor, you can't ask
18 for it from the Jury. And I understand you disagree; that's fine. But that's what we were
19 here on today.

20 DISCOVERY COMMISSIONER: I have no idea where you're getting this. What
21 case are you --

22 MR. PARK: The Sandoval case is one. There are several Federal District Court
23 cases out there, Your Honor, that say if they're going to ask for a specific number from the
24 Jury, they have to disclose it prior to trial.

25 DISCOVERY COMMISSIONER: Well, I would agree with you if it's like a breach

1 of contract case or a case where you've got liquidated damages where you have a number.
2 But on pain and suffering, I don't think they have to disclose to you what they're asking for.

3 MR. LICHTENSTEIN: We've cited the drafter's note on Rule 30 that said that
4 special damages require disclosure, general damages or intangible damages --

5 DISCOVERY COMMISSIONER: At proof of trial.

6 MR. LICHTENSTEIN: -- do not, yeah.

7 DISCOVERY COMMISSIONER: Yeah.

8 MR. LICHTENSTEIN: And that was our position. And so we, again, have disclosed
9 the special damages, and that's kind of where we stand right now.

10 MR. PARK: I'm sorry. And my understanding, Your Honor, is that -- and the reason
11 why we came up first I think is because they weren't going to ask for a specific dollar
12 amount. Sure they're going to ask for pain and suffering, or they're going to ask for
13 whatever component of general damages, but that's Plaintiffs' representation, Your Honor.

14 MR. LICHTENSTEIN: Well --

15 DISCOVERY COMMISSIONER: Well, how can you not go to trial and ask for a
16 number?

17 MR. LICHTENSTEIN: Well, the question at trial is really a trial question. It's not a
18 discovery question.

19 DISCOVERY COMMISSIONER: Right.

20 MR. LICHTENSTEIN: And that's a strategic question, as you've said. Whether we
21 choose to do so or I guess don't choose to do so isn't a matter before this tribunal at the
22 moment.

23 DISCOVERY COMMISSIONER: I don't see the Sandoval case in your materials.
24 Maybe I'm just not --

25 MR. PARK: In the reply brief, Your Honor.

1 DISCOVERY COMMISSIONER: Oh, it's in the reply.

2 MR. PARK: Correct.

3 DISCOVERY COMMISSIONER: Next time put your authority in your initial.

4 MR. PARK: Sure, Your Honor, and we -- that was just essentially a clarification for
5 us. After they went ahead and disclosed their actual and special damages, then we just
6 wanted to clarify that, hey, we also would like a number in the general, for the general.

7 DISCOVERY COMMISSIONER: Okay. I just feel like I've fallen down the rabbit
8 hole this morning. All right. So your motion to compel damages you still -- you've reached
9 an agreement on the special damages, which have been disclosed now.

10 MR. PARK: Correct.

11 MR. LICHTENSTEIN: Right.

12 DISCOVERY COMMISSIONER: What you need to do is compel a number for the
13 general damages; otherwise, you want the Plaintiff from being excluded to asking about
14 those damages at trial, is that right?

15 MR. PARK: Almost, Your Honor. If they don't give us a number, that's fine. They
16 just can't present a specific number to the Jury. They can say compensate us fairly and
17 reasonably based on the evidence you've heard, or the Judge, if it ends up being a bench trial
18 here, it may still be a question as to what --

19 DISCOVERY COMMISSIONER: Okay.

20 MR. PARK: -- you ask for.

21 DISCOVERY COMMISSIONER: I'm denying that motion to compel.

22 MR. PARK: Okay.

23 DISCOVERY COMMISSIONER: And I am not going to prohibit the Plaintiffs'
24 counsel from asking for a specific number from the Judge at trial; that needs to go in the
25 Report and Recommendations.

1 MR. LICHTENSTEIN: All right.

2 DISCOVERY COMMISSIONER: So both motions are denied, with the

3 understanding that the denial is on the general damages disclosure because the special
4 damages have already been disclosed.

5 MR. LICHTENSTEIN: Already been disclosed.

6 MR. PARK: Through the motion, correct.

7 DISCOVERY COMMISSIONER: Okay. All right.

8 MR. LICHTENSTEIN: Thank you.

9 MR. PARK: Thank you.

10 DISCOVERY COMMISSIONER: So Plaintiffs' counsel is going to prepare my
11 Report and Recommendation; run it by defense counsel, please, to approve as to form and
12 content; and there will be a status check on the Report and Recommendation.

13 THE CLERK: March 18 at 11.

14 DISCOVERY COMMISSIONER: Don't be here for that, Plaintiffs' counsel.
15 Defense counsel, you don't need to appear.

16 MR. PARK: Perfect. Thank you.

17 DISCOVERY COMMISSIONER: Okay. All right. Thank you, all.

18 MR. PARK: Thank you.

19 DISCOVERY COMMISSIONER: Have a good week.

20 MR. LICHTENSTEIN: I'm sorry. I missed that. We don't need to appear --

21 THE CLERK: March 18th at 11.

22 MR. LICHTENSTEIN: -- or --

23 DISCOVERY COMMISSIONER: No, you'll need to --

24 MR. LICHTENSTEIN: I'll need to appear.

25 DISCOVERY COMMISSIONER: -- be here --

1 MR. LICHTENSTEIN: Okay.

2 DISCOVERY COMMISSIONER: -- unless we tell you otherwise. I'm suggesting
3 you don't want to be here. You want to get that Report and Recommendations done, and
4 make sure you run it by defense counsel.

