

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

Cause No.: D-202-CV-2017-00341

RACHEL HIGGINS, as
Guardian Ad Litem for B.P.,
a minor child,

Plaintiff,

vs.

BRITTNY SAAVEDRA, in her personal capacity
acting under color of state law;
DEBORAH GARTMAN, in her personal capacity
acting under color of state law;
MARK A. GARCIA, in his personal capacity acting
under color of state law;
SHONN SCHROER, in his personal capacity acting
under color of state law;
CYNTHIA SOO HOO, in her personal capacity acting
under color of state law; and ALBUQUERQUE
PUBLIC SCHOOLS DISTRICT,

Defendants.

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS

The Plaintiffs, by and through their counsel of record McGraw & Strickland, LLC and Martinez, Hart, Thompson & Sanchez, PC, hereby bring the following causes of action against Defendants and state as follows upon knowledge, information and belief:

PARTIES AND VENUE

1. **Plaintiff Rachel Higgins** is the court appointed Guardian Ad Litem for B.P., a minor child, pursuant to case number: D-202-CV-2016-07814 and is a proper party to bring this lawsuit on B.P.'s behalf pursuant to Rule 1-017(D) NMRA. Rachel Higgins is a resident of Bernalillo County and a citizen of the State of New Mexico.

2. **B.P.**, a minor child, is a resident of Bernalillo County and a citizen of the State of New Mexico.
3. **Defendant Albuquerque Public Schools** (hereinafter, “APS”) is a local governmental agency with offices located at 6400 Uptown Blvd. NE, Albuquerque, NM 87110.
4. West Mesa High School is a public high school within the APS District.
5. **Defendant Brittney Saavedra** (hereinafter “Coach Saavedra”) is a resident of Bernalillo County, New Mexico and was employed by APS as the head varsity cheerleading coach at West Mesa High School.
6. **Defendant Deborah Gartman** (hereinafter “Asst. Principal Gartman”) is a resident of Bernalillo County, New Mexico and was employed by APS as the assistant principal of West Mesa High School. Upon information and belief, Asst. Principal Gartman was the acting principal of West Mesa High School at the time of the July 25, 2015 incident.
7. **Defendant Mark A. Garcia** (hereinafter “Principal Garcia”) is a resident of Bernalillo County, New Mexico and was employed by APS as the principal of West Mesa High School.
8. **Defendant Shonn Schroer** (hereinafter “Athletic Director Schroer”) is a resident of Sandoval County, New Mexico and was employed by APS as the Athletic Director at West Mesa High School.
9. **Defendant Cynthia Soo Hoo** (hereinafter “ED Soo Hoo”) is a resident of Bernalillo County, New Mexico and was employed by APS as the Executive Director of Compliance for the Special Education Department at APS.

10. At all times material to the allegations set forth in this lawsuit, Defendants Coach Saavedra, Asst. Principal Gartman, Athletic Director Schroer, Principal Garcia and ED Soo Hoo were state actors and acted under color of state law.
11. This action arises under the provisions of the First and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983.
12. Jurisdiction and venue are proper with this Court.

FACTUAL ALLEGATIONS

Plaintiff hereby incorporates all previously alleged paragraphs as though set forth fully herein.

13. B.P. was a student at West Mesa High School, and a member of the West Mesa High School Varsity Cheerleading Squad at all times material hereto.
14. The initial incident giving rise to this Complaint occurred on or about July 25, 2015 while B.P. and the other West Mesa High School Varsity Cheerleading Squad members were under the care and supervision of three West Mesa High School cheerleading coaches, Coach Saavedra, Chloe Saavedra and Salome Chavez, in Phoenix, Arizona at a cheerleading camp.
15. On or about the evening of Saturday, July 25, 2015, 15-year old B.P. was showering in a hotel room when at least two teammates put a phone over the shower to photograph her, and then pulled the shower curtain out of B.P.'s grasp to take video of B.P. naked and scared.
16. The teammates used West Mesa High School Junior Varsity Coach Salome Chavez's smart phone to take the photographs and video of a nude B.P.

17. The video was shown to approximately seven other teammates, who began to tease and harass B.P. about her body, including saying “she doesn’t shave,” “who would want to have sex with her,” and “her body ain’t shit.”
18. The video was also posted on a social media app called “Snapchat.”
19. The behavior by the seven West Mesa High School Varsity Cheerleading Squad teammates constitutes criminal conduct, including voyeurism, contrary to NMSA 1978, § 30-9-20 (2007), harassment, contrary to NMSA 1978, § 30-3A-2 (1997), and bullying and cyberbullying.
20. The behavior by the seven West Mesa High School Varsity Cheerleading Squad teammates violates the APS Athletic and Activity Code of Conduct, and the APS Student Behavior Handbook.
21. At least one of the teammates admitted to Coach Saavedra that she had videotaped B.P. using Junior Varsity Coach Salome Chavez’s smart phone.
22. On or about the evening of Saturday, July 25, 2015, B.P. went to Coach Saavedra’s hotel room to discuss the incident.
23. On information and belief, Coach Saavedra instructed B.P. that she needed to apologize to the teammates for overreacting to a joke.
24. On information and belief, Coach Saavedra advised B.P. that none of the teammates were going to be disciplined because Coach Saavedra did not want to “ruin the trip for everybody.”
25. On information and belief, Coach Saavedra threatened punishing B.P. by making her run during practice if B.P. ruined the trip for West Mesa High School Varsity Cheerleading Squad members.

