

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

1) S.J., as parent, Conservator, and	§	
Next Friend of N.J.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
2) PERRYTON INDEPENDENT	§	
SCHOOL DISTRICT, and	§	
	§	
3) COLE UNDERWOOD,	§	
individually and in his official	§	Case No. _____
capacity as Athletic Director of	§	
Perryton ISD,	§	Jury Trial Demanded
	§	
Defendants.	§	Attorney Lien Claimed

PLAINTIFF’S COMPLAINT

Plaintiff S.J., as parent, Conservator, and Next Friend of N.J. (“Victim”), Plaintiff’s minor daughter, by and through his undersigned counsels of record, and for his causes of action against Defendants, Perryton Independent School District (“Perryton ISD”) and Cole Underwood (“Underwood”), individually and in his official capacity as Athletic Director of Perryton ISD, alleges and states:

I. THE PARTIES

1. Plaintiff, S.J., parent, Conservator, and Next Friend of Victim, is the father of Victim, and at all relevant times was a citizen of the State of Texas and a resident of Ochiltree County, Texas.

2. Victim, a minor, was a fifteen-year-old female student athlete at all times complained of herein. At all relevant times, Victim was a citizen of the State of Texas and a resident

of Ochiltree County, Texas. During the 2023-2024 academic school year, Victim attended Perryton ISD as a student and was a member of the Perryton High School women's basketball team.

3. Perryton ISD is a public educational institution located in Perryton, Texas. Perryton ISD is a Texas school district organized and existing under the laws of the State of Texas and has its principal place of business in Ochiltree County, Perryton, Texas. Perryton ISD receives federal funding and is subject to Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.*

4. Underwood was formerly the Athletic Director of Perryton ISD during the 2023-2024 academic school year. Underwood was initially hired by Perryton ISD to teach and was an Assistant Football Coach during the 2022-2023 academic school year. As Athletic Director, Underwood was the highest-ranking member of the Perryton ISD athletic department. Underwood graduated from Perryton ISD in 2013 and previously taught and coached football at Amarillo High School from 2017-2022. At all relevant times, Underwood was a citizen of the State of Texas and a resident of Ochiltree County, Texas.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, which gives District Courts jurisdiction over all civil actions arising under the Constitution, laws, and treaties of the United States.

6. This Court also has subject matter jurisdiction under 28 U.S.C. § 1343, which gives District Courts original jurisdiction over any civil action authorized by law to be brought by any person to redress the deprivation, under color of any State Law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the

jurisdiction of the United States; and any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights.

7. Pursuant to 28 U.S.C. § 1367, this Court also has subject matter jurisdiction to determine all pendent state law claims brought under the Texas Constitution, state statutes, and common law.

8. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Victim's claims occurred in this District, Defendants do business in the District, and Defendants reside and/or have their principal place of business in the District.

9. Perryton ISD has had actual notice of the claims herein since on or prior to January 2024. At a minimum, Perryton ISD received actual notice of the claims herein on or about March 22, 2024.

III. FACTUAL BACKGROUND

UNDERWOOD'S PRIOR EMPLOYMENT

10. As stated above, Underwood was previously employed by Amarillo High School ("AHS"), which is part of the Amarillo Independent School District ("Amarillo ISD"). During his employment, Underwood served generally as an assistant football and soccer coach for AHS from 2017-2022.

11. While at AHS, Underwood was well known within the school district's staff and athletic department for having inappropriate relationships and interactions with students, including minor female students.

12. For example, an Amarillo ISD coach has provided that Underwood regularly texted female students.

13. For example, an Amarillo ISD coach has provided that Underwood also regularly used social media platforms, including Snapchat, to communicate with students. Further, Underwood regularly posted and appeared on social media platforms with students, including female student athletes, such as Instagram and Snapchat.

14. For example, an Amarillo ISD coach has provided that Underwood regularly attended practices for female sports, e.g., volleyball practices, despite the fact that he was not affiliated with said female sports, and was repeatedly admonished for interacting with female athletes during their practices.

15. For example, an Amarillo ISD coach has provided that Underwood often “chaperoned” at the houses of underage students.

16. For example, an Amarillo ISD coach has provided that Underwood routinely shirked his employment responsibilities in favor of hanging around minor female athletes during the school day and “flirting” with minor female athletes while on duty at AHS.

17. While employed by AHS, Underwood received complaints about his behavior and on at least one occasion was placed on temporary administrative leave due to the allegations of an inappropriate relationship and contact with a minor female student. These allegations against Underwood included hosting a party at the home of an underage student where drinking and inappropriate conduct was overseen by Underwood.

18. An Amarillo ISD coach has provided that Underwood was given the nickname of “Perv” (euphemism of pervert) by athletic department staff at AHS while employed by Amarillo ISD.

19. While at AHS, Underwood intentionally ingratiated himself with influential members of the AISD school board and other influential members of the community. When faced

with allegations of inappropriate relationships, an Amarillo ISD coach has provided that Underwood would brag that he intended to contact such influential people for support against such allegations.

