

Case No. 83557

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**In the Supreme Court of Nevada**

CLARK COUNTY SCHOOL DISTRICT,  
Appellant,

*vs.*

ETHAN BRYAN; and NOLAN HAIRR,  
Respondents.

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Electronically Filed  
Jun 02 2022 02:51 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

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**APPELLANT'S APPENDIX  
VOLUME 10  
PAGES 2251-2500**

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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 designations from additional witnesses if Plaintiffs are allowed to designate  
2 testimony from previously undisclosed or undesignated witnesses, or if  
3 Plaintiffs add further testimony from witnesses previously identified. Certain  
4 of Defendant's designated testimony may pertain to topics that will ultimately  
5 be excluded from evidence at trial. By designating such testimony, Defendant  
6 did not intend to waive any of its objections to deposition testimony, exhibits,  
7 or other evidence or argument.

8 Dated this 14<sup>th</sup> of November, 2016

10 LEWIS ROCA ROTHGERBER CHRISTIE LLP

11 By: /s/ Matthew W. Park

12 DANIEL F. POLSENBERG (SBN 2376)

13 DAN R. WAITE (SBN 4078)

14 MATTHEW W. PARK (SBN 12062)

15 3993 Howard Hughes Parkway, Suite 600  
16 Las Vegas, Nevada 89169

17 *Attorneys for Defendants*

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

**Lewis Roca**  
**ROTHGERBER CHRISTIE**

**CERTIFICATE OF SERVICE**

Pursuant to Nev.R.Civ. Rule 5(b) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of ***Defendant's Notice Of Designation Of Deposition Testimony For Trial*** to be filed and served via Court's electronic filing system on all interested parties in the above-referenced matter.

Allen Lichtenstein, Esq.

Staci Pratt, Esq.

ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.

3315 Russell Road, No. 222

Las Vegas, Nevada 89120

allaw@lvcoxmail.com

*Attorneys for Plaintiffs*

John Houston Scott, Esq.

SCOTT LAW FIRM

1388 Sutter Street, Suite 715

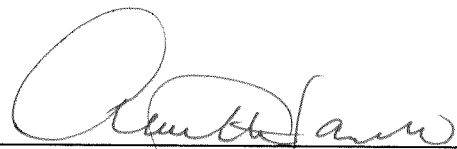
San Francisco, CA 94109

john@scottlawfirm.net

*Attorneys for Plaintiffs*

*(Admitted Pro Hac Vice)*

DATED this 14<sup>th</sup> day of November, 2016.

  
An Employee of Lewis Roca Rothgerber  
Christie LLP

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

**Lewis Roca**  
**ROTHGERBER CHRISTIE**

# EXHIBIT A

002253

# EXHIBIT A

002253

**AFFIDAVIT OF DUE DILIGENCE**

State of Nevada

County of Clark

District Court

Case Number: A-14-700018-C

Plaintiff:

**Mary Bryan, et al.**

vs.

Defendant:

**Clark County School District (CCSD), et al.**

Received by AM:PM Legal Solutions on the 21st day of October, 2016 at 11:59 am to be served on C.L. , 1809  
**Sydney Leigh Lane, Henderson, NV 89074.**

I, Stan McGrue, being duly sworn, depose and say that on the 14th day of November, 2016 at 2:21 pm, I:

at all times herein, pursuant to NRCP 4(c), was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made and after diligent attempts I was **unable to serve the (2 copies) Trial Subpoena and a Witness fee check in the amount of \$40.00** upon C.L. for the reason that: *(see additional information below)*

**Additional Information pertaining to this Service:**

10/23/2016 12:15 pm Attempt made at 1809 Sydney Leigh Lane, Henderson, NV 89074 without an answer at the door;  
 10/24/2016 6:03 pm Attempt made at 1809 Sydney Leigh Lane, Henderson, NV 89074 without an answer at the door;  
 10/26/2016 9:44 am Attempt made at 1809 Sydney Leigh Lane, Henderson, NV 89074 without an answer at the door;  
 10/27/2016 8:01 pm Attempt made at 1809 Sydney Leigh Lane, Henderson, NV 89074 without an answer at the door.  
 Affiant noticed that the same interior lights illuminated within the residence as observed from previous attempts, indicating that they may be on a timer. Additionally, at no time were any vehicles observed at said address;  
 10/30/2016 3:10 pm Attempt made at 1809 Sydney Leigh Lane, Henderson, NV 89074 without an answer at the door.  
 Status remained the same;  
 10/31/2016 That from 10/31/2016 through 11/9/2016 (4) four additional attempts were made at 1809 Sydney Leigh Lane, Henderson, NV 89074 without an answer at the door nor a change in status;  
 11/10/2016 4:51 pm Attempt made at 7123 S. Durango Dr., Unit 303, Las Vegas, NV 89113 without an answer at the door;  
 11/11/2016 8:21 am Attempt made at 7123 S. Durango Dr., Unit 303, Las Vegas, NV 89113 and server was told by an unidentified child, from behind a closed door, to come back later;  
 11/11/2016 7:25 pm Attempt made at 7123 S. Durango Dr., Unit 303, Las Vegas, NV 89113 without an answer at the door;  
 11/12/2016 12:29 pm Attempt made at 7123 S. Durango Dr., Unit 303, Las Vegas, NV 89113 without an answer at the door;  
 11/13/2016 4:00 pm Attempt made at 7123 S. Durango Dr., Unit 303, Las Vegas, NV 89113 without an answer at the door;  
 11/14/2016 An attempt was made to locate C.L. parents/guardians by using the following sources: CLARK COUNTY ASSESSOR'S OFFICE, UNITED STATES POST OFFICE, CLARK COUNTY VOTER'S REGISTRATION, LOCAL TELEPHONE DIRECTORY and NATIONAL PROPRIETARY NON - PUBLIC DATABASES which did provide a possible home address for the Witness located at 7600 S. Rainbow Blvd., #1057, Las Vegas, NV 89139. Said address shows current through November, 2016;

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, signed and dated this:

**14** day of **NOVEMBER**, 20**16**

  
 Stan McGrue  
 NV License #190

**AM:PM Legal Solutions**  
**520 S. 7th St., Ste. B**  
**Las Vegas, NV 89101**  
**(702) 385-2676**

Our Job Serial Number: AMP-2016004018

# EXHIBIT B

002255

# EXHIBIT B

1/5/2016

Deposition of **C.L.**  
Bryan, et al. v. CCSD, et al.

1

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MARY BRYAN, mother of ETHAN )  
BRYAN; AIMEE HAIRR, mother of )  
NOLAN HAIRR, )  
Plaintiffs, )  
vs. ) CASE NO.: A700018  
CLARK COUNTY SCHOOL DISTRICT )  
(CCSD); Principal Warren P. )  
McKay, in his individual and )  
official capacity as principal )  
of GJHS; Leonard DePiazza, in )  
his individual and official )  
capacity as assistant )  
principal at GJHS; Cheryl )  
Winn, in her individual and )  
official capacity as Dean at )  
GJHS; John Halpin, in his )  
individual and official )  
capacity as counselor at GJHS; )  
Robert Beasley, in his )  
individual and official )  
capacity as instructor at )  
GJHS, )  
Defendants. )

DEPOSITION OF **C.L.**  
Taken on Tuesday, January 5, 2016  
At 2:59 p.m.  
At 3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada  
Reported By: Lori M. Unruh, R.D.R., C.C.R. #389

1/5/2016

Deposition of **C.L.**  
Bryan, et al. v. CCSD, et al.

29

1 as me.

2 Q Okay. What about his hair? Did he have short  
3 hair? Long hair?

4 A I don't remember.

5 Q Was he skinny? Was he muscular? Was he  
6 overweight?

7 A He wasn't overweight. That's all I can remember.

8 Q Okay. Did you have any other classes with Nolan  
9 besides band?

10 A No.

11 Q Did you consider yourself Nolan's friend?

12 A No.

13 Q And why is that?

14 A Because during band we had conflicts.

15 Q Okay. What kind of conflicts would you have with  
16 Nolan during band?

17 MS. JOHNSON: Objection, form.

18 Q (BY MR. KIEFER) You can answer. Any time your  
19 attorney objects, the only time you won't answer is when  
20 she specifically instructs you not to.

21 A So what was the question?

22 Q Describe the conflicts that you were just talking  
23 about.

24 A So during band class Nolan and his friend would  
25 trip me and **D.M.**, and they would also call **D.M.** skinny

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1 and make fun of him. And him and his friend called me the  
2 Asian Justin Bieber, which aggravated me.

3 Q Now you said Nolan and his friend.

4 Who are you referring to?

5 A Ethan.

6 Q Anyone else with Nolan and Ethan that  
7 participated in these conflicts?

8 A No, sir.

9 Q Okay. How often did Nolan call you Asian Justin  
10 Bieber?

11 A Just around two or three times that same day.

12 Q Did Ethan call you that as well?

13 A No.

14 Q And you said that someone called **D.M.** skinny?

15 A Yes.

16 Q Ethan or Nolan?

17 A I'm not sure.

18 Q Leaving aside you and **D.M.**, how did Nolan get  
19 along with the other members of the band class?

20 MS. JOHNSON: Objection, speculation.

21 Q (BY MR. KIEFER) That you observed.

22 A He didn't really talk to anyone else but Ethan.

23 Q Did he talk to any of the other trombone players  
24 besides Ethan?

25 A No.

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1 Q But he did talk to you at least for the purpose  
2 of teasing you, you were saying.

3 A Yes.

4 Q Did he ever talk to you when he wasn't teasing  
5 you?

6 A No.

7 Q Was Nolan popular?

8 A I couldn't say.

9 Q When's the last time you saw Nolan?

10 A Sixth grade.

11 Q Can you be more specific? Was it the first part  
12 of sixth grade, the second part of sixth grade, after  
13 Christmas, before Easter?

14 A I don't remember.

15 Q Okay. Did you ever call Nolan any names?

16 A Yes.

17 Q What did you call him?

18 A Faggot.

19 Q Did you call him any other names?

20 A I can't remember.

21 Q But you remember calling him faggot?

22 A Yes.

23 Q How many times did you call him faggot?

24 A Only whenever he would trip me or tease me. I  
25 noticed they would also converse with each other and look

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1 at me and laugh.

2 Q With each other, you mean Nolan and Ethan?

3 A Yes.

4 Q Was there a particular reason that you called  
5 Nolan a faggot as opposed to any other name you could have  
6 called him?

7 A No. I did not think he was gay. It was just an  
8 insult that I had used during the sixth grade.

9 Q So you called him a faggot just to insult him?

10 A Yeah.

11 Q But you didn't believe that Nolan was gay?

12 A No, sir.

13 Q Can you help me understand that? I'm just a  
14 little confused, cause I know what faggot means --

15 A Uh-huh.

16 Q -- and to me, it means calling someone a  
17 homosexual, a gay man.

18 So why would you choose that word?

19 A During the sixth grade, it was just something  
20 that I thought would be insulting. I honestly didn't  
21 really know the meaning of it. I just knew that it was a  
22 cuss word.

23 Q Did you ever hit or touch Nolan?

24 A No, sir.

25 Q What about **D.M.**, did **D.M.** ever call Nolan

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1 names?

2 A I don't remember.

3 Q Do you know whether or not he ever touched or hit

4 Nolan?

5 A I don't recall any of that happening.

6 Q Let's switch over to Ethan.

7 When did you first meet Ethan?

8 A Band class.

9 Q Describe Ethan for me.

10 A Tall, white. And that's all I remember.

11 Q When you say tall -- I mean was he the tallest

12 kid in the room? Was he --

13 A Yeah, he was the tallest.

14 Q Okay. How much bigger -- was he bigger than

15 you --

16 A Yeah.

17 Q -- obviously?

18 How much bigger than you was he?

19 MS. JOHNSON: Objection, form.

20 THE WITNESS: I'd have to say a foot and a half.

21 Q (BY MR. KIEFER) A foot and a half?

22 A (Witness nodding head.)

23 Q Wow.

24 Did Ethan intimidate you?

25 A No.

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1 Q Did his size scare you?

2 A A little bit.

3 Q What do you mean by a little bit?

4 A I knew that I couldn't mess with -- I knew that I  
5 didn't want to mess with him because his sheer size could  
6 obviously overpower me if he ever did get angry.

7 Q So you said you knew you couldn't mess with him.

8 A Yes.

9 Q Because of his sheer size?

10 A Yeah.

11 Q Meaning that if you were to -- by mess with him,  
12 you mean tease him or --

13 A Anything, yeah.

14 Q Okay. Because -- and when you say sheer size,  
15 you're talking about a physical --

16 A Yeah.

17 Q -- encounter, cause you'd be concerned that a  
18 physical encounter would end with you losing?

19 A Yeah.

20 Q Do you remember, did Ethan have long hair or  
21 short hair?

22 A I don't remember.

23 Q Was he muscular or skinny?

24 A He was pretty muscular.

25 Q Muscular. Okay.

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1 Did you have any other classes with Ethan besides  
2 band?

3 A No.

4 Q Did you consider yourself Ethan's friend?

5 A No.

6 Q And why is that?

7 A Because he would do the same things that Nolan  
8 would do, like trip me.

9 Q Now when you say he would trip you, this would  
10 happen in band class?

11 A Yes.

12 Q Where in the room would this happen?

13 A When he's sitting down in the aisle and me and  
14 **D.M.** would go up to get our instruments from the aisles,  
15 they would stick their leg out and trip us.

16 Q When you say get your instruments from the  
17 aisles, you're talking about the line that you drew there?

18 A Yeah, the lockers where the instruments were  
19 right here.

20 Q Okay. Were there also lockers on the other side  
21 for the other students in the other --

22 A Yeah.

23 Q -- aisle?

24 So if **D.M.** -- if Ethan and Nolan would trip you  
25 and **D.M.** --

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1 A Yeah.

2 Q -- when you got to your lockers, does that mean  
3 that Nolan and Ethan sat here?

4 A Yes.

5 Q Okay. So they sat closest to the lockers?

6 A Uh-huh.

7 Q Okay. Can you mark that on your map there for  
8 me.

9 A They didn't sit right next to us though. I think  
10 there was a space between us, so we didn't sit that close  
11 together.

12 Q Okay. Anyone besides Nolan that was Ethan's  
13 friend that you knew of?

14 A No.

15 Q Did you ever witness Ethan interact with anyone  
16 else in the band class besides you and **D.M.** and Nolan?

17 A No.

18 Q Did Ethan get along with Mr. Beasley?

19 A Yeah.

20 Q And what makes you say that?

21 A They never argued.

22 Q What about Nolan, did he get along with  
23 Mr. Beasley?

24 A Yes.

25 Q And why do you say that?

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1           A     They never argued.

2           Q     Did you get along with Mr. Beasley?

3           A     Yes.

4           Q     And why is that?

5           A     We never argued as well.

6           Q     Did you ever witness Nolan or Ethan get in

7     trouble --

8           A     No.

9           Q     -- for tripping you in band?

10          A     No.

11          Q     Do you know whether or not Mr. Beasley ever saw

12     them trip you?

13          A     No.

14          Q     No, you don't know or no, he didn't see?

15          A     He did not see.

16          Q     Okay. When's the last time that you saw Ethan?

17          A     Sixth grade.

18          Q     Can you be more specific? Was it after Christmas

19     break? Before Christmas break?

20          A     I don't remember.

21          Q     Did you ever interact with Ethan outside of band?

22          A     No.

23          Q     Did you ever see him in the hallway?

24          A     No.

25          Q     Did you ever have lunch with him?

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1           A     Yes.

2           Q     So you had lunch with him. I'm a little  
3 confused.

4                     So you didn't interact with him, but you had  
5 lunch with him.

6           A     Yes.

7           Q     Do you mean just sitting in the same place?

8           A     He would just have the same lunch period as me.  
9 There were two lunches.

10          Q     Okay. And that's what I mean.

11                     So you're saying you guys had lunch at the same  
12 time in the same location.

13          A     Yes.

14          Q     Okay. But you wouldn't interact.

15          A     We would.

16          Q     Okay. So tell me about some of those  
17 interactions.

18          A     I've only interacted with him one time, which is  
19 the time we would -- me and **D.M.**, we sit in a specific  
20 area in the corner of the table. And I saw Ethan sitting  
21 right across from **D.M.**, and he usually doesn't sit there.  
22 And there was a bunch of empty seats -- empty seat space  
23 from him. And I went up to him, cause that's where I  
24 usually sit, and I asked if he could please scoot over.  
25 And then he looked at me, and he stopped eating for like

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1 10 seconds, then looked back at his food and didn't  
2 respond. So I said I get it, you don't want to burn too  
3 many calories, so I just sat right next to him.

4 Q And you said this was to Ethan or to Nolan?

5 A To Ethan.

6 Q Did you ever have any interactions like that with  
7 Nolan?

8 A No, sir.

9 Q Was Nolan with Ethan that day?

10 A No.

11 Q Did you ever call Ethan names?

12 A Yes.

13 Q What did you call him?

14 A The green giant.

15 Q And why did you call him the green giant?

16 A Because he was tall and he always wore a green  
17 shirt.

18 Q Did you call him any other names?

19 A I called him faggot.

20 Q And why did you call him faggot?

21 A Just because I thought it was an insult.

22 Q And why would you want to insult Ethan?

23 A Because he would trip me, and he aggravated me in  
24 band.

25 Q Any other names you called him?

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1 A Not that I can remember.

2 Q How often for instance would you call him green  
3 giant?

4 A Whenever he would wear a green shirt.

5 Q So was there ever a time when he wore a green  
6 shirt and didn't trip you but you called him green giant?

7 A No, sir.

8 Q So it's only when he wore a green shirt and  
9 tripped you that you would call him green giant?

10 A Yes. He would trip me almost every day.

11 Q Okay. How often would you call him faggot?

12 A Just the times that we get into arguments.

13 Q Tell me about one of these arguments. You told  
14 me about the one in the lunchroom, or I guess lack thereof  
15 cause he didn't respond.

16 Tell me about an argument with Ethan in the band  
17 room.

18 A Sometimes he would trip me, and I would say stop,  
19 and he would say or what? And I would just call him a  
20 faggot and walk away.

21 Q So to try and clarify, was it only ever Ethan  
22 that tripped you, or was it both Ethan and Nolan?

23 A It was both of them.

24 Q And did you have similar arguments with Nolan?

25 A No.

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1 Q So he would trip you, and what would happen?

2 A I would just call both of them faggots.

3 Q But the only one who would have a response was  
4 Ethan?

5 A Yes.

6 Q And that response would be or what?

7 A Yes.

8 Q Any other responses?

9 A Not that I can remember, no.

10 Q Did you ever see **D.M.** or did you ever witness  
11 **D.M.** call Ethan names?

12 A Not that I can remember.

13 Q Did you ever hit or touch Ethan?

14 A No.

15 Q Did you ever see **D.M.** hit or touch Ethan?

16 A No.

17 Q So having gone through some of the notes and some  
18 of the allegations in the case, I'm going to ask you some  
19 more specific questions --

20 A Okay.

21 Q -- about Nolan and Ethan.

22 Did you ever call Nolan duckbill Dave?

23 A No.

24 Q Did you ever call anyone duckbill Dave?

25 A No.

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1 Q Any idea what duckbill Dave means?

2 A No, sir.

3 Q That makes two of us.

4 Did **D.M.** ever call Nolan or Ethan duckbill Dave?

5 A Not that I can remember.

6 Q And earlier you said you called Ethan green  
7 giant.

8 Did you ever call him Jolly Green Giant?

9 A Yes.

10 Q Okay. I assume for the same reason?

11 A Yeah.

12 Q Did **D.M.** call him that?

13 A I think so, yeah.

14 Q Did you ever have a nickname for **D.M.**?

15 A No.

16 Q Did he ever have one for you?

17 A Condor.

18 Q Condor.

19 A (Witness nodding head.)

20 Q Play on words for your name or...

21 A Yeah.

22 Q Any other rhyme or reason to it?

23 A No.

24 Q Did you ever call the other trombone players, and  
25 including yourself -- did you ever refer to the trombone

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1 players as tromboners?

2 A No.

3 Q Did **D.M.**?

4 A I don't remember.

5 Q Did you ever use your trombone to jab or poke or  
6 touch other students?

7 A No, sir.

8 Q Including the slide?

9 A Yes.

10 Q Did you ever see **D.M.** do that?

11 A No.

12 Q Do you know whether or not he ever did it and you  
13 just didn't see?

14 That's a horrible question.

15 MS. JOHNSON: Objection, speculation.

16 MR. KIEFER: She's right.

17 Q Did you ever touch another student's buttocks?

18 A No.

19 Q Did you ever touch another student's genitals?

20 A No.

21 Q Did you ever see **D.M.** do either of these things?

22 A No, sir.

23 Q So there's a list of -- and I apologize, these  
24 aren't pleasant phrases, but I'd like to ask you  
25 specifically --

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1           A     Okay.

2           Q     -- because there's specific allegations.

3                 Did you ever call other students fat ass?

4           A     No.

5           Q     Now you did say you called them faggot, right?

6           A     Yes.

7           Q     Did you ever call them gay?

8           A     Yes.

9           Q     Who did you call gay?

10          A     Ethan and Nolan.

11          Q     So you also called Ethan and Nolan gay?

12          A     Yes.

13          Q     And again I have to ask, did you believe that

14     they were homosexuals?

15          A     No.

16          Q     Then why did you call them gay?

17          A     Because it -- just back then, to me, it was just

18     an insult.

19          Q     Is that -- and again, I'm just an old dude who

20     doesn't know much, but is that kind of like when you hear

21     kids say oh, that's gay or that's stupid?

22          A     Yes.

23          Q     Did you ever call other students worthless?

24          A     No.

25          Q     Cocksucker?

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1 A No.

2 Q Fag boy?

3 A Yes.

4 Q Who did you call fag boy?

5 A Ethan and Nolan.

6 Q Okay.

7 A And **D.M.**.

8 Q And again, were you calling Ethan and Nolan fag

9 boy because you believed that they were homosexual?

10 A No, sir.

11 Q Then why were you calling them that?

12 A Immaturity.

13 Q And you said you called **D.M.** that as well.

14 A Yeah.

15 Q And why would you call that -- why would you call

16 **D.M.** fag boy?

17 A Just to be funny.

18 Q Was that -- were you guys razzing each other?

19 A Yeah.

20 Q Would he say that back to you?

21 A No. We'd just laugh.

22 Q Did you ever call any other students gay wad?

23 A No.

24 Q Dumbass?

25 A Yes.

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1 Q Who did you call dumbass?

2 A **D.M.**

3 Q And I'm not sure I want to know the answer to  
4 that, but I'm going to ask, why did you call **D.M.** a  
5 dumbass?

6 A Like when -- like I say, when he would ask stupid  
7 questions or just to annoy the teacher.

8 Q Okay. So did you call him that in class?

9 A Yeah.

10 Q What about tattletale, you ever call anyone  
11 tattletale?

12 A No.

13 Q So you never called Nolan or Ethan tattletale?

14 A No, sir.

15 Q Did **D.M.** ever say anything to you that led you  
16 to believe that he thought Ethan or Nolan were gay?

17 A No.

18 Q All right. Let's shift gears here for a second,  
19 and let's talk about -- I'd like to know how you would  
20 define or characterize being bullied.

21 What does that mean to you?

22 A Pushing someone to the point where they just  
23 have -- you know, they're sad, they can't -- they don't  
24 want to go to school anymore, just pretty much hurting  
25 their feelings so much and -- yeah, hurting their

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1           A     Usually Ethan's response after he trips me, I'll  
2     say stop or I'm going to tell the dean on you, and he  
3     would say shut up. Or if I said stop, he would say or  
4     what?

5           Q     Okay. Would they ever threaten to tell on you,  
6     "they" being --

7           A     No.

8           Q     -- Ethan and -- okay.

9                     Okay. Leaving aside your relationship or your  
10    interactions and **D.M.**'s interactions with Nolan and  
11    Ethan, did you ever witness any other students pick on or  
12    bully or tease Nolan and Ethan?

13          A     No.

14          Q     Did you ever witness Nolan and Ethan tease or  
15    pick on anyone else?

16          A     No.

17          Q     Based on the complaint, it's clear that Ethan and  
18    Nolan left Greenspun during the sixth grade year.

19                     Did you know that?

20          A     Yes.

21          Q     When did you first learn that they were leaving?

22          A     They were just absent for a long time during that  
23    band class. And I -- at first I thought they had moved  
24    classes, but **D.M.** told me that they had moved schools.

25          Q     So **D.M.** was the one who told you?

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1           A     Yes.

2           Q     Do you remember about how long after they had  
3 left it was that you knew -- you found out that they had  
4 moved schools?

5           A     No.

6           Q     What was your first thought when you found out  
7 they had moved schools?

8           A     That I wouldn't have to worry about them tripping  
9 me anymore.

10          Q     Were you surprised?

11          A     No.

12          Q     Is it -- you're not surprised, so is it common  
13 for kids to move schools in your experience?

14          A     Yeah. I thought they had moved or something.

15          Q     Did anyone say anything to you about why Ethan  
16 and Nolan had left the school?

17          A     No.

18          Q     Did you talk to any of the staff or  
19 administration at Greenspun about Ethan and Nolan leaving?

20          A     No.

21          Q     And you did mention that **D.M.** told you that  
22 Ethan and Nolan had left.

23          A     Yeah.

24          Q     How often did you talk about that particular  
25 issue?

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1 A Just one time.

2 Q Just the one time?

3 A Yeah.

4 MR. KIEFER: Let's take a quick break.

5 MS. JOHNSON: Okay. That's fine.

6 (Recess.)

7 Q (BY MR. KIEFER) Now to remind me, did you say  
8 whether or not you knew who Mr. McKay was?

9 A I did not know.

10 Q And do you remember who Mr. DePiazza was?

11 A No.

12 Q But you do remember Mrs. Winn.

13 A Yes.

14 Q And who is she again?

15 A The dean.

16 Q Did you ever have -- during the sixth grade year  
17 did you ever have any conversations with Miss Winn about  
18 your behavior at school?

19 A Yes.

20 Q About how many times?

21 A I can't remember.

22 Q What type of behavior did Miss Winn discuss with  
23 you?

24 A She would discuss bad behavior.

25 Q Well, I assume that you were talking to her

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1 Q Did you ever blow in Nolan or Ethan's face?

2 A No.

3 Q Ever kick Ethan or Nolan's band instruments?

4 A No.

5 Q Now I'm guessing this probably won't come as a  
6 surprise to you, but there's an allegation in the  
7 complaint that in September of 2011 you stabbed Nolan in  
8 the genitals with a pencil.

9 Did you do that?

10 A No. I know for a fact that I did not do that.

11 Q The other day Nolan was deposed, and under oath  
12 he said that -- I'll set up the scenario.

13 He said that you were sitting on his left and  
14 that you had a yellow pencil with a sharpened end, not the  
15 eraser end, and unprovoked reached across and stabbed him  
16 between his legs.

17 A No. I don't even bring pencils to band.

18 Q You say you don't bring pencils to band.

19 Why is that?

20 A I would leave my pencil in my binder, and when I  
21 go to get my instrument, I would leave my binder on the  
22 shelf.

23 Q The shelf of the lockers?

24 A Yes.

25 Q On the side?

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1 A Yes.

2 Q Did those lockers lock up, or were they just --

3 A There were lockers and there were shelves, and I  
4 kept my trombone in the shelf.

5 Q Okay. Does it surprise you that Nolan testified  
6 that you stabbed him in the crotch?

7 A It did when I first heard about it, yes.

8 Q Why does it surprise you?

9 A Because I have never heard of that, and I know  
10 for a fact that I did not do that. And if I had stabbed  
11 someone in the crotch, I'm pretty sure it's something that  
12 I would remember.

13 Q Do you remember anything about Nolan switching  
14 seats in band?

15 A No, sir.

16 Q Do you remember whether or not Ethan switched  
17 seats in band?

18 A No.

19 Q All right. Now there was another kind of  
20 specific allegation that the plaintiffs have made  
21 regarding -- oh, no. Sorry, that's the wrong section.

22 All right. Let me back up. I got ahead of  
23 myself. I'm thinking of some other documents.

24 Can you remind me how old you were in sixth  
25 grade?

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1 MS. JOHNSON: I think often.

2 MR. KIEFER: Often, there you go. Thank you.

3 Q The trouble never stopped, so my parents  
4 eventually moved me to a different school. I told my  
5 parents I wanted to move schools because I was afraid of  
6 **C.L.**

7 Now I think earlier we talked about this  
8 genital --

9 A Yeah.

10 Q So this is -- now I told you Nolan testified  
11 yesterday -- or last week, I think, maybe two weeks ago,  
12 that you had stabbed him in the genitals.

13 Now this is the statement of Ethan saying that he  
14 witnessed you stab him in the genitals. You've already  
15 said that's not true.

16 Does it surprise you that Ethan filled out a  
17 police report saying that you stabbed his friend in the  
18 genitals?

19 A Yes, because I know I did not do that.

20 Q Okay. What about this part about **C.L.** came to  
21 me with his trombone, took off the rubber part of the  
22 bottom, and underneath that there's a sharp piece of metal  
23 and stabbed me in the leg several times?

24 A I don't remember that. And I can't recall there  
25 ever being a sharp piece on my trombone.

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1 Q Now you say you can't recall.

2 Does that mean that you might have done it and  
3 you don't remember?

4 A Yeah. I have no recollection of this.

5 Q Okay. So you're not sure whether or not that  
6 happened.

7 A Yeah.

8 Q Okay. After the incident, **C.L.** would follow me  
9 and Nolan around calling us gay, and he would call me fat  
10 often.

11 Did you ever call Ethan fat?

12 A Yes.

13 Q Okay. Why did you call him fat?

14 A Just because -- just to retaliate after him  
15 tripping me in band.

16 Q So what about this part about you following him  
17 around? Did you follow --

18 A No, I would not follow him around.

19 Q What about -- well, there's Nolan and Ethan.  
20 Did you follow either of them around?

21 A No.

22 Q Okay. And we've already talked about the gay  
23 thing, I think.

24 Did you know that Ethan felt afraid of you?

25 A No.

1/5/2016

Deposition of **C.L.**  
Bryan, et al. v. CCSD, et al.

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1 Q Does that surprise you?

2 A Yes.

3 Q Why does that surprise you?

4 A He doesn't seem afraid of me. Like usually he  
5 would keep his cool and like seem -- to me, he was  
6 intimidating to me.

7 Q So were you ever afraid of Ethan?

8 A Yeah.

9 Q When were you afraid of Ethan?

10 A When he would say "or what?"

11 Q And that's because -- and that's what would take  
12 place in band, right?

13 A Yes.

14 Q When he'd trip you?

15 A (Witness nodding head.)

16 Q Is that because -- were you afraid of him because  
17 you've seen him fight and you know he's a skilled fighter?

18 A No.

19 Q Were you afraid of him cause of his size?

20 A Yes.

21 Q What about Nolan, were you afraid of Nolan?

22 A No.

23 Q And why's that?

24 A Just because he was the same size as me.

25 Q Let's go to page 82, so if you'll flip over two

1/5/2016

Deposition of **C.L.**  
Bryan, et al. v. CCSD, et al.

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1 Q So what is duckbill Dave?

2 A I have no idea. Sixth grade.

3 Q Fair enough.

4 I mean leaving the name-calling aside, is  
5 duckbill Dave -- is that a character? Is it from a show?

6 A No.

7 Q Not that you're aware of?

8 A No.

9 Q And also poke him with the end of my trombone  
10 while playing -- playing a song?

11 A A song.

12 Q So you would also poke Nolan, not while you were  
13 walking or tripping, but you would actually take your  
14 trombone and bump him.

15 A That's what I -- I can't remember that, but...

16 Q Okay. So you don't remember anything about that?

17 A No.

18 Q All right. Let's go to the last page, page -- or  
19 the next page, page 85. I think it's the same issue on  
20 this one.

21 It's redacted here. Again, I'm showing the  
22 witness a copy of the unredacted form. It's a State of  
23 Nevada, Clark County, Las Vegas Metro Police Department  
24 citation.

25 Is that your signature there?

1/5/2016

Deposition of **C.L.**  
Bryan, et al. v. CCSD, et al.

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## 1 CERTIFICATE OF DEPONENT

2 I, **C.L.**, deponent herein, do hereby  
3 certify and declare the within and foregoing transcription  
4 to be my deposition in said action, subject to any  
5 corrections I have heretofore submitted; and that I have  
6 read, corrected, and do hereby affix my signature to said  
7 deposition.  
8

9 **C.L.**, Deponent  
10

11 Subscribed and sworn to before me this  
12 \_\_\_\_\_ day of \_\_\_\_\_,  
13  
14  
15

16 STATE OF NEVADA )

ss:

17 COUNTY OF CLARK )  
18  
19  
20

\_\_\_\_\_  
Notary Public  
21  
22  
23  
24  
25

# EXHIBIT C

# EXHIBIT C

**AFFIDAVIT OF SERVICE**

State of Nevada

County of Clark

District Court

Case Number: A-14-700018-C

Plaintiff:

**Mary Bryan, et al.**

vs.

Defendant:

**Clark County School District (CCSD), et al.**

Received by AM:PM Legal Solutions on the 21st day of October, 2016 at 11:59 am to be served on **Dr. Edmund Faro, M.D. - Mountain Vista Pediatrics, 6301 Mountain Vista, Ste. 205, Henderson, NV 89014.**

I, Stan McGrue, being duly sworn, depose and say that on the 24th day of October, 2016 at 2:15 pm, I:

at all times herein, pursuant to NRCP 4(c), was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made and **personally served** the within named person with a true and correct copy of the **(2 copies) Trial Subpoena and a Witness fee check in the amount of \$40.00** on the date and hour endorsed thereon by me, at the aforementioned address.

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

  
Stan McGrue  
NV License 1190

**AM:PM Legal Solutions  
520 S. 7th St., Ste. B  
Las Vegas, NV 89101  
(702) 385-2676**

Our Job Serial Number: AMP-2016004019

# EXHIBIT D

002287

# EXHIBIT D

## 1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3  
4 MARY BRYAN, mother of ETHAN )  
BRYAN; AIMEE HAIRR, mother of )  
5 NOLAN HAIRR, )

6 Plaintiffs, )

7 vs. )

CASE NO. A-14-700018-C  
DEPT. NO.: XXVII

8 CLARK COUNTY SCHOOL DISTRICT )  
(CCSD); Principal Warren P. )  
9 McKay, in his individual and )  
official capacity as principal )  
10 of GJHS; Leonard DePiazza, in )  
his individual and official )  
11 capacity as assistant )  
principal at GJHS; Cheryl )  
12 Winn, in her individual and )  
official capacity as Dean at )  
13 GJHS; John Halpin, in his )  
individual and official )  
14 capacity as counselor at GJHS; )  
Robert Beasley, in his )  
15 individual and official )  
capacity as instructor at )  
16 GJHS, )

17 Defendants. )  
18  
19

20 DEPOSITION OF EDMUND FARO, M.D.

21 Henderson, Nevada

22 Friday, February 19, 2016

23  
24 REPORTED BY: PEGGY S. ELIAS, RPR  
Nevada CCR No. 274 - California CSR No. 8671  
25 JOB NO.: 293653

EDMUND FARO, MD - 02/19/2016

<p style="text-align: right;">Page 2</p> <p>1 Deposition of EDMUND FARO, M.D., taken at  2 Mountain Vista Pediatrics, 6301 Mountain Vista Street,  3 Suite 205, Henderson, Nevada, on Friday, February 19,  4 2016, at 10:15 a.m., before Peggy S. Elias, Certified  5 Court Reporter in and for the State of Nevada.  6  7 APPEARANCES OF COUNSEL  8  9 For Plaintiffs:  10 ALLEN LICHTENSTEIN, ESQ.  11 Law Office of Allen Lichtenstein  12 3315 East Russell Road, Suite 222  13 Las Vegas, Nevada 89120  14 702.433.2666  15 702.433.9591 Fax  16 allaw@lvcoxmail.com  17  18 For Defendants:  19 MATTHEW W. PARK, ESQ.  20 Lewis Roca Rothgerber Christie, LLP  21 3993 Howard Hughes Parkway, Suite 600  22 Las Vegas, Nevada 89169  23 702.474.2674  24 702.216.6189 Fax  25 MPark@lrrlaw.com    Also Present:    Angelito Ferrer</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX OF EXAMINATION  2 WITNESS: EDMUND FARO, M.D.  3 EXAMINATION PAGE  4 By Mr. Park 4  5  6 INDEX TO EXHIBITS  7 EXHIBIT DESCRIPTION PAGE  8 Exhibit A Medical Records 13  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 4</p> <p>1 DEPOSITION OF EDMUND FARO, M.D.  2 Friday, February 19, 2016, 10:15 a.m.  3 -cOo-  4 (Prior to the commencement of the deposition,  5 all of the parties present agreed to waive statements  6 by the court reporter pursuant to Rule 30(b) (4) of the  7 NRC.P.)  8 -cOo-  9 Whereupon,  10 EDMUND FARO, M.D.,  11 having been first duly sworn to testify to the truth,  12 the whole truth, and nothing but the truth, was  13 examined and testified as follows:  14 EXAMINATION  15 BY MR. PARK:  16 Q. Dr. Faro -- am I saying that correctly?  17 A. Yeah.  18 Q. Dr. Faro, my name is Matt Park. I represent  19 the defendants in this case. Also here is Allen  20 Lichtenstein, who represents the plaintiffs in this  21 case. We are here because you were the doctor for the  22 plaintiffs, and we just want to go over some of his  23 medical records.  24 A. Okay.  25 Q. But before we do that, have you ever had your</p>	<p style="text-align: right;">Page 5</p> <p>1 deposition taken before?  2 A. No.  3 Q. I'm going to go over some ground rules for  4 you just to make this process go easier.  5 A. Okay.  6 Q. As you see, this fine young lady next to us  7 is a court reporter, and she's typing down every word  8 we say.  9 A. Okay.  10 Q. Part of that is try to speak a little slower  11 than you normally would.  12 A. Okay.  13 Q. And try not to interrupt me because she can't  14 type two streams at once, and I'll try not to interrupt  15 you.  16 A. Okay.  17 Q. So let me finish my question, and I'll let  18 you finish your answer, and that will just make it  19 easier on her.  20 A. Okay.  21 Q. Also, the court reporter can't take down  22 nonverbal answers. So if you go uh-huh, huh-uh, or nod  23 your head, she can't write that down. So I may remind  24 you and ask for a yes or a no, and I'm not trying to be  25 rude; I'm just trying to get a good record.</p>

EDMUND FARO, MD - 02/19/2016

Page 6

1 A. Okay.  
 2 Q. Furthermore, if I ask a bad question, it's  
 3 not clear, go ahead and ask me to rephrase or ask me to  
 4 clarify. I'm happy to do that.  
 5 A. Okay.  
 6 Q. If you don't ask me to rephrase or clarify,  
 7 I'll assume you understood the question. I don't think  
 8 this will be a very long deposition, but if you do need  
 9 to take a break, just let me know --  
 10 A. Okay.  
 11 Q. -- and we can absolutely take a break. Let's  
 12 go ahead and start.  
 13 Can you give me your full name.  
 14 MR. LICHTENSTEIN: Before you do that, just  
 15 to -- because I may object to a question.  
 16 MR. PARK: Oh, sure.  
 17 MR. LICHTENSTEIN: So...  
 18 BY MR. PARK:  
 19 Q. And you're not represented by counsel today,  
 20 correct?  
 21 A. No.  
 22 Q. So there may be a time when I'm asking you a  
 23 question, and Mr. Lichtenstein may object.  
 24 A. Okay.  
 25 Q. Now, unless -- since he's not your counsel --

Page 8

1 Q. And the difference between the two is a  
 2 guess, something you never knew, right; an estimate is  
 3 something you know but you're not exactly sure  
 4 precisely what it is, but you have a general  
 5 understanding or a general knowledge.  
 6 Does that make sense?  
 7 A. Okay.  
 8 Q. Great.  
 9 So can you go ahead and give us your full  
 10 name on the record.  
 11 A. My name is Edmund Faro.  
 12 Q. And have you ever acted as an expert witness  
 13 for anybody?  
 14 A. No.  
 15 Q. Let's go ahead and start with a summary of  
 16 your education, if we can.  
 17 A. Uh-huh.  
 18 Q. Starting with high school.  
 19 A. Went to high school in the Philippines.  
 20 Q. Okay.  
 21 A. And went to college.  
 22 Q. And where did you go to college?  
 23 A. In the Philippines.  
 24 Q. And what's the name of the university?  
 25 A. It's University of San Agustin.

