

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

S.L., as Parent and Natural Guardian of a)	
Minor, B.W., and in her own right,)	
Plaintiff)	
)	
v.)	
)	Civil Action No. 11 cv 4092
PALISADES SCHOOL DISTRICT,)	
FRANCIS BARNES, RICHARD)	Judge Stewart Dalzell
HEFFERNAN, JR., KARL R.)	
SCHEIBENHOFER, and MICHAEL)	
LYNCH, Defendants.)	

AMENDED COMPLAINT WITH JURY DEMAND

Plaintiff, S.L., as Parent and natural guardian of B.W., a minor, by and through counsel Ilene Young Law Offices, complains of the above named defendants as follows:

1. Plaintiff, S.L., brings this action in her own right, and on behalf of her minor child, B.W., against a school district and several of its officials and employees for tolerating, encouraging, and failing to adequately address a pattern of disability and sexual harassment during which B.W. was verbally, emotionally and physically assaulted by other students over a long period of time because she has only one eye.

JURISDICTION

2. Jurisdiction is invoked pursuant to 28 U.S.C. Sections 1331, and 1343 (3) and (4).

Claims are asserted pursuant to the Fourteenth Amendment to the U.S. Constitution,

Section 504 of the Rehabilitation Act (Section 504) 29 U.S.C. § 794, Title II of the Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. § 12131 et seq, Title IX of the Education Amendments of 1972, and 42 U.S.C. Section 1983. Supplemental state claims are asserted pursuant to 28 U.S.C. Section 1367(a), state statutes and state common law pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred within the jurisdiction of this Court.

PARTIES

4. Plaintiff S. L. is the Parent and natural guardian of B.W. Plaintiff brings this claim on B.W.'s behalf and in her own right as Parent.
5. Defendant the Palisades School District (hereinafter "the District") is a school district organized pursuant to the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. § 1-101, *et seq.*, and maintains an office at 39 Thomas Free Drive, Kintnersville Pennsylvania. Throughout the time referenced in this Complaint, the District was responsible for BW's education and a recipient of federal funds.
6. Defendant Francis Barnes, whose office is located at 39 Thomas Free Drive, Kintnersville, Pennsylvania, was at all relevant times the Superintendent of the Palisades School District; in that capacity, acting under color of law, he is responsible for the regulations and procedures governing the District. He is sued in his official and individual capacities.

7. Defendant Richard Heffernan, whose office is located at 35 Church Hill Road, Kintnersville, Pennsylvania, was at all relevant times a full time employee of the District, serving as the Principal of Palisades High School; in that capacity, acting under color of law, he is responsible for the implementation of all official government laws, policies, regulations and procedures governing Palisades High School. He is sued in his official and individual capacities.
8. Defendant Karl R. Scheibenhofer, whose office is located at 35 Church Hill Road, Kintnersville, Pennsylvania, was at all relevant times a full time employee of the District, serving as Assistant Principal of Palisades High School; in that capacity, acting under color of law, he is responsible for the implementation of all official government laws, policies, regulations and procedures governing Palisades High School. He is sued in his official and individual capacities.
9. Defendant Michael Lynch, whose office is located at 39 Thomas Free Drive, Kintnersville, Pennsylvania, was at all times relevant the President of the School Board of the District, in that capacity acting under color of law, he is responsible for implementation of all official government laws, policies, regulations and procedures governing Palisades School District. He is sued in his official and individual capacities.

FACTS

10. Plaintiff S.L. is a resident of the Palisades Area School District. Her daughter, B.W., is 17 years old. She has been a student of the Palisades School District since she

began elementary school. From September 2008 until December 2010, B.W. was a student at the Palisades High School.

11. B.W. has been an individual with a disability since May of 2004, when her left eye was severely damaged. Since that date she has lost the eye, and with it her peripheral vision and stereopsis (the ability to combine two retinal images into one that people with vision in both eyes accomplish easily). She is limited in seeing people or objects on her blind side and must rely on other senses to detect that someone is near and then must turn her head to see the person. She has difficulty judging distances within a six-foot range, and thus cannot use her vision to guide her in reaching for objects or putting objects down on a table or other surface. Similarly, she must rely on memory and tactile clues to negotiate stairs and stepping on and off curbs. All such tasks are more difficult for her because of her loss of vision and take her longer to perform than they take the average person. She is substantially limited in seeing, due to her lack of vision in one eye.
12. B.W.'s injury occurred on May 26, 2004, when she was just ten years old. As she stood on the family lawn waving to her Daddy, a metal projectile thrown by a tractor pierced her eye. Rushed by ambulance to St. Luke's hospital in Bethlehem Pennsylvania, which transferred her to Wills Eye Institute in Philadelphia, she underwent immediate surgery. Most of her retina was amputated.
13. Though the Doctors were able to keep the eyeball intact, B.W.'s appearance had changed. Her eye was flattened and grayish in color. Because the eye had lost its natural curvature, her eyelid drooped.

