

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss

SUPERIOR COURT
CIVIL ACTION No.

NOELLE-MARIE HARRINGTON,)
by her Mother and Next)
Friend, CORRINE HARRINGTON,)
& CORRINE HARRINGTON,)
Plaintiffs)

v.)

CITY OF ATTLEBORO, RICHARD)
GEORGE, DOUGLAS SATRAN,)
PATRICIA KNOX, MARK DONNELLY,)
JEFFREY NEWMAN, and,)
ELIZABETH YORK,)
Defendants)

COMPLAINT

JURY TRIAL DEMANDED

PARTIES

1. The plaintiff, Noelle-Marie Harrington (hereafter "Noelle-Marie"), is an individual who now resides in Logansport, DeSoto Parish, State of Louisiana, who at all times material resided in Attleboro, Bristol County, Commonwealth of Massachusetts, and who is a minor who brings this action by her Mother and Next Friend, Corrine Harrington.

2. The plaintiff, Corrine Harrington, is an individual who now resides in Logansport, DeSoto Parish, State of Louisiana, who at all times material resided in Attleboro, Bristol County, Commonwealth of Massachusetts, and who is the mother of the plaintiff, Noelle-Marie Harrington. Corrine Harrington brings this action individually and as Mother and Next Friend of the minor plaintiff, Noelle-Marie Harrington.

3. The defendant, City of Attleboro (hereafter "City" or

"Attleboro"), is a municipal corporation, duly organized under the laws of the Commonwealth of Massachusetts, which is located and has a principal place of business in Attleboro, Bristol County, Commonwealth of Massachusetts, and which operates among its duly constituted governmental departments and agencies the Attleboro School Committee and the Attleboro public schools, which also are located and have principal places of business in Attleboro, Bristol County, Commonwealth of Massachusetts.

4. The defendant, Richard George (hereafter "George"), is an individual who at all times material was employed by the defendant, City of Attleboro, and who had a principal place of business in Attleboro, Bristol County, Commonwealth of Massachusetts.

5. The defendant, Douglas Satran (hereafter "Satran"), is an individual who at all times material was employed by the defendant, City of Attleboro, and who had a principal place of business in Attleboro, Bristol County, Commonwealth of Massachusetts.

6. The defendant, Patricia Knox (hereafter "Knox"), is an individual who at all times material was employed by the defendant, City of Attleboro, and who had a principal place of business in Attleboro, Bristol County, Commonwealth of Massachusetts.

7. The defendant, Mark Donnelly (hereafter "Donnelly"), is

an individual who at all times material was employed by the defendant, City of Attleboro, and who had a principal place of business in Attleboro, Bristol County, Commonwealth of Massachusetts.

8. The defendant, Jeffrey Newman (hereafter "Newman"), is an individual who at all times material was employed by the defendant, City of Attleboro, and who had a principal place of business in Attleboro, Bristol County, Commonwealth of Massachusetts.

9. The defendant, Elizabeth York (hereafter "York"), is an individual who at all times material was employed by the defendant, City of Attleboro, and who now has a principal place of business in Avon, Norfolk County, Commonwealth of Massachusetts.

FACTS COMMON TO ALL COUNTS

10. At all times material, the defendant City operated a public school known as the Cyril K. Brennan Middle School ("Brennan MS") in Attleboro, Bristol County, Commonwealth of Massachusetts.

11. At all times material, the defendant City operated a public school known as the Attleboro High School ("AHS") in Attleboro, Bristol County, Commonwealth of Massachusetts.

12. At all times material, the defendant City employed defendants George and Satran as the principals of the Brennan MS,

and assigned them chief executive authority over the Brennan MS during their respective terms in that position, including ultimate authority and responsibility for employing, training, supervising, and disciplining Brennan MS employees, and overseeing the education, supervision, and discipline of Brennan MS students, during their respective terms in that position.

13. At all times material, the defendant City employed defendants Knox and Donnelly as the assistant principals of the Brennan MS during their respective terms in that position, and assigned them supervisory authority over the Brennan MS during their respective terms in that position, including authority and responsibility for employing, training, supervising, and disciplining Brennan MS employees, and overseeing the education, supervision, and discipline of Brennan MS students, subject to the controlling authority of the principals and School Committee officials who had supervisory authority over these defendants during their respective terms in that position.

14. At all times material, the defendant City employed defendant Newman as the principal of the AHS and assigned him chief executive authority over the AHS, including ultimate authority and responsibility for employing, training, supervising, and disciplining AHS employees, and overseeing the education, supervision, and discipline of AHS students.

15. At all times material, the defendant City employed

defendant York as the assistant principal of AHS, and assigned her supervisory authority over AHS, including authority and responsibility for employing, training, supervising, and disciplining AHS employees, and overseeing the education, supervision, and discipline of AHS students, subject to the controlling authority of the principal and School Committee officials who had supervisory authority over this defendant.

16. At all times material, the defendant City employed Raymond Lamore (hereafter "Mr. Lamore") in various capacities, including without limitation, school psychologist and special needs coordinator.

17. At all times material, the defendant City employed the teachers, assistant teachers, administrators, counselors, and other staff of the Brennan MS and the AHS.

18. At all times material, the Brennan MS and the AHS were subject to the direction, control, and supervision of the defendant City's Attleboro School Committee, which was authorized by law to adopt and implement, and which did adopt and implement policies, procedures, rules, and regulations to govern the safe and efficient operation of the defendant City's public schools for the purpose of safely and properly educating the defendant City's minor public school student population.

19. At all times material, the defendant City's Attleboro School Committee had promulgated policies and procedures which

were in effect before and at the time of the repeated bullying, sexual discrimination, peer on peer sexual harassment, and abuse of the minor plaintiff, Noelle-Marie, which is described below.

20. The policies and procedures promulgated and placed in effect by the Attleboro School Committee stressed the Attleboro public schools' commitment "to providing a safe, positive and productive educational environment where students can achieve the highest academic standards," the Attleboro public schools' "responsibility [to] serv[e] every student with the goal for all students to attain excellence and reach their maximum potential regardless of race, color, sex, gender identity, religion, national origin, sexual orientation, age, or disability," its "duty to ensure that the educational process is not unnecessarily disrupted, as well as to protect the safety and confidentiality of its students," and its obligation to ensuring that "[a]ll persons in the school...have the opportunity to grow personally, socially, and intellectually, as well as the opportunity to exercise their rights in a positive and constructive way." Policy JICFB, "Anti-Bullying;" Policy AC, "Nondiscrimination;" Policy KI, "School Visitor Policy;" Attleboro High School Handbook, "Social and Civic Expectations." See also "Attleboro High School's Learning Expectations" ("Attleboro High School expects its graduates to possess these college-ready skills: AHS students will honor their

responsibility to others... AHS students will interact constructively with others."); Policy KE "Problem Resolution Procedure" ("It is the policy of the Attleboro School Committee to assist any concerned party to quickly and equitably resolve concerns with the individuals who are closest to the issue or problem."); Attleboro High School Handbook, "Social and Civic Expectations" ("Students in the Attleboro Public Schools are expected to treat all members of the school community with dignity and respect.... [A]ll members of the school community have the responsibility to conduct themselves in a way that demonstrates a respect for all individuals, their rights, and their property.... Behavior which is disruptive to individual student learning or to the environment of the high school will not be tolerated."); Attleboro High School Handbook, "The Discipline Process," ("Because all members of the school community are subject to both the laws of the Commonwealth and City Ordinances, the school will report acts which may violate the law to the police as appropriate. These acts include but are not limited to,...behavior of students which endangers the safety of themselves or others..."); Attleboro High School Handbook, "Code of Conduct," (Group IV: 3-5 day suspension...*8. Harassment or bullying of a student.").

21. At all times material, the defendant City's Attleboro School Committee and AHS administered specific policies and

procedures to address harassment, sexual harassment, and bullying, reportedly in accordance with G.L. c. 151C:

Attleboro High School will provide to all an environment free from harassment. It is committed to courteous and considerate treatment of students and employees at all times as an accepted standard of behavior. Attleboro High School will have an atmosphere free of tension caused by demeaning or inappropriate religious, racial, sexual or ethnic comments. It is the policy of Attleboro High School to prohibit harassment by any of its agents, officers, employees or students and has set forth a process by which allegations of harassment may be filed, investigated and resolved.... [¶] Harassment includes communications such as gestures, jokes, comments, innuendos, notes, display of pictures or symbols, communicated in any form, including orally, in writing, or electronically via the Internet, cell phones, text messaging, or in any other way, that shows disrespect to others based upon race, color [sic] sex, religion, national origin, sexual orientation, age, or disability. [¶] Sexual harassment includes sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature. Sexual harassment has the purpose or effect of interfering with a person's work or educational performance by creating an intimidating, hostile, or offensive working or learning environment. Sexual harassment may take many forms, including but not limited to the following: 1) Verbal harassment or abuse; ... 3) Assault, inappropriate touching, impeding movement, comments or gestures, written documents or a suggestive or derogatory nature.... [¶] The act of **bullying** [emphasis in original] may accompany harassment. Bullying is defined as the severe or repeated use by one or more students of a written, verbal, or electronic expression, or a physical act or gesture, or any combination thereof, directed at another student, that has the effect of causing physical or emotional harm to the other student or damage to the other student's property and creating a hostile environment at school for the other student.... [¶] The Attleboro Public Schools will promptly investigate every complaint of harassment. If it determines that harassment has occurred, it will take appropriate action to end the harassment and to ensure that it is

not repeated.

Attleboro High School Handbook, "Harassment, Sexual Harassment, and Bullying."

