

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**JANE DOE, INDIVIDUALLY, AND AS
NEXT FRIEND OF MINOR T.W.**

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Plaintiffs,

v.

CIVIL ACTION NO.3:15-CV-03811-B

**DALLAS INDEPENDENT SCHOOL
DISTRICT**

Defendant.

JURY TRIAL DEMANDED

PLAINTIFFS’ FIRST AMENDED ORIGINAL COMPLAINT

COMES NOW, Jane Doe, Individually, and as Next Friend of T.W., her minor daughter (“Plaintiff”), and for her causes of action against Defendant Dallas Independent School District (“DISD”), (“Defendant”) would show the Court as follows:

PARTIES

1. Plaintiff Jane Doe is the natural mother of T.W., a child who attended Justin F. Kimball High School (“Kimball”) during all periods relevant to the facts giving rise to this Complaint. Jane Doe’s identity is being made known to the Defendant under separate cover due to the sensitive nature of this matter.

2. T.W., a minor, and the biological daughter of Plaintiff Jane Doe, was (14) years of age at the time of the incidents described herein. T.W.’s identity is being made known to the Defendant under separate cover due to the sensitive nature of this matter in

that T.W. was repeatedly sexually assaulted and raped at the Defendant's school during school hours, and that she is still a minor child with severe disabilities that qualify her as "special needs."

3. Defendant Dallas Independent School District (DISD) is a municipal agency responsible for oversight, rulemaking, compliance with state and federal law, and control of the public primary and secondary schools in Dallas, Dallas County, Texas and receives federal funding. DISD conducts its principal operations at 3700 Ross Avenue, Dallas, Texas 75204-5491. Michael Hinojosa is the Superintendent of Dallas Independent School District and is its registered agent for service of process. Dallas Independent School District has been served with process, has not answered, but has filed a *12(B)1 and 12(b)(6) Motion to Dismiss Plaintiff's Original Complaint and Brief in Support Thereof*.

JURISDICTION AND VENUE

4. Subject-matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because this is a civil action that arises under the Constitution, laws, or treaties of the United States. This civil action arises under 20 U.S.C. § 1681, or "Title IX," and 42 U.S.C. § 1983, and as a result of violations by Defendant of Plaintiffs' rights under the substantive Due Process Clause of the Fourteenth Amendment to the United States Constitution. At all relevant times the Defendant, including all its employees and agents, was acting under the color of state law. *Lauderdale v. Texas Department of Criminal Justice*, 512 F3d 157 (5th Cir. 2007)).

5. This Court has personal jurisdiction over Defendant Dallas Independent School District. Defendant Dallas Independent School District is a school district

organized under the laws of the State of Texas, conducts its principal operations at 3700 Ross Avenue, Dallas, Texas 75204-5491 which is an address within the jurisdiction of the Northern District of Texas.

6. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial portion of the events at issue occurred in this district. Kimball High School where the Plaintiff child, T.W. was repeatedly sexually assaulted, is located in Dallas County, Texas, which is one of the counties over which the Northern District of Texas exercises jurisdiction.

FACTS GIVING RISE TO THE ACTION

7. T.W. started attending Kimball High School (“Kimball”) in her 9th grade year in the Fall Semester of 2013 when she was 14 years old.

8. Prior to attending Kimball, T.W. was diagnosed with severe physical, mental, and learning disabilities as a result of her suffering from Cerebral Palsy and Static Encephalopathy. The Defendant including but not limited to the administration at Kimball was aware of this prior to T.W. starting school at Kimball.

9. While T.W. was attending Kimball the Defendant prepared a Full and Individual Evaluation of her which reflects that the Defendant was aware that T.W.: “has a history of severe brain damage” , “continues to demonstrate a gross motor delay”, “has significant difficulty generalizing many concepts that relate to academic learning. Her overall Adaptive Behavior is in the low range. Her Cerebral Palsy and Static Encephalopathy negatively impacted her Nonverbal ability. This in turn negatively impacted her overall cognitive ability. Her health impairments appear to negatively

impact both her academic and adaptive behavior abilities. Based on a review of previous evaluations and information from the ARD committee, [T.W.] continues to exhibit intellectual weakness.” Also “her vision is poor and cannot be corrected.”

10. T.W.’s school records also reflect that she “has insufficient mobility skills for safe travel on regular school bus” at the time she endured the sexual assaults by her classmate at Kimball.

11. Due to T.W.’s learning disabilities she was considered by DISD to be special needs, qualifying her for special classes including Functional Life Skills (“FLS”) and requiring the Defendant to have an educational plan in place for her at all times.

12. Jane Doe had been informed by T.W.’s school and medical professionals that T.W.’s mental and cognitive development was lagging at least 5 years behind her biological age and Jane Doe had discussed this with administrators at Kimball prior to January 2014. Thus, while T.W. was chronologically 14 years of age at the time of the sexual assaults at Kimball, she mentally and cognitively functioned at the level of a 9-year-old child.

13. From approximately August 2013 until T.W.’s departure from Kimball in March, 2014, Monica Gray (“Gray”) served as her case manager and was charged with administering T.W.’s special needs educational plan.

14. Starting in the Fall Semester of 2013, T.W. and V. A. (whose identity has been made known to the Defendant confidentially under separate cover due to the sensitive nature of this matter) were both special needs students in Ms. Jones’ FLS classroom at Kimball. V.A. was 20 years of age at the time, a fully grown adult male,

physically much larger and stronger than T.W.

In the early Fall Semester of 2013 V. A. started physically grabbing T.W.'s buttocks and genital area in the school hallways and lunchroom at Kimball. T.W. reported this offensive touching to Ms. Jones, T.W.'s FLS teacher, shortly after it started. Nothing was done about V.A.'s behavior and the sexual assaults on T.W. continued.

15. During the very early part of the Fall Semester of 2013, M.E. a young female student at Kimball, (whose identity has been made known to the Defendant under separate cover due to the sensitive nature of this matter and the belief that she is still a minor), reported being touched sexually inappropriately by V.A. to Ms. Gilbert the assistant to Mr. Waters who was vice-principal of Kimball at all times relevant to the issues in this Complaint. M.E. did not speak English, and Ms. Gilbert who is fluent in Spanish reported in an ARD meeting in September 2013 in which Vice Principal Waters and Ms. Gray (T.W.'s case manager) were in attendance, that she had been notified of this inappropriate sexual contact by V.A. with M.E. After M.E.'s report of V.A.'s sexual assaults on her to Vice Principal Waters through Ms. Gilbert and Ms. Gray, she was placed in a separate classroom from V.A. Despite the fact that T.W. had reported to her teacher Ms. Jones that V. A. had touched her in a sexually inappropriate manner on several occasions, T.W. was still required to be in the same classroom as V. A.

16. Later in the Fall semester of 2013 another student at Kimball, P. A. (whose identity has been made known to the Defendant confidentially under separate cover due to the sensitive nature of this matter and the belief that she is still a minor) and M. E. both reported to Gray that while they were off campus at a school function at CiCi's Pizza that V.A. touched them inappropriately on their buttocks. The two girls told

Gray that they had previously reported this inappropriate sexual touching at the time it was occurring to Ms. Jones, T.W.'s teacher. Gray wrote up these incidents and turned her reports into Vice Principal Waters and Principal Jones.

17. Also during the Fall of 2013, another student at Kimball reported to Ms. Gray (T.W.'s case manager) that V.A. was making violent threats against him during lunch and that V.A. raised his fist and threatened to "hit him hard". This student told Ms. Gray that he had already informed Ms. Jones, T.W.'s teacher of this and that as a result of V.A.'s physical threat, this student was then separated from V.A. Upon learning of Gray immediately wrote up a report regarding what she had been told about V. A's violent threat against the student and gave it to Vice Principal Waters and Principal Jones.