26. Coach Saavedra told B.P. that the July 25th incident was no big deal because the teammate had previously taken photos and videos of another teammate while using the toilet and that teammate had not complained.
27. Coach Saavedra repeated this same statement to Mrs. Pizarro the morning after the July 25th incident, and requested that Mr. and Mrs. Pizarro not contact the Phoenix Police Department because she did not want the teammates to get in trouble for the “prank.”
28. Coach Saavedra told B.P. in front of her teammates that her teammates were only playing a joke on her, this was just what girls did during sleepovers, and that B.P. was over-reacting.
29. Coach Saavedra and Asst. Coach Chloe Saavedra became upset with B.P. when they saw her speaking with hotel security following the July 25th incident, and they prevented security from further assisting B.P. and prevented B.P. from reporting to security what had occurred.
30. B.P.’s parents were notified of this incident – not by the West Mesa High School coaches – but by their distraught daughter.
31. The Phoenix Police Department was notified of this criminal conduct – not by the West Mesa High School coaches – but by the distraught Pizarro family.
32. Coach Saavedra refused to cooperate with the police investigation into this incident by preventing witnesses from speaking with Phoenix police officers after the incident, telling police there was no video and failing to return phone calls from the Phoenix Police Department detective.
33. The day after the incident, B.P. was excluded from a West Mesa High School Varsity Cheerleading Squad photo that was later posted on social media.

34. The day after the incident, Coach Saavedra was overheard making negative comments about B.P. to the other coaches and team members, including calling B.P. “a baby”, saying that B.P. needed to get over it and stop complaining because the video had been deleted, calling B.P. a bad teammate for reporting the incident to hotel security and police, and stating that incidents like B.P. experienced are part of competing.
35. On the plane ride back to Albuquerque, New Mexico, Coaches Brittny Saavedra and Chloe Saavedra of the West Mesa High School Varsity Cheerleading Squad sat near B.P. and harassed her throughout the flight by calling her “a baby” who was “overreacting” and that she simply needed to “get over it.”
36. Following the July 25, 2015 incident, B.P. suffered pervasive harassment, distress, intimidation and unfair treatment at the hands of the West Mesa High School coaches, administration, and teammates.
37. In the weeks following the incident, as the Pizarro family continued to insist that the West Mesa High School administration take action against the teammates responsible for this student-on-student harassment, voyeurism, bullying and cyberbullying, Coach Saavedra demoted B.P., taking away her position as a “flier” on the varsity squad, blamed B.P. for the two-week suspension of practices in front of the entire team, and continued to exclude her from team activities, including a team meeting with Athletic Director Schroer on August 10, 2015.
38. During an August 14, 2015 meeting, which was attended by B.P., B.P.’s parents, Asst. Principal Gartman, Athletic Director Schroer and APS Officer Deb Romero, B.P. was informed that only one of the seven West Mesa High School Varsity Cheerleading Squad

teammates would be disciplined as result of the July 25th incident, but the one teammate would be permitted to stay on the West Mesa High School Varsity Cheerleading Squad.

39. None of the other West Mesa High School Varsity Cheerleading Squad teammates who actively participated in the July 25th incident were disciplined despite Coach Saavedra's, Asst. Principal Gartman's, Athletic Director Schroer's, Principal Garcia's, and APS's actual knowledge that other teammates' July 25th conduct constituted criminal conduct and conduct in violation of the APS Athletic and Activity Code of Conduct and the APS Student Behavior Handbook.
40. Notably, the West Mesa High School Varsity Cheerleading Squad teammates who took nude photographs of B.P. on July 25th were not disciplined.
41. On information and belief, this particular teammate had previously taken photographs and video footage of another West Mesa High School Varsity Cheerleading Squad teammate.
42. On information and belief, Coach Saavedra had actual knowledge that this teammate had previously taken photographs and video footage of another West Mesa High School Varsity Cheerleading Squad member and did not discipline this teammate for her history and pattern of harassment, voyeurism, bullying and cyberbullying. On the contrary, Coach Saavedra used this particular teammates' prior conduct of taking photographs and video footage of another West Mesa High School Varsity Cheerleading Squad teammate using the toilet to explain to B.P. why the July 25th incident was no big deal.
43. Following the July 25th incident, the West Mesa High School Varsity Cheerleading Squad members involved in the incident continued harassing and bullying B.P., but these

teammates were never disciplined by Coach Saavedra, Asst. Principal Gartman, Athletic Director Schroer, Principal Garcia, or APS.