22. In addition to the policy on "Harassment, Sexual Harassment, and Bullying" in the defendant City's Attleboro High School Handbook, the defendant City's Attleboro School Committee approved and adopted Policy JICFB, "Anti-Bullying" in 2011.

Policy JICFB defined bullying as

the repeated use by one or more students of a written, verbal, or electronic expression, or a physical act or gesture, or any combination thereof, directed at a target that: • causes physical or emotional harm to the victim or damage to the target's property; • places the target in reasonable fear of harm to himself/herself, or of damage to his/her property; • creates a hostile environment at school for the target; • infringes on the rights of the target at school; or • materially and substantially disrupts the education process or the orderly operation of a school.

23. Policy JICFB described prohibitions and preventive measures that school officials and administrators were required to take to stop bullying on and off school property and at school functions:

Bullying shall be prohibited: • on school grounds; • on property immediately adjacent to school grounds; • at a school-sponsored or school-related activity, function or program whether on or off school grounds; • at a school bus stop; • on a school bus or other vehicles owned, leased or used by the Attleboro school district; or, • through the use of technology or an electronic device owned, leased or used by the Attleboro public schools. [¶] Bullying and cyberbullying are prohibited at a location, activity, function or program that is not school-related or through the use of technology or an electronic device that is not owned, leased or used

by the Attleboro School district if the bullying: • creates a hostile environment at school for the target; • infringes on the rights of the target at school; or • materially and substantially disrupts the education process or the orderly operation of a school. [¶] The Superintendent and/or his/her designee shall oversee the development, monitoring and updating of a prevention and intervention plan.... The bullying prevention and intervention plan shall be updated at least biennially. [¶] The Principal is responsible for the implementation and oversight of the bullying prevention and implementation plan within his or her school.

24. At all times material, the defendant City was authorized by law to employ, train, direct, supervise, and control, and did employ, train, direct, supervise, and control administrators, educators, teachers, and counselors to implement the policies, procedures, rules, and regulations promulgated by the defendant City's Attleboro School Committee in order to ensure the safe and efficient operation of the defendant City's public schools for the purpose of safely and properly educating the defendant City's minor public school student population.

25. At all times material, defendants George, Satran, Newman, Knox, Donnelly, and York, and the teachers and administrators of the Brennan MS and the AHS, including without limitation Mr. Lamore, and the Attleboro School Committee, were acting under color of law, under color of their authority as employees of the defendant City's public school system, and within the scope of their employment with the defendant City.

26. At all times material, the defendant City received

federal funds through a variety of educational programs.

27. At all times material, the defendants were subject to the requirements of Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-1686, and the regulations and rules promulgated thereunder.

28. While she was a student at the Brennan MS between 2008 and 2010, the minor plaintiff, Noelle-Marie, was subjected to a hostile learning environment where she suffered repeated sex-based discrimination, peer on peer sexual harassment, and physical and emotional abuse, as a result of her gender, physical appearance, sexual orientation, and perceived failure to adhere to sexual stereotypes.

29. During the time that the minor plaintiff, Noelle-Marie, attended the Brennan MS, Thomas C., a minor student of the Brennan MS, who is identified by his first name due to his age, repeatedly called Noelle-Marie obscene and offensive names, such as "slut," "whore," and "fat ass." Thomas C. told the minor plaintiff that "the world would be a better place without you in it," and demanded to know "why don't you just die already?"

30. During the time that the minor plaintiff, Noelle-Marie, attended the Brennan MS, two other students, Chris H. and Cam H., minor students of the Brennan MS who are identified by their first names due to their ages, also subjected the minor plaintiff to repeated emotional abuse, sexually offensive remarks, sexual

discrimination, and peer on peer sexual harassment. Chris H. and Cam H. called Noelle-Marie "bitch," "slut," and "whore." They taunted Noelle-Marie daily, asking "will you go out with me?," and when Noelle-Marie told them "no," Chris H. and Cam H. called her "dyke" and "faggot."

31. The plaintiffs notified the defendant City's Brennan MS employees, including without limitation, defendants George, Satran, Knox, and Donnelly, and Mr. Lamore, about the sexually offensive, sexually discriminatory, sexually harassing, peer on peer harassment committed by Thomas C., Chris H., and Cam H. against the minor plaintiff.

32. Thomas C. punched the minor plaintiff, Noelle-Marie, in her stomach, causing her physical pain and bruising, as well as emotional distress.

33. Thomas C. tripped the minor plaintiff in the Brennan MS hallway, causing Noelle-Marie to fall and sprain her ankle.

34. On a different occasion, while the minor plaintiff, Noelle-Marie, was walking down the Brennan MS stairs on crutches, Thomas C. again tripped her, injuring her and causing her emotional distress.

35. On a different occasion, Thomas C. twisted the minor plaintiff, Noelle-Marie's left wrist behind her back, injuring her and causing her emotional distress.

36. On another occasion, Thomas C. tripped the minor

plaintiff, Noelle-Marie, causing her to fall on her wrist, fracturing her left wrist and causing her emotional distress.

37. The plaintiffs notified the defendant City's Brennan MS employees, including without limitation, defendants George, Satran, Knox, and Donnelly, and Mr. Lamore, of the violent physical assaults and bullying committed by Thomas C. against the minor plaintiff.

38. The defendants told the plaintiffs that defendant Knox and Mr. Lamore would "deal with" the problems caused the minor plaintiff by Thomas C., Chris H., and Cam H., but the defendants failed to stop or alleviate the bullying and harassment.

39. Notwithstanding the actual and constructive knowledge provided to and gained by the defendant City's Brennan MS employees, including without limitation, defendants George, Satran, Knox, and Donnelly, and Mr. Lamore, of the violent physical assaults, bullying, sexual discrimination, sexual harassment, and sexually offensive peer on peer harassment committed against the minor plaintiff, Noelle-Marie, by Thomas C., Chris H., and Cam H., the defendants, although telling the plaintiffs that defendant Knox and Mr. Lamore would "deal with" the problems, treated the plaintiffs' complaints with skepticism, responded minimally when at all, failed to take effective responsive measures to prevent the on-going harassment, and left the minor plaintiff, Noelle-Marie, subjected to hurtful,

offensive, and inappropriate comments and misconduct by her peers at the Brennan MS.

40. The plaintiffs attempted to obtain assistance from the Attleboro Police Department to stop the harassment and bullying, but the police insisted that the matter was a school issue and refused to intervene.

41. When the minor plaintiff, Noelle-Marie, graduated Brennan MS with her class in 2010, Brennan MS officials, all of whom were employees of the defendant City, did not transfer records of her abuse to officials of the defendant City's AHS.

42. The defendant City's employees advised the plaintiff Corrine Harrington that the failure/refusal to transfer records of student misconduct from the Brennan MS to the AHS was in accordance with the defendant City's school policies and procedures.

43. The defendant City's systemic failure to transfer records of illegal bullying, peer on peer sexual discrimination, harassment, and abuse prevented the defendant City's AHS officials and employees from knowing, addressing, or monitoring Noelle-Marie's abuse by her peers and helping the minor plaintiff deal with the bullying, discrimination, harassment, and abuse.

44. By its systemic failure, the defendant City's school officials enabled the bullying, sexual discrimination, peer on peer sexual harassment, and abuse to continue and to escalate,

and effectively ratified such illegal conduct.

45. The bullying, sexual discrimination, peer on peer sexual harassment, and abuse perpetrated against the minor plaintiff, Noelle-Marie, because of her gender, physical appearance, perceived failure to adhere to sexual stereotypes, and sexual orientation escalated when she reached AHS in 2010, and continued throughout her high school years, finally culminating in Noelle-Marie's withdrawal from AHS on March 1, 2012.

46. Despite the history of harassment at the Brennan MS by Thomas C. against the minor plaintiff, Noelle-Marie, which was well-known to the defendant City's Brennan MS employees and should have been communicated to the defendant City's AHS employees, the defendant City's AHS employees placed Noelle-Marie and Thomas C. in the same freshman classroom at AHS.

47. By February 2011, Thomas C. again was bullying and harassing the minor plaintiff, Noelle-Marie, in the defendant City's public schools, poking her in her back, and calling her "dyke," "faggot," "whore," "bitch," and "slut."

48. The plaintiffs notified the defendant City's AHS employees, including without limitation, defendant York, who then was the AHS Assistant Principal, and Mr. Lamore, who then served in essence as an AHS guidance counselor with respect to this situation, of the history of bullying and sexual harassment and

discrimination which had been committed against the minor plaintiff at the defendant City's Brennan MS, including without limitation, the bullying and harassment committed against her by Thomas C.

49. In response to being informed by the plaintiffs of Thomas C.'s bullying and sexual discrimination and harassment of the minor plaintiff, Noelle-Marie, at the Brennan MS, defendant York claimed to speak with Thomas C. and to tell him that such conduct would not be tolerated.

50. Defendant York and other defendant City employees refused to inform the plaintiff Corrine Harrington whether the Brennan MS student files reflected the bullying, harassment, and sexual discrimination to which the minor plaintiff, Noelle-Marie, had been subjected in the Brennan MS, refused to inform her whether the records reflected warnings of Thomas C.'s behavior, refused to inform her whether the records reflected any discipline directed at Thomas C. or the minor plaintiff's other abusers, and informed the plaintiffs that they were prohibited from knowing such information, although the minor plaintiff had been the target of the illegal conduct.

51. If, in fact, defendant York did speak with Thomas C., the defendant's discussion was ineffective in stopping the abuse, because Thomas C. continued to subject Noelle-Marie to bullying and to sexually offensive, discriminatory, and harassing remarks

and abuse.

