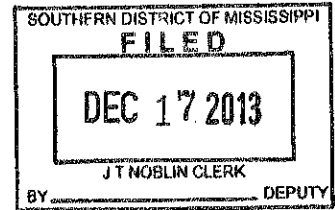


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
~~GULFPORT DIVISION~~
southern



D.H., by and through her next friend and parent,
Robert Holmes;

Plaintiff,

v.

Case No. 1:13cv4100+50 RHW

Moss Point School District;
Moss Point School Board;
Superintendent Maggie Griffin in her official
capacity as Superintendent of Moss Point
School District; and Durand Payton in his
individual capacity;

COMPLAINT

Defendants.

PRELIMINARY STATEMENT

1. This is a civil rights action brought by Plaintiff D.H., by and through her legal guardian and parent Robert Holmes, against Defendants Principal Durand Payton, Superintendent Maggie Griffin, the Moss Point School District ("the District"), and the Moss Point School Board, of Moss Point, Mississippi. Students, staff, and school administrators of the District targeted and subjected D.H. to severe and pervasive harassment on account of her gender expression and sexual orientation in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. D.H., a 17 year-old lesbian formerly enrolled at Magnolia Junior High and now enrolled at Moss Point High School, seeks to vindicate her constitutional and statutory rights to equal access to educational opportunities.

2. Since the day D.H. enrolled in the Moss Point School District in 2011, teachers and peers harassed her because of her gender expression. Perceived by others as gender-variant, students and/or District staff called her "it," "he/she," and "freak." One teacher refused her access to the girls' restroom and made her use the boys' restroom instead. Another teacher made D.H. sit in the middle of the room during a class when students were split into groups of boys and girls because, according to her, D.H. was an "in between it." Despite knowing D.H. for at least several weeks, teachers made comments such as, "He/she cannot go to the restroom," "I don't care what he/she is," and "What are you? Sit down boy."

3. Students and teachers also targeted D.H. because of her sexual orientation. Students' anti-gay slurs included "dyke," "dyke-ass freak," and "lesbo." District staff also used "dyke." One teacher repeatedly called D.H. a "dyke," and Assistant Principal LaJuna Payton referred to D.H. as a "dyke" in front of other students. As set forth below, Defendant Principal Payton also addressed D.H. as a "dyke" during a meeting.

4. Some days, D.H. heard such slurs up to 20 times a day.

5. The verbal harassment D.H. suffered was coupled with physical harassment on at least two occasions as students called her names like "dyke ass lesbian." Students used similar slurs while also repeatedly throwing objects at her during class time. Such behavior was all in plain view of District staff who failed to protect her.

6. Two months after a suicide attempt of which the school was made aware, a peer harassed D.H. during class and D.H.'s teacher failed to intervene. Only after the harassment escalated and D.H. expressed suicidal thoughts within her classroom, did the school notify her case manager and guardians.

7. Despite having actual notice of the severity of the harassment she faced, the District failed to alleviate the harassment and in fact, continued its pattern of targeting D.H. and punishing D.H. when she attempted to defend herself.

8. Other students who are gay and/or dressed in a gender-variant fashion were subjected to similar harassment by peers and staff, and were also harshly disciplined. A gay male student was afraid to use the restroom because students threatened to attack him, and he was physically assaulted by other students because he was open about his sexual orientation. Students often told him, "faggot, you don't deserve to live." Because of such harassment, this student in fact attempted to commit suicide. Another student was repeatedly and publicly singled out by District staff to be punished for his failure to dress in a stereotypically masculine fashion. A female student was physically attacked, publicly ridiculed, and punished by District staff for wearing clothes associated with the female gender or for carrying a purse, all because she was transgender. Several of these students were repeatedly referred to as "it," as was D.H., by both District staff and students. The District ignored students' reports and pleas for assistance.

9. Despite numerous reports and requests for assistance throughout the school year from D.H., her grandmother, and father, the District took no constructive action to address the harassment. Similar requests from the parents of other gender-variant and/or LGBT youth within the District were also ignored. Instead of remedying the harassment, the District partook in discriminatory acts.

10. Mental health providers working closely with students across the District made requests that were similarly ignored. Even after D.H.'s suicide ideation became known at school, when her case manager attempted to speak with Principal Payton about the need to remedy the

harassment she faced, Payton stated he would not follow the case manager's guidelines because, "when you are in my school, you follow my lead since I allow you to be here."