Page 7

1 A. Uh-huh.  
 2 Q. -- we'll wait for the objection, and then you  
 3 can go ahead and answer. The only time that you  
 4 wouldn't answer is if he instructs you not to answer on  
 5 the basis of some privilege.  
 6 MR. LICHTENSTEIN: I'm not sure I can even do  
 7 that since I can't advise him on that, but the  
 8 objections would be for the record but --  
 9 THE WITNESS: Okay.  
 10 BY MR. PARK:  
 11 Q. Essentially, what we're doing is we're  
 12 objecting so when the Court reads it later, we can  
 13 decide what questions come in, what questions don't  
 14 come in.  
 15 A. Okay.  
 16 Q. But you're still obligated to answer the  
 17 question to the best of your ability.  
 18 A. Okay.  
 19 Q. Also, today we don't want any guesses; so if  
 20 you see something and you don't recall at all, let me  
 21 know. If you don't recall a particular patient or a  
 22 particular procedure, that's fine to let me know you  
 23 just don't recall it. I don't want you guessing;  
 24 however, we are entitled to your best estimate.  
 25 A. Okay.

Page 9

1 Q. Can you spell that for her?  
 2 A. A-g-u-s-t-i-n.  
 3 Q. And did you get a degree?  
 4 A. Yes, I did. BS in biology.  
 5 Q. And do you recall approximately when you  
 6 graduated from university?  
 7 A. 1988.  
 8 Q. 1988?  
 9 A. Yeah.  
 10 Q. So you graduated with a BS in biology in  
 11 1988?  
 12 A. Uh-huh.  
 13 Q. Then what did you do?  
 14 A. Went to med school.  
 15 Q. And medical school where?  
 16 A. In the Philippines.  
 17 Q. Also in the Philippines.  
 18 What was the name of the medical school?  
 19 A. Iloilo Doctors' College of Medicine.  
 20 Q. Can you spell that first for her.  
 21 A. I-l-o-i-l-o Doctors' College of Medicine.  
 22 Q. And where in the Philippines was that?  
 23 A. This was in Iloilo City.  
 24 Q. And did you graduate with a degree?  
 25 A. Yes.

EDMUND FARO, MD - 02/19/2016

Page 10

1 Q. M.D.?  
 2 A. Yes.  
 3 Q. Or its equivalent, I guess.  
 4 A. Yes.  
 5 Q. What year did you graduate from medical  
 6 school?  
 7 A. 1992.  
 8 Q. Did you do any residencies after that?  
 9 A. No.  
 10 Q. Did you do any fellowships after that?  
 11 A. No.  
 12 Q. Did you do any kind of formal education after  
 13 you graduated from medical school?  
 14 A. I went to residency here in the  
 15 United States.  
 16 Q. And where did you do residency here?  
 17 A. Los Angeles County, University of Southern  
 18 California, pediatric residency.  
 19 Q. My alma mater, University of Southern  
 20 California.  
 21 A. Okay.  
 22 Q. When did you finish your residency in LA?  
 23 A. That was 1994 to 1997.  
 24 Q. So 1997 you finish your residency?  
 25 A. Uh-huh.

Page 12

1 Q. And from what time period were you board  
 2 certified in pediatrics; do you remember?  
 3 A. I don't remember.  
 4 Q. Sometime after your residency?  
 5 A. Yes.  
 6 Q. So sometime between --  
 7 A. In the 2000s, 2001-2007.  
 8 Q. Any reason you haven't maintained that board  
 9 certification?  
 10 A. Busy working.  
 11 Q. And so your first job was here in Las Vegas,  
 12 correct?  
 13 A. Uh-huh.  
 14 Q. Where did you first work in Las Vegas?  
 15 A. I worked for ACI Pediatrics.  
 16 Q. And where are they located here in town?  
 17 A. Bruce Street. I don't think they're around  
 18 anymore because the owner died.  
 19 Q. How long did you work -- approximately what  
 20 years did you work at that job?  
 21 A. 1991 -- 1999 to 2001.  
 22 Q. And 2001, did you take a different job?  
 23 A. Yeah. I worked for Foothills Pediatrics.  
 24 Q. And how long did you work at Foothills  
 25 Pediatrics for?

Page 11

1 Q. And what was your residency in?  
 2 A. Pediatrics.  
 3 Q. Pediatrics, okay.  
 4 After that did you have any other formal  
 5 training?  
 6 A. No.  
 7 Q. Oh, so 1997, you finish your residency?  
 8 A. Uh-huh.  
 9 Q. And then did you just start working as a  
 10 pediatrician after that?  
 11 A. Yeah.  
 12 Q. Where was your first job?  
 13 A. Here in Vegas.  
 14 Q. In Las Vegas, okay.  
 15 And approximately what year was that?  
 16 A. That was 1999.  
 17 Q. Did you pass your board exams?  
 18 A. Yes, I did.  
 19 Q. Are you board certified?  
 20 A. Not right now.  
 21 Q. Not right now, okay.  
 22 Have you ever been board certified --  
 23 A. Yes.  
 24 Q. -- in pediatrics?  
 25 A. Uh-huh.

Page 13

1 A. 2001 to 2000- -- just after when Ralph Conti  
 2 died.  
 3 Q. Can you give me an approximate year on that?  
 4 A. Two years ago.  
 5 Q. So you were there from 2001 until 2012, 2013.  
 6 A. Yeah.  
 7 Q. And where did you go after that to work?  
 8 A. I stayed here.  
 9 Q. So you opened up -- did you open up your own  
 10 practice?  
 11 A. I bought the practice.  
 12 Q. Bought the practice?  
 13 A. Uh-huh.  
 14 Q. And you've been here ever since?  
 15 A. Yeah.  
 16 Q. Great.  
 17 Do you recall a patient named Nolan Hairr?  
 18 A. Yes, I do.  
 19 Q. And why does he stick out in your mind?  
 20 A. Well, I saw him last week for a well checkup.  
 21 Q. So you still see him? He's still a patient?  
 22 A. Yeah.  
 23 MR. PARK: I'm going to go ahead and  
 24 introduce this as Exhibit A.  
 25 ///

EDMUND FARO, MD - 02/19/2016

<p style="text-align: right;">Page 14</p> <p>1 (Defendant's Exhibit A was marked for 2 identification.) 3 BY MR. PARK: 4 Q. Just so we're all looking at the same order, 5 you'll want to look at that one just in case they're 6 ordered differently. 7 A. Okay. 8 Q. Take a second to look through those. 9 A. (Witness complied.) 10 Q. Do you recognize those records? 11 A. Yes. 12 Q. Are they your records? 13 A. Yes, they are. 14 Q. I want you to turn -- it should be in 15 chronological order. 16 A. Uh-huh. 17 Q. So if you'll turn to the October 11th, 2010, 18 well visit. 19 A. Uh-huh. 20 Q. When it says well visit on top, what does 21 that mean to you? 22 A. It's a checkup, a physical. 23 Q. Is it something that's normally scheduled 24 months/weeks in advance? 25 A. It can be days. They can schedule that same</p>	<p style="text-align: right;">Page 15</p> <p>1 day. 2 Q. And if there's a sick visit form, what does 3 that mean? 4 A. They're coming in for -- sick; they have a 5 cold, have a fever, have a sore throat. 6 Q. There's some specific symptom that's bringing 7 them in? 8 A. Yeah, uh-huh. 9 Q. Whereas a well visit, they're assumed to be 10 well; they're just getting a checkup -- 11 A. Yes. 12 Q. -- is that fair? 13 Now, when you see Nolan, do you see him with 14 the parents in the room, or do you see him by himself? 15 A. With the parents in the room. 16 Q. Parents in the room, okay. 17 I'm going to ask you to interpret some of 18 your writing -- 19 A. Okay. 20 Q. -- on this, if I can. 21 I'm looking down to the subjective line -- 22 A. Uh-huh. 23 Q. -- and it says feeds AFG. 24 What does that mean? 25 A. All foods groups. He eats everything.</p>
<p style="text-align: right;">Page 16</p> <p>1 Q. Eats everything, okay. 2 A. Uh-huh. 3 Q. And let's move down to the next line, which 4 is voids. 5 What does that -- 6 A. Voids, history of bed-wetting. 7 Q. Okay. History of bed-wetting. 8 And so he had a history of bed-wetting late? 9 A. Uh-huh. 10 Q. In other words, he wet his bed up until he 11 was, you know, eleven, twelve years old, something like 12 that? 13 A. Yes, uh-huh. 14 Q. Did you treat him for that during that entire 15 time? 16 A. I did not. 17 Q. Do you know who did? 18 A. He saw a urologist. 19 Q. And when somebody wets their bed late like 20 that, what are some of the common causes? 21 A. Most common cause, it's a neurodevelopmental 22 thing. They regress developmentally. The body thinks 23 it's like in an infant stage -- state. 24 Q. And so did Nolan ever express to you that he 25 had anxiety about this, that he was worried about it;</p>	<p style="text-align: right;">Page 17</p> <p>1 you know, either because he was concerned about having 2 sleepovers or having it happen, you know, when he was 3 at a friend's house, anything like that? 4 A. Not that I recall. 5 Q. Let's go down to the next line, sleeps. 6 A. Uh-huh. 7 Q. What is that notation? 8 A. Normal. 9 Q. Normal, okay. If you look there's a notation 10 on the far right-hand side. 11 What does that say? 12 A. Adopted. 13 Q. Adopted, okay. 14 And why was that important for you to note 15 that he's adopted? 16 A. Because I believe when I started seeing this 17 family, she did have her own children, her own 18 biological children, and she had adopted children. 19 Q. And does that make a difference as to how you 20 care for a particular patient -- 21 A. No. 22 Q. -- whether they're in an adopted family or a 23 mixed family like that? 24 A. No. 25 Q. Let's go to developmental -- I assume DEV --</p>

EDMUND FARO, MD - 02/19/2016

Page 18

1 what does DEV mean?  
 2 A. Yeah, developmental.  
 3 Q. And what's the notation right after that?  
 4 A. Doing well in school.  
 5 Q. And is that a question you normally ask kids  
 6 when they come in --  
 7 A. Yes.  
 8 Q. -- how are you doing in school?  
 9 A. Yes. Especially if they're school age, I ask  
 10 them how are they doing in school, and the parent will  
 11 say, well, not doing too well.  
 12 Q. All right.  
 13 A. Well, they're doing good. A lot of the times  
 14 the answer is they're doing good.  
 15 Q. And why is that important for you as a  
 16 pediatrician to know --  
 17 A. It's a rough screen for developmental  
 18 problems, if they're having problems in school, if  
 19 they're having symptoms of attention deficit  
 20 hyperactivity disorder.  
 21 Q. That would express -- that would be expressed  
 22 in possibly problems at school --  
 23 A. Yeah.  
 24 Q. -- and then you could go ahead and delve  
 25 deeper into those?

Page 20

1 sure I wrote it, I noted it.  
 2 Q. And underneath "objective" there's two rows  
 3 of boxes, like a checklist.  
 4 A. Uh-huh.  
 5 Q. Can you tell me what each of those categories  
 6 are.  
 7 A. First one is general.  
 8 Q. Okay.  
 9 A. It's the general appearance and behavior of  
 10 the child. The second one is HENT; that's head, ears,  
 11 nose, throat.  
 12 Q. Okay.  
 13 A. Head, eyes, ears, nose, throat.  
 14 Dental, neck, chest, lungs. CVS is  
 15 cardiovascular. ABD is abdomen. GU is genitourinary  
 16 and rectal, extremities, back and neurologic.  
 17 Q. So what does the N category stand for?  
 18 A. Normal.  
 19 Q. And what does AB stand for?  
 20 A. Abnormal.  
 21 Q. So if there was a problem with any of these  
 22 sections, you would have checked?  
 23 A. I would check it --  
 24 (Reporter interrupted.)  
 25 Q. If there was a problem with any of these

Page 19

1 A. Delve deeper into it or refer to a  
 2 specialist.  
 3 Q. Down to IMM, what does IMM mean?  
 4 A. Immunizations.  
 5 Q. Okay. And --  
 6 A. It says up to date.  
 7 Q. Up to date, correct.  
 8 And on the concerns line, what does that say?  
 9 A. That is history of urethrostenosis.  
 10 Q. What is urethrostenosis?  
 11 A. That is a problem in the urethra, the penis,  
 12 uh-huh.  
 13 Q. And what specifically is stenosis?  
 14 A. It's narrowing, yeah.  
 15 Q. And what problems can that cause?  
 16 A. Problems going pee.  
 17 Q. Okay.  
 18 A. Hard to pee, pain when you go pee, and that  
 19 was dealt with by the urologist.  
 20 Q. And it says objective underneath that.  
 21 A. Uh-huh.  
 22 Q. And there's a notation on the far right.  
 23 What does that say?  
 24 A. That is another note for history of  
 25 bed-wetting. I probably just wrote it just to make

Page 21

1 categories, you have checked the AB box, right?  
 2 A. Yes.  
 3 Q. And the fact you checked the normal box  
 4 meant, on this particular visit, everything was normal?  
 5 A. Yes.  
 6 Q. Great. Let's go ahead and turn to the  
 7 March 2nd, 2011, letter from Dr. Ganesan. It's about  
 8 four or five pages after that.  
 9 A. Uh-huh. The first one or the second one?  
 10 Q. The March 2nd, 2011, one.  
 11 A. Okay.  
 12 Q. Now, first, I note that there's either a  
 13 signature or a stamp in the bottom right-hand corner.  
 14 A. Uh-huh.  
 15 Q. What does that mean?  
 16 A. That means I received it and I read it.  
 17 Q. And how do you know Dr. Ganesan?  
 18 A. He's a consultant. Yeah, he's a specialist.  
 19 Q. Someone you refer patients to?  
 20 A. Yes.  
 21 Q. And do you recall why you referred Nolan to  
 22 Dr. Ganesan, based on this letter?  
 23 A. I believe because of his urethra problem and  
 24 his bed-wetting.  
 25 Q. And it talks in here about using a

EDMUND FARO, MD - 02/19/2016

Page 22

1 bed-wetting alarm.  
 2 A. Uh-huh.  
 3 Q. What is that?  
 4 A. It's an alarm that you attach to the child's  
 5 underwear. Once it starts to get wet, it buzzes. It  
 6 kind of trains the body to wake up and go to the  
 7 bathroom.  
 8 Q. And it looks like he used this and was doing  
 9 well with it; is that right?  
 10 A. Uh-huh, yes.  
 11 Q. Again, did he ever report any discomfort or  
 12 embarrassment at the enuresis?  
 13 A. No.  
 14 Q. It also says he has phimosis.  
 15 What is that?  
 16 A. Phimosis is narrowing of the foreskin.  
 17 Q. And what problems can that cause?  
 18 A. Difficulty going to the bathroom, pain.  
 19 Q. And is it something that is easily  
 20 discernible to the naked eye, or is it something that  
 21 is kind of on the inside of the penis?  
 22 A. It's -- you have to manipulate the penis to  
 23 determine it.  
 24 Q. Okay. So you'd have to move --  
 25 A. Yeah.

Page 24

1 circumcision at, you know, eleven, twelve, thirteen  
 2 years old?  
 3 A. Not very common.  
 4 Q. The majority of circumcisions happen when  
 5 babies are small; is that correct?  
 6 A. Babies, uh-huh.  
 7 Q. And are there any complications that can  
 8 occur when you have circumcision when you're older like  
 9 this as opposed to when you're a baby?  
 10 A. Bleeding, pain, infection.  
 11 Q. Those are common side effects?  
 12 A. Yes.  
 13 Q. And do you recall if Nolan ever complained to  
 14 you of pain or bleeding or discomfort after his  
 15 circumcision?  
 16 A. I do not recall.  
 17 Q. Is that he never did, or you just don't  
 18 remember?  
 19 A. I just don't remember.  
 20 Q. So he may have?  
 21 A. He may have.  
 22 Q. Let's go ahead and turn a few pages forward  
 23 now to the September 22nd, 2011, well visit.  
 24 A. (Witness complied.)  
 25 Q. Are you there on that record?

Page 23

1 Q. -- the foreskin, for example, to see it?  
 2 A. Yeah.  
 3 Q. What is balanitis?  
 4 A. Balanitis.  
 5 Q. Balanitis, thank you.  
 6 A. It is infection for irritation of the  
 7 foreskin.  
 8 Q. And when does that normally occur?  
 9 A. It happens if an infection -- it's not clean,  
 10 an infection sets in in the foreskin, it causes  
 11 inflammation and irritation and pain in that area.  
 12 Q. Is that something that is often a problem,  
 13 folks who are uncircumcised?  
 14 A. I see it commonly in uncircumcised patients.  
 15 Q. And the reason I ask is because if you look  
 16 at the next sentence, it says I've suggested  
 17 circumcision, and the family is in agreement.  
 18 Were you also in agreement with that?  
 19 A. Yes.  
 20 Q. And why did you think this was a good outcome  
 21 for this particular patient?  
 22 A. If there's an infection there all the time,  
 23 there's discomfort, obviously, and the solution to it  
 24 is to have the circumcision to take out that foreskin.  
 25 Q. How common is it for someone to have a

Page 25

1 A. Yes, I am.  
 2 Q. So, again, this is a well visit which would  
 3 signify to you that it was a checkup?  
 4 A. Uh-huh.  
 5 Q. Let's go down the categories again.  
 6 So feeds, is that the same as it was in the  
 7 previous record?  
 8 A. Yes.  
 9 Q. Eats everything?  
 10 A. Uh-huh.  
 11 Q. Stools or voids, what is that notation?  
 12 A. Normal.  
 13 Q. Normal.  
 14 Sleeps?  
 15 A. Good.  
 16 Q. Good.  
 17 Developmental?  
 18 A. Grade 6.  
 19 Q. And does that just mean that he's in the  
 20 sixth grade?  
 21 A. Yeah.  
 22 Q. What about safety?  
 23 A. Safety, that's discussed.  
 24 Q. And what does that mean?  
 25 A. Discussed normal safety, like wearing a

EDMUND FARO, MD - 02/19/2016

Page 26

1 helmet when you ride a bike.  
 2 Q. The standard safety precautions that you  
 3 would tell any, you know, eleven- or twelve-year old?  
 4 A. Uh-huh.  
 5 Q. And what about concerns?  
 6 A. Concerns, rash.  
 7 Q. And what does that mean?  
 8 A. Rash, at that time Mom had concerns, he  
 9 probably had rashes, eczema rashes.  
 10 Q. Do you have any specific recollection as to  
 11 where those rashes were on his body?  
 12 A. No.  
 13 Q. And if we look over to the checked boxes on  
 14 the far left-hand side, it looks as though all of those  
 15 are normal, right?  
 16 A. Yes.  
 17 Q. And if there had been something abnormal, you  
 18 would have checked the box, right?  
 19 A. Yes.  
 20 Q. And the assess was well. The plan, well.  
 21 And there's no other notation of any other  
 22 issue with Nolan on this page; is that fair?  
 23 A. Yes.  
 24 Q. And if Nolan had come in for being stabbed in  
 25 the genitals, would you have written that on this page?

Page 28

1 bottom right-hand?  
 2 A. Uh-huh.  
 3 Q. And that signifies that you received this and  
 4 read it?  
 5 A. Yes.  
 6 Q. Tell me your understanding of kind of what  
 7 this letter was from Dr. Ganesan to you.  
 8 A. It looks like he was seen by Dr. Ganesan, and  
 9 somebody struck him with a pencil. He didn't tell his  
 10 parents about it.  
 11 Q. And let's go ahead and go to the second  
 12 sentence. It says that he was a Caucasian male who  
 13 underwent a circumcision and a penile torsion repair  
 14 last April.  
 15 What is a penile torsion repair?  
 16 A. Torsion is when -- well, when you do a  
 17 circumcision, you're taking out the foreskin, and some  
 18 of the foreskin is turning the penis. It's torted; so  
 19 you're repairing the torsion when you do the  
 20 circumcision.  
 21 Q. And do you always repair torsion when you do  
 22 a circumcision, or do you only do it if the penis is  
 23 twisted in some way?  
 24 A. You would have to ask Dr. Ganesan on that  
 25 one.

Page 27

1 A. I would have.  
 2 Q. And the fact that it's not on here, does that  
 3 lead you to believe that that's not something you were  
 4 aware of at that time?  
 5 A. At that time it's not something I was aware  
 6 of.  
 7 Q. Let's go to the March 7th, 2012, letter from  
 8 Dr. Ganesan.  
 9 A. (Witness complied.)  
 10 Q. First of all, there's a notation, a  
 11 handwritten note on the --  
 12 MR. LICHTENSTEIN: Let me find it. Where is  
 13 this?  
 14 MR. PARK: It's about five pages behind where  
 15 we just were.  
 16 MR. LICHTENSTEIN: Oh, okay.  
 17 MR. PARK: March 7th, 2012.  
 18 MR. LICHTENSTEIN: Yeah.  
 19 BY MR. PARK:  
 20 Q. There's a handwritten note in the upper  
 21 right-hand corner.  
 22 Do you know what that is?  
 23 A. That is a note for our office, this office,  
 24 Mountain Vista.  
 25 Q. And your signature, again, is down on the

Page 29

1 Q. If someone requires a penile torsion repair,  
 2 to the naked eye would it be obvious?  
 3 A. Not necessarily.  
 4 Q. Not necessarily.  
 5 It depends on the degree of the torsion; is  
 6 that fair?  
 7 A. I believe.  
 8 Q. It says he did well from the procedure.  
 9 Now, this line, several months ago a boy  
 10 accidentally stuck him in the groin with a pencil, is  
 11 this the first that you had heard of that?  
 12 A. I believe so.  
 13 Q. And if you move down a little further, it  
 14 says he complains of extreme sensitivity since then.  
 15 Did Nolan ever complain to you of extreme  
 16 sensitivity on his penis?  
 17 A. No.  
 18 Q. It says my examination today was  
 19 unremarkable. There was no tenderness.  
 20 If the doctor says my examination was  
 21 unremarkable, what's your understanding?  
 22 A. It's a normal exam.  
 23 Q. And it said that he has a well-healed penis  
 24 from the circumcision.  
 25 Did you ever notice any follow-up

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1 complications of the circumcision with Nolan?  
 2 A. No.  
 3 Q. It healed normally?  
 4 A. Healed normally.  
 5 Q. And he says he did not see the need for any  
 6 further follow-up.  
 7 Do you know if Nolan actually did have  
 8 follow-up with Dr. Ganesan or if this was the last time  
 9 he saw him?  
 10 A. None that I recall.  
 11 Q. Do you recall sending him back to Dr. Ganesan  
 12 for any reason?  
 13 A. (No audible response.)  
 14 Q. In other words, do you recall sending Nolan  
 15 back to Dr. Ganesan for any reason after this?  
 16 A. I do not recall.  
 17 Q. Do you recall, in August of 2012, having a  
 18 discussion, a telephone discussion, with Aimee Hairr?  
 19 And I'll point you to the page. It is right  
 20 behind the Sunrise Health.  
 21 A. Okay. I see it.  
 22 MR. PARK: It's a couple pages back, Allen  
 23 (indicating). It's the second to the last page.  
 24 MR. LICHTENSTEIN: Second to the last page,  
 25 okay. I'm getting there.

Page 32

1 Q. Let's turn to your February 7th, 2013, well  
 2 visit.  
 3 A. What day was that?  
 4 Q. February 7th, 2013.  
 5 A. Uh-huh.  
 6 Q. Do you recall the reason for this visit?  
 7 A. It looks like a well check and a flu mist.  
 8 Q. And, again, if someone comes in with a  
 9 specific complaint, you also use this specific form,  
 10 right?  
 11 A. Yes.  
 12 Q. And so the fact that this is a well visit  
 13 form indicates to you that this was a general check?  
 14 A. General checkup, but sometimes they come in  
 15 and they have -- during a well visit, they have  
 16 specific questions or concerns.  
 17 Q. And that's something if they have specific  
 18 questions or concerns --  
 19 A. Yeah.  
 20 Q. -- you always note it down?  
 21 A. Note it down.  
 22 Q. And on this particular visit, it looks like  
 23 he got a flu mist?  
 24 A. Yes.  
 25 Q. And, again, there's no notation down here

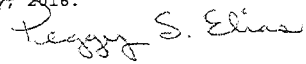
Page 31

1 MR. PARK: Actually, I lied. Hold on.  
 2 MR. LICHTENSTEIN: There we go.  
 3 MR. PARK: Do you see it?  
 4 MR. LICHTENSTEIN: Yeah, a second.  
 5 MR. PARK: Let's go off for a second.  
 6 (Discussion off the record.)  
 7 BY MR. PARK:  
 8 Q. Do you see this telephone consultation page?  
 9 A. Uh-huh.  
 10 Q. Tell me about telephone consultations in your  
 11 practice. What are they?  
 12 A. A lot of times, parents call to ask if their  
 13 children are up to date on shots or if they have a  
 14 minor symptom that -- if they need to come in.  
 15 Q. And based on your review of this record, what  
 16 did you talk to Aimee Hairr about with respect to  
 17 Nolan?  
 18 A. It looks like the medical assistant talked to  
 19 Mrs. Hairr, and from what is the chief complaint, she  
 20 wanted to know if Nolan is up to date on shots.  
 21 Q. Okay.  
 22 A. So it looks like he needed a Tdap shot and  
 23 was going to come in that following Monday.  
 24 Q. Any mention here of any genital pain?  
 25 A. No.

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1 about pain or tenderness in the genitals?  
 2 A. No.  
 3 Q. So, as far as you can recall, that March 7th,  
 4 2012, letter from Dr. Ganesan was the first time that  
 5 you remember hearing about Nolan being stabbed in the  
 6 genitals with a pencil; is that right?  
 7 A. If I recall -- it's been a couple years --  
 8 she did mention something to that nature, the mom did,  
 9 at one point. I can't remember exactly when.  
 10 Q. And you can't remember if it was before or  
 11 after that letter?  
 12 A. I can't remember if it was before or after.  
 13 Q. Do you remember examining Nolan for that or  
 14 just talking to the mom about it in passing?  
 15 A. Just talking to the mom in passing.  
 16 Q. Was she concerned when she told you; do you  
 17 recall, or was it more like just so you know?  
 18 A. I don't recall if she was concerned or not.  
 19 Q. Were you concerned about any kind of damage  
 20 or pain or lingering effects after hearing that he was  
 21 stabbed --  
 22 A. Yes.  
 23 Q. -- with the pencil?  
 24 A. I would be concerned, yes.  
 25 Q. Were you concerned? Do you remember back at

EDMUND FARO, MD - 02/19/2016

<p style="text-align: right;">Page 34</p> <p>1 the time whether you were?</p> <p>2 A. I don't remember.</p> <p>3 Q. But you don't remember ever examining him or</p> <p>4 treating him for that?</p> <p>5 A. For that, no.</p> <p>6 MR. PARK: I have no further questions.</p> <p>7 MR. LICHTENSTEIN: I don't have anything.</p> <p>8 MR. PARK: Thank you.</p> <p>9 (Whereupon, the deposition was concluded at</p> <p>10 10:50 a.m. this date.)</p> <p>11 * * * * *</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 35</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF NEVADA )</p> <p>3 ) ss:</p> <p>4 COUNTY OF CLARK )</p> <p>5 I, Peggy S. Elias, a Certified Court Reporter</p> <p>6 licensed by the State of Nevada, do hereby certify:</p> <p>7 That I reported the deposition of EDMUND FARO, M.D., on</p> <p>8 Friday, February 19, 2016, at 10:15 a.m.</p> <p>9 That prior to being deposed, the witness was</p> <p>10 duly sworn by me to testify to the truth. That I</p> <p>11 thereafter transcribed my said stenographic notes via</p> <p>12 computer-aided transcription into written form, and</p> <p>13 that the typewritten transcript is a complete, true and</p> <p>14 accurate transcription of my said stenographic notes.</p> <p>15 That review of the transcript was not requested.</p> <p>16 I further certify that I am not a relative,</p> <p>17 employee or independent contractor of counsel or of any</p> <p>18 of the parties involved in the proceeding; nor a person</p> <p>19 financially interested in the proceeding; nor do I have</p> <p>20 any other relationship that may reasonably cause my</p> <p>21 impartiality to be questioned.</p> <p>22 IN WITNESS WHEREOF, I have set my hand in my</p> <p>23 office in the County of Clark, State of Nevada, this</p> <p>24 27th day of February, 2016.</p> <p>25 </p> <p>PEGGY S. ELIAS, RPR, CCR NO. 274</p>
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# MOUNTAIN VISTA PEDIATRICS WELL VISIT

NAME Hairr, Nolan Doctor EDMUND FARO MD Front Office By  
 CC WGC Historian trm Nurse J-T  
 DOB 7/12/00 Date OCT 31 2014

Medications A Allergies NKDA  
 Age 14 yr HT 65 <sup>3</sup>/<sub>4</sub> 55 % WT 109, 40 % HC Birth to 2yrs. 1 % Temp 98.0  
 Birth WT 90 / 46 % BP 3 yrs. & older 46 BMI 2 yrs. & older 18, 30 %  
 Visual Screen: R 1 / 1 L 1 / 1 HGB: 1 % BP 3 yrs. & older 46 BMI 2 yrs. & older 18, 30 %

SUBJECTIVE: AKG PMHx AKG  
 zeds: AKG PSHx AKG  
 tools: AKG 11 years and older: AKG  
 aids: AKG Smoke (Y N) AKG  
 leeps: AKG Drink (Y N) AKG  
 ev: AKG Other: AKG  
 afety: AKG  
 shavior: AKG Females: LMP AKG  
 nm: AKG  
 ncerns: AKG

Objective: AKG  
 N AKG AB AKG  
 N AKG AKG  
 N AKG AKG  
 ental AKG AKG  
 eck AKG AKG  
 nest AKG AKG  
 ngs AKG AKG  
 VS AKG AKG  
 bd AKG AKG  
 U AKG AKG  
 ectal AKG AKG  
 xtrem AKG AKG  
 ack AKG AKG  
 euro AKG AKG

AKG AKG  
 Witness: Faro  
 Date: 2/19/16  
 Peggy S. Elson, RPR, CRR 274

Assessment: well Plan: well

discussed

dap AKG Dtap AKG Hib AKG IPV AKG HBV AKG MMR AKG Varicella AKG Meningitis AKG Safety: AKG  
 rev Hep A AKG BSA AKG HPV AKG PPD AKG Dip-UA AKG Hgb AKG GLU AKG Audiopath / Vision Screen AKG  
 le FLU Flu Mist AKG PKU AKG Anticipatory Guidance/Behavior AKG  
 Follow up schedule: AKG

Doctor Signature: AKG

Urine Strip

EDMUND FARO MD

## MOUNTAIN VISTA PEDIATRICS SICK VISIT

NAME Hairn, Nolan HISTORIAN MON DOB 07-12-00 DATE SEP 04 2014  
AGE 14 YR WEIGHT 105 TEMP 100.7 NURSE EH FRONT OC  
MEDICATIONS Omnicel ALLERGIES NKDA  
CC: Swallowing eye (R) and nose pain when to ER  
last night \*~~not~~ C-T scan

Fever	N	Y	
URI	N	Y	
Cough	N	Y	
Vomiting	N	Y	
Diarrhea	N	Y	
Constip.	N	Y	
Pain	N	Y	
Rash	N	Y	
PO	Normal		Abn: ↑ ↓
UOP	Normal		Abn: ↑ ↓

PMHx: \_\_\_\_\_ PSHx: \_\_\_\_\_ HOSPITALIZATIONS \_\_\_\_\_  
 FMHx: \_\_\_\_\_ (allergies) SxHx: daycare (Y N) smoke (Y N) pets (Y N)

## OBJECTIVE

Gen: AA NAD  
 ~kin: clear well perfused  
 EENT: TM's nl  
 Conjunctiva: nl  
 Nose: nl  
 Oropharynx: MMM  
 Tonsils: nl

Neck: supple  
Chest: symm.  
Lungs: CTA no W/R/R  
CVS: RRR no murmur  
Abd: soft, NT/ND BS+ no mass  
GU: NA nl  
Rectal: NA nl  
Extrem: MAE, FROM  
Neuro: no focal findings or change

**ASSESSMENT:**

RTC:

**ulse Ox:**

**Exanthem:**

abnl:

abnl:

**abrnl:**

ebnf:

abnl:

abnl:

**abnl:**

**abnl:**

**abnl:**

**about:**

**abnl:**

abnl:

**abnl:**

**abnl:**

**PLAN:**

**PROCEDURE:**

Anticipatory Guidance/Behavior/Safety

Discussed X

**Doctor Signature**

### Urine Strip

EDMUND FARO MD

Under 6 IM X1  
Lot 043342 Exp 4/15 JF.

Benly 348 v1

002299

# MOUNTAIN VISTA PEDIATRICS

## SICK VISIT

NAME HARR, Nolan HISTORIAN MOM DOB 7/12/00 DATE SEP 03 2011  
 AGE 14 YR WEIGHT 105 TEMP 100.0 NURSE ET FRONT PO  
 MEDICATIONS Dayquil ALLERGIES NADA  
 CC: fever, cold x 1 wk Headache, pain on nose  
soie throat

Fever	N	<u>Y</u>	
URI	N	<u>Y</u>	
Cough	N	<u>Y</u>	
Vomiting	<u>N</u>	<u>Y</u>	
Diarrhea	<u>N</u>	<u>Y</u>	
Constip.	<u>N</u>	<u>Y</u>	
Pain	N	<u>Y</u>	<u>head</u>
Rash	<u>N</u>	<u>Y</u>	
PO	<u>Normal</u>		Abn: ↑ ↓
UOP	<u>Normal</u>		Abn: ↑ ↓

X 4-5 day

PMHx: \_\_\_\_\_ PSHx: \_\_\_\_\_ HOSPITALIZATIONS: \_\_\_\_\_  
 FMHx: \_\_\_\_\_ (allergies) SxHx: daycare (Y N) smoke (Y N) pets (Y N)

### OBJECTIVE

Gen: AA NAD  
 Kin: clear well perfused  
 HEENT: TM's nl  
 Conjunctiva: nl  
 Nose: nl  
 Oropharynx: MMM  
 Tonsils: nl  
 Neck: supple  
 Chest: symm.  
 Lungs: CTA no W/R/R  
 CVS: RRR no murmur  
 Abd: soft, NT/ND BS+ no mass  
 GU: NA nl  
 Rectal: NA nl  
 Extrem: MAE, FROM  
 Neuro: no focal findings or change

### Exanthem:

abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: ph 2  
 abnl: ST PND (H) 2  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_

ASSESSMENT: 2  
25  
100  
 RTC: 8

PLAN: 300g  
1/2 x 0 50g  
R call  
 PROCEDURE: RS ⊖ E1/2

ulse Ox: \_\_\_\_\_

Anticipatory Guidance/Behavior/Safety Discussed X  
 Doctor Signature \_\_\_\_\_

Urine Strip \_\_\_\_\_

EDMUND FARO MD

# MC 'NTAIN VISTA PEDIAT CS

## SICK VISIT

NAME HAIRR, NOLAN HISTORIAN MOM DOB 07-12-2000 DATE 05-28-2014  
 AGE 13YR WEIGHT 10.3 TEMP 99.8 NURSE EH FRONT \_\_\_\_\_  
 MEDICATIONS \_\_\_\_\_ ALLERGIES NKDA  
 CC: almost passed out on Monday per MOM

Fever	<u>N</u>	<u>Y</u>	_____
URI	<u>N</u>	<u>Y</u>	_____
Cough	<u>N</u>	<u>Y</u>	_____
Vomiting	<u>N</u>	<u>Y</u>	_____
Diarrhea	<u>N</u>	<u>Y</u>	_____
Constip.	<u>N</u>	<u>Y</u>	_____
Pain	<u>N</u>	<u>Y</u>	_____
Rash	<u>N</u>	<u>Y</u>	_____
PO	<u>Normal</u>	Abn: ↑ ↓	_____
UOP	<u>Normal</u>	Abn: ↑ ↓	_____

B/P 98/52 EB

PMHx: \_\_\_\_\_ PSHx: \_\_\_\_\_ HOSPITALIZATIONS \_\_\_\_\_  
 FMHx: \_\_\_\_\_ (allergies) SxHx: daycare (Y N) smoke (Y N) pets (Y N)

### OBJECTIVE

Gen: AA NAD  
 Skin: clear well perfused  
 HEENT: TM's nl  
 Conjunctiva: nl  
 Nose: nl  
 Oropharynx: MMM  
 Tonsils: nl  
 Neck: supple  
 Chest: symm.  
 Lungs: CTA no W/R/R  
 CVS: RRR no murmur  
 Abd: soft, NT/ND BS+ no mass  
 GU: NA nl  
 Rectal: NA nl  
 Extrem: MAE, FROM  
 Neuro: no focal findings or change

### Exanthem:

abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_  
 abnl: \_\_\_\_\_

ASSESSMENT: Symptomatic PLAN: \_\_\_\_\_

RTC: \_\_\_\_\_

PROCEDURE: glu (129) EH

Pulse Ox: 97  
95

Urine Strip

Anticipatory Guidance/Behavior/Safety

Discussed X

Doctor Signature

EDMUND FARO MD

## MOUNTAIN VISTA PEDIATRICS

## WELL VISIT

NAME Hairer Nolan Doctor Edmund Faro, MD Front Office PR  
 cc Flu clinic Historian mom Nurse J-T  
 DOB 7-12-00 Date JAN 24 2014  
 Medications 0 Allergies NRDA

Age 13yr HT      /      % WT      /      % HC Birth to 2yrs.      /      % Temp 98.1  
 Birth WT       
 Visual Screen: R      /      L      /      HGB:      % BP 3 yrs. & older      BMI 2 yrs. & older      /      %

SUBJECTIVE:      PMHx       
 Feeds:      PSHx       
 Stools:      11 years and older:  
 Voids:      Smoke (Y N)       
 Sleeps:      Drink (Y N)       
 Dev:      Other:       
 Safety:      Females: LMP       
 Behavior:       
 Imm:       
 Concerns:       
 Objective:     

002302

	N	AB
GEN	<input type="checkbox"/>	<input type="checkbox"/>
ENT	<input type="checkbox"/>	<input type="checkbox"/>
Dental	<input type="checkbox"/>	<input type="checkbox"/>
Neck	<input type="checkbox"/>	<input type="checkbox"/>
Chest	<input type="checkbox"/>	<input type="checkbox"/>
Lungs	<input type="checkbox"/>	<input type="checkbox"/>
CVS	<input type="checkbox"/>	<input type="checkbox"/>
Abd	<input type="checkbox"/>	<input type="checkbox"/>
GU	<input type="checkbox"/>	<input type="checkbox"/>
Rectal	<input type="checkbox"/>	<input type="checkbox"/>
Extrem	<input type="checkbox"/>	<input type="checkbox"/>
Back	<input type="checkbox"/>	<input type="checkbox"/>
Neuro	<input type="checkbox"/>	<input type="checkbox"/>

Assessment:      Plan:     

DTap DTap IPV HBV MMR Varicella Meningitis  
 Hep A HPV PPD Dip-UA Hgb GLU  
 Flu Flu Mist

Safety:      Discussed ☒  
 Audiopath / Vision Screen       
 Anticipatory Guidance/Behavior      ☒  
 Follow up schedule:     

Doctor Signature:     

Urine Strip

Edmund Faro, M.D.



