

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.L.,

Plaintiff,

v.

BEACON CITY SCHOOL DISTRICT,
BEACON BOARD OF EDUCATION,
MATTHEW LANDAHL, Superintendent, ELISA
SOTO, Principal, SAMUELLE SIMMS, Assistant
Principal, CINDY POMARICO, Teacher, and
MICHELE POLHAMUS, Counselor, each in their
official and individual capacities,

Defendants.

Case No. _____

INITIAL COMPLAINT

JURY TRIAL DEMANDED

J.L., by his attorneys, HACH ROSE SCHIRRIPA & CHEVERIE, LLP (“HRSC”), respectfully alleges:

INTRODUCTION

1. On October 12, 2018, Plaintiff J.L. (“J.L.”) was kicked in the face as a result of a physical altercation with another student. J.L., a student in Beacon City School District, was sexually harassed and bullied by other students because he “came out” as a homosexual. J.L.’s continued sexual harassment and bullying by other students was in direct contravention of Beacon School District’s (“BCSD”) policy.

2. J.L.’s unlawful treatment occurred in front of, or was reported to, multiple adults in positions of authority, who idly stood by and allowed students to sexually harass and bully J.L. In particular, over the course of the first half of the 2018-2019 school year, Defendants Elisa Soto (“Soto”), Samuelle Simms (“Simms”), Cindy Pomarico (“Pomarico”), and Michele Polhamus

(“Polhamus”) were made aware of J.L.’s treatment and failed to intervene to stop the onslaught of harassment and bullying and failed to plan for J.L.’s safety. In fact, Defendants actively retaliated against J.L instead of protecting him.

3. As a result of Defendants’ deliberate indifference to J.L.’s rights, J.L was injured and denied his clearly established right to attend public school and receive equal access to education. Further, J.L suffered damages, including without limitation emotional trauma, mental anguish, suffering, impairment of reputation, and personal humiliation.

4. Plaintiff brings suit to vindicate his rights pursuant to 42 U.S.C. § 1983 and 20 U.S.C. § 1681 and seeks compensatory damages, punitive damages, and costs.

JURISDICTION

5. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367, as they are related to the claims in this action within the Court’s original jurisdiction such that they form part of the same case or controversy under Article III of the United States Constitution.

6. Venue is properly laid in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391 because, *inter alia*, Defendants are situated in this district and are subject to this Court’s personal jurisdiction, and the unlawful conduct complained of herein occurred within this district.

PARTIES

7. Plaintiff J.L is a resident of Dutchess County in the State of New York. Plaintiff was born on August 30, 2001 and is a minor. At all times relevant to this Complaint, Plaintiff

resided in the town of Fishkill within the geographical boundaries of the Defendants' school district zone. Plaintiff attended Beacon City Schools from 2006 through present. From 2015 through January 3, 2019, Plaintiff attended Beacon High School in the Beacon City School District.

8. Defendant BCSD was and is a municipal corporation and local educational agency which maintains its principal place of business at 10 Education Drive, Beacon, New York 12508, in Dutchess County. BCSD and each of its component schools are recipients of federal financial assistance as defined in 20 U.S.C. § 1981(c). BCSD is a "person" within the meaning of 42 U.S.C. § 1983.

9. At all times relevant to this Complaint, BCSD owned, operated, controlled, administered and maintained Beacon High School, which is located at 101 Matteawan Road, Beacon, New York 12508, in Dutchess County.

10. At all times relevant to this Complaint, Defendant Beacon Board of Education ("BCSD Board of Education") was and is a public benefit corporation, duly organized by virtue of the laws of the State of New York, maintaining its principal place of business at 10 Education Drive, Beacon, New York, 12508, in Dutchess County. BCSD Board of Education is a "person" within the meaning of 42 U.S.C. § 1983.

11. Pursuant to the New York Education Law § 2503, BCSD Board of Education is charged with, *inter alia*: "[p]rescrib[ing] such regulations and by-laws as may be necessary to make effectual the provisions of this chapter and for the conduct of the proceedings of said board and the transaction of its business affairs, for the general management, operation, control, maintenance and discipline of the schools, and of all other educational, social or recreational activities and other interests under its charge or direction." In this capacity, the BCSD Board of Education bears a fiduciary responsibility to the BCSD and is required to ensure that school policies comply with all

relevant laws and regulations, and that these policies are implemented in schools.

12. Defendant BCSD Board of Education “shall have power, and it shall be its duty . . . [t]o establishes such rules and regulations concerning the order and discipline of the schools . . . as [it] may deem necessary to secure the best educational results . . . [and is required to] provide adequate training to its employees with respect to discrimination, bullying, or harassment based on sexual orientation or sex.” N.Y. Educ. Law § 1709.

13. Charged with final decision making authority with respect to discipline and order in its school, as well as training its staff, managing and operating its schools, and training its students to be educated in the warning signs of harassment and abuse, BCSD Board of Education is a policy maker with respect to all misconduct alleged herein.