14. Following the surgery, she was only able to see outlines of objects and bright lights in her left eye.
15. In August of 2004, B.W. returned to school for her fifth grade year. Students immediately began taunting her because of her eye, calling her “Monster,” “Cyclops,” and “One-eyed Freak,” among other names. The name calling occurred daily.
16. B.W.’s parents contacted B.W.’s teacher, Mr. Hogan, asking him to address and stop the bullying and teasing. He did nothing to effectively intercede. The District took no action in response to the parents’ request. The name-calling continued daily throughout B.W.’s fifth grade year.
17. B.W.’s psychological suffering from the school environment was apparent and required intervention. Her parents privately provided her with psychiatric/psychological counseling. She was diagnosed with situational depression and anxiety consequent to school bullying. Thereafter, the frequency of her treatment varied by the intensity of the bullying.
18. The following school year, B.W.’s sixth grade year, she entered Palisades Middle School (colloquially “PALMS”). Immediately, the name calling and taunting began again. She was called “One-eyed Freak, Monster, Cyclops”, and told she was a “mistake that should’ve never been born.” This took place on a constant daily basis, and was well known to the school community.
19. B.W. underwent multiple surgeries to remove scar tissue and attempt to lift her eyelid from 2005 through 2008. Each time the doctor’s removed more scar tissue from her eye, she lost a greater amount of her vision. Each time, the grayish color of her eye

- intensified. Each time she returned to school, the bullying and harassment intensified.
20. B.W. frequently came home from school crying.
 21. S.L. repeatedly contacted the District. She was directed to speak with B.W.'s guidance counselor, Mrs. Pontier, and did so on an ongoing basis, seeking intercession. Although she was told they would 'look into it', the District took no action.
 22. During B.W.'s time at PALMS, bullying intensified. Students threatened B.W. with violence, telling her to "watch her back." She was pushed and tripped in the hallways by students who came up on her blind side. She was continually called names and subject to derogatory references to her disability – both the appearance of her eye and her lack of vision.
 23. The name calling, harassment and taunting took place in view and hearing of school teachers and administrators and was well known among the students.
 24. S.L. diligently reported each incident of teasing and bullying as relayed to her by B.W. The District consistently responded that they would "look into it" or "take care of it." Despite these assurances from the District, nothing effective was done, and B.W. continued to be victimized by her classmates.
 25. In August 2008, B.W. would begin her 9th grade year at Palisades High School, a new environment within the District. Before the start of the school year, S.L. contacted administrators and requested a conference to address the constant bullying B.W. had faced in elementary and middle school. The District instructed Parent to write a letter

- to the guidance counselor. Parent followed instruction and sent a letter. No further meetings were scheduled, the District took no actions, and nothing occurred.
26. When B.W. entered high-school, the teasing and name-calling intensified. Every day, B.W. returned home in tears due to the treatment she received at school. She expressed feelings of humiliation, despair and depression in response to the constant ridicule and physical harassment.
27. During B.W.'s 9th grade year, Parent continued to telephone District administrators to report incidents of harassment. On each occasion Parent was assured that the District would "look into" and "take care of" the problem. No further action was taken. No procedures were put into place to protect B.W. from bullying and harassment. B.W. continued to be the target of bullying throughout every school day.
28. The District had a "Code of Conduct" which proscribes bullying and identifies consequences for harassment and bullying. The Code of Conduct was not followed for B.W. For example, the Code of Conduct requires a written statement of each incident of reported bullying. The District did not keep a record of S.L. and B.W.'s multiple reports of bullying incidents but merely disregarded them.
29. From elementary school on, a core group of students were responsible for taking the lead in B.W.'s bullying and harassment. Their identities were well known to the District, through S.L. and B.W.'s repeated reports, and through the public and obvious nature of the bullying which took place across school environments.
30. B.W. was instructed to meet with the guidance counselor after requesting permission, from her teacher, to go to the office if she wanted to report incidents. B.W. followed this procedure.

31. The guidance counselor frequently called B.W.'s tormentors from class to confront B.W.
32. Following these meetings, B.W.'s attackers would redouble their bullying and ridicule in retaliation for having been reported. B.W. and S.L. reported these reactions to the District.
33. In June of 2009, at the close of the school year, B.W. was no longer able to bear the bullying and teasing. In desperation, she decided to have her left eye fully removed and a prosthetic eye inserted in its place prior to the start of the next school year. The sole motivation for the surgery was the hope that she would no longer be teased at school if her eye, though now completely unseeing, looked normal.
34. B.W. began her 10th grade year, 2009-2010, with a prosthetic eye in place. Though the prosthetic eye resembled a "normal" eye, the students stepped up B.W.'s torment to include threats of violence, specifically against her eyes. Students threatened to harm or blind her good eye, and pointedly threatened damage to the prosthetic. For example, following a forced meeting with the guidance counselor and B.W. concerning previous bullying, a girl, C.W., threatened to 'punch (B.W.) in her good eye, then pop out the (prosthetic) eye and roll it down the hall like a bowling ball.'
35. The District requirement that B.W. go to the guidance office to report incidents of bullying at the time they occurred, the public nature of her leaving the classroom, and the action of the guidance counselor in forcing confrontation, triggered increased bullying, ridicule and retaliation against B.W. The District was aware of this reaction, through ongoing reports of B.W. and S.L. and through the public nature of the bullies' statements and actions in response to having been "called down to the office".

36. To avoid the consequences of public reporting of incidents, B.W. texted her parent, S.L., reports of incidents. S.L., in turn, would immediately notify the school.
37. S.L. reported incidents to the school in this fashion- sometimes multiple times a day.
38. Despite the ongoing reports of bullying and harassment, the District took no action to remediate the situation.
39. District personnel had direct knowledge of the pervasive nature of B.W.'s harassment. Many if not most incidents of bullying and harassment took place in clear view of the teachers and staff. For example:
- a. Students would scream nasty epithets at B.W. down the open hallway in full view and hearing of teachers and staff;
 - b. Every day, in her math and English classes, students would go through B.W.'s personal belongings – her back pack and purse, and throw her binders, pencils and other items around the room, steal and hide B.W.'s iPod and lunch, causing her to frantically scramble and cry to get her possessions back, in the teacher's presence.
 - c. During class, in full view of the teacher, students would call her names, and threaten her sexually and physically, reducing her to tears in full view of the class, requiring her to ask the teacher to allow her to leave the room.
 - d. One teacher, Mr. Kiker, in an attempt to help, would report incidents to the office for B.W. when she was crying or otherwise too upset to do so.
 - e. S.L. and B.W. reported incidents to the administration and the reports were acknowledged - "we will look into it".