5 MR. LICHTENSTEIN: All right. Thank you.

6 DISCOVERY COMMISSIONER: Thank you.

7 [Proceeding concluded at 9:14 a.m.]

8 * * *

9
10 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
video recording of this proceeding in the above-entitled case.

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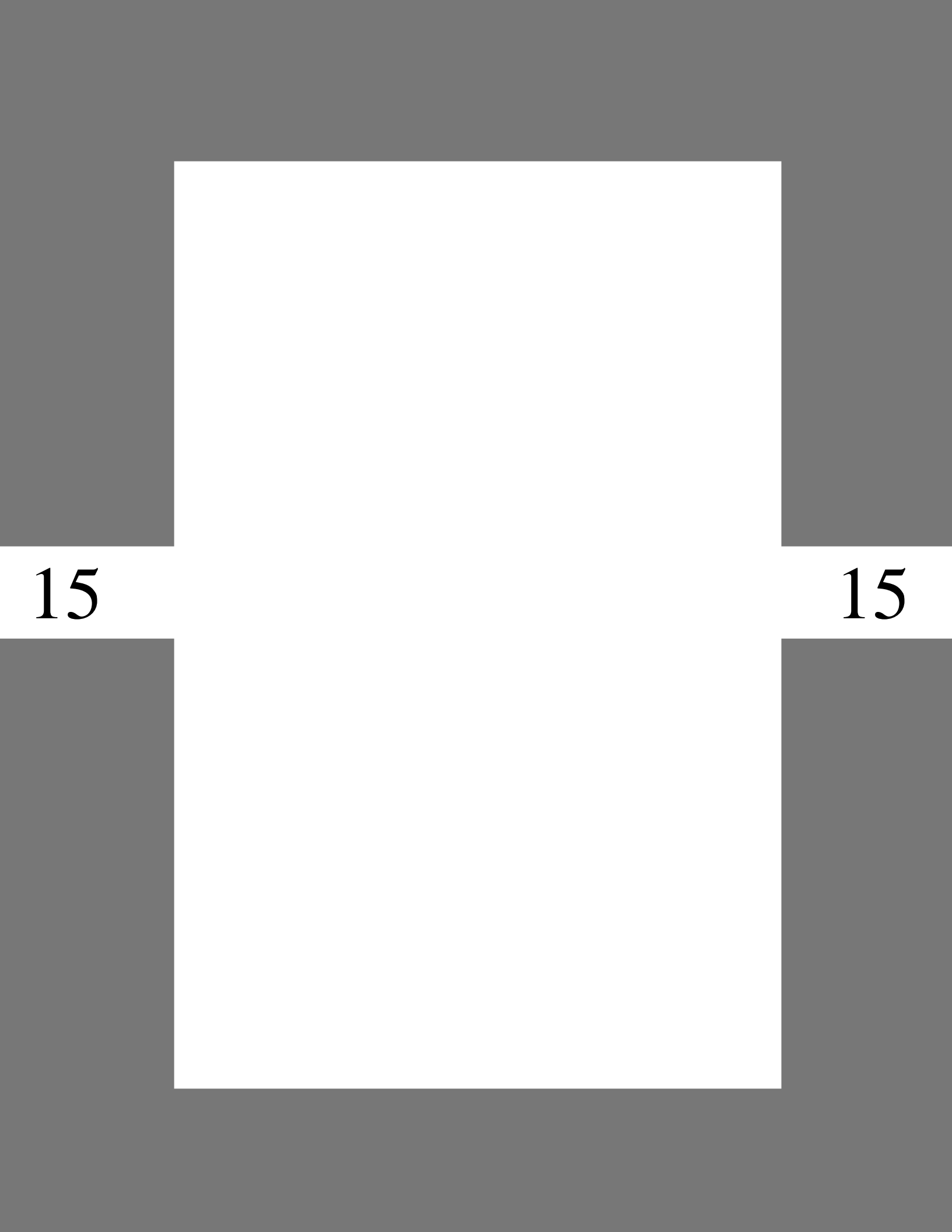
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FRANCESCA HAAK
Court Recorder/Transcriber

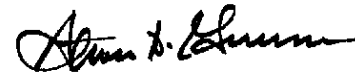
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1 ORSNJC



CLERK OF THE COURT

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 Mary Bryan, Plaintiff(s)

Case No.: A-14-700018-C

6 vs.

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

Department 27

7 **ORDER SETTING FIRM CIVIL BENCH TRIAL, PRE-TRIAL/CALENDAR CALL**

8 IT IS HEREBY ORDERED THAT:

9 A. The above entitled case is set to be tried to begin on the 14th day of
10 November, 2016, at 10:00 A.M. The trial will be held in Department 27, Courtroom
11 3A located in the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada
12 89155.