14. At all times relevant to this Complaint, Defendant Matthew Landahl (“Landahl”) was Superintendent of BCSD, and remains in that position. At all times relevant to this Complaint, Defendant Landahl was a policy-maker for BCSD and its schools.

15. At all times relevant to this Complaint, Defendant Soto was Principal of BCSD’s Beacon High School and continues to serve BCSD in that capacity.

16. At all times relevant to this Complaint, Defendant Simms was an Assistant Principal of BCSD’s Beacon High School and continues to serve BCSD in that capacity.

17. At all times relevant to this Complaint, Defendant Pomarico was a Gym Teacher at Defendant BCSD’s Beacon High School and continues to serve BCSD in that capacity.

18. At all times relevant to this Complaint, Defendant Polhamus was a School Counselor at Defendant BCSD’s Beacon High School and continues to serve BCSD in that capacity.

19. All of the Defendants to this action were state actors with respect to the misconduct alleged herein.

STATEMENT OF FACTS

20. Plaintiff, a 17 year old student with a learning disability, recently graduated from Beacon High School. Plaintiff is also openly homosexual.

21. On or around September 5, 2018, BCSD opened its doors for the 2018-2019 school year. On or around that date, Plaintiff started his senior year of high school at Beacon High School.

22. As a result of Plaintiff's learning disability, he participates in an Individualized Education Program ("IEP"). Since Plaintiff's freshman year in 2015, he has made significant academic achievements and worked diligently to overcome his learning disability.

23. Because of Plaintiff's hard work, Plaintiff J.L was selected to participate in a program where he attended technical classes at the BOCES Dutchess campus ("BOCES") for approximately half of the school day. Plaintiff then reported to Beacon City High School, where he was enrolled in health, gym and art classes for the remainder of the school day.

A. BCSD Maintained a Code of Conduct Which Was Supposed to Maintain a Safe and Orderly Environment for All Students.

24. BCSD's schools operate under a District Code of Conduct (the "Code of Conduct"). At all times relevant to this Complaint, Beacon High School students, faculty and staff were bound to this Code.

25. BCSD provides its Code of Conduct to high school students annually.

26. BCSD's Code of Conduct states that "[t]he Board of Education is committed to providing a safe and orderly school environment where students may receive, and district personnel may deliver, quality educational services without disruption or interference. Responsible behavior by students, teachers, other district personnel, parents and other visitors is essential to achieving this goal."

27. At all times relevant to this Complaint, BCSD's Code of Conduct defined "sexual

orientation” as “actual or perceived heterosexuality, homosexuality or bisexuality.”

28. At all times relevant to this Complaint, BCSD’s Code of Conduct defined “harassment” and “bullying” in relevant part as “the creation of a hostile environment by conduct or by threats, intimidation or abuse (verbal or non-verbal) ... that (a) has or would have the effect of unreasonably and substantially interfering with a student’s education performance, opportunities or benefits, or mental, emotional or physical well-being; (b) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to fear for his or her physical safety; (c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student.”

29. The New York State Dignity for All Students Act (“DASA”) prohibits (1) harassment by employees or students on school property or at school functions and (2) discrimination against a student based on his/her actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex by school employees or students.¹

30. Accordingly, BCSD’s Code of Conduct, specifically Section 5300.80, states, “[t]he district condemns and prohibits all forms of discrimination and harassment of students regardless of actual or perceived ... sexual orientation ... by school employees or students on school property or at school events and activities that take place on or off school property.” The policy continues on to state, “[t]o that end, the administrators, faculty, staff, and students will participate in activities designed to support a school climate of caring and respect and to proactively prevent discrimination, harassment, and bullying, including cyberbullying.” Boldly, the policy mandates that “[a]ll

¹ DASA amended New York State Education Law by expanding tolerance and forcing School Districts and Boards of Education to revise language in their student codes of conduct.

students have the responsibility to treat each other with caring and respect.”

31. BCSD’s Code of Conduct also contains a policy prohibiting sexual harassment. The policy condemns and strictly prohibits all forms of sexual harassment on school grounds, school buses and at school sponsored activities.

B. Defendants Ignored or Selectively Enforced BCSD’s Code of Conduct.

32. Despite district-wide policies and alleged protections, Plaintiff was subjected to behavior and treatment that was not the product of a safe and orderly school. As a result, Plaintiff was unable to receive quality educational services without disruption or interference.

33. On or around September 5, 2018, during in-class instruction on the first day of Plaintiff’s gym class, other students began to bully Plaintiff based upon his sexual orientation.

34. At the end of Plaintiff’s first gym class, as Plaintiff walked back to the locker room, two students screamed at Plaintiff and called him a “queer” and a “faggot.” Other students were circling the area and heard and saw this verbal onslaught of bigotry. As this was occurring, Defendant Pomarico, who was just a few feet away, witnessed this behavior. Pomarico took no action to intervene and stop this harassment, nor did she report this incident to anyone. In fact, Pomarico stood idly by and tacitly approved the harassment of Plaintiff.