- f. The ongoing reporting by S.L. was so constant that the vice principal joked to S.L. that they talked so often (about B.W.'s bullying), S.L. should be given an office in the District.
40. The Defendants inappropriate reaction to widespread harassment occurring in plain sight and well known to students and staff created a hostile environment where harassment of B.W. due to her disability was tolerated. Tormenting B.W. because she had only one eye was a pervasive part of the school culture.
41. On at least one occasion, District staff publicly participated in B.W.'s bullying and retaliation for reporting incidents of harassment. The mother of one of B.W.'s tormentors was a 'lunch lady' at the high school.
42. In response to another confrontation staged by the guidance counselor, the lunch lady, Michelle W., accosted B.W. as she stood in the lunch line, called her a bitch, and warned her not to report C.W.'s behavior and get her in trouble again. This took place in full view of the student body, was reported to the District by B.W. and her family, and was the subject of extensive discussion throughout the school grapevine. The District took no action in response to this event.
43. B.W. was subject to a severe redoubling of retaliatory ridicule and humiliation by students in response to the incident in the lunch line.
44. During high school, physical intimidation of B.W. escalated. B.W. was pushed, shoved and kicked in class and in the hallways of the high school with more vigor, by students who laughed when she was harmed. The students were aware that B.W. was an easy target for physical assault because of her lack of peripheral vision.

45. B.W.'s property was destroyed and defaced. Her iPod was stolen, her lunch hidden, her purse and backpack publicly invaded. When she came to school wearing new costly Ugg boots, a student defaced them with permanent marker.
46. During her high school years, B.W.'s abuse became sexual as well as disability-related.
47. She was called "bitch", "cunt", and taunted with derisive descriptions of her purported sexually perverse preferences. When her purse was rifled, if tampons were found, they were tossed from student to student while her sexuality was ridiculed. Male students threatened to rip out her (prosthetic) eye, and (ejaculate) in her eye socket. B.W. and her family reported these incidents to the District.
48. During the course of her freshman year in high school B.W., reluctantly, would discuss the incidents of bullying with her parents each evening. Her stepfather described it as "something different each day, though the same – always about her eye" and frequently sexually explicit. Her parents and her therapist tried to assist her with coping skills and strategies, while continually seeking intercession from the District. Her mother was fired from her job due to the amount of time she was required to intercede for B.W.
49. In the summer of 2010, B.W. underwent surgery to remove a cyst lodged at the base of her tailbone.
50. As a result of the surgery, B.W. would begin school in August 2010 with an open wound.
51. B.W. had a visiting nurse to see to her wound care and protection.

52. Prior to the start of B.W.'s 11th grade school year, S.L. informed the Defendants about B.W.'s surgery and open wound, speaking directly with the guidance counselor and school nurse. S.L. sought assurance from the District that B.W. would be protected from the physical harassment she had endured the previous school year, particularly because of her post-surgical state and the very private nature of her wound.
53. Defendants assured Parents that B.W. would be safe at school. She would be permitted to leave class five minutes prior to the other students for safe passage through the hallways. She would also make daily visits to the nurse.
54. B.W. feared a return to school because of past abuse. Because the District assured her mother she would be safe, she returned to school.
55. B.W.'s early passage from class to class, and visits to the nurse, alerted the students to B.W.'s new vulnerability due to her wound.
56. Immediately upon the start of the school year, the students tormented B.W., calling her names, tripping and pushing her in the hallways, taking her property and rooting through her backpack during class, throwing, hiding and defacing her belongings, and continuing crude sexualized remarks – increasing the repertoire to include reference to her wound: i.e., “she was fingered on the bus on the way home from school”, “she likes it up the butt”. They soon coupled these remarks with physical sexual intimidation.
57. On September 18, 2010, a student, S.D., one of B.W.'s prime tormentors, thrust his foot into B.W. in the area wounded by her surgery while she passed out papers for the

- teacher in full view of the class. B.W., crying from humiliation and pain, asked the teacher to let her go to the nurse. The nurse took her to the principal.
58. As a result of the assault, S.D. was suspended for three days.
59. The principal deferred S.D.'s suspension until the following day. At the time, the principal was aware that S.D., along with known fellow abusers of B.W., shared the next class with B.W., which had been the location of much of B.W.'s ongoing torment. During the class following his meeting with the principal, S.D. led other students in a stream of taunting and ridicule of B.W. because she "got S.D. called to the office." They continued to torment B.W. for the entire 90 minute period of the class.
60. The principal minimized S.D.'s assault on B.W., because, he later explained to Plaintiffs, S.D. had professed remorse when confronted in his office.
61. Two days later, on September 20, 2010, a friend of S.D.'s smacked B.W.'s wound area with his book bag, triggering the derisive laughter of his friends, bringing B.W. to tears and again sending her, bleeding, to the nurse. The incident caused her a great deal of pain and further prolonged her recovery.
62. B.W. reported the second assault to S.L. S.L. called the police, who came to the school.
63. Although the perpetrators of B.W.'s attacks were well known, the District claimed it was a 'he said/she said' incident and 'no one saw anything.' Therefore no disciplinary action was taken. To Plaintiff's knowledge, the District undertook no investigation.
64. B.W. was required to return to her surgeon for wound care because of the assault.