44. West Mesa High School administrators, including Asst. Principal Gartman, Principal Garcia and Athletic Director Schroer, requested that B.P. engage in mediation with the teammates that had photographed and videotaped her even though the APS Bullying and Cyberbullying Behavior Prevention Training for Staff clearly states “MEDIATION IS NOT APPROPRIATE if bullying is indicated.” (emphasis original).
45. The teammates involved in the incident remained on the West Mesa High School Varsity Cheerleading Squad despite Coach Saavedra’s, Asst. Principal Gartman’s and Athletic Director Schroer’s and West Mesa High School administration’s knowledge of their wrongful conduct.
46. The APS Student Behavior Handbook states that “the principal, any public school official or designated chaperone is authorized to take administrative action when a student’s misconduct away from school during a school activity may have a detrimental effect on the other students, staff or on the orderly educational process. The principal has the responsibility to take discretionary action any time the educational process is threatened with disruption.”
47. The APS Student Behavior Handbook also states “Extracurricular activities are an integral part of the educational process, providing students with opportunities to further develop their unique capabilities, interests and needs beyond the classroom.”
48. In the weeks following the July 25th incident, B.P. was so severely taunted and ostracized by her teammates and coaches that she was forced to leave the West Mesa High School Varsity Cheerleading Squad.

49. Other members of the West Mesa High School Varsity Cheerleading Squad also quit the team because of the student-on-student harassment and the inadequate response of West Mesa High School administrators and staff to the July 25th incident.
50. Parents of other cheerleaders voiced their concern about the July 25th incident to West Mesa High School administrators and staff, including Athletic Director Schroer, who responded by stating that this was what was to be expected in the sport of cheerleading.
51. B.P. experienced continued pervasive harassment, distress and intimidation by her former teammates, including an incident on October 5, 2015, when B.P. was followed around campus by a former teammate involved in the July 25th incident and that teammate's mother. The incident was reported to Principal Garcia by B.P.'s mother, who wrote: "The girls were told over and over to drop this yet it continues. Making it hard for my child to even go to school. She is no longer cheering because of this yet it is continuous behavior. I am requesting your help in this matter as my child does not feel safe at school." In response to this continued bullying and harassment, Principal Garcia, once again, proposed mediation.
52. B.P.'s younger brother who was also a student of West Mesa High School also experienced continued pervasive harassment, distress, and intimidation by B.P.'s former teammates involved in the July 25th incident and students of West Mesa High School as a result of trying to protect B.P. at West Mesa High School during school hours.
53. One of B.P.'s friends and former West Mesa High School Varsity Cheerleading Squad teammate also experienced continued pervasive harassment, distress, and intimidation by the former teammates involved in the July 25th incident as a result of her friendship with B.P. This friend was a member of the West Mesa High School Varsity Cheerleading

Squad during the July 25th incident.

54. Following the July 25th incident, three of the seven teammates involved in the July 25th incident constantly made comments about B.P.'s friend and also B.P., who they called the "bitch friend" and "whore." These teammates harassed B.P.'s friend on a daily basis by following her throughout campus during the lunch hour while making remarks about her and B.P.
55. B.P.'s friend reported the bullying to a West Mesa High School security guard who said he would report the harassment and bullying. On information and belief, these teammates were never disciplined for harassing and bullying B.P.'s friend.
56. B.P.'s friend transferred out of West Mesa High School in April 2016 as a result of the continued pervasive harassment, distress, and intimidation by the former teammates involved in the July 25th incident.
57. APS's Bullying and Cyberbullying Prevention Policy states "Albuquerque Public Schools prohibits reprisal or retaliation against any person who reports an act of bullying."
58. In the months following the incident, B.P. experienced retaliation from school officials at West Mesa High School, including:
 - a. Athletic Director Schroer refusing to let B.P. discuss the July 25, 2015 incident with her former advisor at West Mesa High;
 - b. Principal Garcia calling one of B.P.'s male friends into Principal Garcia's office to question whether the male friend was dating B.P. and warning him that B.P. was "drama";

- c. In December 2015, West Mesa High School administrators told the principal of the proposed transfer school that if he accepted B.P. into his school, he would have nothing but drama.
59. These incidents at West Mesa High School created a hostile environment on the school campus that was so severe and pervasive as to substantially interfere with B.P.'s education.
60. A free public school education is a right guaranteed to every school-aged person.
61. The APS Student Behavior Handbook states "Albuquerque Public Schools affords all students equal educational opportunities, as well as, equal opportunities to participate in extracurricular activities. Policy prohibits discrimination and harassment on the basis of ... sex... in any program or activity sponsored by the school district."
62. The APS Student Behavior Handbook also states "APS will provide a safe and supportive climate for learning and working that maximize student achievement."
63. West Mesa High School Administration, including acting Asst. Principal Gartman, Athletic Director Schroer and Principal Garcia, demonstrated they were unwilling or unable to provide B.P. an appropriate education in a safe environment.
64. As a result of the substantial interference with B.P.'s education at West Mesa High, B.P. wished to transfer to another high school within the Albuquerque Public Schools system (hereinafter "transfer school").
65. The APS Student Behavior Handbook states "Transfers are approved according to State and Federal laws, based on site capacity, program availability and using a random selection process."