13 B. A Pre-Trial/Calendar Call with the designated attorney and/or parties in
14 proper person will be held on the 3rd day of November, 2016, at 10:30A.M. The Pre-
15 Trial/Calendar Call will take place in Courtroom 3A. The parties must have the following
16 ready for trial:

- 17 (1) Typed exhibit lists;
18 (2) List of depositions;
19 (3) List of equipment needed for trial, including audiovisual equipment; and
20 (4) Courtesy copies of any legal briefs on trial issues.

21 C. The Pre-trial Memorandum must be filed no later than November 7, 2016,
22 with a courtesy copy delivered to Department XXVII Chambers. All parties, (Attorneys and
23 parties in Proper Person) MUST comply with ALL REQUIREMENTS of E.D.C.R. 2.67,
24 2.68 and 2.69.

25 D. All discovery deadlines, deadlines for filing dispositive motions and motions
26 to amend the pleadings or add parties are controlled by the previously issued Scheduling
27 Order.
28

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CLERK OF THE COURT

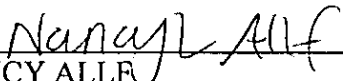
1 E.. Pursuant to EDCR 2.35, a motion to continue trial due to any discovery issues
2 or deadlines must be made before the Discovery Commissioner.

3 F. Pursuant to EDCR 2.47, all motions in limine to exclude or admit evidence
4 must be in writing and filed not less than 45 days prior to the date set for trial and must be
5 heard not less than 14 days prior to trial. **ORDERS SHORTENING TIME WILL NOT**
6 **BE SIGNED EXCEPT IN EXTREME EMERGENCIES.**

7 An upcoming trial date is not an **EXTREME EMERGENCY.**
8 **Failure of the designated trial attorney or any party appearing in proper person**
9 **to appear for any court appearances or to comply with this Order shall result in**
10 **any of the following: (1) dismissal of the action (2) default judgment; (3)**
11 **monetary sanctions; (4) vacation of trial date; and/or any other appropriate**
12 **remedy or sanction.**

13 Counsel must advise the Court immediately when the case settles or is otherwise
14 resolved prior to trial. A Stipulation which terminates a case by dismissal shall also indicate
15 whether a Scheduling Order has been filed and if a trial date has been set, and the date of
16 that trial. A copy should be given to Chambers.

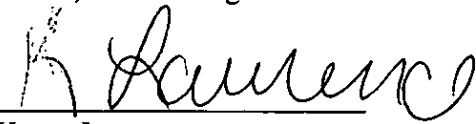
17 DATED: March 23, 2016

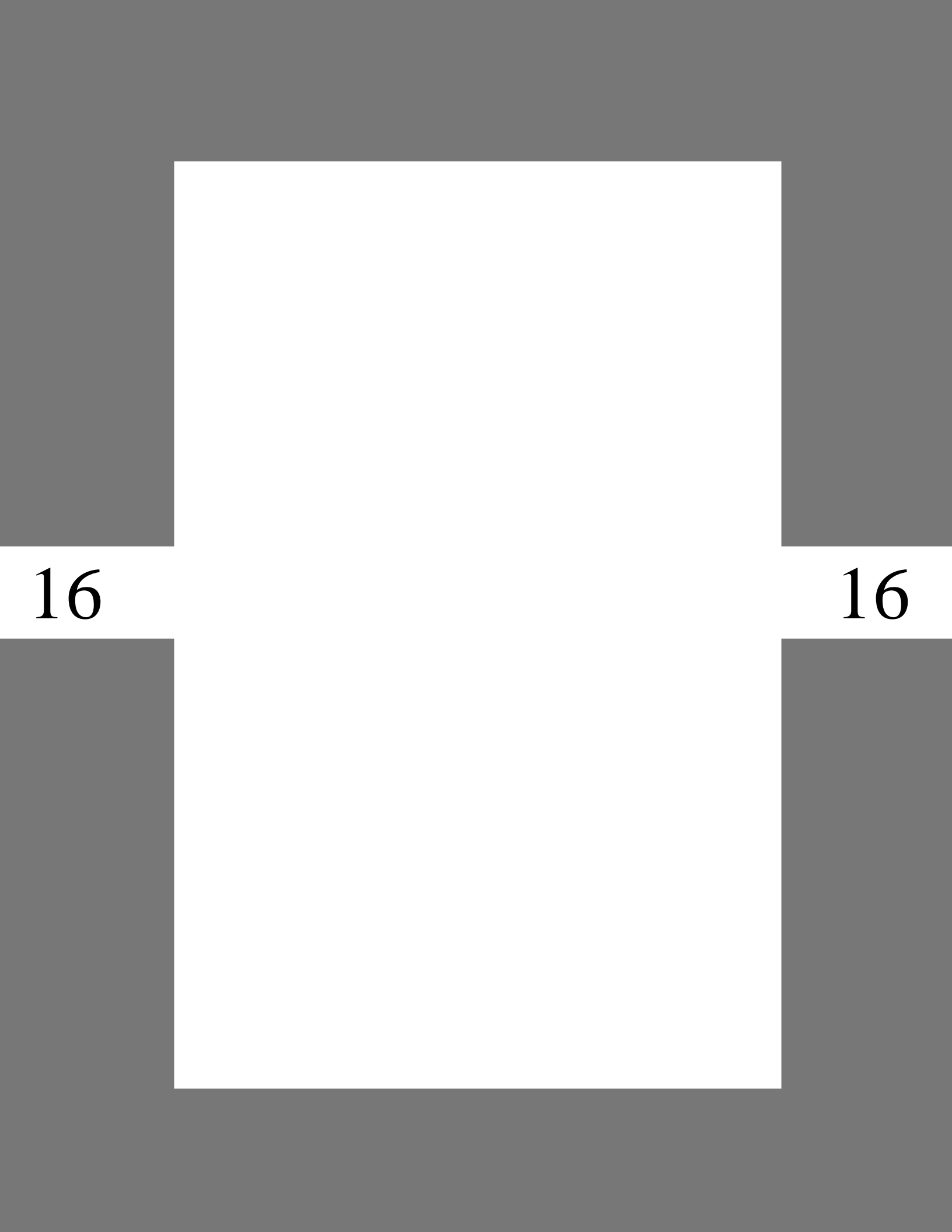
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19 NANCY ALLF
20 District Court Judge, Department 27