18. Additionally during the Fall of 2013 Kimball administration was made aware that due to V.A.'s prior misbehavior he had not been allowed to attend classes at the DISD Magnet school since he needed to be closely monitored at all times.

19. Finally, during the fall of 2013, Kimball administrators were made aware that V.A. also had previous sexual misbehavior issues at the private school he attended prior to being enrolled at Kimball. Vice Principal Waters and Principal Jones were informed that during his time in private school, V.A. had to be physically pulled off of young girls.

20. Prior to and on December 3, 2013 V.A. was on a Behavior Plan developed by the Defendant DISD.

21. Prior to December 3, 2013, D. L. another student at Kimball (whose identity has been made known to the Defendant confidentially under separate cover due to the

sensitive nature of this matter and the belief that he is still a minor) reported to Ms. Gray that V. A. told him that V.A. wanted to “hump” (*have sexual intercourse with*) T.W. Gray immediately wrote this in a report and gave it to Vice Principal Waters, thereby putting Kimball administration on notice that V.A. (an adult) had expressed a desire to have sexual intercourse with T. W. (a minor).

22. On December 3, 2013 T.W. reported to Ms. Gray, her case manager, that she was being groped by V.A. and that she did not like it when V.A. was grabbing her buttocks and touching her genital area. Ms. Gray reported that T.W. was clearly very “visibly upset” when she recalled this unwelcome touching by V.A.

23. T.W. reported to Ms. Gray on December 3, 2013 that V.A. had touched her multiple times, with the most recent assault occurring that day in the cafeteria when V.A. hugged and kissed her. T.W. told Gray that she had told V.A. to stop touching her but that he would not stop.

24. T.W. also reported to Ms. Gray, her case manager, on December 3, 2013 that V.A. had tried *numerous times* to pull her into the bathroom in the rear of Ms. Jones’ FLS classroom with him and she told him “no”. T.W. told Gray that she had reported this to Ms. Jones, her FLS teacher, shortly after each of these incidents happened.

25. Ms. Gray immediately reported T.W.’s complaints about V.A to Vice Principal Waters and Principal Jones on December 3, 2013, and Gray tried to call Jane Doe, T.W.’s mother, at that time to inform her of what T.W. reported. Ms. Gray was unsuccessful in reaching Jane Doe by telephone at that time. A meeting regarding T.W.’s complaints was held on December 3, 2013 at Kimball. In attendance were Mr. Waters

(assistant principal), Mr. Lee (art teacher), Ms. Jones (FLS teacher), and Ms. Gray (T.W.'s case manager). Since the school could not reach Jane Doe by telephone that day, Jane Doe was not able to attend. Gray sent a letter home with T.W. on December 3, 2013 to Jane Doe, regarding T.W.'s complaints about V.A. sexually touching her. Ms. Gray also gave a copy of this letter to Vice Principal Waters and Ms. Jones on December 3, 2013.

26. A subsequent meeting was held on December 5, 2013 regarding V.A.'s assaultive, sexually inappropriate and harassing conduct towards T.W. In attendance at that meeting were Jane Doe and T.W., V.A. and his parents, Vice Principal Waters, and Principal Jones. During this meeting T.W. reported the various sexual assaults and harassment by V.A. at school during school hours, including the fact that V.A. had tried on multiple occasions to drag T.W. into the bathroom located in the rear of Ms. Jones FLS classroom. T.W. told the school teachers and administrators during this meeting that she told V.A. "no" when he would grab her buttocks and genital area and when he would try to pull her into the bathroom with him. T.W. also stated at that meeting that she had reported these incidents to Ms. Jones, her FLS teacher, as they were happening.

27. During the December 5, 2013 meeting it was discussed among the parents, teachers and school administrators that V.A. had been pulled out of Kimball previously because of his behavior problems and had been placed in a private school. V.A.'s mother commented during the meeting that someone at the private school had said that V.A.'s parents needed to "get him a lady" referring to a prostitute, due to his sexually inappropriate behavior there.

28. During the December 5, 2013 meeting Vice Principal Waters read aloud

from reports by Ms. Gray where she had reported to Waters that a Kimball student had told Ms. Gray that V.A. wanted to “hump” (*have sex with*) T.W. V.A. did not deny this when he was confronted with this statement in the meeting.

29. Immediately after the December 5, 2013 meeting Ms. Gray, T.W.’s case manager, who was not permitted by school administrators to be in the meeting, asked Jane Doe if the administrators had told to her in the meeting about all the other complaints that they had received about V.A.’s inappropriate behavior towards other children. Jane Doe replied that she had not been told about these other incidents. Gray told Jane Doe that she had written up several complaints from students about V.A. being sexually assaultive and physically threatening towards them and that Gray had provided these written reports to Vice Principal Waters and Principal Jones.

30. Shortly after the December 5, 2013 meeting regarding V.A.’s inappropriate sexual assaults and harassment of T.W., Kimball’s administrators relocated V.A.’s seat within Ms. Jones’ FLS classroom. School administrators moved V.A.’s seat to the very rear of the classroom behind a half-wall, directly in front of the restroom.

31. While V.A.’s new seat location moved V.A. a short distance away from T.W. during classes, his new seat location was *immediately in front of the restroom* located in the rear of Ms. Jones’ classroom. This relocation of V.A. was made despite the fact that T.W. had previously reported to Mr. Waters, the Vice Principal during the December 5, 2013 meeting that V.A. had on multiple occasions tried to pull T.W. into that restroom and the fact that school administrators were on notice that V.A. had expressed a desire to “hump” (*have sex with*) T.W. a minor.

Jane Doe was not informed by the school, nor did she know from any other source at that time, that V.A.'s seat was relocated directly in front of the restroom that her daughter had reported to school administrators V.A. had previously tried to drag her daughter into.

32. All the students in Ms. Jones' FLS class, including T.W., were required to use the restroom located in the rear of Mrs. Jones' classroom, which V.A. was now positioned directly in front of.

33. Kimball's administrators' decision to relocate V.A.'s seat directly in front of the restroom in response to T.W.'s complaints about V.A.'s inappropriate sexual harassment and assaults, resulted in T.W. having to walk directly past and in very close proximity to V.A. every time that she needed to use the restroom.

34. After V.A.'s seat was relocated directly in front of the restroom of the FLS classroom, on numerous occasions V.A. continued to touch T.W.'s buttocks and genital area and pulled on her trying to force her into that restroom as she walked by him to use the restroom. T.W. continued to report the sexual harassment and assaults to Ms. Jones as they occurred. The teacher's view of T.W.'s sexual harassment by V.A. was now obscured by the half wall V.A. was seated behind in front of the restroom. T.W. repeatedly asked Ms. Jones if she could use *another* restroom instead of the one that V.A. was now sitting in front of, but her requests were always denied. Instead, T.W. was told by Ms. Jones that the "school rules" required that T.W. use the restroom at the back of the classroom.

35. The restroom at the back of Ms. Jones' classroom contained a cot where

Ms. Gray had previously found V.A. asleep during regular class hours. Ms. Jones and other teachers were aware that V.A. had a habit of napping in the restroom on the cot during the school day as well.

36. Despite the fact that there were a lock and key to the FLS classroom restroom, according to Ms. Gray the restroom was almost always kept unlocked during school hours.

