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Attorney for Plaintiff Jane Doe #1, by  
and through her Guardian ad Litem, Jane Doe #2

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JANE DOE #1, a minor, by and through her  
guardian ad litem, JANE DOE #2,

Plaintiff,

vs.

PALO ALTO UNIFIED SCHOOL  
DISTRICT; ELSA CHEN, in her individual  
capacity; ROBERT ANDRADE, in his  
individual capacity; DON AUSTIN, in his  
individual capacity; AVERY OLESEN, in her  
individual capacity; RONI KRAFT, in her  
individual capacity; MONICA LYNCH, in her  
individual capacity; KELLY WHITNEY, in  
her individual capacity; ASHLEY HULL, in  
her individual capacity; CHELSEA TIBBS, in  
her individual capacity; and DOES 1-20, in  
their individual capacities,

Defendants.

Case No.: 5:25-2120

**COMPLAINT FOR DAMAGES**

- 1. FOURTEENTH AMENDMENT –  
EQUAL PROTECTION**
- 2. FOURTEENTH AMENDMENT – DUE  
PROCESS**
- 3. FIRST AMENDMENT /  
RETALIATION**
- 4. SUPERVISORY LIABILITY (FIRST  
AND FOURTEENTH  
AMENDMENTS)**
- 5. MONELL LIABILITY**
- 6. TITLE IX – DELIBERATE  
INDIFFERENCE TO SEXUAL  
MISCONDUCT**
- 7. TITLE IX – PROMPT AND  
EQUITABLE INVESTIGATION**
- 8. TITLE IX – ERRONEOUS  
OUTCOME**
- 9. TITLE IX – HOSTILE  
ENVIRONMENT**
- 10. TITLE IX – RETALIATION**
- 11. NEGLIGENT SUPERVISION**
- 12. NEGLIGENCE**
- 13. RESPONDEAT SUPERIOR**
- 14. INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS**
- 15. SEX DISCRIMINATION (Ed. Code**

§220)  
16. BANE ACT (Violations of Civil Code §52.1)  
17. GENDER VIOLENCE (Violations of Civil Code §52.4)

**JURY TRIAL DEMANDED**

**I. PRELIMINARY STATEMENT**

1. Plaintiff Jane Doe #1, a minor, brings this suit, by and through her Guardian ad Litem, Jane Doe #2, against her educational institution, Palo Alto Unified School District (“District”), and against individual defendants, alleging violations of the United States Constitution, Title IX of the Education Amendments, and state law.

2. Defendants failed to protect Plaintiff from multiple incidents of sexual misconduct by other students (“incidents”) involving three male schoolmates in February and March 2024, subsequently failed to provide critical supportive measures to Plaintiff, and conducted a wholly inadequate investigation into her allegations of sexual misconduct, resulting in an erroneous determination by the District that even the sustained allegations of repeated unwanted contact with Plaintiff’s genitals by multiple boys did not constitute sexual misconduct.

3. The numerous failures at every stage and every level illustrate a culture at the District of callousness toward, dismissiveness of, and minimization of sexual misconduct, in violation of Plaintiff’s rights.

**II. INTRODUCTION**

4. Plaintiff is and was an elementary school student in the District. At the time of the incidents, Plaintiff was in kindergarten at Ohlone Elementary School (“Ohlone” or “school”), where the incidents occurred.

1           5.       On February 6, 2024, three male students (“Respondent 1,” “Respondent 2,” and  
2 “Respondent 3” or, collectively “the respondents”) at the school were sitting at a lunch table  
3 outside with Plaintiff.

4           6.       The three boys took turns going under the table to repeatedly touch Plaintiff’s  
5 genitals on the outside of her clothing, continuing to touch her even after she told them to stop  
6 and kicked at them under the table to get them to stop.

7           7.       Upon information and belief, school personnel were aware of prior incidents  
8 dating back to December 2023 involving these same boys touching Plaintiff’s genital area but  
9 failed to notify Plaintiff’s parents or the District’s Title IX office or to provide enhanced  
10 supervision to ensure safe interactions.

11          8.       Despite school personnel being on notice, on February 8, 2024, on the  
12 playground, and on March 1, 2024, while in class with Plaintiff, Respondent 1 touched Plaintiff  
13 again on her genital area.

14          9.       Upon Plaintiff reporting this conduct by the boys, the school’s principal,  
15 Defendant Chen interviewed Plaintiff and the boys, despite her lack of experience or expertise in  
16 investigating sexual misconduct incidents, and minimized the incident as merely part of an  
17 innocent “game” among the children.

18          10.      When Plaintiff’s parents requested that the school move Plaintiff to a different  
19 classroom, the District denied this request, despite the availability of at least five other  
20 classrooms.

21          11.      Because Plaintiff was fearful about returning to her classroom and was not  
22 permitted to switch to another classroom, Plaintiff missed more than two months of school,  
23 causing her to miss out on academic progress and social engagement.

1 12. While Plaintiff was out of school, the District did not make accommodations to  
2 ensure continuity of her learning and counted the absences as unexcused.

3 13. Ultimately, Plaintiff transferred to another school in the District.

4 14. The District profoundly mishandled its investigation of Plaintiff's allegations of  
5 misconduct, including, but not limited to, by totally dismissing the accounts of Plaintiff's parents  
6 while crediting the accounts of the respondents' parents, adding allegations *against* Plaintiff in  
7 response to Plaintiff flagging additional abuse of her, and improperly disclosing confidential  
8 information about Plaintiff.

9 15. The outcome of the investigation and the appeal of that outcome were erroneous  
10 and applied a gross misinterpretation of the legal standard for evaluating whether conduct  
11 constitutes sexual harassment. Among the errors was the disturbing determination that repeated  
12 deliberate, explicitly unwanted touching of a girl's genitals by three boys in rapid succession,  
13 followed by at least one additional incident just two days later, does not qualify as conduct of a  
14 "sexual nature" or as "objectively offensive."

15 16. In particular, the decision maker determined that the conduct by these young  
16 children was not "sensual" and therefore not prohibited conduct under Title IX.

17 **III. JURISDICTION AND VENUE**

18 17. This Complaint seeks damages for violations of the civil rights, privileges, and  
19 immunities guaranteed by the First and Fourteenth Amendments of the United States  
20 Constitution, pursuant to 42 U.S.C. §§ 1983 and 1988. Plaintiff also brings this action pursuant  
21 to Title IX of the Education Amendments Act, 20 U.S.C. §§ 1681, *et seq.*

22 18. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §§ 1331  
23 (federal question) and 1343 (civil rights). Plaintiffs' state-law claims are within the Court's

1 supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

2 19. This Court has supplemental jurisdiction over the state law claims asserted herein  
3 pursuant to 28 U.S.C. § 1376 because the claims form part of the same case or controversy  
4 arising under the United States Constitution and federal law.

5 20. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §  
6 1391, as the underlying acts, omissions, injuries and related facts occurred in Palo Alto,  
7 California, and because Defendants reside in the Northern District of California. This is an action  
8 for damages and such other and further relief as may be consistent with law.

9 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 21. Pursuant to Government Code § 910, Plaintiff presented a timely appropriate  
11 government claim for damages on or around July 17, 2024, less than six months after the  
12 incidents. On September 4, 2024, the District sent notification indicating it was not taking action  
13 on the claim within 45 days of submission of the claim, which constitutes a denial of the claim.  
14 This action is timely.

15 **V. PARTIES**

16 22. Plaintiff JANE DOE #1 is a minor citizen of the State of California and domiciled  
17 in the Northern District of California. She enrolled at Ohlone as a kindergarten student in Fall  
18 2023.

19 23. Defendant DISTRICT is a public school district in Palo Alto, California. At all  
20 times relevant to this Complaint, the District conducted business in the Northern District of  
21 California. The District operates programs in receipt of federal funds and is thus covered by Title  
22 IX's prohibition on sex-based discrimination.

23 24. Defendant ELSA CHEN is and was at all times relevant herein the Principal of

1 Ohlone Elementary School, the top school official and therefore responsible for all of the  
2 school's relevant operations and activities.

3 25. Defendant ROBERT ANDRADE is and was at all times relevant herein the  
4 District's Title IX Coordinator, responsible for coordinating and overseeing the District's  
5 compliance with Title IX.

6 26. Defendant DON AUSTIN is and was at all times relevant herein the District's  
7 Superintendent, the top official at the District and therefore responsible for overseeing all  
8 relevant District operations and activities.

9 27. Defendant RONI KRAFT is and was at all times relevant herein a classroom  
10 teacher at Ohlone. She was Plaintiff's classroom teacher on February 6, 2024, and February 8,  
11 2024.

12 28. Defendant AVERY OLESEN is and was at all times relevant herein a classroom  
13 teacher at Ohlone Elementary School. She was Plaintiff's classroom teacher on March 1, 2024.

14 29. Defendant MONICA LYNCH is and was at all times relevant herein a classroom  
15 teacher at Ohlone. She was on "yard duty" on February 6, 2024, and therefore responsible for  
16 supervising the children, including Plaintiff and the boys who harassed her, during recess time  
17 outdoors.

18 30. Defendant KELLY WHITNEY was contracted by the District to conduct the  
19 District's Title IX investigation into the allegations by Plaintiff. Defendant Whitney is and was at  
20 all times relevant herein an investigator with the firm Grand River Solutions but conducted her  
21 investigation on behalf and at the request of the District.

22 31. Defendant ASHLEY HULL was contracted by the District to serve as the decision  
23 maker regarding the outcome of the Title IX investigation into the allegations by Plaintiff.

1 Defendant Hull is and was at all times relevant herein an investigator with the firm Grand River  
2 Solutions but conducted her review and decision on behalf and at the request of the District.

3 32. Defendant CHELSEA TIBBS was contracted by the District to serve as the appeal  
4 officer regarding the decision following the Title IX investigation into the allegations by  
5 Plaintiff. Defendant Tibbs is and was at all times relevant herein an attorney with the firm  
6 Dannis Waliver Kelley but conducted her review and decision on behalf and at the request of the  
7 District.

8 33. Defendants DOES 1-20 are additional employees or agents of the District who  
9 were responsible for supervision of students and/or the inadequate response to Plaintiff's reports  
10 of sexual misconduct. Plaintiff alleges that each of the Defendants named as a "DOE" was in  
11 some manner responsible for the acts and omissions alleged herein.

12 34. Plaintiff is informed and believes, and thereupon alleges, that at all times  
13 mentioned herein Defendants worked in Santa Clara County, State of California. Plaintiff is  
14 informed and believes, and thereupon alleges, that at all times mentioned herein Defendants were  
15 employees, agents, and/or servants of the District and acted within the course and scope of said  
16 employment, agency and/or service.