35. On or around September 8, 2018, in Plaintiff’s second gym class of the school year, Plaintiff was playing frisbee with two students. Once again, other students taunted Plaintiff and called him a “homo,” “queer,” and a “faggot.” As this was occurring, Pomarico who was just a few feet away and witnessed this behavior. Yet again, Pomarico took no action to intervene and stop this harassment, nor did she report this incident to anyone. For a second time, Pomarico stood idly by and tacitly approved the harassment of Plaintiff.

36. In or around the second week of school, Plaintiff’s bullies continued to relentlessly

scream slurs at Plaintiff such as “faggot” and “queer.” Again Pomarico, who was just a few feet away, witnessed this behavior. Once again, Pomarico took no action to intervene and stop this harassment, nor did she report this incident to anyone. Instead, Pomarico watched as other children witnessed and laughed at Plaintiff’s treatment and tacitly approved the homophobic behavior of other students.

37. In or around the third week of school, while outside on the field and in gym class, Plaintiff was again playing frisbee. During the course of the class, Plaintiff’s bullies – who were across the field – noticed Plaintiff’s presence and immediately begin to scream “faggot” and “homo” at Plaintiff. Pomarico, who was just a few feet away, witnessed this incident. Unsurprisingly, Pomarico took no action to intervene and stop this harassment, nor did she report this incident to anyone.

38. In or around the week of September 24, 2018, Plaintiff received an assignment to write a college admissions essay for his BOCES English teacher. Plaintiff wrote about his decision to “come out” as a homosexual and inform his parents about his sexual orientation and his related treatment by his peers at school. After reading Plaintiff’s essay, Plaintiff’s BOCES English teacher commended Plaintiff on his bravery. Subsequently he discussed with Plaintiff the bullying Plaintiff was experiencing.

39. Shortly thereafter, Plaintiff also disclosed the bullying and his feelings to his BOCES veterinary technology instructor who reported the bullying to Plaintiff’s guidance counselor at BOCES.

40. In or around the last week of September 2018, Plaintiff’s BOCES guidance counselor reported the situation to Defendant Polhamus, the guidance counselor at Beacon High School.

41. At this time, no one at Beacon High School addressed Plaintiff's bullying with J.L. or his parents.

42. On or around October 2, 2018, when Plaintiff arrived at Beacon High School, his bullies were waiting for him. As soon as Plaintiff exited the school bus, his bullies continued to hurl homophobic slurs at Plaintiff.

43. Indeed, students repeatedly threatened Plaintiff's physical safety, screaming "hey queer" and "hey fucking faggot, I am going to beat your ass" and urged Plaintiff to "come fight them" in front of other students and in the presence of adult instructors.

44. Again on October 10, 2018, in his gym class, Plaintiff was bullied in front of other students. Once again, Pomarico was present and took no action. A distraught Plaintiff confided in a friend (who is also a student) that he had become very frustrated with the harassment and bullying occurring in his gym class and throughout his school day.

45. On or about October 10, 2018, Plaintiff's female friend and confidant, who repeatedly witnessed students bullying Plaintiff because of his sexual orientation, reported this behavior to Defendant Simms and suggested that Simms transfer Plaintiff to a new gym class for his safety.

46. Simms advised the other student that she would talk to the Plaintiff but that she "doesn't do schedules." Simms never contacted Plaintiff or his parents.

47. Despite *at least three* Beacon High School employees being aware of Plaintiff's bullying, no DASA investigation was commenced by the school.

48. Plaintiff has been intimidated, humiliated and embarrassed as a result of the above incidents, among others. As a result, Plaintiff experienced weight loss, loss of sleep, and anxiety about attending school.

49. On October 12, 2018, Plaintiff arrived at Beacon High School and encountered Polhamus. Plaintiff disclosed his harassment to Polhamus. Polhamus responded to Plaintiff, “I heard what is going on. That sucks, can we talk about it next week?” Polhamus never contacted Plaintiff’s parents, but instead provided J.L. with a hallway pass for October 15, 2018 to come to her office. Plaintiff then traveled to BOCES for his class.

50. On October 12, 2018, while Plaintiff was at the BOCES campus, Plaintiff’s bullies told other students that they were going to find Plaintiff and “beat his ass.” No student reported this threat. Plaintiff traveled back Beacon City High School for his regularly scheduled gym class.

51. Plaintiff returned to Beacon High School and reported to gym class where his bullies continued to call Plaintiff a “homo” and threaten him, screaming, “homo, come on, pussy.” Again, Pomarico was present and close by and took no action to stop Plaintiff from being marginalized.

52. Immediately after gym class, after weeks of continued harassment, as Plaintiff and his bullies engaged in a verbal confrontation, other students began to gather in the hallway to watch the altercation. This verbal altercation escalated and Plaintiff and one of his bullies engaged in a physical altercation.

53. Plaintiff was kicked in the face resulting in bruises and injury to his eye.

54. Both Plaintiff and his bully were suspended and referred to a Superintendent’s Hearing, pursuant to the BCSD’s policy. Plaintiff was not permitted to return to school or any school related activities pending the determination of the Superintendent’s Hearing.