21 **CERTIFICATE OF SERVICE**

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

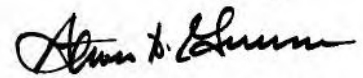
26 Allen Lichtenstein, Esq.
27 Lewis, Roca Rothgerber - Dan R. Waite, Esq., Daniel F. Polsenberg, Esq.

28 
Karen Lawrence
Judicial Executive Assistant



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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

MARY BRYAN,

Plaintiff,

vs.

CLARK COUNTY SCHOOL DISTRICT,
ET AL,

Defendant.

AND OTHER PARTIES

CASE NO. A-14-700018-C
DEPT NO. XXVII**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

**RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
DEFENDANTS' MOTION FOR LEAVE TO FILE EXCESS PAGES**

THURSDAY, APRIL 21, 2016

APPEARANCES:

FOR PLAINTIFFS:

ALLEN K. LICHTENSTEIN, ESQ.

FOR CCSD:

DANIEL F. POLSENBERG, ESQ.
DAN R. WAITE, ESQ.

FOR BEASLEY:

DAN R. WAITE, ESQ.

FOR HALPIN:

DAN R. WAITE, ESQ.

FOR WINN:

DAN R. WAITE, ESQ.

FOR DEPIAZZA:

DAN R. WAITE, ESQ.

FOR MCKAY:

DAN R. WAITE, ESQ.

RECORDED BY: TRACI RAWLINSON, COURT RECORDER
TRANSCRIBED BY: JD Reporting, Inc.

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1 LAS VEGAS, CLARK COUNTY, NEVADA, APRIL 21, 2016, 11:14 A.M.

2 * * * * *

3 THE COURT: Bryan versus Clark County School
4 District.

5 Appearances, please.

6 MR. LICHTENSTEIN: Good morning, Your Honor. Allen
7 Lichtenstein for plaintiffs.

8 THE COURT: Thank you.

9 MR. POLSENBERG: Good morning, Your Honor. Dan
10 Polsenberg and Dan Waite for defendants.

11 THE COURT: Thank you.

12 This is the defendants' motion for summary judgment
13 and a motion for leave to file excess pages. I have no
14 opposition to the motion for leave to file excess pages. It
15 will be granted.

16 MR. POLSENBERG: Thank you, Your Honor.

17 THE COURT: Mr. Polsenberg.

18 MR. POLSENBERG: Thank you, Your Honor. This is, as
19 the Court says, our motion for summary judgment, and it's a
20 classic motion for summary judgment under Wood versus Safeway,
21 under Orcutt versus Miller. The purpose of summary judgment,
22 way different from the last time we were here on motions to
23 dismiss, is to test the evidence to see if plaintiffs can make
24 out a claim, and -- and here we're making essentially the same
25 legal arguments we were making before, but now we see what

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1 evidence they have, and plaintiffs don't present any evidence
2 that creates a genuine issue of material fact.

3 THE COURT: But -- and that's the problem I have, is
4 that both sides are asking me to make determinations based on
5 the evidence, and I've realized I'm the finder of fact, that
6 it's a bench trial, but without having the demeanor of the
7 witnesses and knowing their believability and the strength of
8 their memory, how can I make those qualitative -- how can I
9 make those judgments that you're asking me to make?

10 MR. POLSENBERG: Well, here's why.

11 THE COURT: It's -- you know, perception, people's
12 perceptions, how am I supposed to do that from deposition
13 testimony? How am I supposed to do whether conduct rises to
14 deliberate indifference?

15 MR. POLSENBERG: Well, I think -- and here's why I
16 think you can, two reasons. I don't think that they actually
17 create a genuine issue of fact because all they're doing is
18 making argument about -- about conflicts in the evidence, and I
19 don't think -- even if there were a genuine issue, it's not as
20 to a material fact.

21 Deliberate indifference is one of the many issues in
22 the case, but it's the -- it's the brunt of their opposition,
23 and here the deliberate indifference standard is such a
24 difficult standard to meet. They have to show an awful lot
25 more than they can show here. If you look at the actions that

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1 were taken, I can make the argument that these were patently
2 reasonable things. There's no dispute about certain things
3 that were done. They may come in here and say that Principal
4 McKay doesn't --

5 THE COURT: Right. Dates of e-mails, dates of
6 meetings, all of those are undisputed on both sides.

7 MR. POLSENBERG: Right, and what Instructor Beasley
8 did. He -- he -- you know, after the first e-mail he moved --
9 he moved the students in a way where he had a direct line of
10 sight as to Nolan and CL. Remember, that was all the first
11 complaint was about, and here he could keep an eye on them.
12 The second -- and everybody was saying afterwards that that
13 took care of the problem, even on October 5th at the
14 parent-teacher night.