17 35. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
18 Does 1 through 20, inclusive, and therefore sues these defendants by such fictitious names.  
19 Plaintiff is informed, believes, and alleges that each of the fictitiously named defendants is  
20 legally responsible, intentionally, negligently, or in some other actionable manner, for the events  
21 and happenings hereinafter referred to and described, and thereby illegally caused the injuries,  
22 damages, and violations and/or deprivations of rights hereinafter alleged. Plaintiff will seek leave  
23 of Court to amend this Complaint and state the true names and/or capacities of said fictitiously

1 named defendants when the same have been ascertained.

2 36. The reason why Plaintiff is ignorant of the true names and capacities of  
3 Defendants sued herein as Does, inclusive, is that same have been unascertainable as of the date  
4 of filing of this complaint and many of their records may be protected by state statute and can  
5 only reasonably be ascertained through the discovery process.

6 **VI. FACTS**

7 **A. Plaintiff experienced sexual misconduct**

8 37. On February 6, 2024, Plaintiff, while a kindergartner at Ohlone Elementary  
9 School, experienced sexual harassment by three male classmates (in kindergarten or first grade).

10 38. Plaintiff was sitting at a lunch table outside with the three boys.

11 39. The harassment consisted of three of Plaintiff's classmates, explicitly and  
12 implicitly without Plaintiff's consent, touching her genitals outside her clothing.

13 40. Respondent 1 touched Plaintiff and then directed the other two boys to touch her.

14 41. Each of the boys took turns going under the lunch table to touch Plaintiff's  
15 genitals outside her clothing multiple times.

16 42. Plaintiff told the boys to stop and kicked at them under the table, but they  
17 continued to engage in the unwelcome touching of Plaintiff.

18 43. No adult supervision was present to observe the conduct or intervene to stop it.

19 44. Upon information and belief, prior incidents involving these same boys touching  
20 Plaintiff's genital area occurred in or around December 2023, but Plaintiff's parents were not  
21 notified of these prior incidents until the Title IX investigation of the February 6, 2024 incident  
22 and subsequent incidents revealed these prior incidents.

23 45. Plaintiff immediately reported the February 6 incident to school officials.



1 46. On February 8, 2024, Respondent 1 touched Plaintiff while they were outside  
2 during recess.

3 47. On March 1, 2024, Respondent 1 touched Plaintiff while they were in the  
4 classroom, including after Plaintiff moved away from him and explicitly indicated the touching  
5 was unwelcome.

6 48. Plaintiff's parents immediately reported the February 8 and March 1 incidents  
7 when Plaintiff reported it to them.

8 49. Neither the principal, Elsa Chen, nor the classroom teachers, Roni Kraft and  
9 Avery Olesen, all of whom were notified regarding the behavior, ensured that the students were  
10 separated in order to prevent further incidents from occurring, thus causing the February 8 and  
11 March 1 incidents to occur.

12 50. **Indeed, even after Plaintiff and Plaintiff's parents notified the school and**  
13 **requested separation, Defendants decided to keep the students in the same classroom and instead**  
14 **instituted an ineffective "safety plan." Chen repeatedly minimized the incidents, referring to**  
15 **them as a mutual "game" among the students.**

16 51. Kraft likewise minimized the incidents as a "game" among the children.

17 **B. The initial investigation by Defendant Chen of Plaintiff's harassment report was**  
18 **mishandled**

19 52. Defendant Chen conducted an investigation of the February 6 and February 8  
20 incidents rather than referring the matter to the Title IX office.

21 53. Defendant Chen questioned Plaintiff and the boys accused of harassing Plaintiff,  
22 despite not having training in conducting such questioning or investigating such incidents.  
23

1 54. As a result, she asked confusing and vague questions of Plaintiff (e.g., whether  
2 “something” happened) and conflated separate incidents.

3 55. Chen indicated she had prematurely formulated her opinion as to the merits of the  
4 allegations. For example, she referred to the conduct as a mere “game” and initially suggested a  
5 restorative meeting between the two sets of parents, only to later identify the inappropriateness  
6 of such a suggestion in light of the ongoing investigation; failed to update the security plan after  
7 additional reported incidents; and indicated that Plaintiff was at risk only on the playground  
8 because that is where the initial incident occurred, even though the boys also shared a classroom  
9 with Plaintiff.

10 56. Chen’s notes from her interviews with the students were scant and disorganized.  
11 Her memory of the various accounts included inaccuracies regarding the dates of her  
12 conversations, uncertainty about who provided certain information (e.g., erroneously thinking it  
13 may have been Plaintiff’s parents who told her that the children were just playing and only one  
14 of the boys engaged in poking Plaintiff’s genitals), and mischaracterization of key facts (e.g.,  
15 erroneously claiming Plaintiff’s claims were inconsistent as to the number of times she was  
16 poked).

17 57. Chen could not be sure about Plaintiff’s response to a key question.

18 58. Chen’s notes from speaking with the boys made it appear she spoke with all of  
19 them at once, which would undermine the reliability of their individual accounts.

20 59. Chen provided her biased and inaccurate assessment to the investigator, further  
21 undermining the process.

22 60. Chen’s investigation was deeply flawed and circumvented and complicated the  
23 formal investigation that occurred subsequently, caused unnecessary trauma to Plaintiff, and was

1 used to justify denying supports to Plaintiff.

2 61. Defendant Chen has repeatedly demonstrated a bias against Plaintiff's parents.

3 For example, she:

- 4 a. chafed at and refused to honor Plaintiff's parents' persistent requests for
- 5 supportive measures (i.e., switching her to another classroom), instead insisting
- 6 on keeping Plaintiff in the same classroom with multiple boys she feared being
- 7 around;
- 8 b. did not follow through on ensuring counseling services were provided to Plaintiff;
- 9 c. referred to Plaintiff's parents as emotional;
- 10 d. complained about rehashing the same issues;
- 11 e. deemed Plaintiff's absences unexcused despite medical documentation;
- 12 f. canceled a meeting when Plaintiff's parents decided that Plaintiff would not
- 13 attend the meeting;
- 14 g. indicated in a February 20, 2024 email that she had drawn conclusions about the
- 15 alleged conduct despite the ongoing investigation;
- 16 h. on May 9, cut off a conversation with Plaintiff's mother and closed the door on
- 17 her.

18 **C. The District denied Plaintiff critical supportive measures**

19 62. This dismissiveness of Plaintiff's parents' input or willingness to engage  
20 Plaintiff's parents made it substantially more difficult for Chen to properly assess the risk and  
21 implement needed measures.

22 63. Chen failed to update the safety plan after the additional reported incidents.

23 64. On March 14, 2024, Plaintiff's parents requested that, as a supportive measure

1 under Title IX, Plaintiff be transferred to a different classroom so that she would not be at risk of  
2 further harassment by boys who had harassed her.

3 65. The same day, the District denied the request to transfer Plaintiff to a different  
4 classroom, despite the availability of five or six other kindergarten classrooms and despite being  
5 on notice that Plaintiff and the boys required ongoing redirection and supervision to ensure they  
6 remained separate and not at risk of inappropriate or abusive touching

7 66. As a result of her fear of returning to a classroom with the students who harassed  
8 her, Plaintiff was forced to miss more than two months of school, which the District counted as  
9 unexcused absences even after Plaintiff's parents flagged this unjustifiable designation.

10 67. In order to avoid missing more school or being forced to be in a classroom with  
11 classmates who had harassed her, Plaintiff ultimately transferred to another school in the District.

12 68. Additionally, Kraft, Olesen, and Chen failed to provide other supportive measures  
13 and accommodations: they did not send work home for Plaintiff to complete while she was out of  
14 school, Chen refused to meet with the parents (including cancelling a May 9 meeting), and the  
15 school did not ensure that the parents were able to connect with counseling services.

16 69. Title IX Coordinator Robert Andrade was involved in the discussions about the  
17 request to switch Plaintiff into a different classroom, was responsible for coordinating that  
18 supportive measure and other supportive measures, and failed to ensure that these supportive  
19 measures and other supports were provided to Plaintiff.

20 70. Plaintiff's parents also notified Defendant Austin of their request for a classroom  
21 transfer and of the school's denial of such request, and Defendant Austin failed to intervene to  
22 ensure such a transfer would occur.

23 //

1 **D. The investigation of the sexual misconduct allegations was deeply flawed**

2 71. On February 10, 2024, Plaintiff's parents filed a complaint with the District's  
3 Title IX office.

4 72. On March 5, the District initiated a Title IX investigation.

5 73. The Title IX office accepted the complaint, did not dismiss it under U.S.C. §  
6 106.45(b)(3)(i) of the Title IX regulations, and thus determined that the allegations, if true,  
7 would constitute sexual harassment.

8 74. The investigation determined that the allegations regarding the February 6 and  
9 February 8 incidents were true, yet the District determined that the conduct did not constitute  
10 Title IX sexual harassment, thus moving the goal posts at the end of the months-long process.

11 75. The investigation conducted by the outside investigator hired by the District was  
12 riddled with serious flaws and demonstrated significant bias on the part of the investigator.

13 76. Plaintiff's parents notified the District as to their concerns about the  
14 investigation's flaws and the investigator's bias, but the District did not intervene or provide any  
15 remedy.

16 77. The final report of the investigator determined that, on February 6, 2024, the three  
17 respondents "went underneath the table and poked [Plaintiff] multiple times in the vaginal area  
18 over her clothing and [Plaintiff] told [the three boys] to 'stop' but they continued to poke  
19 [Plaintiff]."

20 78. Ultimately, the investigator recommended finding that the February 8 incident did  
21 not occur, though the decision maker, Defendant Hull, ultimately decided otherwise.

22 79. Examples of deficiencies in the investigation, which demonstrate bias and/or lack  
23 of competence on the part of the investigator, included the following:

1 a. The investigation initially failed to address the allegations against  
2 Respondents 2 and 3 despite Plaintiff’s original complaint addressing all three  
3 boys’ conduct on February 6, 2024.

4 b. The initial report did not include interviews with Respondents 2 and 3,  
5 even as witnesses to the February 6, 2024 incident.

6 c. The investigation initially failed to address the allegation that Respondent  
7 1 told another student to touch Plaintiff.

8 d. The investigator’s report omitted any summary of interviews with  
9 Plaintiff’s parents, even though summaries of interviews with the respondents’  
10 parents were included.

11 e. The report discredited Plaintiff’s parents’ descriptions of their  
12 conversations with Plaintiff. The report cited the lack of clarity about how  
13 Plaintiff’s parents questioned her, but it did not explain why this same concern  
14 would not apply to the respondent’s parents or others not trained in investigations,  
15 such as Defendant Chen. Nor was there any indication that Plaintiff’s parents  
16 were mischaracterizing Plaintiff’s statements. Indeed, they even reported that she  
17 made allegations about the second alleged incident to *each* of them separately –  
18 the report did not address this. There was no explanation as to why the two sets of  
19 parents were treated differently or why Plaintiff’s parents lacked credibility. The  
20 investigator included a detailed summary of her interview with Respondent 1’s  
21 parents but did not include a summary of the interviews with Plaintiff’s  
22 parents. The investigator discredited all of the accounts of Plaintiff’s parents,  
23 rather than evaluating the credibility of each statement on its own merits.