20. An Amarillo ISD coach has provided that Underwood was denied coaching positions within the AHS athletic department as a result of his inappropriate actions toward and contact with minor female students. Simply put, other members of the coaching staff at AHS were not comfortable with Underwood being around their student athletes.

21. Moreover, during Underwood's tenure at AHS, he was closely associated with fellow AHS coach, Kevin Ufford, who was arrested and charged in February 2020 for having an inappropriate relationship with an AHS female student.

22. Despite his history of inappropriate conduct with female students and his widespread nickname as "Perv" during his tenure at Amarillo ISD, Underwood was hired by Perryton ISD in 2022 by the former Athletic Director, who coached with Underwood at Amarillo ISD. Similar to Underwood, the former Athletic Director dealt with a sexual assault case during his employment at Perryton ISD as described below.

23. Further, the former Athletic Director was aware that Underwood had been placed on administrative leave while employed by Amarillo ISD and that certain coaches at AHS were critical of Underwood's behavior around female student athletes.

PERRYTON ISD POLICIES AND ACTIONS

24. Perryton ISD has written policies, *inter alia*, to protect students within its district from sexual harassment and harm (FFH Student Welfare), to wit:

Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent, or pervasive that it:
 - a. Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or
 - b. Creates an intimidating, threatening, hostile, or abusive educational environment.

Romantic or other inappropriate social relationships between students and District employees are prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. (See DH).

25. In addition, Perryton ISD has written policies, *inter alia*, which forbid any relationship between a student and the teacher (DH) and which subjects the student to sexual harassment (DH), namely:

An employee shall not engage in prohibited harassment, including sexual harassment, of:

1. Other employees. (See DIA).
2. Students. (See FFH; see FFG regarding child abuse and neglect).

While acting in the course of employment, an employee shall not engage in prohibited harassment, including sexual harassment, of other persons, including Board members, vendors, contractors, volunteers, or parents.

An employee shall report child abuse or neglect as required by law. (See FFG).

An employee shall not form romantic or other inappropriate social relationships with students. Any sexual relationship between a student and a District employee is always prohibited, even if

consensual. (See FFH).

As required by law, the District shall notify the parent of a student with whom an educator is alleged to have engaged in certain misconduct. (See FFF).

26. Perryton ISD has additional written policies for its Athletic Department concerning travel to and from athletic events, to wit:

TRAVEL POLICY:

Players will travel to and from games on the team bus. Some exceptions will be made when based on a “common sense” decision and necessity not just “want to”. Decisions will be made at the head coaches’ discretion.

Perryton Athletics Bus Policy falls under the following guidelines:

***Players must travel to and from the games on the team bus, unless they have received APPROVAL from the coaches for other modes of transportation PRIOR to departure.**

***Players may be released to a parent or legal guardian at out of town games with a signed and dated note releasing the athlete from the coach to the parents/legal guardian at the time they are released which requires the parent’s/legal guardian’s PRESENCE.**

***Players may be released to someone designated by the parent or legal guardian but a note and approval must be in the coach’s possession prior to leaving for the trip. Verbal confirmation by the parent is also necessary. If a coach does not have a signed note prior to leaving and verbal confirmation the athlete will not be release to the designated party. Just verbal or just a note will not work; it will take a combination of both in order for the athlete to be released to someone other than their parent/legal guardian.**

(emphasis in original).

27. Finally, Perryton ISD has written policies, *inter alia*, that prohibit teachers from communicating with students directly via electronic or telephonic means.

28. Despite these written policies, Perryton ISD failed to implement, instruct, and follow such policies.

29. A Perryton ISD coach has provided that Perryton ISD did not conduct in-service or other trainings concerning its written policies and procedures and, when asked whether Perryton ISD has policies and procedures for how teacher and coaches are expected to treat and interact with students, provided that he was “unaware” of any other policies and procedures other than what may be available in the “athletic policies.” Note, a review of the “Athletic Code of Conduct” reflects that it is only directed to students and parents, **and not** school employees, teacher, coaches, or administrators. A further review indicates that Perryton ISD violated said Athletic Code of Conduct with respect to Victim as described herein.

30. Another Perryton ISD teacher, when asked whether Perryton ISD has policies and procedures for how teacher and coaches are expected to treat and interact with students, provided, “No.” Further, said teacher also provided that the only knowledge or instruction she received regarding Perryton ISD policies and procedures was a form she was asked to execute at the beginning of the school year that confirmed said policies and procedures were available online or that a paper copy could be requested.

31. Another Perryton ISD coach, when asked whether Perryton ISD has policies and procedures for how teacher and coaches are expected to treat and interact with students, provided, “No.”

32. A former high-level administrator at Perryton ISD has also provided that while there are certain policies and procedures in the handbook, “it’s one of those things you don’t even read. You just sign it because you have to be there.” Further, said high-level administrator thought they were available “somewhere” online.

33. In direct contravention of its own policies, Perryton ISD teachers and staff routinely contact students directly using common telephonic applications.