37. After the school holiday break in late December 2013, early January, 2014, T.W. continued to complain to Ms. Jones that V.A. was grabbing her buttocks and genital area and trying to pull her into the FLS classroom restroom.

One day during the last week of January 2014, while T.W. was in Ms. Jones' FLS classroom, she needed to use the restroom. Ms. Jones was not supervising her classroom at the time because she was purportedly attending another student's ARD meeting in another part of the school. Two teacher's aides, Ms. Comacho and Ms. Cruse were in T.W.'s classroom. Ms. Comacho at that time was a "one on one" aide for a particular special needs student in that class, and therefore was not supervising V.A. or T.W. or any of the other students in the class. This left one teacher's aide in charge of the rest of the special needs students in the FLS classroom, despite the fact that DISD's policy at the time required 2 teachers to be present at all times in the FLS classroom.

38. On that day in January 2014, T.W. had to walk directly by V.A. to use the restroom in Ms. Jones classroom. As he had done the day before and T.W. had reported to her teacher Ms. Jones, V.A. grabbed at her buttocks and genital area. Immediately after T.W. entered the restroom, V.A. followed directly behind T.W. pushing her into the

restroom closing the door behind them, forced her to take his penis into her mouth and then violently raped T.W. on the cot located in the restroom.

39. During the sexual assault and rape T.W. repeatedly told V.A. “No” and “Stop”. V. A. threatened to “hurt” T.W. if she cried out for help or tried to leave the restroom. Following the rape T.W. was fearful of reporting it because of the threats V.A. made to her while the assault was occurring. During the rape neither of the two teachers’ aides in the classroom nor anyone else on the school staff came to T.W.’s aid.

40. T.W. outcried a couple weeks later on February 12, 2014 to her mother Jane Doe that V.A. had raped her in the FLS restroom during class. T.W. told the police that V.A. got visibly angry with T.W. during the rape when she told him no and stop, and that she was very afraid of him. T.W. reported to the police in her outcry tape that the rape was “painful”, “hurtful” and “upset” her.

41. When Jane Doe learned of T.W.’s rape by V.A. she immediately reported it to the administration at Kimball, the police and Texas Family and Protective Services (CPS).

42. On February 13, 2014 there was a meeting at Kimball to discuss V.A.’s rape of Jane Doe. In attendance were Jane Doe and her husband, T.W., and Kimball Vice Principal Waters and Principal Jones. Jane Doe requested that Ms. Gray, T.W.’s case manager, who had previously reported V.A.’s inappropriate behavior and threats toward T.W. be allowed to attend the meeting, but that request was denied by Principal Jones. During the meeting T.W. described the details of the rape. Principal Jones and Vice Principal Waters took Jane Doe and her husband to show them the location where the

rape occurred. While the school administrators and Jane Doe and her husband were in Ms. Jones classroom, they and Ms. Jones showed Jane Doe and her husband the seat directly in front of the restroom, behind the half wall, where V.A.'s seat had been moved after the December 5, 2013 meeting concerning T.W.'s complaints about V.A.'s sexually inappropriate behavior. Jane Doe and her husband asked the administrators and teachers that day, why with so few students in the class why T.W. and her assailant V.A. were not missed from the classroom during the rape and why no one had checked on them and determined that they were "both" in the restroom.

43. Principal Jones and Vice Principal Waters told Jane Doe and her husband that day that they would be investigating the rape and assured them of T.W.'s safety, but Jane Doe was never given any information regarding whether they had in fact conducted any such investigation and if so, what the outcome of the investigation had been.

44. After the rape, Jane Doe took T.W. to the ER at Children's Hospital, where she was directed to the REACH clinic where T.W. was invasively examined and extensively tested due to the rape. The medical examination and resulting records from that examination confirm that there was evidence of sexual penetration.

45. Over the next couple of weeks, Kimball school personnel, as well as officials from Texas Department of Family and Protective Services (CPS), extensively questioned T.W. at school about the rape by V.A. without her parents' permission or knowledge.

46. Subsequent to the rape, Ms. Camacho, one of the aides present in T.W.'s classroom when the rape occurred, pulled T.W. aside multiple times when T.W. was at

school after her outcry and tried to convince T.W. that the rape “never happened” and T.W. “made it all up.”

47. Contrary to what Jane Doe had been told by the school’s administrators after the rape, and in clear contravention of DISD policy as set forth in the Student Handbook, Jane Doe learned that V.A. had not been suspended or expelled from school nor was any other action taken to ensure that V.A. had no further contact with T.W. Fearing for her daughter’s safety, because T.W. was still coming into contact with V.A. at school, Jane Doe held T.W. out of school starting March 6, 2014, while she repeatedly called Defendant DISD headquarters requesting that T.W. be transferred to another school.

48. Jane Doe continued to hold T.W. out of Kimball because V.A. was still being allowed to attend classes there in close proximity to her daughter. Jane Doe was getting no response from the Defendant to her requests to move her daughter to another school. In the meantime, to add insult to injury, as a result of her daughter being held out of school for her own safety, Jane Doe was notified that she was being charged with truancy.

49. Jane Doe had to appear in Court at a truancy hearing and explain to a Judge why she had withheld her daughter from attending school at Kimball.

50. Due to the Defendant’s failure to take action to remove V.A. from Kimball, T.W. was forced to eventually transfer to a new school. T.W. fell behind in her studies due to time missed because of the Defendant’s inaction. T.W. was also forced to leave her school, friends, and teachers, and relocate. As a special needs student this

sudden change of environment under these circumstances was extremely difficult and disruptive. She never received any tutoring or counseling from the school to compensate for these losses.

51. T.W.'s school records in 2015, reflect that after the rape, she was struggling with her grades, receiving unsatisfactory marks in the subjects of writing, science, and social studies/history, and did not meet the statewide assessment performance standard for science and social studies/history.

52. Plaintiff's forensic psychologist will testify that T.W. has sustained lifelong psychological damages from V.A. sexually assaulting and raping her for which she will need extensive lifelong therapy. In addition to physical pain, suffering and bodily injury, T.W. has suffered from emotional harm and mental anguish, and likely will continue to suffer from same in the future, as a direct result of Defendant's actions described herein. Further T.W. has had a loss of educational benefits as a direct result of the Defendant's actions described herein.

53. The actions of Principal Jones, Vice Principal Waters, T.W.s teacher Ms. Jones and teacher's aide Camacho demonstrate that each of them lacked adequate training and supervision by DISD in the area of how to properly respond to complaints of student on student sexual harassment and assault. Their failure to separate T.W. from V.A. when they had actual knowledge that V.A. was sexually harassing T.W. and likely to continue to do so made it more likely that the sexual harassment would continue and escalate. As a direct result of Defendant's deliberately indifferent actions in failing to adequately train or supervise its employees in this regard, Jane Doe sustained a variety of damages as described herein.

CAUSES OF ACTION

(Title IX)

**As Codified in 20 U.S.C. § 1681—
STATUTORY RIGHT TO EDUCATIONAL OPPORTUNITIES AND BENEFITS
AGAINST DEFENDANT DALLAS ISD**

54. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained within paragraphs 1 through 53 of this Complaint.

55. Defendant Dallas ISD is a recipient of federal funds.

56. T.W., a special needs minor student, was repeatedly sexually assaulted by her attacker V.A., an adult male student, on the basis of the child's sex, in a school classroom restroom during regular school hours.

57. The sexual assaults and harassment endured by Plaintiff T.W. were so severe, pervasive, and objectively offensive that they deprived T.W. of access to the educational opportunities or benefits provided by Kimball High School and DISD.