52. Moreover, in view of the ineffective response of the defendant City's employees to the bullying and peer on peer sexual harassment and discrimination at both the defendant City's Brennan MS and AHS, by approximately May 2011, other AHS students, including without limitation a minor student referred to as Becca M. because of her age, directed the same type of obscene, sexually offensive, sexually discriminatory and harassing comments at the minor plaintiff, Noelle-Marie, calling her "slut," "whore," and "fat ass."

53. The defendant City's employees, including without limitation, defendant York, were made aware of the continuing and escalating sexually offensive, discriminatory, and harassing peer on peer misconduct.

54. Despite their actual and/or constructive knowledge, the defendant City's employees, including without limitation, defendant York, failed to take meaningful, effective remedial measures to end the illegal peer on peer sexual discrimination, sexual harassment, and bullying, or to help the minor plaintiff deal with the abuse.

55. In October 2011, the plaintiffs were involved in a motor vehicle collision, during which Noelle-Marie suffered a sprained ankle. As a consequence, the minor plaintiff went to school walking on crutches for a period of time.

56. Seeing the minor plaintiff on crutches at AHS, many students bullied and harassed the minor plaintiff, Noelle-Marie, taunting her that the only reason she was on crutches was because her body could not support her weight.

57. The minor plaintiff advised the defendant City's employees, including without limitation, defendant York, of the bullying and harassing comments with which she had been taunted.

58. Defendant York advised the plaintiffs that she spoke with students who were witnesses to the bullying and harassment of the minor plaintiff, Noelle-Marie, but advised the plaintiffs that defendant York could not identify the bullies and could not stop their illegal misconduct.

59. The defendant City's employees, including without limitation, defendant York, did nothing to end the bullying and harassment, or to help the minor plaintiff, Noelle-Marie, deal with it.

60. By January 2012, the bullying, peer on peer sexual harassment, sexual discrimination, and abuse to which the minor plaintiff had been subjected had been so severe that Noelle-Marie suffered a panic attack when she saw Chris H. and Cam H. in the Registry of Motor Vehicles while she was taking her road test to obtain her driver's license. The minor plaintiff was so upset that she failed the test.

61. Effective January 11, 2012, the defendant City's

employees prepared a "Safety Plan" for the minor plaintiff, Noelle-Marie, to use while she was at AHS.

62. Despite its title, the plan provided no meaningful safety to the minor plaintiff, Noelle-Marie, and little respite from the on-going bullying, harassment, and abuse to which she was being continually subjected. Two of three plan provisions merely acknowledged the minor plaintiff's already existing right to report instances of harassment to school administration and to access the nurse "in times of stress." The remaining provision allowed her to leave class minutes early to navigate the halls to the minor plaintiff's next class before her tormenters were dismissed from their classes and could harass and bully her in the defendant City's AHS hallways. No provision of the so-called "Safety Plan" addressed her abusers or provided safe escort for the minor plaintiff in the halls.

63. Despite the history of harassment at the Brennan MS by Chris H. against the minor plaintiff, Noelle-Marie, which was well-known to the defendant City's Brennan MS employees and should have been communicated to the defendant City's AHS employees, the defendant City's AHS employees placed Noelle-Marie and Chris H. in the same class at AHS in February 2012.

64. The plaintiffs informed the defendant City's AHS employees of the history of harassment at the Brennan MS by Chris H. against the minor plaintiff, Noelle-Marie, and the defendants

agreed to rearrange the minor plaintiff's class schedule.

65. However, although the defendant City's AHS employees rearranged the minor plaintiff's class schedule, Chris H.'s friends, some of whom previously had harassed, bullied, and discriminated against Noelle-Marie, subjected the minor plaintiff to discrimination and sexual harassment, including two new assailants, Ollie G. and Andrew M., minors who are identified by their first names because of their ages.

66. In February 2012, the on-going bullying and peer on peer sexual discrimination and harassment escalated to stalking. Thomas C. followed the plaintiff, Corrine Harrington's sons, the minor plaintiff, Noelle-Marie's brothers, from the library to the plaintiffs' home, entering the plaintiffs' property when the boys went inside. One son reported Thomas C.'s presence to the plaintiff, Corrine Harrington, who told Thomas C. to get off their private property or she would call police.

67. The next school day, plaintiff Corrine Harrington visited AHS and informed defendant York of the stalking incident.

68. Defendant York told the plaintiff that the defendants would not address the stalking incident because the incident occurred at the plaintiffs' home.

69. The increasing boldness of the minor plaintiff, Noelle-Marie's assailants, as a result of the defendants' ineffective responses to the on-going bullying, sexual discrimination, and

peer on peer sexual harassment, failed to convince the defendants to change their policies or responses, notwithstanding the well recognized danger that the escalating incidents presented, especially in the aftermath of two well-published student suicides in other school districts, including that of Phoebe Prince in South Hadley, Massachusetts, which resulted from alleged bullying.

70. The defendant City's school officials and employees, including without limitation, defendant York, did not treat the minor plaintiff, Noelle-Marie's allegations more seriously or make more effort to stop the bullying, sexual discrimination, and peer on peer sexual harassment to which she was being subjected.

71. In February 2012, Andrew M., one of her bullies, shined a laser pointer directly into the minor plaintiff, Noelle-Marie's eyes, during class, and taunted her by asking repeatedly, "Why are you mad?"

72. Although the classroom teacher, one of the defendant City's employees, sent Andrew M. out of the classroom, the teacher did not prevent him from passing the laser pointer to Ollie G., another of the minor plaintiff's bullies, who continued to shine the laser pointer into Noelle-Marie's eyes.

73. At the end of class, Noelle-Marie went to the school nurse, another of the defendant City's employees, to get ice for her injured eye and told the nurse what had happened.

74. The defendant City's school nurse contacted the minor plaintiff's mother, the plaintiff Corrine Harrington, who contacted defendant York, who refused to provide any information about the incident to the plaintiffs, despite the fact that Noelle-Marie remained a continuing target of bullying and harassment.

75. The minor plaintiff, Noelle-Marie, was taken for emergency medical treatment for injuries that she sustained to her eyes.

76. The plaintiffs again attempted to file a complaint with the defendant City's Attleboro Police Department, but were told by the police that the incident had to be handled by the school police officer, Robert Hale, who failed to respond to the plaintiffs' complaint and failed to contact the plaintiffs.

77. The plaintiffs were advised that Andrew M. was suspended for three days from the defendant City's AHS.

78. Notwithstanding the reported suspension of Andrew M., his fellow bullies, Ollie G. and Nakia S., minors whose names are withheld because of their ages, continued to harass the minor plaintiff, Noelle-Marie, in Andrew M.'s absence, calling the minor plaintiff a "snitch," and telling her that "the world would be better off without dykes like her in it." When, during the course of Andrew M.'s suspension, Andrew M. injured himself, Nakia S. blamed the minor plaintiff, Noelle-Marie, accusingly

reprimanding her that "it's your fault he got hurt. If you hadn't snitched and gotten him suspended, he wouldn't have gotten hurt."

79. The defendant City's employees failed to stop or otherwise take effective remedial action in an effort to stop the on-going bullying and harassment of the minor plaintiff by an expanding number of bullies, who were emboldened by the defendants' ineffective measures.

80. In February 2012, during the period of the incidents described, the plaintiff Corrine Harrington discovered a Facebook post left by the minor plaintiff, Noelle-Marie, stating "when the bullying got worse, I thought about whether or not people would regret the things they did if I committed suicide."

81. The plaintiff Corrine Harrington brought a printed copy of the minor plaintiff's Facebook post to AHS, where she met with the defendant City's employees, including without limitation, defendant York.

82. Defendant York told the plaintiff Corrine Harrington that there was nothing the defendants could do, and that the minor plaintiff, Noelle-Marie, needed professional help.

83. The plaintiff Corrine Harrington informed the defendant City's employees that the plaintiffs wanted to transfer Noelle-Marie to a different school, but the defendant City's school officials, including without limitation, defendant York, refused

to assist the plaintiffs to place Noelle-Marie into a different school.

84. After meeting with the defendant City's employees, the plaintiff Corrine Harrington took the minor plaintiff, Noelle-Marie, to her pediatrician, who immediately referred the plaintiffs to a crisis center for evaluation and care.

85. The crisis team instructed the plaintiffs not to return the minor plaintiff, Noelle-Marie, to AHS for the minor plaintiff's safety and well-being, due to the minor plaintiff's suicidal ideation, which was the result of the bullying and sexual discrimination and peer on peer harassment to which she had been subjected.

86. Instead, the minor plaintiff, Noelle-Marie, registered at the Westwood Lodge day treatment center.

87. The plaintiff Corrine Harrington formally removed the minor plaintiff, Noelle-Marie, from the defendant City's Attleboro High School on March 1, 2012, over the objection of the defendant City's public school administration.

88. The minor plaintiff, Noelle-Marie, underwent a protracted period of psychotherapeutic care and treatment in an effort to prevent her from harming herself as a result of the bullying, peer on peer sexual harassment, sexual discrimination, and the defendants' negligent and deliberately indifferent failure and refusal to adequately respond to the continuing

misconduct.

89. Notwithstanding the policies and procedures of the defendant City and the requirements of law, no reasonable or effective measures were taken by the defendant City's school system and its employees to address the bullying, sexual discrimination, peer on peer sexual harassment, and abuse of the minor plaintiff, Noelle-Marie.

90. The defendants and the defendant City's employees did not undertake timely and meaningful investigation of the plaintiffs' complaints.

91. Rather, the defendant City and its employees treated the plaintiffs' complaints skeptically.

92. The defendants and the defendant City's employees did not impose effective discipline, as required by mandatory School Committee and school administration policies and procedures.

