

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**P.S., A MINOR by and through his  
parents and next friends, JARETT AND  
MINTA STEPHENSON;  
PLAINTIFFS**

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**Civil Action: 6:21-cv-00427- JDK**

v.

**BROWNSBORO INDEPENDENT  
SCHOOL DISTRICT,  
DEFENDANT**

**PLAINTIFFS’ FIRST AMENDED COMPLAINT**

COMES NOW, P.S., A Minor, and through his parents and next friends, Jarett and Minta Stephenson and files this their *First Amended Complaint* showing that the Brownsboro Independent School District [hereinafter referred to as the “BISD” or “the School District”] violated P.S.’s civil rights as more specifically pled herein. Plaintiffs reserve the right to re-plead if new claims and issues arise upon further development of the facts, as permitted by law and this Court. In support thereof, Plaintiffs respectfully show this Honorable Court the following:

**I. PROLOGUE**

1. **ETHICAL STANDARDS FOR COACHES-  
THE TEXAS UNIVERSITY INTERSCHOLASTIC LEAGUE.**

“Good sportsmanship is not only limited to the playing field. It is also showing compassion and respect toward your own teammates and other students. Hazing is a very serious matter in high schools across the nation. Due to the developmental stages of adolescence, many students feel a strong need to belong to a certain group or organization. As a result, many students find themselves in a vulnerable position and will satisfy the demands of someone else in order to feel as though they belong. Hazing should not occur in Texas high schools and the University Interscholastic League takes a very strong stance in the prevention of such actions. Hazing has been

defined as “any activity expected of someone joining a group (or to maintain full status in a group) that humiliates, degrades or risks emotional and/or physical harm, regardless of the person’s willingness to participate.

An important part of showing good sportsmanship is not allowing hazing to occur in your program. Players, coaches, administrators and others can help to make sure that hazing does not occur within your program. If you see any act that you believe is a form of hazing, it is your responsibility to tell someone and help to stop the act. Allowing hazing to occur is the same as conducting the act itself. If everyone works together in an effort to stop hazing in your program, you can build closer teams and foster individual relationships, which are healthy to the educational process.”<sup>1</sup>

## **II. STATEMENT OF THE CASE**

2. When a student is hazed by another student and it rises to the level of sexual harassment or even assault, the victim may have a plausible claim of discrimination based upon sex or gender, pursuant to Title IX of the Educational Acts of 1972, 20 U.S.C. §1681-1688 (“Title IX”). A School District will be liable under Title IX if a staff member has actual knowledge of a pattern of sexual harassment and also has the authority to address the harassment but does not. At times pertinent to this lawsuit, Wes Johnston was the Head Baseball Coach for BISD. He knew that older members of the Baseball Team, as a rite of passage and hazing tradition, sexually harassed younger members of the team. P.S. was one such member of the team and one such victim. Apparently this unfortunate and time-honored hazing tradition with the Baseball Team, was passed on from year to year and was well-known in the community. Accordingly, P.S. files this claim against the School District for violating his

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<sup>1</sup>. The University Interscholastic League has been authorized in the Texas Education Code at Sec. 33.083 to address athletic (and non-athletic; *see* Code Of Ethics at p. 13/13; <https://www.uil texas.org/files/athletics/manuals/sportsmanship-manual.pdf>

civil rights pursuant to Title IX. Additionally he alleges his constitutional rights pursuant to the Fourteenth (14<sup>th</sup>) Amendment to the United States Constitution, which may be remedied pursuant to 42 U.S.C. Section 1983, were also violated by the District.

## **II. JURISDICTION**

3. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C.A. §1331 and 1343 because the matters in controversy arise under the laws of the United States.

## **III. VENUE**

4. Under 28 U.S.C. §1391, venue is proper before this Court because the events and omissions giving rise to the Plaintiffs' claims occurred in the Eastern District of Texas, Tyler Division.