34. Further, Perryton ISD has a policy that communications between teachers, staff and students are to be utilized solely through an electronic application called ParentSquare. As addressed more specifically below, ParentSquare was utilized in the sexual abuse of the Victim in this matter.

35. Most troubling, Perryton ISD has a recent history of sexual harassment and sexual abuse claims. In each such occasion, the written policies of Perryton ISD were ignored and/or violated with claims and accusations being made concerning sexual harassment toward and sexual abuse of Perryton ISD students. Within the last three (3) years, ***at least*** three (3) separate claims have been made concerning sexual harassment or sexual abuse of students at Perryton ISD by employees of Perryton ISD.

36. As recently as February 17, 2023, certain claims were brought against Perryton ISD, a certain coach at Perryton ISD, and involved students, for sexual assault, child pornography, and Title IX violations. The case was ultimately brought in the United States District for the Northern District of Texas, styled *D.K. v. [], M.S., J.C., Ragan Watson, and Perryton Independent School District*, Case No. 2:23-CV-25.

37. Said case involved, *inter alia*, gruesome allegations of sexual assault and inaction on the part of Perryton ISD and its Athletic Department to adequately address the alleged wrongdoing. Essentially, said case paints a similar picture of a broken and tasteless culture growing rampant through Perryton ISD.

38. Said case appears to have been resolved on or about April 2024, during the crux of the ongoing sexual harassment and sexual abuse that is described herein, and thus, these issues should have been of the utmost importance to Perryton ISD as a result of the existing litigation. However, despite said litigation, and the plethora of policy failures identified therein, the sexual

harassment and sexual abuse by Underwood of Victim was occurring and ongoing despite repeated complaints.

39. Further, as Athletic Director at Perryton ISD, Underwood relaxed requirements for coaches to be present in locker rooms at all times, as mandated by Perryton ISD's previous athletic director. Such mandate by Perryton ISD's previous athletic director was necessary as a result of the sexual assault on a student by other athletes at Perryton ISD in the above-identified case.

THE SEXUAL ASSAULT OF VICTIM

40. Prior to the 2023-2024 academic school year, and before his promotion to Athletic Director, Underwood had already cultivated a reputation at Perryton ISD for questionable conduct around female students.

41. For example, prior to said school year, Underwood had already had an issue with an 8th grade female student at Perryton Junior High, which involved communications between Underwood and said female student over Snapchat and Underwood receiving a stuffed animal from said student which was referred to as "our baby."

42. For further example, Underwood regularly communicated with students, including female student athletes, as well as parents, via the social media platform, Snapchat. Underwood even went so far as to add a minor sister of a fellow Perryton ISD coach on Snapchat.

43. Additionally, Perryton ISD coaches have provided that they also regularly use Snapchat to communicate with students and athletes.

44. As early as the 2023 fall semester, while acting as the newly appointed Athletic Director of Perryton ISD, Underwood cultivated a "friendship" with the 15-year-old Victim through meetings in his office to discuss various life topics, including the demise of Underwood's relationship with his wife as well as personal issues Victim was having with her own parents. It

has been discovered that Underwood employed this same strategy with other female student athletes at both Amarillo ISD and Perryton ISD.

45. As early as September 2023, Underwood reached out to a fellow Perryton ISD coach (who was of much less rank) to inquire about whether or not it would be appropriate to have Victim in his office alone during school hours. Surprisingly, one can only presume that the Athletic Director, i.e., the individual that sits in the highest athletic office in the school, would know whether or not this conduct was appropriate.

46. In December 2023, Underwood began a pattern of frequently contacting Victim after hours by calling Victim's mobile phone. Such contact included, *inter alia*, long telephone conversations (in excess of 6 hours), use of the social media and messaging application Snapchat, use of other social media application(s), and text messages. Underwood began flirtatiously cultivating the Victim in these messages, which he directed to her in a sexual manner.

47. In addition to the social media and Snapchat communications between Underwood and the Victim, Underwood likewise utilized the application required by Perryton ISD, ParentSquare, or an equivalent, to communicate with Victim. However, Perryton ISD failed even *de minimus* efforts to monitor ParentSquare in order to detect the rampant use of the application by Underwood in grooming and sexually assaulting the Victim.

48. In these communications, Underwood routinely referred to Victim as "wifey" and told her that he "loved her."

49. Using the Snapchat application and telephone calls, Underwood began arranging sexual encounters with the Victim at the school. These communications coerced Victim into entering into a sexual relationship with Underwood.

50. The sexual relationship fostered and coerced by Underwood revealed increasing sexual activities and requests by Underwood, including hours of “cuddling” while disrobed in Underwood’s office at the school. These encounters took place from the beginning of February 2024 to the end of April 2024.

51. Only administrators of Perryton ISD, including Underwood, had access to the video cameras owned and operated by Perryton ISD. Perryton ISD was in full control of the video system and at all times had access to Underwood’s elaborate scheme.