93. The defendants and the defendant City's employees did not recognize the manifestations of the bullying of the minor plaintiff, Noelle-Marie.

94. The defendants and the defendant City's employees did not deter student intimidation of the minor plaintiff.

95. The defendants and the defendant City's employees did not make clear to the minor plaintiff's abusers the consequences of bullying.

96. The defendants and the defendant City's employees did

not employ community resources to prevent violence.

97. The defendants and the defendant City's employees did not expel or prosecute the minor plaintiff's assailants.

98. The defendant City's employees, including without limitation, defendant York, told the plaintiff Corrine Harrington that the defendants could do nothing about bullying off school grounds although the defendant City's School Committee Policy JICFB specifically prohibited it and required investigation, action, and discipline.

99. The defendants and the defendant City's employees violated mandatory policies and procedures of the defendant City's School Committee and public school administration.

100. Given the prolonged, multi-year pattern of negligence and the misconduct of numerous officials and employees of the defendant City, including without limitation, defendant York, and the deficiencies of school policies and procedures, the administrators, agents, servants, and employees of the defendant City's public schools were not properly trained, properly supervised, or properly employed to handle life-threatening incidents of school violence.

101. As a direct and proximate result, the minor plaintiff, Noelle-Marie, was exposed to prolonged and escalating violence, bullying, sexual discrimination, and peer on peer sexual harassment by students of the defendant City's public schools

because of the systemic failures of the defendant City's school officials who were supposed to protect the minor plaintiff and help her avoid and recover from the medical and psychological traumas that she sustained.

102. During four years of continuing abuse by students, and deliberate indifference, negligence, and illegal discrimination by the defendant City's employees, the defendant City's public school system and its agents, servants, and employees, repeatedly failed to take reasonable measures to monitor, address, prevent, and respond to bullying, peer on peer sexual harassment, sexual discrimination, physical assault, and battery committed by other students against the minor plaintiff, Noelle-Marie, and failed to provide proper medical, psychological, and educational support and assistance to help Noelle-Marie and her mother, the plaintiff, Corrine Harrington, deal with the ongoing bullying, sexual discrimination, and peer on peer sexual harassment, and thereby failed to take reasonable and effective steps to provide Noelle-Marie with a safe learning environment.

103. The defendant City's employees had actual knowledge of the abuse and were deliberately indifferent to the peer on peer sexual harassment, sexual discrimination, bullying, and physical assaults and batteries.

104. As a direct and proximate result of the defendants' negligence and deliberate indifference to the persistent and

well-known sexual discrimination, peer on peer sexual harassment, bullying, and abuse of the minor plaintiff, Noelle-Marie, the minor plaintiff was subjected to a hostile and violent educational environment, denied the benefits of a free and appropriate public education, was forced to leave the defendant City's public schools for her own safety and well-being, suffered physical and mental injury which have disabled her from her usual activities and which have manifested in physical symptoms and which required medical and psychotherapeutic care and treatment, experienced pain and suffering, emotional injuries and distress, lost earnings and lost earning capacity, and loss of the pleasures and enjoyments of life.

105. As a direct and proximate result of the defendants' negligence and deliberate indifference to the persistent and well-known sexual discrimination, peer on peer sexual harassment, bullying, and abuse of the minor plaintiff, Noelle-Marie, the minor plaintiff's mother, the plaintiff Corrine Harrington, incurred expenses for the reasonable and necessary medical and psychotherapeutic care and treatment of the minor plaintiff, Noelle-Marie Harrington, and suffered emotional injuries and distress, lost earnings and lost earning capacity, and loss of the pleasures and enjoyments of life.

COUNT I: VIOLATIONS OF TITLE IX BY DEFENDANT CITY OF ATTLEBORO

106. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

107. The defendants failed to take appropriate measures to protect the minor plaintiff, Noelle-Marie, from peer on peer sexual discrimination and sexual harassment and the effects of peer on peer sexual discrimination and sexual harassment, in violation of Title IX of the Education Amendments of 1972, and in violation of rights guaranteed by the United States and Massachusetts constitutions, laws, regulations, and rules.

108. Through their aforesaid conduct and deliberate indifference, the defendants created and permitted the existence of a severe, perverse, pervasive, and persistent sexually hostile educational environment, in violation of Title IX of the Education Amendments of 1972.

109. The defendants violated the rights secured to the minor plaintiff pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-1686, and the regulations and rules promulgated thereunder, as aforesaid, for which the defendants may be held liable to the plaintiffs.

110. The minor plaintiff was a victim of peer on peer sexual discrimination and sexual harassment because of her gender.

111. As a direct and proximate result of peer on peer sexual

discrimination and sexual harassment and the defendants' deliberate indifference thereto, the minor plaintiff was deprived of equal protection of the laws on the basis of her gender, and suffered the damages aforesaid.

112. As a direct and proximate result of peer on peer sexual discrimination and sexual harassment and the defendants' deliberate indifference thereto, the minor plaintiff was effectively denied equal access to educational resources, benefits, and opportunities, and suffered the damages aforesaid.

**COUNT II: VIOLATIONS OF FEDERAL CIVIL RIGHTS BY DEFENDANT,
CITY OF ATTLEBORO**

113. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

114. The defendant City developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in Attleboro, which caused the violations of the plaintiffs' rights.

115. It was the policy and/or custom of the defendant City to inadequately and improperly investigate complaints of peer on peer sexual discrimination and harassment and bullying in the defendant City's public schools, and such acts of misconduct were instead tolerated by the defendant City.

116. It was the policy and/or custom of the defendant City to inadequately supervise, discipline, employ, and train its

public school administrators and staff, including without limitation, defendants George, Satran, Knox, Donnelly, Newman, and York, and other Brennan MS and AHS administrators, teachers, and staff, including without limitation, Mr. Lamore, thereby failing to adequately discourage constitutional violations by such administrators, teachers, and staff.

117. The defendant City knew or should have known that defendants George, Satran, Knox, Donnelly, Newman, and York, and other employees of the defendant City, including without limitation, Mr. Lamore, were involved in the formulation and execution of policies, practices, and procedures which illegally abridged the rights and privileges of students of the Brennan MS, AHS, and other Attleboro public schools.

118. Despite actual or constructive knowledge of the aforesaid policies, practices, and procedures of defendants George, Satran, Knox, Donnelly, Newman, and York, and other employees of the defendant City, including without limitation, Mr. Lamore, the defendants did not stop or curtail such misconduct but rather condoned it by refusing to correct, discipline, or prevent such misconduct.

119. The defendants' acts and omissions, pursuant to policies, practices, and customs which were well known and widely practiced, constitute conduct under the color of law, within the meaning of 42 U.S.C. §1983, which deprived the minor plaintiff of

her statutory and constitutional rights and privileges including, without limitation, her rights to Equal Protection of the laws and Due Process of law pursuant to the Fourteenth Amendment of the United States Constitution, her right to equal educational opportunity without sexual discrimination and/or sexual harassment pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-1686 and the rules and regulations promulgated thereunder, her rights to an education which "provides the conditions of all pupils to engage fully in learning . . . without threats to their sense of security or self-esteem" pursuant to G.L. c. 69, §1, her right to enjoy in safety and tranquility her natural rights and the blessings of life and liberty, her right to enjoy and defend her life and liberty, her right to seek and obtain safety and happiness, her right to be protected by society in the enjoyment of her life, liberty and property according to standing laws, her right to find remedy by having recourse to the laws for all injuries and wrongs which she has received to her person, property or character, and her right not to be put out of the protection of the law or deprived of liberty or estate but by the judgment of her peers and the law of the land, all in violation of the Preamble and of Articles I, X, XI, XII and CVI of the Declaration of Rights of the Commonwealth of Massachusetts.

120. The above described policies and customs demonstrated

deliberate indifference on the part of the policy makers of the defendant City to the constitutional rights of persons within the defendant City, and caused the violations of the plaintiffs' rights alleged herein.

121. The defendant City violated the plaintiffs' civil rights, protected by the constitutions and laws of the United States and of the Commonwealth of Massachusetts, by the intentional and deliberately indifferent manner in which, pursuant to municipal policy, custom and/or practice, it failed and refused properly to employ, instruct, train, supervise, and discipline its public school administrators, teachers, and staff, and in the manner in which it condoned, sanctioned, and ratified the peer on peer sexual discrimination and harassment and bullying of the minor plaintiff.

122. As a direct and proximate result of the defendant City's violations of the plaintiffs' civil rights, the plaintiffs suffered the damages aforesaid, for which they may recover pursuant to 42 U.S.C. §1983 and §1988.

**COUNT III: VIOLATIONS OF FEDERAL CIVIL RIGHTS BY DEFENDANTS
GEORGE, SATRAN, KNOX, DONNELLY, NEWMAN, AND YORK**

123. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

124. Defendants George, Satran, Knox, Donnelly, Newman, and York, as supervisory officials of the defendant City's Brennan MS

and AHS, developed, enforced, supervised, and maintained policies or customs which exhibited deliberate indifference to the constitutional rights of persons in Attleboro, which caused the violations of the plaintiffs' rights.

125. It was the policy and/or custom of defendants George, Satran, Knox, Donnelly, Newman, and York to inadequately and improperly investigate complaints of peer on peer sexual discrimination and harassment and bullying and abuse of Brennan MS and AHS students, and acts of misconduct were instead tolerated by defendants George, Satran, Knox, Donnelly, Newman, and York.

126. It was the policy and/or custom of defendants George, Satran, Knox, Donnelly, Newman, and York to inadequately employ, train, supervise, and discipline Brennan MS and AHS administrators, teachers, and staff, thereby failing to adequately discourage constitutional violations by such administrators, teachers, and staff.