58. Principal Jones and Vice Principal Waters, officials of Dallas ISD, had the authority to take corrective action to end the sexual harassment and assaults committed by V.A. upon T.W. and to act upon the T.W.'s reports of the harassment and assaults.

59. Prior to the rape of T.W. by V.A., Principal Jones and Vice Principal Waters had actual knowledge of multiple sexual assaults and instances of sexual harassment by V. A. on T.W. and other young female students at Kimball High School while the assaults were ongoing by virtue of complaints made to Ms. Jones , T.W.'s teacher, complaints that Ms. Gray, T.W.'s case manager, received from several students and documented in her written reports to Vice Principal Waters and Principal Jones, as well as complaints *made directly by T.W. to Principal Jones and Vice Principal Waters* in

the December 5, 2013 meeting, described supra in Paragraphs 26, 27, 28 and 29 of this amended complaint. The substance of the complaints and information made known to DISD and Kimball teachers, case managers, aids staff and Kimball administrators, including Principal Jones and Vice Principal Waters is detailed in Paragraphs 13-34 of this amended complaint.

60. Principal Jones and Vice Principal Water's actual knowledge of the assaults is functionally equivalent to Dallas ISD's actual knowledge.

61. DISD through Principal Jones and Vice Principal Waters acted with *deliberate indifference* to the known sexual assaults and harassment by V.A. directed toward T.W. and their response to same was clearly unreasonable under the circumstances because they:

(a) failed to take any action to end the sexual assaults and harassment of Plaintiff T.W. by V.A., who was under their control and authority, after receiving many complaints about his sexually inappropriate behavior towards T.W. and others;

(b) took affirmative action that clearly endangered T.W. by relocating V.A.'s seat behind a half-wall directly in front of the restroom in Ms. Jones classroom after T.W. and others had informed the administrators that V.A. had expressed a desire to have sexual intercourse with her, was sexually assaulting and harassing her and trying to drag her into *that* restroom, and then *not permitting* T.W. to use any *other* restroom. This action not only made T.W. more liable to undergo sexual harassment and

assault, it caused her to be more vulnerable to sexual assault, harassment and rape.

(c) retaliated against T.W. by attempting to cover up the sexual assaults by V.A. of T.W. and by condoning teacher's aide Camacho's attempted coercion of T.W. into stating that the rape in the restroom never occurred;

(d) failed to take any disciplinary action against V.A. after receiving reports of the sexual assaults on and harassment by V.A. of T.W. in December 2013, or after they were notified of the rape by V.A. of T.W. on February 13, 2014;

e) failed to insure T.W.'s education and access to educational benefits and opportunities was not impacted due to the sexual assaults and harassment of which they had actual knowledge;

f) failed to insure T.W.'s safety at school in light of complaints of sexually inappropriate behavior by V.A. to T.W. and others, and in light of known prior sexually inappropriate behavior by V.A.

g) failed subsequent to the rape to properly segregate T.W. from the rapist, V.A. and to properly investigate the circumstances of the rape or to provide T.W. with any counseling or support all of which exacerbated T.W.'s emotional trauma.

h) In addition to the foregoing, the circumstances known by Defendant DISD, Principal Jones and Vice Principal Waters which made the response of these school administrators to T.W.'s sexual harassment and

sexual assaults by V.A. clearly unreasonable, deliberately indifferent and demonstrating recklessness and wantonness were:

1. the tender years and minority of T.W. (age 14) along with their knowledge of her lack of physical capacity vis a vis that of the 20-year-old adult male harasser, V.A.;

2. their lack of enforcement of DISD's own "2 teachers" in the room policy in special needs FLS classrooms;

3. their knowledge of recent ongoing sexual harassment of T.W. and other female students by V.A.;

4. actual knowledge that V.A., a 20-year-old adult, had expressed a desire to "hump" or have sexual intercourse with 14-year-old T.W., a minor;

5. actual knowledge that T.W.'s sexual harasser had actually tried on more than one occasion to drag T.W. into the restroom that they recklessly relocated his seat directly in front of.

6. actual knowledge of a policy or custom at Kimball that during FLS class periods students were required to use only the restroom located in the rear of the FLS or special needs classroom.

7. the Defendant had substantial control over both the harasser and the context in which the known harassment was occurring. The Defendant exposed T.W. knowingly to continued sexual assaults and made her more vulnerable to rape, and caused her to suffer it by virtue of the circumstances in which Defendant had intentionally placed T.W.

62. Principal Jones and Vice Principal Waters' deliberate indifference to the assaults amounted to an official decision not to remedy the outrageous and continuous sexual assaults and harassment suffered by T.W. and other female students.

63. Principal Jones and Vice Principal Waters deliberate indifference to the sexual assaults and harassment of which they had actual knowledge is functionally equivalent to Dallas ISD's deliberate indifference.

64. Principal Jones and Vice Principal Waters and, thus DISD's, deliberate indifference to the brutal sexual assaults that T.W. suffered deprived her of access to the educational opportunities and benefits provided by DISD to which T.W. was entitled in violation of 20 U.S.C. § 1681.

**42 U.S.C. § 1983—
DUE PROCESS RIGHT TO BODILY INTEGRITY AND FREEDOM FROM
STATE OCCASIONED BODILY HARM
AGAINST DEFENDANT, DALLAS ISD**

65. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained within paragraphs 1 through 64 of this Complaint.

66. T.W. has a liberty interest in her bodily integrity and freedom from state occasioned harm that is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. See, *Doe v. Taylor ISD* 15 F3d 443 (5th Cir. 1994)) and *Breen v. Tex . A & M Univ.* 485 F3d 325,332 (5th Cir. 2007)

67. V.A.'s sexual assaults of T.W. violated T.W.'s Due Process right to bodily integrity. DISD's deliberate indifference, acting under color of state law, to those assaults and its reckless action in response to the assaults and harassment resulted in T.W.

suffering state occasioned bodily harm a violation of her Due Process right to bodily integrity.

68. DISD through Principal Jones and Vice Principal Waters acting under of color of state law at all times had actual knowledge of the repeated sexual assaults and harassment of T.W. including but not limited to V.A.'s repeatedly groping her buttocks and genital area, kissing her, expressing his desire to "hump" (have sex with) her, and multiple instances of his grabbing and trying to pull T.W. into the FLS classroom restroom. Prior to her being raped by V.A. Principal Jones and Vice Principal Waters also had actual knowledge of the likelihood that V.A.'s sexual assaults on and sexual harassment of T.W. would continue and likely escalate without their intervention.

69. Principal Jones and Vice Principal Waters' actual knowledge of the likelihood of continuous assaults by V.A. on T.W. which was confirmed when they acknowledged receipt of reports from Ms. Gray, T.W.'s teacher and case manager, and when they were personally told of the assaults by T.W. during the December 5, 2013 meeting described supra.

70. Principal Jones and Vice Principal Waters demonstrated deliberate indifference towards T.W.—that is, knew of and disregarded an excessive risk to the child's health and safety—by failing to take action that was obviously necessary to prevent or stop the ongoing and continuous assaults, and moreover then took unreasonable reckless, wanton affirmative action in relocating V.A.'s seat, behind a half-wall – a wall which concealed his behavior, directly in front of the restroom that the Defendant required T.W. to use exclusively, thus placing T.W. in a position where she was more liable to sustain injury in violation of her Constitutional rights.

71. Principal Jones and Vice Principal Waters' affirmative action in placing T.W. in a dangerous circumstance, and their failure to take action that was obviously necessary to prevent or stop the assaults was a violation of T.W.'s Due Process right to bodily integrity and to freedom from state occasioned harm.