# FOOTHILLS PEDIATRICS

## WELL VISIT

NAME Haim Nolan Doctor Edmund Faro, MD Front Office Nat  
 CC WC Historian MOM Nurse JT  
 DOB 7.12.2000 Date FEB 07 2013

Medications vitamins Allergies NKDA

Age 12yr HT 59 1/2 45% WT 87 35% HC Birth to 2yrs. 1 % Temp 98.5  
 Birth WT 11  
 Visual Screen: R 1 / 1 L 1 / 1 HGB: 92 % BP 3 yrs. & older 50 BMI 2 yrs. & older 17 30%

SUBJECTIVE: \_\_\_\_\_ PMHx \_\_\_\_\_  
 Feeds: \_\_\_\_\_ PSHx \_\_\_\_\_  
 Stools: \_\_\_\_\_  
 Voids: \_\_\_\_\_ 11 years and older:  
 Sleeps: \_\_\_\_\_ Smoke (Y N) \_\_\_\_\_  
 Dev: \_\_\_\_\_ Drink (Y N) \_\_\_\_\_  
 Safety: \_\_\_\_\_ Other: \_\_\_\_\_  
 Behavior: \_\_\_\_\_ Females: LMP \_\_\_\_\_  
 Imm: \_\_\_\_\_  
 Concerns: \_\_\_\_\_  
 Objective: \_\_\_\_\_

	N	AB
GEN	<input type="checkbox"/>	<input type="checkbox"/>
in	<input type="checkbox"/>	<input type="checkbox"/>
Recent	<input type="checkbox"/>	<input type="checkbox"/>
Dental	<input type="checkbox"/>	<input type="checkbox"/>
Neck	<input type="checkbox"/>	<input type="checkbox"/>
Chest	<input type="checkbox"/>	<input type="checkbox"/>
Lungs	<input type="checkbox"/>	<input type="checkbox"/>
CVS	<input type="checkbox"/>	<input type="checkbox"/>
Abd	<input type="checkbox"/>	<input type="checkbox"/>
GU	<input type="checkbox"/>	<input type="checkbox"/>
Rectal	<input type="checkbox"/>	<input type="checkbox"/>
Extrem	<input type="checkbox"/>	<input type="checkbox"/>
Back	<input type="checkbox"/>	<input type="checkbox"/>
Neuro	<input type="checkbox"/>	<input type="checkbox"/>

Assessment: Well Plan: Well / 1

Tdap Dtap HIB IPV HBV MMR Varicella Meningitis  
 Prev Hep A ROTA HPV PPD Dip-UA Hgb GLU  
 uride Flu Flu Mist

Discussed ☒  
 Safety: ☒  
 Audiopath / Vision Screen \_\_\_\_\_  
 Anticipatory Guidance/Behavior ☒  
 Follow up schedule: \_\_\_\_\_

Doctor Signature: [Signature]

Urine Strip

Edmund Faro, M.D.

# FOOTHILLS PEDIATRICS

## WELL VISIT

Front Office

MH

Nurse

EP

NAME Hairr, Nolan Doctor EDMUND FARO Historian Mom DOB 7/12/2000 Date SEP 22 2011

CC Well Medications NO Allergies NKDA Reactions

Age 11 YR HT 56 1/2 SD 50 % WT 76 / 50 % HC Birth to 2yrs. / % Temp 98.3  
 Birth WT / Visual Screen: R / L / HGB: % BP 3 yrs. & older 98/60 BMI 2 yrs. & older / %

## SUBJECTIVE:

Feeds: AFG PMHx  
 Stools: (P) PSHx  
 Voids: (P) 11 years and older:  
 Sleeps: 8 hr. Smoke (Y N)  
 Dev: 8 hr. VT Drink (Y N)  
 Safety: LI Other:  
 Behavior: well Females: LMP  
 Imm:  
 Concerns: none  
 Objective:

002305

	N	AB
GEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Skin	<input type="checkbox"/>	<input type="checkbox"/>
Heart	<input type="checkbox"/>	<input type="checkbox"/>
tal	<input type="checkbox"/>	<input type="checkbox"/>
Neck	<input type="checkbox"/>	<input type="checkbox"/>
Chest	<input type="checkbox"/>	<input type="checkbox"/>
Lungs	<input type="checkbox"/>	<input type="checkbox"/>
CVS	<input type="checkbox"/>	<input type="checkbox"/>
Abd	<input type="checkbox"/>	<input type="checkbox"/>
GU	<input type="checkbox"/>	<input type="checkbox"/>
Rectal	<input type="checkbox"/>	<input type="checkbox"/>
Extrem	<input type="checkbox"/>	<input type="checkbox"/>
Back	<input type="checkbox"/>	<input type="checkbox"/>
Neuro	<input type="checkbox"/>	<input type="checkbox"/>

Assessment: well Plan: well / 1

Tdap ☒ Dtap ☐ Hib ☐ IPV ☐ HBV ☐ MMR ☐ Varicella ☒ Meningitis ☒  
 Prev ☐ Hep A ☐ ROTA ☐ HPV ☐ PPD ☐ Dip-UA ☐ Hgb ☐ GLU ☐  
 Flouride ☐ Flu ☐ Flu Mist ☐

Safety:

discussed

Audiopath / Vision Screen

Anticipatory Guidance/Behavior

Follow up schedule:

Doctor Signature:

EF

Urine Strip

EDMUND FARO, M.D.

# FOOTHILLS PEDIATRICS

## WELL VISIT

NAME HAIRR Doctor FARO Front Office [Signature]  
 cc WC Historian [Signature] DOB 7-12-00 Nurse [Signature]  
 Date OCT 11 2010  
 Medications [Signature] Allergies NKDA

Age 10 Yr HT 55 WT 55 % WT 71-850 % HC Birth to 2yrs. 1 % Temp 99.5  
 Birth WT [Signature]  
 Visual Screen: R 1 L 1 HGB: 98/52 % BP 3 yrs. & older 98/52 BMI 2 yrs. & older [Signature]

## SUBJECTIVE:

Feeds: AFB  
 Stools: [Signature]  
 Voids: h/o  
 Sleeps: [Signature]  
 Dev: [Signature]  
 Safety: [Signature]  
 Behavior: [Signature]  
 Imm: [Signature]  
 Concerns: [Signature]  
 Objective: [Signature]

	N	AB
GEN	<input type="checkbox"/>	<input type="checkbox"/>
Heart	<input type="checkbox"/>	<input type="checkbox"/>
Dental	<input type="checkbox"/>	<input type="checkbox"/>
Neck	<input type="checkbox"/>	<input type="checkbox"/>
Chest	<input type="checkbox"/>	<input type="checkbox"/>
Lungs	<input type="checkbox"/>	<input type="checkbox"/>
CVS	<input type="checkbox"/>	<input type="checkbox"/>
Abd	<input type="checkbox"/>	<input type="checkbox"/>
GU	<input type="checkbox"/>	<input type="checkbox"/>
Rectal	<input type="checkbox"/>	<input type="checkbox"/>
Extrem	<input type="checkbox"/>	<input type="checkbox"/>
Back	<input type="checkbox"/>	<input type="checkbox"/>
Neuro	<input type="checkbox"/>	<input type="checkbox"/>

Assessment: well Plan: well / y

Dtap Dtap Hib IPV HBV MMR Varivax Menactra

rev Hep A ROTA HPV PPD Dip-UA Hgb GLU

side FLU 0.5 ML

Safety: discussed

Audiopath / Vision Screen [Signature]

Anticipatory Guidance/Behavior [Signature]

Follow up schedule: [Signature]

Doctor Signature: [Signature]

Urine Strip

U3385CA (E) 30 JUN 11  
 Influenza Virus Vaccine  
 No Preservative  
 US Dept. Lic 91725  
 Mfg by: SmithKline Beecham Inc.  
 Philadelphia PA 19101 USA

0.5 mL

2010-2011 Formula  
 Rx only  
 5000

1 Indicated 6/12/09

mvp



# SUNRISE HEALTH

SUNRISE | MOUNTAINVIEW | SOUTHERN HILLS | SUNRISE CHILDREN'S

Dear Physician/Provider,

Your patient HAIRR, NOLAN, account number D00109490879, visited the Sunrise Hospital Emergency Department on 9/3/2014 for the reason of SINUS INFECTION.

If you would like more information regarding this admission, please contact Medical Records at 702-731-8077 or log in remotely to Meditech.

You may obtain a copy of the patient's medical record by faxing a request on letterhead to the Medical Records Department at 702-892-3686.

## FOOTHILLS PEDIATRICS

## TELEPHONE CONSULTATION

082412

Date: \_\_\_\_\_

Time: 9:54 am pm

Patient Name: Hain NolanAge: \_\_\_\_\_ DOB: 7-12-00

Drug Allergies: \_\_\_\_\_

Current Medication: \_\_\_\_\_

Calling Party Name: Aimee

Relationship: \_\_\_\_\_

Phone: 353-1364 Work: \_\_\_\_\_

Pharmacy Phone: \_\_\_\_\_

## Dispositions

- ☐ NSG  
☐ Medical Records  
☐ Doctor  
☐ Referrals  
☐ Lab Results  
☐ Pharmacy

## Chief Complaint

update on shot  
TDap  
APPI on Monday.

Message Taken By: EH

## Assessment

<input type="checkbox"/>	Fever
<input type="checkbox"/>	Rash
<input type="checkbox"/>	Cough
<input type="checkbox"/>	Congestion
<input type="checkbox"/>	Sore Throat
<input type="checkbox"/>	Ear Ache
<input type="checkbox"/>	Body Aches
<input type="checkbox"/>	Headache

<input type="checkbox"/>	Abdominal Pain
<input type="checkbox"/>	Nausea
<input type="checkbox"/>	Vomiting
<input type="checkbox"/>	Urination
<input type="checkbox"/>	Diarrhea
<input type="checkbox"/>	Constipation
<input type="checkbox"/>	Appetite
<input type="checkbox"/>	Activity Level

Call Back Time: 10:43 PM Advice: \_\_\_\_\_  
 Call Back Date: 8-24-12

SPE MOM & advised pt is up to date  
EH

## Call Back Attempts

DATE	TIME	DESCRIPTION

TCB - To call back

NANM - No answer / no machine

LMOM - Left message on machine

BC - Blocked call

Back Office Signature: \_\_\_\_\_

children's  
urology associates

George S. Ganesan, M.D., FAAP, FACS  
J. Chadwick Plaire, M.D., FAAP, FACS  
Waldo C. Feng, M.D., PhD, FAAP, FACS

MTV

March 7, 2012

Edmund Faro, M.D.  
Foothills Pediatrics  
10001 S. Eastern #103  
Henderson, Nevada 89052

RE: NOLAN HAIRR

Dear Edmund:

I had the pleasure of seeing Nolan in my office today. He is an 11-year-old Caucasian male who underwent a circumcision and a penile torsion repair last April. He did well from the procedure. Several months ago, a boy accidentally stuck him, in the groin, with a pencil. Although it did not penetrate the clothes, it caused some discomfort and pain. Nolan did not tell his parents about this. He complains of extreme sensitivity since then. My examination today was unremarkable. There was no tenderness. He has a well-healed penis from his circumcision. I reassured the mother that all is well. I do not see the need for any further follow up.

Thank you very much for allowing me to participate in this patient's care.

Sincerely,

George S. Ganesan, M.D.

GSG/bjs  
Signed but not edited.  
Conf#: 0307-400

E27ano, M.D.

3-26-12

child's  
associates

George S. Ganesan, M.D., FAAP, FACS  
J. Chadwick Plaire, M.D., FAAP, FACS  
Waldo C. Feng, M.D., PhD, FAAP, FACS

March 2, 2011

Edmund Faro, M.D.  
Foothills Pediatrics  
10001 S. Eastern #103  
Henderson, Nevada 89052

RE: HAIRR, NOLAN

Dear Edmund:

I had the pleasure of seeing Nolan in my office today. He is a 10-year-old Caucasian male who was initially seen in April of 2009 for bedwetting. He was toilet trained at two years, was dry about a year, and then had nocturnal enuresis ever since. He followed up one time in my office and then was lost to follow up until now. He still wets his bed but uses a bedwetting alarm and seems to be doing well with this. He quit using the alarm since he was dry and then the enuresis recurred. I have advised him to continue using the alarm because he is motivated to be dry.

Nolan also has phimosis and a history of balanitis. My examination confirmed that he has a partially retractile foreskin. I have suggested circumcision and the family is in agreement.

Thank you very much for allowing me to participate in Nolan's care.

Sincerely,

George S. Ganesan, M.D.

GSG/bjs  
Signed but not edited.  
Conf#: 0302-273

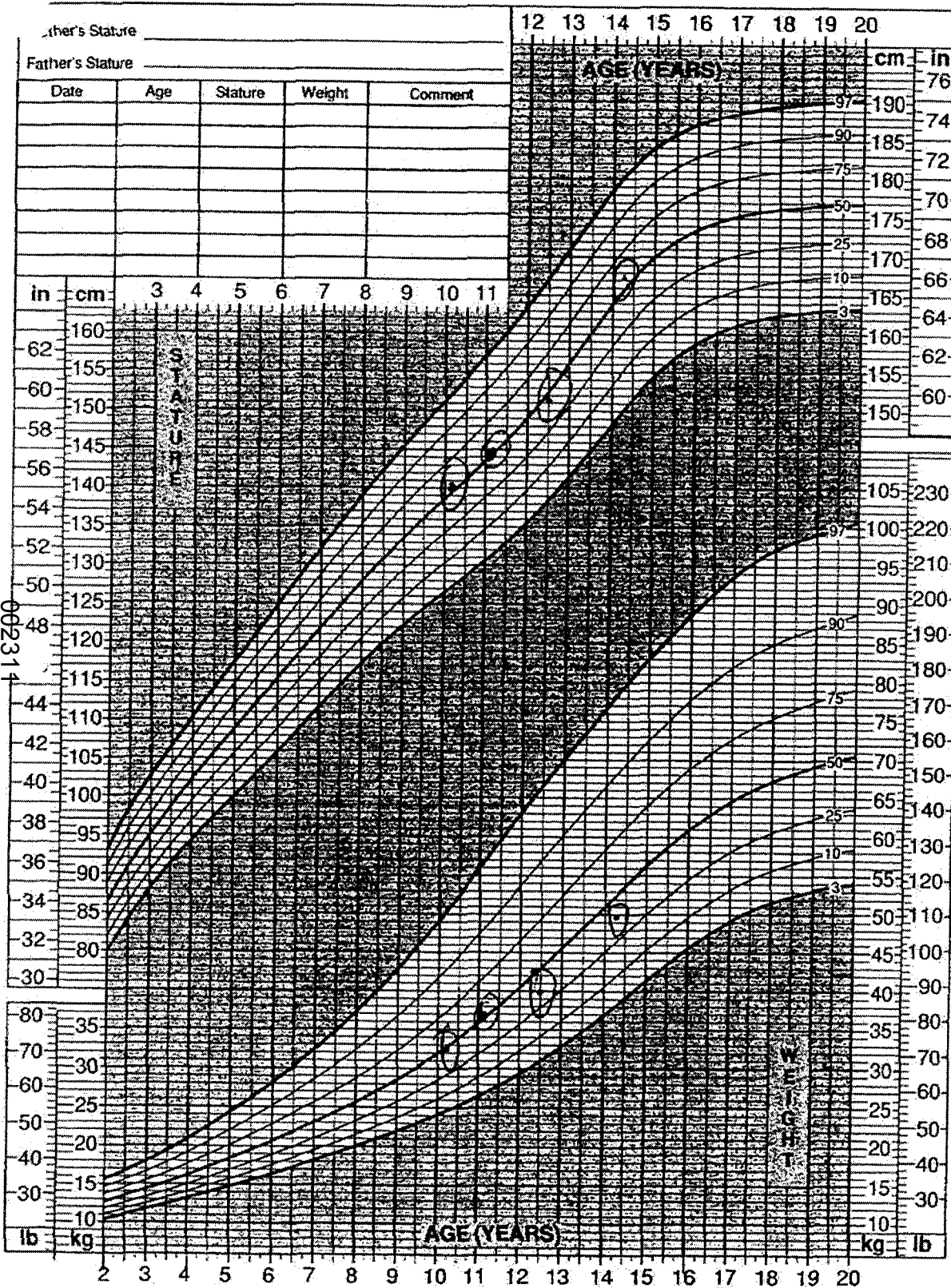
*EGFano, M.D.*  
*3/10/11*

**2 to 20 Years: Boys**  
**Stature-for-age and**  
**Weight-for-age percentiles**

Name

Hank, Nolan

Record #



**Abbott**  
**Nutrition**

[www.abbottnutrition.com](http://www.abbottnutrition.com)

**PediaLyte®**

Oral electrolyte maintenance  
 solution/freezer pops

**PediaSure®**

Complete, Balanced Nutrition®

**EleCare®**

Nutritionally complete amino  
 acid-based medical food and  
 infant formula with iron

\*SOURCE: Developed by the  
 National Center for Health  
 statistics in collaboration with  
 the National Center for Chronic  
 Disease Prevention and Health  
 Promotion (2000).

This chart is consistent with CDC  
 growth data as of November 2007.

<http://www.cdc.gov/growthcharts>



Nevada Immunization Record  
Official Document

Registro de Inmunización  
Documento Oficial

Name/Nombre: **NOLAN HAIR**

Date of Birth/Fecha de Nacimiento: **07/12/2000**

Gender/Genero: **M**

Nevada WebID ID#: **2037877**

Date of Next Vaccination/Fecha de Proxima Vacuna: **08/24/2012**

Present this record at each medical visit.  
Presente este documento durante sus visitas medicas.

Immunization Provider:

FOOTHILLS PEDS-MTNVISTA  
6301 MOUNTAIN VISTA STREET #205  
HENDERSON, NV 89014

702-614-5437

Allergies/Precautions/Contraindications  
Alergias/Precauciones/Contraindicaciones:

Vaccine Reactions / Reacciones contra Vacunas:

Comments

Date	Note

	Vaccine/Vacuna	Date Given Dada en la Fecha MM/DD/YYYY	Age at Imm. Edad Cuando Imm.	Doctor or Clinic Doctor o Clínica
1	Influenza	10/19/2005	5Y 3M 7D	FHP-MTNVST
2	Influenza	11/13/2006	6Y 4M 1D	FHP-MTNVST
	Influenza	12/12/2007	7Y 5M 0D	FHP-MTNVST
	Influenza	10/11/2010	10Y 2M 29D	FHP-MTNVST

	Vaccine/Vacuna	Date Given Dada en la Fecha MM/DD/YYYY	Age at Imm. Edad Cuando Imm.	Doctor or Clinic Doctor o Clínica
1	DTaP	04/27/2001	0Y 9M 15D	FHP-MTNVST
2	DTaP	06/08/2001	0Y 10M 27D	FHP-MTNVST
3	DTaP	09/28/2001	1Y 2M 16D	FHP-MTNVST
4	DTaP	11/30/2001	1Y 4M 18D	FHP-MTNVST
5	DTaP	05/03/2005	4Y 9M 21D	FHP-MTNVST
6	Tdap	09/22/2011	11Y 2M 10D	FHP-MTNVST
7				
1	IPV	04/27/2001	0Y 9M 15D	FHP-MTNVST
2	IPV	06/08/2001	0Y 10M 27D	FHP-MTNVST
3	IPV	09/28/2001	1Y 2M 16D	FHP-MTNVST
4	IPV	05/03/2005	4Y 9M 21D	FHP-MTNVST
1	MMR	09/28/2001	1Y 2M 16D	FHP-MTNVST
2	MMR	05/03/2005	4Y 9M 21D	FHP-MTNVST
1	Hib (PRP-T)	04/27/2001	0Y 9M 15D	FHP-MTNVST
2	Hib (PRP-T)	06/08/2001	0Y 10M 27D	FHP-MTNVST
3	Hib (PRP-T)	11/30/2001	1Y 4M 18D	FHP-MTNVST
4	Hib (PRP-T)	01/23/2002	1Y 6M 11D	FHP-MTNVST
1	Hep B, ped/adol	04/27/2001	0Y 9M 15D	FHP-MTNVST
2	Hep B, ped/adol	06/08/2001	0Y 10M 27D	FHP-MTNVST
3	Hep B, ped/adol	11/20/2001	1Y 4M 8D	FHP-MTNVST
4				
1	Hep A, ped/adol, UF	09/13/2002	2Y 2M 1D	FHP-MTNVST
2	Hep A, ped/adol, UF	05/03/2005	4Y 9M 21D	FHP-MTNVST
3				
1	PCV7	04/27/2001	0Y 9M 15D	FHP-MTNVST
2	PCV7	06/08/2001	0Y 10M 27D	FHP-MTNVST
3	PCV7	11/30/2001	1Y 4M 18D	FHP-MTNVST
4	PCV7	01/23/2002	1Y 6M 11D	FHP-MTNVST
5				
1				
2				
3				
1	CPOX (Varicella)	09/28/2001	1Y 2M 16D	FHP-MTNVST
2	CPOX (Varicella)	11/13/2005	6Y 4M 1D	FHP-MTNVST
1				
1	MCV4P (MENACTRA)	09/22/2011	11Y 2M 10D	FHP-MTNVST
2				
1				
2				
3				

Print Date: 03/03/2010

**IMMUNIZATION REPORT**  
**J COREY 20 BROWN MD FREMONT**  
**1505 WIGWAM PKWY**  
**STE 230**  
**HENDERSON, NV 89074-8194**  
Main: (702) 870-2099 Fax:

Patient Name: NOLAN M HAIR  
Birth Date: 07/12/2000 9 y  
Patient Sex: MALE

This patient has received the following immunizations:

IMMUNIZATION NAME	IMMUNIZATION DATES				
Diphtheria, Tetanus Toxoids, acellular Pertussis	05/03/2005	11/30/2001	09/28/2001	06/08/2001	04/27/2001
HEP A	05/03/2005	09/13/2002			
Hepatitis B	11/20/2001	06/08/2001	04/27/2001		
Hib (Haemophilus Influenzae b) Conjugate Vaccine	01/23/2002	11/30/2001	06/08/2001	04/27/2001	
Inactivated Poliovirus Vaccine	05/03/2005	09/28/2001	06/08/2001	04/27/2001	
Influenza Vaccine	12/12/2007	11/13/2006	10/19/2005	09/28/2001	
Measles, Mumps, Rubella	05/03/2005	09/28/2001			
PENTACEL					
Pneumococcal Conjugate Vaccine	01/23/2002	11/30/2001	06/08/2001	04/27/2001	
Rotavirus Vaccine (live, oral)					
TETANUS AND DIPHTHERIA					
Varicella (Chicken Pox)	11/13/2006	09/28/2001			

**ADDITIONAL INFORMATION:**

Last PE: \_\_\_\_\_

Height: \_\_\_\_\_

Blood Pressure: \_\_\_\_\_

Weight: \_\_\_\_\_

Head Circumference: \_\_\_\_\_

# Vaccine Administration Record for Children and Teens

Patient Name:

Nolan HAIR

Birthdate:

7-12-00

Web IZ #:

Vaccine	Type of Vaccine <sup>1</sup> (generic abbreviation)	Date Given (mo/day/yr)	Source (F,S,P) <sup>2</sup>	Site <sup>3</sup>	Vaccine		Vaccine Information Statement		Signature/Initials of vaccinator
					Lot #	Mfr.	Date on VIS <sup>4</sup>	Date given <sup>5</sup>	
Hepatitis B <sup>5</sup> (eg., HepB, Hib-HepB, DTaP-HepB-IPV) Give IM.							7/18/2007		
							7/18/2007		
							7/18/2007		
							5/17/2007		
Diphtheria, Tetanus, Pertussis <sup>3</sup> (eg., DTaP, Dtap-Hib, Dtap-HepB-IPV, DT, Tdap, Td) Give IM.							5/17/2007		
							5/17/2007		
							5/17/2007		
							5/17/2007		
	Tdap	9-22-11	S	LA	ACS2B072EA7	MSD	9-22-11	9-22-11	EL
Haemophilus Influenzae type b <sup>5</sup> (eg., Hib, Hib-HepB, DTaP-Hib) Give IM.							11/18/2008		
							12/16/1998		
							12/16/1998		
							12/16/1998		
Polio <sup>5</sup> (eg., IPV, DTaP-HepB-IPV) Give IPV SC or IM. Give DTaP-HepB-IPV IM.							1/1/2000		
							1/1/2000		
							1/1/2000		
							1/1/2000		
Pneumococcal (eg., PCV, conjugate; PPV, polysaccharide) Give PCV IM. Give PPV SC or IM.							12/9/2008		
							12/9/2008		
							12/9/2008		
							12/9/2008		
Rotavirus (Rv) Give oral (po).							8/28/2008		
							8/28/2008		
							8/28/2008		
Measles, Mumps, Rubella <sup>5</sup> (e.g., MMR, MMRV) Give SC.							3/13/2008		
							3/13/2008		
Varicella <sup>5</sup> (e.g., Var., MMRV) Give SC.							3/13/2008		
							3/13/2008		
Hepatitis A (HepA) Give IM.							3/21/2006		
							3/21/2006		
Meningococcal (eg., MCV4/MPSV4) Give MCV4 IM and MPSV4 SC.	Menactra	9-22-11	S	RA	U4CQJAF43	MSD	9-22-11	9-22-11	EL
Human papillomavirus (eg., HPV) Give IM.							3/30/2010		
							3/30/2010		
							3/30/2010		
Influenza <sup>5</sup> (e.g., TIV, Inactivated; LAV, live attenuated) Give TIV IM. Give LAV IN.	Flu .5	10-11-10	P	LA	U35659A	MSD	8-10-10	10-11-10	EL
	Flumist	2-7-13	S	IN	AL2Q333	MSD	7-2-12	2-7-13	JL
	Flu .5ml	1-24-14	P	RA	UH949AB	MSD	7-26-13	1-24-14	JL
Other	Flu .5ml	10-31-14	P	RA	UIB8AA6	MSD	8-19-14	10-31-14	JL

1. Record the generic abbreviation for the type of vaccine give (e.g., DTaP-Hib, PCV, not the trade name).

2. Record the source of the vaccine given as either F (Federally-supported) S (State-supported) or P (supported by Private insurance or other Private funds).

3. Record the site where vaccine was administered as either RA (Right Arm), LA (Left Arm), RT (Right Thigh), LT (Left Thigh), IN (Intranasal), or D (Oral).

4. Record the publication date of each VIS as well as the date given to the patient.

5. For combination vaccines, fill in a row for each separate antigen in the combination.

# MOUNTAIN VISTA PEDIATRICS

## INFORMED DOCUMENT FOR INFLUENZA VACCINATION

NAME: Hairr, NolanDATE OF BIRTH: 7-12-00

WHAT IS THE FLU? INFLUENZA (THE "FLU") IS A HIGHLY CONTAGIOUS VIRUS USUALLY ABRED THROUGH COUGHING AND SNEEZING. SYMPTOMS OF THE FLU VARY. TYPICALLY THEY CAN INCLUDE AN ABRUPT ONSET OF FEVER, MUSCLE PAINS, HEADACHES, SORE THROAT AND COUGHING THAT CAN LAST FOR DAYS. EACH YEAR 10% TO 20% OF THE COMMUNITY MAY BECOME INFECTED BY THE FLU.

	YES	NO
1. ARE YOU ALLERGIC TO EGGS, CHICKEN FEATHERS OR ANY EGG PRODUCTS?		<input checked="" type="checkbox"/>
2. ARE YOU TAKING ANY MEDICATION FOR ASTHMA OR BRONCHITIS, BLOOD THINNIG AND/OR TO TREAT SEIZURES? (PLEASE CIRCLE)		<input checked="" type="checkbox"/>

AFTER YOUR FLU SHOT: THE FLU SHOT VACCINE IS GENERALLY WELL TOLERATED. LIKE ALL MEDICINES, VACCINES MAY HAVE SIDE EFFECTS. SOME REDNESS, TENDERNESS, DISCOMFORT OR SWELLING IS COMMON AT THE INJECTION SITE, BUT THIS USUALLY DISAPPEARS AFTER A FEW DAYS. SOME PEOPLE MAY HAVE MILD FEVER, MUSCLE PAINS AND GENERALLY FEEL A BIT UNWELL FOR A FEW DAYS AFTER VACCINATION. THERE "FLU LIKE SYMPTOMS" DO NOT MEAN YOU HAVE THE FLU.

I HAVE READ AND UNDERSTAND THE INFORMATION LISTED ABOVE. I CONSENT TO RECEIVING A FLU VACCINE INJECTION.

SIGNATURE: [Signature]DATE: 9/4/15

### FOR OFFICE USE ONLY:

FLU VACCINE ADMINISTERED BY: JohnINJECTION SITE: RAIMLOT NUMBER: UI422AAEXPIRATION DAT: 6-30-16SIGNATURE: [Signature]DATE: 9-4-15

# MOUNTAIN VISTA PEDIATRICS

## INFORMED DOCUMENT FOR INFLUENZA VACCINATION

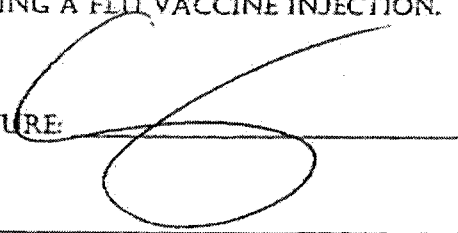
NAME: Hairr, NolanDATE OF BIRTH: 7-12-00

WHAT IS THE FLU? INFLUENZA (THE "FLU") IS A HIGHLY CONTAGIOUS VIRUS USUALLY ABRED THROUGH COUGHING AND SNEEZING. SYMPTOMS OF THE FLU VARY. TYPICALLY THEY CAN INCLUDE AN ABRUPT ONSET OF FEVER, MUSCLE PAINS, HEADACHES, SORE THROAT AND COUGHING THAT CAN LAST FOR DAYS. EACH YEAR 10% TO 20% OF THE COMMUNITY MAY BECOME INFECTED BY THE FLU.

	YES	NO
1. ARE YOU ALLERGIC TO EGGS, CHICKEN FEATHERS OR ANY EGG PRODUCTS?		<input checked="" type="checkbox"/>
2. ARE YOU TAKING ANY MEDICATION FOR ASTHMA OR BRONCHITIS, BLOOD THINNIG AND/OR TO TREAT SEIZURES? (PLEASE CIRCLE)		<input checked="" type="checkbox"/>

AFTER YOUR FLU SHOT: THE FLU SHOT VACCINE IS GENERALLY WELL TOLERATED. LIKE ALL MEDICINES, VACCINES MAY HAVE SIDE EFFECTS. SOME REDNESS, TENDERNESS, DISCOMFORT OR SWELLING IS COMMON AT THE INJECTION SITE, BUT THIS USUALLY DISAPPEARS AFTER A FEW DAYS. SOME PEOPLE MAY HAVE MILD FEVER, MUSCLE PAINS AND GENERALLY FEEL A BIT UNWELL FOR A FEW DAYS AFTER VACCINATION. THERE "FLU LIKE SYMPTOMS" DO NOT MEAN YOU HAVE THE FLU.

I HAVE READ AND UNDERSTAND THE INFORMATION LISTED ABOVE. I CONSENT TO RECEIVING A FLU VACCINE INJECTION.

SIGNATURE: DATE: 10/31/14

### FOR OFFICE USE ONLY:

FLU VACCINE ADMINISTERED BY: JohnINJECTION SITE: RAIMLOT NUMBER: UI188AAEXPIRATION DATE: 6-30-15SIGNATURE: DATE: 10-31-14

# MOUNTAIN VISTA PEDIATRICS

## INFORMED DOCUMENT FOR INFLUENZA VACCINATION

NAME: Nolan Hair DATE OF BIRTH: 7-12-00

WHAT IS THE FLU? INFLUENZA (THE "FLU") IS A HIGHLY CONTAGIOUS VIRUS USUALLY ABRED THROUGH COUGHING AND SNEEZING. SYMPTOMS OF THE FLU VARY. TYPICALLY THEY CAN INCLUDE AN ABRUPT ONSET OF FEVER, MUSCLE PAINS, HEADACHES, SORE THROAT AND COUGHING THAT CAN LAST FOR DAYS. EACH YEAR 10% TO 20% OF THE COMMUNITY MAY BECOME INFECTED BY THE FLU.

	YES	NO
1. ARE YOU ALLERGIC TO EGGS, CHICKEN FEATHERS OR ANY EGG PRODUCTS?		<input checked="" type="checkbox"/>
2. ARE YOU TAKING ANY MEDICATION FOR ASTHMA OR BRONCHITIS, BLOOD THINNIG AND/OR TO TREAT SEIZURES? (PLEASE CIRCLE)		<input checked="" type="checkbox"/>

AFTER YOUR FLU SHOT: THE FLU SHOT VACCINE IS GENERALLY WELL TOLERATED. LIKE ALL MEDICINES, VACCINES MAY HAVE SIDE EFFECTS. SOME REDNESS, TENDERNESS, DISCOMFORT OR SWELLING IS COMMON AT THE INJECTION SITE, BUT THIS USUALLY DISAPPEARS AFTER A FEW DAYS. SOME PEOPLE MAY HAVE MILD FEVER, MUSCLE PAINS AND GENERALLY FEEL A BIT UNWELL FOR A FEW DAYS AFTER VACCINATION. THERE "FLU LIKE SYMPTOMS" DO NOT MEAN YOU HAVE THE FLU.

I HAVE READ AND UNDERSTAND THE INFORMATION LISTED ABOVE. I CONSENT TO RECEIVING A FLU VACCINE INJECTION.

SIGNATURE: 

DATE: 1-24-14

### FOR OFFICE USE ONLY:

FLU VACCINE ADMINISTERED BY: John

INJECTION SITE: RAIM

LOT NUMBER: UH949AB

EXPIRATION DAT: 6-30-14

SIGNATURE: 

DATE: 1-24-14

# Foothills Pediatrics

## Informed Document for Flu Mist

Name: Hairr, Nolan DOB: 7-12-00

What is the flu? Influenza (the "flu") is a highly contagious virus usually spread through coughing and sneezing. Symptoms of the flu vary. Typically they can include an abrupt onset of fever, muscle pains, headaches, sore throat and coughing that can last for days. Each year 10% to 20% of the community may become infected by the flu.

Are you allergic to / Ever had any hypersensitivity to eggs, egg protein, gentamicin, gelatin, or arginine or life threatening reactions to previous influenza mist?	Yes	No <input checked="" type="checkbox"/>
Do you or your child have any asthma, wheezing, or breathing problems?		<input checked="" type="checkbox"/>
Are you pregnant or nursing?		<input checked="" type="checkbox"/>
Are you or your child receiving aspirin or aspirin-containing therapy?		<input checked="" type="checkbox"/>

After your flu mist: The Flu Mist vaccine is generally well tolerated. Like all medicines, Flu Mist may have side effects. Most common side effects were generally mild and included runny nose or nasal congestion, sore throat, and fever. A vaccine, like any medicine, could possibly cause serious problems, such as severe allergic reactions. However, the risk of a vaccine causing serious harm, or death, is extremely small.

I have read and understand the information listed above. I consent to receiving a flu mist vaccine.

SIGNATURE: 

DATE: 2-7-13

For Office Use Only:

Flu Mist administered by: John

Lot Number: AL2033

Expiration Date: 3-11-13

SIGNATURE: 

DATE: 2-7-13

# FOOTHILLS PEDIATRICS

## INFORMED DOCUMENT FOR INFLUENZA VACCINATION

Name: Hairr, Nolan

Date Of Birth: 7-12-00

What is the flu? Influenza (the "flu") is a highly contagious virus usually spread through coughing and sneezing. Symptoms of the flu vary. Typically they can include an abrupt onset of fever, muscle pains, headaches, sore throat and coughing that can last for days. Each year 10% to 20% of the community may become infected by the flu.

	YES	NO
1. Are you allergic to eggs, chicken feathers or any egg products?		<input checked="" type="checkbox"/>
2. Are you taking any medication for asthma or bronchitis, blood thinning and/or to treat seizures? (please circle)		<input checked="" type="checkbox"/>

After your flu shot: The flu shot vaccine is generally well tolerated. Like all medicines, vaccines may have side effects. Some redness, tenderness, discomfort or swelling is common at the injection site, but this usually disappears after a few days. Some people may have mild fever, muscle pains and generally feel a bit unwell for a few days after vaccination. There "flu like symptoms" do not mean you have the flu.

I have read and understand the information listed above. I consent to receiving a flu vaccine injection.

SIGNATURE: [Signature]

DATE: 10/11/10

For Office Use Only:

Flu vaccine administered by: EH

Injection Site: L

Lot Number: U3565CA

Expiration Date: 6-30-11

SIGNATURE: [Signature]

DATE: 10-11-10

*67*

*67*

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Steven D. Grierson  
CLERK OF THE COURT

52



OSCC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \* \*

MARY BRYAN, PLAINTIFF(S)  
VS.

CASE NO.: A-14-700018-C

CLARK COUNTY SCHOOL  
DISTRICT, ET AL, DEFENDANT(S)

DEPARTMENT 27

**CIVIL ORDER TO STATISTICALLY CLOSE CASE**

Upon review of this matter and good cause appearing,  
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
statistically close this case for the following reason:

**DISPOSITIONS:**

- |                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/>            | Default Judgment                       |
| <input type="checkbox"/>            | Judgment on Arbitration                |
| <input type="checkbox"/>            | Stipulated Judgment                    |
| <input type="checkbox"/>            | Summary Judgment                       |
| <input type="checkbox"/>            | Involuntary Dismissal                  |
| <input type="checkbox"/>            | Motion to Dismiss by Defendant(s)      |
| <input type="checkbox"/>            | Stipulated Dismissal                   |
| <input type="checkbox"/>            | Voluntary Dismissal                    |
| <input type="checkbox"/>            | Transferred (before trial)             |
| <input type="checkbox"/>            | Non-Jury – Disposed After Trial Starts |
| <input checked="" type="checkbox"/> | Non-Jury – Judgment Reached            |
| <input type="checkbox"/>            | Jury – Disposed After Trial Starts     |
| <input type="checkbox"/>            | Jury – Verdict Reached                 |
| <input type="checkbox"/>            | Other Manner of Disposition            |

DATED this 19th day of March, 2019.

  
NANCY ALLF  
DISTRICT COURT JUDGE

RECEIVED

MAR 28 2019

CLERK OF THE COURT

68

68

# IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT  
(CCSD),  
Appellant,  
vs.  
MARY BRYAN, MOTHER OF ETHAN BRYAN;  
AND AIMEE HAIRR, MOTHER OF NOLAN  
HAIRR,  
Respondents.

**Supreme Court No. 73856**  
District Court Case No. A700018

**FILED**

**JAN 25 2021**

*Elizabeth A. Brown*  
**CLERK OF COURT**

**Supreme Court No. 74566**  
District Court Case No. A700018

CLARK COUNTY SCHOOL DISTRICT,  
Appellant,  
vs.  
MARY BRYAN, MOTHER OF ETHAN BRYAN;  
AND AIMEE HAIRR, MOTHER OF NOLAN  
HAIRR,  
Respondents.

## CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

## JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Reversed and remanded with instructions."

Judgment, as quoted above, entered this 24 day of December, 2020.