66. On October 7, 2015, Mrs. Pizarro submitted a transfer request to Albuquerque Public Schools for B.P. and B.P.'s younger brother. The basis for both transfer requests was student safety stemming from the July 25th incident.
67. Despite having actual knowledge that West Mesa High School was an unsafe environment for B.P., APS delayed transferring B.P. out of West Mesa High School for over three months.
68. APS had no reasonable basis for delaying transferring B.P. out of West Mesa High School for over three months.
69. On January 7, 2016, Mrs. Pizarro drove to the transfer school and spoke with the principal of the transfer school. The principal of the transfer school agreed that B.P. could start school there immediately. The principal signed transfer documents allowing B.P. to begin classes immediately at the transfer school.
70. That same morning, January 7, 2016, Mrs. Pizarro drove to West Mesa High to sign papers to withdraw B.P. and B.P.'s younger brother from West Mesa High School where B.P. had been so significantly harassed and retaliated against that she could no longer function as a student there.
71. Later that day, on January 7, 2016, Mr. and Mrs. Pizarro received voicemail messages from ED Soo Hoo, the Executive Director of Compliance for Albuquerque Public Schools. ED Soo Hoo's messages said that B.P.'s transfer from West Mesa High School could not be accomplished unless and until B.P., through her parents, signed a release that settled any and all claims the child or her parents had or might have had against any APS entity, agent, or employee ("Release").
72. On information and belief, ED Soo Hoo conspired with APS administrators to deny B.P.

- a public education in a safe environment unless B.P., through her parents, signed the Release and waived her constitutional right to access the civil justice system.
73. In her voicemail and email, ED Soo Hoo, on behalf of APS, demanded that B.P. waive her right to bring civil claims, in exchange for which, according to ED Soo Hoo, APS would provide the free and appropriate education it is required by law to provide. ED Soo Hoo never demanded that B.P.'s brother equally waive his right to bring civil rights claims in exchange for an approved transfer out of West Mesa High School.
74. On information and belief, ED Soo Hoo also never demanded that B.P.'s friend equally waive her right to bring civil rights claims in exchange for an approved transfer out of West Mesa High School despite similarly citing student safety as the basis for her transfer request.
75. ED Soo Hoo emailed the Release to Mr. and Mrs. Pizarro and set forth in writing that she, on behalf of APS, would not allow B.P. to transfer schools unless B.P.'s parents signed the Release on behalf of their minor daughter. ED Soo Hoo's January 7, 2016 email states, in part, "[T]he District is willing to facilitate a transfer of [B.P.] ahead of other students if we can put any and all disputes behind us. Attached is the settlement agreement necessary for an approved transfer to Albuquerque High School."
76. ED Soo Hoo attached a Release to her email, which acknowledged that B.P.'s parents sought the transfer due to safety concerns for their child: "Parents have raised concerns and claims regarding the safety of their child, B.P., at West Mesa High School, which are disputed by APS. Because of their safety concerns, which are disputed by APS, Parents wish to transfer B.P. to Albuquerque High School."
77. At all material times, APS, its employees, agents and representatives knew that Mr. and

- Mrs. Pizarro and their daughter, B.P., were represented by counsel.
78. Nevertheless, ED Soo Hoo, on behalf of APS, communicated directly with Mr. and Mrs. Pizarro in an attempt to extort a waiver of B.P.'s constitutional right to access the civil justice system in exchange for B.P. receiving a public education in a safe environment.
79. ED Soo Hoo, on behalf of APS, communicated directly with Mr. and Mrs. Pizarro and advised them that APS could "make B.P.'s transfer happen" if B.P.'s parents dropped B.P.'s civil claims.
80. On Friday, January 8, 2016, Mrs. Pizarro went to the transfer school to begin the enrollment process for B.P. and B.P.'s younger brother.
81. That day, the principal of the transfer school informed Mrs. Pizarro that he had been instructed by APS to reverse the transfer of B.P. pending further instructions from APS' administration.
82. According to the principal of the transfer school and according to the Director of Special Education at the transfer school, there was no impediment at the transfer school to allowing B.P. to transfer there.
83. The only basis to stop B.P.'s transfer from West Mesa High School to the transfer school was in order to further harass and retaliate against B.P. and to extort the Release of Liability from her parents.
84. On information and belief, ED Soo Hoo, on behalf of APS, instructed the principal of the transfer school not to accept B.P. as a student at the school unless and until Mr. and Mrs. Pizarro signed away B.P.'s rights to bring civil claims.
85. APS immediately transferred B.P.'s younger brother to the transfer school without incident but refused to transfer B.P. out of the unsafe educational environment at West

Mesa High School.