15 It wasn't until October 19th that there was a
16 second e-mail, and we know what was done then. Instructor
17 Beasley moved the children around again. I mean, here Ethan
18 now is being moved away. Remember, the first time we didn't
19 know that there was a problem as to Ethan, only has to Nolan,
20 and so putting Ethan, who was a pretty big kid for sixth grade,
21 next to CL made sense at the time, and then with the second
22 complaint, we moved them around again.

23 Inspector Beasley says he watched them like a hawk.
24 He was there when they unloaded and loaded their instruments.
25 He set out a number of things that he did, and then Dean Winn

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1 also -- we know what the Dean did at the time. We know the
2 things that were done and weren't done.

3 We can get in the little details about when did --
4 when did Principal McKay actually see the e-mail. We know that
5 he didn't see the e-mail originally because, not that it was
6 sent to the wrong e-mail address, it was typed in incorrectly
7 and didn't go to an e-mail address. We know that people
8 assumed Inspector -- I keep saying inspector -- Instructor
9 Beasley assumed that Principal McKay had received it. Later,
10 when they had the meeting about it, I mean, there were actions
11 that were taken. We know the actions that were taken.

12 All these things that are coming in -- Judge, this is
13 a very methodical motion.

14 THE COURT: Actually, the briefing of both sides was
15 the best I ever see. It was beautifully done, and it's not to
16 offend anybody else in the courtroom but the briefing was
17 excellent.

18 UNIDENTIFIED ATTORNEY: Except Phil.

19 UNIDENTIFIED ATTORNEY: We haven't shown up yet.

20 MR. POLSENBERG: But we -- we know what was done, and
21 what the opposition -- I mean, I will say it is well-written,
22 and it's tactically written.

23 You know, this principle goes back to the 16th
24 century. William Wycherley said, Be sure your argument is
25 intricate enough to confound the court, and they throw so much

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1 up there that -- that a judge is apt to say, Well, there are a
2 lot of issues here, and -- and this is confounding. So it must
3 be able to defeat summary judgment, especially in Nevada where
4 our tradition and our practice, although I don't think it's our
5 procedure and our law, is if there's the -- I mean, as Judge
6 Mendoza used to say, if there's a whiff of evidence, that you
7 can't grant summary judgment.

8 I'm not saying we've -- and we haven't gone totally
9 to the federal standard, but we have made clear in Wood versus
10 Safeway the purpose of summary judgment is to test to see
11 whether there's a case here, and -- and while I can make the
12 argument that our actions -- it's undisputed what our actions
13 were. I can make the argument that they are patently
14 reasonable. That's not the standard.

15 They can't even show -- I mean, they can't even
16 succeed by saying we were grossly unreasonable. To say
17 deliberate indifference is a standard far hire than that, and I
18 don't think there is an issue of credibility or nuance that
19 goes to that. This is a case where it's -- I mean, we've set
20 out very carefully what the undisputed facts are. They come in
21 and throw in a lot of disputes and differences in the fact that
22 don't go at all to whether they've made out a case.

23 And even if you were to say that there is a case
24 here, Judge, there can't be a punitive damage case here. I
25 mean, they don't even put up much of a fight on that one.

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1 Punitive damages are just not available under Title IX. You
2 know, they rely on — they don't even rely on anything for that
3 idea. They don't dispute us on that. The wealth of cases
4 after Barnes, which was a Title VI case but does say that Title
5 VI and Title IX are construed the same, all the federal cases
6 have said, you can't get punitive damages under Title IX.

7 And you can't get punitive damages against a
8 municipality, and the school district is a municipality. You
9 can't get punitive damages against officially acting defendants
10 because that's the same as getting them against a municipality.
11 The only argument that they really make is that they can get
12 cases -- they can get punitive damages against individually
13 acting defendants, but here they haven't really presented any
14 evidence that would show that they -- that these defendants
15 first of all acted in anything other than an official capacity.

16 There aren't individual claims here for punitive
17 damages, and I'm going to address the compensatory damages in a
18 second, and even if there were, you'd have to show the type of
19 malice that I think even exceeds deliberate indifference. So
20 there isn't a punitive damage claim.

21 Now, they do try to cite cases that say that the
22 standard for malice and conscious disregard is the same as the
23 standard for deliberate indifference. Well, I don't agree with
24 that. I think the punitive damage standard is far greater. We
25 all know the statue in Nevada, and that's a despicable act,

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1 either done with intent to injure or with conscious --
2 conscious disregard for the right and safety of others.

3 But even if it were the same standard, that just
4 makes my point on deliberate indifference. If deliberate
5 indifference is such a high standard that it raises to the
6 equivalent of -- of malice, the express or implied intent to
7 injure somebody, that here they can't make out a claim even for
8 compensatory damages. So let me go -- so I think punitives are
9 out, even if compensatory damage claims are still in.