65. Appalled by B.W.'s treatment at the hands of her schoolmates, B.W.'s visiting nurse contacted Sterlen Barr, developer of the "No Place for Hate – Bullying Prevention" program, in an attempt to help B.W. Mr. Barr contacted the District to offer to provide a free bullying prevention program. The District did not respond.
66. S.L. pled with the District to do something about the ongoing assaults. She spoke with Karl Schiebenhofer, Richard Heffernan, Monica Lassino and Francis Barnes' assistant Bridget O'Connell.
67. Defendants informed B.W. that henceforth she was to go to the office of the assistant principal, Mr. Scheibenhofer, to report all incidents directly as they occurred. She was instructed to do this before texting her mother. If Mr. Scheibenhofer was not in the office at the time, she was to have him paged.
68. When B.W. and S.L. questioned the advisability of the public nature of this approach, given the history of retaliation, they were assured that Mr. Scheibenhofer would react appropriately to any incidents of harassment. No other procedures for protection were put into place.
69. Thereafter, when B.W. reported incidents to Mr. Scheibenhofer, he failed to react appropriately, and made her feel demeaned and belittled. Mr. Scheibenhofer told B.W.: "We're (the District) not your babysitter."
70. The public nature of the requirement that B.W. go to Mr. Schiebenhofer to report incidents as they occurred resulted in an escalation of B.W.'s ridicule and abuse by other students, culminating in her withdrawal from the District for safety.
71. In September, the third week of school, the math teacher informed the whole class that Mr. Schiebenhofer had instructed her to move everyone's seats. A student loudly

- responded “this is bullshit. We’re all getting our seats moved because of (B.W.)... Why don’t you take someone else down to the office?” When the students took their new seats, the student continued to taunt B.W., so she asked to be allowed to go to the office. While there, a student knocked on the door to tell the principal that a student had threatened B.W., saying: “If this b... takes one more person down to the office I’m going to bash her f..ing skull in with a baseball bat and pop her eye out.” B.W. texted S.L. who immediately went to the school. The police were also called.
72. When S.L. arrived, she found that the District had locked B.W. in the nurses’ office for her safety. S.L. demanded that the superintendent be made aware of B.W.’s situation.
73. Superintendent Barnes was alerted and, for a few minutes, joined a meeting with S.L., B.W.’s stepfather M.L, B.W., Ms. Lassino and a state police officer who had been called to the school.
74. When asked to address B.W.’s bullying and safety issues, Defendant Barnes responded that the District could not be responsible for things coming out of kids’ mouths. S.L. took B.W. home.
75. T.B.’s threat met the District’s disciplinary code definition of terroristic threats. Plaintiffs wanted T.B. charged with making a terroristic threat, which would trigger safe schools and zero tolerance obligations of the District. The District downgraded T.B.’s behavior to harassment. T.B. was therefore charged with only harassment.
76. T.B. was later criminally convicted and fined, at Plaintiff’s instigation.

77. Before returning B.W. to school, Parent sought assurance from both Mr. Heffernan and Mr. Scheibenhofer that B.W. would not be subjected to further physical assault or threat.
78. Defendants told Parent they could not provide such assurances.
79. B.W. developed severe symptoms including paralyzing anxiety, hypervigilance, sleep disturbances (insomnia, flashback nightmares), suicidal ideation, emotional reactivity, panic attacks and loss of appetite. B.W. curled into a fetal position in her closet when her symptoms were at their worst.
80. B.W.'s treating psychologist diagnosed her with Major Depression and Post Traumatic Stress Disorder.
81. B.W.'s treating therapist put her on a schedule of increased therapy sessions and ongoing suicide prevention safety assessments.
82. Due to her diagnosis and trauma, B.W.'s treating therapist advised that B.W. could not return to Palisades High School without further triggering her post-traumatic stress. Because of this, S.L. contacted B.W.'s guidance counselor Ms. Lasino and requested homebound services.
83. On October 15, 2010, B.W. was rushed to St. Luke's emergency room in Quakertown, Pennsylvania due to a severe panic attack.
84. B.W. has been unable to return to Palisades High School since September 2010. She obtained prescriptions to this effect from her treating providers. Nonetheless, the District would not provide homebound instruction beyond 90 days. B.W. was effectively left without a publicly funded education following the 90 days homebound instruction period.

85. In January 2011, Parents enrolled B.W. in a cyber charter school.
86. The harassment has continued through cyber bullying since the date of B.W.'s withdrawal from the District.
87. At the encouragement of her therapists, B.W. and her parents began exploring private educational settings.
88. In March of 2011, B.W. was required to return to her high school to take the PSSAs. She encountered two of her bullies, B.J. and M.W., who immediately began calling her 'bitch', 'cunt', making rude noises and ridiculing her for having reported harassment to the authorities. S.L. called the District to report this incident. In response, Ms. Lassino, the guidance counselor, criticized B.W. for failing to report the incident herself while at the PSSA's. S.L. reminded Ms. Lassino that she, S.L., was making the report because the requirement that B.W. publically make an immediate report of an incident had negative consequences. S.L. was told that the District would "look into it." She never received a response.
89. The PSSA incident triggered B.W.'s post traumatic stress disorder and prevented her from being able to commence attending any educational setting.
90. B.W.'s tormentors continue in attendance at the District.
91. Defendants knew that B.W. was being subject to ongoing, pervasive verbal and physical bullying because it took place on school grounds in plain sight, and was well known to students and staff, occurring in hallways, during classes, and electronically. Parents and B.W. reported complaints to the Defendants on a daily basis.