## **IV. PARTIES**

5. P.S. lives with his natural mother and father Minta & Jarett Stephenson in Brownsboro, Texas and within the Brownsboro Independent School District catchment area.
6. The Brownsboro Independent School District is a subdivision of the government and organized under the laws of the State of Texas. As a matter of course, it must follow the relevant requisites of the Constitution of the United States of America, as well as the statutes and regulations promulgates thereunder. At all times pertinent to this case, P.S. was a student in the Brownsboro Independent School District. The School District has been served and has answered by and through its counsel of record, the Honorable David A. Oubre, Sean O'Neal and William S. Helfand with the Law Firm of Lewis, Brisbois, Bisgaard & Smith, L.L.P., 24 Greenway Plaza, Suite 1400, Houston, Texas 77046.

## **V. HISTORICAL BACKGROUND OF TITLE IX**

- A. About Title IX

7. The Educational Acts of 1972 passed through Congress as Public Law No. 92-318, 86 Stat. 235 (June 23, 1972) and codified at 20 U.S.C. sections 1681 through 1688. It is commonly known as “Title IX” and states (in part) that:

“No person in the United States shall, on the basis of gender, 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.”

It is intended to remedy the effects of discrimination based upon sex, gender or gender stereotypes. Moreover it is to assure that a student is not a victim of bullying, harassment, sexual harassment, assault or sexual assault because of their membership in a protected class.

B. The Operative Law & Regulations

8. The United States Department of Education (“DOE”) promulgated rules to help implement Congress’ intent at 34 C.F.R. §106.1, which became effective as early as July 1, 1975. From the inception of Title IX the United States Department of Education (“DOE”) in their Office for Civil Rights (OCR) issued policy guidance on discriminatory harassment. They did so on discrimination based upon race (*see* 59 Fed. Reg. 11448 (Mar. 10, 1994) and later regarding harassment based upon sex [“Title IX”] (*see* 62 Fed. Reg. 12034 [Mar. 13, 1997])). So for instance, 34 C.F.R. §106.34; 34 C.F.R Part 100, App. A and B requires public schools to provide female students *equal access* to educational services as compared to their male peers and access to counseling. 34 C.F. R. §106.36.
9. A School District must have a Title IX Coordinator, 34 C.F. R. §106.8 whose duty it is, among other things, to assure that students and their parents receive notice of their *due process rights* under the statute and its implementing regulations, 34 C.F.R. §106.9 including and especially notice of the District’s complaint procedure. 34 C.F. R. §106.9. During an

investigation of a formal Title IX complaint, a district must provide a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. 34 C.F.R. §106.45(b)(5)(v).

C. Professional Standards Of Care Developed By The Department Of Education

10. After holding public hearings, the DOE issued policy guidance on discriminatory harassment based upon sex [“Title IX”]; 62 Fed. Reg. 12034 (1997). First and foremost, the District must provide parents notice of their *due process rights* including an explanation of such rights as noted above, notice of who the Title IX Coordinator for the District is, how to contact that person, the grievance procedure itself, the right to get an investigatory report when completed and to appeal the findings, (p. 12038, Col. III; p. 12040, Col. I-II; p. 12043, Col. II; p. 12044, Col. II-III; p. 12045, Col. I-II), as contemplated by Title IX’s implementing regulations. Additionally, a School District has a duty to take “immediate and appropriate steps to promptly investigate (p. 12039, Col. III; ;p. 12042 (Col. II-III) ...” the allegations, end any harassment “and prevent harassment from occurring again.... and take steps to remedy (p. 12037) the effects of the harassment” which includes, among other things, to contact the parent.” (Exh. A, p. 12042, Col. II-III; p. 12043, Col. III; P. 12044, Col. III).
11. It made a distinction in what is termed *quid pro quo* sexual harassment. In such a scenario, the conditions of participation in the educational program is predicated on permitting the harassment to occur. In this case the School District is responsible for the effects of the trauma the student experienced, whereby in student-upon-student harassment a District may only be responsible to address the effects depending on the speed and efficacy of the school’s

response once it receives notice. (p. 12037, Col. II; 12039, Col. II).