72. Defendant DISD, through its Board of Trustees and Superintendent Michael Hinojosa, policymakers, by and through delegating their policy making authority to Principal Jones, making him during all times relevant to the facts of this cause the *final policy maker* for DISD, and acting under color of state law, is liable for the wrongful conduct of Principal Jones, Vice Principal Waters and the other DISD employees involved in DISD's response to T.W.'s sexual harassment claims, because DISD practiced an *official policy* and/or had a custom of inadequately training or failing to train their employees to respond to sexual assaults on students such as the ones that were perpetrated on T.W. and others by V. A. in the instant cause—a policy or custom that was deliberately indifferent to the fact, known by school district officials, that sexual assaults of students on or around school grounds by other students, teachers, and/or intruders are commonplace in the DISD schools—a fact evidenced by, among other things, the dozens of newspaper accounts and reported cases describing such assaults. Because of these frequent assaults, DISD, was on notice that training in this particular area was deficient and likely to cause injury. That failure to train or inadequate training caused the violations of and was *the moving force* behind Defendant's violations of T.W.'s constitutionally-protected right to bodily integrity and to be free from state occasioned harm. As a direct and proximate result of Defendant DISD's violation of

T.W.'s right to bodily integrity and to be free from state occasioned harm, T.W. has suffered the harm and damages described above.

More specifically, the Defendant failed to supervise or train subordinate officials, in this case, inter alia, Principal Jones, Vice Principal Waters, T.W.s teacher Ms. Jones and others in how to effectively and properly respond to complaints of sexual harassment or assault. This training should have but did not in this instance include, inter alia, requirements for written documentation and expedited reporting to administration of complaints of sexual harassment, provision for the timely reporting of complaints, immediate segregation of the victim of the sexual harassment and the abuser or guidelines for the timely investigation of complaints or resolution thereof as well as disciplinary action to be taken. This failure to train and supervise was at all times known to policy makers with DISD and was a direct cause of the violation of T.W.s right to bodily integrity and freedom from state created harm as demonstrated by the facts set forth supra and this failure to train constituted deliberate indifference on the part of the Defendant. See, *Estate of Davis v. City of N. Richland Hills*, 406 F.3d. 375, 381. (5th Cir. 2006).

73. Defendant Dallas ISD, through its Board of Trustees and by and through its Superintendent Michael Hinojosa, as policymaker, delegating his authority to Principal Jones in this instance, is liable for the wrongful conduct of Principal Jones and Vice Principal Waters because Dallas ISD practiced a policy and/or had a custom of not having enforcing its own "2 teachers in the FLS classroom at all times" policy designed to insure the safety of and maximum educational benefit to special needs students such as T.W. with the District. The custom and practice of failing to consistently enforce this

school policy was deliberately indifferent to the fact, known by school district officials, that sexual assaults of students, particularly special needs students, on or around school grounds by other students, teachers, and/or intruders are commonplace in the DFW-area schools (particularly with special needs children) —a fact evidenced by, among other things, the dozens of newspaper accounts and reported cases describing such assaults. Because of these frequent assaults, DISD was on notice that supervision, including enforcement of the “2 teachers in the FLS classroom at all times” was imperative and any deficiency would likely cause injury to students such as T.W. The failure to enforce the 2 teacher requirement caused the violations of T.W.’s constitutionally-protected right to bodily integrity.

Additionally, Defendant Dallas ISD, through its Board of Trustees and by and through its Superintendent Michael Hinojosa, as policymaker, delegating his authority to Principal Jones in this instance is liable to Plaintiffs for deliberate indifference in the enforcement of a specific school policy as it related to T.W. namely that special needs students such as T.W. were required to use only the restroom in the rear of the FLS classroom. Under the specific circumstances known to DISD prior to T. W’s rape by V.A., namely that he had indicated a desire to have sexual intercourse with her and had on several occasions tried to drag her into that restroom, strict enforcement of this policy resulted in making T.W. more likely to undergo sexual harassment and assault. Strict enforcement of this policy with actual knowledge of the foregoing information by school officials was clearly unreasonable and demonstrated deliberate indifference on their parts.

As a direct and proximate result of Defendant Dallas ISD's violation of T.W.'s right to bodily integrity and freedom from state created harm, T.W. has suffered the harm and damages described herein.

**42 U.S.C. § 1983—
DUE PROCESS RIGHT TO CONTROL CHILD'S UPBRINGING
AGAINST DEFENDANT DALLAS ISD**

74. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained within paragraphs 1 through 73 of this Complaint.

75. Jane Doe, T.W.'s mother, has a liberty interest in controlling T.W.'s upbringing and directing her education that is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

76. Dallas ISD, violated Jane Doe's Due Process right to control T.W.'s upbringing when Principal Jones and Vice Principal Waters, acting under color of state law, condoned and ratified teacher's aide Comacho's efforts to try and coerce T.W. into saying that the rape did not occur. DISD further violated Jane Doe's Due Process right to control T.W.'s upbringing when Principal Jones and Vice Principal Waters unilaterally made the decision to relocate V.A. to a seat directly in front of the FLS restroom without informing or consulting Jane Doe so that she could make a decision based on the facts known to her about her child's previous sexual harassment and assault by V.A. as to whether such a relocation would constitute an additional potentially more serious risk of harm to her daughter's bodily integrity or to her ability to receive the educational benefits to which she was entitled by law.

77. Defendant Dallas ISD, through its Board of Trustees and Superintendent Michael Hinojosa, policymakers, by and through delegating their policy making

authority to Principal Jones, making him during all times relevant to the facts of this cause the *final policy maker* for DISD, and acting under color of state law, is liable for the wrongful conduct of Principal Jones, Vice Principal Waters and the other DISD employees involved in DISD's response to T.W.'s sexual harassment claims, because DISD practiced an *official policy* and/or had a custom of inadequately training or failing to train their employees to respond to sexual assaults on students such as the ones that were perpetrated on T.W. and others by V. A. in the instant cause—a policy or custom that was deliberately indifferent to the fact, known by school district officials, that sexual assaults of students on or around school grounds by other students, teachers, and/or intruders are commonplace in the DISD schools—a fact evidenced by, among other things, the dozens of newspaper accounts and reported cases describing such assaults. Because of these frequent assaults, Dallas ISD, was on notice that training in this particular area was deficient and likely to cause injury. That failure to train or inadequate training caused the violations of and was *the moving force* behind Defendant's violations of T.W.'s constitutionally-protected right to bodily integrity and to be free from state occasioned harm. As a direct and proximate result of Defendant Dallas ISD's violation of T.W.'s right to bodily integrity and to be free from state occasioned harm, T.W. has suffered the harm and damages described above.

More specifically, the Defendant failed to supervise or train subordinate officials, in this case, inter alia, Principal Jones, Vice Principal Waters, T.W.'s teacher Ms. Jones and others in how to effectively and properly respond to complaints of sexual harassment or assault. This training should have but did not in this instance include, inter alia, requirements for written documentation and expedited reporting to administration of

complaints of sexual harassment, provision for the timely reporting of complaints, immediate segregation of the victim of the sexual harassment and the abuser or guidelines for the timely investigation of complaints or resolution thereof as well as disciplinary action to be taken. This failure to train and supervise was at all times known to policy makers with DISD and was a direct cause of the violation of T.W.s right to bodily integrity and freedom from state created harm as demonstrated by the facts set forth supra and this failure to train constituted deliberate indifference on the part of the Defendant. See, *Estate of Davis v. City of N. Richland Hills*, 406 F.3d. 375, 381. (5th Cir. 2006).