A-14-700018-C  
CCJR  
NV Supreme Court Clerks Certificate/Judgn  
4941483



IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 22, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze  
Administrative Assistant



**136 Nev., Advance Opinion 82**  
**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**CLARK COUNTY SCHOOL DISTRICT  
 (CCSD),**

**Appellant,**

**vs.**

**MARY BRYAN, MOTHER OF ETHAN  
 BRYAN; AND AIMEE HAIRR, MOTHER  
 OF NOLAN HAIRR,**

**Respondents.**

**CLARK COUNTY SCHOOL DISTRICT  
 (CCSD),**

**Appellant,**

**vs.**

**MARY BRYAN, MOTHER OF ETHAN  
 BRYAN; AND AIMEE HAIRR, MOTHER  
 OF NOLAN HAIRR,**

**Respondents.**

No. 73856

**FILED**

**DEC 24 2020**

ELIZABETH A. BROWN  
 CLERK OF SUPREME COURT  
 BY S. Young  
 DEPUTY CLERK

No. 74566

Consolidated appeals from a district court judgment and post-judgment attorney fees award in a civil rights action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

*Reversed and remanded with instructions.*

Lewis Roca Rothgerber Christie LLP and Joel D. Henriod, Daniel F. Polsenberg, Dan R. Waite, Brian D. Blakley, and Abraham G. Smith, Las Vegas,  
 for Appellant.

Allen Lichtenstein, Ltd., and Allen Lichtenstein, Las Vegas; Scott Law Firm and John Houston Scott, San Francisco, California,  
 for Respondents.

BEFORE HARDESTY, STIGLICH and SILVER, JJ.

## OPINION

By the Court, SILVER, J.:

The plaintiffs below raised Title IX and 42 U.S.C. § 1983 claims against a school district for student-on-student harassment after two sixth-graders targeted classmates Nolan and Ethan with sexual slurs, other insults, and physical assaults in the fall of 2011. Nolan's and Ethan's mothers reported the harassment and the physical assaults to the school in September and again in October, but school administrators failed to conduct an official investigation as required by NRS 388.1351 or to prevent continued harassment. Nolan and Ethan eventually withdrew from the school, and their parents (collectively Bryan) later filed the underlying lawsuit. The district court found for Bryan on both their Title IX and § 1983 claims following a bench trial.

On appeal, the school district contests nearly every element of the district court's decision, beginning with whether the harassment was "on the basis of sex," as required for a Title IX claim. Recently the United States Supreme Court ruled that Title VII's prohibition against discrimination "because of . . . sex" extends to homosexual and transgender individuals. *Bostock v. Clayton Cty.*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 1731 (2020). Applying *Bostock's* reasoning to the analogous language in Title IX prohibiting harassment "on the basis of sex," we first conclude sufficient facts support a claim under Title IX.

The school district also challenges the district court's sole reliance on the violation of state law to satisfy "deliberate indifference," an essential element of both the Title IX and § 1983 claims. Although the state law violation is a factor in determining deliberate indifference, it does not constitute *per se* deliberate indifference under federal law. We therefore reverse the judgment in Bryan's favor on both claims and remand for further findings on the Title IX claim.

### FACTS

In the fall of 2011, Nolan and Ethan were sixth-graders at Greenspun Junior High, where they played the trombone in band class. Fellow trombone player C., along with his friend D., bullied Nolan by calling him homophobic names and touching his shoulder-length blond hair. In mid-September, C., who sat next to Nolan in band, called Nolan a tattletale and stabbed him in the groin with a pencil, commenting he wanted to know if Nolan was a boy or a girl. Nolan, who had reported C.'s harassment to the dean a few days earlier, believed C. was retaliating for that report.

Nolan and Ethan were friends, and Nolan told Ethan about the incident. Ethan's mother, Mary, overheard the boys talking and thereafter obtained the details from Ethan. On September 15, Mary emailed the band teacher and school counselor to report the bullying and the pencil-stabbing incident, but she did not mention the homophobic slurs. Mary attempted to include Principal Warren McKay on the email but misspelled his email address. The band teacher spoke with C. and D. and rearranged the trombone section, and the school counselor met with Nolan, who stated he was fine.

Nolan's mother, Aimee, learned about the stabbing incident for the first time on September 21. Aimee spoke with both the dean and the vice principal on September 22. She told the vice principal that C. had assaulted Nolan by stabbing him in the genitals while asking "if [Nolan] was a little girl." The school counselor again met with Nolan and walked Nolan to the dean's office, encouraging him to file a report of the stabbing and other bullying. Nolan filed a report stating that C. was messing with his hair, blowing air in his face, kicking his instrument, and calling him and other students names like "duckbill Dave." Nolan did not report the stabbing or the homophobic slurs. The dean met with C. and his mother in

late September to discuss the school's hands-off policy for students and to prohibit C. from name-calling.

C. and D. nevertheless continued to harass Nolan by calling him names and bumping into him as he entered or exited the band room. C. and D. also began targeting Ethan and Nolan jointly, calling them "faggots" and teasing them about being boyfriends and engaging in sexual conduct with each other. Nolan and Ethan later testified they did not identify as homosexual, nor did they believe others at Greenspun thought they were homosexual, despite the homophobic slurs.

On October 18, C. scratched Ethan on the leg with a trombone. Ethan told Mary of the incident and that C. had continued to say that Nolan and Ethan were boyfriends and faggots. Mary recalled Ethan reporting, for example, that C. had asked Ethan whether he was learning about shoving staffs "up people's asses so that you can jerk each other off" and "putting penises in somebody's ass."

Mary emailed Principal McKay and the school counselor again on October 19—although she again misspelled Principal McKay's email address. Mary reported the trombone-scratching incident and referenced the September 15 email, reiterating that C. and D. continued to bully Ethan and Nolan. As in her prior email, she omitted mention of the homophobic conduct. The school counselor forwarded the email to the dean. Mary also met with the dean on October 19, telling her of the full extent of the harassment, including the homophobic slurs.

C. and D. continued to call Ethan and Nolan names. Nolan began to withdraw and show signs of stress. Ethan began contemplating suicide. Nolan and Ethan began avoiding class and eventually stopped going to school. The boys withdrew from Greenspun in early 2012 and thereafter enrolled in private schools. Mary sent a third email on February 7 to school administrators and the school district, detailing the

homophobic slurs and the sexual nature of the harassment. Principal McKay suspended C. and D. at the direction of district supervisors.

Mary and Aimee filed the underlying lawsuit, which proceeded to trial against Clark County School District (CCSD) on a Title IX claim under 20 U.S.C. § 1681 and a civil rights claim under 42 U.S.C. § 1983.<sup>1</sup> The district court presided over a five-day bench trial during November 2016. The CCSD employees generally testified that they believed at least one of Greenspun's administrators had investigated both the September and October reports, and that they did not know of the homophobic nature of the bullying until after Nolan and Ethan withdrew from school. But the CCSD employees gave varied testimony regarding the administrators' exact response to the September and October reports, and no administrator could recall conducting an investigation complying with NRS 388.1351 (2011),<sup>2</sup> the statute governing bullying complaints.

The district court found CCSD liable for student-on-student harassment under both Title IX and § 1983. In its two written orders, the district court focused on the school's failure to conduct any investigation, let alone one as required by Nevada law under NRS 388.1351, when the bullying occurred. The court awarded physical and emotional distress damages of \$600,000 apiece to Nolan and Ethan, \$50,000 apiece for the cost of alternative schooling over five years, and attorney fees and costs.

CCSD now appeals.

### *DISCUSSION*

CCSD contests the district court's decision as to nearly every element of the Title IX and § 1983 claims and further contests the awards

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<sup>1</sup>We focus only on the claims and parties that proceeded to trial and do not address the dismissed claims and parties.

<sup>2</sup>All references to this statute refer to the 2011 version.

for damages and attorney fees. While the students' harassment is disturbing and the administrators' response deficient under NRS 388.1351, we are constrained to follow federal law governing Title IX and § 1983 claims for student-on-student harassment, which allows for the recovery of damages only in very narrow circumstances. We first address the Title IX claim and remand for findings regarding deliberate indifference under the applicable law. We then address the § 1983 claim and reverse the decision as to that claim.

### *Title IX*

Title IX is a federal civil rights law enacted in 1972 that provides the following: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a) (2012) (Title IX).

The first requirement for imposing Title IX liability is that the harassment be "on the basis of sex." *Id.* For liability to attach to a school district in cases of student-on-student harassment, the plaintiff must also show that the school exercised substantial control over the harasser and the situation, the harassment was so severe as to deprive the plaintiff of educational opportunities, a school official with authority to correct the situation had actual knowledge of the harassment, and the school was deliberately indifferent to the known harassment. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736, 739 (9th Cir. 2000) (relying on *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999)). We address these elements in turn.

### *The harassment fell within the purview of Title IX*

The district court based Title IX liability upon perceived sexual orientation harassment, finding the bullying was sexual in nature due to

the homophobic name calling.<sup>3</sup> On appeal, CCSO contends that the bullying was “sexually tinged” but was not sexual harassment under Title IX because Nolan and Ethan testified they were not homosexual and the evidence showed the bullying was retaliatory.

In addressing this issue, we may look to Title VII, as the prohibition there is substantially similar to Title IX’s prohibition and courts have frequently looked to Title VII jurisprudence to interpret Title IX’s antidiscrimination provision. *See Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020) (explaining that caselaw interpreting Title VII “guides our evaluation of claims under Title IX”); *Adams v. Sch. Bd. of St. Johns Cty.*, 968 F.3d 1286, 1305 (11th Cir. 2020) (using caselaw interpreting Title VII to address whether a school’s bathroom policy discriminated against transgender status in violation of Title IX because both titles prohibit discrimination based on sex and use a but-for causation standard); *Emeldi v. Univ. of Or.*, 698 F.3d 715, 724 (9th Cir. 2012) (explaining the legislative history of Title IX implies Congress intended that legislation to have substantive standards similar to Title VII).

We recognize that, at the time this appeal was filed, there was substantial conflicting law regarding whether Title IX’s protections extended to homosexual and transgender individuals or protected against perceived sexual orientation harassment. *Compare Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 115 (2d Cir. 2018) (broadly construing Title VII based on the statute’s language and concluding that “because sexual

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<sup>3</sup>The district court’s findings on this point are limited. We caution district courts in the future to make express, detailed findings on this point in order to clarify their reasoning and, if necessary, facilitate appellate review. *See, e.g., Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) (recognizing that a lack of findings supporting the district court’s decision hampers meaningful appellate review, even when such review is deferential, “because [the appellate court is] left to mere speculation”).

orientation discrimination is a function of sex, and is comparable to sexual harassment, gender stereotyping, and other evils long recognized as violating Title VII, the statute must prohibit it”), *with Tumminello v. Father Ryan High Sch., Inc.*, 678 Fed. Appx. 281, 285-86 (6th Cir. 2017) (addressing Title IX and concluding the plaintiff’s allegations of sexual orientation discrimination did not amount to a viable sex-stereotyping claim).

In deciding the question of whether the harassment here was “on the basis of sex” within the purview of Title IX, we are aided by the United States Supreme Court’s recent Title VII decision in *Bostock v. Clayton County*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 1731 (2020). *See, e.g., Grimm*, 972 F.3d at 616 (applying *Bostock* to evaluate a Title IX claim); *Adams*, 968 F.3d at 1305 (using *Bostock* to address a Title IX violation).

In *Bostock*, the Supreme Court addressed whether Title VII prohibited employers from firing employees “simply for being homosexual or transgender.” \_\_\_ U.S. at \_\_\_, 140 S. Ct. at 1737. Title VII provides that an employer may not lawfully discharge an employee “because of such individual’s . . . sex.” *Id.* at \_\_\_, 140 S. Ct. at 1738 (quoting 42 U.S.C. § 2000e-2(a)(1) (Title VII)). The Court explained that “the ordinary meaning of ‘because of’ is ‘by reason of’ or ‘on account of,’” and that the statute’s language therefore incorporated a “but-for causation” standard. *Id.* at \_\_\_, 140 S. Ct. at 1739 (quoting *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 350 (2013)). The Court recognized that, under this “sweeping standard,” more than one factor could lead to the discrimination and held that “[s]o long as the plaintiff’s sex was one but-for cause of that decision, that is enough to trigger the law.” *Id.* at \_\_\_, 140 S. Ct. at 1739. The Court then addressed the question of what constitutes discrimination under Title VII, holding that “an employer who intentionally treats a person worse because of sex . . . discriminates against that person in violation of Title VII.” *Id.* at \_\_\_, 140 S. Ct. at 1740. In reaching its conclusion, the Court

noted that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Id.* at \_\_\_, 140 S. Ct. at 1741.

*Bostock* clarifies that Title VII prohibits employment discrimination against transgender and homosexual individuals. Turning to Title IX, and applying *Bostock*’s reasoning, we conclude that Title IX’s prohibition of discrimination “on the basis of sex” likewise encompasses discrimination against homosexual or transgender individuals. *See Grimm*, 972 F.3d at 616-17 (construing Title IX as encompassing discrimination against transgender individuals pursuant to *Bostock*). It follows that harassment based upon perceived sexual orientation also falls under Title IX, as in both situations the perpetrator’s view of the victim’s sexual orientation is a factor motivating the harassment. *See Zarda*, 883 F.3d at 112 (explaining that “sexual orientation discrimination is predicated on assumptions about how persons of a certain sex can or should be”); *see also Bostock*, \_\_\_ U.S. at \_\_\_, 140 S. Ct. at 1739-40 (explaining Title VII is triggered where an employer “intentionally treats a person worse because of sex”). Thus, regardless of whether the harassment arises from the person’s actual sexual orientation or perceived sexual orientation, the harassment is prohibited by Title IX. *See, e.g., Bostock*, \_\_\_ U.S. at \_\_\_, 140 S. Ct. at 1739-40; *Zarda*, 883 F.3d at 112.

Following a bench trial, the district court here found that Nolan and Ethan were harassed because of their perceived sexual orientation. Unlike cases dismissed for failure to state a claim or resolved on summary judgment, which we review completely *de novo*, here we only review issues of law *de novo* and give deference to the district court’s factual findings that are supported by substantial evidence in the record. *See, e.g., Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012) (explaining we will uphold factual findings so long as they are supported by substantial

evidence and not clearly erroneous, but will review legal issues de novo); *see also Pack v. LaTourette*, 128 Nev. 264, 267, 277 P.3d 1246, 1248 (2012) (reviewing a dismissal for failure to state a claim de novo); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing summary judgment de novo). “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.” *Weddell*, 128 Nev. at 101, 271 P.3d at 748 (quoting *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008)).

With those standards in mind, we conclude substantial evidence supports the district court’s finding. Although testimony supported that Nolan and Ethan were neither gay nor perceived as gay by C. and D., it was within the district court’s discretion to weigh this testimony against the other evidence at trial and determine the evidence as a whole nevertheless established perceived sexual orientation harassment—harassment on the basis of sex—within the meaning of the statute. In particular, we note the continual homophobic slurs, including those that went far beyond mere name-calling and described specific sex acts. We also note that C. and D. touched Nolan’s long, blond hair as part of the harassment and, on one occasion, stabbed Nolan in the genitals while questioning his gender. Further, C. and D. targeted Nolan and Ethan jointly for their alleged sexual relationship. These facts support that the harassment was motivated, at least in part, by perceived sexual orientation and therefore falls within the purview of Title IX. *See, e.g., Bostock*, \_\_\_ U.S. at \_\_\_, 140 S. Ct. at 1739-40 (explaining that, so long as sexual discrimination is one of the motivations behind the harassment, the harassment falls under Title VII).

*The school exercised substantial control over the harasser and the situation*

The district court found that CCSD had substantial control, since the harassment occurred during band class. This prong is typically established where the misconduct occurs at school and during school hours. *See Davis*, 526 U.S. at 646. The facts establish this prong, as the harassment occurred while the boys were at school, and CCSD does not challenge this point on appeal.

*The harassment was so severe as to deprive the plaintiff of educational opportunities*

The district court found that the harassment deprived Nolan and Ethan of their educational opportunities where both boys suffered emotional distress, skipped band class, and eventually left school. CCSD argues that the harassment was not so severe, pervasive, and objectionably offensive as to deprive the boys of their educational opportunities or to have a concrete, negative effect on the boys' education. CCSD points out that Ethan and Nolan testified they were not prevented from participating in school activities and both did well academically.

Under this factor, "the plaintiff [must] suffer[] 'sexual harassment . . . that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.'" *Reese*, 208 F.3d at 739 (alteration in original) (quoting *Davis*, 526 U.S. at 650). The Supreme Court and the Ninth Circuit have cautioned that "simple acts of teasing and name-calling," even if gendered, will not warrant Title IX liability. *Id.* (quoting *Davis*, 526 U.S. at 652). The Supreme Court has also explained that "in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it." *Davis*, 526 U.S. at 651-52. Thus, in considering this prong, courts should "bear in mind that schools are unlike the adult workplace and that

children may regularly interact in a manner that would be unacceptable for adults," such that "[d]amages are not available for simple acts of teasing and name-calling among school children . . . even where these comments target differences in gender." *Reese*, 208 F.3d at 739 (alterations in original) (quoting *Davis*, 526 U.S. at 651-52).

While the record does not reflect that the district court here expressly considered the schoolroom setting or that the harassers were minors, we nevertheless conclude the record contains sufficient evidence to support the district court's finding. The conduct at issue here went far beyond mere insults and banter—the language was ugly, pervasive, and resulted in a serious physical assault. Although the evidence suggested the boys did well academically despite the harassment, the facts nevertheless demonstrate that Nolan began skipping band and other classes and eventually skipped school, while Ethan began faking illness to stay home and contemplating suicide. We therefore conclude substantial evidence supports that the boys were denied educational opportunities as a result of the harassment. *See Davis*, 526 U.S. at 654 (suggesting this element is satisfied where the harassment has a "concrete, negative effect" on the victim's ability to participate in the educational program).

*A school official with authority to correct the situation had actual knowledge of the harassment*

The district court found that the collective complaints and discussions with Mary and Aimee put CCSD on notice of the bullying and "should have prompted a mandatory investigation." CCSD on appeal contends it did not have actual knowledge of the continuing harassment because Nolan and Ethan concealed the harassment.

This prong requires that a school "official 'who at a minimum has authority to address the alleged discrimination and to institute corrective measures'" have "actual knowledge of the discrimination." *Reese*,

208 F.3d at 739 (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998)).

The parties introduced substantial conflicting evidence regarding the extent to which Greenspun administrators knew of the ongoing sexual harassment. The CCSD employees all denied knowing of the sexual slurs until after the boys left school and, to varying degrees, denied knowing details of the physical and nonsexual harassment. But Nolan's mother, Aimee, testified to telling school administrators on September 22 that C. had stabbed Nolan in the genitals while asking if Nolan was a girl. Moreover, Ethan's mother, Mary, testified to reporting the full details of the harassment to the dean on October 19. We will not disturb the district court's determination that the parents were more credible than the school district employees on this fact. *See Weddell*, 128 Nev. at 101, 271 P.3d at 748; *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (acknowledging the conflicting evidence presented on an issue of fact and noting, "we leave witness credibility determinations to the district court and will not reweigh credibility on appeal"). And, because the administrators had the ability to address the bullying and institute corrective measures, we conclude CCSD had actual notice for purposes of Title IX. *See, e.g., Reese*, 208 F.3d at 739.

*Further findings are necessary to establish deliberate indifference*

As to the deliberate indifference element, the district court determined it had been satisfied because Greenspun administrators violated state law by failing to investigate the complaints. The court particularly faulted them for failing to comply with NRS 388.1351(2), which, at the time, required a school, upon learning of a bullying incident, to "initiate an investigation not later than 1 day after receiving notice" and

to complete the investigation within 10 days.<sup>4</sup> The court found that the administrators undertook “no investigation, much less one conforming to statute,” in 2011, and that this failure was “significant evidence of an overall posture of deliberate indifference toward Ethan’s and Nolan’s welfare.” The parties vehemently disagree over whether the facts establish deliberate indifference—most notably, about whether the failure to investigate as required by state statute established *per se* deliberate indifference under federal law.

To succeed on a Title IX claim, a plaintiff must establish that the defendant acted with “deliberate indifference” to the harassment. See *Davis*, 526 U.S. at 643. Deliberate indifference is a stringent standard that requires more than mere negligence. *Id.* at 642-43 (declining to impose liability under a negligence standard); see also *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1105 (9th Cir. 2020) (explaining that “[t]his is a fairly high standard—a ‘negligent, lazy, or careless’ response will not suffice” (quoting *Oden v. N. Marianas Coll.*, 440 F.3d 1085, 1089 (9th Cir. 2006))).

Addressing deliberate indifference in the context of student-on-student harassment, the Supreme Court has explained that Title IX liability will arise only from “an official decision by the recipient not to remedy the violation,” citing the “high standard imposed” in *Gebser v. Lago Vista Independent School District*. *Davis*, 526 U.S. at 642-43 (first quote quoting *Gebser*, 524 U.S. at 291), 653 (also warning that “[p]eer harassment, in particular, is less likely to satisfy [Title IX] requirements than teacher-student harassment”); see also *Karasek*, 956 F.3d at 1104-05, 1108-09 (explaining damages are not recoverable for a Title IX violation unless the

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<sup>4</sup>If the investigation found bullying, the school then had to make “recommendations concerning the imposition of disciplinary action or other measures . . . in accordance with the policy governing disciplinary action adopted by the board of trustees of the school district.” NRS 388.1351(2).

defendant made an official decision not to remedy the situation, and considering this point in the context of deliberate indifference). The Court has also admonished district courts to “refrain from second-guessing the disciplinary decisions made by school administrators,” who “will continue to enjoy the flexibility they require” so long as the school “merely respond[s] to known peer harassment in a manner that is not clearly unreasonable.” *Davis*, 526 U.S. at 648-49. The Ninth Circuit later explained that, “[a]bsent an unreasonable response, [courts] cannot ‘second-guess[ ] the disciplinary decisions made by school administrators. And the reasonableness of the response depends on the educational setting involved . . .’” *Karasek*, 956 F.3d at 1105 (citation omitted) (quoting *Davis*, 526 U.S. at 648-49).<sup>5</sup>

The Ninth Circuit has explained that Title IX also requires “the deliberate indifference [to], at a minimum, cause students to undergo harassment or make them liable or vulnerable to it,” and that “‘deliberate indifference’ occurs ‘only where the recipient’s response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.’” *Reese*, 208 F.3d at 739 (quoting *Davis*, 526 U.S. at 645, 648); see also *Karasek*, 956 F.3d at 1105 (addressing deliberate indifference and causation). Even ineffective responses may still satisfy the school’s obligation where the response was not clearly unreasonable and therefore does not amount to deliberate indifference. See, e.g., *Sauls v. Pierce Cty. Sch. Dist.*, 399 F.3d 1279, 1285 (11th Cir. 2005). And, again, negligence is not enough—the response or inaction must constitute an official decision against remedying the situation. See, e.g., *Davis*, 526 U.S. at 642-43.

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<sup>5</sup>*Davis* gave an example of actionable student-on-student sexual harassment where male students physically threatened female peers in order to prevent them from using a school resource, and the school district administrators, while “well aware” of the harassment, “deliberately ignore[d] requests for aid.” *Davis*, 526 U.S. at 650-51.

The Ninth Circuit recently addressed whether a school's violation of its own regulations and policies is deliberate indifference *per se* for purposes of Title IX liability. *Karasek*, 956 F.3d at 1107-08; *see also Per Se*, *Black's Law Dictionary* (11th ed. 2019) (defining "per se" as "standing alone, without reference to additional facts"). The Ninth Circuit held it is not, as a school can fail to follow federal or self-imposed regulations without being deliberately indifferent under federal law. *Karasek*, 956 F.3d at 1107-08 ("A damages remedy for Title IX violations is judicially implied, not statutorily created. . . . The Supreme Court in *Davis*, not Congress, articulated the deliberate-indifference standard."). Thus, although a school's noncompliance with statutes, regulations, and policies can be a significant factor in analyzing deliberate indifference, "particularly when it reflects 'an official decision . . . not to remedy the [Title IX] violation,'" noncompliance is not dispositive evidence of deliberate indifference. *Id.* at 1108 (quoting *Gebser*, 524 U.S. at 290 (alterations in original)).

We agree with *Karasek* that the violation of a regulation or policy—or here, a state statute—is not *per se* deliberate indifference. The foregoing clarifies that deliberate indifference is an exacting standard established by federal caselaw and requires the plaintiff to show, for instance, that the defendant was more than negligent, the response was clearly unreasonable in light of the known circumstances, and the indifference caused the plaintiff to either undergo harassment or made the plaintiff more vulnerable to it. *See, e.g., Davis*, 526 U.S. at 642-43, 648-49; *Karasek*, 956 F.3d at 1104-05, 1108-09; *Reese*, 208 F.3d at 739. Moreover, Title IX damages are appropriate only where the plaintiff shows an official decision not to remedy the violation. *See, e.g., Davis*, 526 U.S. at 642-43; *Karasek*, 956 F.3d at 1108.

Accordingly, although the violation of a statute, regulation, or policy may inform a finding of deliberate indifference, the state law violation could not constitute *per se* deliberate indifference. Our careful review of the district court's orders shows it erroneously focused on the statutory violation in finding deliberate indifference without expressly analyzing the elements of deliberate indifference under the applicable federal standards. The relevant question under the pleaded claims was not whether Greenspun administrators failed to comply with NRS 388.1351, but whether the response was more than negligent, was clearly unreasonable in light of the known circumstances, and caused the boys to either undergo harassment or be more vulnerable to it. *See, e.g., Davis*, 526 U.S. at 642-43, 648-49; *Karasek*, 956 F.3d at 1104-05, 1108-09; *Reese*, 208 F.3d at 739. Again, while the facts underlying the statutory violation may inform a finding of deliberate indifference, the statutory violation and the deliberate indifference are separate legal questions.

And, after reviewing the record, we cannot say that substantial evidence supports the district court's finding of deliberate indifference regardless of this error. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that we can affirm a district court's decision on different grounds than those used by the district court). In regard to the September reports<sup>6</sup> of Nolan's harassment, despite whether Greenspun administrators failed to comply with NRS 388.1351 at that time, the record shows that CCSD's employees were at

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<sup>6</sup>While the district court did not separately address the responses to the September and October reports of harassment, we choose to do so because the record does not support that CCSD employees knew of the sexual nature of the harassment before October, Mary failed to inform Principal McKay of the harassment in September by misspelling his email address, and Nolan did not report the sexual harassment and downplayed the harassment when school officials asked about it in September.

most negligent and their response was not unreasonable in light of the known circumstances. The dean followed the school's procedure and met with C, and his mother to remind C. about the school's hands-off policy for students and instructed him to stop bullying Nolan. She also spoke to the band teacher about rearranging the classroom seating. Although the band teacher and the school counselor were not school administrators, both took action as well. The band teacher spoke to C. and D. about their behavior and rearranged the seating to move Nolan away from C. and to where he could easily watch the boys. The school counselor met with Nolan, encouraged him to report the stabbing incident to the dean, and walked Nolan to the dean's office for that purpose. With the advantage of hindsight, it is clear the response failed to prevent further harassment. Nevertheless, the record does not demonstrate that CCSD deliberately failed to take action or that any of the actions taken amounted to more than mere negligence in light of the known circumstances. *See, e.g., Karasek*, 956 F.3d at 1104. Accordingly, to the extent the district court found deliberate indifference based upon CCSD's action or inaction in September, that finding is not supported by the record. *See Karasek*, 956 F.3d at 1107-08.

The school's response following the October report, however, presents a closer call. Although all of CCSD's employees denied receiving notice of the sexual nature of the harassment until after the boys left the school, and Ethan and Nolan hid the harassment from the administrators, Mary testified she informed the dean of the full details of the harassment on October 19. Thus, the record supports that, by October, Greenspun administrators knew the harassment was sexual in nature, ongoing, unresolved by the school's earlier efforts, and now involved Ethan as well as Nolan. Moreover, no administrator could recall actually investigating that report or whether another employee had actually done so.

Importantly, the information gained from the investigation of the September incident, and Greenspun's administrators' failure to prevent future harassment, informs the October incident. Indeed, at that point it was clear that further investigation and more serious intervention was necessary to stop the sexual and other harassment against Nolan and Ethan, as well as to prevent further bullying and physical assaults. But by finding that the school's violation of a state statute constituted *per se* deliberate indifference, the district court bypassed the key questions of whether the evidence demonstrated CCSD was more than negligent, that its inaction was clearly unreasonable in light of the known circumstances, and that its inaction caused the boys to either undergo harassment or be more vulnerable to it. *See Davis*, 526 U.S. at 642-43, 648-49; *Karasek*, 956 F.3d at 1104-05, 1108-09; *Reese*, 208 F.3d at 739. And because there was substantial conflicting testimony regarding what occurred during and following the harassment, we decline to resolve this issue on appeal, as in light of the evidence adduced at trial it is an issue more appropriately determined by the district court.<sup>7</sup> *See, e.g., Davis*, 526 U.S. at 639-54 (addressing the elements of a Title IX claim and reversing the dismissal of a complaint after concluding the plaintiff presented facts that, if supported by evidence the fact-finder found credible, would support a violation); *Ellis*, 123 Nev. at 152, 161 P.3d at 244 (recognizing that it is the district court's duty to make credibility determinations regarding conflicting evidence).

We therefore reverse the decision insofar as it was based upon the September complaint but remand for additional findings as to whether

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<sup>7</sup>While evidence supports the district court's conclusion that CCSD's inaction made the boys more vulnerable to harassment, the district court, by focusing on the statutory violation, failed to appropriately analyze this issue. We therefore do not address this particular point here, instead leaving this element for the district court to address on remand when determining whether Bryan established deliberate indifference.

the events following the October report constituted deliberate indifference under the applicable federal standards.

*Section 1983 liability*

On appeal, CCSD contends Bryan's § 1983 claim fails on multiple grounds, including, again, on the deliberate indifference prong. As set forth below, we agree Bryan's § 1983 claim fails, and we therefore reverse the district court's finding of liability under that statute.<sup>8</sup>

42 U.S.C. § 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . .

To prove liability under § 1983, the plaintiff must show "(1) the conduct complained of was committed by a person acting under color of state law; and (2) the conduct deprived the plaintiff of a federal constitutional or statutory right." *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 971 (9th Cir. 2011). Because the "state is not liable for its omissions," and § 1983 "does not impose a duty on [the state] to protect individuals from third parties," *id.* (alteration in original) (quoting *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1086 (9th Cir. 2000), and *Morgan v. Gonzales*, 495 F.3d 1084,

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<sup>8</sup>Our above analysis regarding deliberate indifference under Title IX equally applies to the § 1983 claim. *See, e.g., Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1133, 1135 (9th Cir. 2003) (addressing the plaintiff's § 1983 claim alleging student-on-student harassment and quoting *Davis*, 526 U.S. at 649, for the proposition that the deliberate indifference required for such a claim exists where school administrators "respond[ ] to known peer harassment in a manner that is . . . clearly unreasonable"). In light of the foregoing and our decision regarding *Monell* liability, we need not separately address deliberate indifference here.

1093 (9th Cir. 2007)), a plaintiff cannot recover for student-on-student harassment unless the plaintiff shows the state affirmatively placed the plaintiff in danger.<sup>9</sup> See *id.* at 971-72 (addressing the state-created danger exception).

In addition, a school *district* will not be liable for student-on-student harassment unless the school district's official policies caused the deprivation of the protected rights (*Monell* liability). *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-94 (1978) (addressing how a governmental entity may be held liable for injuries caused by its employees and agents); *Lansberry v. Altoona Area Sch. Dist.*, 318 F. Supp. 3d 739, 758 (W.D. Pa. 2018) (explaining that for a school district to have liability under *Monell*, it "must establish that the [district] had a 'policy or custom' and that the policy or custom 'caused' the constitutional violations" (quoting *Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 584 (3d Cir. 2003))); see also *L.A. Cty. v. Humphries*, 562 U.S. 29, 35 (2010) (concluding a municipality and other governing bodies (such as school districts) typically cannot be held vicariously liable under § 1983).

More specifically, and as applicable here, *Monell* liability will attach if the "district employee was acting as a 'final policymaker.'" *Lytle v. Carl*, 382 F.3d 978, 982 (9th Cir. 2004) (quoting *Webb v. Sloan*, 330 F.3d 1158, 1164 (9th Cir. 2003)) (addressing the three circumstances under which *Monell* liability applies to a school district). To be a final policymaker for purposes of *Monell* liability, the district employee "must be in a position of authority such that a final decision by that person may appropriately be attributed to the District." *Id.* at 983. A plaintiff satisfies this element by showing that a decisionmaker with final authority to establish policy with

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<sup>9</sup>There is a second exception, the "special relationship" exception, which is not at issue here.

respect to the issue takes action that effectively binds the school district. *See Lansberry*, 318 F. Supp. 3d at 758. Authority to make school district policy can be granted by the legislature or delegated by an official who possesses the policymaking authority. *Lytle*, 382 F.3d at 983.

In considering *Monell* liability, courts must look to the particular situation to determine whether the district employee is a policymaker, asking “whether he or she has authority ‘in a particular area, or on a particular issue.’” *Id.* (emphasis in *Lytle*) (quoting *McMillian v. Monroe Cty.*, 520 U.S. 781, 785 (1997)). Courts must therefore consider “whether there is an actual opportunity for meaningful review” of the subject decision. *Holloman v. Harland*, 370 F.3d 1252, 1292 (11th Cir. 2004) (internal quotation marks omitted). “If a higher official has the power to overrule a decision but as a practical matter never does so, the decision-maker may represent the effective final authority on the question.” *Bowen v. Watkins*, 669 F.2d 979, 989 (5th Cir. 1982). We review de novo the district court’s decision regarding final policymaker authority. *See Holloman*, 370 F.3d at 1292.

Here the district court concluded that the elements of *Monell* liability were satisfied because under NRS 388.1351(2)’s directive, the principal or his designee investigate bullying reports and Principal McKay was a decisionmaker with final authority to make policy (a final policymaker) with respect to student discipline. For the reasons below, we conclude the § 1983 claim fails on this element.<sup>10</sup>

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<sup>10</sup>Given our disposition under *Monell*, we need not address the other elements of § 1983 liability, but after carefully reviewing the record and the law, we find Bryan’s arguments with respect to the federal constitutional right and the state-created danger exception to be without merit.

Although the above caselaw makes clear that, in some circumstances, a principal may be a final policymaker for purposes of *Monell* liability, in this matter, the appellate record does not support that Principal McKay was a final policymaker. While NRS 388.1351 clearly tasked principals and their designees with investigating bullying allegations and recommending discipline for violations, those recommendations are to be in accordance with the district's disciplinary policies. See NRS 388.1351(2). More importantly, the record established that Principal McKay did not have the final say over student discipline, as his superiors could overrule his decisions. Even in this case, Principal McKay did not have the final say over C.'s and D.'s discipline, as the school district ordered him to suspend both students—overriding Principal McKay's concerns regarding D.'s suspension. Accordingly, the district court erred by concluding Bryan established this element.

Based on the foregoing, we reverse the district court's decision as to the § 1983 claim.

### CONCLUSION

Following *Bostock v. Clayton County*, we hold Title IX's protections against sex-based discrimination extend to prohibit discrimination against homosexual and transgender individuals, as well as discrimination based on perceived sexual orientation. \_\_\_ U.S. \_\_\_, 140 S. Ct. 1731 (2020). Here, we conclude the record supports the district court's finding that the harassment was "on the basis of sex" for purposes of Title IX. While we conclude the record does not support the finding of deliberate indifference with respect to the September incident, we remand for additional findings as to whether the events following the October report demonstrate deliberate indifference. And finally, we reverse the decision as

to the 42 U.S.C. § 1983 claim. In light of our decision, we necessarily reverse the damages and attorney fees awards.<sup>11</sup>

Silver, J.  
Silver

We concur:

Hardesty, J.  
Hardesty

Stiglich, J.  
Stiglich

<sup>11</sup>We do not reach the substantive arguments regarding the damages and attorney fees awards here. We note, however, several concerns with the damages award. First, Mary and Aimee merely speculated to their out-of-pocket expenses, and the record does not support the district court's calculation for five years of out-of-pocket expenses for each boy. We are also troubled by the district court's reliance on a settlement agreement in an unrelated federal case to calculate physical and emotional distress damages. We caution that damages cannot be merely speculative or simply based on another case's settlement agreement. *See Frantz v. Johnson*, 116 Nev. 455, 469, 999 P.2d 351, 360 (2000) (explaining there must be an evidentiary basis for an award). We also caution courts in civil rights cases to consider whether the plaintiffs have a duty to mitigate damages. *See 2 Civ. Actions Against State & Local Gov't § 13:15* (2d ed. 2002) (addressing the plaintiff's responsibility to mitigate damages when suing under civil rights statutes due to the application of common-law tort principles to determine the remedies for such claims).

To the extent CCSD argues state law caps on damages awards apply, we note that where liability arises from the violation of a federal law, state law damages caps will likely not apply. *See, e.g., Beard v. Wexford Health Sources, Inc.*, 900 F.3d 951, 956-57 (7th Cir. 2018) (noting the variations on damages caps among the states, declining to apply state law caps to punitive damages under § 1983, and considering whether federal caps should apply); *Commonwealth Div. of Risk Mgmt. v. Va. Ass'n of Cty.'s Grp. Self Ins. Risk Pool*, 787 S.E.2d 151, 160 (Va. 2016) (concluding that state statutory caps on damages in medical malpractice cases applied only to state claims, not to federal civil rights claims, based on the language of the relevant state statutes).

# IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT  
(CCSD),

Appellant,

vs.

MARY BRYAN, MOTHER OF ETHAN BRYAN;  
AND AIMEE HAIRR, MOTHER OF NOLAN  
HAIRR,  
Respondents.

**Supreme Court No. 73856**

District Court Case No. A700018

CLARK COUNTY SCHOOL DISTRICT,  
Appellant,

vs.

MARY BRYAN, MOTHER OF ETHAN BRYAN;  
AND AIMEE HAIRR, MOTHER OF NOLAN  
HAIRR,  
Respondents.

**Supreme Court No. 74566**

District Court Case No. A700018

## REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: January 22, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze  
Administrative Assistant

cc (without enclosures):

Hon. Nancy L. Alf, District Judge  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Allen Lichtenstein  
Scott Law Firm \ John Houston Scott

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on JAN 25 2021.

HEATHER UNGERMANN

**Deputy** District Court Clerk

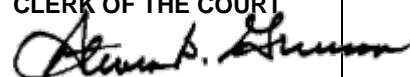
**RECEIVED  
APPEALS**

**JAN 25 2021**

**CLERK OF THE COURT**

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1 **TRAN**

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 MARY BRYAN, )  
 8 Plaintiff, ) CASE NO: A-14-700018-C  
 9 vs. )  
 10 CLARK COUNTY SCHOOL ) DEPT. XXVII  
 11 DISTRICT, )  
 12 Defendant. )  
 \_\_\_\_\_ )

13  
14 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

15 WEDNESDAY, FEBRUARY 17, 2021

16  
17 **TRANSCRIPT OF PROCEEDINGS**

18 **RE: MOTIONS**

19  
20  
21 FOR PLAINTIFF:  
 22 ALLEN LICHTENSTEIN, ESQ. (Blue Jeans)

23 FOR DEFENDANT:  
 24 BRIAN D. BLAKLEY, ESQ. (Blue Jeans)

25 RECORDED BY: BRYNN WHITE, COURT RECORDER  
 TRANSCRIBED BY: KATHERINE MCNALLY, TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 WEDNESDAY, FEBRUARY 17, 2021 1:20 p.m.

3 \* \* \* \* \*

4  
5 THE COURT: Let me call the next case, which is Bryan  
6 versus Clark County School District. Let's take appearances  
7 from the plaintiff first.