1 f. The report inaccurately indicated that “[Plaintiff] was never questioned at  
2 school about whether she touched [Respondent 1].” Defendant Chen met on  
3 March 4 with Plaintiff and her parents and directly asked Plaintiff this question, to  
4 which Plaintiff responded, “No.” The report incorrectly indicated that there is no  
5 way to test Plaintiff’s consistency across multiple statements, which was one of  
6 the factors in the report’s conclusion that Respondent 1’s account was more  
7 reliable.

8 g. The report included no discussion of the significance of the incidents’  
9 impact on Plaintiff or evidence of such an impact, which was relevant to assessing  
10 the credibility of her accounts. Such evidence, which the investigator ignored,  
11 included Plaintiff’s behavior during a field trip, her reaction to being Respondent  
12 1’s classroom “buddy,” bed wetting, her need for therapy, fear of going to school,  
13 nightmares, trouble sleeping, anxiety, and diagnoses. While the report mentioned  
14 the impact, this was not identified in the analysis section, that is, it was not  
15 assessed as relevant to Plaintiff’s credibility. This impact evidenced the veracity  
16 of the allegations, and of Plaintiff’s parents’ claims, and was relevant to whether  
17 the conduct was “unwelcome” and interfered with Plaintiff’s education and to the  
18 severity of the conduct, under the policy and Title IX regulations. There was  
19 extensive documentation of this impact available to the investigator, including  
20 medical documentation. Plaintiff’s parents also addressed this topic, including  
21 medical advice they received, in detail in interviews that were not summarized in  
22 the report or the report’s appendix.

23 h. The report indicated that, based on the fact that Plaintiff reported the

1 February 6 incident to a teacher, Plaintiff was likely to have done the same on  
2 February 8 if in fact another incident occurred that day. This does not follow as a  
3 logical conclusion and plays on harmful sex-based tropes about delayed reporting  
4 by victims of sexual abuse being evidence of fabricating the allegation of  
5 misconduct. Indeed, the formal complaint indicated that Plaintiff forgot to report  
6 it because she became distracted by other things. Moreover, she had been  
7 consistent in reporting incidents promptly to her parents. The report stated that  
8 Plaintiff's parents "also represented that [Plaintiff] told a teacher about the  
9 touching, yet none of the teachers, who had been alerted to the issue two days  
10 earlier" said they had been notified of a second incident. However, Plaintiff's  
11 parents subsequently clarified in a February 12 email that in fact Plaintiff simply  
12 forgot to report it to the teacher.

13 i. The report stated that it is "notable" that the teacher needed to redirect  
14 Plaintiff regarding behavior involving rolling around with another student. The  
15 report did not explain why this is "notable." It appears the investigator intended to  
16 highlight that Plaintiff was happy and carefree during a time she supposedly was  
17 touched inappropriately. But there is no acknowledgment that young children, in  
18 particular, may have unpredictable or seemingly inconsistent reactions to abuse,  
19 nor does it explain whether the touching might have occurred after the time she  
20 was rolling around with the other student.

21 j. The report provided no assessment of Plaintiff's discomfort and elopement  
22 during her interview with the investigator that might explain the inconsistencies in  
23 her accounts.



1 k. Plaintiff's mother said on March 6, 2024, that Plaintiff asked why the  
2 touching is continuing. This statement was not addressed in the report despite  
3 being highly relevant to the alleged incidents.

4 l. Plaintiff's mother provided, via email, additional statements by Plaintiff  
5 shortly after the interview. These were not addressed in the report.

6 m. The report did not incorporate some of the feedback Plaintiff's parents  
7 provided about the summary of Plaintiff's interview:

- 8 o Plaintiff's mother had indicated that she believed that Plaintiff was  
9 confused by the investigator's question regarding whether touching  
10 stopped after Plaintiff reported it. Plaintiff did not mean that *all*  
11 touching had ceased. Instead, it appears Plaintiff understood the  
12 question to be about the February 6 touching, which she indicated  
13 stopped once she told adults at the school, but the investigator  
14 characterized Plaintiff's response as indicating that no further incidents  
15 occurred.
- 16 o The report indicated that Plaintiff said that she was touched on her  
17 nose and did not say she was touched on her private parts. However,  
18 the report did not make clear that Plaintiff did not deny being touched  
19 on her private parts.

20 n. The report uniformly credited Chen's accounts and failed to question  
21 Chen's credibility regarding her accounts of what the involved children told her  
22 about the incidents, despite her minimization of the conduct, her inaccurate  
23 description of her discussions with the children involved, the disorganized nature

1 of her notes, her inexperience and lack of expertise in interviewing children about  
2 such incidents, her demonstrated bias against Plaintiff's parents, and her interest  
3 in minimizing the incidents in order to vindicate or justify her inadequate initial  
4 response to the incidents.

5 o. The investigator failed to question Chen about her potential bias against  
6 Plaintiff's parents.

7 p. Kraft said that the message that Plaintiff's parents gave of their daughter  
8 being too afraid and traumatized to come to school was not consistent with her  
9 observations. Kraft is not a medical professional who can make such a judgment,  
10 and her statement betrays a potential bias against Plaintiff's parents. But the  
11 investigator did not adequately analyze the credibility of Kraft's statement. Kraft  
12 minimized the situation, referring to the conduct as a "game" among the children  
13 and a "one-time thing." She never responded to Plaintiff's mother's February 27,  
14 2024 email to clarify the confusion over the assignment of Plaintiff and one of her  
15 harassers as classroom "buddies," which was causing Plaintiff substantial distress.  
16 This may have demonstrated a bias on the part of Kraft. Finally, Kraft told the  
17 investigator that Plaintiff had been consistently absent since March 4, 2024, and  
18 that she had had no further contact with her parents. In fact, Kraft was copied in  
19 all emails between Plaintiff's parents and Chen in April and May.

20 q. When Respondent 2 was interviewed by Chen on Feb. 6, he initially  
21 denied that he and the other two boys went under the table. After Chen spoke with  
22 the other two boys, Respondent 2 told her he went under the table and was poking  
23 people and he poked Plaintiff. In contrast, Respondent 3 was consistent between

1 two interviews with Chen that he poked Plaintiff’s privates and did not mention  
2 that Plaintiff poked him. Chen gave another example of Respondent 2’s unreliable  
3 answers: When she was accidentally mischaracterizing what Respondent 2 had  
4 told her, Respondent 2 deferred to her and said “Yes” as if those things happened.  
5 Chen said that she had to discount what Respondent 2 told her because she  
6 noticed that he “just said yes to everything.” Despite these inconsistencies and  
7 concerns about his reliability as a witness, the report still credited Respondent 2’s  
8 statement supporting Respondent 1’s allegation against Plaintiff.

9 r. The investigation report did not separate the investigation of Respondent 1  
10 and the investigation of Respondents 2 and 3, resulting in disclosure to  
11 Respondents 2 and 3 of confidential and sensitive information regarding Plaintiff,  
12 including Respondent 1’s allegations against Plaintiff, allegations by Plaintiff  
13 against Respondent 1 regarding incidents that did not involve Respondents 2 and  
14 3, and information relevant to those allegations but not to the investigation of the  
15 allegations against the Respondents 2 and 3.

16 **E. The District retaliated against Plaintiff by adding allegations against her and**  
17 **disclosing confidential information to Respondents 2 and 3**

18 80. On July 8, 2024, the Title IX office added an allegation against Plaintiff, which,  
19 upon belief, is retaliation for Plaintiff’s parents, in their formal response to the draft report,  
20 notifying the Title IX office of the need for additional allegations against Respondent 1 and for  
21 the inclusion of the additional respondents.

22 81. Specifically, on June 27, 2024, Plaintiff’s parents pointed out to the District that,  
23 in the course of the Title IX investigation, Respondent 1 “acknowledged that he touched

1 [Plaintiff] on *multiple* occasions. Even if the precise timing of the other touching cannot be  
2 identified, this should be added as an allegation. In contrast, the [draft] report made adverse  
3 findings against [Plaintiff] even though the dates of that conduct could not be nailed down and  
4 there were no reliable independent witnesses.”

5 82. On July 8, 2024, Defendant Andrade notified the parties of updated allegations,  
6 including a new allegation against Plaintiff. Upon information and belief, the respondents did not  
7 request this added allegation against Plaintiff, and the District added it on its own initiative.

8 83. On July 11, 2024, Defendant Andrade acknowledged that he added the allegation  
9 in part as a result of reviewing Plaintiff’s parents’ June 27, 2024 feedback, citing the same  
10 content that Plaintiff’s parents had cited.

11 84. Plaintiff’s parents, through their counsel, identified the potentially retaliatory  
12 nature of this added allegation against Plaintiff and the chilling effect on participating in the Title  
13 IX process such a response to a party’s feedback could have.

14 85. When Defendant Andrade responded by asking if Plaintiff’s parents were alleging  
15 retaliation by him, Plaintiff’s parents, through their counsel, responded that they “are very  
16 concerned about seeing expanded allegations as a direct result of their engagement in this  
17 process,” indicated it did not appear the respondent had asked for the added allegation, and  
18 reiterated the chilling effect of the action.

19 86. Defendant Andrade did not respond further or, upon information and belief, report  
20 the allegation of retaliation by him to the District.

21 87. On August 23, 2024, the investigator produced a second draft investigation report  
22 that combined the investigations of the allegations against Respondent 1 and the allegations  
23 against Respondents 2 and 3, resulting in disclosure of confidential and private information about

1 allegations against Respondent 1 and allegations against Plaintiff that had nothing to do with  
2 Respondents 2 and 3.

3 88. When Plaintiff's parents on August 30, 2024, through their counsel, broached  
4 their concerns about these disclosures, Defendant Andrade refused, in an email on September 2,  
5 2024, to address it.

6 89. On September 3, 2024, Defendant Andrade acknowledged Plaintiff's parents'  
7 concerns and asked if they were alleging retaliation by the investigator. He further asked them to  
8 identify any allegations that they were deterred from reporting as a result of the disclosures.  
9 When counsel for Plaintiff's parents responded that the concern was about the *risk* of deterring  
10 reporting, Defendant Andrade did not respond further.

11 90. Upon information and belief, Defendant Andrade did not report the discussion  
12 about potential retaliation and did not intervene with the investigator to address the concern.

13 **F. The decision by the decision-maker was flawed**

14 91. Defendant Hull issued her decision on November 4, 2024, and, on the same day,  
15 the District notified Plaintiff and her parents regarding this outcome.

