

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

JASMINE ADAMS, INDIVIDUALLY, and as)
NATURAL PARENT of MCKENZIE ADAMS,)
DECEASED, and JANICE ADAMS, as the)
PERSONAL REPRESENTATIVE of the ESTATE)
of MCKENZIE ADAMS)

Plaintiff,)

v.)

Civil Action No.

U.S. JONES ELEMENTARY SCHOOL,)
DEMOPOLIS CITY SCHOOLS,)
KYLE KALLHOFF, TORI INFINGER)
GLORIA MIMS, and TRACY STEWART)

JURY DEMANDED

Defendants.)

COMPLAINT

On December 3, 2018 Mckenzie Adams (“Mckenzie”), at the age of nine, committed suicide.

Mckenzie committed suicide because the defendants, U.S. Jones Elementary School (“US Jones”), Demopolis City Schools (“Demopolis Schools”), Kyle Kallhoff (“Kallhoff”), Tori Infinger (“Infinger”), Gloria Mims (“Mims”), and Tracy Stewart (“Stewart”) (collectively referred to herein as “Defendants”), exhibited deliberate and blatant indifference to the wrongful persistent bullying and harassment, rife with racial and gender based slurs, imparted upon Mckenzie by a boy who was her classmate.

Defendants (1) failed to enact and enforce bullying rules and regulations as required by Alabama law by June 1, 2018; (2) acted in direct contravention to Demopolis Schools’ rules and regulations in effect at the time of the vicious bullying and discriminatory harassment of Mckenzie;

(3) failed to ensure compliance and training with regard to pre-existing, albeit limited, regulations and policies related to bullying as promulgated by Defendants US Jones and Demopolis Schools; and (4) failed to take action to address the bullying and harassment despite having actual notice of the bullying and discriminatory acts. The Defendants, and/or their employees, servants, and/or agents' omissions and/or commissions toward McKenzie caused more than a *de minimis* injury. These acts of omission and/or commission by the Defendants were both objectively and subjectively unreasonable and clearly exhibited deliberate indifference for McKenzie's basic human needs causing her harm, injury and death. Defendants Infinger, Mims, and Stewart were agents and/or employees of Defendants US Jones and Demopolis Schools, and were on actual notice of the bullying and the extent of the bullying. Defendants Infinger, Mims, and Stewart, as agents and/or employees of Defendants US Jones and Demopolis Schools unilaterally ignored pleas for help from McKenzie, McKenzie's mother and McKenzie's grandmother; and blatantly disregarded their own rules and regulations. The Defendants' indifference to McKenzie's constitutional rights caused the death of a nine-year old child.

As such, Plaintiffs files this Complaint against the Defendants, and, in support, state as follows:

PARTIES

1. The Plaintiff, Jasmine Adams, is a resident of Tuscaloosa, Tuscaloosa County, Alabama. She brings this action in her capacity as a natural parent of McKenzie Adams ("McKenzie"), deceased, pursuant to Ala. Code §§ 6-5-390 and 391. At the time of her death, McKenzie was a resident of Linden, Marengo County, Alabama.

2. Plaintiff Janice Adams is a resident of Linden, Marengo County, Alabama, and brings

this action in her capacity as the Personal Representative of the Estate of Mckenzie Adams. Plaintiff Jasmine Adams and Plaintiff Janice Adams are hereinafter collectively referred to as “Plaintiffs”).

3. Upon information and belief, Defendant Demopolis Schools is a government entity engaged in providing education to children in Demopolis, Marengo County, Alabama. Demopolis Schools is a recipient of federal funds under Title IX, 20 U.S.C. §§ 1681-1688 (“Title IX”), and Title VI of the Civil Rights Act of 1964, 32 U.S.C. § 2000d (“Title VI”), and is being sued in its official capacity.

4. Upon information and belief, Defendant US Jones is a government entity engaged in providing education to children in Demopolis, Marengo County, Alabama, and is subject to the control and governance of Defendant Demopolis Schools. US Jones is a recipient of federal funds pursuant to Tile IX and Title VI.

5. Upon information and belief, Defendant Kallhoff is Superintendent of Demopolis City Schools, is an individual over the age of nineteen (19) and, at all times relevant hereto, is and was a resident citizen of Demopolis, Marengo County, Alabama. Kallhoff is a “person” under 42 U.S.C. §1983 and at all times relevant to this case acted under color of law. Kallhoff is being sued in his individual capacity and in his official capacity as an agent and/or employee of the Demopolis Schools.

6. Upon information and belief, Defendant Infinger was the Principal of US Jones during the 2018-2019 school year, is an individual over the age of nineteen (19) and, at all times relevant hereto, is and was a resident citizen of Livingston, Sumter County, Alabama. Upon information and belief, Infinger is now a resident of Montgomery County, Alabama. Infinger is a “person” under 42 U.S.C. §1983 and at all times relevant to this case acted under color of law.

Infinger is being sued in her individual capacity and in her official capacity as an agent and/or employee of the Demopolis Schools.