8 MR. LICHTENSTEIN: Allen Lichtenstein for plaintiffs.

9 I believe John Scott is also on the phone.

10 MR. SCOTT: That's correct, Your Honor. John Scott,  
11 also appearing for the plaintiffs.

12 THE COURT: Thank you.

13 And for the defendants, please.

14 MR. POLSENBERG: Good afternoon, Your Honor. Dan  
15 Polsenberg for the Clark County School District.

16 MR. WAITE: And good afternoon, Your Honor. Dan  
17 Waite, also for the Clark County School District.

18 THE COURT: Thank you.

19 Are there any other appearances?

20 All right. The decision I made based on the trial  
21 that was held in 2016 was reversed and remanded for new  
22 findings on the Title 9 claim, on the delivered indifference  
23 to harassment. I have re-reviewed the trial transcript. I  
24 have not reviewed the evidence, but I've reviewed the  
25 transcript.

1           And I -- let me just set this hearing to talk about  
2 procedure and how both of you want to move the case forward.  
3 I could make findings or I could hear additional argument. I  
4 don't intend to take new evidence. I think the evidence is  
5 closed at this point.

6           But let me hear -- you know, one thought I had was  
7 perhaps tasking both sides to do proposed findings, so that  
8 you would have a record on that, because I'm sure this will go  
9 back up on appeal.

10           So -- but let me hear the thoughts from plaintiff and  
11 then the defendant on how you wish to proceed.

12           MR. LICHTENSTEIN: Thank you, Your Honor. Allen  
13 Lichtenstein for plaintiffs.

14           Essentially our position is whatever the Court would  
15 feel is most helpful to the Court in doing this. We would be  
16 happy to do.

17           If it would be, as you suggested, proposed findings --  
18 that'll be fine. If you want a briefing, that'll be fine. Or  
19 if the Court feels that there's enough there to make its own  
20 findings without our input because it's been briefed, you  
21 know, quite extensively, we're fine with that.

22           So I guess our feeling really is the pleasure of the  
23 Court as to how you would like to proceed.

24           THE COURT: Thank you.

25           And Mr. Polsenberg and Mr. Waite?

1 MR. POLSENBERG: Thank you, Your Honor. This is  
2 Mr. Polsenberg.

3 I have two thoughts. You know, I worked with Rhett  
4 Stemmison [phonetic] for 25 years. And whenever we had a case  
5 where the plaintiff would win at trial, and then the Supreme  
6 Court would reverse and remand, he would say, you know,  
7 everybody has lost once now. It's probably a great time to  
8 look at settling the case.

9 So I think the first thing we ought to do is have a  
10 settlement conference. And if that fails -- and I'm really  
11 hopeful that it will be successful. But if that fails, I  
12 would suggest that we do briefing for you, and I think we can  
13 be more focused than last time. There are fewer issues.

14 And I think, Judge, I don't mind doing briefing and  
15 proposed findings of fact, but I think briefing would be more  
16 helpful for you.

17 THE COURT: Well, I hate to be rude, but it's been six  
18 weeks since the decision came down. No, I guess the -- it  
19 wasn't remanded until January 25th.

20 Have you guys talked about the possibility of having a  
21 settlement conference? And if so, how that would occur?

22 MR. POLSENBERG: I did propose that to Allen, yes.

23 THE COURT: All right.

24 MR. LICHTENSTEIN: Yes.

25 THE COURT: Would it be with an independent mediator

1 or --

2 MR. LICHTENSTEIN: Oh, yes.

3 THE COURT: -- or through the [indiscernible].

4 MR. POLSENBERG: You could -- you could either appoint  
5 a senior judge. Or we could go to one of the -- go to ARM or  
6 JAMS and pick somebody.

7 THE COURT: And the expense?

8 MR. POLSENBERG: I haven't talked to my client about  
9 that. But usually when we're involved, the defendant winds up  
10 paying for that.

11 THE COURT: Mr. Lichtenstein, I cut you off twice,  
12 sorry. No. That's fine. [Indiscernible.]

13 MR. LICHTENSTEIN: Obviously, if the Court feels that  
14 that is the proper approach, that would be fine. But since  
15 the question, as I read the report [indiscernible], it was  
16 what are the facts that would or would not show deliberate  
17 indifference? And that's not something for settlement.  
18 That's something for the Court to make a decision on.

19 It may make more sense to have that, and then, if  
20 appropriate, perhaps have a settlement conference after that.  
21 But as long as the question of whether or not there was  
22 deliberate indifference is still up in the air, it doesn't  
23 seem to us to be something that could be resolved at the  
24 settlement conference.

25 MR. POLSENBERG: Well, with all respect, that's when

1 you settle cases is when there are issues and risks for both  
2 sides. And I've settled a lot of cases on remand. So to put  
3 you through all that work before a settlement conference, and  
4 to be honest, to charge the school district attorney's fees to  
5 do all that work, that money would be better used as part of  
6 the settlement than paying lawyers. And that --

7 I am referring, of course, to Dan and myself, not to  
8 Allen.

9 THE COURT: Right. And Mr. Polsenberg, you said you  
10 had two thoughts. Then you talked about settling. Did you  
11 have another thought?

12 MR. POLSENBERG: Settlement conference, and, failing  
13 that, I would suggest briefing.

14 THE COURT: All right. Because what I'm going to  
15 suggest to both of you is that, you know, I have a certain  
16 time frame to make a decision, and I don't want to keep this  
17 hanging too long. I'm going to say that I've set a deadline,  
18 an artificial deadline, that if both sides can agree to  
19 mediate then we can put off the issue of briefing. But I  
20 really did like the issue of having both perspectives on the  
21 interpretation of the testimony.

22 Frankly, I did form an impression with regard to one  
23 of the witnesses who admitted he didn't act in accordance with  
24 the instructions of the principal. And I should have been  
25 more articulate in making sure that was in the record. To

1 give --

2           You know what, I've already ruled in favor of the  
3 plaintiff once. And I realize that only one claim is  
4 remaining -- the reversal also reverses the monetary award to  
5 the plaintiffs.

6           So response to that, let me hear first from  
7 Mr. Lichtenstein. And I would suggest that by a week from  
8 tomorrow -- today is what, the 17th -- by the 26th, you  
9 would -- yeah, you would either agree to -- and let me know  
10 that you've agreed to a settlement conference of some sort or  
11 a mediation or set a briefing schedule.

12           MR. LICHTENSTEIN: Certainly, Your Honor. We can  
13 discuss that and discuss that with our clients. And by that  
14 time have an answer to that question one way or the other.

15           THE COURT: Mr. Polsenberg?

16           MR. POLSENBERG: You know, I think you might make it  
17 easier for the lawyers if you would just order the settlement  
18 conference.

19           THE COURT: I can't unless both sides agree.

20           MR. POLSENBERG: Okay.

21           THE COURT: Even if you offer to pay for it, because  
22 [indiscernible].

23           MR. POLSENBERG: So the -- all right. If the -- if  
24 you want to go to -- I'm not really sure you have a time  
25 deadline to get to a decision. Under 41(e), you would have

1 three years from the remand. So I don't think that there's a  
2 rush.

3 THE COURT: I've also got [indiscernible] staring me  
4 in the face.

5 MR. POLSENBERG: Right. But I don't think anybody  
6 would accuse you in this case, or any other case, of not  
7 pushing forward on your case load, Judge.

8 My problem is I've got two Supreme Court arguments in  
9 the first half of March -- if you're going to do a briefing  
10 schedule.

11 THE COURT: Does the 26th give -- does the 26th give  
12 you both enough time?

13 I'm sorry. I cut you off. Go ahead.

14 MR. POLSENBERG: No. I was just thinking, well, you  
15 know, it's probably plaintiff goes first on the briefing  
16 schedule. So --

17 THE COURT: The way I would do it is just set a date  
18 to submit blind findings, and I'll review both sets, and then  
19 choose how to supplement the judgment and the findings.

20 MR. POLSENBERG: And I apologize for objecting, but I  
21 have a due process issue with blind briefs.

22 THE COURT: No, no. They -- simultaneously filed with  
23 service.

24 MR. POLSENBERG: I know. And I have a problem with  
25 not having a chance to respond to things. So I would propose

1 plaintiff go first, I respond, they reply.

2 THE COURT: Okay. This is way more complicated than I  
3 hoped it would be.

4 MR. LICHTENSTEIN: May I respond to it, please? I'm  
5 sorry.

6 THE COURT: Yeah. I think what I'm going to do is  
7 just set this on the Thursday calendar next week. Give you  
8 two a chance to talk about the various options and  
9 alternatives, and then we'll just hash it out.

10 MR. POLSENBERG: Great. Good idea.

11 THE COURT: But, Mr. Lichtenstein, please. Plaintiff,  
12 I cut you off again. It's unintentional.

13 MR. LICHTENSTEIN: That's quite all right.

14 All I was going to say was in terms of briefings, what  
15 I thought you were talking about were findings of fact or  
16 alternative versions of findings of fact -- not argument,  
17 which --

18 THE COURT: Not argument, no, not argument. I  
19 don't --

20 MR. LICHTENSTEIN: [Indiscernible] well,  
21 Mr. Polsenberg is talking about, which was one side would go  
22 first, then the other side, then the reply. It's more  
23 appropriate for argument if you're just doing findings of  
24 fact. Having them done simultaneously would seem to fit the  
25 bill.

1           THE COURT: What I intended was that you would cite to  
2 portions of the record from which conclusions could be made.  
3 So -- I like the idea of bringing you guys back on next  
4 Thursday at 11 a.m. You would be the last thing on the  
5 calendar. To the extent you could talk about these things,  
6 great. If not, I have your ideas in mind.

7           Mr. Polsenberg, I would not jam you up in March, if  
8 you have professional commitments that would take your  
9 attention away from this matter. But I don't anticipate a  
10 briefing schedule. There may be proposed findings with a  
11 comment period, and that's reasonable.

12           But I'm not -- I'm not going to rehear argument on it.  
13 You guys have -- we just don't hold trial -- the Supreme Court  
14 gave me a road map on how to either find or not find that  
15 there was still deliberate indifference.

16           So does Thursday work for both of you?

17           MR. POLSENBERG: 11 o'clock will work, Your Honor.

18           THE COURT: How about plaintiffs? Take a minute and  
19 check.

20           MR. WAITE: Are we talking about the 25th, Your Honor?

21           THE COURT: We are. The 25th at 11 a.m.

22           MR. WAITE: And I'll just remind you -- let me look at  
23 our schedule, but I think that is the day --

24           MR. LICHTENSTEIN: [Indiscernible] we have a *pro bono*  
25 lunch that day. And that's at 11:30.

1 THE COURT: Oh, you do.

2 MR. WAITE: It is.

3 THE COURT: We can do it at 10:30.

4 MR. POLSENBERG: Well, I have -- I think I'll be done  
5 with my other hearing by 10:30. So we could try that.

6 THE COURT: Great.

7 MR. LICHTENSTEIN: I can't speak for Mr. Scott. But  
8 I'm free at that time, so that would work for me.

9 THE COURT: Okay. Mr. Scott, would you be available  
10 on the 25th at 10:30 a.m.?

11 MR. SCOTT: Yes, I am, Your Honor.

12 THE COURT: Okay. All right. And I actually thought  
13 this hearing would take longer than the other one, so sorry  
14 you had to sit through that and hear me admit that I wasn't  
15 prepared, which is very embarrassing.

16 So February 25th, 10:30 a.m., you'll consult with your  
17 clients with regard to the possibility of doing the settlement  
18 conference, most likely at the expense of the defendant. And  
19 then with a way to present your proposed findings with a  
20 chance to respond, but not a chance to reargue. Yes?

21 MR. POLSENBERG: Can I talk you into letting us  
22 reargue it? I think that will stave -- but if there is a  
23 second appeal, it may even save a second appeal.

24 THE COURT: Let's take that up next week --

25 MR. POLSENBERG: All right.

1 THE COURT: -- after the two of you have talked.

2 So thank you all for your appearance today. Stay  
3 safe. Stay healthy. And I get to go back to the office next  
4 week. So [indiscernible].

5 MR. POLSENBERG: Yeah. I get my second shot at the --

6 THE COURT: [Indiscernible] I'm really going to miss  
7 COVID work -- I miss not leaving the house. So all right you  
8 guys, see you next week. Take care, everybody.

9 [Proceeding adjourned at 1:34 p.m.]

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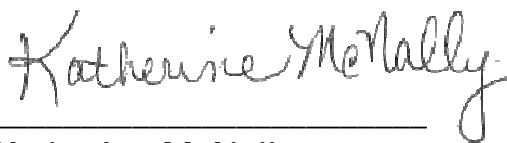
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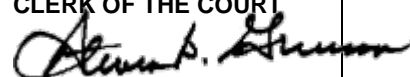
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1 **TRAN**

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 MARY BRYAN,

8 Plaintiff,

9 vs.

10 CLARK COUNTY SCHOOL  
 11 DISTRICT,

12 Defendant.

) CASE NO: A-14-700018-C

) DEPT. XXVII

14 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

15 THURSDAY, FEBRUARY 25, 2021

17 **TRANSCRIPT OF PROCEEDINGS**

18 **RE: MOTIONS**

21 FOR PLAINTIFF:

22 ALLEN LICHTENSTEIN, ESQ. (Blue Jeans)

23 FOR DEFENDANT:

24 BRIAN D. BLAKLEY, ESQ. (Blue Jeans)

25 RECORDED BY: BRYNN WHITE, COURT RECORDER

TRANSCRIBED BY: KATHERINE MCNALLY, TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 THURSDAY, FEBRUARY 25, 2021 10:51 a.m.

3 \* \* \* \* \*

4  
5 THE COURT: -- with Clark County School District. How  
6 long do you think you'll need?

7 Let's have appearances.

8 MR. LICHTENSTEIN: Allen Lichtenstein, for the  
9 plaintiff. This is Allen Lichtenstein.

10 MR. WAITE: Your Honor, Dan -- Dan Waite for Clark  
11 County School District. I can see Mr. Polsenberg there.  
12 There, he's gotten off the phone. He's coming.

13 THE COURT: Okay. Mr. Lichtenstein, your appearance.

14 MR. POLSENBERG: Well, Your Honor, congratulations on  
15 being back to the Court.

16 THE COURT: It's good to be back. Thank you.

17 And counsel for plaintiff, Mr. Lichtenstein.

18 MR. LICHTENSTEIN: Good morning, Your Honor.

19 THE COURT: How long do you think that you will need  
20 this morning? 10 minutes, 15 minutes, 5 minutes?

21 MR. LICHTENSTEIN: Really just a few minutes.

22 MR. POLSENBERG: Yeah. I agree. My dog has escaped  
23 from the backyard, so I have to go get her.

24 THE COURT: Mr. Polsenberg, you may be excused.

25 MR. POLSENBERG: No. That's all right. I'll stay. I

1 agree with Allen. I think it's only going to take a few  
2 minutes.

3 THE COURT: Okay.

4 [Recess taken from 10:52 a.m., until 10:56 a.m.]

5 THE COURT: -- page 13, which is Bryan versus Clark  
6 County School District. And let me hear from the plaintiff to  
7 report back, if you have talked about additional briefing,  
8 what form that will take, how long you need.

9 Okay. Mr. Lichtenstein.

10 MR. WAITE: Allen, you have to unmute.

11 MR. LICHTENSTEIN: Sorry, Your Honor. We've had some  
12 communication. We've got no agreement. I know that last week  
13 Mr. Polsenberg suggested a settlement conference.

14 We spoke with our clients. They're not inclined to  
15 want to enter into such a conference at this time, perhaps  
16 after more issues and findings of fact [indiscernible] may  
17 want to reconsider. But not at this point.

18 Also, last week, while the Court itself had made a  
19 suggestion that it might find it helpful if the parties filed  
20 this competing -- or their own, I should say -- findings of  
21 fact and [indiscernible], it seems to us to be a good idea.

22 Again, my purpose at this point is to assist the  
23 Court. I don't know if there is more argument to be  
24 [indiscernible] or it has all been made. I think the Court  
25 also indicated last week that it has an idea of what it

1 thinks, in spite of the remand. So that is what we are  
2 suggesting, although if the Court would want something more  
3 extensive, in terms of briefing, we certainly could do that.

4 So that's really our position.

5 THE COURT: Thank you.

6 Mr. Waite and Mr. Polsenberg?

7 MR. POLSENBERG: Thank you, Your Honor. And good  
8 morning again.

9 Yes. Plaintiffs have declined to engage in mediation.

10 As to where we should go from there, I had suggested  
11 briefing. And part of the reason I had suggested briefing is  
12 that it might avoid having to do briefing after  
13 [indiscernible] findings of fact and conclusions of law under  
14 Rule 52 (b).

15 But if you just want proposed findings of fact, we  
16 could either do that, perhaps with annotations; or the two  
17 sides could get together and see if they could agree to the  
18 findings of fact, and then submit competing conclusions of  
19 law.

20 THE COURT: Okay. I like the idea of findings of fact  
21 being joint, if possible, and conclusions of law being  
22 separate.

23 MR. LICHTENSTEIN: Excuse me, Your Honor. I'm having  
24 trouble hearing if --

25 THE COURT: Okay. So Mr. Lichtenstein, what

1 Mr. Polsenberg suggested was a joint findings of fact with  
2 separate conclusions of law, if you are amenable to that.  
3 Otherwise, you can do competing findings and conclusions.

4 MR. LICHTENSTEIN: We're amenable to essentially  
5 whatever the Court would find most helpful. So if that is  
6 something that -- that the Court would find useful, then we'll  
7 certainly have no -- if the Court would prefer a different  
8 approach --

9 THE COURT: And that --

10 MR. LICHTENSTEIN: [Indiscernible.]

11 THE COURT: And if I order joint findings of fact and  
12 conclusions of law, how long would you need to do that? Do  
13 you want a response period? And do either of you want to  
14 argue after that?

15 MR. LICHTENSTEIN: [Indiscernible] again, I did not  
16 think that that is really necessary. The facts are  
17 essentially what the facts are. The Supreme Court did not  
18 have any problem with the findings of fact that were  
19 submitted.

20 The issue really came down to one issue which was, Did  
21 those facts amount to deliberate indifference?

22 So to argue the evidence that has already been  
23 established and approved by the Supreme Court. So it's really  
24 the only point in question. I don't know if we're going to  
25 find common ground on that particular one, because again, that

1 would -- what I fear is we're going to come together and not  
2 agree and then just come back here and end up briefing the  
3 whole thing all over again.

4 MR. POLSENBERG: Your Honor, if I may.

5 THE COURT: Please.

6 MR. POLSENBERG: I didn't -- I do agree with Allen the  
7 facts are what the facts are, and which is why I think we can  
8 agree on what the facts are. And I also agree where he is --  
9 seems to be saying that our legal conclusions from those facts  
10 differ. So we could -- I think we would be able to agree on  
11 the statement of the facts as indicated by the evidence. And  
12 then we could submit competing conclusions of law on the --  
13 yeah, on conclusions of law.

14 THE COURT: All right. And does the deadline of  
15 March 26 work for both of you to do that? It's a month.

16 MR. LICHTENSTEIN: It would work for plaintiffs.

17 MR. POLSENBERG: Yeah. I'm out of commission for  
18 about two weeks. But Dan Waite is giving us a thumbs up, so  
19 let's go.

20 THE COURT: Okay. Then after the competing  
21 conclusions of law are filed, do you want a chance to respond  
22 and/or argue?

23 MR. POLSENBERG: I would love to respond, yes,  
24 Your Honor.

25 THE COURT: Mr. Lichtenstein?

1 MR. LICHTENSTEIN: Again, we leave that to the Court's  
2 discretion. If the Court feels that argument is  
3 [indiscernible] --

4 THE COURT: Okay.

5 MR. LICHTENSTEIN: -- going to help the Court. Fine.  
6 Otherwise, again, this has been [indiscernible] death, so I  
7 don't really see the need for it, but certainly if the Court  
8 would like [indiscernible].

9 THE COURT: And would April 16th work for both of you  
10 to respond? As a deadline to respond or not?

11 MR. LICHTENSTEIN: I'm sorry. I missed that one  
12 again, Your Honor.

13 THE COURT: Would a response date of April 16th work  
14 for both sides?

15 MR. LICHTENSTEIN: Yes.

16 THE COURT: Okay. Then I will put this on my chambers  
17 calendar for April 20th, to review that week and determine  
18 whether I need argument. And if either of you request  
19 argument in your responses, I will so note at that point.

20 Does that work for everyone?

21 MR. POLSENBERG: Excellent. I think that's great,  
22 Your Honor.

23 MR. LICHTENSTEIN: Yes, Your Honor. That will be  
24 fine.

25 THE COURT: Okay. All right, guys. So then I think

1 that resolves everything we were back today to do.

2 MR. POLSENBERG: Right, it does.

3 THE COURT: I thank you for your professional  
4 courtesy. Any questions?

5 MR. POLSENBERG: And I've got to tell you, I'm at the  
6 office, but if you were home, I would ask you to get my dog.

7 THE COURT: Oh, you guys. Dan and I unfortunately  
8 have been -- we have been neighbors for 23 years. So a little  
9 teeny back of our backyards touch. And I didn't even know he  
10 was a neighbor for, like -- until about 10 years ago, which is  
11 really embarrassing. So --

12 MR. POLSENBERG: Well, Dan Waite knows how reclusive I  
13 am, so he's not surprised by that.

14 THE COURT: Anyway.

15 MR. WAITE: No. I texted Bryan -- I texted Bryan  
16 Blakley who is on this call saying the reason that Judge Allf  
17 is so quick to excuse Dan Polsenberg is she didn't want your  
18 dog at her house.

19 THE COURT: Well -- oh, you guys --

20 MR. WAITE: Judge, just a clarification.

21 THE COURT: Sure.

22 MR. WAITE: The March date -- I didn't write it down.  
23 But the March date, is that the date for joint findings and  
24 separate conclusions?

25 THE COURT: Yes.

1 MR. WAITE: Okay. Thank you.

2 THE COURT: All right. Anything else on this hearing  
3 before I conclude it?

4 MR. POLSENBERG: Thank you very much, Your Honor.

5 THE COURT: Thanks, guys. Stay safe and healthy,  
6 until I see you next.

7 MR. WAITE: Thank you.

8 THE COURT: And it is 11:06.

9 [Proceeding adjourned at 11:06 a.m.]

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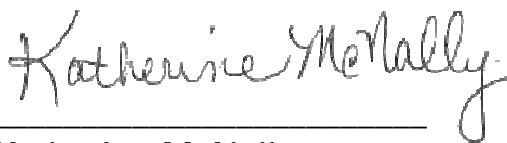
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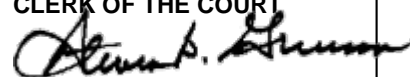
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DANIEL F. POLSENBERG (SBN 2376)  
DAN R. WAITE (SBN 4078)  
BRIAN D. BLAKLEY (SBN 13074)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996  
Tel: 702.949.8200  
Fax: 702.949.8398  
[DPolsenberg@LewisRoca.com](mailto:DPolsenberg@LewisRoca.com)  
[DWaite@LewisRoca.com](mailto:DWaite@LewisRoca.com)  
[BBlakley@LewisRoca.com](mailto:BBlakley@LewisRoca.com)

*Attorneys for Defendant Clark County School  
District (CCSD)*

# DISTRICT COURT

## CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT  
(CCSD)

Defendants.

Case No. A-14-700018-C

Dept. No. XXVII

## NOTICE OF ENTRY OF ORDER ON JOINT, POST-REMAND FINDINGS OF FACT

NOTICE IS HEREBY GIVEN that an Order was entered on March 25,  
2021, that the parties' post-remand Stipulated Findings of Fact are adopted  
and entered by this Court. A copy of said Order is attached hereto.

DATED this 30<sup>th</sup> day of March, 2021.

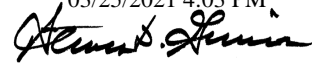
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Brian D. Blakley  
DANIEL F. POLSENBERG (SBN 2376)  
DAN R. WAITE (SBN 4078)  
BRIAN D. BLAKLEY (SBN 13074)  
*Attorneys for Defendant*

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Dated this 30th day of March, 2021

/s/ Annette Jaramillo  
An Employee of Lewis Roca  
Rothgerber Christie LLP

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7 DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No.: A-14-700018-C

10 Plaintiffs,

Dept. No.: 27

11 vs.

12 CLARK COUNTY SCHOOL DISTRICT  
(CCSD)

13 Defendant.

**STIPULATION AND ORDER ON  
JOINT, POST-REMAND FINDINGS OF  
FACT**

14  
15 **STIPULATION**

16 The court's Minute Order regarding the February 25, 2021 Status Hearing instructed the  
17 parties to submit joint Findings of Fact. Accordingly, plaintiffs proposed a set of Stipulated Findings  
18 of Fact. Defendant CCSD agreed to plaintiffs' proposed Stipulated Findings after suggesting minor,  
19 non-substantive edits, which plaintiffs incorporated. Thus, the parties stipulate to the following  
20 Stipulated Findings of Fact attached hereto as **Exhibit 1**.  
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1                   **SO STIPULATED:**

2                   Dated this \_25<sup>th</sup> day of March, 2021.

                    Dated this 25th day of March, 2021.

4                   **ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.   LEWIS ROCA ROTHGERBER CHRISTIE LLP**

6                   By: /s/ Allen Lichtenstein

7                   ALLEN LICHTENSTEIN (SBN 3992)  
8                   3315 Russell Road, No. 222  
                    Las Vegas, Nevada 89120  
                    Attorney for Plaintiffs

9                   JOHN HOUSTON SCOTT  
10                  SCOTT LAW FIRM  
                    1388 Sutter Street, Suite 715  
                    San Francisco, CA 94109  
11                  [john@scottlawfirm.net](mailto:john@scottlawfirm.net)  
12                  (Admitted Pro Hac Vice)  
                    Attorney for Plaintiffs

                    By: /s/ Brian D. Blakley

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

                    Attorneys for Defendant CCSD

15                   **ORDER**

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

17                   HEREBY ORDERED THAT the parties' post-remand Stipulated Findings of Fact are  
18                   expressly adopted and entered by this Court.

19                   **IT IS SO ORDERED.**

21                   Dated this 25th day of March, 2021

22                   \_\_\_\_\_  
                    Nancy L Alf

23                   749 30D 8BED 06B7  
24                   Nancy Alf  
25                   District Court Judge

# EXHIBIT 1

# EXHIBIT 1

## FINDINGS OF FACT

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

1. In late August 2011, two friends, Ethan Bryan and Nolan Hairr begin sixth grade at Greenspun Jr. High School.
2. Both Ethan and Nolan enrolled in Mr. Beasley's third period band class in the trombone section.
3. Almost from the beginning of the school year, Ethan and Nolan began to be bullied by two other trombone students, C and D.
4. In sixth grade, at age 11, Nolan was small for his age with long blonde hair. C and D taunted him with names like gay and faggot, and called him a girl. C also touched, pulled, ran his fingers through Nolan's hair and blew in Nolan's face.
5. Nolan, following what he believed was proper procedure, went to the Dean's office and filled out a complaint report. He was, however, too embarrassed to mention the homophobic and sexual content of the slurs that he was enduring.
6. Nolan was subsequently called into the Dean's office and met with Dean Winn. He did not feel that she was either sympathetic or even interested, and therefore was reluctant to discuss the homophobic sexually-oriented nature of the bullying.
7. Within a day or two of Nolan's meeting with the Dean, on or about September 13, 2011, C, who was sitting next to Nolan in band class, reached over and stabbed Nolan in the groin with the sharpened end of the pencil. C said he wanted to see if Nolan was a girl, and also referred to Nolan as a tattletale.

8. Nolan took the tattletale reference as a sign that the stabbing was, at least in part, retaliation for Nolan complaining about the bullying.

9. Because of this fear of retaliation, Nolan decided not to tell any adults about any further bullying directed at him, and instead, to endure the torment in silence.

10. A day or two after the stabbing incident, while Nolan was at Ethan's house, Ethan's mother, Mary Bryan overheard Ethan and Nolan talking about some problem taking place at school.

11. After Nolan had gone home, Mary Bryan confronted her son and questioned him concerning what Ethan and Nolan had been discussing.

12. Ethan described to his mother the incident where C stabbed Nolan in the groin with a pencil, and about the overall bullying occurring in Mr. Beasley's band class.

**B. Mary Bryan's September 15, 2011 e-mail**

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

14. On September 15, 2011, she attempted to telephone Greenspun Principal Warren P. McKay. However, she could not reach him by telephone and was only able to talk to a junior high student volunteer. Mary did not want to leave such a sensitive message with a junior high student and was not transferred to Principal McKay's voicemail.

15. Mary then decided she would email the Principal and got an email address for him from the student volunteer.

16. On September 15, 2011, Mary Bryan sent an email complaining about the bullying and specifically about the stabbing to three people: 1) Principal Warren McKay; 2) band teacher Robert Beasley; and 3) school counselor John Halpin.

17. Both Mr. Beasley and Mr. Halpin acknowledged receiving the September 15, 2011 email from Mary Bryan. Principal McKay said he did not receive it because the email address for him (which Mary Bryan obtained from his own office) was incorrect.

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

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

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

21. In response to the September 15, 2011 email, Mr. Beasley changed the seating arrangements in the trombone section of his class. While before, Nolan had been sitting next to C, after the change, Nolan sat directly in front of C.

22. While Mr. Beasley attempted to keep an eye on both bullies and the bullied students, he admitted that he was unable to constantly watch them and still teach his class.

23. Mr. Beasley said that he made the decisions concerning the seating arrangements on his own without consultation with anyone else. This testimony conflicted with that of Dean Winn, who stated that she was involved in the decision.

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

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

26. Like his friend Nolan, Ethan also chose not to report the bullying that he was enduring for fear of retaliation, and lack of any real interest on the part of Greenspun school officials.

27. Mary Bryan, naïvely believing that the school would contact Nolan's parents after Mary sent them the September 15, 2011 email about the stabbing of Nolan, did not directly inform Nolan's parents herself.

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

28. On or about September 21, 2011, while Mary Bryan and Nolan's mother Aimee Hairr were at a birthday party for another of Mary's children, Mary casually asked Aimee about the school's response to the September 15, 2011 email.

29. Aimee responded that she had received no communication from the school, and that she had no knowledge or information about the bullying of her son occurring in Mr. Beasley's band class.

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

31. On September 22, 2011, Nolan's mother made several various phone calls in an attempt to contact the school regarding the September 15, 2011 email about the stabbing of their son.

They left several messages for different school officials. Finally, Aimee Hairr was able to reach Vice Principal DePiazza, and had a phone conversation with him in which she described the September 15, 2011 email, and the stabbing, including the comment by C that he did it to see if Nolan was a girl.

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

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

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

36. On or about September 23, 2011, Mrs. Hairr received a return phone call from counselor John Halpin. Aimee knew Mr. Halpin because she was his dental hygienist. Mr. Halpin told her he had received this September 15, 2011 email and was aware of its contents. He said he had previously spoken to Nolan and would do so again to make sure that Nolan made a formal

complaint about the stabbing to the Dean. He said he believed that Dean Winn knew about it, but wanted to make sure.

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

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

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

40. Dean Winn said she did not learn of the stabbing incident until the following year, February 2012.

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

41. On or about October 19, 2011, Mary Bryan noticed that Ethan had come home from school with scratches on his leg. When she confronted him about the scratches, he told her that at the end of band class, while Mr. Beasley was out of the room, one of the bullies who was behind

Ethan, removed a rubber stopper out of a piece of his trombone and started hitting Ethan in the legs with the remaining sharp piece of the instrument.

42. Upon questioning by his parents, Ethan also disclosed that C and D continued to make lewd sexual comments including calling both Ethan and Nolan gay, faggots and other similar names, and also talked about Ethan and Nolan jerking each other off and otherwise engaging in gay sex with each other.

43. Ethan's parents, enraged that this was going on -- particularly after the September 15, 2011 email -- decided to confront school officials.

44. On October 19, 2011 Mary Bryant sent a second email addressed to Principal McKay, Mr. Beasley, and Mr. Halpin describing the continuing bullying and also the hitting scratching of Ethan's leg.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57. Throughout the rest of 2011, the bullying of Ethan and Nolan by C and D continued out of the sight of Mr. Beasley.

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

59. When Ethan and Nolan came back to Greenspun for the second semester, in January 2012, their resolve began to waver. Each boy tried to avoid band class or even school altogether.

Ethan

feigned illness, and even tried to make himself sick by eating cardboard. Nolan would hang out in the library or in the halls. By the middle of January, both boys had essentially stopped going to school in order to avoid further bullying.

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

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

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

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

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

65. In fact, this was the only investigation done at Greenspun into the bullying of Ethan and Nolan. At trial, no one from either the school or the school district testified either to seeing any results of any earlier investigation, nor provided any evidence obtained from any earlier investigation. Contrary to the responsibilities under Nevada law, no investigation ever took place while Ethan and Nolan were attending Greenspun Junior High School.

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**From:** Allen Lichtenstein <allaw@lvcoxmail.com>  
**Sent:** Thursday, March 25, 2021 3:06 PM  
**To:** Blakley, Brian <BBlakley@lewisroca.com>  
**Subject:** Re: Bryan v. CCSD – SAO re: joint findings of fact

[EXTERNAL]

---

yes

On 03/25/2021 2:35 PM Blakley, Brian <[bblakley@lewisroca.com](mailto:bblakley@lewisroca.com)> wrote:

Allen,

Based on my understanding of the telephone call between you and Dan Polsenberg this morning, I've attached a slightly revised version of the Stipulation and Order you submitted to the Court yesterday. The only change is to correct the title from "STIPULATION AND ORDER TO SUBSTITUTE PARTIES" to "STIPULATION AND ORDER ON JOINT, POST-REMAND FINDINGS OF FACT"

Do I have your authorization to affix your e-signature and submit to the Court today.

Thanks,  
Brian

Brian D. Blakley, Esq.

**LEWIS  ROCA**

[bblakley@lewisroca.com](mailto:bblakley@lewisroca.com)  
Direct: 702.474.2687

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

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Allen Lichtenstein  
Attorney at Law, Ltd.  
3315 Russell Road, No. 222  
Las Vegas, NV 89120  
(702) 433-2666 phone  
(702) 433-9591 fax

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Mary Bryan, Plaintiff(s)

CASE NO: A-14-700018-C

7 vs.

DEPT. NO. Department 27

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 3/25/2021

16 Allen Lichtenstein . allaw@lvcoxmail.com

17 Annette Jaramillo . ajaramillo@lrrc.com

18 Brian D. Blakley . bblakley@lrrc.com

19 Dan R. Waite . DWaite@lrrc.com

20 Dana Provost . dprovost@lrrc.com

21 Eva Martinez . emartinez1@interact.ccsd.net

22 Jessie Helm . jhelm@lrrc.com

23 Luz Horvath . LHorvath@lrrc.com

24 Maria Makarova . mmakarova@lrrc.com

25 Matt Park . mpark@lrrc.com

26 Phillip Lewis . plewis@lrrc.com

27  
28

1  
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John Scott

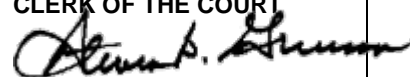
john@scottlawfirm.net

John Scott

john@scottlawfirm.net

*72*

*72*



Allen Lichtenstein (State Bar No. 3992)  
ALLEN LICHTENSTEIN, LTD.  
3315 Russell Road, No. 222  
Las Vegas, NV 89120  
Tel: 702.433.2666  
Fax: 702.433.2666  
[allaw@lvcoxmail.com](mailto:allaw@lvcoxmail.com)

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](mailto: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)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

**PLAINTIFFS' OBJECTIONS TO  
CCSD'S PROPOSED CONCLUSIONS  
OF LAW ON REMAND**

**A. CCSD's argument that only CCSD District official's conduct rather than those of Greenspun JHS is both legally incorrect, and contrary to the Nevada Supreme Court's decision in this case.**

On page 1, paragraph 6, CCSD states the following:

"To prevail on a student-on-student Title IX claim, (1) a plaintiff must prove that: CCSD itself, not just school staff, had actual knowledge of the alleged sexual harassment and an opportunity to take corrective action."

This statement directly contradicts the Nevada Supreme Court's conclusion that "because the administrators had the ability to address the bullying and institute corrective measures, we

1 conclude CCSD had actual notice for purposes of Title IX.” 478 P.3d at 356. Thus the CCSD’s  
2 emphasis on what occurred on the District level is inappropriate as failing to conform to law of  
3 the case.

4 CCSD makes the same inaccurate statement of law – that only the actions of CCSD  
5 District level officials, not the Greenspun school officials are pertinent to Title IX – in paragraph  
6 21 on page 6, and particularly in paragraph 28 when it argues against the straw man of a vicarious  
7 liability theory that was never put forth by Plaintiffs. At this point CCSD must accept that the  
8 Nevada Supreme Court ruled that Greenspun officials had both the requisite notice and ability to  
9 remedy the situation to satisfy those elements of the Title IX analysis.

11 **B. The question of the calculation of damages, although mentioned, was not part of the**  
12 **remand.**

13 On page 2, paragraph 7, n. 11, CCSD states that the remand Order necessitates a  
14 determination on damages. Yet, at 478 P.3d at 356, the Supreme Court noted that, “We do not  
15 reach the substantive arguments regarding the damages and attorney fees awards here.” Although  
16 the Supreme Court expressed a concern about how the damages amount were arrived at, the  
17 remand specifically ordered the District Court to consider one question. “While we conclude the  
18 record does not support the finding of deliberate indifference with respect to the September  
19 incident, we remand for additional findings as to whether the events following the October report  
20 demonstrate deliberate indifference.” *Id.* at 361.

22 **C. Actions taken by Greenspun officials in September are not part of the remand are not**  
23 **part of the analysis on remand, which involves only deliberate indifference after**  
24 **October 19, 2011.**

25 This brings up another flaw in the District’s proposed conclusions. The Supreme Court  
26 ruled that CCSD did not violate Title IX in September. “Accordingly, to the extent the District  
27 Court found deliberate indifference based upon CCSD’s action or inaction in September, that  
28 finding is not supported by the record.” *Id.* at 359-360. However, the Court specifically stated that

1 the purpose of the remand was to determine the question of deliberate indifference on the part of  
2 Greenspun officials after the October 19, 2011 meeting between Mary Bryan and Dean Winn. Yet,  
3 in paragraphs 19 and 20 on pages 4 and 5, (see also paragraphs 35 and 36 on pages 9-10), CCSD  
4 argues about the remedial actions taken in September, which, however, according to the Supreme  
5 Court were irrelevant to the issue on remand which involve Greenspun officials' behavior after  
6 October 19, 2011.  
7

8       Importantly, the information gained from the investigation of the September  
9 incident, and Greenspun's administrators' failure to prevent future harassment,  
10 informs the October incident. Indeed, at that point it was clear that further  
11 investigation and more serious intervention was necessary to stop the sexual and  
12 other harassment against Nolan and Ethan, as well as to prevent further bullying  
13 and physical assaults. But by finding that the school's violation of a state statute  
14 constituted *per se* deliberate indifference, the district court bypassed the key  
15 questions of whether the evidence demonstrated CCSD was more than negligent,  
16 that its inaction was clearly unreasonable in light of the known circumstances, and  
17 that its inaction caused the boys to either undergo harassment or be more  
18 vulnerable to it.

19 *Id.* at 359.

20 **D. Sexual bullying and harassment of Ethan and Nolan continued after October 19, 2011, stated in the Stipulated Findings of Fact.**

21       Here, CCSD appears to be arguing that there was no evidence of continuing sexual  
22 bullying and harassment of Ethan and Nolan. This argument, however, is belied by the stipulated  
23 findings of fact, paragraphs 57-62. Moreover, subsequent paragraphs 63-65 show that no  
24 investigation or any other remedial action was taken after October 19, 2011, until about February  
25 7, 2012, when Ethan and Nolan had already been removed from Greenspun to get away from the  
26 bullying. Paragraph 56 of the stipulated findings of fact acknowledges this lack of action on the  
27 part of Greenspun officials.