16 92. Defendant Hull determined that Plaintiff's allegations regarding the February 6,  
17 2024, and February 8, 2024, incidents did in fact occur, including that all three of the  
18 respondents touched Plaintiff on February 6 and that each of them touched her multiple times  
19 even after being asked to stop and after she kicked at them to get them to stop.

20 93. Defendant Hull nonetheless determined:

21 On its face, [the] conduct could be considered similar to conduct that the Policy  
22 listed as one example of potential sexual harassment: "massaging, grabbing,  
23 fondling, stroking, or brushing the body." However, [the] quick "pokes" of  
[Plaintiff's] vaginal area cannot reasonably be compared to more sensual,  
lingering touches like massaging and fondling, or to grabbing.

1 94. Examples of deficiencies in the decision following the investigation, which  
2 demonstrate bias and/or lack of competence on the part of the decision maker, include the  
3 following:

4 a. Defendant Hull failed to consider in her analysis the fact, which Defendant  
5 Hull identified, that multiple boys touched Plaintiff multiple times, including after  
6 Plaintiff asked them to stop and kicked the boys to get them to stop; cited a non-  
7 exhaustive list of examples in the policy; and conflated deliberate contact with the  
8 genitals with non-sensual contact with other parts of the body that would not be  
9 inherently sexual.

10 b. Defendant Hull did not analyze the conduct under the correct policy or  
11 definition of sexual harassment, thus focusing only on whether the conduct was of  
12 a sexual nature rather than whether it occurred on the basis of sex.

13 c. Defendant Hull found that overtly sexual conduct, deliberate contact with  
14 the genital area, was not sexual in nature.

15 d. Defendant Hull indicated that Plaintiff's accounts of the conduct by  
16 Respondent 1 on March 1, 2024, were inconsistent. However, Plaintiff's accounts  
17 immediately after the incident were consistent. She confirmed with Chen directly  
18 that Respondent 1 touched her genitals. Defendant Hull noted this. The only  
19 inconsistency was with the investigator months later, when memory, especially  
20 for a very young child, had dissipated or her understanding of precise dates  
21 affected her ability to recount the incident accurately.

22 e. Defendant Hull failed to note other factors for assessing the reliability and  
23 credibility of Plaintiff's claim. Specifically, the immediate nature of her reporting,

1 the consistency with prior alleged conduct, and the lack of a motivation to lie all  
2 bolstered the credibility of her account. This was not a “he-said/she-said”  
3 situation – Plaintiff’s credibility was sound.

4 95. Defendant Hull had to address Plaintiff’s response to the investigation, which  
5 alleged significant bias on the part of the investigator – Defendant Hull’s colleague and fellow  
6 investigator at Grand River Solutions – and Plaintiff’s proposed questions for Defendant Hull to  
7 ask the investigator addressed concerns about the investigator’s bias.

8 96. Defendant Hull had an inherent conflict of interest because of her relationship  
9 with the investigator and with Grand River Solutions.

10 97. Despite inquiring, Plaintiff’s parents never received an explanation as to the  
11 nature of the relationship between these two Grand River Solutions investigators and why their  
12 relationship did not give rise to a conflict of interest or perception thereof.

13 98. A proper assessment of Plaintiff’s credibility would have resulted in a finding that  
14 the conduct did, in fact, occur.

15 **G. Appeal and appeal decision**

16 99. Plaintiff appealed the outcome of the investigation on November 12, 2024. On  
17 November 21, 2024, Defendant Andrade notified Plaintiff of the outcome of her appeal and  
18 provided the appeal decision by the contracted appeal officer, Defendant Tibbs.

19 100. Defendant Tibbs affirmed the decision by the decision maker.

20 101. Examples of deficiencies in the appeal decision, which demonstrate bias and/or  
21 lack of competence on the part of the appeal officer, include the following:

22 a. Defendant Tibbs determined that the substantiated conduct was not of a  
23 “sexual nature” but did not address the fact that the conduct clearly involved

1 deliberate, repeated, and direct contact with Plaintiff’s genital area or the fact that  
2 the respondents apparently attempted to hide their actions from adults by going  
3 under the table to touch Plaintiff. All that Defendant Tibbs stated was the  
4 conclusory observation that “I find the Decision-Maker issued a well-reasoned  
5 determination on this matter based on the collective facts in the investigation.”

6 b. Defendant Tibbs did not address Plaintiff’s argument in her appeal that  
7 physical touching of other parts of the body are different from touching the  
8 genitals, which is inherently sexual if done on purpose.

9 c. Defendant Tibbs noted that “[n]o witness statements suggest that the  
10 touching occurred because of [Plaintiff’s] gender,” ignoring Plaintiff’s own  
11 statement and admissions by the respondents that they touched Plaintiff’s genitals,  
12 which strongly suggests that it occurred because of her gender, and the fact that  
13 no evidence was presented that the respondents touched each other’s or other  
14 boys’ genitals.

15 d. Defendant Tibbs determined that the substantiated conduct was not  
16 “objectively offensive” because of the age of the children involved but  
17 characterized the conduct as mere “poking,” ignoring the fact that Plaintiff was  
18 poked by multiple children who each touched her multiple times, ignoring the  
19 additional fact that – as Defendant Hull determined and the respondents  
20 acknowledged – the respondents continued touching Plaintiff even after she told  
21 the boys to “stop” touching her and kicked at them to get them to stop, and failing  
22 to consider Plaintiff’s reaction as evidence of objective offensiveness. While the  
23 age of the children was a relevant *factor* in assessing intent, other evidence



1 demonstrating intent was not considered.

2 e. Defendant Tibbs determined that the “[t]he mere fact that the [sic] both the  
3 Investigator and Decision-Maker are from the same firm is not, *alone*, an indica  
4 of bias” (emphasis added), thus mischaracterizing Plaintiff’s argument as focusing  
5 solely on that single factor (the fact that Hull and Whitney worked at the same  
6 firm) and failing to address Plaintiff’s argument in her appeal that other factors  
7 *combined* to demonstrate bias.

8 f. Defendant Tibbs determined that “[b]ecause the Decision-Maker is not in  
9 the position of ‘vindicating’ or overturning any findings made by the Investigator,  
10 it is not inherently plausible that the Decision-Maker would be motivated, as  
11 Complainant argues, by a desire to reach the ‘same outcomes as her colleague,’”  
12 ignoring the fact that the investigator indeed made recommended findings that a  
13 decision maker would be required to explicitly overrule or disagree with.

14 g. Defendant Tibbs mischaracterized Plaintiff’s argument in her appeal,  
15 erroneously noting that “Complainant did not articulate how a different  
16 conclusion regarding credibility [as to the March 1 incident] would affect the  
17 outcome,” though Plaintiff argued in the appeal that “[a] proper assessment of her  
18 credibility should result in a finding that the conduct did, in fact, occur.”

19 h. Defendant Tibbs mischaracterized Plaintiff’s appeal as claiming that  
20 Defendant Hull’s bias was demonstrated merely by virtue of the fact that she  
21 came to a conclusion that Plaintiff disagreed with: “While Complainant disagrees  
22 with the analysis of the evidence, this does not automatically equate to a biased  
23 Decision-Maker.” Defendant Tibbs thus ignored the argument in Plaintiff’s appeal

1 that Plaintiff’s “accounts immediately after the incident were consistent,” any  
2 inconsistency later should be considered in light of the lengthy amount of time  
3 that had lapsed since the incident and in light of her young age, and Defendant  
4 Hull failed to “note other factors for assessing the reliability/credibility of  
5 [Plaintiff’s] claim,” including “the immediate nature of her reporting, the  
6 consistency with prior alleged conduct, and the lack of a motivation to lie all  
7 bolster the credibility of her account.”

8 i. Defendant Tibbs cherry-picked the regulations in determining that the  
9 alleged conduct was not of a sexual nature and was not based on sex. Defendant  
10 Tibbs determined that “[t]he record supports that the touching [of the genitals]  
11 was not based on sex because it was neither sexual in nature nor referenced one  
12 sex or another” and was not objectively offensive. Defendant Tibbs relied on the  
13 age of the children. The appeal decision ignores a critical part of the very portion  
14 of the Title IX regulations preamble she cited. Specifically, Defendant Tibbs  
15 omitted the following (emphasis added): “The Department appreciates the  
16 opportunity to clarify that whether conduct is ‘on the basis of sex’ *does not*  
17 *require probing the subjective motive* of the respondent (e.g., whether a  
18 respondent subjectively targeted a complainant because of [a party’s] actual or  
19 perceived sex, *as opposed to because of anger or romantic feelings*.” This  
20 portion of the preamble directly precedes the portion Defendant Tibbs did cite:  
21 “Where conduct is sexual in nature, or where conduct references one sex or  
22 another, that suffices to constitute conduct ‘on the basis of sex.’” Defendant Tibbs  
23 further ignored the portion that directly follows the sentence she cited (emphasis

1 added): “[T]he Supreme Court accepted sexual harassment as a form of sex  
2 discrimination *without inquiring into the subjective motive* of the perpetrator . . .  
3 . The Department [of Education] follows the Supreme Court’s approach . . . .”

4 **VII. DAMAGES**

5 102. As a direct and proximate result of aforesaid acts and omissions, and the customs,  
6 practices, policies and decisions of the defendants alleged in this complaint, Plaintiff suffered  
7 and will continue to suffer great emotional, mental and physical pain and injuries, anguish,  
8 fright, nervousness, anxiety, shock, humiliation, indignity, embarrassment, harm to reputation,  
9 and apprehension, which have caused and will continue to cause, Plaintiff to sustain general  
10 damages in a sum to be determined at trial.

11 103. Plaintiff has experienced profound institutional betrayal by trusted teachers and  
12 administrators at multiple levels, causing her significant trauma and emotional distress that  
13 compounded the trauma she experienced as a result of the underlying harassment and sexual  
14 misconduct.

15 104. Defendants acted in a manner that was willful, wanton, malicious and oppressive,  
16 with reckless disregard of or in deliberate indifference to and with the intent to deprive Plaintiff  
17 of her constitutional rights, and did in fact violate the aforementioned rights, entitling Plaintiff to  
18 exemplary and punitive damages in an amount to be proven at the trial in this matter. Plaintiff  
19 also seeks attorneys’ fees.

20 //

21 //

22 //

23 //

**VIII. CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES**

**– EQUAL PROTECTION (42 U.S.C. § 1983)**

**(Against All Defendants Except District)**

105. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same herein by this reference.

106. The Equal Protection Clause of the Fourteenth Amendment prohibits states from denying any person the equal protection of the laws. *See* U.S. Const. amend. XIV, § 1.