86. Although B.P. and her younger brother submitted transfer requests on the same date and to the same transfer school as a result of the same safety reasons arising from the July 25th incident, ED Soo Hoo, on behalf of APS, refused to transfer B.P. despite the pervasive harassment, retaliation, and intimidation at West Mesa High School in an attempt to extort a waiver of B.P.'s constitutional rights in exchange for the transfer.
87. B.P. was not transferred until January 11, 2016 after a Petition for Temporary Restraining Order prepared on B.P.'s behalf was shared with APS and its counsel.
88. At all times material to the allegations set forth in this lawsuit, B.P. had a right under state and federal law to a free and appropriate education devoid of harassment, retaliation, intimidation, and discrimination.
89. At all times material to the allegations set forth in this lawsuit, APS had an obligation to provide B.P. with a free and appropriate education which was free of harassment, retaliation, intimidation, and discrimination.
90. Defendants inappropriately interfered with B.P.'s right to a free and appropriate education in an effort to extort a waiver of B.P.'s access to the civil justice system.

Count I
Title IX

Plaintiff hereby incorporates all previously alleged paragraphs as though set forth fully herein.

91. At all times material to the allegations set forth in this lawsuit, Coach Saavedra, as a leader at West Mesa High School and person who was in a position of authority and entrusted with the care of B.P. and other students, was acting under color of law.

92. At all times material to the allegations set forth in this lawsuit, B.P. had a federal right not to suffer discrimination on the basis of her sex, including sexual harassment, at school and at school-sponsored events.
93. At all times material to the allegations set forth in this lawsuit, B.P. suffered discrimination on the basis of her sex, including sexual harassment, retaliation, and intimidation, at West Mesa High School and at West Mesa High School-sponsored events.
94. Coach Saavedra and West Mesa High School administration and staff, including Principal Garcia, had actual knowledge of the sexual harassment, retaliation, and intimidation B.P. suffered.
95. Upon information and belief, APS did not follow its obligations and responsibilities under Title IX because the nature of the harassment was caused by persons of the same sex. As APS presumably known, Title IX does not require the harassment be caused by persons of the opposite sex.
96. The following conduct by Coach Saavedra and West Mesa High School administrators and staff demonstrates how they did not take B.P.'s situation seriously because she was victimized by members of her own gender in the sport of cheerleading:
- a. Coach Saavedra's refusal to cooperate with the police investigation into the July 25th incident by preventing witnesses from speaking with Phoenix police officers after the incident and failing to return phone calls from the Phoenix Police Department detective;
 - b. Coach Saavedra's actual knowledge that one of the teammates involved in the July 25th incident had previously taken photographs and video footage of

another West Mesa High School Varsity Cheerleading Squad member and did not discipline this teammate for her history and pattern of harassment, voyeurism, bullying and cyberbullying. On the contrary, Coach Saavedra used this particular teammates' prior conduct of taking photographs and video footage of another West Mesa High School Varsity Cheerleading Squad teammate using the toilet to explain to B.P. why the July 25th incident was no big deal;

- c. Coach Saavedra's negative statements to other West Mesa High School coaches and team members about B.P. following the July 25th incident, which included calling B.P. "a baby", saying that B.P. needed to get over it and stop complaining because the video had been deleted, and calling B.P. a bad teammate for reporting the incident to hotel security and police;
- d. Athletic Director Shroer responded to the concerns expressed by other parents about the July 25th incident by stating that this was what was to be expected in the sport of cheerleading;
- e. Coach Saavedra's statement that incidents like B.P. experienced are part of competing in the sport of cheerleading;
- f. Principal Garcia responded to the persistent and pervasive harassment B.P. suffered as a result of the July 25th incident by belittling B.P. to B.P.'s male friend and warning him that B.P. was "drama";
- g. West Mesa High School administrators responded to the persistent and pervasive harassment B.P. suffered as a result of the July 25th incident by

contacting the principal of the proposed transfer school to warn him that if he accepted B.P. into his school, he would have nothing but drama; and

- h. West Mesa High School administrators, including Asst. Principal Gartman, Principal Garcia and Athletic Director Schroer, requested that B.P. engage in mediation with the teammates that had photographed and videotaped her even though the APS Bullying and Cyberbullying Behavior Prevention Training for Staff clearly states “MEDIATION IS NOT APPROPRIATE if bullying is indicated.” (emphasis original).