52. Underwood created an elaborate scheme, including propping open certain doors and turning off lights in order to avoid detection by PISD video cameras of his trysts with the Victim. However, even a cursory review of the video would reveal Underwood’s scheme. Based upon the multiple reports by staff, students, coaches, ministers and administrators from surrounding school districts, Perryton ISD apparently failed or otherwise refused to conduct such cursory review.

53. Each and every incident of sexual harassment and sexual abuse of Victim by Underwood occurred on Perryton ISD’s premises/school grounds in Underwood’s office.

54. Despite this deplorable conduct, a Perryton ISD coach provided that it was in fact Underwood, along with other school administrators (of which Underwood took the lead), that gave him instructions when he began his employment in August 2023 as to what he could and could not do with athletes, especially females, as a coach. For example, Underwood instructed him to always leave his door open and always have someone else with him when around a female student athlete, i.e. do not be alone with female student athletes. Underwood further explained to him to that “you’re on camera at all times.” Finally, Underwood further explained to him that if he was to violate these instructions that he could be *immediately* terminated.

PERRYTON ISD'S KNOWLEDGE OF THE SEXUAL ASSAULT

55. During the 2024 Spring semester, Perryton ISD was informed by students, teachers, and coaches that Underwood appeared to be having an inappropriate relationship with Victim.

56. As far back as September 2023, a female student at Perryton ISD referred to Underwood as a “pedophile” during a discussion she was having with other female friends of hers. Unbeknownst to said student, Underwood overheard the conversation, and the student was eventually punished for the remark, the discipline of which was handled by the High School Principal **and Underwood**. Surprisingly, it was Underwood that organized a subsequent meeting with the female student athletes, at which time he instructed them that he could get in trouble for those kinds of remarks. Underwood also advised the female student athletes that “you all can hate it, but I am going to be here” when discussing his involvement with female sports and attendance at practices. Underwood utilized his authoritative role as Athletic Director, by stating that he “cared about women’s’ sports” to provide cover for his inappropriate and sexually motivated conduct.

57. Perryton ISD teachers and coaches that worked with Underwood had concerns after witnessing Underwood’s interactions with female student athletes, including Victim. Specifically, said concerns revolved around the fact that they constantly observed Underwood in the presence of female student athletes despite his position as Athletic Director, which was in direct contrast to the amount of time he spent around male student athletes. For example, during high school sporting events, Underwood was regularly observed by teachers and coaches sitting in the middle of female student athletes and always close to Victim, during which times he would involve himself in their gossip and horseplay. In some instances, Victim could be observed sitting between Underwood’s legs in stands filled with students, parents, teachers, coaches, and administrators.

58. Perryton ISD coaches have provided that they regularly observed Underwood alone in his office with Victim, as well as other female student athletes, all of whom would confide in Underwood and even “cry” in his presence, at which time Underwood would console them. Underwood was even observed by Perryton ISD coaches regularly eating lunch with Victim in his office. According to reports, Victim, as well as other female student athletes, would regularly go to and from Underwood’s office during the school day.

59. Perryton ISD coaches have provided that they regularly observed Underwood at volleyball practices for no apparent reason.

60. At least one Perryton ISD coach has provided that he was reluctant to report anything about the inappropriate conduct he observed for fear of retaliation from Underwood. Said coach was advised by Underwood that he could be “gotten rid of” at any time.

61. Similarly, students regularly made the same observations. In addition to observing Underwood and Victim sitting side-by-side at high school sporting events, these student athletes additionally observed Underwood and Victim touching each other, including Underwood rubbing Victim’s leg in the stands.

62. Students and Perryton ISD coaches have provided that during a basketball tournament in Gruver in December 2023, Underwood was observed using a massage gun on one of the female athlete’s legs, at which time he was rubbing the gun up and down the back of the female’s leg from her knee to her buttocks. Again, this occurred in the middle of the stands, which would have been filled with students, parents, teachers, coaches, and administrators from both Perryton and other schools. One Perryton ISD coach provided that it made him so uncomfortable that he had to “look away.”

63. As a further example, in November 2023, a Perryton ISD coach provided that he walked into the trainer's room and observed Underwood in the presence of Victim, and another female student athletes, who were taking an ice bath in their sports bras and volleyball shorts.

64. As a further example, In March 2024, Underwood was observed giving Victim a ride home alone following a track meet that was several hours away from Perryton. On their way home, Underwood and Victim stopped for dinner at a Texas Roadhouse.

65. Additionally, Underwood and Victim regularly posted about each other on social media, including various pictures and collages of their time spent together, a majority of which were at school sponsored sporting events or on Perryton ISD premises.

66. Additionally, Perryton ISD teachers and coaches also observed a noticeable change in Victim's behavior during this time period, which included avoiding her former social circle, losing a long-time boyfriend, walking alone in the school's hallways between classes, or being walked to class by Underwood. Students made similar observations.