28 **E. The failure to take any action was a decision by Greenspun officials.**

      CCSD, in paragraphs 18-22 of its proposed conclusions, argues the failure to take any  
action after October 19, 2011 did not amount to a decision. This argument directly contradicts the

1 United States Supreme Court decision in *Gebser v. Lago Vista Ind. School Dist.*, 524 U.S. 290  
2 (1998).

3 [I]f an institution either fails to act, or acts in a way which could not have  
4 reasonably been expected to remedy the violation, then the institution is liable for  
5 what amounts to an official decision not to end discrimination.

6 524 U.S. at 290. Clearly, a decision not to take action is a decision. Such was the case here.

7 **F. Plaintiffs are entitled to damages in an amount determined by the finder of fact.**

8 In paragraphs 42 and 43, on page 11, CCSD claims that Plaintiffs are not entitled to any  
9 damages because there was no Title IX violation. That position, however, is refuted by the facts as  
10 well as their misrepresentation of the Nevada Supreme Court's decision. As noted above, while  
11 the remand did not include the question of monetary damages, it was mentioned in footnote 11. At  
12 trial, Plaintiffs did not specify a particular damages figure, but left it up to the finder of fact (in this  
13 case the District Court) to determine, based upon all of the evidence. Part of the Court's damages  
14 award to Plaintiffs was based on an estimation of out-of-pocket costs. The rest was for physical  
15 and emotional harm, as testified to at trial. This included incidents of self-harm and a  
16 contemplated suicide.

17 Emotional distress damages are generally left to the jury's determination, or in the case of  
18 a bench trial, the Court's. A district court's computation of damages is reviewed for clear  
19 error. *Marsu, B.V. v. Walt Disney Co.*, 185 F.3d 932, 938 (9th Cir. 1999), *citing Nintendo of*  
20 *Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1038-1039 (9th Cir. 1994). The Ninth Circuit  
21 noted that they "will not disturb an award of damages unless it is clearly unsupported by the  
22 evidence." *Marsu, supra, citing Stinnett v. Damson Oil Corp.*, 813 F.2d 1394, 1398 (9th Cir.  
23 1987). *See also, Sandoval v. Las Vegas Metro. Police Dep't*, No. 2:10-cv-01196-RCJ-PAL, 2017  
24 U.S. Dist. LEXIS 3381 (D. Nev. Jan. 10, 2017).

1 Because Plaintiffs will not be presenting evidence of economic damages, and  
2 because Plaintiffs represent in their motion brief that they will rely wholly on the  
3 jury to determine the appropriate amount of damages to be awarded in this case,  
4 Defendants' motion is denied. *See, e.g., Williams v. Trader Publishing Co.*, 218  
5 F.3d 481, 486 n. 3 (5th Cir. 2000) ("Since compensatory damages for emotional  
6 distress are necessarily vague and are generally considered a fact issue for the jury,  
7 they may not be amenable to the kind of calculation disclosure contemplated  
8 by Rule 26(a)(1)(C)."); *see also Jackson v. United Artists Theatre Circuit, Inc.*, 278  
9 F.R.D. 586, 593 (D. Nev. 2011) ("Rule 26(a)(1)(A)(iii) does not require a  
10 computation of general damages for pain and suffering or emotional distress  
11 because such damages are subjective and do not lend themselves to  
12 computation."); *Crocker v. Sky View Christian Acad.*, No. 3:08-cv-00479-LRH,  
13 2009 U.S. Dist. LEXIS 1116, 2009 WL 77456, at \*2 (D. Nev. Jan. 8,  
14 2009) ("Indeed, because emotional suffering is personal and difficult to quantify,  
15 damages for emotional anguish likely will be established predominantly through  
16 the plaintiffs' testimony concerning the emotional suffering they experienced, not  
17 through the type of documentary evidence or expert opinion relied upon to make  
18 a Rule 26(a)(1)(A)(iii) disclosure of a computation of damages."); *Creswell v.*  
19 *HCAL Corp.*, No. 04-cv-388-BTM, 2007 U.S. Dist. LEXIS 9724, 2007 WL 628036  
20 at \*2 (S.D. Cal. Feb. 12, 2007) ("While Rule 26 generally requires a party to  
21 provide a computation of such damages, emotional damages, because of their  
22 vague and unspecific nature, are oftentimes not readily amenable to computation.").  
23 Accordingly, Plaintiffs may seek and present evidence of non-economic  
24 compensatory damages. It is within the jury's ability to determine a reasonable  
25 amount.

26 2017 U.S. Dist. LEXIS 3381, at \*9-10.

27 Emotional distress damages are are "inextricably related to the conduct causing  
28 that distress." *Rozario v. Richards*, 687 F. App'x 568, 569-70 (9th Cir. 2017). "The more  
aggravated the conduct, the larger the award of damages is likely to be." *Id.* at 570, *citing Kardly*  
*v. State Farm Mut. Auto. Ins.*, 207 Cal. App. 3d 479, 255 Cal. Rptr. 40, 43 (Ct. App.  
1989). Therefore "[t]he amount and severity of damages for emotional distress is a question of fact  
for the jury [or court] to decide based on all the evidence before it." *Id.* Although "the amount  
of damages must be reasonable," there "is no fixed or absolute standard by which to compute  
[them]." *Plotnik v. Meihaus*, 208 Cal. App. 4th 1590, 146 Cal. Rptr. 3d 585, 596 (Ct. App.  
2012) (quoting *Hope v. Cal. Youth Auth.*, 134 Cal. App. 4th 577, 36 Cal. Rptr. 3d 154, 169 (Ct.  
App. 2005)). Moreover, "while other somewhat similar cases furnish no precise or accurate bases

1 for comparison, they are nevertheless continually resorted to by appellate courts as of some  
2 guidance. *Reilly v. Cal. S. C. R. Co.*, 76 Cal. App. 2d 620, 627, 173 P.2d 872, 876 (1946).  
3 Therefore, the District Court's use of *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001) as  
4 a benchmark for comparison in assessing damages was entirely proper.

5 Dated this 16th day of April 2021

6 Respectfully submitted by:

7  
8  
9  
10 /s/Allen Lichtenstein  
11 Allen Lichtenstein  
12 Nevada Bar No. 3992  
13 ALLEN LICHTENSTEIN, LTD.  
14 3315 Russell Road, No. 222  
15 Las Vegas, NV 89120  
16 Tel: 702.433.2666  
17 Fax: 702.433.2666  
18 [allaw@lvcoxmail.com](mailto:allaw@lvcoxmail.com)

19 John Houston Scott (CA Bar No. 72578)  
20 Admitted Pro Hac Vice  
21 SCOTT LAW FIRM  
22 1388 Sutter Street, Suite 715  
23 San Francisco, CA 94109  
24 Tel: 415.561.9601  
25 [john@scottlawfirm.net](mailto:john@scottlawfirm.net)

26 *Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,*  
27 *Aimee Hairr and Nolan Hairr*  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I served the following Plaintiffs' Objections to CCSD's Proposed  
Conclusions of Law on Remand e-mail on the 16th day of April 2021.

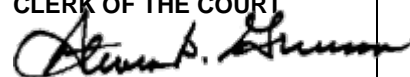
Dan Polsenberg  
Lewis Rocha Rothgerber Christie  
3993 Howard Hughes Pkwy., Suite 600  
Las Vegas, NV 89169-5996

DPolsenberg@LewisRoca.com

/s/ Allen Lichtenstein

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DANIEL F. POLSENBERG (SBN 2376)  
DAN R. WAITE (SBN 4078)  
BRIAN D. BLAKLEY (SBN 13074)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996  
Tel: 702.949.8200  
Fax: 702.949.8398  
[DPolsenberg@LewisRoca.com](mailto:DPolsenberg@LewisRoca.com)  
[DWaite@LewisRoca.com](mailto:DWaite@LewisRoca.com)  
[BBlakley@LewisRoca.com](mailto:BBlakley@LewisRoca.com)

*Attorneys for Defendant Clark County School  
District (CCSD)*

## DISTRICT COURT

### CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT  
(CCSD)

Defendant.

Case No. A-14-700018-C

Dept. No. XXVII

### DEFENDANT'S RESPONSE TO PLAINTIFFS' PROPOSED CONCLUSIONS OF LAW

**Trial Date: November 15-22, 2016**

## INTRODUCTION

In November 2016, plaintiffs Ethan Bryan and Nolan Hairr each tried a Title IX claim and a § 1983 claim against a single defendant, CCSD. Both plaintiffs based their claims on allegations that CCSD failed to adequately respond to student-on-student harassment at Greenspun Junior High School between the end of August 2011 and the beginning of February 2012.

Following a bench trial, this Court concluded that Ethan and Nolan had each proved their Title IX and § 1983 claims, and it entered judgment to that effect.

On appeal, the Nevada Supreme Court reversed judgment on both claims, and it reversed the award of damages, fees, and costs. Then, it

1 remanded the Title IX claim for findings as to whether CCSD's conduct  
2 amounted to "deliberate indifference under the applicable federal standard."  
3 *Clark Cty. Sch. Dist. v. Bryan*, 136 Nev. \_\_\_, 478 P.3d 344, 359 (2020) ("*Bryan*").  
4 Further, the Supreme Court held that the record in this action could not  
5 support a finding of "deliberate indifference" based on CCSD's "action or  
6 inaction in September [2011]." *Id.* Beyond deliberate indifference, the Supreme  
7 Court's remand order requires a new determination on Title IX's causation  
8 element and damages. *Id.* at 359, n.11.

9       Following the remand, this Court ordered each side to propose findings  
10 of fact and conclusions of law consistent with the Supreme Court's opinion.  
11 Later, the parties stipulated to a single set of post-remand findings, which this  
12 Court adopted (the "Findings"). (See SAO Adopting Findings, Mar. 25, 2021).  
13 Each side also submitted proposed, post-remand conclusions. Now, as directed  
14 by the Court, CCSD submits this brief in response to plaintiffs' proposed  
15 conclusions to demonstrate why the Court should enter CCSD's version and  
16 why it would be error to enter plaintiffs'.

17       As shown below, Plaintiffs' deliberate indifference conclusions are  
18 erroneous in several respects. In its *Bryan* opinion, the Nevada Supreme Court  
19 expressly stated—five separate times—that "deliberate indifference" requires  
20 proof that CCSD made an "official decision" not to remedy the Title IX  
21 violation. *Bryan*, 478 P.3d at 357-358. Remarkably, however, plaintiffs  
22 conclusions do not even attempt to address that controlling rule. Instead, they  
23 avoid the rule, because nothing in the record even remotely suggests that  
24 CCSD made "an official decision" not to remedy a violation.

25       Unable to prevail under the "official decision" rule, plaintiffs ask this  
26 Court to rewrite it. For example, they suggest that if a school-level employee  
27 chose not to render aid (which did not occur here), the Court need not find that  
28 CCSD separately made an "official decision." Similarly, they invite the Court

1 to disregard the controlling culpability standard for deliberate indifference and  
2 instead use a simple negligence test to determine liability. These last-ditch  
3 attempts to rewrite the deliberate indifference standard fail as a matter of law  
4 and contradict the Supreme Court's clear instructions. In fact, they largely  
5 repeat the errors that plaintiffs previously proposed.

6 Worse, in applying their flawed legal standards, plaintiffs misrepresent  
7 the Findings and the evidence in an effort to establish that no CCSD employee  
8 took any action to remedy the situation. (Pls' Concl., at 5:13-16, 5:22, 6:17,  
9 7:11-13). That is, they invite the Court to conclude that CCSD's response was  
10 deliberately indifferent because nobody from the school took any responsive  
11 action at all. (*Id.*). The Findings and the record flatly contradict this  
12 conclusion, and they establish that several CCSD employees took prompt,  
13 responsive action. Thus, plaintiffs proposed "deliberate indifference" theory  
14 relies on both the wrong legal standard and demonstrably false facts.

15 Finally, plaintiffs' proposed conclusions do not even address the  
16 causation and damages elements of their Title IX claims. Thus, all other  
17 defects aside, plaintiffs have failed to propose the liability and damages  
18 conclusions necessary to support a judgment. In contrast, CCSD's proposed  
19 conclusions address all of the issues identified by the Supreme Court, and they  
20 rigorously apply the standards set forth in the opinion. Accordingly, the Court  
21 should reject plaintiffs' conclusions and adopt CCSD's.

## 22 ARGUMENT

### 23 I. PLAINTIFFS' DELIBERATE INDIFFERENCE CONCLUSIONS INVITE ERROR

24 As the Supreme Court made clear, deliberate indifference requires proof  
25 that CCSD made "an official decision" not to remedy the harassment and acted  
26 with culpability beyond negligence. *Bryan*, 478 P.3d at 357-58 (quoting *Gebser*,  
27 524 U.S. at 276). Likewise, the deliberate indifference standard precludes  
28

1 courts from “second-guessing” the school’s efforts to remedy the known  
2 harassment. *Id.* Plaintiffs’ conclusions contradict these rules.

3 First, plaintiffs do not even propose that this Court to conclude that a  
4 CCSD official made any decision—much less an “official decision”—not to  
5 remedy the harassment. (*See generally* Pls’ Concl.). Their failure to propose  
6 such a conclusion is alone fatal to any finding of deliberate indifference, but it  
7 is no accident. As demonstrated below, this Court’s Findings, the trial  
8 testimony, and even the *Bryan* opinion plainly establish that school staff did,  
9 in fact, take deliberate action in an attempt to remedy the reported  
10 harassment. Even if those remedial actions were less than completely  
11 effective, the mere fact that school staff undertook them confirms that CCSD  
12 made no “official decision” to allow the harassment to continue. *Infra* Part I.C.

13 Because they cannot satisfy the “official decision” rule, plaintiffs invite  
14 the Court to change it. Specifically, they invite this Court to hold that the  
15 school-level employees made an implicit decision to take no action, and on that  
16 basis, find deliberate indifference without concluding that CCSD made an  
17 “official decision” to do nothing. (Pls’ Concl., 6:17, 7:11-13). This argument  
18 contradicts settled Title IX law, wrongly assumes that CCSD can be held liable  
19 under a theory of vicarious liability, and misrepresents this Court’s Findings  
20 and the evidence. *Infra* Part I.D.

21 Similarly, because plaintiffs failed to prove the culpability required for  
22 deliberate indifference, they invite the Court to use a simple negligence test to  
23 determine whether CCSD was deliberately indifferent. (*E.g.*, Pls’ Concl., 6:12-  
24 14). Plaintiffs proposed a similar error in their prior set of conclusions, when  
25 they invited the Court to find deliberate indifference based on the standard for  
26 negligence per se. The Supreme Court expressly rejected that effort, and it  
27 further rejected any use of a negligence test to find deliberate indifference.  
28 Yet, that is exactly what plaintiffs propose again here.

1 Finally, plaintiffs admit that they repeatedly lied to staff members in an  
2 effort to convince them that the harassment had ceased and induce them to  
3 take no further remedial actions. These deceptive statements had their  
4 intended effect, and they induced school staff to believe that nothing more was  
5 required. Now, however, plaintiffs contend—and propose that this Court  
6 conclude—that school staff should not have believed them, discovered that the  
7 harassment was still ongoing, and taken additional remedial action. According  
8 to plaintiffs, the staff’s failure to do so—and belief in plaintiffs’ repeated and  
9 consistent statements that the harassment stopped and everything was okay—  
10 amounts to deliberate indifference. This argument fails. Nothing in Title IX  
11 jurisprudence requires school staff to distrust a student. Quite the opposite, it  
12 precludes courts from second-guessing staff members who believe victim  
13 statements. *Infra* Part I.F. Thus, plaintiffs’ deliberate indifference conclusions  
14 are erroneous in every respect.

15 **A. Deliberate Indifference Requires an “Official Decision” Not**  
16 **to Remedy the Violation and Culpability Beyond Negligence**

17 Title IX applies only against fund-recipient school districts, not individual  
18 teachers, administrators, employees, or officers. *Gebser v. Lago Vista Indep.*  
19 *Sch. Dist.*, 524 U.S. 274, 290 (1998). Because Title IX claims implicate district-  
20 wide funding, “the deliberate indifference standard set forth in *Davis* sets a  
21 high bar for plaintiffs to recover.” *Stiles ex rel. D.S. v. Grangier Cnty., Tenn.*,  
22 819 F.3d 834, 848 (6th Cir. 2016). This high standard is intended to be met  
23 only in “limited circumstances.” *Davis*, 526 U.S. at 643, 649.

24 Deliberate indifference “requires more than mere negligence.” *Bryan*, 478  
25 P.3d at 357-58 (citing *Davis*, 526 U.S. at 643; *Karasek v. Regents of Univ. of*  
26 *Cal.*, 956 F.3d 1093, 1105 (9th Cir. 2020)). Under this “fairly high standard,” a  
27 “negligent, lazy, or careless response will not suffice.” *Bryan*, 478 P.3d at 357-  
28 58 (quoting *Karasek*, 956 F.3d at 1105) (alterations incorporated). Deliberate

indifference requires “a state of mind more blameworthy than negligence.” *See Farmer v. Brennan*, 511 U.S. 825, 835 (1994). Indeed, even “gross negligence” is insufficient to establish deliberate indifference, because deliberate indifference requires a “culpable mental state.” *E.g., Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011).<sup>1</sup> Even “recklessness” isn’t enough.<sup>2</sup> Rather, the indifference must actually be “deliberate”—the standard is not mere indifference, but indifference that “result[s] from careful and thorough consideration.”<sup>3</sup>

Importantly, student-on-student harassment “is less likely to satisfy Title IX’s requirements than teacher-student harassment.” *Bryan*, 478 P.3d at 357-58 (quoting *Gebser*, 524 U.S. at 29).

“Addressing deliberate indifference in the context of student-on-student harassment, the [United States] Supreme Court has explained that Title IX liability will arise only from ‘an official decision by the recipient not to remedy the violation.’” *Bryan*, 478 P.3d at 357-58 (quoting *Gebser*, 524 U.S. at 276) (emphasis added). This means that the fund-recipient school district—not a school-level employee—must officially decide not to take action.

In its *Bryan* opinion, the Nevada Supreme Court reiterated this “official decision” rule five separate times:

- “Title IX liability will arise only from ‘an official decision by the recipient not to remedy the violation’”;
- “[D]amages are not recoverable for a Title IX violation unless the defendant made an official decision not to remedy the situation”;

<sup>1</sup> *Hendrichsen v. Ball State Univ.*, 2003 WL 1145474, at \*3 (S.D. Ind. Mar. 12, 2003), *aff’d*, 107 F. App’x 680 (7th Cir. 2004) (holding that “even gross negligence[] does not rise to the level of deliberate indifference”); *McKay v. Dallas Indep. Sch. Dist.*, 2009 WL 615832, at \*6 (N.D. Tex. Mar. 10, 2009) (“Deliberate indifference is a level of intent beyond gross negligence that is applied in any number of contexts in civil rights law.”).

<sup>2</sup> *E.g., Peer ex rel. Doe v. Porterfield*, 2007 WL 9655728, at \*12 (W.D. Mich. Jan. 8, 2007) (“‘Deliberate indifference’ in this context does not mean a collection of sloppy, or even reckless, oversights; it means evidence showing an obvious, deliberate indifference to sexual abuse.” (quoting *Doe v. Claiborne County, Tenn.*, 103 F.3d 495, 508 (6th Cir. 1996)).

<sup>3</sup> *See* Merriam-Webster On-Line Dictionary for “deliberate” at <https://www.merriam-webster.com/dictionary/deliberate?src=search-dict-box> (last accessed on April 14, 2021).

- “[N]egligence is not enough—the response or inaction must constitute an official decision against remedying the situation”;
- “[A]lthough a school’s noncompliance with statutes, regulations, and policies can be a significant factor in analyzing deliberate indifference, ‘particularly when it reflects ‘an official decision . . . not to remedy the [Title IX] violation,’ noncompliance is not dispositive evidence of deliberate indifference.”; and
- “Title IX damages are appropriate only where the plaintiff shows an official decision not to remedy the violation.”

*Id.* 357-358 (quoting *Gebser*, 524 U.S. at 276; *Karasek*, 956 F.3d at 1104-05; *Davis*, 526 U.S. at 642-43) (emphases added).

Without such an “official decision” from the recipient district, there can be no “deliberate indifference.” *Id.* Indeed, a deliberate indifference finding is dependent on an “official decision” finding, because absent evidence of such a “decision” there is no basis to conclude that CCSD (the Title IX funding recipient) “deliberately” allowed the harassment to continue. *See id.* Simply put, plaintiffs must show that the Title IX recipient itself (i.e., the school district) “deliberated” before showing “indifference” to the violation, and this requires proof that the district itself—not its school-level employees—officially decided to take no action. *Gebser*, 524 U.S. at 290; *Davis*, 526 U.S. at 640, 643.

Explaining this standard, the Nevada Supreme Court admonished courts to “refrain from second-guessing the disciplinary decisions made by school administrators,’ who ‘will continue to enjoy the flexibility they require,’ so long as the school ‘merely responds to known peer harassment in a manner that is not clearly unreasonable.” *Bryan*, 478 P.3d at 357-58 (quoting *Davis*, 526 U.S. at 648-49). Accordingly, a “claim that the school system could or should have done more is insufficient” to establish deliberate indifference. *Counts v. N. Clackamas Sch. Dist.*, 654 F. Supp. 2d 1226, 1241 (D. Or. 2009). Similarly, “the violation of a regulation or policy—or here, a state statute—is not *per se* deliberate indifference.” *Bryan*, 478 P.3d at 358 (citing *Karasek*, 956

1 F.3d at 1108). As explained in the *Bryan* opinion, a district can fail to follow a  
2 state statute “without being deliberately indifferent under federal law.” *Id.*

3 In short, even where a school district violates state law, “deliberate  
4 indifference is an exacting standard established by federal caselaw and  
5 requires the plaintiff to show, for instance, that [1] the district was more than  
6 negligent” and [2] the school district itself made “an official decision” not to  
7 remedy the Title IX violation. *Bryan*, 478 P.3d at 357-58 (citing *Davis*, 526  
8 U.S. at 642-43; *Karasek*, 956 F.3d at 1108). Further, there is no vicarious  
9 liability under Title IX. *Gebser*, 524 U.S. at 290; *Davis*, 526 U.S. at 640, 643.  
10 Rather, for liability to attach, the district itself—not school employees—must  
11 act with deliberate indifference to the Title IX violation. *Id.*

12 **B. Plaintiffs Do Not Even Attempt to Establish**  
13 **that CCSD Made “an Official Decision,”**  
14 **and this Alone is Fatal to Their Claim**

15 Plaintiffs proposed conclusions do not even attempt to satisfy the  
16 stringent standards for deliberate indifference. For example, they do not even  
17 propose that the Court conclude that CCSD made an “official decision” not to  
18 remedy the violation. (*See generally* Pls’ Concl.). Indeed, their conclusions do  
19 not remotely suggest that any CCSD official made any decision—much less an  
20 “official decision”—to allow the harassment to continue. (*Id.*). This alone is  
21 fatal to any judgment for plaintiffs, because—as the Nevada Supreme Court  
22 reiterated five times—there can be no deliberate indifference, and no Title IX  
23 liability, unless this Court concludes that CCSD itself made such an “official  
24 decision.” *Bryan*, 478 P.3d at 357-58. Thus, because plaintiffs’ conclusions do  
25 not address the “official decision” requirement, they cannot support any  
26 judgment, and the Court should reject them on that basis alone.

**C. Plaintiffs Cannot Propose an “Official Decision” Conclusion Because the Record Shows that CCSD Took Remedial Action**

Plaintiffs’ failure to propose an “official decision” conclusion is no accident. The Nevada Supreme Court went well out of its way—five times—to make absolutely clear that the “official decision” rule controls here. *Id.* Thus, plaintiffs know it controls. *Id.* Yet, they refuse to propose any “official decision” conclusion, because there is no evidence—none—that CCSD made such an “official decision” to let the harassment continue.

Indeed, there is no evidence in the Findings (or the record) that anyone decided not to remedy the known harassment. (*See generally* Findings). Instead, the *Bryan* opinion,<sup>4</sup> the Findings,<sup>5</sup> and the evidence<sup>6</sup> all firmly establish that the school-level employees took prompt action in an attempt to remedy the known harassment. And even if those remedial efforts ultimately failed to end the harassment, the mere fact that CCSD employees undertook them is the opposite of an “official decision” not to remedy the harassment.

**1. The Nevada Supreme Court Acknowledged that CCSD Employees Took Action to Remedy the Harassment**

First, as the Supreme Court acknowledged, the evidence establishes that CCSD employees took several affirmative steps in an effort to aid plaintiffs and remedy the situation. *E.g.*, *Bryan*, 478 P.3d at 352, 358-59. For example, the Supreme Court summarized some of the staff’s remedial actions as follows: “The dean followed the school’s procedure and met with C. and his mother to remind C. about the school’s hands-off policy for students and instructed him to stop bullying Nolan.” *Id.* Then, she “spoke to the band teacher about rearranging the classroom seating.” *Id.* Further, while “the band teacher and

<sup>4</sup> *See, e.g.*, *Bryan*, 478 P.3d at 352, 358-59.

<sup>5</sup> *See, e.g.*, Findings, at ¶¶ 21-22, 32, 36-37, 48-49, 51, 63-64.

<sup>6</sup> *See, e.g.*, Ex Nos. 1-5.

1 the school counselor were not school administrators, both took action as well.”  
2 *Id.* Specifically, “[t]he band teacher spoke to C. and D. about their behavior  
3 and rearranged the seating to move Nolan away from C. and to where he could  
4 easily watch the boys.” *Id.* Around the same time, “[t]he school counselor met  
5 with Nolan, encouraged him to report the stabbing incident to the dean, and  
6 walked Nolan to the dean’s office for that purpose.” *Id.* Based on these  
7 remedial actions, the Court noted that the “[t]he record does not demonstrate  
8 that CCSD deliberately failed to take action or that any of the actions taken  
9 amounted to more than mere negligence in light of the known circumstances.”

10 **2. *The Post-Remand Findings Establish that CCSD***  
11 ***Employees Took Action to Remedy the Harassment***  
12 ***in Response to the September and October Emails***

13 Second, this Court’s post-remand Findings further confirm that CCSD  
14 employees took responsive action in an attempt to stop the known harassment.  
15 (See Findings, at ¶¶ 21-22, 32, 36-37, 48-49, 51, 63-64). For example, the  
16 Court’s Findings confirm that school staff members took the following actions:

- 17 • “In response to the September 15, 2011 email, Mr. Beasley changed the  
18 seating arrangements in the trombone section of his class.” (*Id.* ¶ 21)
- 19 • Mr. Beasley also “attempted to keep an eye on both [the] bullies and the  
20 bullied students.” (*Id.* ¶ 22).
- 21 • The Vice Principal met with Mrs. Hairr and discussed multiple remedial  
22 options, including Nolan transferring into another class or transferring  
23 to a different school. (*Id.* ¶ 32).
- 24 • In response to the September 15, 2011 email, Counselor Halpin spoke to  
25 Nolan. Then, the same day Mrs. Hairr called him to discuss the pencil  
26 incident, he met with Nolan again and encouraged Nolan to submit an  
27 incident report to the dean’s office. In that incident report, Nolan “left a  
28 bland and rather innocuous version of what he was enduring in band  
class. He did not mention the stabbing or any homophobic, sexually-  
oriented slurs.” (*Id.* ¶¶ 36-38).

- On October 19—the day Mrs. Bryan sent her second email—Mr. Halpin attended an administrators meeting where he reported on the bullying “in considerable detail.” (*Id.* ¶¶ 48-48).
- During the October 19 administrators meeting, Principal McKay instructed his subordinates to remedy the situation described in Mrs. Bryan’s October 19 email (though, it is unclear, which subordinates were assigned to do what). (*Id.* ¶ 51).
- In February 2012, Assistant Superintendent Jolene Wallace—a CCSD Official—expressly ordered Principal McKay to conduct a further “investigation into the bullying of Ethan Bryan and Nolan Hairr,” and he directed Vice Principal DePiazza to do exactly that. (*Id.* ¶¶ 63-64).

### 3. *The Evidence Offered at Trial Establishes that CCSD Employees Took Action to Remedy the Harassment in Response to the September and October Emails*

Third, the evidence offered at trial establishes that school staff took additional remedial actions. For example—and consistent with the Supreme Court’s summary and this Court’s Findings—the trial testimony establishes that CCSD’s employees took the following additional actions:

- Dean Winn summoned C. to her office for a disciplinary interview and issued a “required parent conference” for his prior behavior. (Winn, Day 4, at 125:11-12; 137:18-21, Ex. 4).
- After Mrs. Bryan sent her October 19 email, where she first reported harassment directed toward Ethan, Mr. Beasley immediately re-arranged the seats for a second time to move Ethan away from C. Specifically, he moved Ethan as far away from C. as he could within the trombone section. (Beasley, Day 4, at 64:12-65:13, Ex. 4; Ethan, Day 1, at 164:22-165:7, Ex. 1; Nolan, Day 1, at 107:20-23, Ex. 1).
- On the morning of October 19, Counselor Halpin called Mrs. Bryan to discuss her same-day email about the harassment. (M. Bryan, Day 3, at 7:17-18, Ex. 3). When they spoke, Mrs. Bryan told Counselor Halpin she had just met with Dean Winn and, “in so many words, [Mrs. Bryan told Counselor Halpin] don’t worry about it, Ms. Winn is handling it.” (*Id.* at 59:20-60:4).

- Shortly after Mrs. Bryan's October 19 email (and Ethan submitted his incident report), Dean Winn brought Ethan into her office to discuss the situation. Dean Winn tried to determine what was going on in the band class, but—as Ethan admits—he told her that everything was fine and that the problem was resolved. (Ethan, Day 2, at 14:10-15:12, Ex. 2).
- After Counselor Halpin received Mrs. Bryan's September 15 and October 19 emails, he regularly met with (and checked on) Ethan and Nolan. (Halpin, Day 3, at 146:12-148:2, Ex. 3; Ethan, Day 2, at 14:10-15:12, Ex. 2). Each time he did, the boys told him that everything was fine, inducing Counselor Halpin not to take more action. (*Id.*).
- Following Mrs. Bryan's emails—and as plaintiffs admit—other school administrators followed-up with Ethan in the lunchroom and asked how he was doing. (*E.g.*, M. Bryan, Day 3, at 66:20-23, Ex. 3). Each time, Ethan represented that everything was fine. (*E.g.*, *id.* 67:18-71:1; Ethan, Day 2, at 14:10-16:22, Ex. 2).

As these numerous examples confirm, CCSD's employees took prompt responsive action following both the September 15 and October 19 emails. In other words, these were not random acts by CCSD's employees—rather, they were deliberate efforts intended to stop the reported harassment. These efforts continued through October and beyond—including after the boys began telling staff members that the harassment had ceased and everything was fine.

**4. *Even if CCSD's Remedial Actions Were Inadequate, They Demonstrate that CCSD Did Not Make an "Official Decision" to Let the Harassment Continue***

Even assuming these remedial efforts were insufficient—or even negligent—such deficiencies do not establish that CCSD made an “official decision” not to remedy the harassment. *See, e.g., Bryan*, 478 P.3d at 358-59. If anything, the school's remedial efforts establish the exact opposite of an “official decision” not to remedy the situation. Indeed, even if the staff “could have done more,” its efforts to remedy the harassment establish that CCSD did not decide—let alone “officially” decide—against taking remedial action. Further, as a matter of law, a “claim that the school system could or should

1 have done more is insufficient” to establish deliberate indifference. *Counts*,  
2 654 F. Supp. 2d at 1241 (emphasis added).

3 Simply put, school staffs’ attempts to remedy the harassment confirms  
4 that CCSD did not “deliberately” or “officially” decide against remedying the  
5 harassment. That is dispositive. *Bryan*, 478 P.3d at 358-59.

6 In fact, the evidence shows that CCSD made only one “official decision”  
7 in this case, and it did so on February 7, 2012, when it officially ordered  
8 Principal McKay to further investigate the alleged harassment, (Findings, at ¶  
9 63), and then suspend the alleged bullies, *Bryan*, 478 P.3d at 358. That, of  
10 course, was not an “official decision” not to remedy the situation. Rather, it  
11 was an official attempt to prevent future harassment at the school—the exact  
12 opposite of the “official decision” plaintiffs were required (but failed) to prove.

13 Accordingly, there is no evidence of any “official decision” not to remedy  
14 the harassment, *id.*, and plaintiffs do not (and cannot) even attempt to propose  
15 a conclusion to the contrary. As the Nevada Supreme Court repeatedly  
16 reiterated, this alone precludes a finding of “deliberate indifference,” and it is  
17 fatal to plaintiffs’ Title IX claim.

18 **D. Plaintiffs’ Attempt to Rewrite the “Official Decision”**  
19 **Rule Contradicts the Law and Misrepresents the Findings**

20 Because plaintiffs cannot—in good faith—invite this Court to conclude  
21 that CCSD made an “official decision,” they subtly invite this Court to change  
22 the rule. Specifically, they argue that—despite the Findings and evidence—the  
23 Court could conclude that the individual school-level employees implicitly  
24 decided “to take no action” and that such a conclusion would somehow be  
25 enough for deliberate indifference. (Pls’ Concl., at 7:2-3). Indeed, they suggest  
26 that if the Court concludes that some employees chose not to act, it need not  
27 conclude that CCSD made an “official decision” in order to find deliberate  
28 indifference and hold the entire district liable. (*See id.*). This unexplained

1 theory contradicts the United States Supreme Court’s decisions in *Gebser* and  
2 *Davis*, the Nevada Supreme Court’s decision in this case (*Bryan*), and it  
3 misrepresents the Findings and evidence. It is a desperate attempt to apply  
4 nonexistent law to nonexistent facts and support a deeply flawed conclusion.

5 First, plaintiffs’ argument that a school-level employee’s failure to act  
6 can supplant Title IX’s “official decision” rule is meritless. Among other  
7 defects, it wrongly assumes that school-level employees (such as teachers) can  
8 bind a Title IX recipient itself (i.e., CCSD)—and even make “official decisions”  
9 for the district—through some kind of theory of vicarious liability. Indeed, it  
10 assumes that if a teacher chooses not to act, that is tantamount to the  
11 recipient district itself making an “official decision” not to act, such that the  
12 Court can impose Title IX liability on the district as a whole. That assumption  
13 fails as a matter of law. *Gebser*, 524 U.S. at 290 (expressly rejecting the use of  
14 any vicarious liability under Title IX, because only the actions of the fund  
15 recipient itself can create a Title IX violation).

16 The Supreme Court has firmly established that there is no vicarious  
17 liability—of any kind—under Title IX. *Id.*; *Davis*, 526 U.S. at 640, 643 (The  
18 standard imposed in *Gebser* seeks to eliminate “any risk” that a school district  
19 would be liable “for its employees’ independent actions.”). Likewise, it has  
20 repeatedly ruled that for any liability to exist, the school district itself (i.e., the  
21 Title IX funding recipient) must take official action, and it is not bound by the  
22 actions, inaction, or decisions of its employees. *Gebser*, 524 U.S. at 290; *Davis*,  
23 526 U.S. at 640, 643 (“a recipient of federal funds may be liable in damages  
24 under Title IX only for its own misconduct,” not the misconduct of its students,  
25 agents, or employees.).

26 Were vicarious liability allowed, the actions of individual employees  
27 could jeopardize Title IX funding for the entire district—to the detriment of all  
28 students—which Title IX does not allow. *See Gebser*, 524 U.S. at 290; *Davis*,

1 526 U.S. at 640, 643. Simply put, for purposes of Title IX liability, CCSD can  
2 be liable only for its own “official decisions,” not the decisions of its employees.  
3 *Id.* Thus, to the extent plaintiffs attempt to argue that an employee’s decision  
4 not to act can be construed as an “official” CCSD “decision” not to act, their  
5 argument fails as a matter of law.

6 Second, plaintiffs’ employee-decision argument grossly misrepresents  
7 the Findings and the evidence. Specifically, and with no citation, plaintiffs  
8 misrepresent that school employees took no responsive action whatsoever,  
9 such that the Court can conclude that they implicitly “made a decision to take  
10 no action.” (*E.g.*, Pls’ Concl., at 7:2-3). This is disingenuous and demonstrably  
11 false. The Findings, the record, and the *Bryan* opinion all repeatedly establish  
12 that the school-level employees took several forms of remedial action. *Supra*  
13 Part I.C. Thus, there is no basis whatsoever for plaintiffs to argue—or for this  
14 Court to conclude—that the school-level employees made “a decision” to “take  
15 no action.” And even if there were, such employee decisions cannot be  
16 construed as an “official” CCSD “decision.” Therefore, plaintiffs’ attempt to  
17 evade the “official decision” rule fails on the law and on the facts, and it cannot  
18 support Title IX liability.

19 Beyond that, plaintiffs’ desperate attempt to manipulate the “official  
20 decision” rule, Findings, and evidence confirms the obvious: They did not prove  
21 deliberate indifference under the controlling standards, and they are now  
22 forced to invite the Court to apply nonexistent standards to nonexistent facts.  
23 The Court should reject their invitation and enter CCSD’s conclusions.

24 **E. Instead of Applying the Deliberate Indifference**  
25 **Standard, Plaintiffs Again Propose a Negligence Test**

26 Recognizing that they cannot satisfy the controlling, stringent standard  
27 for deliberate indifference, plaintiffs ultimately propose a simple negligence  
28 test. (*See* Pls’ Concl., at 6:13-14) Specifically, they invite the Court to use the

1 following question to determine whether CCSD was deliberately indifferent:  
 2 “were the actions of the Greenspun administrators reasonable under the  
 3 circumstances.” *Id.* (emphasis added).

4 To be clear, this is not the test for deliberate indifference at all. *See*  
 5 *supra* Part I.A. Rather, it is the much lower “reasonableness” standard for  
 6 simple negligence. *E.g., Driscoll v. Erreguible*, 87 Nev. 97, 101, 482 P.2d 291,  
 7 294 (1971) (“Negligence is failure to exercise that degree of care in a given  
 8 situation which a reasonable man under similar circumstances would  
 9 exercise.”). Indeed, the test for negligence is whether the defendant’s actions  
 10 were “reasonable” under the “circumstances,” *id.*, which is the very question  
 11 that plaintiffs’ propose here, (Pls’ Concl., at 6:13-14).

12 But deliberate indifference requires much more than mere negligence.  
 13 *E.g., Bryan*, 478 P.3d at 357-58; *Patel*, 648 F.3d at 974; *Brennan*, 511 U.S. at  
 14 835. In fact, it requires even more than “gross negligence.” *Patel*, 648 F.3d at  
 15 974. As the name “deliberate” indifference makes clear, liability requires  
 16 “deliberate choice, rather than negligence or bureaucratic inaction.” *Loeffler v.*  
 17 *Staten Island Univ. Hosp.*, 582 F.3d 268, 276 (2d Cir. 2009) (emphasis added).  
 18 Unintentional or negligent indifference is not enough. *Supra* Part I.A.

19 As with their set of conclusions, however, plaintiffs invite the Court to  
 20 ignore this controlling standard and use a negligence test to determine  
 21 whether CCSD was deliberately indifferent. (*See* Pls’ Concl., at 6:13-14).<sup>7</sup> The  
 22 Supreme Court has already rejected plaintiffs’ offered negligence test. *Supra*  
 23 n.7. Nevertheless, they invite this error again.

24 After proposing this erroneous negligence standard, plaintiffs apply it to  
 25 a demonstrably false factual recitation. Specifically, they invite the Court to

26 <sup>7</sup> Plaintiffs’ negligence tactic is not new. With their prior conclusions, plaintiffs  
 27 persuaded the Court to use a negligence per se standard as the test for deliberate  
 28 indifference, and the Supreme Court expressly rejected the use of such negligence standards.  
*E.g., Bryan*, 478 P.3d at 359 (“[T]he district court bypassed the key questions of whether the  
 evidence demonstrated CCSD was more than negligent.”).