55. A DASA investigation was only commenced by the school after the October 12, 2018 physical altercation when Plaintiff’s mother raised this issue with Defendant Soto. Indeed, Plaintiff’s mother was given the investigation form to fill out herself.

56. On October 23, 2018, a Superintendent Hearing regarding the aforementioned

physical altercation between Plaintiff and one of his bullies was held.

57. During the hearing, Plaintiff laid bare the weeks of harassment and bullying he experienced and Defendants Pomarico and Polhamus' knowledge and lack of intervention.

58. At the time of the hearing, no DASA determination had been made.

59. Despite the Hearing Officer acknowledging Plaintiff's harassment and bullying, and understanding the context of Plaintiff's actions, Plaintiff was found guilty of violating the BCSD's Code of Conduct.

60. As a result of the Hearing Officer's determination, Plaintiff was suspended through November 23, 2018 and permitted to return to school on November 26, 2018.

61. During this period of suspension, Plaintiff was provided mandatory tutoring at Beacon High School.

62. Plaintiff's suspension from school resulted in an entry on his disciplinary record which will be disclosed on college applications.

63. On November 1, 2018, Simms approached Plaintiff during his tutoring session and inquired as to why he was present at the tutoring session and informed him he could have resumed his studies on the BOCES campus already. This information was not relayed to Plaintiff nor his parents prior to this assertion. As a result, Plaintiff was incorrectly marked absent.

64. On or about November 2, 2018, Polhamus asked Plaintiff if he would be comfortable returning to his previous gym period. Plaintiff informed Polhamus that he did not feel safe returning to that period of gym.

65. On or about November 14, 2018, BCSD determined the DASA Complaint surrounding Plaintiff's harassment and bullying was deemed founded and that it would be proper to transfer Plaintiff into a different gym class.

66. Beacon High School security personnel was made aware of Plaintiff's suspension and expected return date.

67. During Plaintiff's period of suspension, he continued to attend BOCES for his technical education. BCSD provided a tutor for Plaintiff's Beacon High School coursework. During this period, no administrator, teacher, or counselor – nor any representative from BCSD – attempted to reach Plaintiff or his parents to discuss safety planning upon his return to his normal schedule.

68. Plaintiff returned to school on November 26, 2018. Upon information and belief, Plaintiff's bully returned to school prior to Plaintiff.

69. Plaintiff returned to his normal schedule on November 26, 2018. Shortly after his return to campus, Plaintiff was approached by Soto to see why he had not come to see her. Plaintiff – unaware that he was supposed to report to anyone – called his mother. Plaintiff's mother emailed Soto and requested that she be present for all meetings with Plaintiff and school officials.

70. Despite Plaintiff's mother's request, no school official – administrator, teacher, or counselor, nor any representative from BCSD – ever mentioned scheduling a safety planning meeting with Plaintiff or his parents.

71. No safety plan was put in place for Plaintiff's return to school. However, Plaintiff was transferred into a different gym class taught by Pomarico. Pomarico was aware of Plaintiff's bullying because, as detailed above, it repeatedly occurred in front of her.

72. While in his first gym class since returning to school, one of Plaintiff's bullies appeared in his new gym class. Pomarico once again took no action. Plaintiff was frightened and upset and left his gym class, and immediately went to Polhamus' office to report what happened. Once again, no adult did anything to intervene in this situation. No one – including Pomarico or

Polhamus – reported this incident to Soto.

73. Several days after this incident, on November 30, 2018, yet another student shoulder-checked and threatened Plaintiff in a stairwell. This student screamed at Plaintiff, “I’m gonna kick your ass faggot!”

74. In the wake of Plaintiff’s harassment and bullying, Plaintiff retained Counsel who prepared a Notice of Claim relating to potential tort causes of action Plaintiff might have and want to pursue against BCSD.

75. On December 4, 2018, Plaintiff served BCSD with his Notice of Claim alleging, *inter alia*, violations of Plaintiff’s civil rights and emotional distress.

76. On December 7, 2018, Plaintiff had a verbal altercation with the student who had shoulder-checked Plaintiff in the stairwell a week prior. During this verbal altercation, approximately six school security guards were dispatched to remove Plaintiff to Soto’s office.

77. Soto and Simms falsely alleged that Plaintiff called another student a “homo,” “pussy” and “queer.” When discussing this incident with the J.L., Soto advised him that she “should not talk to his mother, but should talk to his lawyer.” Immediately thereafter, Soto called Plaintiff’s mother and advised her that J.L. would, again, be suspended.

78. Plaintiff requested an informal conference with the Soto prior to the suspension. On December 13, 2018, Plaintiff and his mother had a conference with Soto; therein, despite Soto’s ability to use her discretion to develop an alternate way of proceeding, J.L. was informed that suspension was necessary and he would have to attend another Superintendent’s Hearing and, *if and when* he was allowed back into the building, a safety plan would *then* be formulated.

79. At this conference, Plaintiff was offered counseling for his bullying and harassment by BCSD for the first time.

80. Upon information and belief, the other student involved in this incident was not punished in any way.

81. On January 3, 2019, a second Superintendent's Hearing was held, this time relating to the December 7, 2018 verbal altercation.