78. Defendant Dallas ISD, through its Board of Trustees and by and through its Superintendent Michael Hinojosa, as policymaker, delegating his authority to Principal Jones in this instance, is liable for the wrongful conduct of Principal Jones and Vice Principal Waters because Dallas ISD practiced a policy and/or had a custom of not enforcing its own “2 teachers in the FLS classroom at all times” policy designed to insure the safety of and maximum educational benefit to special needs students such as T.W. with the District. The custom and practice of failing to consistently enforce this school policy was deliberately indifferent to the fact, known by school district officials, that sexual assaults of students, particularly special needs students, on or around school grounds by other students, teachers, and/or intruders are commonplace in the DFW-area schools (particularly with special needs children) —a fact evidenced by, among other things, the dozens of newspaper accounts and reported cases describing such assaults. Because of these frequent assaults, DISD was on notice that supervision, including enforcement of the “2 teachers in the FLS classroom at all times” was imperative and any

deficiency would likely cause injury to students such as T.W. The failure to enforce the 2 teacher requirement caused the violations of T.W.'s constitutionally-protected right to bodily integrity.

Additionally, Defendant Dallas ISD, through its Board of Trustees and by and through its Superintendent Michael Hinojosa, as policymaker, delegating his authority to Principal Jones in this instance is liable to Plaintiffs for deliberate indifference in the enforcement of a specific school policy as it related to T.W. namely that special needs students such as T.W. were required to use only the restroom in the rear of the FLS classroom. Under the specific circumstances known to DISD prior to T. W's sexual rape by T.W., namely that he had indicated a desire to have sexual intercourse with her and had on several occasions tried to drag her into that restroom, strict enforcement of this policy resulted in making T.W. more likely to undergo sexual harassment and assault. Strict enforcement of this policy with actual knowledge of the foregoing information by school officials was clearly unreasonable and demonstrated deliberate indifference on their parts.

The above described failures to train, failure to abide by the "2 teacher requirement," overly strict enforcement of the exclusive use of the FLS classroom restroom rule, and Kimball administrator's unilateral decision to relocate V.A. to a seat directly in front of the FLS classroom restroom, caused the violation of Jane Doe's constitutionally-protected parental rights. As a direct and proximate result of Defendant Dallas ISD's violations of Jane Doe's right to control the upbringing of her daughter, T.W. has suffered the harm and damages described herein.

**42 U.S.C. § 1983—
DUE PROCESS RIGHT TO FAMILIAL ASSOCIATION**

AGAINST DEFENDANT DALLAS ISD

79. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained within paragraphs 1 through 78 of this Complaint.

80. Jane Doe has a liberty interest in familial association and in the society and companionship of her child that is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

81. V.A., the attacker, violated Jane Doe's Due Process right to familial association when he sexually assaulted T.W. Defendant DISD acting under color of state law, violated Jane Doe's Due Process right to familial association when acting under color of state law, it took unilateral action in moving V.A. into a position in front of the FLS classroom restroom making T.W more susceptible to sexual harassment, assault or rape. DISD took this action without informing or consulting Jane Doe depriving her of her right to exercise care, custody or control of her daughter or to insure her safety and that she would not be deprived of educational benefit to which she was entitled by law.

82. The mental and emotional harm T.W. suffered as a result of the assaults interfered with the child's ability to maintain an emotional bond with her mother, thereby depriving Jane Doe of the society and companionship of T.W.

83. Further, Dallas ISD, by and through teacher's aide Comacho acting under color of state law, violated Jane Doe's Due Process right to familial association when it attempted to coerce T.W. into saying that the rape did not occur.

84. Dallas ISD, through Principal Jones and Vice Principal Waters's interference, acting under color of state law, with Mrs. Doe's right to familial association was arbitrary, capricious, and willful.

85. Defendant Dallas ISD, through its Board of Trustees and Superintendent Michael Hinojosa, policymakers, by and through delegating their policy making authority to Principal Jones, making him during all times relevant to the facts of this cause the *final policy maker* for DISD, and acting under color of state law, is liable for the wrongful conduct of Principal Jones, Vice Principal Waters and the other DISD employees involved in DISD's response to T.W.'s sexual harassment claims, because DISD practiced an *official policy* and/or had a custom of inadequately training or failing to train their employees to respond to sexual assaults on students such as the ones that were perpetrated on T.W. and others by V. A. in the instant cause—a policy or custom that was deliberately indifferent to the fact, known by school district officials, that sexual assaults of students on or around school grounds by other students, teachers, and/or intruders are commonplace in the DISD schools—a fact evidenced by, among other things, the dozens of newspaper accounts and reported cases describing such assaults. Because of these frequent assaults, Dallas ISD, was on notice that training in this particular area was deficient and likely to cause injury. That failure to train or inadequate training caused the violations of and was *the moving force* behind Defendant's violations of T.W.'s constitutionally-protected right to bodily integrity and to be free from state occasioned harm. As a direct and proximate result of Defendant Dallas ISD's violation of T.W.'s right to bodily integrity and to be free from state occasioned harm, T.W. has suffered the harm and damages described above.

More specifically, the Defendant failed to supervise or train subordinate officials, in this case, inter alia, Principal Jones, Vice Principal Waters, T.W.'s teacher Ms. Jones and others in how to effectively and properly respond to complaints of sexual harassment

or assault. This training should have but did not in this instance include, inter alia, requirements for written documentation and expedited reporting to administration of complaints of sexual harassment, provision for the timely reporting of complaints, immediate segregation of the victim of the sexual harassment and the abuser or guidelines for the timely investigation of complaints or resolution thereof as well as disciplinary action to be taken. This failure to train and supervise was at all times known to policy makers with DISD and was a direct cause of the violation of T.W.s right to bodily integrity and freedom from state created harm as demonstrated by the facts set forth supra and this failure to train constituted deliberate indifference on the part of the Defendant. See, *Estate of Davis v. City of N. Richland Hills*, 406 F.3d. 375, 381. (5th Cir. 2006).

That failure to train or inadequate training caused the violation of Jane Doe's constitutionally-protected right to familial association. As a direct and proximate result of Defendant Dallas ISD's violations of Jane Doe's right to familial association Jane Doe and T.W. have suffered the harm and damages described above.

86. Defendant Dallas ISD, through its Board of Trustees and by and through its Superintendent Michael Hinojosa, as policymaker, delegating his authority to Principal Jones in this instance, is liable for the wrongful conduct of Principal Jones and Vice Principal Waters because Dallas ISD practiced a policy and/or had a custom of not having enforcing its own "2 teachers in the FLS classroom at all times" policy designed to insure the safety of and maximum educational benefit to special needs students such as T.W. with the District. The custom and practice of failing to consistently enforce this school policy was deliberately indifferent to the fact, known by school district officials,

that sexual assaults of students, particularly special needs students, on or around school grounds by other students, teachers, and/or intruders are commonplace in the DFW-area schools (particularly with special needs children) —a fact evidenced by, among other things, the dozens of newspaper accounts and reported cases describing such assaults. Because of these frequent assaults, DISD was on notice that supervision, including enforcement of the “2 teachers in the FLS classroom at all times” was imperative and any deficiency would likely cause injury to students such as T.W. The failure to enforce the 2 teacher requirement caused the violations of T.W.’s constitutionally-protected right to bodily integrity.