11. Defendant Payton's hostility to D.H., including his refusal to address reported harassment, culminated in March 2012 when he told her "I don't want a dyke in this school," and called her a "pathetic fool."

12. Fearing for D.H.'s physical and mental safety, D.H.'s grandmother and father withdrew her from the District so she could be homeschooled. However, because the family could only afford this arrangement for one year, D.H. thereafter returned to the District in fall 2013.

13. Upon her enrollment at Moss Point High School, a teacher who had known D.H. for weeks addressed D.H. as a boy in front of the class, despite D.H.'s requests that she be addressed as a female. When D.H.'s grandmother reported this harassment to District staff, D.H. was punished. Instead of moving the teacher, the District transferred D.H. into a new math class that was inappropriate for her skill set. D.H. was only returned to the proper class after several weeks.

14. The District has created and fosters an environment in which gender variant and LGBT students are targeted by students, staff, and administrators. The District's deliberate indifference to the rights of these students constitutes a denial of equal educational opportunities to D.H. and similarly situated students.

JURISDICTION AND VENUE

15. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343(a)(3) (jurisdiction over Section 1983 claims) because the matters in controversy arise under the Constitution and laws of the United States.

Jurisdiction is also proper under 28 U.S.C. §§ 2201-2202 because Plaintiff seeks a declaration of her federal civil rights.

16. This Court has personal jurisdiction over each of the Defendants because each resides in Mississippi.

17. Venue is proper in this District under 28 U.S.C. § 1391(b) because one or more Defendants resides in the District and because the events giving rise to Plaintiff's claims occurred in the Southern District of Mississippi.

PARTIES

18. Plaintiff D.H. is a 17-year-old female and sues here by and through her next friend, parent, and guardian, Robert Holmes. She identifies as a lesbian. D.H. attended Magnolia Junior High beginning in August of 2011 until March of 2012 and is now a student at Moss Point High School. D.H. is resident of Jackson County, Mississippi.

19. Defendant Moss Point School District is a public school district in Jackson County, Mississippi. The District is a "person" within the meaning of 42 U.S.C. § 1983. Upon information and belief, the School District and each of its component schools are recipients of federal financial assistance.

20. Defendant Moss Point School Board (the "School Board" or "Board") is a public education corporation governing the School District pursuant to the laws of the State of Mississippi. The School Board is a "person" within the meaning of 42 U.S.C. § 1983. The Board holds policymaking authority for the School District with respect to equal opportunity, anti-harassment, and anti-bullying policies. The Board has the ability and authority to take corrective action on behalf of the School District to stop discrimination and harassment within its component schools.

21. Defendant Maggie Griffin (“Superintendent Griffin”) is the current Superintendent of the District and is sued in her official capacity. Pursuant to Mississippi Code § 37-9-69, she has the responsibility of, among other things, enforcing school rules, regulations, and policies. As Superintendent and Chief Executive Officer of the District, she holds policymaking authority for the School District with respect to equal opportunity, anti-harassment, and anti-bullying policies. Although Superintendent Griffin was not the Superintendent during the occurrence of many of the facts giving rise to this case, she has since gained the ability and authority to take corrective action on behalf of the School District to stop discrimination and harassment within the District and to respond appropriately to instances of such discrimination and harassment. Superintendent Griffin is a natural person and, upon information and belief, resides in Mississippi.

22. Defendant Durand Payton is currently employed by the District and was the Principal of Magnolia Junior High for the 2011-2012 year. Defendant Payton is sued in his individual capacity. As the Principal of Magnolia Junior High, he was responsible for the day-to-day administration of the school, including management of teachers, administrators, and staff. He was also responsible for ensuring students within the school received equal access to educational opportunities. Defendant Payton is a natural person and, upon information and belief, resides in Mississippi.

FACTS

23. D.H. enrolled in the District for the 2011 Fall semester. She began her 8th grade year at Magnolia Junior High (“Magnolia”) on August 8, 2011. Before she enrolled at Magnolia, D.H., her father, and grandmother met with Principal Payton. During the meeting the adults discussed D.H.’s gender non-conforming appearance.

