

on behalf of the Estate of A.M., whose death and rights are at issue in this case. They are authorized to act on behalf of the Estate of A.M..

2. The Chilton County Board of Eductaion operates the public schools in Chilton County, Alabama (including Jemison High School) under the laws of the State of Alabama. At all times pertinent to this case, and up to the date of her death, A.M. was a student at the Chiton County Schools, namely at Jemison High School. The Superintendent of the Chilton County schools is Dave Hayden at 1705 Lay Dam, Clanton, Alabama – who may be served with the summons and complaint in this case. Alternatively, the President of the Board of Education may be served with the Summons and Complaint. The President of the Board of Eduction is Joe Mims. The Board of Education is entitled to sovereign immunity for state tort law claims, but is not immune from federal law claims.

Jurisdiction

3. This case is brought to vindicate civil rights and other rights protected under federal law. Jurisdiction is proper in this Court under 28 U.S.C. §§1331 and 1343.

Venue

4. The defendants reside in this Distict, and all defendants are residents of this District. In addition, all or a substantial part of the events giving rise to this claim occurred in whole or in part in this District. Venue is proper under 28 U.S.C. §1391.

A.M.

5. A.M. was a bright and caring child. She had interests in art and drawing, and she loved animals. She was not really any different than other high school students in her

interests, her school performance or her family life.

6. She had two issues that set her apart from the other kids at her high school. She was overweight. As much as she regretted it, she had not overcome her weight disorders and compulsions.
7. A.M. also had Blount's Disease. Blount's disease is a growth disorder that causes the lower leg to angle inward, making the person appear bow-legged. It occurs often in adolescents, and is associated with obesity. It is a progressive disease that can result in a disability, and deformity. The treatment is surgical, and requires realignment or restriction of growth in the lower leg bones.
8. A.M. had surgery to correct her disease which caused her to be in a wheelchair, to use a walker, and to have a temporary, but visibly awkward gait.
9. Blount's Disease caused A.M. to be unusually slow, not active, unable to participate in physical activity, and often late to class and other engagements.
10. A.M. also had pins in her arm, and an unattractive scar from a fall while skating.
11. Finally, A.M. suffered from the untimely and tragic death of her sister. She received counseling for as long as her family could afford it, and was, for a short time, on medication relating to her reaction to her sister's death.
12. A.M. found it difficult to make friends in high school. She was not a part of the "in" crowd; in fact, she was friendly with the kids interested in art and music and reading, not the group involved in sports or cheerleading.
13. Because of her appearance, her social activities, her weight and her physical challenges, A.M. was a target for a wide variety of bullies at school. As is outlined in

detail below, the bullying was constant; it was brutal; it came from students of all types, colors and sizes. In legal parlance, it was severe and pervasive, and could not fail to be noticed.

14. In fact, A.M. was such a common target for bullies that there was hardly a segment of school society that did not “pile on” when opportunity arose.
15. Teachers, coaches, staff and administrators knew about it, and did nothing to address it, or to respond to it, or to stop it.
16. On May 18, 2010, A.M. committed suicide by jumping off a bridge over Interstate 65 near her home. Before doing so, she wrote:

Dear Mom and Dad,

I'm leaving today. I'm taking my own life. I'm killing myself because I can't take this crap anymore.

Eli, the local law enforcement, L----, L----, J----, etc. - this is all the crap that's making me do this.

Don't try to stop me. By the time you find this letter, I'll be dead. It's not your fault. But do not worry. Rejoice because I will be with Him.

Soon, I will return, but in a different form.

The History Of Bullying And Harassment In The United States

17. The infamous Columbine High School massacre occurred on Tuesday, April 20, 1999. E.H. and D.K., both known to have serious emotional disturbances and also

known by school officials to be victims of bullying and harassment themselves, embarked on a horrid massacre, killing twelve (12) students and one teacher. They also injured twenty-one (21) other students directly, and three people were injured while attempting to escape. Not surprisingly, the pair then committed suicide.

18. Importantly, the issue of bullying and harassment in schools was already a major concern even before *Columbine*. In 1998, J.H., a special education student at the Pasco School District, also a victim of incessant bullying, committed suicide.