7. Upon information and belief, Defendant Stewart was the Assistant Principal of US Jones, is an individual over the age of nineteen (19) and, at all times relevant hereto, is and was a resident citizen of Demopolis, Marengo County, Alabama. Stewart is a “person” under 42 U.S.C. §1983 and at all times relevant to this case acted under color of law. Stewart is being sued in her individual capacity and in her official capacity as an agent and/or employee of the Demopolis Schools.

8. Upon information and belief, Defendant Mims is an educator at US Jones and is an individual over the age of nineteen (19) and, at all times relevant hereto, is and was a resident citizen of Demopolis, Marengo County, Alabama. Mims is a “person” under 42 U.S.C. §1983 and at all times relevant to this case acted under color of law. Mims is being sued in her individual capacity and in her official capacity as an agent and/or employee of the Demopolis Schools.

JURISDICTION AND VENUE

9. This action is filed pursuant to 42 U.S.C. § 1983 and 20 U.S.C. § 1681, *et seq.*, and 32 U.S.C. § 2000d, seeking redress of injuries suffered by Mckenzie Adams and the Plaintiffs, due to deprivation, under color of state law, of rights secured by the Fourteenth Amendment to the United States Constitution. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

10. This action also claims violations of Alabama state law. Pursuant to 28 U.S.C. §

1367(a), this Court has supplemental jurisdiction over the Alabama state law claims since these claims are so related to the claims in the § 1983 civil rights action that they form part of the same case and controversy.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and other applicable law because the cause of action arose in Marengo County, Alabama, which is situated within the district and divisional boundaries of the Southern District of Alabama, Northern Division.

FACTS

12. Paragraphs 1 through 11 are incorporated herein as if set out in full.

13. US Jones is governed by Defendant Demopolis Schools. Both US Jones and Demopolis Schools receive federal funds for the education and welfare of its students, including Title IX and Title VI funds.

I. The Jamari Terrell Williams Bullying Prevention Act (the “Act”) and the Failure of the Defendants to Comply with the Requirements of the Act or with the Defendants’ Own Regulations and Rules

14. The Act, which was once known Student Harassment Prevention Act (Acts 2009 No. 09-571), was amended by the Alabama legislature in March of 2018 and became law on June 1, 2018. The purpose of amending the Student Harassment Prevention Act, which had been in effect since October 1, 2009, was to “expand [the Act] to include student against student harassment, intimidation, violence, ...threats of violence off of school property, [and] cyberbullying.” *See* 2018 Bill Text AL S.R. 140.

15. Pursuant to the Act, as written in 2009, “each local board of education [is to] adopt procedural policies to manage and possibly prevent these acts against any student by another student or students based on the characteristics of a student.” Ala. Code § 16-28B-2.

16. The Act, as written in 2009¹, mandates that “[e]ach school shall develop plans or programs, including but not limited to, peer mediation teams, in an effort to encourage students to report and address incidents of bullying, violence or threats of violence. ...” Ala. Code §16-28B-4(d).

17. The Act, as written in 2009, required “[e]ach local board ... establish a policy in compliance with this chapter on or before July 1, 2010.” Ala. Code §16-28B-9. A model policy was included in the 2009 act and is largely unchanged in the current Act.

18. Defendants US Jones and Demopolis Schools failed to implement the model policy or to develop plans or programs as required by the Act, which they were required to do by July 1, 2010. Ala. Code §16-28B-9.

19. Pursuant to the Act, as written in 2009 and amended in 2018, Defendants were required to develop and implement a plan (by July 1, 2010), which contained the following thirteen components²:

- (1) A statement prohibiting bullying, violence, and threats of violence.
- (2) Definitions of the terms bullying, as provided in subdivision (1) of Section 16-28B-3, intimidation, and threats of violence.
- (3) A description of the behavior expected of each student.
- (4) A series of graduated consequences for any student who commits an act of intimidation, bullying, violence, or threats of violence. Punishment shall conform with applicable federal and state disability, antidiscrimination, and education laws and school discipline policies.
- (5) A procedure for reporting an act of intimidation, threat of suicide, bullying, violence, or threat of violence. An anonymous report may not be the basis for imposing formal disciplinary action against a student.
- (6) A procedure for the prompt investigation of reports of serious violations and complaints, specifying that the principal, or his or her designee, is the person responsible for the investigation.
- (7) A response procedure for a school to follow upon confirmation of an incident of intimidation, bullying, violence, or threats of violence.
- (8) A statement prohibiting reprisal or retaliation against any person who reports an act of intimidation, violence, threat of violence, or bullying, including the

¹ 2018 Al. HB 366 changed replaced the word “harassment” with the word “bullying”.

² 2018 Al. HB 366 indicates the edits that were made to this components list.

consequences of and any appropriate remedial action that may be taken against a person who engages in such reprisal or retaliation.

(9) A statement of the consequences of and appropriate remedial action that may be taken against a person who has deliberately and recklessly falsely accused another.

(10) A procedure for publicizing local board policy through publication in the student handbook, including providing notice that the policy applies to behavior occurring off of school property and to participation in school-sponsored functions, whether the conduct occurs on or off school property, online, or electronically.