24. From the moment D.H. entered Magnolia, students and teachers harassed her on the basis of her gender-variant appearance and her sexual orientation. Students and teachers consistently referred to D.H. as "it." Students routinely called D.H. names such as "freak" "he/she," "wanna-be-boy," and "dyke" in plain view of teachers and school staff up to 20 times a day.

25. The District was not only indifferent to the peer harassment she faced, but participated in discriminatory acts. One teacher, along with students, repeatedly called D.H. "it" and D.H. had to finally state, "I am a girl, please call me she." Other teachers made comments such as, "he/she cannot go to the restroom," "I don't care what he/she is, it is not going there," and "What are you? Sit down boy."

26. One day when D.H. was attempting to use the girls' restroom, a teacher stopped her in the hallway and told her she had to use the boys' restroom instead. Even after D.H. told the teacher she was a girl, the teacher refused and pointed to the boys' restroom. Humiliated and feeling as though she had no other choice, D.H. used the boys' restroom.

27. Another teacher refused to allow D.H. to participate in a classroom math activity in which teams were divided by gender because, according to the teacher, D.H. was an "in-between it." D.H. sat in the middle of the room, put her head down and cried, while the other students laughed and participated in the class assignment.

28. District staff and students also routinely harassed D.H. with anti-gay comments relating to her gender expression and her perceived and actual sexual orientation. Students would routinely call D.H. a "dyke," "lesbian," "lesbo," "queer," and "dyke-ass freak." Another student heard Assistant Principal LaJuna Payton call D.H. "that dyke" and as set forth herein, Defendant Principal Payton directly addressed D.H. as "dyke."

29. D.H. repeatedly notified the adults around her about the harassment. Specifically, she met with Defendant Payton on several occasions during the Fall of 2011 to report her experiences, yet nothing changed.

30. Teachers continued to mock D.H.'s gender expression in front of students, asking why she wore baggy pants and over-size sweatshirts. At least one told her she was not acting "like a lady" based on her short hair and style of dress. When D.H. reported to Assistant Principal LaJuna Payton, in the school cafeteria, that students were making fun of her and a friend based on their appearance and sexual orientation, Assistant Principal LaJuna Payton told D.H. and her friend to "grow up and accept it." Defendant Principal Payton criticized her on at least one occasion asking why she dressed "like a boy."

31. D.H. was also subjected to disciplinary measures on account of her sexual orientation. In approximately November 2011, D.H. received an in-school suspension for hugging another female student. The gym teacher called D.H.'s father to report her conduct, stating that D.H. was hugging another female student during class and that it "wasn't appropriate."

32. Reports from mental health providers ("case workers") at Singing River Services, an organization that provided mental health services to the District's students, made to District administrators were also similarly ignored by the District.

33. D.H. regularly met with Mr. H., a social worker who was under contract with the District to provide mental health services to D.H. and a number of students within the District. In his notes dated October 17, 2011, Mr. H. observed that D.H.'s "biggest problem at school is over how the other kids have been treating her and been calling her a dyke."

34. Similarly, in notes dated December 20, 2011, Mr. H. stated, "[D.H.] has been experiencing trouble with school officials calling her names and mocking her appearance.

[D.H.] feels like she has no support at the school and is alienated by a majority of the staff.”

These notes were written around the time D.H. attempted to commit suicide relating, at least in part, to the harassment she faced at Magnolia. Despite Mr. H.’s repeated efforts to convince Defendant Principal Payton about the discriminatory treatment D.H. faced, even after D.H.’s suicide attempt, he too was ignored.

35. The experiences of former students from the District confirm that the District’s treatment of D.H. is not unique. Student A was an eighth-grader enrolled in the Moss Point School District for the 2011-2012 academic year and identifies as a gay male. While in the District, he was close friends with D.H. Students physically assaulted Student A because he was open about his sexual orientation. Another student told him, “faggot, you don’t deserve to live.” Student A attempted suicide as a result of relentless bullying. Instead of protecting him, Assistant Principal LaJuna Payton told Student A he needed to “learn to tone it down if he wanted to get through life easier” and that “flamboyance won’t get [him] anywhere.” He was sent to in-school suspension because he wore a collection of bracelets forming a rainbow indicating his support for gay rights. Student A was called “he/she” by a teacher who knew he was a male within hearing range. Assistant Principal LaJuna Payton called D.H. “that dyke” in front of Student A on at least one occasion.