- D. The Department Of Education- Office Of Civil Rights
12. Early on the United States Department Of Education (“DOE”) *Office of Civil Rights* (“OCR”) provided guidance to public school district’s across the country by issuing what have been called *Dear Colleague Letter*. They have provided ongoing leadership with these directives for now over twenty years. Most relevant to this lawsuit they underscore the operating law and implementing regulations noted above. In addition, the OCR reviews the evolving jurisprudence on the topic of sexual harassment including and especially the Supreme Court cases of Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 75 (1992) [applying Title VII principles to teacher upon student sexual harassment at a school]; Gebser v. Lago Vista Independent School District, 524 U.S. 274, 290; 118 S. Ct. 1989; 141 L. Ed. 2d 277 (1998) [addressing teacher upon student sexual harassment and that liability arises because a school district does not address the harassment] and Davis v. Monroe County Board of Education, 526 U.S. 629; 119 S. Ct 1661; 143 L. Ed. 2d 839 (1999) [addressing student upon student sexual harassment] and their progeny.
13. This *Guidance* from the OCR makes clear that school personnel must understand their legal obligations to address harassment based upon sex, gender and gender stereotypes. It lists a number of examples of effective actions including, most importantly timely and impartial investigations. It noted that even if a District referred a case for investigation to a local law enforcement agency, the District had a duty to complete its own inquiry after the police investigation was over.
14. Additionally, it provided school boards further direction on its specific obligations and

reiterated that in completing an investigation the District should review the effect of the sexual harassment on the child's education; the type, frequency and duration of the conduct, the number of individuals involved, the location of incidents and the "totality of the circumstances." Importantly, the School District is required to provide prompt and effective action, let a family know of the harassment the child was experiencing in a timely manner and provide information about their procedural rights under the regulations including and especially a grievance process.

15. Last, if a student has been a victim of sexual harassment the school district has a number of potential interventions including providing/ paying for counseling, working with a tutor, and giving the student the opportunity to make up work. Moreover, an essential part of a school district's duty is to provide ongoing assessment and follow up inquiries, as to the effectiveness or ineffectiveness, of any remedy actually or attempted to be provided. It reinforced the need for a strong Title IX Compliance Coordinator to assure that the school district followed the various directives developed by the OCR. Importantly, a School District must provide to parent complaining that their child was a victim of sexual harassment by another student, information of any disciplinary action the School District took against an offending student.

E. STANDARDS OF THE UNIVERSITY INTERSCHOLASTIC LEAGUE

16. The Texas State Legislature wants to assure that the physical and mental health of students are paramount. Accordingly it authorized what is called *The University Interscholastic League* (UIL) which was created under the auspices of *The University of Texas at Austin* to provide leadership and guidance to public school debate and athletic teachers regarding

competitive events in public schools. Its purpose is to organize and properly supervise contests that assist in preparing students for citizenship. It aims to provide healthy, character building, educational activities carried out under rules providing for good sportsmanship and fair play for all participants. It develops ethical standards for teachers and coaches.

17. Among many other things, Texas Education Code §33.204 states that a School District may not encourage or permit a student participating in the activity to engage in any unreasonably dangerous athletic technique that unnecessarily endangers the health of a student.

18. In accord with state law, UIL Subchapter E, Section 21 enumerates the responsibilities of a School District's Superintendent. Among other things, the Superintendent of a member school district shall educate UIL student participants, coaches and other appropriate persons on UIL rules, regulations, ethical standards and practices that could affect them, and monitor the school's compliance with UIL rules.