107. Under the Equal Protection Clause, if a law or regulation burdens a fundamental right to some groups but not others, the law or regulation can be upheld only if the government can justify it under strict scrutiny. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973). To survive strict scrutiny, the government must demonstrate that the law or regulation is “‘narrowly tailored’ to serve a ‘compelling’ government interest.” *See e.g., Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701, 720 (2007) (quoting *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995)).

108. As described hereinabove, Defendants applied policies and procedures and the law of California in a manner that discriminated against Plaintiff based on her sex and on her status as a victim of gender-based violence because of sex.

109. Defendants discriminated against Plaintiff on the basis of sex by subjecting her to a hostile environment, minimizing and/or dismissing the abuse Plaintiff experienced, and failing to prevent, appropriately respond to, and properly investigate reports of sexual misconduct against Plaintiff. Defendants’ discrimination against Plaintiff on the basis of sex endangered the

1 safety, privacy, security, and well-being of Plaintiff. Defendants’ actions and inactions deprived  
2 Plaintiff of her right to equal dignity, liberty, and autonomy by treating her as second-class  
3 citizen at the District.

4 110. As a direct and proximate result of Defendants’ actions, as alleged herein,  
5 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
6 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
7 required by this Court.

8 **SECOND CLAIM FOR RELIEF**

9 **FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES**

10 **– DUE PROCESS (42 U.S.C. § 1983)**

11 **(Against All Defendants Except District)**

12 111. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
13 herein by this reference.

14 112. The Due Process Clause of the Fourteenth Amendment to the United States  
15 Constitution prohibits states from depriving any person of life, liberty, or property, without due  
16 process of law. *See* U.S. Const. amend. XIV, § 1.

17 113. The Due Process Clause has both procedural and substantive components, which  
18 function to safeguard fundamental liberty interests like the right of access to the courts, and also  
19 mandate that certain procedures be followed before the government deprives someone of such an  
20 interest. *See Washington v. Glucksberg*, 521 U.S. 702, 719–20 (1997) (“The Due Process Clause  
21 guarantees more than fair process . . . [it] also provides heightened protection against  
22 government interference with certain fundamental rights and liberty interests.”).

1           114. By failing to provide supervision of students and thus exposing Plaintiff to harm  
2 by Respondent 1 after becoming aware of a prior incident or prior incidents involving the same  
3 offending student or students (Defendants Chen, Kraft, Olesen, Lynch, and DOEs); disclosing  
4 private information (Defendants Andrade, Whitney, and DOES); failing to implement a safety  
5 plan to prevent further harm (Defendants Chen, Kraft, Olesen, Lynch, and DOEs); failing to  
6 properly respond with supportive measures (Defendants Chen, Kraft, Olesen, Andrade, and  
7 DOES) and an appropriate investigation consistent with the requirements of Title IX (Defendants  
8 Chen, Andrade, Whitney, Hull, and Tibbs); and retaliating against Plaintiff (Defendants Andrade  
9 and Whitney), Defendants infringed the fundamental liberty interests of Plaintiff to privacy,  
10 bodily integrity, freedom from violence and physical harm, and a process to petition the  
11 government for redress of grievances, in violation of substantive due process. *See Ringgold-*  
12 *Lockhart v. Cnty. Of Los Angeles*, 761 F.3d 1057, 1061 (9th Cir. 2014) (“[T]he right of access to  
13 the courts is a fundamental right protected by the Constitution.”); *see also BE & K Constr. Co. v.*  
14 *N.L.R.B.*, 536 U.S. 516, 524– 25 (2002) (describing right to petition as “one of the most precious  
15 of the liberties safeguarded by the Bill of Rights”).

16           115. *Procedural* due process requires that the government be constrained before it acts  
17 in a way that deprives a person of liberty interests protected under the Due Process Clause of the  
18 Fourteenth Amendment. *See Matthews v. Eldridge*, 424 U.S. 319, 332 (1976). A procedural due  
19 process claim requires: “(1) a protect[ed] liberty or property interest . . . and (2) a denial of  
20 adequate procedural protections.” *Foss v. Nat’l Marine Fisheries Serv.*, 161 F.3d 584, 588 (9th  
21 Cir. 1998).

1 116. In violation of her right to procedural due process, Plaintiff was not provided with  
2 notice or an opportunity to be heard before being deprived of her rights by Defendants. *See*  
3 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

4 117. Defendants Andrade, Chen, and Austin denied Plaintiff the opportunity to be  
5 heard when they denied her any meaningful process to address her concerns about remaining in  
6 the classroom with boys who had harassed her.

7 118. Defendants Andrade, Chen, Whitney, Hull, and Tibbs denied Plaintiff an  
8 impartial and thorough investigation free from bias and retaliation and that ensures other  
9 procedural protections provided for under Title IX.

10 119. On information and belief, Defendants repeatedly violated Plaintiff's due process  
11 rights and will continue to do so in the absence of adequate policies and procedures.

12 120. As a direct and proximate result of Defendants' actions, as alleged herein,  
13 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
14 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
15 required by this Court.

16 **THIRD CLAIM FOR RELIEF**

17 **FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES –**

18 **RETALIATION (42 U.S.C. § 1983)**

19 **(Against Defendants Andrade, Chen, and Whitney)**

20 121. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
21 herein by this reference.

22 122. Defendants deprived Plaintiff of her right to be free from interference with, or  
23 retaliation for, their exercise of constitutionally protected rights, including but not limited to

1 speech and the right to petition the government, as secured by the First and Fourteenth  
2 Amendments.

3 123. By adding allegations against Plaintiff and disclosing confidential information,  
4 Defendants Andrade and Whitney retaliated against Plaintiff when she sought to expand the  
5 complaint she had filed and add allegations against the boys who harassed her.

6 124. As a direct and proximate result of Defendants' actions, as alleged herein,  
7 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
8 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
9 required by this Court.

10 **FOURTH CLAIM FOR RELIEF**

11 **Supervisory Liability**

12 **(42 U.S.C. § 1983; 1st and 14th Amendments)**

13 **(Against Defendants Austin, Andrade, Chen, and DOES)**

14 125. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
15 herein by this reference.

16 126. Defendants Austin, Andrade, Chen, and DOES acted in a supervisory capacity  
17 under color of law.

18 127. The acts and failures of Defendants were a cause of the discrimination against and  
19 denial of due process to Plaintiff.

20 128. As supervisors, Defendants disregarded the known or obvious consequences that  
21 deficiencies in policies and training for their subordinates posed to victims of sexual misconduct,  
22 and those deficiencies would cause their subordinates to violate Plaintiff's rights.  
23



1           129. The conduct of Defendants, as described above, were so closely related to the  
2 deprivation of Plaintiff’s constitutional rights as to be the moving force behind permitting staff to  
3 violate Plaintiff’s rights.

4           130. Defendants engaged in conduct that showed a deliberate, reckless, or callous  
5 indifference to the deprivation by their subordinates of the rights of others.

6           131. Defendants Austin and DOES were Defendant Andrade’s supervisors and failed  
7 to ensure that Defendant Andrade intervened regarding supportive measures, including transfer  
8 of Plaintiff to another classroom, and regarding the investigation, when, upon information and  
9 belief, Defendant Andrade notified Defendants Austin and DOES as to Plaintiff’s parents’  
10 concerns regarding these matters.

11           132. Defendants Austin and DOES also failed to intervene to prevent and/or address  
12 Defendant Andrade’s retaliation against Plaintiff, thus acting with deliberate indifference to  
13 Plaintiff’s right to be free from such retaliation.

14           133. Defendants Austin and DOES were Defendant Chen’s supervisors and acted with  
15 deliberate indifference to Plaintiff’s rights when they failed to ensure that Defendant Chen  
16 provided supportive measures, including transfer of Plaintiff to another classroom, when, upon  
17 information and belief, Defendant Chen notified Defendants Austin and DOES as to Plaintiff’s  
18 parents’ concerns regarding the classroom transfer.

19           134. Defendant Andrade was Defendant Whitney’s supervisor regarding Defendant  
20 Whitney’s investigation and failed to intervene regarding the investigation’s deficiencies when  
21 Plaintiff’s parents alerted him to such deficiencies and despite the obvious deficiencies.

1           135. Defendant Andrade failed to intervene when Defendant Whitney retaliated against  
2 Plaintiff, thus acting with deliberate indifference to Plaintiff's right to be free from such  
3 retaliation.

4           136. Defendant Andrade was responsible for supervising Defendants Hull and Tibbs  
5 regarding their decision making and appeal decision, respectively.

6           137. Defendant Andrade failed to intervene regarding Defendant Hull's decision's  
7 deficiencies when Plaintiff's parents alerted him to such deficiencies and despite the obvious  
8 deficiencies, thus acting with deliberate indifference.

9           138. Defendant Andrade failed to intervene regarding Defendant Tibbs' appeal  
10 decision despite the obvious errors in that decision, thus acting with deliberate indifference.

11           139. Defendants Chen and DOES supervised teachers and other staff at Ohlone,  
12 including Lynch, Olesen, Kraft, and DOES, and acted with deliberate indifference to Plaintiff's  
13 safety and rights when they failed to ensure proper implementation of the safety plan following  
14 Plaintiff's reports of sexual misconduct and to ensure proper supervision of students to prevent  
15 or respond immediately to the sexual misconduct against Plaintiff.

16           140. Plaintiff is accordingly entitled to an injunction requiring the District or any of  
17 their employees, or agents to comply fully with state law protections in all cases and to institute  
18 appropriate training, policies, procedures, and supervision to facilitate such compliance.

19           141. As a direct and proximate result of Defendants' actions, as alleged herein,  
20 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
21 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
22 required by this Court.

**FIFTH CLAIM FOR RELIEF**

***Monell: 42 U.S.C. § 1983***

**(Against Defendant District)**

1  
2  
3  
4 142. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
5 herein by this reference.

6 143. Pursuant to 42 U.S.C. § 1983, a local government may be liable for constitutional  
7 torts committed by its officials according to municipal policy, practice, or custom.” *Weiner v.*  
8 *San Diego Cnty.*, 210 F.3d 1025, 1028 (9th Cir. 2000) (citing *Monell v. Dep’t of Soc. Servs.*, 436  
9 U.S. 658, 690–91 (1978)).

10 144. “To hold a local government liable for an official’s conduct, a plaintiff must first  
11 establish that the official (1) had final policymaking authority concerning the action . . . at issue  
12 and (2) was the policymaker for the local governing body for the purposes of the particular act.”  
13 *Id.* at 1028 (citing *McMillian v. Monroe Cnty.*, 520 U.S. 781, 785 (1997)).

14 145. Plaintiff was deprived by the District of her constitutional rights to equal  
15 protection of the law and due process of law under the Fourteenth Amendment and to be free  
16 from retaliation under the First Amendment.