36. Student B, a student enrolled in the Moss Point School District for the 2011-2012 academic year, identifies as a gay male. On one occasion, Student B was dancing in the lunch line when another student told him “cut that out—I don’t like that gay shit in front of me,” in hearing range of District staff. No staff intervened and a fight ensued. Both students were sent to the Assistant Principal’s office where Student B explained that he did not instigate the fight and that it was not his fault. Assistant Principal LaJuna Payton, told him, “Maybe it wasn’t your

fault but you still need to be punished.” In Student B’s tenth grade year, 2011-2012, he was stopped in a hallway for wearing makeup by the Principal of the High School, Mr. Mumford. In hearing range of the other Principals, Mr. Mumford told Student B, “that’s not what we do at Moss Point High School.” In the Spring of 2012, Student B dyed his hair red like several female students in the District. He was told by Principal Mumford that he could not return to school unless his hair was a “natural” color. When he told one of his teachers that it was unfair that he had to have natural hair while girls did not, the teacher told him “I know, but I have to go with [Mr. Mumford’s] wishes.”

37. Student C, a student enrolled in the Moss Point School District for the 2011-2012 academic year, identifies as a transgender female. School authorities sent Student C home on multiple occasions for wearing clothing associated with the female gender. On one occasion she was sent home for two days for carrying a purse to school. Conversely from D.H., Student C was told she could not wear form-fitting pants and was instead required to wear baggier pants—she was told “You can’t wear pants that show your figure.” One teacher told her, “You’re a boy and boys don’t put lip gloss on.” Another teacher during class told Student C and another student that they were “its.” Another teacher muttered “fucking queer” after Student C said good morning to him. Despite physical altercations that were either instigated or escalated because of Student C’s gender expression, District administrators never adequately addressed the consistent harassment Student C faced or addressed the hostile anti-LGBT school environment.

38. Like D.H., Student A and other students reported the severity of the harassment to varying levels of District seniority numerous times. When D.H. reported the harassment to Defendant Payton and Assistant Principal LaJuna Payton, she was told to “grow up.” When Student A reported the harassment to both of these administrators, he was told “suck it up and

get back to class.” Thus, although District staff and administrators were aware of the harassment of students based on their sexual orientation and gender expression, upon information and belief, they refused to take action and the harassment continued.

39. D.H.’s grandmother and father contacted the District repeatedly, including directly contacting Defendant Payton, at least ten times to discuss the conditions at Magnolia. Student A’s mother spoke with Defendant Payton and Assistant Principal LaJuna Payton to report the ongoing physical and verbal harassment of her son, yet the harassment continued unabated. Student A’s mother also reported the harassment to the School Board. On at least one occasion, representatives from Singing River Services notified the District that gay and/or gender non-conforming students were disproportionately targeted for harassment by teachers and students within the District, but the District’s only response was that the harassment was “just part of kids being kids.”

40. The harassment was so severe that in February 2011, nearly two months after her earlier suicide attempt, D.H. had a breakdown in class where she expressed suicidal thoughts. A crisis intervention team was called to the school. When Mr. H., D.H., and Defendant Principal Payton met later that day, they discussed how D.H. was singled out and repeatedly called “dyke,” “lesbo,” and “freak.” Although Principal Payton stated he would address the bullies, neither D.H. nor Mr. H. was informed of any specific interventions taken as a result, and the harassment continued.

41. On March 2, 2012, Mr. H. and D.H.’s father held another meeting with Defendant Payton. During that meeting, Principal Payton refused to acknowledge the severity of the continued harassment. Notes from Mr. H. explain that Principal Payton stated:

he did not know who we [Singing Rivers] were despite working with this case manager for almost two years and having frequent contact with the other staff

members assigned to his school. The Principal claimed that he would not give special consideration to an individual in services and when [Mr. H.] brought up the guidelines that we have for our clients, the Principal said that he doesn't follow our guidelines, that when we are in his school, we follow his lead since he allows us to be there.

42. Only a few weeks after the meeting on March 2, 2012, Defendant Payton called a meeting with D.H. At the conclusion of the meeting, Principal Payton called her a "pathetic fool" and told her, "I don't want a dyke in this school."