82. Based on video tape, lacking audio, and Plaintiff's *disciplinary record through elementary school*, the Hearing Officer determined that Plaintiff had violated BCSD's Code of Conduct and recommended a suspension from the Beacon High School campus through the end of the school year. Because Plaintiff holds an IEP, the Hearing Officer recommended that Plaintiff be allowed to receive alternative instruction through appropriate means as determined by the appropriate individuals in the district.

83. Plaintiff's suspension from school resulted in a second entry on his disciplinary record which will be disclosed on college applications.

84. On or about January 8, 2019, Plaintiff was allowed to continue his studies at BOCES and through a tutor at the Rombout Middle School, which is another BCSD-owned and operated facility.

85. Plaintiff continued his studies at BOCES and through his tutor, ultimately earning enough credits to graduate.

86. While not allowed to attend any school functions – including, but not limited to prom – Plaintiff was allowed to attend graduation ceremonies and practices leading up to graduation.

87. Unfortunately, while attending a graduation practice, Plaintiff was further subjected to ridicule at the hands of the adults in charge of graduation and was publicly humiliated when his name was called during the practice when two security officers (who were aware of the allegations Plaintiff levied against BCSD) loudly “booed” him in front of staff and students. Soto and others

stood by and did not intervene.

88. On June 29, 2019, Plaintiff graduated from BCSD.

CLAIMS FOR RELIEF

**FIRST CAUSE OF ACTION
FOR VIOLATION OF 42 U.S.C. § 1983 – FAILURE TO TRAIN, INVESTIGATE, AND
SUPERVISE
(Against All Defendants)**

89. Plaintiff incorporates by reference all preceding paragraphs.

A. *The failure of the BCSD Defendants to train its staff and students to recognize and report sexual harassment of students proximately and foreseeably caused J.L.’s Injury.*

90. Defendants BCSD, BCSD Board of Education, Landahl and Soto, acting under the color of state law, violated J.L.’s clearly established right to equal access to an education as guaranteed by the Fourteenth Amendment of the United States Constitution.

91. Defendants BCSD, BCSD Board of Education, Landahl and Soto’s custom and practice of failing to train staff and students as set forth below proximately caused J.L.’s injuries.

92. Defendants BCSD, BCSD Board of Education, Landahl and Soto failed to train its staff at Beacon High School to recognize and report clear indications that J.L. was being subjected to inappropriate conduct – sexual harassment and bullying – and additional oversight was needed to ensure student protection.

93. Defendants BCSD, BCSD Board of Education, Landahl and Soto failed to train its staff and students to recognize and report on sexual harassment and bullying by other students.

94. The obligation of the Defendants BCSD, BCSD Board of Education, Landahl and Soto to train its staff and students to recognize and report sexual harassment was made clear by federal and state law and their own policies.

95. By failing, as a custom and practice, to train both staff and students as to how to

recognize and report sexual harassment of students to District authorities, the Defendants BCSD, BCSD Board of Education, Landahl and Soto acted with deliberate indifference to J.L.'s clearly established right to attend public school and receive an equal access to education as guaranteed by the Fourteenth Amendment of the United States Constitution.

96. As a direct and proximate result of the Defendants BCSD, BCSD Board of Education, Landahl and Soto's actions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish, suffering, impairment of reputation, and personal humiliation.

97. The failure of the Defendants BCSD, BCSD Board of Education, Landahl and Soto to exercise adequate supervision over staff, including Defendants Simms, Pomarico and Polhamus proximately and foreseeably caused the deprivation of J.L.'s clearly established right to access to education.

98. Defendants BCSD, BCSD Board of Education, Landahl and Soto's custom and practice of failing to supervise staff, including Defendants Simms, Pomarico and Polhamus's interactions with students, notwithstanding notice that such supervision was warranted, proximately caused J.L.'s injuries.

99. Defendants BCSD, BCSD Board of Education, Landahl and Soto wholly abnegated their responsibility to exercise appropriate supervision of staff, including Defendants Simms, Pomarico and Polhamus in interactions with minor students.

100. Upon information and belief, the BCSD Board of Education knew of the reports of the sexual harassment and bullying of J.L. The BCSD Board of Education consciously chose not to effectuate an investigation of these reports, not to train BCSD students and staff as to how to recognize and report sexual harassment of a student, and not to require appropriate supervision despite the evident need for such supervision. These decisions represent the official policy of the

District and demonstrate the BCSD Board of Education's willful indifference to J.L.'s clearly established right to education.

101. Despite indications that supervision was required, BCSD failed to respond with the oversight required by common sense and minimal concern for the welfare of their students, and in particular J.L.

102. The reports received by Defendants BCSD, BCSD Board of Education, Landahl and Soto that Defendants Simms, Pomarico and Polhamus were aware of Plaintiff's ongoing harassment did not engender appropriate supervision of Simms, Pomarico or Polhamus.

103. Defendants BCSD, BCSD Board of Education, Landahl and Soto were all policy-makers with respect to the duty to undertake or direct appropriate supervision of staff and students.