Additionally, Defendant Dallas ISD, through its Board of Trustees and by and through its Superintendent Michael Hinojosa, as policymaker, delegating his authority to Principal Jones in this instance is liable to Plaintiffs for deliberate indifference in the enforcement of a specific school policy as it related to T.W. namely that special needs students such as T.W. were required to use only the restroom in the rear of the FLS classroom. Under the specific circumstances known to DISD prior to T. W’s sexual rape by T.W., namely that he had indicated a desire to have sexual intercourse with her and had on several occasions tried to drag her into that restroom, strict enforcement of this policy resulted in making T.W. more likely to undergo sexual harassment and assault. Strict enforcement of this policy with actual knowledge of the foregoing information by school officials was clearly unreasonable and demonstrated deliberate indifference on their parts.

The above described failures to train, failure to abide by the “2 teacher requirement,” overly strict enforcement of the exclusive use of the FLS classroom

restroom rule, and Kimball administrator's unilateral decision to relocate V.A. to a seat directly in front of the FLS classroom restroom, caused the violation of Jane Doe's constitutionally-protected right to familial association. As a direct and proximate result of Defendant Dallas ISD's violations of Jane Doe's right to familial association Jane Doe and T.W. have suffered the harm and damages described above.

**42 U.S.C. § 1983—
RETALIATION FOR EXERCISE OF FIRST-AMENDMENT RIGHTS
AGAINST DEFENDANT DALLAS ISD**

87. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained within paragraphs 1 through 86 of this Complaint.

88. T.W.'s report that she had been sexually assaulted in the bathroom of Kimball High School concerned an important matter of public concern and was, accordingly, protected by the First Amendment to the United States Constitution.

89. After the child reported that she had been sexually assaulted, DISD by and through teacher's aide Comacho, acting under color of state law, retaliated against her by engaging in a pattern over the course of several weeks of attempting to cover up the rape by trying to coerce this child with severe disabilities that had just been brutally sexually assaulted into saying that "nothing happened" to her.

90. Dallas ISD, by and through teacher's aide Camacho so intimidated the child that she ceased engaging in her constitutionally-protected right to comment upon matters of public concern: she would not even initially tell the representative from Texas Department of Family and Protective Services (CPS) what really happened.

91. Dallas ISD's actions, by and through teacher's aide Comacho were motivated entirely against the child's exercise of her constitutionally-protected right to

speak out about the attack she had suffered. DISD's actions caused T.W. to suffer such an injury that would chill a person of ordinary firmness from continuing to engage in the exercise of free speech in reporting her sexual assault.

92. Defendant Dallas ISD, through its Board of Trustees and Superintendent Michael Hinojosa, policymakers, by and through delegating their policy making authority to Principal Jones, making him during all times relevant to the facts of this cause the *final policy maker* for DISD, and acting under color of state law, is liable for the wrongful conduct of Principal Jones, Vice Principal Waters and the other DISD employees involved in DISD's response to T.W.'s sexual harassment claims, because DISD practiced an *official policy* and/or had a custom of inadequately training or failing to train their employees to respond to sexual assaults on students such as the ones that were perpetrated on T.W. and others by V. A. in the instant cause—a policy or custom that was deliberately indifferent to the fact, known by school district officials, that sexual assaults of students on or around school grounds by other students, teachers, and/or intruders are commonplace in the DISD schools—a fact evidenced by, among other things, the dozens of newspaper accounts and reported cases describing such assaults. Because of these frequent assaults, Dallas ISD, was on notice that training in this particular area was deficient and likely to cause injury. That failure to train or inadequate training caused the violations of and was *the moving force* behind Defendant's violations of T.W.'s constitutionally-protected right to bodily integrity and to be free from state occasioned harm. As a direct and proximate result of Defendant Dallas ISD's violation of T.W.'s right to bodily integrity and to be free from state occasioned harm, T.W. has suffered the harm and damages described above.

More specifically, the Defendant failed to supervise or train subordinate officials, in this case, inter alia, Principal Jones, Vice Principal Waters, T.W.s teacher Ms. Jones and others in how to effectively and properly respond to complaints of sexual harassment or assault. This training should have but did not in this instance include, inter alia, requirements for written documentation and expedited reporting to administration of complaints of sexual harassment, provision for the timely reporting of complaints, immediate segregation of the victim of the sexual harassment and the abuser or guidelines for the timely investigation of complaints or resolution thereof as well as disciplinary action to be taken. This failure to train and supervise was at all times known to policy makers with DISD and was a direct cause of the violation of T.W.s right to bodily integrity and freedom from state created harm as demonstrated by the facts set forth supra and this failure to train constituted deliberate indifference on the part of the Defendant. See, *Estate of Davis v. City of N. Richland Hills*, 406 F.3d. 375, 381. (5th Cir. 2006).

That failure to train or inadequate training caused the violation of Jane Doe's constitutionally-protected right to familial association. As a direct and proximate result of Defendant Dallas ISD's violations of Jane Doe's right to familial association Jane Doe and T.W. have suffered the harm and damages described above.

93. Defendant Dallas ISD, through its Board of Trustees and by and through its Superintendent Michael Hinojosa, as policymaker, delegating his authority to Principal Jones in this instance, is liable for the wrongful conduct of Principal Jones and Vice Principal Waters because Dallas ISD practiced a policy and/or had a custom of not enforcing its own "2 teachers in the FLS classroom at all times" policy designed to

insure the safety of and maximum educational benefit to special needs students such as T.W. with the District. The custom and practice of failing to consistently enforce this school policy was deliberately indifferent to the fact, known by school district officials, that sexual assaults of students, particularly special needs students, on or around school grounds by other students, teachers, and/or intruders are commonplace in the DFW-area schools (particularly with special needs children) —a fact evidenced by, among other things, the dozens of newspaper accounts and reported cases describing such assaults. Because of these frequent assaults, DISD was on notice that supervision, including enforcement of the “2 teachers in the FLS classroom at all times” was imperative and any deficiency would likely cause injury to students such as T.W. The failure to enforce the 2 teacher requirement caused the violations of T.W.’s constitutionally-protected right to bodily integrity.

Additionally, Defendant Dallas ISD, through its Board of Trustees and by and through its Superintendent Michael Hinojosa, as policymaker, delegating his authority to Principal Jones in this instance is liable to Plaintiffs for deliberate indifference in the enforcement of a specific school policy as it related to T.W. namely that special needs students such as T.W. were required to use only the restroom in the rear of the FLS classroom. Under the specific circumstances known to DISD prior to T. W’s sexual rape by T.W., namely that he had indicated a desire to have sexual intercourse with her and had on several occasions tried to drag her into that restroom, strict enforcement of this policy resulted in making T.W. more likely to undergo sexual harassment and assault. Strict enforcement of this policy with actual knowledge of the foregoing information by

school officials was clearly unreasonable and demonstrated deliberate indifference on their parts.

The above described failures to train, failure to abide by the “2 teacher requirement,” overly strict enforcement of the exclusive use of the FLS classroom restroom rule, and Kimball administrator’s unilateral decision to relocate V.A. to a seat directly in front of the FLS classroom restroom, resulted in violations to T.W.’s constitutionally-protected right of expression. As a result of Defendant Dallas ISD’s actions, T.W. has suffered the harm and damages described above.

**42 U.S.C. § 1983—
STATE CREATED DANGER
AGAINST DEFENDANT DALLAS ISD**

94. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained within paragraphs 1 through 93 of this Complaint.

95. Plaintiff asserts that the Defendant is liable to Plaintiff by virtue of a state-created danger under 42 U.S.C. § 1983 since the Defendant took specific affirmative acts which placed T.W. in immediate and imminent danger from further sexual assaults by V.A. This action directly resulted in severe harm to T.W. which otherwise would not have occurred.