43. As soon as D.H.'s grandmother was informed of the meeting she traveled to the school to attend it, but was told it was over when she arrived. Assistant Principal LaJuna Payton told her "we do not want D.H. back at our school." When D.H.'s grandmother asked for copies of D.H.'s disciplinary records, she was told they did not exist or were lost.

44. Thereafter, D.H.'s father scheduled a meeting with Principal Payton. Because the school previously withheld D.H.'s disciplinary records, D.H.'s father recorded the meeting as permitted under Miss. Code § 41-29-531(e).

45. During that meeting, D.H.'s father asked, "[D.H.] made several complaints about bullying by other students calling her lesbian, dyke, things like that...I want to know what measures you took to find out what was happening." Principal Payton replied:

Actually I've met with Ms., with D.H., several times. First semester it was about two little boys who were calling her names...the same thing I told to her I'll say to you all, you cannot say stuff to children and then when the child says something back all of the sudden now wrong has been committed...I have to talk to her the same way I talk to my boys, nobody wanna see your nasty underwear. That is not sexy, that is not cute people. . . And I'm consistent across the board. I don't know what her sexual orientation is, that's not even my concern, but *I say it like this, whatever choice to make, if you choose to present yourself in a certain manner, it's going to come.* (Emphasis added.)

46. Realizing the District was not only indifferent but hostile towards D.H., D.H.'s father withdrew her from the District so she could be homeschooled.

47. D.H.'s father and grandmother faxed written complaints to the Mississippi Department of Education and the District Superintendent outlining the harassment D.H. experienced. The Mississippi Department of Education referred D.H.'s father back to the District, stating it was a matter to be resolved at the "local" level. The District never responded.

48. Although homeschooling removed D.H. from the hostile school environment, it caused great financial strain on the family.

49. On March 21, 2013, the Southern Poverty Law Center contacted the District and demanded that the District remedy the discrimination faced by youth because of their sexual orientation or gender expression.

50. Representatives from the SPLC met with Superintendent Griffin and representatives from the Moss Point School Board and other District leaders in late May of 2013. No agreement was reached.

51. Due to the family's finances, D.H. returned to the Moss Point School District in the Fall of 2013. She is currently enrolled in Moss Point High School.

52. On September 5th, 2013, after correctly referring to D.H. as "Ms. Holmes" throughout the first few weeks of school, her math teacher told her to "sit down, boy" and filled out a disciplinary report in which the teacher identified "D.H." and described her misconduct as "[r]efusing to follow directions. I asked *him* to go to his seat and he refused." (Emphasis added.)

53. When D.H. told her math teacher that she would not bring the disciplinary report to the Principal unless the teacher corrected the pronouns, the teacher told her to "forget it" and sent D.H. back to her seat.

54. When the District was notified of the situation, the District transferred D.H. to a math class a full year ahead of her skill level.

55. After almost two weeks, D.H. was moved back into the appropriate classroom, following intervention by her counsel.

56. As of this date, D.H. and the District have been unable to come to an agreement that adequately provides a safe environment for D.H. and similarly situated students.

FIRST CLAIM FOR RELIEF

(Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

Discrimination Based on Sex

Pursuant to 20 U.S.C. § 1681 against the District)

57. Plaintiffs incorporate by reference all preceding paragraphs.

58. Upon information and belief, the District and each school within the District are recipients of federal financial assistance.

59. District staff harassed D.H. and subjected her to harassment on the basis of her gender expression through their acts and omissions, violating D.H.'s rights under Title IX.

60. The U.S. Department of Education Office for Civil Rights ("OCR") states that school districts violate Title IX "when peer harassment based on race, color, national origin, sex or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees." In particular, OCR's regulations implementing these statutes, 34 C.F.R. §100, §104, §106, "apply in administrative enforcement and in court cases where plaintiffs are seeking injunctive relief." Thus, OCR's guidance regarding gender variant discrimination, which states that "it can be sex discrimination [under Title IX] if students are harassed either for exhibiting what is perceived as stereotypical characteristics for their sex, or failing to conform to stereotypical notions of masculinity and femininity, " governs the case at hand. Letter from Russlyn Ali, Assistant Secretary for Civil Rights, Office for Civil Rights, U.S. Dep't of Education, October 26, 2010,

available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>. Application of the facts to these authorities shows that the District violated D.H.'s rights under Title IX.