F. Policies & Procedures Developed By The Brownsboro Independent School District

19. In Texas, the Texas Association of School Board's ("TASB") develops various School Board Policies and Procedures. They are essentially the same across the state except for some local modifications. In Texas all School Districts must implement the laws promulgated by the State Legislature, the rules promulgated by the Texas Education Agency and in regard to competitive events, must follow the policies, procedures and related ethical guidelines as promulgated by the Texas University Interscholastic League.

20. As noted above, *Hazing* is of great concern and an important part of the ethical duties of teachers who also coach, is to assure that students do not participate or condone hazing. Importantly, physical education staff, nor any other school or community personnel working

in the school, are permitted to use physical activity/physical education as punishment. [FFA (Regulation)]. Additionally, there is a policy [called DMA (LEGAL) [PROFESSIONAL DEVELOPMENT REQUIRED STAFF DEVELOPMENT] which and among many other things, addresses the need for coaches or sponsors for an extracurricular athletic activity to satisfactorily complete an extracurricular activity safety training program and be knowledgeable in UIL Ethical Standards, including and especially related to hazing. If a student is sexually harassed, assaulted or hazed the School District must contact its Title IX Coordinator to take appropriate action.

21. Based upon the Title IX statute, its implementing regulations and professional guidelines from the DOE Office Of Civil Rights, all in concert with evolving caselaw, with the assistance of TASB, the Brownsboro Independent School District has long had and re-authorized policies and procedures related to *Student Welfare* [FFH LEGAL/LOCAL] and *Equal Educational Opportunity* [FB LEGAL/LOCAL] keeping students free from Discrimination, Harassment & Retaliation based upon sex or gender. It sets out definitions of sexual harassment, information about reporting allegations of bullying and harassment and their own investigatory procedures. It required that all allegations of bullying and harassment based upon sex or gender *shall* be directed to the School District's Title IX Coordinator, and that the family be given that person's contact information or for their designee. The family also must receive actual notice of their other procedural rights including and especially the investigatory process. The school district's investigation may be delegated by the Title IX Coordinator often to a local School Principal or Vice-Principal.
22. In any case, it must be completed in a timely manner, usually less than 10 days and a written

report must be developed with interim action taken, as appropriate. The report must address whether or not prohibited contact occurred and must be filed with the relevant School District Official and provided to the parent. If a student is not satisfied with the outcome of the investigation, they have the right to appeal the decision through the District's grievance procedure or even with the Office of Civil Rights with the U.S. Department of Education.

23. The School Board Policies, also note a non-exhaustive list of potential corrective actions. This includes notifying the parents, taking interim action, providing psychological services, providing or paying for counseling to the victim, providing a training program for the victim and perpetrator, and providing a comprehensive education program for the school community. There must also be a system in place to follow-up and determine if new incidents had occurred and effectiveness of those provided. There is also discussion of increasing staff monitoring and assessment of the problem and having the perpetrator execute a stay-away agreement.
24. The Brownsboro Independent School District did none of these things.

## **V. FACTUAL BACKGROUND**

### **A. ABOUT THE STUDENT**

25. P.S. was born in 2004. He is now 17 years old and is in the 11<sup>th</sup> Grade at the Brownsboro Independent School District High School.
26. He lives with his parents, is the youngest of three children, and enjoys a tight knit family connection.
27. P.S. is a typical male, growing up in the country.
28. He loves sports, hunting, fishing, and anything that takes him outdoors.

29. He attends youth group in his local church.
30. He is also an active in the Future Farmers of America (“FFA”) Program, with livestock projects including pigs, goats and a steer.
31. Above all he loves baseball.
32. He is an excellent baseball player and has been a member of the team since he was a freshman.
33. Up to the time of his sexual assault, for all practical purposes he was a normal kid living a normal life.

B. ABOUT BROWNSBORO INDEPENDENT SCHOOL DISTRICT

34. Brownsboro Independent School District is a public school district based in Brownsboro, Texas (USA). In addition to Brownsboro, the district serves the cities of Chandler and portions of Coffee City, Athens, Murchison, and Moore Station in northeastern Henderson County. The District has six (6) campuses and just under three thousand (3,000) students.
35. As of the 2019-2020 school year the High School had 750 students.
36. It is small and not surprisingly, a relatively tight knit community.