127. The above described policies and customs demonstrated defendants George's, Satran's, Knox's, Donnelly's, Newman's, and York's deliberate indifference to the constitutional rights of persons at the Brennan MS and AHS, and caused the violations of the plaintiffs' rights alleged herein.

128. Defendants George, Satran, Knox, Donnelly, Newman, and York violated the plaintiffs' civil rights, protected by the

constitutions and laws of the United States and of the Commonwealth of Massachusetts, by the intentional and deliberately indifferent manner in which they failed and refused properly to employ, instruct, train, supervise, and discipline Brennan MS and AHS administrators, teachers, and staff, and in the manner in which they condoned, sanctioned, and ratified the peer on peer sexual discrimination and harassment and bullying of the minor plaintiff.

129. As a direct and proximate result of defendants George's, Satran's, Knox's, Donnelly's, Newman's, and York's violations of the plaintiffs' civil rights, the plaintiffs suffered the damages aforesaid, for which they may recover pursuant to 42 U.S.C. §1983 and §1988.

COUNT IV: TORT CLAIMS AGAINST DEFENDANT CITY OF ATTLEBORO

130. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

131. The defendant City is the public employer of defendants George, Satran, Knox, Donnelly, Newman, and York, and of the administrators, teachers, educators, and facilitators of the Brennan MS and the AHS, including without limitation, Mr. Lamore, and of the Attleboro School Committee, all of whom are public employees within the definition of G.L. c. 258, §1.

132. The defendant City, as "public employer", is liable for

any injuries caused by the negligent acts or omissions of any public employees while said employees act within the scope of their office or employment, pursuant to G.L. c. 258, §2.

133. The defendant City is liable for the negligence of defendants George, Satran, Knox, Donnelly, Newman, and York, and of the administrators, teachers, educators, and facilitators of the Brennan MS and the AHS, including without limitation, Mr. Lamore, and of the Attleboro School Committee, in connection, *inter alia*, with their negligent failure to investigate properly the plaintiffs' allegations of peer on peer sexual discrimination and sexual harassment, bullying, violence, and assault; their negligent decision to not discipline the minor plaintiff's bullies; their negligent decision to not expel the minor plaintiff's bullies; and their negligent failure to implement the mandatory policies of the Attleboro School Committee which were promulgated to ensure a safe and effectual learning environment for the defendant City's minor public school student population.

134. The defendant City is liable for the negligence of its School Committee, *inter alia*, in hiring, retaining and supervising defendants George, Satran, Knox, Donnelly, Newman, and York; in refusing and failing to enforce School Committee policies and procedures which were promulgated to ensure a safe and effectual learning environment for the defendant City's minor public school student population; and in failing properly to

instruct, train, and supervise defendants George, Satran, Knox, Donnelly, Newman, and York, and other administrators, teachers, educators, and facilitators of the Brennan MS and AHS, including without limitation, Mr. Lamore, in connection with proper methods of implementing Attleboro School Committee policies, practices, and procedures which were promulgated to ensure a safe and effectual learning environment for the defendant City's minor public school student population.

135. The defendant City is liable for the negligence of its supervisory employees, including without limitation, defendants George, Satran, and Newman, in refusing and failing to enforce School Committee policies and procedures which were promulgated to ensure a safe and effectual learning environment for the defendant City's minor public school student population; and in failing properly to instruct, train, and supervise defendants Knox, Donnelly, and York, and Mr. Lamore, and other administrators, teachers, educators, and facilitators of the Brennan MS and AHS in connection with proper methods of implementing Attleboro School Committee policies, practices, and procedures which were promulgated to ensure a safe and effectual learning environment for the defendant City's minor public school student population.

136. The Brennan MS and AHS staff's and administration's refusal to enforce the policies mandated by the Attleboro School

Committee, and the School Committee's failure to ensure that their policies were being implemented, empowered the minor plaintiff's bullies and abusers to engage in the peer on peer sexual discrimination and sexual harassment, bullying, intimidating, and anti-social activities prohibited by the defendant City's School Committee policies.

137. As a result of their conduct, the defendant City's Brennan MS and AHS staff and administration and the defendant's School Committee ratified the peer on peer sexual discrimination and sexual harassment and intimidation, enabled the bullies, and increased the level of violence, ultimately resulting in the damages sustained by the minor plaintiff, Noelle-Marie.

138. The refusal of the defendant City's Brennan MS and AHS staff and administration and the defendant City's School Committee to enforce the School Committee's own policies and procedures at a time when the bullies were engaging in intimidation rather than physical assault, and could have been deterred from escalating their levels of anti-social behavior and violence, "materially contributed to creating the specific 'condition or situation' that resulted in the harm" to the minor plaintiff, Noelle-Marie.

139. As a direct and proximate result of the negligence of the public employees of the defendant City, the plaintiffs suffered the damages aforesaid.

140. On or about February 28, 2014, the plaintiffs made timely written demand for relief upon the defendant, in accordance with G.L. c. 258, §4, a copy of which demand is annexed hereto as Exhibit "1".

141. The defendant City failed to respond in satisfactory written manner to the plaintiffs' written demand for relief, thus constituting a denial of said demand within the meaning of the statute.

COUNT V: VIOLATIONS OF MASSACHUSETTS DECLARATION OF RIGHTS

142. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

143. The defendants deprived the minor plaintiff of her right to enjoy in safety and tranquility her natural rights and the blessings of life and liberty; of her right of enjoying and defending her life and liberty; of her right of seeking and obtaining safety and happiness; of her right to be protected by society in the enjoyment of her life, liberty and property according to standing laws; of her right to find remedy by having recourse to the laws for all injuries and wrongs which she has received to her person, property or character; and of her right not to be put out of the protection of the law or deprived of liberty or estate but by the judgment of her peers and the law of the land, all in violation of the Preamble and of Articles I, X,

XI, XII, and CVI of the Declaration of Rights of the Commonwealth of Massachusetts.

144. As a direct and proximate result of the defendants' deprivation of the minor plaintiff's civil rights under the Declaration of Rights of the Commonwealth of Massachusetts, the minor plaintiff suffered the damages aforesaid.

145. The plaintiff has a cause of action directly under the provisions of the Declaration of Rights of the Commonwealth of Massachusetts for the Constitutional deprivations inflicted upon her by the defendants.

COUNT VI: VIOLATION OF RIGHT TO BE FREE FROM SEXUAL HARASSMENT

146. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs, as though they were fully set forth herein.

147. The minor plaintiff, Noelle-Marie Harrington, has an enforceable right to be free from sexual harassment in receiving her public education, pursuant to G.L. c. 151C, §2(g) and G.L. c. 214, §1C, *inter alia*.

148. The defendants violated the minor plaintiff's right to be free from sexual harassment in receiving her public education, as aforesaid.

149. As a direct and proximate result of the defendants' illegal conduct, the plaintiff suffered the damages aforesaid.

150. The plaintiffs timely filed a Charge of Discrimination

against the defendants with the Massachusetts Commission Against Discrimination ("MCAD").

151. The plaintiffs were given leave by the MCAD to withdraw their Charge of Discrimination from the MCAD in order to pursue their claims at bar.

COUNT VII: VIOLATION OF RIGHT TO BE FREE FROM SEX DISCRIMINATION

152. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs, as though they were fully set forth herein.

153. The minor plaintiff, Noelle-Marie Harrington, has an enforceable right to be free from discrimination on the basis of her sex and her sexual orientation in a place of public accommodation, pursuant to G.L. c. 272, §98 and G.L. c. 76, §5, *inter alia*.

154. The defendants violated the minor plaintiff's right to be free from discrimination on the basis of her sex and sexual orientation, as aforesaid.

155. As a direct and proximate result of the defendants' illegal conduct, the plaintiff suffered the damages aforesaid.

COUNT VIII: VIOLATION OF MASSACHUSETTS EQUAL RIGHTS ACT

156. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs, as though they were fully set forth herein.

157. The defendants have interfered with and violated the

minor plaintiff, Noelle-Marie Harrington's rights to the full and equal benefit of all laws for the security of persons, which are protected pursuant to G.L. c. 93, §102.

158. As a direct and proximate result of the defendants' illegal conduct, the plaintiff suffered the damages aforesaid.

COUNT IX: LOSS OF CONSORTIUM
(PLAINTIFF CORRINE HARRINGTON v. ALL DEFENDANTS)

159. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs, as though they were fully set forth herein.

160. The plaintiff, Corrine Harrington, suffered the loss of the care, comfort, and services of her minor daughter, the plaintiff, Noelle-Marie Harrington, as a direct and proximate result of the negligence, tortuous and illegal acts of all of the defendants.

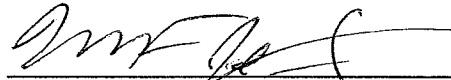
RELIEF DEMANDED

WHEREFORE, the plaintiffs respectfully demand judgment against all of the defendants, jointly and severally, in an amount to be determined by a jury, plus costs, interest, reasonable attorney fees where authorized by law, multiple and punitive damages where authorized by law, and such other and further relief as this Court deems equitable and just.

JURY TRIAL DEMAND

THE PLAINTIFFS RESPECTFULLY DEMAND A TRIAL BY JURY ON ALL COUNTS OF THEIR COMPLAINT.