61. Fifth Circuit law is also instructive. As set forth in *Sanchez v. Carrollton-Farmers Branch Indep. Sch. Dist.*, a school district that receives federal funds may be liable for student-on-student harassment under Title IX if the district (1) had actual knowledge of the harassment, (2) the harasser was under the district's control, (3) the harassment was based on the victim's sex, (4) the harassment was so severe, pervasive, and objectively offensive that it effectively barred the victim access to an education opportunity or benefit, and (5) the district was deliberately indifferent to the harassment. 647 F.3d 156, 165 (5th Cir.2011) (citing *Doe v. Dall. Indep. Scho. Dist.*, 153 F.3d 211, 219 (5th Cir. 1998)).

62. Defendant had actual notice that D.H. was subjected to student-on-student harassment based on her sex, including her non-conformity to gender stereotypes and others. Furthermore, at least one court in this Circuit has held "harassment based on a victim's perceived homosexuality is sufficient to constitute 'sexual harassment,' [under Title IX] regardless of whether the victim is in fact gay." *Estate of Brown v. Ogletree*, No. 11-cv-1491, 2012 WL 591190, at *17 (S.D. Tex. Feb. 21, 2012), (citing *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165, 1170 (N.D. Cal. July 24, 2000) ("finding it reasonable to believe that plaintiff student was harassed *on the basis of sex* where the student's mother was a transgendered female and there was a 'widespread, general perception that [the student] was homosexual'") (emphasis added)), on reconsideration, sub nom. *Estate of Brown v. Cypress Fairbanks Indep. Sch. Dist.*, 863 F. Supp. 2d 632 (S.D. Tex. 2012) (affirming denial of dismissal of Title IX claim). As stated herein, Defendants not only had actual notice that D.H. was subjected to harassment based on her gender nonconformity and sexual orientation, they *participated* in the discriminatory conduct.

That the harassers were under Defendants' control is undeniable as the harassment alleged herein all took place within school, during school hours, by students and/or District staff and administrators.

63. Defendants were deliberately indifferent to the harassment D.H. faced in violation of Title IX. Title IX liability arises from "an official decision by the [recipient of federal funds] not to remedy the violation" where the recipient's actions are "clearly unreasonable in light of the circumstances" and the recipient's actions "subject" or make the victim vulnerable to the harassment. *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 640-41 (1999). As stated herein, as evidenced by D.H.'s experiences in the District, Defendants took no reasonable action in response to reports of harassment on the basis of D.H. and other students' failure to conform to gender stereotypes. Indeed, the District's main response was to perpetuate and foster the harassment.

64. Defendants' deliberate indifference subjected D.H. to severe, pervasive, and objectively offensive conduct that deprived D.H. of access to educational opportunities. As *Roe ex rel. Callahan* notes, courts across the country consider a wide range of examples of a deprivation of educational opportunities including "dropping grades, *Davis* 526 U.S. at 634, being diagnosed with behavioral and/or anxiety disorders, *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 377 F. Supp. 2d 952, 968 (D. Kan. 2005), becoming homebound or hospitalized due to harassment, *see Murrell v. School District No. 1, Denver, Colorado*, 186 F.3d 1238, 1248-49 (10th Cir. 1999), physical violence, *see Vance v. Spencer County Public School District*, 231 F.3d 253, 259 (6th Cir.2000), or sexual assault, *see Williams v. Board of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282, 1299 (11th Cir. 2007)." 678 F. Supp. 2d 1008, 1028 (E.D. Cal. 2009). D.H. was excluded from equal access to educational opportunities within the District

on the account of her appearance, since among other things a teacher excluded her from participation in a class activity, she was denied access to the girls' restroom, and eventually, had to start homeschooling because of the District's continued failure to acknowledge and remedy the harassment she faced.

65. On information and belief, Defendants would have taken effective measures to protect D.H. and her educational opportunities if they thought her appearance was gender conforming and she was not a lesbian. Defendants would not have told a male student that he should not wear stereotypically masculine clothing or call a male student a derogatory name based on his sexual attraction to females.