C. THE BASEBALL PROGRAM HAS A HISTORY OF HAZING

37. Wes Johnston was the Head Coach for the Brownsboro High School Baseball Team at all times relevant to this case. Pursuant to his contract with the School Board Johnston, School Board Policies & Procedures and professional ethical duties, Johnston was responsible for all relevant disciplinary activities related to the team. This included, but was not limited to assuring students did not haze other students and if a student did do so, stop the practice and hold the offending student or students, responsible for their conduct.

38. Prior to P.S.' attendance at the BISD High School, the Baseball Team had a long-standing hazing "tradition." It existed with the blessing of the coaches.
  39. Upper classmen on the varsity team annually hazed varsity newcomers.
  40. It took many forms, ranging from having varsity newcomers carry equipment, all the way to sexual assault. Players were "tea bagged", held down and "dry humped" and one former player reported having an upperclassman's penis in his mouth.
  41. Upper classmen routinely and openly discussed hazing younger players in the presence of baseball coaches.
  42. A former student K.J. told another student, L.H. that he had been tea-bagged as a freshman when on the baseball team.
  43. Another student, J.C. has reported that hazing on the baseball team by seniors has existed for years.
  44. One student M.M., who was also a protagonist joked about the hazing in front of the baseball team coaches.
  45. The Head Coach, Wes Johnston was well-aware of the hazing tradition as was the entire Coaching Staff which included Daniel Scott, Deondre Taylor and Jeremy Bumpers, who also drove the bus to and from games.
  46. The acts and omissions of the Baseball Coaching Staff, including and especially with the knowledge of the Head Coach, Wes Johnston, made P.S. more vulnerable to the known sexually hostile educational environment.
- D. P.S. WAS A VICTIM OF HARASSMENT AND LATER SEXUAL ASSAULT
47. P.S. made the varsity baseball team as a freshman during the 2019-2020 school year.

48. During pre-season practices (in the presence of BISD head baseball coach Wes Johnston, and other baseball coaches) in December and January, student A.W. warned student L.H. that upper classmen openly discussed how they were going to haze the freshmen, including “shoving a broomstick up their ass.”
49. L.H. also reports that Coach Johnston and other coaches were present “and had to hear it.”
50. L.H. further states that because the threats were so overt, and the coaches made no effort to stop the taunts or practice itself, he and the other students like P.S. dealt with their anxiety by “trying to keep their heads down.”
51. During batting practice the seniors taunted L.H., P.S. and other varsity newcomers. The environment became more and more anxiety-invoking.
52. During the last week of February 2020, the baseball team was playing in a tournament at Alba Golden high school.
53. The first day of the tournament (Thursday), the team was shorthanded because several seniors on the team were also playing their final basketball game of the season. As a result, the first day of the baseball tournament was uneventful.
54. The next day (Friday), a number of the seniors re-joined the baseball team and the hazing began. Following their game, the seniors required the (then) freshmen (P.S. and L.H.) to carry equipment to the bus.
55. On the bus ride home about four (4) seniors followed L.H. to his seat, threw him down and they dry humped him. He tried to fight them off but could not.
56. The final day of the tournament was on Saturday but things got worse.
57. L.H. and P.S. sat about three (3) rows behind the coaching staff. The interior bus lights,

overhead lights and running lights down each row of seats were on.