104. Defendants BCSD, BCSD Board of Education, Landahl and Soto's inadequate supervision of Defendants Simms, Pomarico and Polhamus in interactions with Beacon High School students, and with J.L., constitutes deliberate indifference to J.L.'s right to equal access to education as a student at Beacon High School and as guaranteed by the Fourteenth Amendment of the United States Constitution.

B. Defendants' Failure to Appropriately Investigate Allegations of Sexual Harassment and Bullying of J.L. foreseeably led to J.L.'s injury.

105. Plaintiff incorporates by reference all preceding paragraphs.

106. All of the Defendants, acting under color of state law, violated J.L.'s right to equal access to education as guaranteed by the Fourteenth Amendment to the United States Constitution by failing to investigate reports that J.L. was being harassed.

107. Plaintiff disclosed being sexually harassed and bullied to his teachers at BOCES, who in turn reported this abuse to Plaintiff's BOCES guidance counselor. Plaintiff's BOCES guidance counselor reported his sexual harassment and bullying to Defendant Polhamus. Polhamus

took no action.

108. Plaintiff was sexually harassed and bullied on multiple occasions in front of Defendant Pomarico. Each and every time, Pomarico stood idly by and tacitly approved this behavior.

109. Another student reported Plaintiff's sexual harassment and bullying to Defendant Simms, who took no action.

110. Had any of these reports been competently investigated, J.L.'s abuse would have been discovered and stopped and the October 12, 2018 altercation – which resulted in physical injury and a lengthy suspension for J.L. – would not have occurred.

111. Had any of these reports been competently investigated, J.L.'s abuse would have been discovered and stopped and J.L.'s two suspensions – which resulted in two disciplinary markings on his permanent record – would not have occurred.

112. Instead, all of the Defendants, with willful indifference to the rights of its students to attend public school free of sexual harassment and bullying, failed to properly investigate the claims of sexual harassment and bullying.

113. Thus, Defendants utterly failed to investigate claims of sexual harassment, bullying and abuse that J.L. suffered, in violation of his right to equal access to education as guaranteed by the Fourteenth Amendment to the United States Constitution.

114. As a direct and proximate result of the Defendants' actions and inactions, Plaintiff suffered damages, including without limitation emotional trauma, mental anguish, suffering, impairment of reputation, and personal humiliation.

SECOND CAUSE OF ACTION
FOR VIOLATION OF 42 U.S.C. § 1983 – EQUAL PROTECTION OF THE LAW
(Against Defendants BCSD, BCSD Board of Education, Landahl, and Soto)

115. Plaintiff incorporates by reference all preceding paragraphs.

116. Defendants violated Plaintiff's rights under 42 U.S.C. § 1983 by denying him equal protection under the law, as guaranteed by the 1st and 14th Amendments to the United States Constitution.

117. Plaintiff's 1st Amendment claims arise from the retaliation he suffered as a result of speaking out about the sexual harassment to which he was subjected and seeking relief from the harassment by beginning the process to litigate his claims.

118. The 14th Amendment to the U.S. Constitution states:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

119. Plaintiff was denied equal protection of the law in violation of the 14th Amendment by virtue of policies, practices and customs of BCSD, and as result of the policies established or countenanced by BCSD and its officials, including Defendants Landahl, and Soto.

120. Defendants BCSD, BCSD Board of Education, Landahl, and Soto acting under color of state law, treated Plaintiff, a homosexual student, differently than his heterosexual or perceived-to-be-heterosexual student peers.

121. Plaintiff was subjected to punishment under BCSD's Code of Conduct in an unduly harsh manner because of his sexual orientation. Plaintiff was subject to sexual harassment and bullying and was punished both when considered a victim of bullying under BCSD's own policies and when falsely considered an aggressor.

122. Plaintiff's bullies – who are heterosexual or perceived-to-be-heterosexual students – were not punished with the same level of severity as Plaintiff, or even at all.

123. Defendants BCSD, BCSD Board of Education, Landahl, and Soto selectively

enforced district rules and regulations to Plaintiff's detriment, because it would not enforce rules where homosexual students were the target of misconduct, if the nature of the conduct was sexual harassment or the creation of a hostile education environment by heterosexual students. This indifference to the harassment suffered by homosexual students at the hands of heterosexual students has become so enshrined as to constitute a custom or practice of BCSD.

124. Plaintiff was injured as a result of Defendants BCSD, BCSD Board of Education, Landahl, and Soto's perpetuation of a policy or custom of allowing heterosexual students to engage in inappropriate, sexually offensive behavior by virtue of the fact that their victims were homosexual.

125. Defendants BCSD, BCSD Board of Education, Landahl, and Soto's failure to take affirmative and effective steps to stop heterosexual students from sexually harassing homosexual students resulted in an unequal application of the law and violated Plaintiff's rights under the 14th Amendment.