92. The actions taken by the Defendants were clearly unreasonable and insufficient to curtail the bullying and harassment B.W. faced. The Defendant's conscious decision to take inappropriate actions constitutes deliberate indifference and reckless disregard of B.W.'s rights.
93. The bullying and harassment were so severe, persistent and pervasive as to deprive B.W. of the benefit of services and opportunities offered by the District. Defendants' actions in response to the known bullying and harassment effectively deprived B.W. of access to the District's resources and opportunities in the school. The consequence of B.W.'s suffering was a foreseeable result of Defendant's acts and omissions.
94. The actions and conscious omissions of the Defendants were similar in nature and repeatedly continued over time.
95. Defendants followed a consistent policy, custom and practice in responding to bullying and harassment within the District over the course of many years despite its failure to effectuate any reduction in harassment. The policy, custom and practice included:
- a. ignoring all but the most egregious reports;
 - b. treating reported incidents dismissively;
 - c. selectively disregarding its own Code of Conduct;
 - d. victimizing victims by requiring public reporting of incidents;
 - e. demanding confrontation between reporting victim and perpetrator;

- f. placing victims and known perpetrators in close proximity in classrooms without maintaining control or discipline;
 - g. failing to acknowledge and address the behaviors of individual known perpetrators;
 - h. minimizing the import of verbal harassment; and,
 - i. repeated application of the same policies and practice despite knowledge that its actions had exacerbated the harassment.
96. B.W. has been damaged as a direct and proximate result of the District's actions.
97. B.W. has and continues to require intensive therapy and counseling in order to cope with the post-traumatic stress.
98. The emotional suffering associated with B.W.'s clinical diagnoses is great. Her symptoms cause daily bouts of sadness and fear, depriving her of any lasting experience of safety, happiness, security or serenity. Her inability to return to any school setting deprives her of social interactions critical to adolescent development.
99. S.L. has incurred losses in her own right as a direct and proximate result of the Defendants actions:
- i. S.L. has incurred out of pocket costs providing B.W. with counseling and therapy services in response to the trauma and humiliation suffered.
 - ii. S.L. has incurred out of pocket costs providing B.W. with medical treatment in response to panic attacks triggered by B.W.'s post-traumatic stress syndrome.

- iii. S.L. has lost employment due to the consequences and demands of B.W.'s situation.
- iv. S.L. has lost the enjoyment of her daughter's consortium.
- v. The deliberate misconduct of the District has directly and proximately caused Parents to suffer from extreme and ongoing mental distress and anxiety.

Federal Guidance: Bullying and Disabilities/Sexual Harassment in School

100. Bullying, sexual and disabilities harassment within the public school are a serious and potentially deadly concern. World Health Organization, *Bulletin of the World Health Organization* 2010;88:403-403. doi: 10.2471/BLT.10.077123; National Association of Pupil Services Administrators, (bullying is an epidemic) October, 2010; U.S. Department of Health and Human Services (bullying is a serious public health issue) website [www. Stopbullying.gov](http://www.Stopbullying.gov); American Medical Association (bullying is a public health problem) *Proceedings of the American Medical Association Educational Forum on Adolescent Health: Youth Bullying*, May 3, 2002
101. Disabilities harassment has been defined -“intimidation or abusive behavior based on disability that creates a hostile environment” -and proscribed by the U.S. Department of Education for decades. *U.S. Dept. of Educ., Reminder of Responsibility Under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, July,25, 2000*. During the time period at issue, the Pennsylvania Legislature debated and adopted legislation requiring school districts to address bullying. 24 PS 13-1303.1-A The Pennsylvania Department of Education offers extensive bullying prevention resources to Districts.

http://www.portal.state.pa.us/portal/server.pt/community/resources/7506/bullying,_hazing,_and_harassment_resources/508593

102. For many years, the Federal Government has offered extensive instruction and guidance to school districts in their responsibilities for prevention of, and response to, bullying and disabilities and sexual harassment. In January of 1999, the United States Department of Education (USDOE) issued guidance, “Protecting Students from Harassment and Hate Crime,” which provided a roadmap for Districts to employ in creating a school culture adverse to harassment, and in responding to incidents of harassment to prevent further occurrences.
103. Shortly thereafter, the USDOE Office of Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS) issued a “Dear Colleague” letter which reminded Districts that failure to curtail disabilities harassment constitutes a violation of federal law. The policy letter, which began, in part, “(W)e are writing to you about a vital issue that affects students in school,” included a section advising Districts “How to Prevent and Respond to Disability Harassment,” which, among other things, required School Boards to have active programs to prevent the creation of a hostile environment and to effectively respond to specific acts of bullying. This document also provided an easy to use checklist/roadmap of strategies for Districts to use in creating effective anti-bullying programs and practices.
104. In 2009, the U.S. Department of Justice issued a policy guide entitled “Bullying in Schools,” including the topic “Responses to the Problem of Bullying in School,” with subsections entitled: “General Requirements for an Effective Strategy to Counter

Bullying in Schools,” and “Specific Responses to Reduce Bullying in School,” and “Responses with Limited Effectiveness.”

105. In 2010, the Office of Civil Rights issued another “Dear Colleague” letter which outlined “well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints.” The letter reminded Districts that “(o)nce a school knows or reasonably should know of possible student-on-student harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. • (sic) If harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent its recurrence. These duties are a school’s responsibility even if the misconduct also is covered by an anti-bullying policy and regardless of whether the student makes a complaint, asks the school to take action, or identifies the harassment as a form of discrimination. “

106. The 2010 “Dear Colleague” letter included extensive links and reference to further guidance for Districts.

107. Defendants, a public school entity and its governing officials and administrators, are charged with the responsibility for the care, management and control of public school business, training of teachers and staff, safety and supervision of students and adherence with state and federal mandates within the political boundaries of the Palisades School District.

108. Defendants were recipients of the Federal and State Guidance, and “Dear Colleague” letters; were at all times aware of their responsibilities under the law; and, were, at all times relevant hereto, privy to federal and state mandates for

development, modification, and implementation of an effective anti-harassment program, policy and practice in the District.