Respectfully Submitted,
The Plaintiffs,
By their Attorney,



MARK F. ITZKOWITZ (BBO #248130)
175 Federal Street
Suite 1425
Boston, MA 02110-2287
(617) 695-1848
MFitzkowitz@hotmail.com
February 26, 2015

EXHIBIT “1”

RECEIVED
CITY OF ATTLEBORO
CITY CLERK

Mark F. Itzkowitz

Attorney at Law

2014 FEB 28 PM 3: 25

175 Federal Street
Suite 1425
Boston, Massachusetts 02110-2287
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RECEIVED



FEB 28 2014

Telephone: 617-695-1848
Facsimile: 617-426-7972
Also Admitted In New York

Office of the Mayor

February 28, 2014

Kelly Emp
Reception
02/28/14 4:37pm

VIA MESSENGER DELIVERY

The Honorable Kevin J. Dumas, Mayor
City Hall
Government Center
77 Park Street
Attleboro, MA 02703

The Honorable Elizabeth A. Shockroo, City Clerk
City Hall
Government Center
77 Park Street
Attleboro, MA 02703

Robert Mangiaratti, Esquire
Murphy, Hesse Toomey & Lehane
300 Crown Colony Drive
Room 410
P.O. Box 9126
Quincy, MA 02269

Re: Massachusetts Tort Claim Act Demand of Noelle-Marie Harrington

Dear Mayor Dumas, Clerk Shockroo, and Attorney Mangiaratti:

I represent Noelle-Marie Harrington and her mother, Corrine Harrington, in claims for physical and emotional injuries and loss of consortium which Noelle-Marie and her mother sustained as a result of negligence compensable pursuant to G.L. c. 258 and violations of her civil rights caused by the tortious misconduct of employees of Brennan Middle School and Attleboro High School, and negligent supervision, training, hiring, and retention by the Attleboro School Committee and public school administration. This demand is sent to you in a good faith effort to resolve the negligence claims of Noelle-Marie and her mother without the need for protracted litigation. By making demand in this fashion at this time, the Harringtons do not waive any claims, theories of liability, or evidence not expressly set forth herein.

Mark F. Itzkowitz

Attorney at Law

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Boston, Massachusetts 02110-2287
Email: MFIzkowitz@hotmail.com

RECEIVED
SUPERINTENDENT'S OFFICE

FEB 28 2014

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Also Admitted In New York

ATTLEBORO PUBLIC SCHOOL SYSTEM

February 28, 2014

VIA MESSENGER DELIVERY

The Honorable Kevin J. Dumas, Mayor
City Hall
Government Center
77 Park Street
Attleboro, MA 02703

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STATEMENT OF THE FACTS

While a student at the Brennan Middle School in Attleboro between 2008 and 2010, Noelle-Marie Harrington was subjected to a hostile learning environment where she suffered repeated sex-based discrimination, sexual harassment, and physical and emotional abuse. The discrimination, harassment, and abuse surrounding Noelle-Marie's physical appearance, perceived failure to adhere to sexual stereotypes, and sexual orientation escalated when she reached Attleboro High School. Discriminatory, violent, and illegal conduct continued against her throughout her high school years and finally culminated in Noelle-Marie's withdrawal from Attleboro High School on March 1, 2012. During these four years of continuing abuse by students and negligence by City employees, the Attleboro public school system and its agents, servants, and/or employees, repeatedly failed to take reasonable measures to prevent, monitor, address, and respond to harassment, discrimination, physical assault, and battery committed by other students against Noelle-Marie, and failed to provide proper medical, psychological, and educational support and assistance to help Noelle-Marie and her mother deal with the ongoing bullying. The City's employees had actual knowledge of the abuse and were deliberately indifferent to the harassment, discrimination, and physical assaults and batteries. As a direct and proximate result of the negligence and deliberate indifference of the Attleboro Public Schools to the persistent and well-known discrimination, harassment, and abuse of Noelle-Marie, she was subjected to a hostile and violent educational environment, denied the benefits of a free and appropriate public education, suffered physical and mental injury, pain, and suffering, and was ultimately forced to leave the Attleboro Public Schools for her own safety and well-being.

The following incidents describe some, but not all, of the abuse to which Noelle-Marie was subjected, and reference by first name some of her minor abusers. Thomas, another student of the Brennan Middle School, repeatedly called Noelle-Marie obscene and offensive names, such as "slut," "whore," and "fat ass." He told her that "the world would be a better place without you in it" and demanded to know "why don't you just die already?" Thomas punched Noelle-Marie in the stomach causing her physical pain and bruising, as well as emotional distress. He tripped her in the hallway causing Noelle-Marie to fall and sprain her ankle. While Noelle-Marie was going down the stairs on crutches, Thomas again tripped her. On one occasion, he twisted her left wrist behind her back. On another occasion, he tripped her, causing her to fall on her wrist. Her left wrist was fractured.

These events were known to Principals Richard George and Douglas Satran, Vice Principals Patricia Knox and Mark Donally, and several teachers. Their response was minimal. Noelle-Marie and Thomas were placed in different classes for the 2009-2010 academic year. Noelle-Marie was still subjected to hurtful, offensive, and inappropriate comments. Her complaints were treated with skepticism.

The Harringtons tried to obtain assistance from the Attleboro Police Department. The police insisted that the matter was a school issue and refused to intervene.

Thomas was not Noelle-Marie's only abuser. Two other students, Chris and Cam, subjected her to repeated physical and emotional abuse, discrimination, and harassment. Like Thomas, Chris and Cam called Noelle-Marie a "bitch," "slut," and "whore." They taunted Noelle-Marie daily, asking "will you go out with me?" When Noelle-Marie would tell them "no," Chris and Cam called her a "dyke" and a "faggot." These incidents were made known to school officials.

When Noelle-Marie graduated Middle School with her class, Brennan Middle School officials did not transfer records of her abuse to Attleboro High School. This was Attleboro School Department policy and procedure, Mrs. Harrington was told. This systemic failure prevented High School officials from knowing, addressing, or monitoring Noelle-Marie's abuse and helping her deal with it. School officials thus enabled the abuse to continue and to escalate.

Despite the well-known history of problems at the Middle School, Noelle-Marie and Thomas were placed in the same class freshman year at Attleboro High School. By February 2011, Thomas again was harassing Noelle-Marie, poking her in the back and calling her a "dyke," "faggot," "whore," "bitch," and "slut." The Harringtons immediately brought the history between the students to the attention of Vice Principal York and Guidance Counselor Lamore. The Harringtons were told that student incident files from the Middle School inexplicably do not get transferred to the High School as a matter of policy. The administrators refused to inform Mrs. Harrington whether Thomas's student file noted his abuse of Noelle-Marie, and told Mrs. Harrington that she was not allowed to know. Mrs. York claimed that she spoke to Thomas and told him that such conduct would not be tolerated. If she did speak with him, Mrs. York's discussion was ineffective. Thomas continued to subject Noelle-Marie to vulgar and offensive remarks and abuse.

By approximately May 2011, other Attleboro High School students, including Becca, directed the same type of obscene comments at Noelle-Marie, calling her "slut," "whore," and "fat ass." Again, Mrs. York was made aware of these remarks. Again, little, if anything, and certainly nothing meaningful, was done.

In October 2011, the Harringtons were involved in a car accident. Noelle-Marie suffered a sprained ankle and walked on crutches. At school, many students, some she did not know, told her that the only reason she was on crutches was because her body could not support her weight. Again, such comments were brought to the attention of Mrs. York. Mrs. York claimed to have spoken with students who were witnesses to Noelle-Marie's harassment, but alleged that the students refused to identify other students who made the offensive comments. Nothing was done to end

the harassment or to help Noelle-Marie address it.

Her abuse was so severe that in January 2012, Noelle-Marie had a panic attack when she saw Chris and Cam in the Registry of Motor Vehicles while she was taking her road test to obtain her driver's license. She was so upset she failed the test.

Attleboro High School prepared a "Safety Plan" for Noelle-Marie, effective January 11, 2012. Despite its title, the plan provided no meaningful safety to Noelle-Marie and little respite from her harassment. Two of three plan provisions merely acknowledged her right to report instances of harassment to school administration and to access the nurse "in times of stress." The other allowed her to leave class minutes early to navigate the halls to her next class before her tormenters were dismissed from their classes. No provision addressed her abusers.

In February 2012, Noelle-Marie was required to have her class schedule rearranged because Chris was placed in her class. Chris's friends subjected her to discrimination and sexual harassment, including two new assailants, Ollie and Andrew. While Noelle-Marie was subjected to discrimination and harassment by these new assailants, her previous assailants continued their discrimination and harassment. In February 2012, that discrimination and harassment escalated to stalking. Thomas followed Mrs. Harrington's sons from the library to the Harrington home. When her sons went inside, Thomas stepped onto the Harrington's property. One son reported Thomas's presence to Mrs. Harrington, who told Thomas to get off their private property or she would call the police. The following Monday, Mrs. Harrington visited the High School to inform Mrs. York of the incident. Mrs. York told Mrs. Harrington that because the incident occurred at their home, there was nothing that the school could do to address it.

The increasing boldness of her assailants as a result of the school's ineffective actions failed to convince school officials to change their policies or responses. As you may recall, these incidents occurred after two well-published student suicides, including that of Phoebe Prince in South Hadley, Massachusetts, which resulted from alleged bullying. Nevertheless, Attleboro school officials did not treat Noelle-Marie's allegations more seriously or make more effort to stop her abuse.