58. The seniors, G.W., N.S. and C.W. all sat at the back of the bus.
59. They brazenly came forward and again attacked L.H. He again fought them off. It was a loud scuffle. The coaches could clearly see and hear everything but did nothing.
60. These same seniors then told P.S. that they wanted to ask him a question. When he responded, the seniors overpowered him, once again all in the presence of the coaching staff.
61. In both attacks P.S. and L.H. yelled out hoping to get the Coaches would stop the attack. They did not.
62. Left alone, these senior students forcibly spread P.S.'s legs and "dry humped" him. P.S. continued to fight back and continued to yell, but none of the coaches intervened.
63. Another student, D.R. was also physically and sexually attacked by these same students.
64. At the conclusion of the assault, Head Coach Wes Johnston laughed and told P.S., "it looks like you have two daddies now."
65. BISD bus video cameras were on and recorded this incident.

E. AFTER THE INCIDENT

66. After the incident, P.S.' parents complained.
67. Johnston downplayed the incident and recommended the protagonists be given the proverbial "slap on the wrist."
68. Several BISD Administrators, including then Athletic Director Greg Pearson, then Transportation Director Roger Millender and Head Powerlifting Coach Logan McGill.
69. While they could clearly see the assaults on the video, they also heard Coach Wes Johnston's "two daddies" comment, then saw him laugh about the assault.

70. Athletic Director Greg Pearson requested the School Superintendent, Dr. Keri Hampton to watch the video. Instead she sent the Assistant Superintendent, Brad Robertson to watch the video. Robertson later denied hearing/seeing Coach Johnston do anything wrong on the video. He obviously was defending Johnston, others and likely himself.
71. A.D. Pearson then asked high school Principal Brent Cooper to watch the video. After watching the video, Mr. Cooper increased punishment for the seniors.<sup>2</sup>
72. A.D. Pearson then told Dr. Hampton that Coach Wes Johnston was aware of the assault and did not stop it. According to Roger Millender, Transportation Director and in charge of the bus video, Dr. Hampton did not watch the video. Apparently she too was avoiding the topic and in doing so, defending Johnston, others and likely herself.
73. Millender reported that the video showed none of the coaches ever intervened, and that it would have been impossible for them to not see the boys standing in the bus seats, climbing over the bus seats and assaulting the freshmen. Specifically, video showed the seniors bullying the younger players and “humping on them”. When one boy tried to escape, they “humped his head”. The assault of P.S. occurred about three seats behind the coaches.
74. Millender stated that he saved a copy of the video on his BISD Computer to assure it would not be purged from the BISD System.
75. When P.S.’s parents later asked to see the video, BISD Staff represented to them that it had been purged and no longer existed.
76. Shortly before filing this lawsuit, the BISD’s attorney again confirmed that BISD did not maintain the bus video/audio of the assaults, and “that no such records exist.”

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<sup>2</sup>. Of course, these boys were also victims of hazing and products of the culture.

77. Plaintiffs allege that the videos were destroyed or someone with the District, or on behalf of the District, still has the videos and has been untruthful.

F. THE FAILURES OF THE DISTRICT

78. A sexually hostile educational environment was known to coaches on the Baseball Team and they failed to report such hostility to the appropriate School District Officials.

79. Head Coach Johnston knew about the sexually hostile educational environment, was in the position to both punish wrongdoers and prevent further harassment and he refused to do so.

80. Such failures made P.S. and the other students named herein, more vulnerable to the sexual harassment they experienced.

81. The School District failed to contact the their own Title IX Investigator.

82. The District failed to complete a Title IX Investigation.

83. The School District failed to follow their own policies and procedures regarding such claims.

84. In fact, there is no record that the District did a complete investigation. For instance, and among things, they did not investigate all the members of the baseball coaching staff, other staff, other members of the team or former members of the team.

85. Nor was there any formal reprimand of the Coaching Staff.

86. The District failed to contact the Police.

87. The District failed to contact Child Protective Services.

88. The District failed to report the Coaches to the State Board Of Education Certification.

89. Subsequently, A.D. Greg Pearson left BISD.

90. BISD spoliated the video evidence.

91. The District has never attempted to address the assaults P.S. experienced delineated in their

own policies and procedures.