109. The United States Supreme Court has recognized that public school students who “ may be injured by verbal assaults on the basis of a core identifying characteristic such as race, religion, or sexual orientation, have a right to be free from such attacks while on school campuses.” *Harper v Poway United Sch Dist*, 445 F. 3d 1166, 1178 (9th Cir 2006) vacated as moot 549 U.S. 1262 (2007) referencing *Tinker v Des Moines Sch. Dist.*, 393 U.S. 503 (1969); see also *Kowalski v Berkeley Cnty Schools*, 2011 U.S. App. LEXIS 15419 (4th Cir 2011), *J.S. v. Blue Mt. Sch. Dist.*, 2011 U.S. App. LEXIS 11947 (3rd Cir 2011) at 36.

Pennsylvania Law

110. Citizens of Pennsylvania have the right to public education. 22 Pa Code 11:11 *Entitlement of Resident Children to Attend Public Schools*, provides:
- (a) *Entitlement.*(1) A school age child is entitled to attend the public schools of the child’s district of residence.
111. Pennsylvania compulsory school attendance laws make it mandatory for school aged children to attend school. 24 PS 13-1333 and 1338.1 provide that parents are subject to the penalties of fines up to \$300 per day and court costs, or in cases where the party fails to pay the fine, sentencing to the county jail.
112. The child herself is subject to penalties if she does not attend school. If the child is over the age of thirteen, the child may be subject to a daily fine of \$300 or assigned to an adjudication alternative program for criminal youth 42 Pa.C.S. § 1520.

113. Parents whose child does not attend school may lose their right to raise their children. The District may institute proceedings to have the child's legal and physical custody removed from the Parent due to truancy. 42 Pa.C.S. §6303(a)(1)
114. The child herself may be brought, by the District, before the juvenile court to face charges or be placed into care.
115. The nature of the surrender of the care and wellbeing of children, by Parents, to Districts is not voluntary. The public school therefore has "custodial and tutelary responsibility for children." *Board of Ed. of Independent Sch. Dist. No. 92 of Pottawatomie City v Earls*, (01-332) 536 U.S. 822 (2002). A state imposing such compulsory attendance owes a duty of care to those required to attend. *Pagano v Massapequa Pub Schs*, 714 F. Supp. 641 (ED NY 1989)
116. One of the recognized property interests of a citizen of a State is public education. By reason of Pennsylvania's compulsory attendance law, there is, for citizens, a —legitimate claim of entitlement to a public education.¶ *Goss v Lopez*, 419 U.S. 565 (1975), 22 Pa Code 11.11. —The State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause (of the United States Constitution.)¶ *Goss*, 419 U.S. at 575.

COUNT I – 14th Amendment Due Process Violation and §1983

117. The preceding paragraphs are incorporated herein as though set forth in full.
118. Defendants failed to develop programs and practices reasonably designed to effectively address bullying and harassment of students with disabilities. Rather than promote a school climate that was effective in prevention or alleviation of bullying,

disabilities and sexual harassment, the Defendants affirmative actions and policy choices fostered a climate where harassment was rampant.

119. Defendants are the administrators and governing officials of the District. At all times relevant hereto, they possessed final authority regarding disabilities and sexual harassment policy in general, and the disability and sexual harassment of B.W. in particular.

120. Defendant's custom and policy in response to bullying of students with disabilities by other students had the foreseeable effect of making B.W. vulnerable to trauma, humiliation, physical and sexual assault in the following manner:

- i. Defendants had extensive prior knowledge of the fact that B.W. was being regularly bullied and harassed by students by reason of her disability.
- ii. Defendants had extensive prior knowledge of the identity of the prime offenders.
- iii. Defendants had extensive prior knowledge that its actions had not addressed B.W.'s previous complaints, had triggered retaliation and exacerbated the hostile environment.
- iv. Defendants had extensive prior knowledge of the increasing severity of acts of harassment against B.W.
- v. Defendants consciously disregarded their affirmative obligation to put into place procedures to ensure B.W.'s safety while at school.
- vi. Defendants downplayed S.L. and B.W.'s identification of the students perpetrating ongoing harassment upon B.W. and failed to take appropriate action against such students.

- vii. Defendants purposely used procedures that minimized B.W.'s complaints, belittled and humiliated B.W., publicized B.W.'s efforts at self-protection, shifted responsibility to the victim, facilitated retaliation and encouraged escalation of B.W.'s harassment and bullying.
- viii. Defendants created a hostile environment where harassment against a student with a disability was encouraged, facilitated, and tolerated.
- ix. In the face of escalating attacks against B.W., triggered by the nature of its previous responses, the District failed to modify or change its manner of response.
- x. Defendants ignored their obligation to take a comprehensive approach to eliminate the hostile environment.

121. The continual application of the District custom and practice in light of the knowledge of its failure to address the pervasive bullying and harassment of B.W. was unreasonable. Given the increasing severity of the attacks against B.W., escalation from name-calling through specific threats to her vision and well-being, violation of her personal property and person and, finally, sexualized assaults, the District's continuing application of custom was deliberately indifferent to B.W.'s rights and rises to the level of conscious-shocking actions.

122. Defendants were at all times acting under the color of law.

123. As a direct and proximate result B.W. et al has been deprived of the property right to public education.

124. As a direct and proximate result B.W. has been deprived of her right to privacy, including the most fundamental right inherent to free citizens – the “right to be let alone” and free from psychological attacks.
125. As a direct and proximate result of the Defendant’s actions, B.W. has been denied equal participation in the public program of education solely on the basis of her disability and sex.
126. As a direct and proximate result B.W. has suffered from physical harm in violation of her right to bodily integrity.
127. As a direct and proximate result, B.W. has suffered physical pain, psychological harm and emotional distress.
128. The harm suffered by B.W. was a foreseeable consequence of the Defendant’s conduct.
129. S.L., as B.W.’s parent, holds the fundamental constitutional right to the companionship, care and upbringing of her child, B.W. This includes the right to protect her from psychological and physical damage.
130. S.L. complied with the Defendant’s directives and upheld her responsibilities in reporting incidents of harassment and bullying to designated individuals. The District, through actions and inactions, caused harm to B.W., irreversibly invaded her present and future well being, and otherwise interfered with S.L.’s upbringing of her child.
131. Due to her post-traumatic stress, B.W. is now a psychologically fragile individual, requiring frequent ongoing therapy, and is unable to participate in the enjoyment of

life activities. S.L. has lost opportunity to participate in such activities with her daughter.