10 I think there a number of things that we can talk
11 about. First of all, the school district is entitled to
12 summary judgment on the 1983 claims. There isn't a claim under
13 1983 against the entity the school district because for there
14 to be a claim against the school district you would have to
15 show that it is school district policy, that it's school
16 district practice or that a policy maker for the school
17 district made the determinations that this case should be
18 handled in the way that it was. They don't try to even make
19 out a claim like that.

20 The individual actors are also out as well.
21 Principal McKay, Assistant Principal DePiazza, Dean Winn,
22 Counselor Halpin, Instructor Beasley, to have an individual
23 claim against them, you would have to show the equivalent of
24 bad faith, that they acted without any good faith whatsoever in
25 order to have a 1983 action, and this is -- and our defense is

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1 even stronger than that. It's the qualified immunity defense.

2 I mean, here they are, and it's very similar. When
3 we were in here last time -- when I was in here last time
4 arguing the motions to dismiss, I pointed out the similarities
5 between the discretionary immunity under state law and the
6 qualified immunity under federal law, and the Court granted our
7 motion to dismiss on discretionary immunity, and we're dealing
8 with the same concepts here under federal law.

9 I mean, look -- look at what these actors did.
10 They're faced with a situation. They have to balance the
11 interests of all the parties involved. Plaintiffs' whole
12 argument is, Well, look, you could have done more. You should
13 have imposed higher discipline. Now, they're talking about
14 state law concepts of what you -- what had to be done and what
15 obligations there were, but state law concepts don't create
16 constitutional or federal claims.

17 And here we've got a qualified immunity for the
18 individuals. You'd have to say that they were acting beyond
19 their official capacity for punitive damages, and you'd have to
20 say that they weren't exercising the same kind of good faith in
21 making their determinations, the same thing that we dealt with
22 in the discretionary immunity under state law.

23 Look what they have to do. I mean, plaintiffs are in
24 an easy position. Well, all parties are. All parties argue
25 their point of view. They're saying there should have been

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1 more discipline. At one point they argue there should have
2 been expulsions and suspensions, but, I mean, these defendants
3 devote their adult lives to the care and education of children,
4 and they've got to make these determinations not just looking
5 at plaintiffs, those individual students. They have to look at
6 the rights and responsibilities of the other students, DM and
7 CL.

8 They've got to figure out what they need to do at the
9 time, and I think -- and, again, I say, I can make the argument
10 that Instructor Beasley was -- was incredibly reasonable in the
11 way he handled the situation, but I don't even need to show
12 that much. So I think the qualified immunity applies here for
13 the same reasons. So the individuals are out on punitive
14 damages and compensatory damages claims.

15 Let me -- let me briefly -- you know, there's a
16 couple of ways I can win this case. There are a number of
17 elements that they have to set out, and they've only got two
18 claims left. There have been dismissals of some claims,
19 withdrawals of other -- another claim. So they've got a Title
20 IX claim, and the Title IX claim, they have to show
21 discrimination on the basis of sex, and we alluded in the
22 motions to dismiss when we argued those about the subtlety of
23 the issues when we have to do with --

24 Do we need to take a break?

25 THE COURT: No, I just asked my clerk for more water.

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1 MR. POLSENBERG: And Mr. Waite needs some, too.
2 The -- on the basis of sex, and we talked about --
3 Thank you.

4 We talked then about how the issues are a lot more
5 subtle when we're dealing with allegations of homosexuality,
6 and, you know, my Inns of Court group put on a presentation of
7 that this year.

8 THE COURT: I was in the same group.

9 MR. POLSENBERG: Indeed you were, and so we were
10 talking -- so here what we're looking at is a very narrow
11 issue. Under their pleadings, under their proof, under all the
12 discovery we did is can you have a claim under Title IX for the
13 perception of homosexuality when these boys are not
14 homosexuals, and they're not perceived to be homosexuals?

15 THE COURT: But -- but isn't the test also whether or
16 not the intent of the name-calling was used in a sexual manner?
17 Isn't that part of the same test?

18 MR. POLSENBERG: I don't think it's part of the same
19 test. I don't, Judge, because what they've done is they've
20 shifted over to their stereotyping argument now. That wasn't
21 what their argument was before. That wasn't what their
22 pleadings were. That wasn't what their claim was when we went
23 through discovery. These boys don't claim -- CL and DM do not
24 claim that they thought or perceived or meant to actually
25 literally suggest that Ethan and Nolan were homosexuals.

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1 At one point, one of the boys, you know, when asked
2 why he was calling these names, he responds going, Sixth grade,
3 and that's what it is, and, you know, the plaintiffs go so far
4 as to compare us to the Klan and say that, you know, We -- It's
5 like the Klan saying they're not racist. Well, it's a lot more
6 subtle than that. We're not the Klan.

7 Let's say we were dealing with the Klan, and nobody
8 is saying that the Klan wasn't racist, but if the Klan is
9 saying racist things against a member of the Klan, a white
10 Anglo-Saxon Protestant, that's not the same thing as actually
11 being biased or prejudiced, and so here I don't think they fall
12 under the perception of homosexuality exception. They're
13 trying to fall under the stereotyping exception, but I think
14 it's too late to raise that.