1 conclude that CCSD's response was not reasonable because "no remedial  
2 action was taken" (Pls' Concl., 6:12-20, 7:2-3 (emphasis added)). That is,  
3 plaintiffs actually invite this Court to conclude that no school staff members  
4 took any action in an attempt to remedy the situation. (*See id.*). That is  
5 obviously and demonstrably false. It clearly contradicts this Court's Findings,  
6 the trial record, and the *Bryan* opinion, all of which repeatedly establish that  
7 multiple staff members took action in an attempt to remedy the harassment.

8 Thus, even when applying this lower negligence standard—instead of  
9 the controlling deliberate indifference standard—plaintiffs are still forced to  
10 resort to obviously false facts. It's not enough to reduce the standard for  
11 liability; they also have to rewrite the record. By doing so, they further  
12 demonstrate their reversible position and confirm that they failed to prove  
13 deliberate indifference at trial. Indeed, they confirm that nothing in the  
14 Findings—not a single thing—suggests that school staff acted with the higher  
15 degree of culpability required for deliberate indifference.

16 Beyond that, plaintiffs' proffer of a simple negligence standard  
17 inadvertently confirms what CCSD has argued all along—namely, that even if  
18 the school's response rises to the level of negligence, it rises no higher, and  
19 that is not enough for liability here.

20 In contrast to plaintiffs' proposal, CCSD's conclusions articulate and  
21 apply the exact deliberate indifference standard set forth in the *Bryan* opinion,  
22 and they correctly conclude that nothing in the Findings or evidence suggests  
23 that CCSD made the required "official decision" or acted with the required  
24 degree of culpability. With their attempt to apply lower standards to non-  
25 existent facts, plaintiffs all but concede this is true. They failed to establish  
26 deliberate indifference, and thus, the Court should enter CCSD's conclusions.

**F. By Their Own Admission, Plaintiffs Repeatedly Told School Staff that the Harassment Ceased, and Now They Invite the Court to Second-guess the Staff's Decision to Believe Them**

Plaintiffs' admissions further preclude their deliberate indifference conclusion. Specifically, they contend that CCSD was deliberately indifferent because it failed to do enough to stop harassment that occurred after Mrs. Bryan's October 19 email and before their withdrawal in early February. *Bryan*, 478 P.3d at 359 (holding that CCSD's response to the September 15 email was not deliberately indifferent, but remanding for a determination concerning CCSD's response after the October 19 email). Yet, plaintiffs admit that during this October-to-February period, school staff members repeatedly checked on them to determine whether the harassment had stopped (and whether additional remedial measures were necessary).<sup>8</sup> Further, they admit that during each of these conversations, they refused to tell staff members about the ongoing harassment and instead told them that everything was fine, that the harassment had ceased, or something similar. *Supra* n.8.

These admitted statements to school staff were either true or false. If they were true, the school's remedial efforts actually caused the harassment to cease. Alternatively, if they were false, they concealed ongoing harassment and thereby denied school staff the opportunity to take additional remedial actions. Indeed, if plaintiffs' admitted statements to school staff were false, those statements failed to impart knowledge of on-going harassment and thereby denied staff members the opportunity to do exactly what plaintiffs claim they failed to do here—namely, stop the harassment that continued during and after October 2011.

Now, plaintiffs suggest that their statements were false. (*See, e.g.,* Findings, ¶¶ 9, 26, 38, 58; Pls' Concl., 5:1-7:22; *supra* n.8). Specifically, they

<sup>8</sup> *E.g.,* Ethan, Day 2, at 14:10-18:3, Ex. 2; M. Bryan, Day 3, at 66:20-23, 67:18-71:1, Ex. 3; Halpin, Day 3, at 146:12-148:2, Ex. 3; Findings, at ¶¶ 9, 26, 38, 58; *see also Supra* Part I.C.

1 appear to concede that they repeatedly lied to school staff when asked if the  
2 harassment had ceased and that, in reality, the harassment was ongoing. (*Id.*).  
3 Worse, they admit that they lied to school staff for the very purpose of  
4 inducing school staff to take no further responsive action, because they  
5 believed such actions could lead to retaliation. (*Id.*). That is, plaintiffs admit  
6 that they intentionally concealed the harassment that occurred after the  
7 school's initial response to Mrs. Bryan's October 19 email in order to induce  
8 school staff to take no further action. (*Id.*).

9 Stated differently, the boys admit they lied to school staff for the very  
10 purpose of inducing no action and now seek to hold CCSD liable for getting  
11 exactly what they induced, i.e., no action. Worse, even though Ethan and  
12 Nolan wanted school staff to do nothing (out of fear that C. and D. would  
13 retaliate against them again), school staff nevertheless repeatedly checked-in  
14 with the boys. That is, this was not a one-and-done check-in where the boys  
15 induced inaction once. Each and every time school staff followed-up with  
16 Ethan and Nolan, they had to induce inaction again with more deception. The  
17 law does not reward deception, and there is no exception for sixth grade boys.

18 Yet, plaintiffs now contend—and invite this Court to conclude—that the  
19 staff was deliberately indifferent for taking them at their word and failing to  
20 discover (and remedy) that which plaintiffs intentionally concealed. (Pls'  
21 Concl., at 5:1-7:22). That conclusion fails as a matter of law.

22 Nothing in the deliberate indifference standard requires school staff to  
23 distrust a student when the student represents that previous harassment has  
24 ceased. Similarly, nothing requires staff to continue taking responsive actions  
25 after the victim states that the harassment ceased—i.e., deliberate  
26 indifference requires only action in response to known circumstances, not  
27 action in response to denied circumstances. In fact, the controlling cases hold  
28 that schools have considerable discretion and flexibility in determining how to

1 respond to the known circumstances and that courts are precluded from  
2 “second-guessing” those decisions. *E.g.*, *Bryan*, 478 P.3d at 357-58 (citing  
3 *Davis*, 526 U.S. at 648-49).

4 This kind of “second-guessing” is exactly what plaintiffs demand here.  
5 Specifically, they invite error by demanding that the Court criticize—with the  
6 benefit of hindsight (second-guess)—staff’s decision to believe plaintiffs, and  
7 conclude that staff should have instead acted to remedy unknown and, indeed,  
8 expressly denied circumstances. Such second-guessing would, of course, be  
9 error—especially when coupled with plaintiffs’ admittedly false statements  
10 and admitted intent to induce school staff to do nothing. This is yet another  
11 reason to reject plaintiffs’ deliberate indifference conclusions.

12 **II. PLAINTIFFS DO NOT ADDRESS THE CAUSATION ELEMENT,**  
13 **AND THEY CANNOT ESTABLISH CAUSATION HERE**

14 **A. Plaintiffs Failed to Propose a Conclusion on Title IX’s**  
15 **Causation Element, Meaning They Cannot Prevail**

16 Beyond deliberate indifference, the remand order also requires this  
17 Court to make new findings and conclusions on Title IX’s causation element.  
18 On this point, the Supreme Court stated as follows: “[T]he district court  
19 bypassed the key questions of whether the evidence demonstrated CCSD was  
20 more than negligent, that its inaction was clearly unreasonable in light of the  
21 known circumstances, and that its inaction caused the boys to either undergo  
22 harassment or be more vulnerable to it.” *Id.* at 359 (emphasis added). Here,  
23 however, plaintiffs do not propose any conclusions concerning causation. Thus,  
24 even ignoring the other errors in their conclusions, those conclusions still  
25 would not support a judgment for plaintiffs, because they leave Title IX’s  
26 causation element unaddressed and, consequently, unsatisfied.

1           **B. Plaintiffs Failed to Prove the Causation Element at Trial**

2           Further, and as demonstrated in CCSD’s proposed conclusions, this  
3 Court’s Findings confirm that plaintiffs failed to prove causation at trial.  
4 (CCSD’s Concl, at ¶¶ 30-39). Indeed, plaintiffs failed to propose a causation  
5 conclusion, because this Court’s Findings preclude one. (*Id.*).

6           Title IX’s causation and deliberate indifference elements are  
7 intertwined. *Davis*, 526 U.S. at 642-43. Specifically, under the causation  
8 element, a funding recipient—such as CCSD—can be liable “only where [its]  
9 own deliberate indifference effectively caused the discrimination.” *Id.*  
10 (emphasis added). This requires proof that CCSD’s “inaction caused the boys  
11 to either undergo harassment or be more vulnerable to it.” *Bryan*, 478 P.3d at  
12 358 (collecting cases)). “Courts have construed this language as requiring Title  
13 IX plaintiffs to demonstrate that a federal funding recipient’s deliberate  
14 indifference caused them to be subjected to further discrimination or  
15 deprivation.”<sup>9</sup> Like deliberate indifference, the causation element imposes a  
16 “high standard” and exists “to eliminate any ‘risk that the recipient would be  
17 liable . . . not for its own official decision but instead for its employees’  
18 independent actions.” *Davis*, 526 U.S. at 643.

19           At trial, plaintiffs failed to prove that CCSD was deliberately indifferent.  
20 *Supra* Part I. For that reason alone, they cannot establish that CCSD’s  
21 deliberate indifference “caused” plaintiffs to “undergo the harassment” or to be  
22 “more vulnerable to it.” *Bryan*, 478 P.3d at 358.

23           Further, even assuming plaintiffs proved deliberate indifference,  
24 nothing in the record suggests that CCSD’s conduct “caused” the student-on-

25           <sup>9</sup> *Lopez v. Regents of Univ. of Cal.*, 5 F. Supp. 3d 1106, 1125-26 (N.D. Cal. 2013)  
26 (emphasis added); accord *Williams v. Board of Regents of Univ. System of Georgia*, 477 F.3d  
27 1282, 1296 (11th Cir. 2007) (“Based on the *Davis* Court’s language, we hold that a Title IX  
28 plaintiff . . . must allege that the Title IX recipient’s deliberate indifference to the initial  
discrimination subjected the plaintiff to *further* discrimination.” (emphasis added)); *Doe v.*  
*Blackburn College*, 2012 WL 640046, \*7 (C.D. Ill. 2012) (Title IX liability exists “when the  
school exhibits deliberate indifference after the attack which causes the student to endure  
*additional* harassment”).

1 student harassment or made plaintiffs more vulnerable, (*see generally*  
 2 Findings), and plaintiffs do not even attempt to argue otherwise, (*see generally*  
 3 Pls. Concl.). Instead, and at the very most, the evidence suggests that CCSD's  
 4 remedial actions failed to stop the student-on-student harassment. (*See*  
 5 Findings). But, a failure to completely stop student-on-student harassment is  
 6 not the same as causing the harassment to occur in the first place.<sup>10</sup> Nor does  
 7 it necessarily make the victim more vulnerable to the harassment—as would  
 8 be the case if, for example, an administrator assigned a sexual-harassment  
 9 victim to a locker next to her known harasser's locker.

10 Additionally, to the extent any harassment continued after October 19,  
 11 plaintiffs admittedly failed to report it or actively concealed it. *Supra* Part I.F.  
 12 While this is unfortunate, CCSD's failure to stop harassment that plaintiffs  
 13 themselves concealed cannot possibly be the "cause" of any such harassment.  
 14 Therefore, CCSD's proven conduct does not satisfy the causation element's  
 15 "high standard." *Davis*, 526 U.S. at 643.

16 **III. PLAINTIFFS DO NOT EVEN ADDRESS DAMAGES,**  
 17 **AND THEY CANNOT ESTABLISH COMPENSABLE DAMAGES HERE**

18 The remand order also requires new damages conclusions. *See Bryan*,  
 19 478 P.3d at n.11. While CCSD proposed such conclusions, plaintiffs declined to  
 20 do so. Thus, other defects aside, plaintiffs' conclusions cannot support any  
 21 award of damages.

22 In the remand order, the Supreme Court expressed "several concerns  
 23 with the [prior] damages award," and it articulated several rules for any  
 24 future damages award. *Id.* Specifically, it noted (1) that plaintiffs' mothers  
 25 "merely speculated to their out-of-pocket expense," which is no basis for an  
 26 award of such damages; (2) the "record does not support . . . five years of out-

27  
 28 <sup>10</sup> *See, e.g., Davis*, 526 U.S. at 648 ("We stress that our conclusion here . . . does not mean that recipients can avoid liability only by purging their schools of actionable peer harassment or that administrators must engage in particular disciplinary action.").

1 of-pocket expenses for each boy”; (3) the prior conclusions wrongly “relie[d] on  
2 a settlement agreement in an unrelated federal case to calculate physical and  
3 emotional distress damages”; and (4) the Court should consider whether  
4 plaintiffs mitigated their damages. *Id.*

5 Unable to satisfy any of these concerns and rules, plaintiffs chose not to  
6 address damages at all. However, and as demonstrated in CCSD’s conclusions  
7 and below, the rules articulated in the remand order bar any award of  
8 damages here. (*See* CCSD’s Concl, ¶¶ 40-53).

9 Like a finding of deliberate indifference, “Title IX damages are  
10 appropriate only where the plaintiff shows an official decision not to remedy  
11 the violation.” *See, e.g., Bryan*, 478 P.3d at 358 (emphasis added). Moreover,  
12 even where such an award is appropriate, a court cannot use “a settlement  
13 agreement in an unrelated federal case” to calculate “physical and emotional  
14 distress damages.” *Id.* at n.11. Similarly, damages cannot be “speculative.” *Id.*  
15 Rather, “there must be an evidentiary basis for an award.” *Id.*

16 Here, because plaintiffs did not prove “an official decision” not to remedy  
17 the violation, “Title IX damages” are not “appropriate” in the first place.  
18 *Bryan*, 478 P.3d at 358. For this reason alone, the Court should adopt CCSD’s  
19 conclusions and hold that damages are unavailable.

20 But even assuming that plaintiffs proved the required “official decision,”  
21 and the other elements of their Title IX claims, the Supreme Court has already  
22 determined that there is no evidentiary basis for an award of any damages  
23 based on out-of-pocket expenses in this case. *Id.* n.11. Specifically, the Court  
24 determined that the prior award of out-of-pocket damages was entirely based  
25 on the mothers’ mere speculation, not evidence. *Id.* Indeed, at trial, neither the  
26 plaintiffs nor their mothers could say—with any degree of certainty—how  
27 much they paid in tuition expenses. *See, e.g., id.* Thus, the mothers were forced  
28 to speculate. *Id.* Such speculation is no evidentiary basis for an award of out-

1 of-pocket expenses. *Id.* Similarly, and as the Supreme Court expressly found,  
2 nothing in the record supports awarding five years of tuition expenses for each  
3 boy. *Id.* So, with respect to out-of-pocket damages, this Supreme Court’s  
4 determination ends the inquiry—there is simply no evidentiary basis for an  
5 award, and this Court should decline to enter one now. *Id.*

6 Further, the Supreme Court “caution[ed] courts in civil rights cases to  
7 consider whether the plaintiffs have a duty to mitigate damages.” *Bryan*, 478  
8 P.3d at n.11 (citing 2 CIV. ACTIONS AGAINST STATE & LOCAL GOV’T § 13:15 (2d  
9 ed. 2002)). And here, to the extent plaintiffs incurred any tuition expenses, they  
10 failed to mitigate their damages. Specifically, the record establishes that  
11 school staff offered to transfer the boys to another tuition-free public school,  
12 but plaintiffs’ mothers refused. (*E.g.*, Findings, at ¶ 32). Then, when the boys  
13 withdrew from CCSD in February 2012, they transferred first to a tuition-free  
14 charter school, Explorer Knowledge Academy, which cost them nothing. (*E.g.*,  
15 A. Hairr, Day 5, at 52:2-53:5; Ethan, Day 1, at 174:20-23; Nolan, Day 1, at  
16 99:3-101:12). At that tuition-free school, plaintiffs did not experience any  
17 problems or issues related to bullying or harassment. (*E.g.*, Nolan, Day 1, at  
18 61:9-17; Ethan, Day 1, at 138:5-18). That is, following their initial transfer, all  
19 of the harassment at issue in this case ceased, and plaintiffs paid no tuition.  
20 (*Id.*). Still, plaintiffs chose to transfer yet again—this time to a tuition-  
21 charging religious school. (*E.g.*, M. Bryan, Day 3, at 23:23-24:15, 26:3-14,  
22 82:21-84:25). However, this second transfer had nothing to do with CCSD’s  
23 response to the harassment at issue here. (*See id.*). Rather, it was the result of  
24 personal preference and convenience. (*Id.*). Thus, to the extent plaintiffs claim  
25 damages for the cost of tuition at their religious schools, they failed to mitigate  
26 (and instead aggravated) their damages, and such damages are unavailable.

27 Finally, as the Supreme Court found, Plaintiffs also failed to provide any  
28 evidentiary basis for calculating any physical or emotional distress damages.

1 *Id.* Instead, they wrongly relied on a settlement agreement from an unrelated  
2 case, *id.*, and they offered no other evidence from which this Court could  
3 calculate physical or emotional damages, (*see generally* Findings). Thus, to  
4 calculate and award plaintiffs any such damages, the Court would need to  
5 either impermissibly (1) speculate as to the amount or (2) rely on the  
6 settlement agreement from the unrelated federal case. Both of these options  
7 are improper and both “troubled” the Nevada Supreme Court. *Id.*  
8 Consequently, the Court is left with no evidentiary basis to calculate and  
9 award any physical or emotional distress damages. *See id.* As a result, the  
10 Court should rule that such damages are unavailable by entering CCSD’s  
11 proposed conclusions.

#### 12 CONCLUSION

13 For the foregoing reasons, the Court should enter CCSD’s proposed  
14 conclusions of law and reject plaintiffs’ competing version.

15 Dated this 16th day of April, 2021.

16  
17 LEWIS ROCA ROTHGERBER CHRISTIE LLP

18 By: Dan R. Waite  
19 DANIEL F. POLSENBERG (SBN 2376)  
20 DAN R. WAITE (SBN 4078)  
21 BRIAN D. BLAKLEY (SBN 13074)

22 *Attorneys for Defendant*  
23  
24  
25  
26  
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Dated this 16th day of April, 2021.

/s/ Annette Jaramillo  
An Employee of Lewis Roca  
Rothgerber Christie LLP

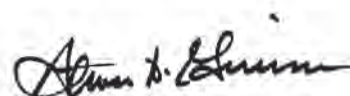
# EXHIBIT 1

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# EXHIBIT 1

TRAN



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MARY BRYAN,  
Plaintiff,  
vs.  
CLARK COUNTY SCHOOL DISTRICT,  
et al,  
Defendant.

CASE NO. A-14-700018  
DEPT NO. XXVII**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE NANCY ALLE, DISTRICT COURT JUDGE

**BENCH TRIAL - DAY 1**

TUESDAY, NOVEMBER 15, 2016

## APPEARANCES:

For the Plaintiff:

ALLEN LICHTENSTEIN, ESQ.  
JOHN SCOTT, Pro Hac Vice

For the Defendant:

DAN R. WAITE, ESQ.  
DANIEL F. POLSENBERG, ESQ.RECORDED BY TRACI RAWLINSON, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

**I N D E X****OPENING STATEMENTS:**

By Mr. Scott

By Mr. Polsenberg

**WITNESSES FOR THE PLAINTIFF:**

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1 Photograph - Nolan Hairr 08/11 36

**DEFENDANT'S EXHIBITS ADMITTED:****PAGE**

512 Detention Notice 9/13/11 82

629 Seating Chart by Nolan Hairr 113

1 Q What'd you tell them?

2 A I told them it was because the bullying had never  
3 stopped and had been continuing throughout the year.

4 Q And at some point did you switch schools?

5 A Yes.

6 Q And when was that?

7 A That was after I had been withdrawn, about a week to  
8 two weeks later, I believe.

9 Q And where did you next go to school?

10 A I went to Explore Knowledge Academy.

11 Q And how long did you attend that school?

12 A I attended that school for seventh — remainder of  
13 sixth grade, seventh grade and eighth grade.

14 Q And at that school, during the rest of sixth,  
15 seventh and eighth grade, did you experience any problems or  
16 issues related to bullying or harassment?

17 A No.

18 Q I take it you're now in high school?

19 A I am.

20 Q Where are you going to high school?

21 A I'm going to high school at Green Valley Christian  
22 School.

23 Q And are you a junior there now?

24 A I am.

25 Q And are you planning on attending college?

1 Q Now let's go to you transferred schools after you  
2 left Greenspun and you went to, was it the Explore Knowledge  
3 Academy?

4 A That is correct.

5 Q And sometimes referred to as EKA?

6 A Yes.

7 Q So if I refer to it, you'll know what I'm talking  
8 about?

9 A I will.

10 Q And how long were you at EKA?

11 A For the remainder of sixth grade, all of seventh  
12 grade and all of eighth grade.

13 Q Is eighth grade -- was eighth grade considered high  
14 school at EKA?

15 A No.

16 Q So in the beginning of your high school you  
17 transferred away from EKA?

18 A Correct.

19 Q And you went to the Lake Mead Christian Academy?

20 A Yes.

21 Q And you liked both EKA and the Lake Mead Christian  
22 Academy better than Greenspun, correct?

23 A Yes.

24 Q And can we sometimes refer to maybe shorthand, if I  
25 refer to the Lake Mead Christian Academy as LMCA, you'll know

1 what I'm talking about?

2 A I will.

3 Q All right. You feel that EKA provided you with a  
4 better educational experience than Greenspun, correct?

5 A I do.

6 Q And your opinion is based on your grades, your  
7 improved mood, your relationship with your friends and your  
8 ability to make new friends?

9 A Yes.

10 Q Now, you've never had any problems in school with  
11 reading at your grade level, have you?

12 A No.

13 Q In fact, you've always read above your grade level,  
14 correct?

15 A Yes.

16 Q And you know that because you take yearly tests on  
17 your reading level and you've always tested above your grade  
18 level, correct?

19 A Yes.

20 Q You've never had any problems expressing yourself in  
21 writing either, correct?

22 A No.

23 Q That's correct, you have not?

24 A That is correct, that I have not had any problems.

25 Q And you've done academically well in math classes,

1 correct?

2 A Yes. As can be expected, yeah.

3 Q And more specifically, you've never had any problems  
4 doing math at your grade level, correct?

5 A No.

6 Q Is that correct, that --

7 A Correct.

8 Q Comparing Greenspun and after Greenspun, so at EKA  
9 and Lake Mead Christian Academy, you participated in about the  
10 same number of activities after Greenspun as you did while at  
11 Greenspun, correct?

12 A Yes.

13 Q And you would agree that your interactions with  
14 **C. L.** and **D. M.** never kept you from participating in any  
15 classes that you wanted to participate in?

16 A No.

17 Q No, you --

18 A I disagree.

19 Q Would you please turn to page 248 of your  
20 deposition.

21 A [Complies.]

22 Q Okay. You'll see starting at line -- on page 248,  
23 line 24, "Question. Going back, I was asking you about  
24 whether your interactions with CL and DM," that's **C. L.** and  
25 **D. M.**, correct --

1 Q In any event, as a result of the seating change  
2 implemented by Mr. Beasley, Ethan was moved further away from  
3 C. L. than he was before the seating change, correct?

4 A As I don't remember where they were to begin with, I  
5 could not give you a definite answer on that.

6 Q Would you please turn to page 175. You would agree  
7 that when you had your deposition taken almost, well, 11  
8 months ago, in December of last year, that your memory of  
9 these events was fresher then?

10 A Today, yes.

11 Q Would you please turn to page 175.

12 A [Complies.]

13 Q At line -- are you there?

14 A I am.

15 Q Line 22. "And as a result of the seating change  
16 that you've identified, he, meaning Mr. Beasley, actually --  
17 I'm sorry, he being Ethan, actually moved further away than he  
18 originally was from CL, meaning C. L., correct?" And your  
19 answer was, Yes.

20 Does that refresh your recollection that in the  
21 seating change that Mr. Beasley moved Ethan further away from  
22 C. L. than he was before the seating change?

23 A Yes.

24 Q Let's switch gears a little bit. You believe --  
25 it's your belief that C. L. perceived you as straight, not

1 A No.

2 Q And at some point did you transfer to another  
3 school?

4 A Yes.

5 Q And what school was that?

6 A Explore Knowledge Academy.

7 Q And when did you go to that school?

8 A I don't remember when.

9 Q Since you left Greenspun, have you had any  
10 experiences at other schools that you could compare to your  
11 experiences at Greenspun?

12 A No.

13 Q At any events and since then that have --

14 A Like for anything?

15 Q For anything, any reason have there been events  
16 where you were eating paper or committing suicide because of  
17 what was going on at school?

18 A No.

19 Q Or other things going on in your life?

20 A No.

21 MR. SCOTT: That's all I have. Thank you.

22 THE COURT: Before we do the cross-examination,  
23 would you like a break?

24 (No audible response.)

25 THE COURT: Let's take about a ten minute break.

1 those locations?

2 A Yes.

3 Q Now, you testified that after the pencil jabbing  
4 incident and the seating change, C.L.'s attention focused  
5 towards you, right, his name calling and things like that?

6 A Yes.

7 Q And does that make sense, that you were sitting next  
8 to him at that time?

9 A Yes.

10 Q So does that refresh your recollection that after  
11 the seating change you moved to this box that I'm pointing to  
12 which is directly to the left of C.L. in the second set?

13 A Yeah, I think so.

14 Q And then at some subsequent time you moved to where  
15 you have me and a question mark, correct?

16 A I think so.

17 Q All right. So I'm going to hand this back to you  
18 and I'm going to ask you to put me where you indicated next to  
19 C.L. And maybe if I could suggest if you would put in that  
20 box a Me 1, and then append in the other one Me 2.

21 A [Complies.]

22 Q So now having your memory refreshed, Ethan, you  
23 would agree that -- well, let me ask you. The best that you  
24 can recall this move from the Me 1 seat to the Me 2 seat, did  
25 that occur as a result of your meeting with Dean Winn?

1 A I don't know.

2 Q Or shortly after your meeting with Dean Winn?

3 A I don't remember.

4 Q In any event, you would agree that the move from Me  
5 1 to Me 2 moved you about as far away in the trombone section  
6 from C.L. as you could be, correct?

7 A Yes, it looks like that.

8 Q And going to middle school was a new experience for  
9 you of course, right?

10 A Yes.

11 Q And in the sixth grade you experienced anxiety, as  
12 you testified, I can't remember the exact words that you used,  
13 but due to the way that C.L. and D.M. treated you, correct?

14 A Yes.

15 Q But you experienced anxiety for reasons that had  
16 nothing to do with bullying and C.L. and D.M.'s behavior,  
17 right?

18 A Yes.

19 Q During this same period?

20 A Yes, but that was mostly about grades and keeping up  
21 with school.

22 Q Sure.

23 A And that wasn't new to sixth grade.

24 Q Sure. School pressures that had nothing to do with  
25 bullying though, right?

1 A No. I'm pretty sure I told her. I don't remember.

2 Q Now, when Mr. Scott was asking you questions on  
3 direct about your suicidal thoughts and he was asking, if I  
4 understood the exchange correctly, he was asking you about  
5 after you left Greenspun if you've had any suicidal thoughts,  
6 was your testimony that no, you have not had any suicidal  
7 thought episodes after leaving Greenspun?

8 A No, I have.

9 Q You have —

10 A Yes.

11 Q — in fact?

12 In fact, occasionally even after you left Greenspun  
13 you thought -- you thought about suicide even long after you  
14 were gone from Greenspun, correct?

15 A Yes.

16 Q And there has been at least one such occasion while  
17 you were at the Explore Knowledge Academy and another after  
18 transferring to the Lake Mead Christian Academy, correct?

19 A Yes.

20 Q And I apologize, Ethan, if we've gotten in the  
21 record, if we have I have forgotten, how long did you attend  
22 EKA?

23 A For the rest of sixth grade and then seventh grade.

24 Q Okay. So from about February of 2012 to the end of  
25 your sixth grade year?

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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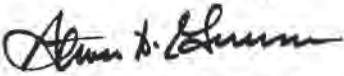
# EXHIBIT 2

002436

002436

# EXHIBIT 2

TRAN

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MARY BRYAN,	)	
	)	
Plaintiff,	)	CASE NO. A-14-700018
	)	DEPT NO. XXVII
vs.	)	
	)	
CLARK COUNTY SCHOOL DISTRICT,	)	
et al,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

BEFORE THE HONORABLE NANCY ALLE, DISTRICT COURT JUDGE

**BENCH TRIAL - DAY 2**

WEDNESDAY, NOVEMBER 16, 2016

APPEARANCES:

For the Plaintiff:	ALLEN LICHTENSTEIN, ESQ.
	JOHN SCOTT, Pro Hac Vice
For the Defendant:	DAN R. WAITE, ESQ.
	DANIEL F. POLSENBERG, ESQ.

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**I N D E X****WITNESSES FOR THE PLAINTIFF:**

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MARY BRYAN

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3 CCSD Bullying Policy 125

**DEFENDANT'S EXHIBITS ADMITTED:****PAGE**

630 Seating Chart by Ethan Bryan 145

617A NERC material 145

1           "Q     And I mentioned teachers, but no  
2 teachers, administrators, no one at your school  
3 did you tell any of those things, correct?

4           "A     Correct."

5           That testimony from your deposition that I just  
6 read, was that all truthful?

7           A     Yes.

8           Q     And that reflects your true and honest opinions?

9           A     Yes.

10          Q     And in fact, when Ms. Winn, the dean, called you to  
11 her office, asked how things were, you told her everything was  
12 fine and you thought the problem in the band class was being  
13 resolved, correct?

14          A     I don't remember what I said.

15          Q     Would you please turn to page 123, of your  
16 deposition.

17          A     [Complies.]

18          Q     Are you there?

19          A     Yes.

20          Q     Line 1. "Question. How long did the meeting last  
21 with Ms. Winn?

22          "A     Maybe about five minutes max.

23          "Q     She called you up, she asked you to  
24 tell her what happened?

25          "A     No. She —

1           "Q     What did she say, I'm sorry?

2           "A     She just said, How are things going  
3     like.

4           "Q     Just generally how are things going?

5           "A     Yeah. And I said they were fine.

6     She said, Is the problem in band class being  
7     resolved, and I said, Yes, I think so."

8           Does that refresh your recollection that when  
9     Ms. Winn called you up to her office to discuss your situation  
10    that you told her everything was fine and that the issue in  
11    the band class was being resolved?

12          A     Yes, I think so.

13          Q     And similarly, when you were approached in the  
14    lunchroom by Counselor Halpin or Assistant Principal DePiazza  
15    and they asked how you were doing, you told that individual  
16    everything was okay, everything was fine as well, right?

17          A     I don't remember.

18          Q     Would you please turn to page 142, of your  
19    deposition.

20          A     [Complies.]

21          Q     Starting at line 23, are you there, Ethan?

22          A     Yes.

23          Q     "Question. Were there occasions when you were  
24    approached in the lunchroom by the assistant principal or the  
25    dean or the counselor or someone who was in the lunchroom on

1 any particular day, were there times when you'd be approached  
2 and asked if everything was okay with you?

3 "A Yes."

4 And then there's some questions about the  
5 videotaping and so forth, and — sorry. Just a moment. Going  
6 to the bottom of that page 143, line 25.

7 "Q So a gentleman who was either the  
8 assistant principal or the counselor came up to  
9 you and asked you how you were doing?

10 "A Yes.

11 "Q Is that kind of the words that they  
12 used —

13 "A Yes.

14 "Q — that person used?

15 "What did you tell them?

16 "A I told them that everything was  
17 fine."

18 Does that refresh your recollection that when  
19 Mr. Halpin or Mr. DePiazza approached you in the lunchroom and  
20 asked how you were doing that you told them that everything  
21 was fine?

22 A Yes.

23 Q And as it relates to **D.M.**, you never told any  
24 teacher, any faculty or staff member or administrator  
25 regarding the conduct that **D.M.** directed towards you,

1 correct?

2 A I don't think so.

3 Q You don't think that you ever did tell any of those  
4 people, correct?

5 A Yes.

6 Q And to be clear, you never complained to any  
7 Greenspun personnel about being called names, correct?

8 A I don't think I did.

9 Q And after the seating change that occurred following  
10 the trombone scratching incident, so you remember yesterday we  
11 were talking about, and I think you ultimately remembered that  
12 there was a move that where you moved to right next to **C.L.**,  
13 and then there was a move where you moved further away from  
14 **C.L.**.

15 I asked you would you agree that you were moved  
16 about as far away from **C.L.** in the trombone section as you  
17 could be and you said yes, it's that move that I'm talking  
18 about. Okay. After the seat — that seating change occurred,  
19 you never made any complaint of any sort to any Greenspun  
20 personnel, correct?

21 A I don't think so.

22 Q You don't think that you did make any complaints to  
23 any person at any time thereafter; is that right?

24 A Yes.

25 Q You're agreeing with me.

1 MR. WAITE: Your Honor, that's all I have.

2 THE COURT: Redirect.

3 MR. SCOTT: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Ethan, just a couple of questions, maybe one.

7 You've testified yesterday and a little bit this morning about  
8 being suicidal in your life. Can you tell us when was the  
9 first time in your life that you were suicidal?

10 A In the sixth grade.

11 MR. SCOTT: That's all I have. Thank you.

12 THE COURT: Any recross?

13 MR. WAITE: No, thank you.

14 THE COURT: And Mr. Scott, may we excuse the  
15 witness?

16 MR. SCOTT: Yes.

17 THE COURT: Sir, you may step down.

18 MR. POLSENBERG: Your Honor, the parties agreed to  
19 take a witness out of order, and the plaintiffs are going to  
20 call Leonard DePiazza now. But before you get him, Marshal, I  
21 want to make an objection.

22 I didn't object to the breadth of the questioning of  
23 the two students, because I understand that's part of the res  
24 gestae. But I think it's important to object and to realize,  
25 as I've said repeatedly, this is not a bullying case. This is

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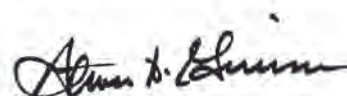
# EXHIBIT 3

002445

002445

# EXHIBIT 3

TRAN



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MARY BRYAN,  
Plaintiff,  
vs.  
CLARK COUNTY SCHOOL DISTRICT,  
et al,  
Defendant.

CASE NO. A-14-700018  
DEPT NO. XXVII

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE NANCY ALLE, DISTRICT COURT JUDGE

**BENCH TRIAL - DAY 3**

THURSDAY, NOVEMBER 17, 2016

## APPEARANCES:

For the Plaintiff:

ALLEN LICHTENSTEIN, ESQ.  
JOHN SCOTT, Pro Hac Vice

For the Defendant:

DAN R. WAITE, ESQ.  
DANIEL F. POLSENBERG, ESQ.

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**I N D E X****WITNESSES FOR THE PLAINTIFF:**

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JOHN HALPIN

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Redirect Examination By Mr. Scott 152

1 place?

2 A In her office.

3 Q Who was present at the meeting?

4 A Myself, my husband and Dean Winn.

5 Q Approximately how long did that meeting last?

6 A Close to an hour, I would imagine.

7 Q And can as best you can recall, can you tell the  
8 Court what you told Dean Winn at the meeting?

9 A I started off by referencing to the two emails that  
10 I had sent, and the first one prompting the second because  
11 Ethan was now involved for having stuck up for what he  
12 believed, for having stuck up for Nolan, and it turned into  
13 that he was protective of Nolan because Nolan was a girl, and  
14 I told her all the information about how it had got to this  
15 point.

16 She said that she -- she acknowledged that she had  
17 seen the emails. She got them from Mr. Halpin, who also left  
18 me a message that morning. We -- I started out by I was  
19 fairly uncomfortable with all that was going on and  
20 [inaudible] I was -- I couldn't believe that that was my child  
21 and...

22 My husband was furious. He -- he hadn't heard bits  
23 and pieces before this meeting about Ethan getting his chair  
24 kicked and Nolan getting blown on by the boys, and his hair  
25 flicked, and the boys blowing their instruments in Ethan and

1 couple days and then I think the first person that I spoke to  
2 was probably Aimee, because I had to tell them I wasn't  
3 driving.

4 Q Do you mean Aimee Hairr?

5 A Yes. For the carpool, and that I wasn't taking  
6 Ethan back to school anymore.

7 Q And so after that, that event, did Ethan go back to  
8 Greenspun?

9 A He did not.

10 Q And at that point did you start thinking ahead of  
11 what Ethan was going to do for education?

12 A The nurse that -- the therapist that was  
13 communicating with me, once we got to the point that Ethan, I  
14 had asked him -- when I felt like he was safe and if I -- you  
15 know, did he have those thoughts every minute and like all the  
16 time, and he said no, like once he realized that he wasn't  
17 going back to school and he felt safe.

18 The therapy lady through the help line said it's not  
19 good for him to stay home all day, he has to get back to  
20 normal as much as he possibly can. And I had been in contact  
21 with some of the people at the school. By then I had --

22 Q What school?

23 A At Greenspun. I had gone to the school not about  
24 Ethan. I had been in there about **J. B.** and I kind of just --

25 Q Your older son?

1       A     Yeah. I had just -- I don't know what I was  
2     thinking about Ethan. I just wanted him to be safe and I knew  
3     that that wasn't a safe place for him to go. By, I don't  
4     know, the end of January, I think, Ethan had been -- he had  
5     missed so much school the first semester, he had missed so  
6     much school the second, and I needed to get him back to a  
7     school.

8                So we started visiting other schools. And I was  
9     going to pull both my kids, but my older son has an IEP. He  
10    has a hard time in school, and it makes it very difficult  
11    because most private schools don't have -- they don't  
12    accommodate IEPs. So we agreed to keep **J.B.** there. We felt  
13    as though he was in a small little group with his IEP and he  
14    was fairly safe, and he wanted to go back. He didn't want to  
15    leave.

16               So we started -- I don't know, I guess started to  
17    put our minds together, like what do we do. I didn't -- Ethan  
18    didn't want to go to any school. He wanted -- there were some  
19    things that he thought he wanted, and if I mentioned a  
20    different school he would say, do they have band, do they have  
21    this, do they have that. And a lot of them didn't.

22       Q     Did you eventually locate another school that Ethan  
23    could go to?

24       A     We did. When I realized that nobody at the school  
25    was going to help us make a plan or do anything about getting

1 him back into the school safely, we did. We went to Explore  
2 Knowledge Academy.

3 Q I'm sorry?

4 A A school called Explore Knowledge Academy.

5 Q And is that part of the same school district?

6 A It's a Clark County School District school, but it's  
7 a charter school. I wanted to be non-affiliated with the same  
8 administration, because I didn't feel safe for him.

9 Q And then he transferred -- approximately when did he  
10 start at the charter school?

11 A He didn't start until probably the second week of  
12 February he started attending classes.

13 Q And did -- how did he do for the rest of sixth grade  
14 at that charter school?

15 A He did all right. He -- Ethan's a very smart boy.

16 Q And did you -- were you looking to at some point  
17 place him back in the public school system?

18 A Yes, at some point. He wanted to go back to  
19 Greenspun, but only if those kids weren't there. He wanted  
20 all the -- he wanted to be back in robotics. He wanted just  
21 to be with the neighborhood kids minus the obvious.

22 Q After sixth grade, did you -- into seventh, eighth  
23 grade, high school, did you consider sending Ethan back to the  
24 public school system?

25 A No. It was still -- we never have to this day have

1 heard anything from anybody to say, hey, we'll make this safe  
2 for your child to come back. Never.