126. Many instances of offensive conduct occurred in front of faculty members or were disclosed to faculty members. Defendants BCSD, BCSD Board of Education, Landahl, and Soto failed to train faculty in methods to stem sexual humiliation of homosexual students by heterosexual students. Consequently, there was a policy, practice or custom to allow heterosexual students to engage in unconscionable conduct directed at homosexual students without sanction.

127. Failure to train the faculty and administrators on the methods of handling sexual harassment, which violates a student's right to equal protection of the law as guaranteed by the 14th Amendment, constitutes deliberate indifference to the rights of such students.

128. As detailed above, Defendants BCSD, BCSD Board of Education, Landahl, and Soto deliberately failed to punish heterosexual students for their misconduct. This conduct violated

the rights guaranteed to Plaintiff by the 14th Amendment to the United States Constitution. As Defendants BCSD, BCSD Board of Education, Landahl, and Soto acted under color of state law, its conduct violated 42 U.S.C. § 1983 and Plaintiff requests that this Court award him compensatory damages he sustained as a result of the illegal conduct of the Defendants, as well as reasonable counsel fees and such other relief as is just and appropriate.

THIRD CAUSE OF ACTION
FOR VIOLATION OF J.L.'S RIGHTS UNDER TITLE IX – DISCRIMINATION
(Against Defendants BCSD and BCSD Board of Education, Landahl, and Soto)

129. Plaintiff incorporates by reference all preceding paragraphs.

130. Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681, states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

131. The BCSD is a recipient of federal funding under Title IX and must comply with Title IX.

132. As alleged herein, Plaintiff faced an intense and prolonged period of sexual harassment and sex-based bullying while enrolled at Beacon High School.

133. The sexual harassment was pervasive and permeated every aspect of Plaintiff’s life.

134. Defendants BCSD, BCSD Board of Education, Landahl, and Soto were aware of the sexual harassment and bullying. Faculty and staff members were present in the hallways, stairways, and classrooms when and where the incidents occurred and turned a blind eye to the behavior. Moreover, Plaintiff and others reported this sexual harassment and bullying.

135. Defendants BCSD, BCSD Board of Education, Landahl, and Soto failed to monitor Plaintiff’s situation or follow up with him. Instead, Plaintiff continued to be a victim of bullying

and harassment, and was then subjected to discipline when his tormentors were not.

136. Despite Defendants BCSD, BCSD Board of Education, Landahl, and Soto's knowledge of Plaintiff's treatment, Defendants failed to take any effective action necessary to address the sexual harassment and bullying. The student harassers were not adequately disciplined or otherwise prohibited from engaging in future inappropriate sexually-charged behavior. Accordingly, those students became emboldened, their harassment intensified, and the administration – which never had control over the students, but should have – did nothing to restore order.

137. Upon information and belief, Defendants BCSD, BCSD Board of Education, Landahl, and Soto's failure to adequately address Plaintiff's treatment resulted from the Defendants' failure to adequately train its faculty and staff on how to identify and stop bullying and student-on-student sexual harassment. Defendants' repeated failure to enforce its own anti-bullying and sexual harassment policies – and the clear absence of even a rudimentary understanding of how hurtful and damaging sexual harassment can be to the victim – demonstrates Defendants' deliberate indifference to its obligations.

138. Plaintiff was penalized and secluded from his classmates while his harassers continued to freely roam the hallways and enjoy the fruits of the educational system. Plaintiff has been subjected to discipline and had his permanent record marred by Defendants' actions.

139. Defendants BCSD, BCSD Board of Education, Landahl, and Soto were also deliberately indifferent to their obligation to provide counseling or other services to Plaintiff to help him cope with, and address the effects of, being sexually harassed and bullied, only offering Plaintiff counseling *after* suspending and removing Plaintiff from the campus of Beacon High School and *after* being made aware of Plaintiff's intention to sue the District.

140. Defendants BCSD, BCSD Board of Education, Landahl, and Soto were thus deliberately indifferent to Plaintiff's plight, and left him on his own to deal with his harassers and the intolerable and unsafe environment that Defendants effectively created for him. Defendants violated the requirements of Title IX and caused Plaintiff to suffer damages, including without limitation emotional trauma, mental anguish, suffering, impairment of reputation, and personal humiliation.

FOURTH CAUSE OF ACTION
FOR VIOLATION OF J.L.'S RIGHTS UNDER TITLE IX – RETALIATION
(Against Defendants BCSD and BCSD Board of Education, Landahl, and Soto)

141. Plaintiff incorporates by reference all preceding paragraphs.

142. Defendants BCSD, BCSD Board of Education, Landahl, and Soto collectively agreed to suspend Plaintiff despite BCSD's determination that Plaintiff was bullied and sexually harassed.

143. Upon Plaintiff's return to the Beacon High School campus, Defendants BCSD, BCSD Board of Education, Landahl, and Soto failed to have a safety plan in place to protect Plaintiff.

144. Once students learned of Plaintiff's reports and Defendants' unwillingness to do anything to arrest the conduct, the students increased their harassment to retaliate against Plaintiff. Defendants BCSD, BCSD Board of Education, Landahl, and Soto were deliberately indifferent to this retaliatory conduct and took no action to stem its occurrence.