17 146. On information and belief, the deprivation of Plaintiff’s rights was part of a  
18 continuing, persistent, and widespread custom and practice by the District of failing to comply  
19 with its obligations to protect and respond to reports of sexual misconduct of female students,  
20 including with respect to Plaintiff; provide supervision of students during recess and in the  
21 classroom in order to prevent and address sexual misconduct; deny transfer of alleged victims to  
22 other classrooms to avoid remaining in the same class with potential perpetrators of sexual  
23

1 misconduct and prevent further misconduct; educate students about proper boundaries and  
2 appropriate versus inappropriate touching; and ensure proper oversight of the Title IX process.

3 147. On information and belief, the District has failed to issue policies and has failed  
4 to train, supervise, and discipline its employees and students to ensure they operate in manner  
5 that (a) protects the due process rights of victims of sexual misconduct, (b) does not treat  
6 similarly situated victims differently on the basis of sex and/or status as a victim of sexual  
7 misconduct, (c) does not entail unlawful retaliation. The actions of individual Defendants in  
8 Plaintiff's case alone demonstrate such a lack of training, supervision, and discipline.

9 148. The District's failure to develop and implement policies and to train, supervise,  
10 and discipline its employees and students reflects deliberate indifference to the constitutional  
11 rights of female students and students who have experienced gender-based harassment.

12 149. The District's failure to issue and implement policies and to train, supervise, and  
13 discipline its employees with respect to protecting students from sexual misconduct, responding  
14 properly to reports of sexual misconduct, offering and implement supportive measures,  
15 investigating and adjudicating complaints of sexual misconduct, and providing adequate  
16 oversight and coordination of the District's responses to reports of sexual misconduct constitutes  
17 a policy or custom that set in motion the violations of Plaintiff's rights and continued despite the  
18 District's knowledge that the constitutional rights of female victims were being violated.

19 150. The District's hiring and retention of unqualified and biased personnel to  
20 investigate and adjudicate complaints of sexual misconduct constitutes a policy or custom that  
21 set in motion the violations of Plaintiff's rights and continued despite the District's knowledge  
22 that the constitutional rights of female victims were being violated.  
23

1 151. The unconstitutional actions and/or omissions of Defendants and other personnel,  
2 as described above, were known, and were ordered, approved, tolerated, and/or ratified by  
3 policy-making officials for the District, including but not limited to Defendants Austin, Chen,  
4 and Andrade.

5 152. Plaintiff is accordingly entitled to a judgment declaring that the District's policies  
6 and procedures have caused violations of her constitutional rights.

7 153. Plaintiff reasonably fears that she is likely to experience sexual misconduct while  
8 at school again, and that her rights will be further violated by the District.

9 154. Plaintiff reasonably believes, given the District's past failures, that her rights will  
10 continue to be violated in any future interactions with the District.

11 155. The aforementioned customs and failures of the District to provide adequate  
12 policies, training, supervision, and discipline regarding employees' obligations to provide equal  
13 protection to female students caused the deprivation of the aforementioned rights of Plaintiff by  
14 Defendants; that is, the District's failure to ensure proper customs and policies and to train,  
15 supervise, and discipline is so closely related to the deprivation of the Plaintiff's rights as to be  
16 the moving force that caused the ultimate injury.

17 156. Therefore, Plaintiff is entitled to an order requiring the District to institute all  
18 necessary and appropriate policies, training, and procedures to ensure an end to such  
19 unconstitutional practices.

20 157. As a direct and proximate result of Defendants' actions, as alleged herein,  
21 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
22 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
23 required by this Court.

**SIXTH CLAIM FOR RELIEF**

**TITLE IX – DELIBERATE INDIFFERENCE TO SEXUAL MISCONDUCT**

**(Against Defendant District)**

158. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same herein by this reference.

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

160. Title IX of the Education Amendments of 1972 applies to all public educational institutions that receive federal funding, including Defendant District.

161. The District receives federal funding.

162. Defendant was deliberately indifferent to sexual misconduct committed by students at Ohlone against Plaintiff.

163. The District created and/or subject Plaintiff to a hostile educational environment in violation of Title IX because:

- a. Plaintiff was subjected to sex-based discrimination in the form of sexual misconduct; and
- b. Plaintiff was subjected to a hostile educational environment created by Defendant’s lack of policies and procedures and failure to investigate, prevent, and/or address the sexual misconduct and harassment perpetrated on Plaintiff.

164. At all relevant times, the District exercised substantial control over Plaintiff’s abusers who, at all relevant times, were (or remain currently) students enrolled at the District.

1 165. The District had actual knowledge of the sex-based discrimination, which was  
2 created and furthered by Defendant's repeated failure to protect Plaintiff consistent with its own  
3 policies and federal law and guidance.

4 166. The District acted with deliberate indifference to the acts of sex-based  
5 discrimination by failing to take any action to prevent them, deter the students responsible,  
6 and/or protect Plaintiff from sexual misconduct.

7 167. The District also acted with deliberate indifference to acts of sexual misconduct  
8 by failing to take immediate, effective remedial steps to resolve Plaintiff's allegations of sex-  
9 based discrimination.

10 168. The District's repeated failure to promptly and appropriately respond to the sexual  
11 misconduct Plaintiff experienced resulted in Plaintiff, on the basis of her sex, being excluded  
12 from participation in, being denied the benefits of, and being subjected to discrimination in the  
13 District's educational programs and activities, in violation of Title IX.

14 169. The District acted intentionally and with deliberate indifference to the repeated  
15 denial of Plaintiff's access to educational opportunities or benefits. The District's violation of its  
16 duty to Plaintiff arises from their systemic failure to properly enforce Title IX. Pursuant to the  
17 District's official policy, practice, and/or custom of deliberate indifference, they cultivated a  
18 culture of tolerance for sexual misconduct by failing to report complaints of sex-based  
19 discrimination, initiate and/or conduct adequate investigations and grievance procedures under  
20 Title IX, and ensure victimized students had equal access to educational opportunities and  
21 benefits or grievance procedures.

22 170. The ongoing sexual misconduct and harassment Plaintiff experienced, and the  
23 subsequent Title IX failures by the District, were so severe, pervasive, and objectively offensive

1 that Plaintiff was denied equal access to the District’s educational opportunities and benefits, as  
2 she lost her academic focus, changed schools, and stopped attending classes.

3 171. As a direct and proximate result of the above conduct, Plaintiff sustained damages  
4 including, without limitation, loss of educational opportunities, reputational damages, economic  
5 injuries, and other direct and consequential damages.

6 **SEVENTH CLAIM FOR RELIEF**

7 **TITLE IX – PROMPT AND EQUITABLE INVESTIGATION**

8 **(Against Defendant District)**

9 172. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
10 herein by this reference.

11 173. “A recipient must adopt and publish grievance procedures that provide for the  
12 prompt and equitable resolution of student and employee complaints alleging any action that  
13 would be prohibited by this part.” 34 C.F.R. § 106.8(c) (2020).

14 174. The Title IX regulations require that the grievance process “[r]equire that any  
15 individual designated by a recipient as a Title IX . . . investigator . . . not have a conflict of  
16 interest or bias for or against complainants or respondents generally or an individual complainant  
17 or respondent.” 34 CFR § 106.45(b)(1)(iii); *see also* 34 CFR § 106.45(b)(1)(ii) (requiring that  
18 the grievance process “[r]equire an objective evaluation of all relevant evidence—including both  
19 inculpatory and exculpatory evidence— and provide that credibility determinations may not be  
20 based on a person’s status as a complainant, respondent, or witness”).

21 175. As described herein *supra*, the investigator whom the District hired demonstrated  
22 gender bias against Plaintiff and failed to operate in a neutral manner.

23 176. As described herein *supra*, the grievance process did not entail an objective



1 evaluation of all relevant evidence or an objective determination of the parties’ or other  
2 witnesses’ credibility, further implying gender bias against Plaintiff.

3 177. Title IX further requires that the grievance process “[p]rovide an equal  
4 opportunity for the parties to present witnesses, including fact and expert witnesses, and other  
5 inculpatory and exculpatory evidence.” 34 CFR § 106.45(b)(5)(ii).

6 178. As described herein *supra*, the District’s grievance process did not provide an  
7 equal opportunity for Plaintiff to present evidence and witnesses, further gender bias against  
8 Plaintiff.

9 179. The decision maker, too, must be free of any conflict of interest or bias, 34 CFR §  
10 106.45(b)(1)(iii).

11 180. As described herein *supra*, the decision maker was not free of bias or conflict of  
12 interest, further implying gender bias against Plaintiff.

13 181. Title IX requires that the grievance process “[i]nclude reasonably prompt time  
14 frames for conclusion of the grievance process.” 34 CFR § 106.45(b)(1)(v).

15 182. As described herein *supra*, the investigation took an unreasonably long time to  
16 complete, further implying gender bias.

17 183. The school district “must keep confidential the identity of . . . any individual who  
18 has been reported to be the perpetrator of sex discrimination” and of “any respondent.” 34 CFR §  
19 106.71(a).

20 184. As described herein *supra*, the District failed to keep confidential Plaintiff’s  
21 identity as it related to her allegations against Respondent 1 regarding the February 8 and March  
22 1 incidents, as those allegations were improperly disclosed to Respondents 2 and 3.

23 185. As described herein *supra*, the District failed to keep confidential Plaintiff’s

1 identity as it related to Respondent 1's allegations against her, as those allegations were  
2 improperly disclosed to Respondents 2 and 3.

3 186. Gender bias can be inferred from these improper disclosures of Plaintiff's  
4 confidential information.

5 187. Defendant failed to ensure a prompt and equitable investigation of Plaintiff's  
6 allegations of sexual misconduct.

7 188. Defendant discriminated against Plaintiff on the basis of sex by denying her the  
8 ability to participate fully in the Title IX grievance process as complainant while allowing the  
9 accused students to participate fully as respondents, counter to her right to an equitable grievance  
10 process under Title IX.

11 189. Gender bias can be inferred from the procedural flaws in the conduct process,  
12 including but not limited to:

- 13 a. The acts and omissions identified in paragraphs 79(a)-(r) herein, *supra*.
- 14 b. The acts and omissions identified in paragraphs 80-90 herein, *supra*.
- 15 c. The acts and omissions identified in paragraphs 94(a)-(e) herein, *supra*.
- 16 d. The acts and omissions identified in paragraphs 101(a)-(i) herein, *supra*.
- 17 e. The failure by the Title IX coordinator to ensure the flaws in the  
18 investigation were corrected.
- 19 f. The deficient response by Chen to the reports of sexual misconduct.
- 20 g. The District's decision to contract with a decision maker who was, upon  
21 information and belief, a close colleague of the investigator at the same firm as  
22 one another, despite Plaintiff's parents' claim to the decision maker that the  
23 investigator exhibited bias against Plaintiff and her parents;

1 190. As a direct and proximate result of the above conduct, Plaintiff sustained damages  
2 including, without limitation, loss of educational opportunities, reputational damages, economic  
3 injuries, and other direct and consequential damages.