15 And we also -- that's -- realize too that here's
16 where the deliberate indifference issue comes in, Your Honor,
17 and I've argued that, the responses to the September 15th
18 e-mail, the responses to the October 19th e-mail, and I also
19 don't think that they have been able to prove that they were
20 denied any educational opportunities or benefits, and we've set
21 that out in the brief.

22 There are a number of elements that they have to
23 make. Now, we didn't make the summary judgment motion on every
24 element that would be at trial, but we -- and there are
25 disputed issues, but they have to make out all the elements,

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1 and they haven't done that.

2 The substantive due process claim, first of all, they
3 have to identify a fundamental right. They haven't attempted
4 to identify a fundamental right. Let's -- let me take a second
5 to talk about the things that they haven't opposed. You know,
6 I talked about the qualified immunity. They -- they don't
7 dispute that the individual defendants are entitled to
8 qualified immunity. They don't dispute that there is no
9 municipal liability under Monell. They don't -- they don't try
10 to identify the fundamental right. There isn't a fundamental
11 right here.

12 The due process clause only goes to certain rights,
13 and they haven't attempted to identify what rights those are,
14 and even if they could identify -- and we've talked about the
15 deliberate indifference. Even if they could identify a
16 fundamental right, the due process clause does not require the
17 government to protect citizens from third parties. They
18 have -- we have to protect citizens from governmental action in
19 a general sense, but not from third parties.

20 Now, the exception to that is the state-created
21 danger exception, but they need two things for that. They need
22 affirmative conduct. It's not enough that we failed to do
23 enough. What they have to show is that we affirmatively
24 created the situation, and all their claim is is that we should
25 have done more. We could have done more, and -- and that

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1 doesn't make out the affirmative conduct requirement, and,
2 again, even if there were affirmative conduct, it has to be
3 done with deliberate indifference.

4 So three claims here, you've got the -- you've got
5 the Title IX claim. You've got the substantive due process
6 claim and the punitive damage claim, and for each one of those
7 claims, they have to show the claim that they can make out
8 against all of the defendants, all six of the defendants, the
9 school district and the six individuals, and they simply have
10 failed to do that, Judge.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Polsenberg.

13 And, Mr. Lichtenstein.

14 MR. LICHTENSTEIN: Thank you, Your Honor. I really
15 didn't want to go into the question of whether the statements
16 made by the police rise to the level of beyond just Davis-style
17 schoolyard stuff. We listed them. I'm not going to repeat
18 them here, but there's a bit of an irony that statements that I
19 don't feel comfortable repeating in a courtroom filled with
20 adults were exposed to 11 year olds every day and suggesting
21 that that's just boys will be boys. I didn't think I needed to
22 go there.

23 In terms of facts, I don't know what the facts are.
24 We've got from all of the defendants different versions of
25 things. Dean Winn and Principal McKay said under oath they

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1 didn't know about any of this until 2012. Others said, No, we
2 told them about it, not just plaintiffs, but also the September
3 15th letter, Halpin and DePiazza also.

4 So there's some real questions about -- this quotes
5 Watergate, and I hate to do that also, but what did they know
6 and when did they know it? Dean Winn said, Had I known about
7 the stabbing -- and we're not just talking about name-calling.
8 We're talking about someone being stabbed with a pencil, which
9 is an assault, and she said, Had I known about it, I would have
10 called the police, but, gee, I didn't know about it, even
11 though others have said, Of course you knew about it. You were
12 told about it. Well, okay. That is a question for the trier
13 of fact to know exactly what happened. We don't have that, and
14 as the trier of fact, you're going to have to be in the
15 position of determining credibility.

16 The defendants make a big deal that one of the
17 bullies or both of the bullies said, Now, I said all those
18 horrible homophobic things, which wasn't just saying, you know,
19 that's so gay or something. When Nolan was stabbed, he was
20 asked -- he was told it was done because they wanted to find
21 out if he had a penis, if he was the girl in the relationship.
22 The bully says, Well, no, I didn't really think he was
23 homosexual.

24 By the way, I just want to clarify something. The
25 Klan reference was never to the school district. It was to the

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1 bully, and simply relying on the bully saying, Hey, me? No, I
2 have no -- I was just fooling around. Well, you, as the trier
3 of fact, have to make that determination throughout his entire
4 testimony, and I can represent his entire testimony -- in the
5 beginning of his deposition, he said, Nolan who? And Ethan
6 who? These are facts that need to be dealt with.

7 In terms of deliberate indifference, if in fact
8 people who are responsible by law and by school policy to do an
9 investigation slough it off saying, Hey, I'll just pretend I
10 never heard of it, there's no immunity there. That's not part
11 of their job. That's malfeasance. That's bad faith. Again,
12 that's a question for the trier of fact to make a determination
13 about the credibility.

14 But I'll say one thing. They all can't be right.
15 You can't have, Yes, we discussed it, and, No, I never heard
16 about it. Those can't occupy the same space. So there are
17 those particular questions of fact.

18 Was the response reasonable? Well, again the trier
19 of fact is going to have to figure out whether it's a
20 reasonable response to take kids who are being bullied by the
21 people sitting next to them and seat them in front of the
22 bullies where they're more vulnerable. That is again a
23 question of fact.