92. When P.S. goes to school he continues to see the coaching staff who had a duty to protect him and did not. In fact, the Superintendent rewarded Coach Wes Johnston and promoted him to a Assistant Principal position. `

G. THE EFFECT UPON THE STUDENT

93. P.S. still loves baseball, but it is not the same.
94. P.S. is more private, and keeps to himself. His trust was violated.
95. P.S.'s parents have noticed these changes in their son.
96. More than anything, P.S. was, and remains, embarrassed and humiliated. He fears that he will forever be remembered for the wrong reasons.
97. He believes the School District did not take the hazing incidents seriously.

**VI. STATE ACTION**

98. Plaintiffs incorporate by reference all the above-related paragraph with the same force and effect as if herein set forth. Equally each paragraph below incorporates by reference as if fully set forth herein, the one above it.
99. The School District, in any capacities and in all matters, acted under color of state law when it permitted Plaintiff to be subjected to the wrongs and injuries set forth herein.

**VII. CONSTITUTIONAL CLAIMS AGAINST DEFENDANT SCHOOL DISTRICT**

A. P.S.' HAS A CONSTITUTIONAL RIGHT TO BODILY INTEGRITY

100. P.S. has a well-established right to bodily integrity pursuant to the *Due Process Clause* 14<sup>th</sup> Amendment to the United States Constitution. Additionally, he has a liberty interest in freedom of movement, also pursuant to *Due Process Clause* 14<sup>th</sup> Amendment.

B. THE COACHING STAFF CREATED THE DANGER LEADING TO THE VIOLATION OF P.S.' RIGHTS

101. The Coaching Staff of the High School Baseball Team knew of the hazing but failed to stop it. They took custody of P.S., placed him on bus with perpetrators and condoned the assault. The District is liable to P.S. pursuant to what is termed the *State-Created Danger Theory*. Accordingly they are liable to P.S. and he seeks recovery for his injuries pursuant to 42 U.S.C. §1983.

C. THE SCHOOL BOARD FAILED TO SUPERVISE STAFF

102. In addition and in the alternative, Plaintiffs contend that the Defendant School District had a number of written policies and procedures to protect P.S. from exploitation, abuse and sexual harassment, and assault from other students within the School District. Such policies and procedures are intended to protect his constitutional rights but staff were obviously not supervised in how to assure such School Board Policies and Procedures were followed. Accordingly they are liable to P.S. and he seeks recovery for his injuries pursuant to 42 U.S.C. §1983.

D. THE SCHOOL BOARD FAILED TO TRAIN STAFF

103. Equally and also in addition and in the alternative, Plaintiffs contend that the Defendant School District had a number of written policies and procedures to protect P.S. from exploitation, abuse and sexual harassment, and assault from students within the School District. Such policies and procedures are intended to protect his constitutional rights but staff were obviously not trained in how to assure such School Board Policies and Procedures were followed. Accordingly they are liable to P.S. and he seeks recovery for his injuries pursuant to 42 U.S.C. §1983.

E. THE DISTRICT VIOLATED P.S.' RIGHT TO EQUAL PROTECTION

104. The United States Constitution provides that no state shall deny any person within its jurisdiction the equal protection of the law. Equally the Texas Constitution provides that “all free men...have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges.” Texas Constitution, art. 1, Section 3. The acts and omissions of the School District noted above, violated the rights of Plaintiffs pursuant to the *Equal Protection Clause* of the Fourteenth Amendment. Accordingly they are liable to P.S. and he seeks recovery for his injuries pursuant to 42 U.S.C. §1983.

**IX. TITLE IX OF THE EDUCATIONS ACTS OF 1972**

105. The Educational Acts of 1972 passed through Congress as Public Law No. 92-318, 86 Stat. 235 (June 23, 1972) and codified at 20 U.S.C. sections 1681 through 1688. It is commonly known as “Title IX” and states (in part) that:

“No person in the United States shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination (emphasis added) under any education program or activity receiving federal financial assistance.”