4 **EIGHTH CLAIM FOR RELIEF**

5 **TITLE IX – ERRONEOUS OUTCOME**

6 **(Against Defendant District)**

7 191. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
8 herein by this reference.

9 192. Under 34 U.S.C. § 106.45(b)(3)(i), dismissal of the allegations was required if  
10 those allegations, even if proven to be true, would not constitute sexual harassment (“If the  
11 conduct alleged in the formal complaint would not constitute sexual harassment as defined in §  
12 106.30 even if proved . . . , then the recipient *must* dismiss the formal complaint with regard to  
13 that conduct for purposes of sexual harassment under title IX or this part.” (emphasis added)).

14 193. The Title IX office did not dismiss the complaint. Accordingly, once Defendant  
15 Hull determined that the allegations were true, she (and the appeal officer, Defendant Tibbs) did  
16 not have discretion to determine that the conduct did not constitute sexual harassment.

17 194. Nonetheless, the final determination regarding the complaint was that the  
18 substantiated conduct was not sexual in nature or objectively offensive.

19 195. This determination by the appeal officer was erroneous for the reasons identified  
20 in paragraphs 101(a)-(i) herein, *supra*.

21 196. To the extent the appeal officer’s determination was based on the decision  
22 maker’s determination and/or the investigator’s investigation, the decision maker’s determination  
23

1 was erroneous for the reasons identified herein, *supra*, and the investigation was flawed, giving  
2 rise to the erroneous outcomes.

3 197. The determination that the March 1 incident did not occur was erroneous, as the  
4 analysis of the evidence was not objective or fair, as discussed herein *supra*.

5 198. As a result of the determination that the conduct did not constitute sexual  
6 misconduct, the District issued no remedies or sanctions, allowing the respondents to avoid  
7 consequences of their abuse against Plaintiff.

8 199. As a result of the District's violation of Title IX, which resulted in an erroneous  
9 outcome, and no sanction, which continues to injure Plaintiff's reputation and right to access  
10 educational programs and activities, an injunction should issue directing the District to reverse  
11 the outcome and findings regarding Plaintiff.

12 200. As a direct and proximate result of the above conduct, Plaintiff sustained damages  
13 including, without limitation, loss of educational opportunities, reputational damages, economic  
14 injuries, and other direct and consequential damages.

15 **NINTH CLAIM FOR RELIEF**

16 **TITLE IX – HOSTILE ENVIRONMENT / DENIAL OF SUPPORTIVE MEASURES**

17 **(Against Defendant District)**

18 201. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
19 herein by this reference.

20 202. Under 34 CFR § 106.30:

21 Supportive measures means nondisciplinary, non-punitive individualized services  
22 offered as appropriate [and] as reasonably available . . . before or after the filing  
23 of a formal complaint or where no formal complaint has been filed. Such  
measures are designed to restore or preserve equal access to the recipient's  
education program or activity without unreasonably burdening the other party,  
including measures designed to protect the safety of all parties or the recipient's

1 educational environment, or deter sexual harassment. Supportive measures may  
2 include counseling, extensions of deadlines or other course-related adjustments  
[or] modifications of work or class schedules.

3 203. The district must “consider the complainant’s wishes with respect to supportive  
4 measures [and] inform the complainant of the availability of supportive measures with or without  
5 the filing of a formal complaint.” 34 CFR § 106.44.

6 204. Upon information and belief, the District would not make the transfer of Plaintiff  
7 to a different classroom unless and until an investigation was completed.

8 205. Transfer to a different classroom pending the outcome of the investigation was  
9 necessary to restoring and preserving Plaintiff’s equal access to Ohlone Elementary School and  
10 to protect Plaintiff’s safety.

11 206. Transfer of Plaintiff to a different classroom would not burden the other party,  
12 i.e., the respondents, let alone unreasonably burden them.

13 207. Transfer of Plaintiff to a different classroom was reasonably available, as five or  
14 six other kindergarten classrooms had open seats available.

15 208. Denial of supportive measures constituted deliberate indifference to Plaintiff’s  
16 safety and right to be free from sexual misconduct, evidences gender-based discrimination, and  
17 constitutes a violation of Title IX.

18 209. By denying supportive measures, Defendant District cultivated and perpetuated a  
19 sexually hostile environment that impeded and effectively denied Plaintiff’s equal access to  
20 educational opportunities and benefits.

21 210. Defendant District is also liable for its failure to remedy the hostile educational  
22 environment experienced by Plaintiff by failing to offer Plaintiff appropriate interim measures  
23 and accommodations that could have provided Plaintiff with equal access to educational

1 opportunities and benefits.

2 211. As a direct and proximate result of the above conduct, Plaintiff sustained damages  
3 including, without limitation, loss of educational opportunities, reputational damages, economic  
4 injuries, and other direct and consequential damages.

5 **TENTH CLAIM FOR RELIEF**

6 **TITLE IX – RETALIATION**

7 **(Against Defendant District)**

8 212. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same  
9 herein by this reference.

10 213. Title IX prohibits retaliation, including “a report or formal complaint of sexual  
11 harassment, for the purpose of interfering with any right or privilege secured by title IX or this  
12 part.” 34 CFR § 106.71(a).

13 214. The school district “must keep confidential the identity of . . . any individual who  
14 has been reported to be the perpetrator of sex discrimination” and of “any respondent.” *Id.*

15 215. The District retaliated against Plaintiff by adding allegations against her in  
16 response to her identifying allegations of harassment of her by Respondents 1-3 the District’s  
17 investigation had omitted.

18 216. The District retaliated by disclosing private and confidential information about  
19 Plaintiff in response to her identifying allegations of harassment of her by Respondents 1-3 the  
20 District’s investigation had omitted.

21 217. As a direct and proximate result of the above conduct, Plaintiff sustained damages  
22 including, without limitation, loss of educational opportunities, reputational damages, economic  
23 injuries, and other direct and consequential damages.

**ELEVENTH CLAIM FOR RELIEF**

**NEGLIGENT SUPERVISION, TRAINING AND STAFFING**

**Cal. Civil Code 1714, Cal. Gov. Code § 844.6(d)**

**(Against Defendants District, Austin, Chen, Andrade, Kraft, Olesen, Lynch, and DOES)**

218. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same herein by this reference.

219. Defendants had a duty to properly supervise, train, and monitor their employees and to ensure those employees' compliance with all applicable statutes, laws, regulations, and institutional policies, but they failed to do so and therefore breached the duties of care owed to Plaintiffs as alleged herein. Each of these duties to supervise, train, and monitor included the duty to ensure that the Title IX and other relevant policies were followed to prevent, properly respond to, and remedy incidents of sex-based discrimination.

220. Defendant District had a duty to supervise, train, and monitor the actions of Defendant Austin and Defendant Andrade.

221. Defendants Austin and DOES had a duty to supervise, train, and monitor the actions of Defendants Andrade and Chen.

222. Defendant Andrade had a duty to supervise, train, and monitor the actions of Defendants Whitney, Hull, and Tibbs to ensure compliance with the Title IX regulations and the District's policies.

223. Defendants improperly, negligently, wrongfully, and recklessly failed to supervise and train their subordinates to ensure that their subordinates did not violate Plaintiff's rights.

224. In executing these duties, Defendants additionally owed a duty to exercise reasonable care in the hiring, supervising, and retaining of their employees. This duty includes

1 ensuring that staff are competent in performing their duties. District and school administrators  
2 must ensure that school employees follow policies and procedures and that such employees have  
3 the requisite knowledge and training.

4 225. As an educational institution for minors, where all of the students are entrusted to  
5 the counselors, advisors, mentors, coaches, faculty members, administrators and teachers,  
6 Defendants expressly and implicitly represented that these individuals would supervise, control,  
7 direct, and guide all students in the District's care while in loco parentis.

8 226. Defendants Chen and DOES negligently failed to supervise or ensure supervision  
9 by DOES of students and allowed a condition where wrongful acts could occur against students,  
10 including Plaintiff.

11 227. Defendants Chen, Kraft, Olesen, Lynch, and DOES failed to provide reasonable  
12 supervision of students at all relevant times and further failed to take reasonable measures to  
13 prevent harassment and physical abuse of minors, including Plaintiff.

14 228. Defendants Austin, Chen, and DOES owed a duty of care to all reasonably  
15 foreseeable people, including Plaintiff, to adequately and properly investigate, screen, hire, train,  
16 monitor, place, evaluate, and supervise their instructors and employees to protect their students  
17 from harm caused by other minor students on their school's premises. These Defendants  
18 negligently failed to fulfill this duty of care.

19 229. Defendants Austin, Andrade, and DOES failed to ensure that Defendants Chen,  
20 Whitney, Hull, and Tibbs received the supervision necessary to conduct a fair, unbiased, and  
21 thorough investigation into and/or adjudication of the sexual misconduct allegations. They failed  
22 to intervene when these individuals submitted reports and/or determinations that contained  
23 numerous critical omissions and content.



1           230. Defendants Austin, Andrade, and Chen failed in their duty to supervise their  
2 respective supervisees to ensure the transfer of Plaintiff to another classroom.

3           231. Plaintiff is informed, believes, and alleges that Defendants failed in their duty to  
4 investigate properly and adequately, screen, hire, train, monitor, place, evaluate, and supervise  
5 and were negligent and reckless in hiring and/or retaining instructors and employees to protect  
6 students, such as Plaintiff, from harm caused by other students.

7           232. Plaintiff is informed, believes, and thereon alleges that Defendants should have  
8 known that their instructors, employees, and contractors were unfit for the specific tasks to be  
9 performed during the course of their employment and posed a danger to students under their  
10 custody and care.

11           233. Plaintiff is informed, believes, and alleges that Defendants were negligent and/or  
12 reckless by failing to provide any or sufficient training and/or supervision of the District's  
13 employees after hiring them and were negligent in their retention of employees who failed to  
14 perform their jobs following California and Federal Law vis-à-vis the protection, safety, and  
15 well-being of the children in their custody and care. This includes failing in their job  
16 performance, which included supervising students and investigating acts of bullying and  
17 harassment.

18           234. By engaging in the acts alleged herein, Defendants failed to act with ordinary care  
19 and breached their duty of care owed to Plaintiff.

20           235. As a direct and proximate result of Defendants' actions, as alleged herein,  
21 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
22 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
23 required by this Court.

**TWELFTH CLAIM FOR RELIEF**

**NEGLIGENCE AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

**Cal. Civil Code 1714, Cal. Gov. Code § 844.6(d)**

**(Against All Defendants)**

236. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same herein by this reference.