19. In January of 1999, the U.S. Department of Education (“DOE”) produced a document, *Protecting Students From Harassment And Hate Crime*, which essentially provided for schools a *Checklist* of items, that if they followed, would help to develop a culture that make the schools safer for all students and help to prevent bullying and harassment. These items included but were not limited to the mandate that Board members, administrators and the superintendent should:

- a. recognize the urgency of the problem and identify people/agencies that can help develop effective prevention and response strategies,
- b. compile a library of useful materials;
- c. work on creating an effective anti-harassment program in consultation with parents, students, and community groups;
- d. appoint a Compliance Coordinator to train School personnel;
- e. assess the school climate to determine the prevalence of harassment that exists and the potential for hate-motivated violence;
- f. adopt a written anti-harassment policy and assure the policy is clearly communicated to all members of the school community; and school personnel and students are held accountable for their actions;
- g. develop a formal grievance procedure and takes steps to make sure it is

working properly;

- h. have instructional personnel use or supplement a district's curriculum and pedagogical strategies to foster respect and appreciation for diversity;
- i. institute, improve, or expand age appropriate student activities to prevent or reduce prejudice and conflict;
- j. institute specific measures to respond immediately and effectively when harassment occurs to stop the harassment and prevent recurrence;
- k. flexibly apply response mechanisms to both the victim and the perpetrator, taking into account the parties' ages and the context of the behavior;
- l. continually monitor the school climate and promptly address problems that could lead to harassment or violence or that indicate that harassment could be occurring;
- m. appoint appropriate school officials to become familiar with pertinent civil and criminal laws at the state, local, and federal levels, so that they are able to recognize possible civil rights violations, hate crimes and other criminal acts;
- n. develop guidelines and procedures for collaboration with law enforcement officials, make appropriate referrals to outside agencies and designate liaison personnel;
- o. assure Crisis Intervention Plans are in place to minimize the possibility of violence or disruption of the educational process;
- p. have District-level personnel and individual school sites form continuing partnerships with parents and the community to prevent hate crimes and harassing behaviors;
- q. provide Staff training and professional development programs to support the district's anti-harassment efforts;
- r. assure that all harassment incidents are carefully documented and incidents are reported to outside authorities as required; and
- s. regularly assesses the effectiveness of its anti-harassment efforts.

20. Over the course of time the *Office Of Civil Rights* within the United States

Department Of Education issued numerous opinions on the issues of bullying and harassment, further giving school boards direction as to how to deal with this ongoing threat to not only the safety of children but to assure they were received an education that was not hostile. The OCR noted that a failure to do any of the following various items could create a hostile educational environment for a student:

- a. provide school assemblies and instruction on bullying;
- b. address bullying in classroom intervention settings;
- c. conduct a school bullying assessment;
- d. form a bullying prevention coordination team at school;
- e. include language specifically identifying bullying in the school rules;
- f. develop strategies to prevent bullying in hot spots;
- g. post signs in classrooms prohibiting bullying & listing its consequences;
and
- h. encourage students to help classmates who are being bullied & to report bullying.

21. In regard to handling an incident once reported, the OCR also noted a school district should:

- a. train staff on how to investigate a claim of bullying and harassment;
- b. fully investigate allegations of bullying and harassment;
- c. respond to each allegation promptly;
- d. interview the student and the perpetrator;
- e. keep a written record of the investigation;
- f. taken prompt action against the perpetrators;
- g. remove the perpetrator from the class;

- h. take action to prevent future incidents;
- i. offer to transfer the student or to a different class;
- j. offer counseling for the student victim;
- k. offer counseling to the perpetrator;
- l. notify parents of their rights to file grievances;
- m. offer the student a 1:1 aide or “shadow” for protection;
- n. offer social skills training to the student;
- o. offer social skills training to the perpetrator;
- p. offer social skills training to the student’s class;
- q. convene a meeting of the parents, and educators to discuss the issues of bullying and harassment;
- r. use a program to monitor and oversee the resolution of incidents;
- s. hire a temporary paraprofessional to monitor the perpetrator after the incident;
- t. perform a psychological evaluation of the student victim after the incident; and among other things; and
- u. most importantly use any incident of bullying as a “teaching moment” for the perpetrator and even the entire student body.

22. In 1995 the U.S. Congress authorized the *Safe Schools Act*, 20 U.S.C. §5961 so that students can be educated in an environment that was safe and free from violence. At and around that same time Congress promulgated the Youth Suicide And Early Intervention And Prevention Act, 42 U.S.C. §290bb-36. Over the past years, both have received strong public support and have been reauthorized many times.