67. As part of this change, Perryton ISD teachers and coaches also observed Victim regularly gravitating to Underwood for guidance and advice, which at times included Victim spending significant time alone with Underwood in his upstairs office during school hours. Students made similar observations.

68. Moreover, members of the community, including parents of other students and at least one local church minister, also complained to Perryton ISD administration that Underwood appeared to be having an inappropriate relationship with Victim.

69. Perryton ISD initially ignored the multiple complaints received regarding Underwood, which is severely disturbing considering Underwood's previous history of similar

issues at Amarillo ISD and Perryton ISD's contemporaneous lawsuit wherein it was being sued over allegations involving sexual assault of a student athlete.

70. During the Spring 2024 semester, Underwood was also directly and personally approached by various Perryton ISD teachers and coaches and was repeatedly questioned about his relationship with Victim.

71. A Perryton ISD coach provided that Underwood's typical response was that he has to "be smarter" and "hide himself better." Another Perryton ISD coach provided that Underwood would get extremely defensive, claim that things were "taken out of context," and insinuate that he was above the law as Athletic Director.

72. As a specific example, a former Perryton ISD coach inquired of a third party about Underwood taking Victim home from the out-of-town track meet in March 2024 after hearing about the incident. When Underwood found out that the former Perryton ISD coach was asking questions, he immediately called the former coach and berated him over the phone, repeatedly cursing and yelling obscenities and profanities as a means of defense. Interestingly, this same coach was asked to resign in January 2024 by Underwood, presumably because he was questioning Underwood's conduct then and essentially knew too much.

73. In early March 2024, after continued and repeated warnings from Perryton ISD teachers, Perryton ISD coaches, Perryton ISD students, and members of the Perryton community, Perryton ISD formally and expressly directed Underwood to not be alone with Victim (or other female student athletes) via correspondence issued by Perryton ISD's Superintendent, Greg Brown ("Brown"). No further action by Perryton ISD apparently took place.

74. In fact, despite such directive, the sexual harassment and sexual abuse of Victim on Perryton ISD grounds ***continued for nearly two (2) more months***, which is when a majority of the sexual acts between Underwood and Victim in Underwood's office occurred.

75. Further, following the receipt of the complaints and issuance of the formal directive to Underwood, Victim's parents ***were not notified by the school's administration*** of the ongoing issues and alleged corresponding investigation, nor were they informed that Underwood had been previously admonished by Perryton ISD.

76. After receiving the directive from Perryton ISD, ***and without informing the Victim's parents of the directive***, Underwood manipulated and coerced Victim's father to send a communication to Perryton ISD administration defending Underwood.

77. Despite the directive, Underwood's inappropriate conduct with Victim amplified. As it amplified, the buzz concerning the ongoing and unaddressed issues between Underwood and Victim continued to grow amongst teachers, coaches, students, and members of the Perryton community. During this time, several Perryton ISD coaches have provided that they remained fearful of retaliation by Underwood, who held his power over their heads.

78. In late March 2024, following the issuance of the singular directive to Underwood, Perryton ISD received a formal report from a high-level administrator at Gruver Independent School District. Said administrator received reports of inappropriate conduct between Underwood and Victim from two (2) Perryton ISD student athletes during a March 21, 2024 track meet at Gruver ISD.

79. These Perryton ISD student athletes apparently confided in said administrator out of fear of further retaliation from Perryton ISD, specifically Underwood. For example, one of the students described to said administrator that following a complaint he previously made regarding

Underwood, Underwood subsequently removed his “Hudl” account, which said student athlete had hoped to utilize to encourage collegiate athletic scholarship offers. Another student remarked, “if we say stuff, [Underwood] will make it hard on us.” These students described to said administrator all of the same conduct that had been occurring for months, and which had been previously complained about, to include the recent circulation of pictures from social media sources depicting and describing the inappropriate relationship between Underwood and Victim.

80. March 21, 2024 was not the first time said administrator had received information about a potentially inappropriate relationship between Underwood and Victim. In fact, said administrator had received information as far back as November/December 2023, as news of said inappropriate relationship was quickly spreading beyond the confines of Perryton and throughout the Texas panhandle. In late December 2023, said administrator actually took it upon herself to observe Underwood and Victim at a Gruver basketball tournament during the Christmas break. During that tournament, said administrator observed Underwood regularly sitting in the middle of female student athletes, and always immediately next to Victim, as well as Underwood and Victim walking around the tournament and corresponding campus being “flirty.”

81. Following the receipt of the concerning information on March 21, 2024, said administrator made a formal report to Perryton ISD detailing the information she had received, including, *inter alia*, Underwood and Victim being in Underwood’s office alone. Specifically, said administrator made her report to Perryton ISD’s High School Principal, as well as Perryton ISD’s Middle School Principal. In response, said administrator was repeatedly advised that those concerns had **already** been brought to Perryton ISD’s attention and that Perryton ISD was in the middle of an alleged investigation. Following her formal report, no one from Perryton ISD ever contacted said administrator again.