- 97. Defendant APS violated B.P.’s rights under Title IX when it was deliberately indifferent to the known severe and serious harassment, which was objectively offensive, that B.P. endured and was continuing to endure at West Mesa High School and did nothing to stop the harassment but actually participated in the continued harassment.
- 98. APS’ response to the known persistent and pervasive harassment suffered by B.P. was clearly unreasonable in light of the known circumstances as there was no dispute as to the underlying facts of videoing and photographing B.P. in the shower. There was also no dispute as to subsequent and continued pervasive harassment against her by her peers and APS employees for reporting the criminal conduct perpetrated against her.
- 99. Despite APS’ knowledge of (and participation in the harassment), it did nothing to respond appropriately and in a manner so as to provide for prompt and equitable resolution of the sexual harassment complaints. The multiple APS employees who knew of the harassment (including Coach Saavedra, Principal Garcia, Principal Gartman, and others) failed to follow the required reporting standards for reports of sexual harassment pursuant to Title IX.

100. As a direct and proximate result of APS' violations of Title IX, B.P. was deprived of access to her educational opportunities at West Mesa High School and the benefits that the school provided.
101. The only reason B.P. suffered continued and pervasive harassment at West Mesa High School was as a result of her reporting the sexual harassment.
102. Coach Saavedra, acting in her official capacity and under color of law, perpetuated the harassment of B.P. by humiliating her in front of the team for reporting the sexual harassment, ceasing all communication with B.P. and refusing to allow her to be a part of the team, not allowing B.P. to be in the team photograph, removing her from her position as flier, and refusing to coach her following the July 25th incident.

Count II
42 U.S.C. § 1983
First Amendment Retaliation

Plaintiff hereby incorporates all previously alleged paragraphs as though set forth fully herein.

103. At all times material to the allegations set forth in this lawsuit, B.P.'s report of sexual harassment was an exercise of her First Amendment right and was constitutionally protected conduct.
104. B.P. informed Coach Saavedra that she had been photographed and videotaped in the shower, while she was nude, by her teammates.
105. B.P. raised the concern that this type of harassment had occurred in the past with another child as the victim, but Coach Saavedra did nothing to address the misconduct at that point either.

106. B.P. also informed the hotel security that she had been photographed and videotaped in the shower, while she was nude, by her teammates.
107. Based on the following conduct, Coach Saavedra failed to act and respond to her reports appropriately:
- a. Coach Saavedra did not properly report the sexual harassment when she became aware of it that night in Arizona;
 - b. Coach Saavedra prohibited B.P. from communicating with the hotel security about the sexual harassment;
 - c. Coach Saavedra did not contact B.P.'s parents after she was notified about the incident in Arizona; and
 - d. Coach Saavedra did not cooperate with Phoenix law enforcement after B.P.'s parents called to report the incident.
108. B.P. informed her parents that she had been photographed and videotaped in the shower, while she was nude, by her teammates.
109. B.P. told her parents that Coach Saavedra did nothing to address the July 25th misconduct.
110. B.P. also told her parents of the continued harassment and bullying she suffered at the hands of the West Mesa High School Varsity Cheerleading Squad teammates involved in the July 25th incident.
111. On August 26, 2015, B.P.'s father reported his concerns about Coach Saavedra's response to this incident and her knowledge of similar prior incidents in writing to Principal Garcia; and,

112. B.P.'s parents reported their concerns about their daughter's safety and continued harassment to Principal Garcia and Asst. Principal Gartman.
113. At all times material to the allegations set forth in this lawsuit, B.P.'s report of sexual harassment along with Coach Saavedra's, Athletic Director Schroer's, Asst. Principal Gartman and Principal Garcia's failure to act and respond to her reports appropriately, resulted in her speech being a matter of public concern and is constitutionally protected.
114. The conduct of West Mesa High School staff and administrators caused B.P. to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that speech. Such conduct included:
- a. Calling B.P. a "baby" who was unable to deal with a "prank" (referring to the video and photographing of her nude);
 - b. not allowing B.P. to participate in the team photograph;
 - c. blaming B.P. for the cheer team's practice suspension in front of the entire team;
 - d. ignoring B.P. and refusing to coach her during practice;
 - e. chastising B.P. for "not being a good team member" and "blowing things out of proportion";
 - f. B.P. being removed from her position as a "flier" with the cheerleading team;
 - g. B.P. being prohibited from doing both cheer and volleyball when other cheerleaders were allowed to do both sports;
 - h. B.P. not getting notice of a meeting with the Athletic Director;
 - i. B.P. being called "drama" by Principal Garcia to B.P.'s male friend;

- j. B.P. being threatened that she could not transfer to another school unless she gave up any claims she may have against the school district;
- k. APS refusal to immediately transfer B.P. in response to the October 7, 2015 transfer request by B.P.'s mother based on a concern for B.P.'s safety;
- l. B.P. being forced to remain at West Mesa High School at the start of the spring 2016 school semester while ED Soo Hoo, on behalf of APS, negotiated B.P.'s transfer out of the unsafe West Mesa High School environment in exchange for a waiver of B.P.'s civil claims, which caused B.P. to suffer additional and undue harassment, distress, and intimidation at West Mesa High School;
- m. B.P. being called "drama" by West Mesa High School administrators attempting to deter the principal of the proposed transfer school from accepting B.P. into the transfer school;
- n. B.P. being blamed by Principal Garcia for the misconduct of other students; and,
- o. B.P. being confronted by Athletic Director Schroer and being told not to speak with her school advisor about the July 25th incident.