23. Nevertheless, many school did not take to heart the message of Columbine and the information provided by the Department of Education.
24. In California in 2000, the Santana High School in California also experienced a school shooting massacre. A student, C.W. shot thirteen students, ultimately killing two. He too was a long time victim of bullying at the hands of fellow students. The shooter's father reported that his son was subjected to taunting and bullying that he reported as more like "torture."
25. In New York in 2001, the New York State Legislature heard testimony from B.C., a 12 year old student from Windham, NY. He testified that for three years he was punched, kicked, choked, and subjected to verbal attacks because he had a ponytail, wore a rainbow necklace, and had two mothers.
26. In Minnesota in 2003 J.M, a 15 year old student at Rocori High School in Cold Spring, Minnesota, shot and killed two fellow students. He too was a victim of severe bullying. During the investigation his friends spoke of harassment and teasing he suffered mainly revolving around his acne. An expert reported that J.M. believed he was doing the morally right thing by shooting his tormentors because the victims represented to him, the bullying he had suffered.
27. Again in Minnesota but in 2005 the fifth deadliest school shooting in United States history occurred when J.W. killed his grandfather and grandfather's girlfriend, then drove to school and shot and killed seven other people, five students and two school district employees, wounded five other students and eventually took his own life. He too was a victim of severe and constant bullying, reportedly because of his weight,

because dressed in all black, and came from a troubled family.

28. In Missouri in 2006, in a case making national headlines a thirteen year old girl hung herself after being cyberbullied over MySpace.

29. In Ohio in 2007 in what proved to be one of four suicides at one high school, E.M. was continuously bullied until he took his own life at the age of seventeen. E.M. was noted to be a quiet and friendly student who was perceived as gay due to his interest in theatre and music. Most of the bullying took place in one math class and was observed by that teacher. E.M.'s parents had previously alerted the school to the bullying their son suffered..

30. Just three weeks after the suicide of her friend E.M., M.R. took her own life. Shortly before committing suicide M.R. joined a school club, the Gay-Straight Alliance and told friends and family she thought she might be gay. Eventually she began to realize that she thought indeed she was a lesbian, and shared this with others. She soon became another victim of verbal harassment and bullying at school.

31. This very same High School in Ohio experienced two more student suicides due to be bullying and harassment in 2008.

32. In Kansas in 2007, a 12 year old boy with a cleft palate and a speech impediment, B.M., was a victim of horrific bullying, hinted to other students and teachers that he was depressed and considering suicide, but no one intervened and he too, committed suicide.

33. In Massachusetts in 2009, C.J.W.-H.'s mother discovered his body hanging from their Massachusetts home. All the bullying and taunting is thought to have begun months earlier when C.J.W.-H. got into an argument with a female student after his knapsack knocked into a television which then bumped that female student. To make matters worse, C.J.W.-H. was at a new school where he had few friends. After this, C.J.W.-H.'s classmates called him gay on a daily basis, made fun of his clothes and threatened to harm him. C.J.W.-H.'s mother contacted the school numerous times and made them aware of the bullying. On the day she discovered his body, she was scheduled to meet with the school again to discuss the way her son was being treated at school. Her son was only 11 years old.
34. In May of 2009, a girl at the Cleburne High School, who was known to be depressed committed suicide.
35. In October of 2009, a male student at the nearby Cleburne High School also allegedly a victim of bullying, also committed suicide.
36. Again in Massachusetts and on January 14, 2010, P.P. committed suicide after being bullied at her Massachusetts school. P.P.'s aunt had previously notified the school district about the abuse P.P. had suffered who failed to intervene.
37. On January 21, 2010 M.L., a 9 year old special education student at the Lewisville Independent School District, also a victim of incessant bullying, hung himself in the nurse's office. When the nurse attempted to open the bathroom door she was not able to, as she did not have a key. This incident was not M.L.'s first suicidal gesture, and in fact, just a few days before, he told a school counselor that he wanted to kill

himself. In addition, about a week before he made the threat, his mother sent a letter to the school principal complaining about the fact M.L. had been, and continued to be, a victim of incessant bullying by other children. She also complained before representatives of the school board. Even with this overt and verbalized threat, and with the reports to the school board and his principal about the bullying, and reports to his counselor about his imminent and overt suicidality, not one person intervened in any way to prevent this catastrophe.

38. On March 18, 2010 T.F. an 11 year old of the Perkins-Tryon School District in Oklahoma, committed suicide due to incessant bullying, the same day he was suspended from school for trying to fight off a bully. His parents had repeatedly complained to school officials. They were told “boys will be boy,” and the bullying went on without school intervention.