82. Despite this alleged investigation and the formal report received from a high-level school administrator from another school district, the sexual harassment and sexual abuse of Victim on Perryton ISD grounds ***continued for another month.***

83. On or about April 22, 2024, ***for the first time***, Victim's father received a phone call from Brown regarding allegations of inappropriate conduct between Underwood and Victim.

84. Upon information and belief, also ***for the first time***, Underwood was placed on administrative leave contemporaneously and resigned shortly thereafter. Additionally, local law enforcement became involved.

85. Interestingly, law enforcement and news reports provide that Perryton ISD acted quickly and removed Underwood upon receipt of a complaint on April 21/22, 2024. However, Perryton ISD had been receiving complaints regarding Underwood since at least the beginning of the spring 2024 semester.

86. According to reports, Perryton ISD had also come into possession of certain videos reflecting numerous encounters between Underwood and Victim on multiple occasions over several months.

THE AFTERMATH

87. On or about April 25, 2024, Underwood was arrested by local law enforcement authorities and criminally charged with sexual assault of a minor child.

88. Contemporaneous with Underwood's state criminal charge, Underwood became the subject of further investigation by the Federal Bureau of Investigation ("FBI"), United States Department of Justice.

89. The FBI discovered, *inter alia*, that Perryton ISD and Brown were in possession of surveillance videos showing Underwood and Victim ***meeting alone on multiple occasions at the***

school after hours, all of which occurred *after* Underwood had been given a specific directive by Perryton ISD and Brown to *not be alone with Victim after multiple reports inappropriate and personal contact between Underwood and Victim*.

90. On or about June 3, 2024, Underwood was subsequently charged in the United States District for the Northern District of Texas with “Enticement and Attempted Enticement of a Minor,” in violation of 18 U.S.C. § 2422(b), in Case No. 2:24-MJ-053, styled *United States of America v. Cole Underwood*. If convicted, Underwood faces up to life in federal prison.

91. Following the incident, Brown provided the following in response (emphasis added): “This is a blow to our program. I mean, this is a setback and what we’re going to try to do is come out of that and come out of it strong. We’re hoping to hire the right person for our *football program* who will not just rebuild but actually rebuild better and take out kids to an even higher level.” Absent from Brown’s quoted remarks in various news publications is any sympathy extended for Victim, Victim’s family, or an emphasis on avoiding similar problems in the future. Instead, Brown focuses on how to take advantage of the deplorable and horrific incident to better Perryton ISD’s football program going forward.

92. Finally, as a result of the separate sexual assault case that was pending during the time period that the horrifying conduct identified herein was taking place, Perryton ISD deliberately ignored the gravity of the horrifying conduct and concealed the reported allegations and any alleged investigation in an effort to save face and money. In doing so, Perryton ISD sacrificed the innocence and vulnerability of a 15-year-old minor female student, who was being repeatedly targeted, harassed, and abused by Underwood for months on end, all in an effort to resolve one case before dealing with the next.

93. Teachers and coaches at Perryton ISD, with the tacit approval of Perryton ISD, have created and encouraged a culture rife with inappropriate abuse and sexual abuse of minors within the school district by Perryton ISD employees, all of which is amplified by Perryton ISD's conscious decision to hire known perpetrators and delegate them in positions of power within Perryton ISD. The abuse is ongoing; children continue to be victimized.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION

42 U.S.C. § 1983

(Defendant Perryton Independent School District and Cole Underwood)

94. Plaintiff incorporates by reference the above and foregoing paragraphs as though fully set forth herein.

95. Under the Fifth Amendment and the Fourteenth Amendment of the Constitution of the United States, Victim has the right to Due Process and Equal Protection of the Law, rights which were denied by Perryton ISD.

96. At all relevant times, it was clearly established that Victim has fundamental rights to public safety and to be free from the infliction of unnecessary pain.

97. It is and was at all relevant times clearly established law in the Fifth Circuit that public officials acting under the color of law and school districts can be liable for the acts of third parties where those officials caused another to be subjected to violation of constitutional or statutory rights.

98. Further, it is and was at all relevant times clearly established law in the Fifth Circuit that school districts can be liable if a hiring decision reflects a deliberate indifference to the risk that a violation of a particular constitutional or statutory rights will follow the decision.

99. The Fourteenth Amendment of the Constitution of the United States provides in part that no State shall “deprive any person of life, liberty, or property, without due process of law” and that no State shall “deny any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

100. Perryton ISD is a state actor acting under the color of state law.

101. Underwood as Athletic Director for Perryton ISD, as more fully described above, was a policymaker for the district. As Athletic Director, Underwood both created and enforced the policies of Perryton ISD.