3 Q What about your other children?

4 A **J.B.** we eventually moved to a private school that  
5 had a little program within it to accommodate his IEP, so he  
6 went to a private school. He went to Bishop Gorman. They  
7 have a little thing called the Learning Center. It's got  
8 about 25 kids with --

9 Q What about Ethan?

10 A What's that?

11 Q What about Ethan?

12 A Ethan, he stayed at EKA and then our younger son, we  
13 pulled him out and put him at EKA too. And then the next year  
14 they all moved to Lake Mead Christian Academy.

15 Q And back when Ethan was in sixth grade, was it your  
16 plan to send him to the Christian academy?

17 A No.

18 Q I'm sorry?

19 A No. Not at all. We would have loved for him to go  
20 to school with his friends within the neighborhood and the  
21 families that we had become close with. We were very social  
22 people and active within the school, and would have loved to  
23 stay there.

24 Q And is the Christian academy a private school?

25 A It is.

1 Q And he asked you to call him back?

2 A Yes.

3 Q And you did?

4 A I did.

5 Q So when you called him back however, you told him  
6 that you had just had a meeting with Dean Winn, and that she's  
7 taking care of it, right?

8 A I either was just going into the meeting or just  
9 came from it. I don't remember.

10 Q Would you turn to page 167, of your deposition.

11 A [Complies.]

12 Q Are you there at 167?

13 A I am.

14 Q Line 20. "Question. Okay. And when you called him  
15 back, what did he say?

16 "A That he had forwarded the emails to  
17 Ms. Winn, and I said, Actually, I just -- I had  
18 a meeting with her and she said she's taking  
19 care of it."

20 Does that refresh your recollection of what you told  
21 Mr. Halpin that morning?

22 A Okay.

23 Q Does it?

24 A Yes.

25 Q And essentially you were telling Mr. Halpin in so

1 many words, don't worry about it, Ms. Winn is handling it?

2 A Giving him acknowledgment that, yes, what he was  
3 telling me was happening. Like that it — yes, gets pushed on  
4 to Mrs. Winn.

5 Q You had talked about your volunteering at the  
6 school. And there came a point where you understood that you  
7 needed to sign in when you would go to volunteer, correct?

8 A Yes.

9 Q And you would actually punch in and you were  
10 supposed to punch out, but you didn't always punch out, but  
11 you at least punched in, correct?

12 A Yes.

13 Q And at what point in time did you come to that  
14 understanding that you needed to punch in every time that you  
15 came to volunteer?

16 A I don't know how many times I'd been there prior to  
17 that without getting a volunteer sticker, but somewhere in  
18 October, I believe, I saw somebody with a volunteer sticker  
19 and I realized that that's how I did it, and the girl at the  
20 front desk showed me how to print out a volunteer sticker.

21 Q All right. Would you in the big book turn to  
22 Defendant's Proposed 546. While you're turning there, did you  
23 follow that procedure thereafter, after you became aware that  
24 that was the procedure, that you needed to punch in?

25 A Yes, for her, when I was volunteering at the

1 video-taped again?

2 A Yes.

3 Q When you called the dean's office and you weren't  
4 able to speak with the dean, I think you had indicated you  
5 spoke with the dean's secretary, Harriet, right?

6 A Yes.

7 Q When you called the dean's office, you did not know  
8 the identity of the kid who video-taped Ethan the prior  
9 Friday, correct?

10 A Correct.

11 Q So you didn't know the identity to — you couldn't  
12 identify the person to the secretary by name or even  
13 description or anything regarding the boy that had video-taped  
14 Ethan; am I understanding correctly?

15 A I didn't know who it was, yes.

16 Q And you had become aware that an administrator did  
17 check on Ethan in the lunchroom the day that you called,  
18 correct?

19 A Yes.

20 Q And in fact, Ethan told you that more than one  
21 administrator checked on him in the lunchroom and asked how he  
22 was doing, right?

23 A Yes.

24 Q But when you told the school that you wanted someone  
25 to check on Ethan to make sure he wasn't being video-taped,

1 what you really wanted was someone to escort him out of the  
2 lunchroom and interview him; is that right?

3 A I would think it would be more appropriate to  
4 interview him when he's by himself for a sensitive matter like  
5 that, yes.

6 Q But that's not what you asked the school to do?

7 A No, I didn't.

8 Q And in fact, you expected the school to confiscate  
9 whoever this offending person's phone was, correct?

10 A I didn't expect that. I asked if that was -- could  
11 be a possibility, could they take -- because Ethan was  
12 concerned about them posting that on the Internet.

13 Q Even though this event had occurred days before and  
14 no one could identify, at least you didn't identify anybody,  
15 you expected them to confiscate the phone just simply why?

16 A I just said why. But I didn't expect them to do it.  
17 I asked is that a possibility.

18 Q And you understand that Ethan told the  
19 administrators that contacted him in the lunchroom that  
20 everything was fine, you understand that he told you -- let me  
21 stop there. You understand that that's what Ethan told the  
22 administrators, correct?

23 A Yes.

24 Q And you understand that the reason that Ethan  
25 misrepresented, I think from your perspective he

1 misrepresented that everything was fine, was because the  
2 offending kids were sitting nearby and he didn't want those  
3 kids to retaliate against him, right?

4 A I don't know who was sitting near him. I know that  
5 he felt as though he didn't want to talk about it.

6 Q You don't know if the offending kids were sitting  
7 next to --

8 A I don't know who was sitting to the right or the  
9 left or whatever. I don't have the seating chart. But I know  
10 that he was uncomfortable talking with other kids being there.  
11 Whether it was the perpetrators or his friends or whatnot, he  
12 was not comfortable.

13 Q Would you turn to page 184, of your deposition.

14 A [Complies.]

15 Q Are you there?

16 A [No audible response.]

17 Q At the top of the page 184, my colleague who is  
18 taking this deposition on that day, he was trying to narrow  
19 down with you who it was that contacted him, whether it was  
20 Vice Principal DePiazza, whether it was Counselor Halpin.  
21 Then he says at line 7, "You're not sure as you sit here?"

22 "A One of the -- or actually two  
23 administrators came to him and asked him if he  
24 was okay.

25 "Q And you said they asked Ethan if he

1 was all right, he said he was fine, and then --

2 "A But he said he was fine because the  
3 kids were sitting near him and he didn't want  
4 to say what happened in front of them. He was  
5 embarrassed and he didn't want them to  
6 retaliate against him."

7 Now, he wouldn't be fearful that his friends would  
8 retaliate against him, right?

9 A You would need to ask Ethan who he was afraid of,  
10 but I'm assuming when he's talking about the -- and what I was  
11 talking about, that he doesn't want the perpetrator, **C. L.**  
12 and his friends or the little gang of friends that he had with  
13 him to retaliate against him.

14 Q And is that what Ethan told you? Is that the reason  
15 Ethan told you as to why he didn't -- he wasn't more  
16 forthright, why he wasn't more honest with the administrators  
17 in telling them everything was not fine; in other words, did  
18 Ethan tell you that the reason he did not tell the truth that  
19 day is because he was afraid that the offenders were sitting  
20 nearby and he did not want them to retaliate against him?

21 A No. He had said the kids were sitting near him.  
22 Like I said here [indicating], the kids were sitting near him.  
23 He didn't want to talk when the kids were near him and he  
24 didn't want to be retaliated against.

25 Q But again, can you think of any reason why he'd be

1 afraid that his friends would retaliate against him?

2 MR. SCOTT: Objection, Your Honor.

3 THE WITNESS: I don't think he said —

4 MR. SCOTT: Excuse me.

5 THE COURT: Hang on. There's an objection.

6 MR. SCOTT: Objection. Misstates the evidence. She  
7 didn't say friends. She said kids.

8 THE COURT: Hang on. Don't trigger the witness with  
9 your objection. The legal grounds for your objection, please.

10 MR. SCOTT: Misstates the evidence.

11 THE COURT: Well, you know, you can redirect on  
12 that. I found it argumentative, so I'm going to sustain the  
13 objection.

14 MR. WAITE: Okay. Thank you, Your Honor. I'll  
15 move on.

16 BY MR. WAITE:

17 Q In any event, did Ethan tell you that he  
18 misrepresented the truth to the administrator because his  
19 friends from elementary school were sitting with him, and he  
20 didn't want to talk about this in front of his friends; did he  
21 tell you that?

22 A If I remember correctly, Ethan just said they  
23 approached him while he was still at lunch and there was  
24 people all around. He didn't want to talk to him then about  
25 something so sensitive. The kids were sitting all around him.

1 He didn't specifically tell me which kids.

2 Q All right. Let's go to the difficult topic of  
3 Ethan's suicidal thoughts. Okay. Do you want to take a break  
4 first, or --

5 A Yeah, that would be great actually.

6 THE COURT: It's 2:25. Take a recess until 2:35,  
7 unless anyone needs more time. And if that -- if anyone needs  
8 more time, let me know. The court's in recess until 2:35.  
9 And Ms. Bryan, you may step down.

10 THE WITNESS: Thank you.

11 (Court recessed at 2:25 p.m. until 2:40 p.m.)

12 THE COURT: Recalling the case. Mrs. Bryan, are you  
13 ready to proceed?

14 THE COURT: If at any time you need a break, let me  
15 know.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Mr. Waite.

18 MR. WAITE: Thank you, Your Honor.

19 CROSS-EXAMINATION (continued)

20 BY MR. WAITE:

21 Q And actually, I don't intend to dwell long on this,  
22 on this sensitive topic. But you did speak with your son  
23 about his suicidal feelings one evening, correct?

24 A Yes.

25 Q And the two of you decided that very night that he

1 well, I'll read it. The beginning of that sentence says,  
2 "Ethan and Nolan are great kids and have been removed from  
3 Greenspun."

4 Do you have that in front of you?

5 A I'm sorry. Tell me what page number.

6 Q It's -- do you have Exhibit 525? It's your  
7 February 7 email.

8 A Oh, yes. I see it now. Yeah.

9 Q And you're on the last page, page 4 of that email?

10 A Yes.

11 Q Second full sentence -- excuse me, the second full  
12 paragraph that says at the beginning of that paragraph, Ethan  
13 and Nolan are great kids and have been removed from Greenspun.

14 A Yes.

15 Q And that was a truthful statement when you wrote it  
16 at that time?

17 A Yes. He quit going to school in January.

18 Q I'm sorry?

19 A He was removed from that school in January. He quit  
20 going to school.

21 Q Let's talk a little bit about the transfer from EKA  
22 to LMCA; EKA being Explore Knowledge Academy, LMCA, Lake Mead  
23 Christian Academy.

24 A Okay.

25 Q Again, just to set the stage, your son, **J. B.**, is two

1 years older than Ethan; is that correct?

2 A Yes.

3 Q And **J. B.** went to Greenspun for his sixth to eighth  
4 grade years?

5 A He didn't go sixth grade. Seventh and eighth.

6 Q Seventh and eighth grade.

7 A Yes.

8 Q Thank you. Then starting ninth grade you put **J. B.**  
9 into Gorman High School, correct?

10 A I did.

11 Q That was a private Christian school?

12 A Yes.

13 Q So **J. B.** went to public school from kindergarten  
14 through eighth grade; am I understanding correctly?

15 A Yes.

16 Q And then in **J. B.**'s tenth grade, you transferred him  
17 from Gorman High School to Lake Mead Christian Academy,  
18 correct?

19 A Yes.

20 Q And **J. B.** graduated from Lake Mead Christian Academy?

21 A He did, yes.

22 Q Lake Mead Christian Academy is a private school,  
23 correct?

24 A Yes, it is.

25 Q One for which you have to pay tuition like Gorman

1 High School?

2 A Yes.

3 Q And the reason you transferred **J. B.** from Gorman is  
4 because you wanted to follow one of **J. B.**'s teachers that was  
5 at Gorman that you really liked, who said she was transferring  
6 from Gorman to Lake Mead Christian Academy, correct?

7 A She was the lady that was running the Learning  
8 Center there that I -- it's not an IEP program, but something  
9 similar for kids that have trouble learning, yes.

10 Q The point being is that the reason that you selected  
11 Lake Mead Christian Academy is because --

12 A By her recommendation, yes.

13 Q -- because you wanted to follow a teacher that was a  
14 good teacher that you liked and you wanted to follow her to  
15 Lake Mead Christian Academy, correct?

16 A Yeah. I don't believe she's a teacher.

17 Q I'm sorry?

18 A I don't believe she's actually a teacher, but yes.

19 Q Okay.

20 A On her recommend and because she was going over  
21 there, we looked at that school.

22 Q And so with **J. B.** going to Lake Mead Christian  
23 Academy, you moved Ethan from EKA to Lake Mead Christian  
24 Academy as well?

25 A Yes, I did.

1 of any homophobic slurs being called Nolan or Ethan?

2 A No.

3 Q Were you aware at the September 22nd meeting with  
4 Nolan or with Aimee Hairr?

5 A No.

6 Q Did the Exhibit 505 have anything about the  
7 homophobic slurs?

8 A It does not.

9 Q In your discussion with Aimee Hairr, did she bring  
10 up any?

11 A No.

12 Q After the September 22nd meeting, where Nolan Hairr  
13 did the incident report, did you have any conversations with  
14 the boys, either Ethan or Nolan?

15 A Since the September 22nd?

16 Q Yeah.

17 A Not besides seeing --

18 Q I'm not saying not besides. Did you have any  
19 conversations with the boys?

20 A I would see them in the lunchroom.

21 Q And what were your conversations with the boys? How  
22 many times --

23 A I would ask --

24 Q Let me lay a foundation so that -- like a lawyer  
25 would do. How many -- when were these conversations? How

1 many were there?

2 A It would be hard to put a number on them, but  
3 anytime I would see them in the lunchroom, I would ask them  
4 how they were doing, if there -- try to look them in the eye  
5 and make sure that they know I'm available still. They hadn't  
6 come back to me. I wasn't aware of any other situations until  
7 the 19th. But I just wanted them to be -- to know that I  
8 care.

9 Q And you looked them in the eye why; to establish  
10 rapport?

11 A Correct. Let them know -- to make sure that they  
12 see me and it's not just a hi thing.

13 Q And so you're not just saying, hey, how are ya, like  
14 I would to a guy in the jury box?

15 A Right.

16 Q And you're actually trying to get across the point  
17 that you care about how they are?

18 A Yes.

19 Q And they answered?

20 A Yes.

21 Q And what did they say?

22 A Everything is going okay, I'm doing fine, things are  
23 good.

24 Q And did you assess them at the time to see whether  
25 you were confident in their answers?

1 A Just in a quick just going along with it kind of  
2 way. I mean, I didn't notice anything that was amiss.

3 Q Very good. And you had a conversation with Dean  
4 Winn, I think you discussed with Mr. Scott?

5 A Correct.

6 Q And that -- was that also in the lunchroom?

7 A Yes.

8 Q You have lunch duties as well as Dean Winn?

9 A Correct. Yes.

10 Q Does everybody in the building get lunch duties?

11 A Everyone in the office.

12 Q Okay. And what's the lunchroom like at the time?

13 A [No audible response.]

14 Q Sorry. You weren't expecting that, were you.

15 What's the noise level in the lunchroom?

16 A It can get loud. Especially sixth graders, they  
17 seem a little more, a little louder.

18 Q Really? Why is that?

19 A They're just -- they -- the freedom is new to them  
20 in the lunchroom.

21 Q Makes sense. All right. The October 19 email, do  
22 you receive that email and what was your reaction to that  
23 email?

24 A I was upset, because I thought it had been taken  
25 care of and apparently there were still issues.

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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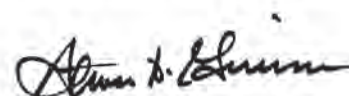
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# EXHIBIT 4

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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MARY BRYAN,	)	
	)	
Plaintiff,	)	CASE NO. A-14-700018
	)	DEPT NO. XXVII
vs.	)	
	)	
CLARK COUNTY SCHOOL DISTRICT,	)	
et al,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

BEFORE THE HONORABLE NANCY ALLE, DISTRICT COURT JUDGE

**BENCH TRIAL - DAY 4**

FRIDAY, NOVEMBER 18, 2016

APPEARANCES:

For the Plaintiff:	ALLEN LICHTENSTEIN, ESQ.
	JOHN SCOTT, Pro Hac Vice
For the Defendant:	DAN R. WAITE, ESQ.
	DANIEL F. POLSENBERG, ESQ.

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**I N D E X****WITNESSES FOR THE PLAINTIFF:**

ROBERT BEASLEY

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CHERYL WINN

Direct Examination By Mr. Scott 77

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WARREN MCKAY

Direct Examination By Mr. Scott 172

Cross-Examination By Mr. Polsenberg 209

**E X H I B I T S****DEFENDANT'S EXHIBITS ADMITTED:****PAGE**

631 Seating Chart by Robert Beasley 61

1 us, something must be up. So I took the opportunity to also  
2 move the rest of the kids around to try to -- you know, by  
3 this time I've identified kids who when they sit next to each  
4 other, talking a little too much, so I used this opportunity  
5 to also move them around as well.

6 Q Okay. Now let's come to the question, the best of  
7 your recollection, how long after September 19 was Nolan in  
8 that seat that's depicted there closest to you?

9 A As far as I remember, he was there at least until  
10 the October email. I can't remember after that. I don't  
11 know -- I can't be specific. I don't know.

12 Q Do you -- now, you received the October email and in  
13 that email you saw that there was issues now that had  
14 developed between C.L. and Ethan, right?

15 A Yes. Yes.

16 Q All right. And so you made a change as a result of  
17 that October 19 email?

18 A Yes.

19 Q Do you recall where you moved the boys after that  
20 October 19 email?

21 A Not specifically, but I know I moved Ethan a long  
22 ways from C.L.

23 Q Were there any other factors that went into your  
24 subsequent move, what I'll call your post October 19 move?

25 A One of the things when I re-seat, I have to consider

1 who I don't want next to each other. I don't want to put them  
2 next to each other, like C.L. and D.M. should not be  
3 sitting together. So that's why they're separated as well.  
4 It's like a chess game.

5 Q So what I hear you saying is when you made the move  
6 after the October 19 email, you knew that C.L. had had  
7 problems with both Ethan and Nolan by that point in time?

8 A Yes.

9 Q And that C.L. and D.M. sitting next to each other  
10 was not a good mix?

11 A Correct.

12 Q And all of that factored into your move after  
13 receiving the October 19 email?

14 A Yes.

15 Q You just don't recall where you placed the boys  
16 subsequently?

17 A No, I don't.

18 Q Going back to the September 15 email and the move  
19 that's depicted here, did you believe that you had corrected  
20 the problem between the boys after the September 15 email?

21 A I did.

22 Q And why is that?

23 A I never heard any -- any complaints after that.

24 Q All right. Let's go to the October 19 email again.  
25 You made -- well, I want you to again just kind of summarize.

1 22, and escorted him to your office?

2 A No. I didn't know that.

3 Q And you did — if you turn to Tab No. 9 in that  
4 binder, and do you recognize this voluntary incident report  
5 dated 9/22/11, signed by Nolan Hairr?

6 A Yes, I recognize that.

7 Q Did you receive it on or about November 22?

8 A Yes, and I worked on this.

9 Q So when you received this statement from Nolan  
10 Hairr, did you contact him and talk to him?

11 A I — I don't know if I called him in to the office,  
12 it's been so many years ago. But I did RPC the other student.

13 Q We'll get there. Okay.

14 A All right.

15 Q My question right now is, did you talk to Nolan  
16 Hairr?

17 A I'm not 100 percent positive that I called him in to  
18 the office that day.

19 Q Did you contact his parents?

20 A I do not recall.

21 Q In the normal course of business, would you have  
22 talked to Nolan Hairr and contacted his parents?

23 A On something like this, I don't know if I would have  
24 contacted the parent on it just right away until I talked to  
25 the student and everything, so I don't know.

1 Q All right. So either on the 22nd or sometime after  
2 the 22nd you remember speaking to Mr. Beasley about the  
3 reassigning?

4 A Yes.

5 Q So you may have spoken to him twice about it?

6 A I could have, but I'm not sure how many times — I  
7 know I was in the bandroom at least once to see where the  
8 trombone players were.

9 Q So in these conversations you had with Mr. Beasley  
10 in September 22 about a complaint made by Nolan Hairr and his  
11 mother to the administration, Mr. Beasley never mentioned the  
12 stabbing; is that right?

13 A Not to me.

14 Q And the last thing you wrote here is that Dean Winn  
15 will meet with **C. L.**, presumably, and his parent to discuss  
16 the issue. Do you see that?

17 A Yes.

18 Q And so your solution was to meet with **C. L.** and his  
19 mother?

20 A Yes. I put him on an RPC the very next day, and I  
21 met with her on the 27th.

22 Q Okay. We'll get to that. Now, did you conduct an  
23 investigation of these allegations made by Nolan that **C. L.**  
24 was calling him names, messing with his hair, kicking his band  
25 instrument and blowing in his face?

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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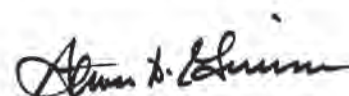
# EXHIBIT 5

002476

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# EXHIBIT 5

TRAN



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MARY BRYAN,	)	
	)	
Plaintiff,	)	CASE NO. A-14-700018
	)	DEPT NO. XXVII
vs.	)	
	)	
CLARK COUNTY SCHOOL DISTRICT,	)	
et al,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

BEFORE THE HONORABLE NANCY ALLE, DISTRICT COURT JUDGE

**BENCH TRIAL - DAY 5**

TUESDAY, NOVEMBER 22, 2016

APPEARANCES:

For the Plaintiff:	ALLEN LICHTENSTEIN, ESQ.
	JOHN SCOTT, Pro Hac Vice
For the Defendant:	DAN R. WAITE, ESQ.
	DANIEL F. POLSENBERG, ESQ.

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## I N D E X

## WITNESSESS FOR THE PLAINTIFF:

AIMEE HAIRR

Direct Examination By Mr. Scott

3

Cross-Examination By Mr. Waite

34

1 A Correct.

2 Q And I think you indicated EKA is a charter school?

3 A It is.

4 Q And it's a charter school within the Clark County  
5 School District system?

6 A It's a state funded charter school, but I do think  
7 that they abide by the Clark County School District policies.

8 Q And you indicated, I want to be just clear, that  
9 when — within just a very short period of time after Nolan  
10 made his transfer to EKA, he felt — he felt happy and safe at  
11 his new school; is that correct?

12 A I felt he felt happy and safe.

13 Q Was that just an assumption on your part, or did he  
14 send you some signals or say something that led you to believe  
15 that?

16 A It was an assumption on my part.

17 Q And everything that Nolan said and did during that  
18 period of time was consistent with that assumption, correct?

19 A Correct.

20 Q Was there any tuition that your family had to bear  
21 for Nolan's attendance at EKA?

22 A There was not.

23 Q Was there any other kind of expense to your family  
24 for Nolan to attend EKA that would not have been also borne if  
25 you were still at Greenspun; for example, if he attended a

1 dance he might have to pay a fee, or a fee for gym clothes or  
2 something like that, but any expense to your family that you  
3 would not have borne had he stayed at Greenspun or any other  
4 Clark County school?

5 A No.

6 Q You mentioned that you had a meeting with Andre Long  
7 and some others, and I think it involved Mary Bryan as well on  
8 February 7?

9 A Yes, and another family.

10 Q Okay. The Foster family, is it?

11 A Yes.

12 Q And who did you understand Andre Long to be at that  
13 time?

14 A I don't recall his position at that time.

15 Q He was not an on-site Clark County School District  
16 person; meaning he wasn't located at Greenspun, correct?

17 A He was not, no.

18 Q Did you understand that he was at the time the  
19 academic manager for the Clark County School District for the  
20 area that covered Greenspun Junior High School?

21 A At that time maybe, but I do now.

22 Q You at least understood that he was a higher up from  
23 anybody that was located at the school?

24 A Yes. Yes.

25 Q And during that meeting, it was asked if Ethan and

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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*Heather S. Smith*

CLERK OF THE COURT

1 **SAO**

DANIEL F. POLSENBERG (SBN 2376)

2 DAN R. WAITE (SBN 4078)

BRIAN D. BLAKLEY (SBN 13074)

3 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Pkwy, Suite 600

4 Las Vegas, NV 89169-5996

Tel: 702.949.8200

5 Fax: 702.949.8398

[DPolsenberg@lrrc.com](mailto:DPolsenberg@lrrc.com)

6 [DWaite@lrrc.com](mailto:DWaite@lrrc.com)

[BBlakley@lrrc.com](mailto:BBlakley@lrrc.com)

7 *Attorneys for CCSD*

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No.: A-14-700018-C

Dept. No.: 27

11 Plaintiffs,

12 vs.

13 CLARK COUNTY SCHOOL DISTRICT  
14 (CCSD)

Defendant.

**STIPULATION AND ORDER TO  
SUBSTITUTE PARTIES**

**STIPULATION**

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

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

21 2. Pursuant to NRCP 17, and subject to this Court's approval, they shall be substituted in—in  
22 place of their mothers—as the plaintiffs in this action.  
23  
24  
25  
26  
27  
28

3. The caption in this action shall be amended to reflect that Ethan Bryan and Nolan Hairr are the plaintiffs in this action.

**SO STIPULATED:**

Dated this 21st day of March, 2021.

Dated this 21st day of March, 2021.

**ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.**

**LEWIS ROCA ROTHGERBER CHRISTIE LLP**

By: /S/ Allen Lichtenstein

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

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

By: /s/ Brian D. Blakley

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

*Attorneys for Defendant CCSD*

**PLAINTIFFS ETHAN BRYAN AND NOLAN HAIRR:**



ETHAN BRYAN



NOLAN HAIRR

**ORDER**

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

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

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

<p>ETHAN BRYAN AND NOLAN HAIRR,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>CLARK COUNTY SCHOOL DISTRICT (CCSD),</p> <p>Defendant.</p>	<p>Case No.: A-14-700018-C</p> <p>Dept. No.: XXVII</p>
---	--

**IT IS SO ORDERED.**

April 22, 2021

Dated this 22nd day of April, 2021

*Nancy L Allf*

NB

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

Respectfully Submitted By:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: 

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

---

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

[EXTERNAL]

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

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

Best,

Brian

**Brian D. Blakley, Esq.**

<image001.png>

[bblakley@lewisroca.com](mailto:bblakley@lewisroca.com)  
Direct: 702.474.2687

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

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Mary Bryan, Plaintiff(s)

CASE NO: A-14-700018-C

7 vs.

DEPT. NO. Department 27

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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16 Annette Jaramillo . ajaramillo@lrrc.com

17 Brian D. Blakley . bblakley@lrrc.com

18 Dan R. Waite . DWaite@lrrc.com

19 Dana Provost . dprovost@lrrc.com

20 Eva Martinez . emartinez1@interact.ccsd.net

21 Jessie Helm . jhelm@lrrc.com

22 Luz Horvath . LHorvath@lrrc.com

23 Maria Makarova . mmakarova@lrrc.com

24 Matt Park . mpark@lrrc.com

25 Phillip Lewis . plewis@lrrc.com

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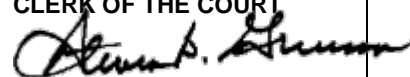
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John Scott  
John Scott

john@scottlawfirm.net  
john@scottlawfirm.net

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Allen Lichtenstein (State Bar No. 3992)  
ALLEN LICHTENSTEIN, LTD.  
3315 Russell Road, No. 222  
Las Vegas, NV 89120  
Tel: 702.433.2666  
Fax: 702.433.2666  
[allaw@lvcoxmail.com](mailto:allaw@lvcoxmail.com)

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](mailto:john@scottlawfirm.net)  
*Attorneys for Plaintiffs, Ethan Bryan,  
and Nolan Hairr*

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR,  
Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT  
(CCSD)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

**NOTICE OF ENTRY OF ORDER  
ACCEPTING  
PLAINTIFFS' PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF  
LAW, AND JUDGMENT**

NOTICE IS HEREBY GIVEN that an Order was entered on June 16, 2021, that the parties' post-remand Stipulated Findings of Fact and Plaintiffs' Conclusions of Law are adopted and entered by this Court. A copy of said Order is attached hereto.

Dated this 27<sup>th</sup> day of June 2021

Respectfully submitted by:

/s/Allen Lichtenstein

Allen Lichtenstein (State Bar No. 3992)  
ALLEN LICHTENSTEIN, LTD.  
3315 Russell Road, No. 222  
Las Vegas, NV 89120

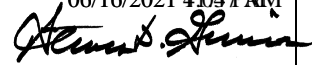
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Fax: 702.433.2666  
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[john@scottlawfirm.net](mailto:john@scottlawfirm.net)  
*Attorneys for Plaintiffs, Ethan Bryan,  
and Nolan Hairr*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2021, I served the foregoing Notice of Entry of Order on all parties via the Court's electronic filing and service system.

Allen Lichtenstein

Electronically Filed  
06/16/2021 4:03 PM  
  
CLERK OF THE COURT

1 **ORDR**

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

4 \* \* \* \*

CASE NO.: A-14-700018-C

DEPARTMENT 27

5 MARY BRYAN, mother of ETHAN  
6 BRYAN; AIMEE HAIR, mother of  
7 NOLAN HAIR

8 Plaintiffs,

9 vs.

10 CLARK COUNTY SCHOOL DISTRICT  
11 (CCSD)

12 Defendant.  
13

14 **ADOPTION OF PLAINTIFF'S CONCLUSIONS OF LAWS**

15  
16 **COURT FINDS** after review that on November 15, 2016 a Bench Trial was held and a  
17 judgment was entered on June 29, 2017.

18  
19 **COURT FURTHER FINDS** after review that on November 21, 2017 an Amended  
20 Notice of Appeal and Amended Case Appeal Statement was filed.

21  
22 **COURT FURTHER FINDS** after review that thereafter on appeal the Nevada Supreme  
23 Court REVERSED and REMANDED the case on January 25, 2021.

24  
25 **COURT FURTHER FINDS** after review that thereafter the parties agreed on one set of  
26 findings of Finding of Fact and each party submitted a version of Conclusions of Law.

27  
28 **COURT FURTHER FINDS** after review that on March 25, 2021 a Stipulation and  
Order on Joint, Post Remand Findings of Fact was filed.

HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

Case Number: A-14-700018-C

002490

**COURT FURTHER FINDS** after review that on April 16, 2021 Defendant s Response to Plaintiff s Proposed Conclusions of Law was filed.

**COURT FURTHER FINDS** after review that on April 16, 2021 Plaintiff s Objections to CCSD's Proposed Conclusions of Law was filed.

**COURT FURTHER FINDS** after review that the Court has reviewed the objections filed by both parties.

**THEREFORE COURT ORDERS** for good cause appearing and after review that the defendant's objections are hereby OVERRULED and that the Plaintiff s Conclusions of Law shall be ADOPTED.

**THEREFORE COURT ORDERS** for good cause appearing and after review that the Plaintiff is to present a form of Findings of Fact, Conclusions of Law and Judgment to Defendant by Friday, May 21, 2021. Defendant will have until Friday, May 28, 2021 to either approve or disapprove the Findings of Fact, Conclusions of Law and Judgment.

**THEREFORE COURT ORDERS** for good cause appearing and after review that after May 28, 2021, the Plaintiff may submit the Findings of Fact, Conclusions of Law and Judgment in compliance with EDCR 7.21 and email it in pdf format to the Department 27 Inbox: DC27Inbox@clarkcountycourts.us.

June 16, 2021

Dated this 16th day of June, 2021

*Nancy L. Allf*

TW

CCB PCA CBA CDB  
Nancy Allf  
District Court Judge

**CERTIFICATE OF SERVICE**

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

/s/ \_\_\_\_\_  
Deborah Bedgood-Ealy  
Judicial Executive Assistant

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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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6 Mary Bryan, Plaintiff(s)

CASE NO: A-14-700018-C

7 vs.

DEPT. NO. Department 27

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

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11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/16/2021

15 Allen Lichtenstein . allaw@lvcoxmail.com

16 Annette Jaramillo . ajaramillo@lrrc.com

17 Brian D. Blakley . bblakley@lrrc.com

18 Dan R. Waite . DWaite@lrrc.com

19 Dana Provost . dprovost@lrrc.com

20 Eva Martinez . emartinez1@interact.ccsd.net

21 Jessie Helm . jhelm@lrrc.com

22 Luz Horvath . LHorvath@lrrc.com

23 Maria Makarova . mmakarova@lrrc.com

24 Matt Park . mpark@lrrc.com

25 Phillip Lewis . plewis@lrrc.com

26  
27  
28

1 John Scott john@scottlawfirm.net

2 John Scott john@scottlawfirm.net

3  
4 If indicated below, a copy of the above mentioned filings were also served by mail  
5 via United States Postal Service, postage prepaid, to the parties listed below at their last  
6 known addresses on 6/17/2021

7 Allen Lichtenstein 3315 Russell Rd. #H222  
8 Las Vegas, NV, 89120

9 Dan Waite Lewis Roca Rothgerber Christie LLP  
10 Attn: Dan R. Waite  
11 3993 Howard Hughes Pkwy - Suite 600  
12 Las Vegas, NV, 89169-5996

13 Daniel Polsenberg Lewis Roca Rothgerber Christie LLP  
14 Attn: Daniel Polsenberg  
15 3993 Howard Hughes Pkwy - Suite 600  
16 Las Vegas, NV, 89169

1 **CSERV**

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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6 Mary Bryan, Plaintiff(s)

CASE NO: A-14-700018-C

7 vs.

DEPT. NO. Department 27

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bblakley@lrrc.com

19 Dan R. Waite .

DWaite@lrrc.com

20 Dana Provost .

dprovost@lrrc.com

21 Eva Martinez .

emartinez1@interact.ccsd.net

22 Jessie Helm .

jhelm@lrrc.com

23 Luz Horvath .

LHorvath@lrrc.com

24 Maria Makarova .

mmakarova@lrrc.com

25 Matt Park .

mpark@lrrc.com

26 Phillip Lewis .

plewis@lrrc.com

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John Scott  
John Scott

john@scottlawfirm.net  
john@scottlawfirm.net

Allen Lichtenstein (State Bar No. 3992)  
 ALLEN LICHTENSTEIN, LTD.  
 3315 Russell Road, No. 222  
 Las Vegas, NV 89120  
 Tel: 702.433.2666  
 Fax: 702.433.2666  
[allaw@lvcoxmail.com](mailto:allaw@lvcoxmail.com)

John Houston Scott (CA Bar No. 72578)  
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 SCOTT LAW FIRM  
 1388 Sutter Street, Suite 715  
 San Francisco, CA 94109  
 Tel: 415.561.9601  
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*Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan,  
 Aimee Hairr and Nolan Hairr*

# DISTRICT COURT

## CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR,  
 Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT  
 (CCSD)

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

## **PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND JUDGMENT**

### **I. INTRODUCTION**

The plaintiffs below raised Title IX and 42 U.S.C. § 1983 claims against a school district for student-on-student harassment after two sixth-graders targeted classmates Nolan and Ethan with sexual slurs, other insults, and physical assaults in the fall of 2011. Nolan's and Ethan's mothers reported the harassment and the physical assaults to the school in September and again in October, but school administrators failed to conduct an official investigation as required by NRS 388.1351 or to prevent continued harassment. Nolan and Ethan eventually withdrew from the school, and their parents later filed the underlying lawsuit. At the time of the filing of the initial lawsuit, both Ethan Bryan and Nolan Hairr were minor, represented in these Court proceedings by their respective mothers. As both are now past the age of 18, they are representing themselves as

1 Plaintiffs. The district court found for Plaintiffs on both their Title IX and § 1983 claims following  
2 a bench trial. CCSD appealed the District Court's decision, in *Clark Cty. Sch. Dist. (CCSD) v.*  
3 *Bryan*, 478 P.3d 344 (Nev. 2020) as follows:

4       Following *Bostock v. Clayton County*, we hold Title IX's protections against sex-  
5 based discrimination extend to prohibit discrimination against homosexual and  
6 transgender individuals, as well as discrimination based on perceived sexual  
7 orientation. U.S. , 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020). Here, we  
8 conclude the record supports the district court's finding that the harassment was "on  
9 the basis of sex" for purposes of Title IX. While we conclude the record does not  
10 support the finding of deliberate indifference with respect to the September  
11 incident, we remand for additional findings as to whether the events following the  
12 October report demonstrate deliberate indifference. And finally, we reverse the  
13 decision as to the 42 U.S.C. § 1983 claim. In light of our decision, we necessarily  
14 reverse the damages and attorney fees awards.

15 478 P.3d at 361.

16       Pursuant to the Nevada Supreme Court's remand Order, the District Court reviewed the  
17 record in order to make additional findings as to the question of whether the events following the  
18 October report demonstrate deliberate indifference. Now, having made such a review of the  
19 record, the District Court finds that Defendant demonstrated deliberate indifference concerning the  
20 sexual bullying of Plaintiffs after October 19, 2011.

## 21 **II. FINDINGS OF FACT**

### 22 **A. Ethan Bryan and Nolan Hairr started being bullied almost from the time the** 23 **began attending Greenspun Jr. High School.**

24 1. In late August 2011, two friends, Ethan Bryan and Nolan Hairr begin sixth grade at  
25 Greenspun Jr. High School.

26 2. Both Ethan and Nolan enrolled in Mr. Beasley's third period band class in the trombone  
27 section.

28 3. Almost from the beginning of the school year, Ethan and Nolan began to be bullied by two  
other trombone students, C and D.

1 4. In sixth grade, at age 11, Nolan was small for his age with long blonde hair. C and D  
2 taunted him with names like gay and faggot, and called him a girl. C also touched, pulled, ran his  
3 fingers through Nolan's hair and blew in Nolan's face.

4 5. Nolan, following what he believed was proper procedure, went to the Dean's office and  
5 filled out a complaint report. He was, however, too embarrassed to mention the homophobic and  
6 sexual content of the slurs that he was enduring.

7 6. Nolan was subsequently called into the Dean's office and met with Dean Winn. He did not  
8 feel that she was either sympathetic or even interested, and therefore was reluctant to discuss the  
9 homophobic sexually-oriented nature of the bullying.

10 7. Within a day or two of Nolan's meeting with the Dean, on or about September 13, 2011,  
11 C, who was sitting next to Nolan in band class, reached over and stabbed Nolan in the groin with  
12 the sharpened end of the pencil. C said he wanted to see if Nolan was a girl, and also referred to  
13 Nolan as a tattletale.

14 8. Nolan took the tattletale reference as a sign that the stabbing was, at least in part,  
15 retaliation for Nolan complaining about the bullying.

16 9. Because of this fear of retaliation, Nolan decided not to tell any adults about any further  
17 bullying directed at him, and instead, to endure the torment in silence.

18 10. A day or two after the stabbing incident, while Nolan was at Ethan's house, Ethan's  
19 mother, Mary Bryan overheard Ethan and Nolan talking about some problem taking place at  
20 school.

21 11. After Nolan had gone home, Mary Bryan confronted her son and questioned him  
22 concerning what Ethan and Nolan had been discussing.

23 12. Ethan described to his mother the incident where C stabbed Nolan in the groin with a  
24 pencil, and about the overall bullying occurring in Mr. Beasley's band class.

**B. Mary Bryan's September 15, 2011 e-mail**

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

14. On September 15, 2011, she attempted to telephone Greenspun Principal Warren P. McKay. However, she could not reach him by telephone and was only able to talk to a junior high student volunteer. Mary did not want to leave such a sensitive message with a junior high student and was not transferred to Principal McKay's voicemail.

15. Mary then decided she would email the Principal and got an email address for him from the student volunteer.

16. On September 15, 2011, Mary Bryan sent an email complaining about the bullying and specifically about the stabbing to three people: 1) Principal Warren McKay; 2) band teacher Robert Beasley; and 3) school counselor John Halpin.

17. Both Mr. Beasley and Mr. Halpin acknowledged receiving the September 15, 2011 email from Mary Bryan. Principal McKay said he did not receive it because the email address for him (which Mary Bryan obtained from his own office) was incorrect.

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

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