- 115. At all times, Defendants' conduct towards B.P. as set forth above, was substantially motivated by her report of the sexual harassment by her teammates and by her report of the failure of West Mesa High School staff and administration to address the sexual harassment.
- 116. B.P. suffered injuries and damages as a result of Defendant's retaliation against her for exercising her First Amendment rights.

Count III
42 U.S.C. § 1983
Equal Protection Violation

Plaintiff hereby incorporates all previously alleged paragraphs as though set forth fully herein.

117. At all times material to the allegations set forth in this lawsuit, ED Soo Hoo and administration at APS, were state actors and acted under color of law as school district officials.
118. At all times material to the allegations set forth in this lawsuit, B.P. had a constitutional right to be free from discrimination by APS officials under the Equal Protection Clause of the Constitution of the United States.
119. ED Soo Hoo and APS administration treated B.P. differently from others similarly situated when she was told she could not transfer schools until her civil claims against APS were released.
120. B.P., B.P.'s younger brother, and B.P.'s friend and former West Mesa High School Varsity Cheerleading Squad teammate suffered equally persistent and pervasive harassment, retaliation, and intimidation from West Mesa High School students as a result of the July 25th incident.
121. B.P., B.P.'s younger brother, B.P.'s friend and former West Mesa High School Varsity Cheerleading Squad teammate all reported the pervasive harassment, retaliation, and intimidation to West Mesa High School officials.
122. On October 7, 2015, Mrs. Pizarro submitted a transfer request to APS for both B.P. and B.P.'s younger brother for the persistent and pervasive harassment, retaliation, and intimidation B.P. and B.P.'s younger brother equally suffered at West Mesa High School.

123. The stated basis for both B.P.'s transfer request and B.P.'s younger brother's transfer request was "student safety" stemming from the July 25th incident.
124. On information and belief, B.P.'s friend and former West Mesa High School Varsity Cheerleading Squad teammate also submitted a transfer request out of West Mesa High School and similarly cited student safety stemming from the July 25th incident as the basis for the transfer request.
125. The transfer school had authorized the transfers for both B.P. and B.P.'s younger brother.
126. ED Soo Hoo, on behalf of APS administration, treated B.P. differently from her similarly situated younger brother and her friend and former West Mesa High School Varsity Cheerleading Squad teammate by singling out B.P., delaying her transfer to the transfer school, and demanding that B.P.'s parents release B.P.'s civil claims in exchange for APS providing B.P. with a public education in a safe environment.
127. ED Soo Hoo and APS administration did not delay the transfer of B.P.'s younger brother, B.P.'s friend and former West Mesa High School Varsity Cheerleading Squad teammate, or other students similarly situated by requiring them to release their civil claims in exchange to transfer schools.
128. There was no conceivable rational basis or legitimate purpose for requiring B.P.'s parents to execute a release of all claims their daughter may have had against APS other than an improper motive or ill will toward B.P.
129. It is clear that the only motivation ED Soo Hoo and APS administration had for refusing to allow B.P. to transfer schools was an improper motive or ill will toward B.P. for her reporting of the July 25th sexual harassment incident and for reporting the failure of West

Mesa High School staff and administration to address the persistent and pervasive harassment she suffered at West Mesa High School based on the following:

- a. B.P.'s brother was permitted to transfer to the transfer school without delay or without any demand that he waive his civil claims;
- b. The principal of the transfer school had already authorized the transfer of B.P. to his school;
- c. West Mesa High School administrators attempted to deter the principal of the proposed transfer school from accepting B.P. into the transfer school by calling B.P. drama;
- d. The head of the Special Education Department at the transfer school approved of B.P.'s transfer;
- e. ED Soo Hoo, on behalf of APS, communicated directly with B.P.'s parents and advised her that APS could "make B.P.'s transfer happen" if B.P.'s parents agreed to drop B.P.'s civil claims; and
- f. ED Soo Hoo and the APS administration required that a release of all claims that B.P. may have against the school district be executed before it would approve her transfer, and did not mention that there was any other problem with B.P.'s requested transfer.

130. In commission of the acts alleged herein, ED Soo Hoo and APS administration acted knowingly, recklessly, or with deliberate indifference and callous disregard of the rights of B.P. and their conduct shocks the conscience.

131. As a direct and proximate result of the violations of B.P.'s constitutional rights, B.P. suffered injuries and damages.

Count IV
42 U.S.C. § 1985
Conspiracy to Interfere with Civil Rights

Plaintiff hereby incorporates all previously alleged paragraphs as though set forth fully herein.