24 Loss of educational opportunities, there's ample case
25 law from Title VII, which now is equivalent to Title IX, that

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1 creating a hostile environment to the extent that someone has
2 to leave school -- and that was the Doe versus Petaluma case --
3 is creation of a hostile environment to the extent of depriving
4 someone of educational opportunities. It's not enough to ask a
5 14-year-old kid to come up with that legal analysis, which is
6 really what they're depending on. They asked him, So how was
7 your educational opportunity? That's a legal definition. It's
8 certainly not something that you would expect a 14 year old to
9 be able to answer.

10 So, yes, there are undisputed facts, but there are a
11 lot of disputed facts, and the disputed facts are, again, who
12 dropped the ball? We didn't just have some name-calling. We
13 had name-calling. We had a couple of assaults, and the
14 investigation that Dean Winn said she did, what investigation?
15 We have no evidence of any investigation, but it's a little
16 strange to have an investigation on something that she said she
17 didn't even know about. So there are a lot of entanglements in
18 terms of what the facts are.

19 Now, what defendants are saying is, even excepting
20 all of those, it still doesn't rise to a level of either
21 discrimination under Title IX or substantive due process under
22 1983. We've gone through this before, and this is the exact
23 same legal argument that they made before, but the Monell
24 argument I thought had been resolved. Maybe it hadn't, which
25 is I guess my mistake.

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1 The decisions about discipline stop with the
2 principal. So the final decision-maker on all these, one of
3 the defendants, McKay or his designee, which he said at his
4 deposition, Dean Winn, who claims she didn't do anything or
5 didn't know anything, and Vice Principal DePiazza, and I guess
6 at some point Winn. According to some testimony, it was
7 supposed to be in the hands of Winn. McKay didn't like that,
8 said DePiazza, Take care of it. No one took care of it. So
9 the legal arguments are the same legal arguments.

10 Does creating a hostile environment where someone is
11 afraid, a child is afraid of being assaulted in a school
12 setting, does that rise to a reasonable cause of action for
13 Title IX and substantive due process? Yes, it does. Did they
14 do everything reasonably possible they could because
15 Mr. Beasley said, I'm going to watch them? Well, obviously it
16 didn't. Because, again, how reasonable is it to move them in a
17 more vulnerable position? And apparently his watching didn't
18 do much good.

19 I mean, it got to the point where both boys were
20 afraid to complain. Why? When Nolan complained, what did he
21 get for it? He got stabbed with a pencil. He wasn't going to
22 talk to anybody again, neither was Ethan, strangely enough.

23 THE COURT: Yes, but you didn't sue the aggressors.

24 MR. LICHTENSTEIN: What?

25 THE COURT: You did not sue the aggressors.

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1 MR. LICHTENSTEIN: Right. And there is a reason for
2 that. Because they're children, and we believe -- my clients
3 definitely believe that suing children is not the best way of
4 dealing with this. The best way of dealing with this is the
5 kind of progressive discipline that the district, particularly
6 as it came out in Andre Long's deposition, said was the proper
7 method. These were children. Again, they were 11 years old.
8 They weren't particularly nice 11 year olds, kids with some
9 real problems, but kids with problems need to be addressed in
10 that regard.

11 The real suit was the people in charge. The adults
12 in the room either didn't care or knew -- well, they didn't
13 care. Because obviously they didn't take their reaction -- the
14 Therese -- the Therese, I'm sorry -- the Deanna Wright example
15 in her own case is a perfect example. She had a kid bullied,
16 complained to the school, took her kid out of school until the
17 school made sure that the bullies and her kid would not
18 encounter each other. This is not rocket science. This isn't
19 something that is extraordinary.

20 Ultimately, they ended up having to take those two
21 kids out of the band class, but that was well after Ethan and
22 Nolan had already decided that they didn't feel safe there, and
23 let's understand also the extent of this. This isn't this sort
24 of boys will be boys kind of thing. Ethan attempted suicide
25 because of this. He was stopped thankfully, but this was

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1 something that was very much a problem. They were taken out of
2 school because they didn't feel safe.

3 And to simply say, Hey, school is not responsible,
4 or, They did everything they could because they moved the kids
5 in front of the bullies, I think that is a question. Whether
6 it is deliberate indifference, which is generally considered --
7 as most of these things -- a question of fact for the trier of
8 fact after hearing all the testimony and not the argument from
9 Mr. Polsenberg or myself, by the witnesses.

10 Thank you.

11 THE COURT: Clarify for me the -- did you not object
12 to dismissing the individuals under Title IX?

13 MR. LICHTENSTEIN: I'm sorry. I'm having -- what?

14 THE COURT: There was a statement made that you
15 didn't object to the dismissal of the individuals under Title
16 IX.

17 MR. LICHTENSTEIN: Well, under Title IX, the
18 defendant on Title IX is someone who receives federal funds.
19 So it's really the institution that receives federal funds, and
20 the individuals, particularly in their individual capacity,
21 aren't subject to -- unless they're getting funds we don't know
22 about, which I don't think is happening, they're not eligible
23 for that.

24 THE COURT: All right. There was also an argument
25 that you had abandoned your equal protection claims.

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