132. As a direct result of the District's actions, S.L. has suffered and continues to suffer extreme emotional pain from the invasion of her right to the companionship, care and upbringing of her child.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violation.

COUNT II – 14th Amendment Equal Protection Violation and § 1983

133. The preceding paragraphs are incorporated herein as though set forth in full.

134. B.W. is entitled to full and equal participation in the rights and privileges accorded individuals in the public state program of education administered by Defendants.

135. B.W. is an individual with a disability. Her disability is visible, i.e. she has only one eye and wears a prosthetic. Her disability is also a functional disability – she has limited vision which significantly impacts her daily life.

136. B.W. is similarly situated to other public school students, both able and differently abled.

137. Any student with a mental or physical impairment that substantially limits a life activity is eligible for protections under Section 504 of the Rehabilitation Act, (discussed, infra). The regulations define such an impairment as: “(A) any

physiological disorder or condition, *cosmetic disfigurement, or anatomical loss* affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” 34 C.F.R. 104.3(j)(2)(i). (emphasis added)

138. The District provides students with disabilities with formal planned accommodations for their disability-related deficits, which address bullying and harassment, and the provision of a safe environment, as required by the individual student’s circumstances.
139. Because the nature of B.W.’s disability the District treated her differently than other students and did not accord her recognition as an individual with a disability.
140. B.W. was without formal individualized protection. As a direct result, B.W. was deprived of her rights under the United States Constitution and Federal Law, and suffered damage.
141. The actions of the District were intentional, affirmative actions and policy choices.
142. Defendants at all times were acting under the color of law.
143. As a result of Defendant’s actions, B.W. has suffered physical pain, psychological and emotional suffering, including post traumatic stress syndrome, panic attacks, and a loss of life’s pleasures.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violations.

COUNT III – Violation of Section 504 of the Rehabilitation Act

144. The preceding paragraphs are incorporated herein as though set forth in full.

145. B. W. is an individual with a disability who is otherwise qualified for full participation in educational curriculum and related services under Section 504 of the Rehabilitation Act.

146. Section 504 of the Rehabilitation Act specifically sets forth that “no qualified individual with a disability shall . . . solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.”

147. The District is a recipient of federal funds.

148. The District's actions constitute deliberate indifference and reckless disregard of B.W.'s rights in direct violation of Section 504's prohibition against discrimination against persons with disabilities.

149. As a result of Defendant's actions, B.W. has suffered physical pain, psychological and emotional suffering, including post traumatic stress syndrome, panic attacks, and a loss of life's pleasures.

150. As a result of the District's acts and omissions, as detailed above, B.W. has been deprived of access to the public program of education.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violations.

COUNT V – Violation of Title II of the Americans with Disabilities Act

151. The proceeding paragraphs are incorporated herein as though set forth in full.

152. B.W. is an individual with a disability who is otherwise qualified for full participation in educational curriculum and related services under Title II of the ADA which prohibits the exclusion of or discrimination against any otherwise qualified individuals with a disability by a public school district and other public entities.

153. The District is a "Public Entity" as defined by 42. U.S.C. §12131

154. The District, in violating B.W.'s rights resulting in her exclusion from the public school, as stated above, has also violated her rights under the ADA.

155. The District is liable to B.W. for its violation of Title II of the ADA in that they have intentionally excluded her from participation in or denied her the benefits of public education.

156. The District acted with reckless and deliberate indifference to B.W.'s right to be free from discrimination and harassment.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violations.

COUNT VI – Failure to Train and Supervise

157. The preceding paragraphs are incorporated herein as though set forth in full.
158. Throughout the relevant time period, Defendants were aware that B. W. was subjected to pervasive, ongoing bullying based upon her disability. Defendants were aware that the District employed a custom and practice which was ineffective to address, and exacerbated the harassment of students with disabilities by other students. Defendants were aware of their obligations to develop and implement effective programming to address disabilities and sexual harassment.
159. Defendants knew or should have known that, without appropriate training and supervision, employees and agents were likely to continue to deny B.W. full participation in the benefits of public education, that B.W.'s rights would be violated, and she would suffer as a result of severe and pervasive harassment.
160. Extensive guidance and training is available from the Commonwealth of Pennsylvania, the United States Department of Education and its Office of Civil Rights, the Office of the United States Attorney General, and through other agencies, both public and private, to assist the District to adequately train and supervise employees and agents in meeting the District's obligations regarding disabilities harassment. Defendants knew, or should have known, of these resources.
161. Defendant's failure to supervise and train staff to provide preventive or remedial measures in reaction to harassment of students with disabilities amounts to deliberate indifference. This indifference directly and proximately caused the deprivation suffered by Plaintiffs.
162. Defendants could have prevented the harassment and damages arising from such harassment by exercise of reasonable diligence, training and monitoring of the staff.

163. As a result of the aforementioned intentional conduct, B.W. has been limited in the enjoyment of rights, privileges, advantages or opportunities enjoyed by others and has suffered from humiliation and physical and mental trauma and distress.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violations.

COUNT VII- Violation of Title IX

164. The preceding paragraphs are incorporated herein as though set forth in full.

165. B.W. was subject to sexual taunting, threats and intimidation, which was severe, pervasive and ongoing. She was subject to verbal abuse about her sexuality and physical assault to her body as hereinbefore described.

166. The taunting and abuse were known to the District and took place over the course of many years, creating a hostile environment and culminating in assault.