106. Here the evidence supports the proposition that P.S. was a victim of discrimination based upon sex because School District Officials (with knowledge of the long history of hazing on the baseball team) refused to address these concerns. Such failures, individually and in concert with each other created a hostile educational environment for P.S. prior to the sexually harassing hazing incident.
107. In addition and in the alternative to the above, such failures by the School District, individually and in concert with each other, made P.S. more vulnerable to the sexually harassing hazing incident he ultimately experienced.

108. Moreover, and also in addition and in the alternative to the above, such failures by the School District, individually and in concert with each other, after the sexually harassing hazing incident, made the already hostile educational environment, even worse for P.S.

109. Accordingly, each separate violation of Title IX by the School District has caused injuries to P.S., and he seeks pecuniary damages under Title IX.

#### **XI. RATIFICATION AND RESPONDEAT SUPERIOR**

110. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.

111. The School District Defendant ratified the acts, omissions and customs of school district personnel and staff, and is responsible for the acts and omissions of staff persons who were responsible for the safety of P.S.

112. The School District Defendant is also responsible for the acts and omissions of staff persons pursuant to the theory of *Respondeat Superior*, who were responsible for the safety of P.S.

#### **XII. PROXIMATE CAUSE**

113. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.

114. Each and every, all and singular of the foregoing acts and omissions, on the part of the School District, taken separately and/or collectively, jointly and severally, constitute a direct and proximate cause of the injuries and damages set forth herein.

#### **XIII. DAMAGES**

115. As a direct and proximate result of the School District's conduct, P.S. has suffered injuries and damages, for which he is entitled to recover herein including but not limited to:

- a. Loss of equal access to educational opportunities;
- b. Physical pain in the past;
- c. Mental anguish in the past;
- d. Mental anguish in the future;
- e. Mental health costs in the future;
- f. Stigma; and
- i. Reimbursement of past and future out-of-pocket expenses incurred by the family.

#### **XIV. PUNITIVE DAMAGES**

- 116. The acts and omissions of the Defendant School District amount to deliberate indifference.
- 117. These acts and omissions of the Defendant School District, satisfy criteria for punitive damages, as contemplated by Section 1983.

#### **XV. ATTORNEY FEES**

- 118. It was necessary for Plaintiffs to retain the undersigned attorneys to file this lawsuit. Upon judgment, Plaintiffs are entitled to an award of attorney fees and costs pursuant to Title IX, Title VI and 42 U.S.C. §2000d et seq. and 42 U.S.C. §1983 and 1988.

#### **XVI. SPOILIATION**

- 119. Plaintiffs hereby require and demand that the Brownsboro ISD preserve and maintain all evidence pertaining to any claim or defense related to the assault or other violations that make the basis of the complaint and the damages resulting therefrom, including statements, photographs, videotapes, audiotapes, surveillance, security tapes, business or medical records, incident reports, telephone records, emails, text messages, electronic data/information, and any other evidence regarding the violations set forth herein.

120. Failure to maintain such items constitutes “spoliation” of evidence, which necessitates use of the spoliation inference rule, i.e, an inference or presumption that any negligent or intentional destruction of evidence was done because the evidence was unfavorable to the spoliator’s case.

**XVII. DEMAND FOR JURY TRIAL**

121. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a jury trial for all issues in this matter.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for judgment against the Defendant in the manner and particulars noted herein and above, and in an amount sufficient to fully compensate them for the elements of damages noted herein and above, judgment for damages, recovery of attorney’s fees and costs for the preparation and trial of this cause of action, punitive damages and for its appeal if required, together with pre- and post- judgment interest and Court costs expended herein, and for such other relief as the Court, in equity, deems just and proper.

Respectfully submitted,

/s/ Anthony O’Hanlon  
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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

On this the 17<sup>th</sup> day of January 2022 I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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