145. Defendants BCSD, BCSD Board of Education, Landahl, and Soto's inaction and failure to provide protection to Plaintiff after his reports of sexual harassment and bullying became known, and their half-hearted efforts to curtail the harassment, actually promoted an atmosphere of retaliation against Plaintiff for his disclosure.

146. In addition to subjecting Plaintiff to an unsafe environment – as evidenced by the Defendants’ lack of a safety plan – once Defendants BCSD, BCSD Board of Education, Landahl, and Soto became aware of Plaintiff’s intent to sue the District, Defendants actively sought to punish Plaintiff instead of protecting him.

147. After Plaintiff was involved in a verbal altercation with a different student, Defendants BCSD, BCSD Board of Education, Landahl, and Soto collectively determined that Plaintiff should be suspended for the remainder of the school year.

148. Plaintiff – whether considered the victim or aggressor - has been subjected to discipline and had his permanent record marred by Defendants’ actions.

149. Retaliation for engaging in activities protected by Title IX is actionable. The retaliation caused J.L. to suffer damages, including without limitation emotional trauma, mental anguish, suffering, impairment of reputation, and personal humiliation.

FIFTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against All Defendants)

150. Plaintiff incorporates by reference all preceding paragraphs.

151. Defendants BCSD, BCSD Board of Education, Landahl, and Soto collectively agreed to suspend Plaintiff despite BCSD’s determination that Plaintiff was bullied and sexually harassed.

152. Upon Plaintiff’s return to the Beacon High School campus, Defendants BCSD, BCSD Board of Education, Landahl, and Soto failed to have a safety plan in place to protect Plaintiff.

153. Once students learned of Plaintiff’s reports and Defendants’ unwillingness to do anything to arrest the conduct, the students increased their harassment to retaliate against Plaintiff.

Defendants BCSD, BCSD Board of Education, Landahl, and Soto were deliberately indifferent to this retaliatory conduct and took no action to stem its occurrence.

154. Defendants BCSD, BCSD Board of Education, Landahl, and Soto's inaction and failure to provide protection to Plaintiff after his reports of sexual harassment and bullying became known, and their half-hearted efforts to curtail the harassment, actually promoted an atmosphere of retaliation against Plaintiff for his disclosure.

155. Less than two weeks after returning to Beacon High School's campus, and after Plaintiff served his Notice of Claim evidencing his intent to sue BCSD, Plaintiff was involved in a verbal altercation with another student.

156. In addition to subjecting Plaintiff to an unsafe environment – as evidenced by the Defendants' lack of a safety plan – once Defendants BCSD, BCSD Board of Education, Landahl, and Soto became aware of Plaintiff's intent to sue the District, Defendants actively sought to punish Plaintiff instead of protecting him by suspending him again.

157. Defendants BCSD, BCSD Board of Education, Landahl, and Soto collectively determined that Plaintiff should be suspended for the remainder of the school year.

158. Plaintiff – whether considered the victim or aggressor – has been subjected to discipline and had his permanent record marred by Defendants' actions.

159. Plaintiff's suspensions from school resulted in a two entries on his disciplinary that will be disclosed on college applications and which will likely result in negative treatment from colleges, impacting Plaintiff's future earning potential.

160. In addition, Plaintiff has experienced multiple signs of emotional distress as a result of his treatment by Defendants.

161. Defendants' knowing and intentional retaliation against Plaintiff, including

suspending Plaintiff from campus, has foreseeably and proximately caused the Plaintiff emotional distress.

162. Defendants' intentional actions were committed with the knowledge that they would cause severe emotional distress to the Plaintiff.

163. Defendants' actions were willful, malicious, deliberate, and were done with reckless or negligent indifference to the likelihood that such behavior would cause severe emotional distress and with utter disregard for the consequences of such actions.

SIXTH CAUSE OF ACTION
NEGLIGENCE
(Against All Defendants)

164. Plaintiff incorporates by reference all preceding paragraphs.

165. Defendants Pomarico, Polhamus, Soto, and Simms were aware of the sexual harassment and bullying Plaintiff was experiencing as they either witnessed Plaintiff's treatment by other students or it was reported to them.

166. Defendants Pomarico, Polhamus, Soto, and Simms' multiple failures to take any action to stem the sexually-charged abuse of Plaintiff by his peers resulted in continued sexual harassment and bullying of Plaintiff, which formed the basis for the October 12, 2018 altercation resulting in Plaintiff's physical injuries and began the chain of events that caused Plaintiff's emotional injuries.

167. Defendants BCSD, Beacon Board of Education, and Landahl, through their agents, servants and employees, acted with a lack of cautious regard for Plaintiff's right to be free from unnecessary bodily harm or from the threat of such harm and without the due care that prudent school officials would use under the circumstances.

168. The injury to Plaintiff was a direct and proximate result of the negligence of all

Defendants.

169. As a result of Defendants' negligence, Plaintiff suffered emotional pain and suffering.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief: Compensatory damages, punitive damages, pre- and post-judgment interest, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: July 29, 2019

Respectfully submitted,

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