An incident in February 2012 placed Noelle-Marie in emergency medical services and finally culminated in Noelle-Marie's withdrawal from Attleboro High School on medical advice. Andrew, another student, shined a laser pointer directly into Noelle-Marie's eyes asking repeatedly, "Why are you mad?" Andrew passed the laser pointer to Ollie when he was called out of class. Ollie continued to shine the laser pointer into Noelle-Marie's eyes. At the end of class, Noelle-Marie went to the school nurse to get ice for her injured eye and told the nurse what had happened. The nurse contacted Mrs. Harrington who contacted Mrs. York. Mrs. York refused to give any information about the incident to Mrs. Harrington. Noelle-Marie was taken

to the emergency room for injuries that she sustained to her eyes. The Harringtons attempted to file a complaint with the Attleboro Police Department. The Police told them that the incident had to be handled by the school police officer, Officer Hale. Officer Hale never contacted the Harringtons.

Andrew was suspended for three days. Andrew's friends, Ollie and Nakia, continued to harass Noelle-Marie in his absence. They told her that she was a "snitch" and that "the world would be better off without dykes like her in it." When Andrew injured himself during his suspension, Nakia blamed Noelle-Marie, saying that "it's your fault he got hurt. If you hadn't snitched and gotten him suspended, he wouldn't have gotten hurt."

Around this time, Mrs. Harrington discovered a Facebook post left by Noelle-Marie, stating "when the bullying got worse, I thought about whether or not people would regret the things they did if I committed suicide." Mrs. Harrington brought a printed copy of the post to the school where she met with Mrs. Shirk, Mr. Parrillo, Mrs. Montagano, and Mrs. York. Mrs. York told Mrs. Harrington that there was nothing the school could do, and that Noelle-Marie needed professional help. Mrs. Harrington informed the administrators that she wanted to transfer Noelle-Marie to a different school. School officials refused to assist Mrs. Harrington place Noelle-Marie into a different school.

Mrs. Harrington took Noelle-Marie to her pediatrician after that meeting. He referred the Harringtons to the crisis center in Norwood. The crisis team instructed Noelle-Marie not to return to Attleboro High School for her own safety and well-being. Noelle-Marie registered at the Westwood Lodge day treatment center. Her mother removed her from Attleboro High School on March 1, 2012, over the objection of High School administration.

Although staff at the Brennan Middle School and Attleboro High School were informed of these and other incidents, as noted, they repeatedly failed to take reasonable and effective steps to provide Noelle-Marie with a safe learning environment. Given the prolonged, multi-year pattern of negligence of numerous officials and employees, and the deficiencies of school policies and procedures, the administrators, agents, servants, and employees of the Attleboro Public Schools clearly were not properly trained, properly supervised, or properly employed to handle life-threatening incidents of school violence. They neither dealt with nor contacted appropriate personnel to deal with Noelle-Marie's bullying. As a result, Noelle-Marie was exposed to prolonged and escalating violence by students of the Attleboro Public Schools because of the systemic failures of the school officials who were supposed to protect her and help her avoid and recover from the medical and psychological traumas that she sustained.

Attleboro School Committee policies in effect before and at the time of the

repeated discrimination, harassment, and abuse of Noelle-Marie Harrington stressed the Attleboro Public Schools' commitment "to providing a safe, positive and productive educational environment where students can achieve the highest academic standards," its "responsibility [to] serv[e] every student with the goal for all students to attain excellence and reach their maximum potential regardless of race, color, sex, gender identity, religion, national origin, sexual orientation, age, or disability," its "duty to ensure that the educational process is not unnecessarily disrupted, as well as to protect the safety and confidentiality of its students," and its obligation to ensuring that "[a]ll persons in the school...have the opportunity to grow personally, socially, and intellectually, as well as the opportunity to exercise their rights in a positive and constructive way." Policy JICFB, "Anti-Bullying;" Policy AC, "Nondiscrimination;" Policy KI, "School Visitor Policy;" Attleboro High School Handbook, "Social and Civic Expectations." See also "Attleboro High School's Learning Expectations" ("Attleboro High School expects its graduates to possess these college-ready skills: AHS students will honor their responsibility to others... AHS students will interact constructively with others."); Policy KE "Problem Resolution Procedure" ("It is the policy of the Attleboro School Committee to assist any concerned party to quickly and equitably resolve concerns with the individuals who are closest to the issue or problem."); Attleboro High School Handbook, "Social and Civic Expectations" ("Students in the Attleboro Public Schools are expected to treat all members of the school community with dignity and respect.... [A]ll members of the school community have the responsibility to conduct themselves in a way that demonstrates a respect for all individuals, their rights, and their property.... Behavior which is disruptive to individual student learning or to the environment of the high school will not be tolerated."); Attleboro High School Handbook, "The Discipline Process," ("Because all members of the school community are subject to both the laws of the Commonwealth and City Ordinances, the school will report acts which may violate the law to the police as appropriate. These acts include but are not limited to,...behavior of students which endangers the safety of themselves or others..."); Attleboro High School Handbook, "Code of Conduct," (Group IV: 3-5 day suspension...*8. Harassment or bullying of a student.").

The Attleboro School Committee and Attleboro High School administered specific policies and procedures to address harassment, sexual harassment, and bullying, reportedly in accordance with G.L. c. 151C:

Attleboro High School will provide to all an environment free from harassment. It is committed to courteous and considerate treatment of students and employees at all times as an accepted standard of behavior. Attleboro High School will have an atmosphere free of tension caused by demeaning or inappropriate religious, racial, sexual or ethnic comments. It is the policy of Attleboro High School to prohibit harassment by any of its agents, officers, employees or students and has set forth a process by which allegations of harassment may be filed,

investigated and resolved.... ¶ Harassment includes communications such as gestures, jokes, comments, innuendos, notes, display of pictures or symbols, communicated in any form, including orally, in writing, or electronically via the Internet, cell phones, text messaging, or in any other way, that shows disrespect to others based upon race, color [sic] sex, religion, national origin, sexual orientation, age, or disability. ¶ Sexual harassment includes sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature. Sexual harassment has the purpose or effect of interfering with a person's work or educational performance by creating an intimidating, hostile, or offensive working or learning environment. Sexual harassment may take many forms, including but not limited to the following: 1) Verbal harassment or abuse; ... 3) Assault, inappropriate touching, impeding movement, comments or gestures, written documents or a suggestive or derogatory nature.... ¶ The act of **bullying** [emphasis in original] may accompany harassment. Bullying is defined as the severe or repeated use by one or more students of a written, verbal, or electronic expression, or a physical act or gesture, or any combination thereof, directed at another student, that has the effect of causing physical or emotional harm to the other student or damage to the other student's property and creating a hostile environment at school for the other student.... ¶ The Attleboro Public Schools will promptly investigate every complaint of harassment. If it determines that harassment has occurred, it will take appropriate action to end the harassment and to ensure that it is not repeated.

Attleboro High School Handbook, "Harassment, Sexual Harassment, and Bullying."

In addition to the policy on "Harassment, Sexual Harassment, and Bullying" in the Attleboro High School Handbook, the Attleboro School Committee approved and adopted Policy JICFB, "Anti-Bullying" in 2011. Policy JICFB defines bullying as

the repeated use by one or more students of a written, verbal, or electronic expression, or a physical act or gesture, or any combination thereof, directed at a target that: • causes physical or emotional harm to the victim or damage to the target's property; • places the target in reasonable fear of harm to himself/herself, or of damage to his/her property; • creates a hostile environment at school for the target; • infringes on the rights of the target at school; or • materially and substantially disrupts the education process or the orderly operation of a school.

Policy JICFB describes prohibitions and preventive measures that school officials and administrators must take to stop bullying on and off school property and at school

functions:

Bullying shall be prohibited: • on school grounds; • on property immediately adjacent to school grounds; • at a school-sponsored or school-related activity, function or program whether on or off school grounds; • at a school bus stop; • on a school bus or other vehicles owned, leased or used by the Attleboro school district; or, • through the use of technology or an electronic device owned, leased or used by the Attleboro public schools. [¶] Bullying and cyberbullying are prohibited at a location, activity, function or program that is not school-related or through the use of technology or an electronic device that is not owned, leased or used by the Attleboro School district if the bullying: • creates a hostile environment at school for the target; • infringes on the rights of the target at school; or • materially and substantially disrupts the education process or the orderly operation of a school. [¶] The Superintendent and/or his/her designee shall oversee the development, monitoring and updating of a prevention and intervention plan.... The bullying prevention and intervention plan shall be updated at least biennially. [¶] The Principal is responsible for the implementation and oversight of the bullying prevention and implementation plan within his or her school.

No reasonable or effective measures were taken by the school system to address Noelle-Marie's discrimination, harassment, or abuse. Timely and meaningful investigation was not undertaken. Noelle-Marie's complaints were treated with skepticism. No effective discipline was imposed, as required by mandatory school administration policies. Staff failed to recognize the manifestations of Noelle-Marie's bullying, failed to deter student intimidation, failed to make clear the consequences of bullying, and failed to employ community resources to prevent violence, all in violation of School Committee Policies. None of Noelle-Marie's assailants were expelled or prosecuted. High School administrators told Mrs. Harrington that the school could do nothing about bullying off school grounds although School Committee Policy JICFB specifically prohibited it and required investigation, action, and discipline.

LIABILITY

The City may be held liable under the Massachusetts Tort Claims Act, G.L. c. 258, §2, for the negligence of school personnel in enforcing School Committee policies and procedures, for the school administration's and the School Committee's negligent failure to train and supervise school staff properly, and for negligently hiring and/or retaining staff, *inter alia*. The conduct of Attleboro High School staff, administrators, and the School Committee demonstrates such negligent failures of enforcement of mandatory policies, hiring, retention, training and supervision.