237. Defendants Chen, Kraft, Olesen, Lynch, and DOES owed Plaintiff a duty to act with reasonable care to protect Plaintiff from foreseeable dangers, including the sexual harassment that she suffered. When Defendants learned of the conduct of Respondents 1-3, including the sexual abuse and the physical assaults, they had a duty to intervene and report to protect Plaintiff from further harm. Defendants had actual and/or constructive notice of a reasonably foreseeable risk of harm.

238. Defendants had a further duty to exercise reasonable and prudent care in the conduct of their activities, or omissions to act, to avoid harm and injury to those students in their care and to ensure a safe and lawful environment at the schools, which included, among other things, a duty to investigate all claims of sexual abuse, harassment, and other forms abuse according to Title IX, the California Education Code, and the California Civil Code (Defendants Andrade, Whitney, Hull, and Tibbs), and to provide supportive measures (Defendants Austin, Andrade, Chen, Kraft, Olesen, and DOES) to ensure equal access to the educational environment. Each defendant negligently, or otherwise wrongfully, failed to act with reasonable care, and their negligence, or other wrongful conduct, was a substantial factor in causing the harm to Plaintiff as alleged herein.

239. Due to these acts and failures to act, Defendants are liable for the injuries and

1 damages to Plaintiff under the California Education Code, including, but not limited to Section  
2 44807, and under the California Government Code, including, but not limited to, Sections  
3 815.2(a), 815.4, 815.6, 820(a), and/or 835.

4 240. Defendants' actions were the cause-in-fact of Plaintiff's injury and emotional  
5 distress, and the risk of injuring Plaintiff was within the scope of duty that was breached by  
6 Defendants' decision to retaliate against Plaintiff or to conduct or permit flawed investigations  
7 and disciplinary processes that resulted in Plaintiff's exclusion from critical aspects of her  
8 education while at the District.

9 241. Defendant Whitney failed to conduct fair, unbiased, and thorough investigations  
10 into Plaintiff's allegations of sexual misconduct. As a neutral investigator operating at the behest  
11 of and under the auspices of the District, Defendant Whitney had a duty to ensure a neutral and  
12 fair investigation and to treat a potential victim with dignity.

13 242. Defendants Andrade and Whitney negligently disclosed or permitted the  
14 disclosure of confidential information about Plaintiff. They had a duty to protect such  
15 information.

16 243. Defendants Hull and Tibbs failed in their duty to objectively, neutrally, and fairly  
17 render decisions regarding Plaintiff's allegations of sexual misconduct.

18 244. By engaging in the acts alleged herein, all Defendants failed to act with ordinary  
19 care and breached their duty of care owed to Plaintiff.

20 245. As a direct and proximate result of Defendants' actions, as alleged herein,  
21 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
22 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
23 required by this Court.

1 **THIRTEENTH CLAIM FOR RELIEF**

2 **RESPONDEAT SUPERIOR**

3 **(Against Defendant District)**

4 246. Plaintiff realleges and incorporates each and every foregoing paragraph.

5 247. At all times material, Defendants Austin, Andrade, Chen, Kraft, Olesen, Lynch,  
6 and DOES were on the premises of the District and privileged to be on the premises by virtue of  
7 their employment with the District.

8 248. At all times material, Defendants Whitney, Hull, and Tibbs were contracted to  
9 provide services on behalf of the District. When they took the prohibited actions against Plaintiff,  
10 they were employees and/or agents of Defendant District acting within the scope of their  
11 employment.

12 249. Defendant District is therefore liable for all torts committed by their agents, in this  
13 case all other Defendants.

14 250. As a direct and proximate result of Defendants' actions, as alleged herein,  
15 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
16 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
17 required by this Court.

18 **FOURTEENTH CLAIM FOR RELIEF**

19 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

20 **(Against Defendants Andrade, Chen, and Whitney)**

21 251. Plaintiff realleges and incorporates each and every foregoing paragraph.

22 252. Plaintiff alleges intentional infliction of emotional distress by all Defendants in  
23 their response to reports of sexual misconduct and/or retaliation.

1 253. By mishandling Plaintiff’s report (Defendant Chen), conducting or allowing  
2 biased and inadequate investigations into Plaintiff’s reports of sexual misconduct (Defendants  
3 Chen, Andrade, and Whitney), retaliating against Plaintiff (Defendants Andrade and Whitney),  
4 and denying supportive measures to Plaintiff (Defendants Chen and Andrade), Defendants  
5 engaged in extreme and outrageous conduct. Defendants specifically intended for their conduct  
6 to cause Plaintiff to suffer emotional distress so severe that it would silence any additional  
7 disclosures.

8 254. As a direct and proximate result of Defendants’ actions, as alleged herein,  
9 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
10 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
11 required by this Court.

12 **FIFTEENTH CLAIM FOR RELIEF**

13 **SEX DISCRIMINATION (Violation of Ed. Code §220)**

14 **(Against All Defendants)**

15 255. Plaintiff realleges and incorporates each and every foregoing paragraph.

16 256. California Education Code, Section 220, provides that “No person shall be  
17 subjected to discrimination on the basis of disability, gender, gender identity, gender expression,  
18 nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is  
19 contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code....”

20 257. As is hereinabove described, Plaintiff was harassed and discriminated against  
21 based on sex.

22 258. Plaintiff suffered harassment that was so severe, pervasive, and offensive that it  
23 effectively deprived her of the right of equal access to educational benefits and opportunities.

1 259. Defendants knew of the conduct committed upon Plaintiff's person, which was  
2 occurring on its campus, included physical assault, bullying, and harassment.

3 260. As a direct and proximate result of Defendants' actions, as alleged herein,  
4 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
5 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
6 required by this Court.

7 **SIXTEENTH CLAIM FOR RELIEF**

8 **BANE ACT (Violations of Civil Code §52.1)**

9 **(Against Defendants Andrade, Chen, and Whitney)**

10 261. Plaintiff realleges and incorporates each and every foregoing paragraph.

11 262. Defendants interfered by threats, intimidation, or coercion, with the exercise or  
12 enjoyment by Plaintiff of rights secured by the Constitution or laws of the United States and of  
13 the state of California.

14 263. The Fourteenth Amendment to the U.S. Constitution guarantees an individual's  
15 rights to equal treatment and due process.

16 264. Plaintiff has a Federal and State Constitutional Right to attend school free of  
17 violence, harassment, and bullying.

18 265. It is also a basic principle of Constitutional law that the First Amendment  
19 guarantees the right to petition the government to redress grievances and to be free from  
20 unlawful retaliation.

21 266. By engaging in the acts alleged above, Defendants denied those rights and other  
22 rights to Plaintiff, thus giving rise to claims for damages pursuant to California Civil Code  
23 section 52.1.

1           267. Section 52.1(b) prohibits interference “by threat, intimidation, or coercion, or  
2 attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any  
3 individual . . . of rights secured by the Constitution or laws of the United States, or of the rights  
4 secured by the Constitution or laws of this state.”

5           268. Defendants interfered with or attempted to interfere with Plaintiff’s rights to her  
6 education, equal access thereto, bodily integrity, and other rights identified herein by  
7 intimidating and coercing her to choose between remaining in the classroom with boys who had  
8 harassed her or switch schools altogether (Defendants Chen and Andrade) and to withdraw her  
9 complaint by denying her a fair and thorough investigation (Defendants Chen, Andrade, and  
10 Whitney) and retaliating against Plaintiff by disclosing confidential information and adding  
11 allegations against Plaintiff (Defendants Andrade and Whitney).

12           269. As a direct and proximate result of Defendants’ actions, as alleged herein,  
13 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
14 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
15 required by this Court.

16           270. In conducting themselves as alleged herein, Defendants were acting within the  
17 course and scope of their employment with Defendant District. Thus, the District is responsible  
18 for Defendants’ actions.

19                               **SEVENTEENTH CLAIM FOR RELIEF**

20                               **GENDER VIOLENCE (Violations of Civil Code §52.4)**

21                               **(Against Defendants Andrade, Chen, Kraft, Olesen, Lynch, and DOES)**

22           271. Plaintiff realleges and incorporates each and every foregoing paragraph.

23           272. The sexual misconduct directed at Plaintiff constituted a criminal offense under

1 California law that has as an element the use, attempted use, or threatened use of physical force  
2 against the person or property of another, committed at least in part based the gender of the  
3 victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or  
4 conviction

5 273. The sexual misconduct directed at Plaintiff as herein above alleged, was a  
6 physical intrusion or physical invasion of a sexual nature under coercive conditions, whether or  
7 not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

8 274. Defendants are “responsible part[ies]” under the statute, as they failed to properly  
9 supervise and prevent the acts by the individuals who engaged in the sexual misconduct against  
10 Plaintiff.

11 275. As a direct and proximate result of Defendants’ actions, as alleged herein,  
12 Plaintiff was injured as set forth above and is entitled to damages, including compensatory and  
13 punitive damages, in an amount to be proven at trial and in excess of the jurisdictional amount  
14 required by this Court.

15 **IX. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for relief as follows against defendants:

- 17 1. For a declaration that Defendants violated Plaintiffs’ rights under the U.S.  
18 Constitution and Title IX.
- 19 2. For an appropriately tailored injunction, after discovery (if necessary) into the current  
20 practices of the District, requiring that the District institute practices and procedures  
21 to comply with Title IX to ensure Plaintiff and other students and employees of  
22 Tulane receive protection from sex discrimination. Plaintiff respectfully requests that  
23 such injunctive relief include (but not be limited to) the following:



1 a. Appropriate changes to policies, procedures, training, and supervision  
2 regarding the responsibilities of faculty, advisors, and the Title IX office as to  
3 reporting, responding to, and investigating such incidents.

4 b. Ongoing monitoring of the District’s relevant practices and procedures for  
5 however many years necessary, under a consent decree or the equivalent, to  
6 ensure practices and procedures compliant with the law are implemented and  
7 maintained.

8 3. For compensatory, general, and special damages, in an amount according to proof;

9 4. For general damages, including damages for emotional pain, emotional distress,  
10 hardship, suffering, shock, worry, anxiety, sleeplessness, illness and trauma and  
11 suffering;

12 5. For prejudgment interest;

13 6. For exemplary and punitive damages against each individual and Doe defendant, in  
14 amounts according to proof and appropriate to punish defendants and deter others  
15 from engaging in similar misconduct;

16 7. For costs of suit, including reasonable attorneys’ fees, under 42 U.S.C. § 1988; and

17 8. For such other relief as may be warranted or as is just and proper.

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**X. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury in this action.

Dated this 28th day of February, 2025

**LAW OFFICE OF AARON ZISSER**



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Aaron B. Zisser  
Attorney for Plaintiff Jane Doe #1, by and  
through her Guardian ad Litem, Jane Doe #2