39. In New York and on March 24, 2010, A.P., also a victim of severe and extreme bullying and harassment committed suicide.

40. On March 28, 2010 J.T.C., a 13 year old middle school student with the Joshua Independent School District, Texas, also a victim of horrible bullying, hung himself. School district. He was bullied in physical education class and in the locker room almost every day, and was also thrown into a dumpster which were observed by staff who did nothing. He was placed upside down in a toilet bowl, had his head flushed several times and just prior to his death was stripped nude, tied up and again placed into a trashcan. The event was videotaped, put on YouTube but was later taken down, at the direction of an unknown staff member, who also failed to report the incident.

41. The U.S. Center For Disease Control reports that from 1999 to 2006 more than 1,600 teenagers between 10-14, committed suicide.
42. This history shows that bullying students to the extent that they commit the most extreme acts is not a new problem, is not unique to any particular locale or culture, and is known to school administrators, staff and employees across the nation.
43. This history is relevant to the necessity for training and supervision, and is relevant to a determination of the moral and legal culpability of the leaders, administrators and staff of the Defendant School District.

Bullying was Severe and Pervasive and Targeted A.M.

44. A.M. was bullied virtually every day she attended school. Viewed in isolation, the juvenile conduct would be called mundane. When it happens every day, it become pervasive. By way of example, A.M. was called names, like “Fat Bitch.” When she complained, she was punished, one might guess, a bad attitude. She was pushed at school; she was punished by teachers because she was slow, or late to class; she had her books knocked to the floor; she had her seat taken away from her; she had her books stolen. Kids made fun of her, and those that she sought out for help, those who heard the cruel words ignored her.
45. Three events stand out as particularly egregious. One day, A.M. had her pants stripped down, along with her underwear in front of a group of peers. Another day, she was physically locked in janitor’s closet – with the rest of the trash and refuse.

46. On a regular basis, A.M. was the target of “pig races” on the school bus. The object of this episode was for senior boys to chase and catch a girl that they thought was the ugliest and fattest girl, and to kiss that girl on the cheek. The observers then determined who was first to catch the target, and who actually caught the ugliest and fattest girl. A.M. was often singled out by the senior boys, to the perverse delight of onlookers, including the bus driver employed by the school.

47. Numerous school administrators, staff and teachers witnessed a variety of bullying activities directed at A.M.. She apparently reported many of them; many were committed in plain view; some right in front of the school office. Not only was no action taken, not a single administrator complied with the statutory obligation to report child abuse under §26-14-3, Code of Alabama – a statute that is common among the states, and well known to school district employees, administrators and teachers.

Claims Against the School District Pursuant to 42 U.S.C. §1983

48. A.M. had a right to bodily integrity that is protected by the Constitution of the United States. Included within that right is the right to be free of restraint, punishment, or physical assault and battery by school officials, and by peers. In addition, A.M. has a right to her life, which shall not (according to the Constitution) be taken by the arbitrary action of the Government. As is set out above, the Defendant was at a minimum, indifferent to A.M.’s rights

49. The indifference is a result of conscious decisions made by the Defendant. By way of example, the Defendant was on notice of a nation-wide problem with bullying; there

were numerous models for anti-bullying policies and procedures to reduce or at least address a nation-wide problem. There were news reports about bullying, national legislation, teacher and administrator conferences. Like the proverbial ostrich, the Defendant consciously buried its head in the sand – pretending that it was a school district immune from any of the real dangers known to exist.

50. The law recognizes that a person cannot claim a lack of knowledge about a fact by deliberately closing his eyes to what would otherwise be obvious or by failing to investigate if he is in possession of facts which cry out for investigation. The “willful blindness” doctrine is recognized as a matter of federal law, and it applies with equal force to the Defendant here.

51. Not only did the Defendant have actual notice and knowledge of the bullying events targeting A.M., they knew in the sense that the willful blindness doctrine charges them with knowledge of the obvious, and with knowledge of things that they would have learned had they made any effort to understand a pervasive national problem.

52. Failing to act or respond to bullying cannot be characterized as reasonably related to any part of an educational plan. Failing to act to prevent, address or respond to bullying violates routinely published and available ethical codes for teachers, administrators and staff members at every school, including primary requirements that schools treat students equally, that they respect cultural background and religion, that they respect the dignity and self-worth of every student, and that they permit students self-determination. School leaders, whether administrators, teachers or staff members, under all available literature regarding their duties are to be conscious of

safety, protection and well-being of students.