The Massachusetts General Court mandated in the Education Reform Act of 1993 that school districts adopt policies and procedures "pertaining to the conduct of students [which] shall include ... standards and procedures to assure school building security and the safety of students and school personnel." G.L. c. 71, §37H. The Attleboro School Committee adopted such policies and procedures, as set forth in part above. Many of the applicable policies mandated specific procedures for curtailing and preventing student violence. However, the Committee and the administration, which acted as its agent, failed to train school staff adequately in the enforcement of such policies and procedures, and failed to ensure that the policies and procedures were being carried out properly in accordance with the law and community safety standards. The failure to follow existing School Committee policies and procedures will support a civil cause of action. *Pavadore v. School Committee of Canton*, 19 Mass. App. Ct. 943, 944 (rescript), *further app. rev. denied*, 394 Mass. 1102 (1985). "Discretionary function immunity does not apply in cases in which a government official's actions were mandated by statute or regulation." *Brum v. Town of Dartmouth*, 428 Mass. 684, 690 (1999). The failure to supervise students and professional staff does not constitute a discretionary function which would except the City from liability under the Tort Claims Act. *Alake v. City of Boston*, 40 Mass. App. Ct. 610, 613 n. 5, 614, *further app. rev. denied*, 423 Mass. 1105 (1996). Decisions by school personnel and administrators to intervene or not in student misconduct are "ministerial in nature" and involve "no social, political, or economic policy" but rather, especially in the instant action, concern the "implementation of 'previously established policies or plans'". *Id.*, 40 Mass. App. Ct. at 614, *quoting Whitney v. Worcester*, 373 Mass. 208, 218 (1977).

Nor is the City immunized from liability by G.L. c. 258, §10(j). Although *Brum* interpreted that exception broadly, and *Kent v. Commonwealth*, 437 Mass. 312, 318 (2002) apparently requires an "affirmative act" by the public employer which creates the "'condition or situation' that results in harm inflicted by a third party," the systemic deficiencies and conduct of school administrators with respect to the policies established by the Attleboro School Committee lifts the City's presumptive immunity. School staff and administration's refusal to enforce the policies mandated by the School Committee, and the School Committee's failure to ensure that their policies were being implemented, empowered Noelle-Marie's assailants to engage in violent, bullying, intimidating, and anti-social activities prohibited by Committee policies. It is well recognized in law enforcement that intervention is required to break patterns of bullying and violence and that the refusal or failure to intervene by those with authority to do so empowers bullies to continue and escalate levels of violence. In recognition of that pattern, Policy JICFB, "Anti-Bullying," mandated school administrators and supervisors to make clear to students that bullying would not be tolerated and would be grounds for disciplinary action. Despite notice of on-going harassment by students under their control, school staff did not make clear to Noelle-Marie's assailants that their abuse would have severe consequences. They did not "promptly investigate" the reports of harassment and did not take

appropriate “[d]isciplinary actions,” as mandated by the Policy. They did not call upon non-emergency crisis teams to assess and address the harassment and intimidation, or notify the Attleboro Police Department while there was time to act before Noelle-Marie was forced to withdraw from Attleboro High School. As a result, school staff, administration, and ultimately the School Committee effectively ratified the intimidation, enabled the bullying, and increased the level of physical and emotional abuse. The refusal of school staff, administration, and the School Committee to enforce the Committee’s own policies and procedures at a time when Noelle-Marie’s assailants could have been deterred from escalating their level of violence, “materially contributed to creating the specific ‘condition or situation’ that resulted in the harm” to Noelle-Marie Harrington. *Kent*, 437 Mass. at 319. The City is not immune from liability under the Tort Claims Act.

Moreover, even were the City to be held immune under the Tort Claims Act, it still would be liable for violations of Title IX and subject to liability under that and other civil rights statutes. The City also would be liable for violating the explicit Constitutional provisions guaranteeing Noelle-Marie’s “safety” and “security,” Massachusetts Declaration of Rights, Preamble, Arts. I, X, XII, CVI, in a claim modeled upon *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). *Bivens* actions have been permitted directly under the Declaration of Rights. *Phillips v. Youth Development Program, Inc.*, 390 Mass. 652, 657-60 (1983); *Layne v. Superintendent, Massachusetts Correctional Institution, Cedar Junction*, 406 Mass. 156, 158-61 (1989); *Horsemen's Benevolent and Protective Association, Inc. v. State Racing Commission*, 403 Mass. 692, 694 n. 1, 698 (1989) (“*Horsemen's*”); *O'Connor v. Police Commissioner of Boston*, 408 Mass. 324, 325 (1990). They may be asserted in addition to, or in substitution for, claims under the Massachusetts Civil Rights Act. *O'Connor*, 408 Mass. at 325; *Horsemen's*, 403 Mass. at 698. Unlike the federal Bill of Rights, which was added as a charter of negative liberties to prevent the federal government from trampling the rights belonging to citizens of the united independent States, *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 195-96 (majority opinion), 204, 211-12 (Brennan, J., *dissenting*) (1989), the Massachusetts Declaration of Rights explicitly codifies the social compact formed by the free citizens who established this Commonwealth. The social compact’s guarantee of the literal safety and security of its covenantors was accepted in Massachusetts at the time the Declaration of Rights was drafted. See 1 *The Founding Fathers: JOHN ADAMS: A Biography in His Own Words* (J. Peabody, ed., 1973) 182 (*Thoughts on Government* (1776)) and 148 (closing argument of John Adams in *King v. Stewart*, (1773-1774) (tort suit seeking damages for plaintiff against patriot mob for breaching social compact by invading plaintiff’s home). The U.S. Supreme Court decision in *DeShaney*, holding that federal substantive due process does not protect citizens against each other, does not state Massachusetts substantive due process as reflected in the Declaration of Rights. *Matter of McKnight*, 406 Mass. 787, 800-801 (1990) (discussing Superior Court decision to that effect); *McClure v. Town of East Brookfield*, No. 97-2004B, 1999 WL

1323628 (Worcester Sup. Ct., March 11, 1999)(denying summary judgment to police chief in case alleging failure to enforce laws against domestic violence). As there is no equivalent federal constitutional right, federal case law "is of little relevance in analyzing the enforceable [state constitutional] right." *Doe v. Superintendent of Schools of Worcester*, 421 Mass. 117, 137 n. 4 (1995)(Liacos, C.J., *dissenting*). Justices Ireland, Marshall, and Abrams expressed their dissatisfaction with the result with which they felt constrained to concur in *Brum*, 428 Mass. at 708-09. The First Circuit Court of Appeals expressed reluctance to concur with the majority of federal circuits which have found no federal constitutional right to protect students in public schools. *Hasenfus v. LaJeunesse*, 175 F.3d 68, 72 (1st Cir. 1999), *discussed in Willhauck v. Town of Mansfield*, 164 F.Supp.2d 127, 133-34 (D.Mass. 2001). The Declaration of Rights provides the vehicle which was denied those courts in determining whether to recognize an enforceable duty to protect public school students against violence. The Superior Court has recognized that a student may assert a *Bivens* type claim to recover damages for the violation of his state constitutional substantive due process rights to safety and protection due to the failure of school officials to protect him from school violence. *Parsons ex rel. Parsons v. Town of Tewksbury*, 26 Mass.L. Rptr. 555 (Middlesex Super.Ct., January 19, 2010, Fishman, J.) (Order on Defendants' Motion to Dismiss). Although Justice Fishman ruled that school officials' conduct must shock the conscience to support liability, the conduct of the instant defendants satisfies that standard.

DAMAGES

Noelle-Marie Harrington underwent years of intensive psychological counseling and medical care due to the discrimination, harassment, physical abuse, and emotional abuse that she sustained at the Brennan Middle School and Attleboro High School. Her medical bills alone exceed Seventy-Six Thousand (\$76,000.00) Dollars. Noelle-Marie's damages far exceed the Tort Claim Act statutory cap of One Hundred Thousand (\$100,000) Dollars.

Noelle-Marie's mother asserts claims for the loss of her daughter's services and consortium, for the medical and psychological expenses which she incurred to care for Noelle-Marie, and for the pain and emotional distress that the City's negligence caused her family. Her damages exceed the Tort Claim Act statutory cap of One Hundred Thousand (\$100,000) Dollars.

DEMAND

Noelle-Marie's tort claims are limited by the Massachusetts Tort Claims Act to a maximum value of One Hundred Thousand (\$100,000) Dollars. G.L. c. 258, § 2. Her civil rights claims are not so limited. She intends to pursue them. As you know, she already commenced proceedings in the Massachusetts Commission Against Discrimination and withdrew her Charge to pursue it in Superior Court. Her civil

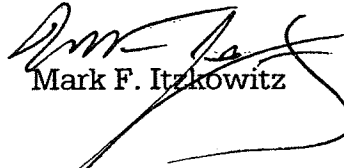
rights claims are not covered by this demand.

Mrs. Harrington seeks the statutory maximum of One Hundred Thousand (\$100,000) Dollars for the loss of Noelle-Marie's services and consortium, and for the pain and emotional distress that the City's negligence has caused her.

In an effort to resolve the Harrington family's tort claims without litigation at the present time, demand is hereby made for payment by the City of Two Hundred Thousand (\$200,000.00) Dollars. Please direct your response to this demand to my attention at the above address within the time permitted by the Massachusetts Tort Claims Act. Do not contact Noelle-Marie Harrington or her mother directly, and do not permit School authorities or the Police to attempt to contact them on behalf of the City or otherwise.

Thank you for your consideration of this matter.

Very truly yours,



Mark F. Itzkowitz

MFI:mri

cc: The Honorable David Murphy, Lori Scales, William Larson, Julienne Singer,
James Stors, Dianne Sawyer, Stephen Withers, Frances Zito, Michael
Tyler, School Committee
The Honorable, Kenneth M. Sheehan, Superintendent
The Honorable Bill Runey, Principal
Mrs. Corrine Harrington