102. Perryton ISD and Underwood denied Victim her rights to Due Process and Equal Protection of the Law by, *inter alia*:

- a. enacting and implementing inadequate policies concerning sexual abuse;
- b. not following and implementing said policies;
- c. inadequately scrutinizing Underwood’s background;
- d. improperly hiring, training, and supervising Underwood, despite a pattern of inappropriate sexual behavior;
- e. allowing Victim to be alone with Underwood, despite repeated complaints;
- f. allowing Underwood to utilize Perryton ISD’s endorsed communication channels to communicate inappropriately with Victim;
- g. improperly investigating the inappropriate relationship between Victim and Underwood, despite repeated complaints;
- h. allowing Underwood to engage in inappropriate conduct with Victim on Perryton ISD’s premises;

- i. allowing Underwood to continue acting as Athletic Director and failing to remove Underwood from his position in a timely manner, despite repeated complaints;
- j. improperly and/or inadequately training and supervising its other employees, at a minimum, concerning inappropriate conduct and reporting procedures; and
- k. exhibiting deliberate indifference to the inappropriate conduct directed at Victim by Underwood.

103. Perryton ISD has an unconstitutional custom or policy of:

- a. improperly and/or utterly failing to adequately scrutinize a potential employee's background;
- b. improperly and/or utterly failing to report criminal misconduct;
- c. improperly and/or utterly failing to investigate criminal misconduct;
- d. discounting the credibility of the allegations;
- e. inadequately training and supervising employees with regard to the investigation and reporting of sexual harassment and abuse of students.

104. The policy is attributable to a policymaker.

105. The resulting inadequate policies and resulting failures allowed the sexual abuse to occur and then subsequently continue for months, resulting in the violation of Victim's Fifth Amendment rights and Victim's Fourteenth Amendment rights to Due Process and Equal Protection.

106. Sexual abuse of students by Perryton ISD employees is a danger.

107. An environment where female student athletes are feloniously touched and taken advantage of by adults is a dangerous environment.

108. Perryton ISD and Underwood created a dangerous environment for female student athletes, including Victim.

109. Perryton ISD and Underwood as Athletic Director, as state actors, affirmatively acted to create, or increased Victim's vulnerability to or danger from, the misconduct of others.

110. Victim was a member of a limited and specifically definable group – namely, female, athlete, and student.

111. Perryton ISD and Underwood as Athletic Director created the danger or increased Victim's vulnerability to the danger by ignoring the allegations and complaints received regarding inappropriate conduct between Victim and Underwood, and not immediately putting an end to the inappropriate conduct.

112. Perryton ISD and Underwood as Athletic Director created the danger or increased Victim's vulnerability to the danger by ignoring obvious and observable inappropriate conduct between Victim and Underwood.

113. Perryton ISD and Underwood's conduct put Victim at a substantial risk of serious, immediate, and proximate harm. That risk includes being sexually harassed and abused while at Perryton ISD and while on Perryton ISD premises. Indeed, Victim was sexually abused for months on end **after** Perryton ISD had actual notice of inappropriate conduct.

114. The risk of danger was obvious or known to Perryton ISD and Underwood as Athletic Director.

115. Perryton ISD's actions or inaction created an opportunity for inappropriate conduct, the inappropriate culture, and for the inappropriate conduct to continue unabated.

116. Perryton ISD and Underwood as Athletic Director acted recklessly in conscious disregard of that risk.

117. Perryton ISD's conduct and Underwood's conduct as Athletic Director, when viewed in total, shocks the conscience, and should be deterred in the future.

SECOND CAUSE OF ACTION
Violation of Title IX
(Defendant Perryton Independent School District)

118. Plaintiff incorporates by reference the above and foregoing paragraphs as though fully set forth herein.

119. Title IX of the Education Amendments Act of 1972 ("Title IX") provides that "[n]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance. ..." 20 U.S.C. § 1681(a).

120. Perryton ISD is an educational institution that receives Federal financial assistance, and therefore has an obligation to comply with the terms and provisions of Title IX.

121. Sexual harassment and/or sexual abuse of a student is a form of discrimination and is an actionable claim under Title IX.

122. Victim suffered sexual harassment and/or sexual abuse; therefore, the discrimination was on the basis of sex. In addition, the discrimination was on the sex because only Victim, a female, endured the abuse. No male students were subjected to the abuses suffered by Victim.

123. Perryton ISD has had actual notice of the claims herein since on or prior to January 2024. At a minimum, Perryton ISD received actual notice of the claims herein on or about March 22, 2024.

124. Perryton ISD was deliberately indifferent to the acts of sexual harassment and/or sexual abuse as set forth herein.

125. Perryton ISD's administrators and employees has actual notice and knowledge of the acts of sexual harassment and/or sexual abuse as set forth herein.

126. The employees who had actual notice and knowledge of the acts of sexual harassment and/or sexual abuse as set forth herein had the authority to take corrective action to end the unlawful conduct yet failed to do so.

127. The acts of sexual harassment and/or sexual abuse occurred, *inter alia*, on Perryton ISD's premises and the abuser, Underwood, was the Athletic Director of Perryton ISD and under Perryton ISD's control at all relevant times.

128. In light of the circumstances surrounding the acts of sexual harassment and/or sexual abuse as set forth herein, Perryton ISD's response was clearly unreasonable.