132. At all times material to the allegations set forth in this lawsuit, ED Soo Hoo, West Mesa High School administrators, and APS administrators, were state actors and acted under color of law as public school district officials.
133. At all times material to the allegations set forth in this lawsuit, B.P. had a right under state and federal law to a free and appropriate public education in a safe environment.
134. At all times material to the allegations set forth in this lawsuit, B.P. had a constitutional right to be free from discrimination by ED Soo Hoo, West Mesa High School administrators, and APS administrators under the Equal Protection Clause of the Constitution of the United States.
135. At all times material to the allegations set forth in this lawsuit, B.P. had a constitutional right to access the civil justice system.
136. On information and belief, ED Soo Hoo, West Mesa High School, and APS administrators conspired for the purpose of depriving B.P. a public education in a safe environment unless B.P.'s parents waived her constitutional right to access the civil justice system.
137. On information and belief, ED Soo Hoo, West Mesa High School, and APS administrators conspired for the purpose of impeding, hindering, obstructing, or defeating B.P.'s civil rights claims and her constitutional right to access the civil justice system.

138. On information and belief, ED Soo Hoo, West Mesa High School administrators, and APS administrators intended to deny B.P. a public education in a safe environment by denying or otherwise delaying her transfer out of the unsafe environment at West Mesa High School unless B.P. waived her constitutional right to access the civil justice system.
139. Based on the following conduct, it is clear that the only motivation for the conspiracy between ED Soo Hoo, West Mesa High School administrators, and APS administrators to deprive B.P. of a public education in a safe environment was an improper motive, animus, or ill will toward B.P. for her reporting of the July 25th sexual harassment incident and for reporting the failure of West Mesa High School staff and administration to address the persistent and pervasive harassment she suffered at West Mesa High School based on the following:
- a. B.P.'s brother was permitted to transfer to the transfer school on the first day of the spring 2016 school semester without delay or first demanding that he waive his civil claims;
 - b. The principal of the transfer school had already authorized the transfer of B.P. to his school;
 - c. The head of the special education department at the transfer school approved of B.P.'s transfer;
 - d. However, West Mesa High School administrators attempted to deter the principal of the proposed transfer school from accepting B.P. into the transfer school by calling B.P. drama; and

- e. ED Soo Hoo, on behalf of APS, communicated directly with B.P.'s parents and advised them that APS could "make B.P.'s transfer happen" if B.P.'s parents dropped B.P.'s civil claims.
- f. ED Soo Hoo, on behalf of APS, threatened B.P.'s parents that B.P. could not transfer to another school unless she gave up any civil claims she may have against the school district.
- g. ED Soo Hoo and the APS administration required that a release of all claims that B.P. may have against the school district be executed before they would approve her transfer, and did not mention that there was any other problem with B.P.'s requested transfer.
- h. According to the principal of the transfer school and according to the Director of Special Education at the transfer school, there was no impediment at the transfer school to allowing B.P. to transfer there without any further delay.
- i. On information and belief, ED Soo Hoo, on behalf of APS, instructed the principal of the transfer school not to accept B.P. as a student at the school unless and until Mr. and Mrs. Pizarro signed away B.P.'s rights to bring civil claims.

140. As a result of ED Soo Hoo's and the APS administration's threatened requirement that Mr. and Mrs. Pizarro sign away B.P.'s rights to bring civil claims, B.P. could not immediately transfer out of the unsafe environment at West Mesa High School.

141. As a result of ED Soo Hoo's and the APS administration's threatened requirement that Mr. and Mrs. Pizarro sign away B.P.'s rights to bring civil claims, B.P. was deprived of a

free and appropriate public education in a safe environment during the first week of the spring 2016 semester.

142. As a result of the delays imposed by ED Soo Hoo's and the APS administration's threatened release requirement, B.P. was forced to remain at West Mesa High School, which caused B.P. to suffer additional and undue harassment, distress, intimidation, and discrimination.
143. As a direct and proximate result of the conspiracy between ED Soo Hoo, West Mesa High School, and APS administrators, B.P. was deprived of a free and appropriate education in a safe environment, denied equal protections under state and federal law, and suffered injuries and damages.

DAMAGES

Plaintiff hereby incorporates all previously alleged paragraphs as though set forth fully herein.

144. B.P. suffered severe emotional injuries as a result of Defendant's wrongful conduct.
145. As the direct, natural and proximate result of the acts and omissions of the Defendant, B.P. has incurred the following compensatory and special damages:
- a. Past and future medical expenses;
 - b. Past and future pain and suffering;
 - c. Past and future emotional distress;
 - d. Loss of enjoyment in her activities.

WHEREFORE, Plaintiffs pray for judgment against Defendant in an amount reasonable to compensate Plaintiffs for:

- A. Damages as alleged in this complaint in an amount to be ascertained at trial;

- B. Punitive damages in an amount to punish and deter Defendants for their intentional and reckless violations of B.P.'s constitutional rights and to deter such violations in the future;
- C. Reasonable attorney's and costs of suit under 42 U.S.C. 1988;
- D. Prejudgment and post-judgment interest; and
- E. Any other relief which this Court may deem just and proper.

Respectfully submitted,

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