96. Plaintiff can establish that Defendant used its authority to create a dangerous environment for the Plaintiff and acted with deliberate indifference to the plight of the Plaintiff. Defendant was put on notice by complaints by T.W. and other young students at Kimball that V.A. was a sexual predator and was sexually assaulting female students, including but not limited to T.W. In the school meeting that was conducted on December 5, 2013 T.W. informed Principal Jones and Vice Principal

Waters of various sexual assaults that V.A. had committed on her including trying to drag her into the bathroom in Ms. Jones' classroom while he was inappropriately sexually touching her. After being informed of this, instead of completely separating V.A. and T.W., the Defendant took affirmative actions that were clearly outrageous and unreasonable, and demonstrated deliberate indifference to her plight by relocating V.A.'s seat in T.W.'s classroom *directly in front of the bathroom that T.W. was required to use* and that she had previously informed the school administrators that V.A. had tried to drag her into. Defendant's affirmative action of relocating V.A.'s seat to directly in front of the bathroom put T.W. at significant risk of serious immediate and proximate harm and resulted within a very short time of her being raped in that bathroom by V.A. during class. The risk of T.W. being sexually assaulted by V.A. in that bathroom was obvious and known to the Defendant prior to the Defendant taking the affirmative action of moving V.A.'s seat directly in front of the bathroom. But for the very close proximity of V.A.'s seat to the bathroom V.A. would not have had the opportunity to get T.W. into the bathroom in order to rape her there. Defendant acted extremely recklessly and in conscious disregard of the risk to T.W. in relocating V.A.'s seat in front of the bathroom, with the knowledge that they had regarding the various sexual complaints about V.A. including specific information relating to V.A.'s previous sexual assaults on T.W.

97. The Defendant specifically used its authority to create a danger for T.W. of being sexually assaulted or raped by V.A. in that restroom, by relocating V.A.'s seat directly in front of that restroom behind a half wall, after it was on clear notice from multiple sources that V.A. had sexually assaulted T.W. and others and that V.A. was trying to drag T.W. into that very restroom having previously expressed a desire to

“hump” or have sexual intercourse with her. Further, the Defendant acted with deliberate indifference to the plight of T.W. by taking the reckless action it took in making her more vulnerable and exposing her to further significant risk of sexual assault by V.A. a known perpetrator of sexual harassment.

**42 U.S.C. § 1983—
SPECIAL RELATIONSHIP
AGAINST DEFENDANT DALLAS ISD**

98. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained within paragraphs 1 through 97 of this Complaint.

99. Plaintiff asserts that the Defendant is liable to Plaintiff by virtue of a special relationship under 42 U.S.C. § 1983, as set forth in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).

100. Plaintiff asserts that T.W. was severely physically, mentally, emotionally, and cognitively challenged at the time of the sexual assaults, of which the Defendant was clearly aware. The Plaintiff cognitively functioned at the level of a 9-year-old child at the time of the rape. The rapist was a 20-year male mentally challenged student, with a long history of sexual assaults, against T.W. and others.

101. Plaintiff asserts that under Texas law there is compulsory school attendance and that the school serves *in loco parentis*. Furthermore, the school practice and policy was to have 2 teachers in the FLS classroom at all times. At the time of the rape there were no teachers in the classroom; there was one aide (and another aide who was solely responsible for a single student). After V.A.’s seat was relocated directly in front of the restroom that T.W. was required to use, and the assaults continued, she asked

to use a different restroom and that request was denied, with her teacher Ms. Jones stating that the “Rules” required her to only use this restroom while she was in the FLS class.

102. T.W. was the equivalent of a prisoner during the time that she was in the FLS classroom. When she needed to exercise the bodily function of using the restroom, she was denied the opportunity of going anywhere else but to the restroom where she was ultimately raped by the known perpetrator of previous sexual harassment and assaults on T.W. Plaintiffs assert that at all times Defendant was acting under color of state law and that Defendants actions demonstrated deliberate indifference to her plight.

103. While the Fifth Circuit has refused to hold that “compulsory attendance laws alone create a special relationship”, Doe v. Hillsboro ISD, 113 F.3d 1412 (5th Cir. 1997), the circumstances in the case at bar go much further than compulsory attendance “alone”, and are similar to where other Courts have found a special relationship in public school settings.

STATE CLAIMS -

104. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained within paragraphs 1 through 103 of this Complaint.

105. Defendant’s conduct at the time and on the occasions in question constituted intentional infliction of emotional distress upon T.W. by forcing her to endure a rape during school hours, on school grounds, by a student with a known history and prior complaints by T.W. and others of being a sexual predator. A necessary component of the rape was the use of the cot located in the restroom on which the rape occurred –

use of tangible property that was instrumental in this rape of a severely physically and mentally handicapped child.

106. Defendant was negligent towards T.W. and Jane Doe in failing to provide adequate supervision to maintain a safe learning environment for T.W. at an institution that she was required by law to attend. Defendant was negligent in relocating V.A.'s seat directly in front of the restroom that V.A. had repeatedly tried to drag T.W. into, knowing that V.A. had already sexually assaulted T.W. and publicly stated his desire to "hump" or have sexual intercourse with her.

Defendant was negligent in denying T.W.'s the use of another restroom other than the one that the District placed V.A. in front of. Defendant was negligent in not having the proper staffing in the FLS classroom during the time the rape occurred. Defendant was negligent in the failing to investigate T.W.'s complaints. Defendant was negligent in their failure to separate V.A. from T.W., both before and after the rape. Defendant was negligent in trying to convince T.W. that the rape did not occur, and trying to convince her to not talk about it to anyone. Defendant was negligent in not promptly removing V.A. from the school after the rape to ensure T.W.'s safety and ability to continue to enjoy the educational benefits to which she was entitled. Defendant was negligent in not promptly assisting Jane Doe in relocating T.W. once Jane Doe made a decision that she had to withdraw her from Kimball due to threats to her safety from V.A.

107. Plaintiff incorporates by reference all the foregoing acts of negligence of the Defendant as pled in paragraph 105 and 106, and maintains that the constitute acts of gross negligence. Defendant at the time and on the occasions in question, acted with heedless and reckless disregard for the safety and welfare of Jane Doe, which disregard

was the result of deliberate indifference to the rights, welfare, and safety, of T.W.in violation of the laws of the State of Texas, and the United States, and thereby Defendant DISD was grossly negligent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests:

- a) that Defendant be required to answer this Complaint within the time required by law;
- b) that Plaintiffs be awarded damages that will fully compensate Plaintiff and T.W. for all injuries caused by Defendant's actions in violation of the United States Constitution and federal law, including but not limited to all actual damages including but not limited to mental anguish, emotional pain and suffering, bodily injury, medical and counseling expenses, and punitive damages;
- c) that Plaintiffs be awarded attorneys' fees authorized under 42 U.S.C. §1988 for Defendant's violations of 42 U.S.C. § 1983; and as authorized under 20 U.S.C. §1681;
- d) for a jury to hear and render judgment on those causes of action so triable; and
- e) all other relief to which Jane Doe and T.W. are entitled.

Respectfully submitted,

/s/ *Lori Watson*

Lori Watson

Texas State Bar No. 00791889

LORI WATSON, PLLC

Hal M. Browne

Texas State Bar No. 03213500

**LAW OFFICES OF HAL BROWNE,
PLLC**

2713 Black Sage Drive, Suite 100

Plano, Texas 75090

(972) 612-2593 – Telephone

(469) 375-5395 – Facsimile

Lori@loriwatsonlawfirm.com

halbrowne@hotmail.com

ATTORNEYS FOR PLAINTIFFS

DATED: February 18, 2016