129. The sexual harassment and/or sexual abuse was so severe, pervasive, and objectively offensive that Victim was excluded from participation in, denied the benefits of, and/or subjected to discrimination in the educational program provided by Perryton ISD.

130. Victim's exclusion from participation, denial of benefits, and/or discrimination was on the basis of sex.

131. As a direct and proximate result of Perryton ISD's violations of Title IX, Victim has endured, and continues to endure, physical pain and suffering, mental anguish and emotional distress, sleeplessness, anxiety, humiliation, embarrassment, inconvenience, loss of enjoyment of life, and other nonpecuniary losses, all to her detriment.

THIRD CAUSE OF ACTION
Violation of 18 U.S.C. § 2251(a)
(Defendant Cole Underwood)

132. Plaintiff incorporates by reference the above and foregoing paragraphs as though fully set forth herein.

133. From on or about November 2023 – April 2024, Underwood committed acts in violation of 18 U.S.C. § 2251(a).

134. Further, from on or about November 2023 – April 2024, Underwood committed acts in violation of 18 U.S.C. § 2422(b).

135. Pursuant to 18 U.S.C. § 2255, Victim, a minor, may recover the damages, both actual and punitive, that she has sustained, and continues to sustain, as a result of Underwood's violations of 18 U.S.C. §§ 2422(b) and 2251(a).

FOURTH CAUSE OF ACTION
Gross Negligence
(Defendant Cole Underwood)

136. Plaintiff incorporates by reference the above and foregoing paragraphs as though fully set forth herein.

137. Underwood owed a duty to Victim to provide Victim with a safe educational environment free from sexual harassment and sexual abuse.

138. Underwood breached his duty to Victim because he failed to provide Victim with a safe educational environment free from sexual harassment and sexual abuse, instead encouraging and enabling said sexual harassment and sexual abuse.

139. Underwood's conduct was grossly negligent and outside the course and scope of his employment.

140. Underwood's conduct involved an extreme degree of risk with a certain probability and magnitude of potential harm to Victim.

141. Underwood had actual and subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, and welfare of Victim.

142. Underwood's conduct was in reckless disregard of the consequences and with callous indifference to Victim's rights and as such Victim is entitled to punitive and exemplary damages against Underwood.

143. As a direct and proximate result of Underwood's gross negligence, Victim has endured, and continues to endure, physical pain and suffering, mental anguish and emotional distress, sleeplessness, anxiety, humiliation, embarrassment, inconvenience, loss of enjoyment of life, and other nonpecuniary losses, all to her detriment.

FIFTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(Defendant Cole Underwood)

144. Plaintiff incorporates by reference the above and foregoing paragraphs as though fully set forth herein.

145. Underwood's conduct was extreme, outrageous, and beyond the bounds of decency. Further, it was atrocious and utterly intolerable in a civilized society.

146. The emotional distress suffered by Victim is severe.

147. Underwood acted intentionally with an intent to inflict severe emotional distress and/or should have known that severe emotional distress would be certain or substantially certain to result from his conduct.

148. Underwood's conduct was in reckless disregard of the consequences and with callous indifference to Victim's rights and as such Victim is entitled to punitive and exemplary damages against Underwood.

149. As a direct and proximate result of Underwood's gross negligence, Victim has endured, and continues to endure, physical pain and suffering, mental anguish and emotional distress, sleeplessness, anxiety, humiliation, embarrassment, inconvenience, loss of enjoyment of life, and other nonpecuniary losses, all to her detriment

V. TRIAL BY JURY

150. Pursuant to FED. R. CIV. P. 38, Victim demands a trial by jury on all claims and issues.

WHEREFORE, premises considered, Plaintiff prays for judgment against Defendants as follows:

- A. for her actual damages in a sum in excess of the amount required for diversity jurisdiction under 28 U.S.C.A. § 1332;
- B. for punitive and exemplary damages in an amount to be determined by the jury at trial;
- C. for equitable relief prohibiting Defendant Perryton ISD and/or any of its employees or agents from retaliating against any witnesses revealed in this litigation;
- D. for a reasonable attorney fee and court costs;
- E. for pre-judgment and post-judgment interest as allowable by law; and
- F. for any other and further relief as the Court or jury deems just and equitable.

Respectfully submitted,

Kyle Goodwin, OBA No. 17036 and
Texas Bar No. 24117975
Tyler L. Gentry, OBA No. 32400
(pro hac vice applications forthcoming)
GOODWIN LEWIS, PLLC
420 NW 6th St., 2nd FL
Oklahoma City, OK 73102
P: (405) 900-5700
tgentry@goodwinlewis.com
kgoodwin@goodwinlewis.com

and

MAYFIELD HEINRICH RAHLFS
WEABER & PARSONS, LLP
320 S. Polk, Suite 1000
Amarillo, Texas 79101
(806) 242-0152 – Telephone
(806) 242-0159 – Fax
brian@mhrwp.com

Brian P. Heinrich

Brian P. Heinrich, SBN 09382320

Attorneys for Plaintiff