167. The District took no action to curtail this harassment. Instead, its acts and omissions exacerbated the harassment, demonstrating deliberate indifference to the violation of B. W.'s rights.

168. Given the severity and pervasiveness of the ongoing harassment, the District's actions were clearly unreasonable.

169. As a result of the aforementioned intentional conduct, B.W. has been limited in the enjoyment of rights, privileges, advantages or opportunities enjoyed by others and has suffered from humiliation and physical and mental trauma and distress.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violations.

COUNT VIII– Intentional Infliction of Emotional Distress

S.L. et al v Defendants Francis Barnes, Richard Heffernan, Karl Schiebenhofer and Michael

Lynch

170. The preceding paragraphs are incorporated herein as though set forth in full.
171. The aforementioned conduct of Defendants was intentional and with reckless disregard for B.W.s rights.
172. As a direct and proximate result of the actions of Defendants, B.W. was placed in constant apprehension of serious bodily harm and has suffered and will continue to suffer a loss of opportunity to participate in the benefits of public education.
173. As a further direct and proximate result of the actions of defendants B.W. has suffered severe emotional distress, including but not limited to, horror, fright, post-traumatic stress disorder, anxiety and humiliation.
174. The conduct of Defendants- ignoring pleas by B.W. and her Parents, failing to change procedures in reaction to its own failure to curb B.W.'s bullying, publicizing B.W.'s incident reporting, intentionally placing B.W. with her tormentors and subjecting her to retaliation and escalation of attacks- amounts to extreme and outrageous conduct committed in willful, wanton and reckless disregard for the rights, safety and well being of B.W..
175. B.W. and Parent are entitled to punitive damages and a claim is made therefor.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violations, as well as punitive damage.

COUNT IX – Breach of Fiduciary Duty

S.L. et al v Defendants Francis Barnes, Richard Heffernan, Karl Schiebenhofer and Michael Lynch

176. The preceding paragraphs are incorporated herein as though set forth in full.

177. Defendants Barnes, Heffernan, Lynch and Scheibenhofer held themselves out to the public and to Plaintiffs as trusted administrators with the power and ability to act on the District's behalf and curtail or prevent harassment and bullying of students by other students and thereby created and fostered a fiduciary relationship with B.W.

178. Plaintiffs were assured by Defendants that harassment in the school would be dealt with appropriately and that B.W. would be physically and emotionally safe.

179. Plaintiffs placed their trust in Defendants who thereby had an obligation to act in minor Plaintiff, B.W.'s best interest and to care for her while under their care, custody and control.

180. Defendants breached their duty of fiduciary care to Plaintiffs by failing to act in minor Plaintiff B.W.'s best interest and to care for her while under their care, custody and control.

181. Defendant Heffernan breached his duty of fiduciary care to Plaintiffs by failing to take appropriate action in response to harassment and assault, and by failing to ensure Defendant Scheibenhofer took appropriate action in response to harassment and assault, thereby creating a culture of approval for Defendant Scheibenhofer's actions.

182. Defendants Barnes and Lynch breached their duty of fiduciary care to Plaintiffs by failing to take appropriate action in response to harassment and assault, and by failing to ensure that Defendants Heffernan and Scheibenhofer took appropriate action in response to harassment and assault, thereby creating a culture of approval for Defendants Heffernan and Scheibenhofer's actions.
183. As a direct and proximate result of the actions of Defendants, B.W. was placed in constant apprehension of serious bodily harm, suffered bodily harm, and has suffered and will continue to suffer a loss of opportunity to participate in the benefits of public education.
184. As a further direct and proximate result of the actions of defendants B.W. has suffered severe emotional distress, including but not limited to, post-traumatic stress disorder, anxiety and humiliation.
185. The conduct of Defendants Barnes, Lynch, Heffernan and Schiebenhofer was willful, wanton and in reckless disregard for the rights, safety and well being of B.W.
186. B.W. and Parent are entitled to punitive damages and a claim is made thereof. WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violations as well as punitive damages.

COUNT X – Negligence

S.L. et al v Defendants Francis Barnes, Richard Heffernan, Karl Schiebenhofer and Michael

Lynch

187. The preceding paragraphs are incorporated herein as though set forth in full.

188. During the relevant time period, Defendants had a duty to all students of the Palisades High School, including to minor Plaintiff B.W., to provide a safe environment in which to receive their education.
189. Defendants recklessly, carelessly and negligently breached the duty to use reasonable care to ensure that B.W. was provided with a safe environment free from harassment and bullying.
190. The negligence of Defendants consisted of the following:
- a. Failing to exercise reasonable care to protect B.W. from physical harm;
 - b. Failing to exercise reasonable care in response to reported incidents of harassment, which failure increased the risk of further harm to B.W.;
 - c. Failing to exercise reasonable care to protect B.W. from verbal assault, teasing and humiliation;
 - d. Failing to exercise reasonable care to keep B.W. safe and free from verbal and physical assault while in their care, control and custody; and
 - e. Acting without due regard for the rights, safety and well being of minor Plaintiff, B.W.
191. As a direct and proximate result of the actions of Defendants, B.W. was placed in constant apprehension of serious bodily harm, suffered bodily harm, and has suffered and will continue to suffer a loss of opportunity to participate in the benefits of public education.
192. As a further direct and proximate result of the actions of defendants B.W. has suffered severe emotional distress, including but not limited to, post-traumatic stress disorder, school related anxiety and humiliation.

193. The negligent conduct of Defendants amounts to reckless disregard for the rights, safety and well-being of B.W.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory damages, attorney's fees and all other necessary and appropriate relief to redress the injuries incurred as a result of the Defendants' violations.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury.

DATED: 9/26/11

Respectfully submitted,

//s// Ilene Young

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