53. The Defendant failed to train, failed to supervise, and failed to monitor its administrators, teachers and employees in a situation where the need for training, supervision and monitoring was obvious, and where the potential for real injury, including self-inflicted injury (suicide) is significant. It was apparent that the consequences of a failure to train, supervise and monitor administrators, teachers and staff is so great that a decision not to train and supervise and monitor is an informal policy of the school that is directly related to the eventual injury to A.M..

54. The informal policy of the Defendant – to fail to train, supervise or monitor administrators, teachers, employees and staff on the dangers of bullying in school was a moving force in the eventual suicide of A.M..

Claims Pursuant To Section 504 of the Rehabilitation Act

55. The actions of the Defendant violated of Section 504 of the Rehabilitation Act, 29 U.S.C. §794 (“Rehabilitation Act”).

56. A.M. was a qualified individual with a disability in the United States, as defined in 29 U.S.C. § 705(20) with her disability affecting a major life activities; i.e., walking, sitting, standing, learning, and receiving education, both as a result of her eating disorder and as result of suffering from Blount’s Disease and the surgery related to Blount’s Disease.

57. The Defendant receives federal financial assistance, as defined by 29 U.S.C. §794 and, as such, may not discriminate against a person because of their disability.

58. Solely by reason of her disability, Jane Doe was excluded from the educational activity that was available to other students – a violation of the Rehabilitation Act.
59. A.M., because of her physical challenges was an obvious target of abuse. She was unable to protect herself, to avoid confrontation, or to ignore the pervasive and severe bullying. She was weak in some areas of life, and that was obvious to her tormentors. She was an easy target because of her disabilities.
60. Further, it would have been obvious to any adult, more so to a trained educator, administrator or teacher that A.M. was an obvious target for abuse and bullying. Her disabilities were constantly on display. Rather than support A.M., the Defendant's personnel enabled the bullying and tormenting. They criticized A.M. for being late; they punished her with detentions and time-out for being victimized. They abandoned her on the school bus, in the classroom, in the hallways, and in the janitor's closet.
61. The School District acted in bad faith in failing to provide appropriate and necessary accommodation to allow A.M. to receive educational benefits. Knowing her limitations, and knowing (in every legally significant sense) of her plight among her peers, the Defendant basically abandoned its statutory role to provide education and its moral role to prevent discrimination to the less able-bodied among them. The bad faith of the Defendant is a violation of the Rehabilitation Act.

Claims Under The Americans With Disabilities Act

62. The actions of the Defendant and its policy demonstrate violations of the Americans with Disabilities Act, 42 U.S.C. §12131, et seq ("ADA").

63. Due to her status as a disabled student under the law, A.M. is a “qualified individual with a disability” as defined in 42 U.S.C. §12131(2) with her disability affecting a major life activities - walking, sitting, standing, learning, and receiving education.

64. The Defendant is a “public entity” as defined in 42 U.S.C. §12131(1), and receives federal financial assistance so as to be covered by the mandate of the ADA.

65. The Defendant is a facility whose operation constitutes a program and services for ADA purposes.

66. The Defendant failed and refused to reasonably accommodate A.M.’s disabilities and modify their services in violation of Title II of the ADA. Such failures caused, and continue to cause injuries to Jane Doe.

Damages

67. As a direct and proximate cause of the above-referenced conduct, A.M. suffered the following injuries, and seeks recovery for:

- a. Physical pain and suffering from the bullying events,
- b. Mental anguish associated with the bullying events, and the subsequent suicide,
- c. Future loss of wage earning capacity,
- d. Any other damage that is properly recoverable under §504 and under the Americans with Disabilities Act,
- e. Any other type of damage that is properly recoverable and proven at time of trial.

Attorney's Fees

68. It was necessary for Plaintiffs to retain the undersigned attorneys to file this lawsuit.

The Plaintiffs are entitled to an award of attorney fees and costs pursuant to 42 U.S.C. §1988 for all claims in which they are the prevailing party under federal law.

Jury Demand

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

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully request that after a trial herein, they recover against Defendants, the following relief:

- a. Judgment for all of their actual damages, both general and special, as described above;
- b. Pre-judgment and post-judgment interest at the highest rate allowed by law;
- c. Costs of court;
- d. Attorney's fees;
- e. Exemplary damages where alleged, and
- f. Such other relief to which they may be entitled, both in law and in equity.

Respectfully submitted,



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