66. Defendants' violations of Title IX were the actual, direct, and proximate cause of injuries suffered by D.H. D.H. suffered damages to be determined according to proof.

67. D.H. requests judgment in her favor against Defendants as set forth in the Prayer for Relief.

SECOND CLAIM FOR RELIEF

(U.S. Constitution Amendment XIV

Denial of Equal Protection on the Basis of Sexual Orientation Pursuant to 42 U.S.C. § 1983 Against All Defendants)

68. Plaintiffs incorporate by reference all preceding paragraphs.

69. Defendants, acting under color of state law, have deprived D.H. of the rights, privileges, or immunities secured by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. Defendants, without justification, have treated D.H. differently than other similarly situated students and student groups and have created and fostered a toxic environment on the basis of D.H.'s actual or perceived sexual orientation. On information and belief, Defendants would have taken effective measures to protect her but for her actual or perceived orientation.

70. Defendants had actual notice that harassment based on sexual orientation was so severe, pervasive, and objectively offensive that it created a hostile climate that deprived D.H. of access to educational programs, activities, and opportunities.

71. Defendants were deliberately indifferent to the harassment D.H. faced based on sexual orientation in violation of Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. Defendants also failed to adequately train school staff about any policies prohibiting harassment and discrimination on the basis of actual or perceived sexual orientation. Defendants' deliberate indifference and failure to train District staff caused D.H. to be subjected to the described discrimination and harassment.

72. Defendants' punishment of and failure to protect D.H. was pursuant to its policy, practice, or custom to punish and fail to protect students from peer harassment based upon the sexual orientation and/or gender expression of the student.

73. Defendants' direct interactions with D.H. were pursuant to a policy, practice, or custom to affirmatively identify students who were perceived as gender non-conforming and treat them differently than similarly situated students who were gender conforming. Defendants' treatment of D.H. was pursuant to a policy, practice, or custom to submit gay and/or gender non-conforming students to greater disciplinary measures than students who were not perceived to be gay or gender non-conforming.

74. Defendants' violations of the Equal Protection Clause were the actual, direct, and proximate cause of injuries suffered by D.H. as alleged. D.H. suffered damages to be determined according to proof.

75. D.H. requests judgment in her favor against Defendants as set forth in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor and against Defendants, providing the following relief:

76. An Order granting D.H. nominal and compensatory against all Defendants, and punitive damages against Defendant Payton, for violations of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

77. An Order granting D.H. compensatory damages against the District for violations of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*

78. An injunction ordering Defendants to adequately protect Plaintiff, and other similarly situated students, from verbal and physical harassment within the school district.

79. An injunction ordering Defendants to stop engaging in the unconstitutional and unlawful acts described above, and to develop policies and procedures for ending such unconstitutional and unlawful acts and the hostile and intolerant environment, including but not limited to the following:

- a. Require Defendants to implement mandatory and continuing training programs for all District faculty, staff, and students that explicitly address harassment based on gender expression or sexual orientation. These training programs must outline intervention methods to stop students from harassing other students who are LGBT or gender non-conforming, or who are perceived to be LGBT or gender non-conforming;
- b. Require Defendants to adopt policies with specific guidelines for instructing teachers, security guards, and administrators about how to address complaints by students who have been taunted, harassed, or discriminated against because of their actual or perceived sexual orientation or gender expression;
- c. Require Defendants to immediately implement programming for all students addressing issues of diversity, homophobia, and tolerance, wherein students are instructed about laws prohibiting harassment and discrimination based on actual or perceived sexual orientation or gender expression;

- d. Require Defendants to assign a peer mediator and/or staff member to District schools to provide active monitoring for the school and to immediately address instances of harassment and/or discrimination that arise at the school;
 - e. Require Defendants to maintain statistical data concerning each complaint of harassment based on actual or perceived sexual orientation and gender identity or expression made by a student or staff member, as well as the specific action District teachers, security guards, and/or administrators take to resolve that complaint;
 - f. Require Defendants to take no reprisal or retaliatory action against D.H. or any administrator, teacher or staff member who speaks out in support of D.H.
80. An award of attorneys' fees, expenses, and costs incurred in the prosecution of this action pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws;
81. An Order granting any other and further relief as the Court deems just and proper.

Respectfully submitted,

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