(11) A clearly defined procedure for students to use in reporting bullying, including, but not limited to, written reports on local board approved complaint forms and written reports of instances of bullying, intimidation, violence, and threats of violence based on the personal characteristics of a student. The complaint form may be served in person or by mail on the principal, or his or her designee, or his or her office. The procedures shall be made known and be readily available to each student, employee, and the parent or guardian of each student. It is the sole responsibility of the affected student, or the parent or guardian of the affected student, to report incidences of bullying to the principal, or his or her designee.

(12) A procedure for promulgating rules to implement this chapter, including the development of a model student complaint form. The department shall seek public input in developing and revising the model policy, model complaint form, and any other necessary forms.

(13) A procedure for the development of a non-exhaustive list of the specific personal characteristics of a student which may often lead to bullying. Based upon experience, a local board of education may add, but not remove, characteristics from the list. The additional characteristics or perceived characteristics that cause bullying shall be identified by the local board on a case-by-case basis and added to the local board policy. The list shall be included in the code of conduct policy of each local board and included in the student handbook.

Ala. Code § 16-28B-5.

[E]ach school shall programmatically address the issue of bullying and school violence with faculty and students.” Ala. Code §16-28B-4(d).

20. At the time relevant to this Complaint, Defendants failed to comply with the requirements of the Act, including but not limited to, (1) failing to ensure and enforce a thorough policy compliant with the Act at the time of the events giving rise to this Complaint; (2) failing to create, develop, implement or enforce a procedure for publicizing local board policy through publication in the student handbook as required by the Act, at the time of the events giving rise to

this Complaint; (3) failing to draft, implement or enforce a clearly defined procedure for students to use in reporting bullying, including, but not limited to, written reports on local board approved complaint forms and written reports of instances of bullying, intimidation, violence, and threats of violence based on the personal characteristics of a student, at the time of the events giving rise to this Complaint; (4) failing to seek public input through the development of a model student complaint form and other necessary forms, at the time of the events giving rise to this Complaint; (5) failing to create, develop, implement or enforce a procedure for the development of a non-exhaustive list of the specific personal characteristics of a student which may often lead to bullying, and failing to place said list in the student handbook in effect at the time of the events giving rise to this Complaint.

21. In affirmatively failing to comply with the provisions of the Act, Defendants acted in direct contravention of the Act.

22. In so far as there were bullying policies, however inadequate, which were promulgated by Defendants Demopolis Schools and US Jones, Defendants acted in direct contravention of said rules and regulations, allowing continued, persistent and repetitive student-on-student race and gender based bullying, which ultimately led to Mckenzie's death.

23. Upon information and belief, on Friday, January 22, 2019, one month after Mckenzie's death and more than half a year after the effective date of the Act, Defendant Demopolis Schools held a board meeting, which was open to the public, to discuss new and enhanced bullying policies, which were purportedly compliant with the Act. According to information and belief, for the first time, Defendant Demopolis Schools disseminated the model policy, which is part and parcel of the Act – the same model policy that was available since the passage of the Act.

24. Upon information and belief, on Monday, February 4, 2019, the board of Defendant

Demopolis Schools voted to approve the model policy.

25. During the time period leading up to Mckenzie's death, the Defendants failed to comply with the Act.

26. During the time period leading to Mckenzie's death, the Defendants failed to comply with rules and regulations promulgated by the Defendant Demopolis Schools, however inadequate and limited, to address instances of bullying, and to address race and gender based harassment.

27. As a result of the Defendants wrongful, reckless and indifferent conduct, a nine-year old child took her life.

II. Defendant Kallhoff was on Notice of the Act, Failed to Comply with the Requirements of the Act, and Acted in Violation of Inadequate Bullying Policies

28. The Act, a written in 2009³, mandates that “[e]ach school shall develop plans or programs, including but not limited to, peer mediation teams, in an effort to encourages students to report and address incidents of bullying, violence or threats of violence. ...” Ala. Code §16-28B-4(d).

29. The Act, as written in 2009, required “[e]ach local board ... establish a policy in compliance with this chapter on or before July 1, 2010.” Ala. Code §16-28B-9. A model policy was included in the 2009 act and is largely unchanged in the current Act.

30. Defendant Kallhoff failed to implement the model policy or to develop plans or programs as required by the Act, which he was required to do in the course of his employment by July 1, 2010. Ala. Code §16-28B-9.

31. Pursuant to the Act, as written in 2009 and amended in 2018, Defendant Kallhoff, in

³ 2018 Al. HB 366 changed replaced the word “harassment” with the word “bullying”.

the course of his employment, was required to develop and implement a plan (by July 1, 2010), which contained the following thirteen components⁴:

- (1) A statement prohibiting bullying, violence, and threats of violence.
- (2) Definitions of the terms bullying, as provided in subdivision (1) of Section 16-28B-3, intimidation, and threats of violence.
- (3) A description of the behavior expected of each student.
- (4) A series of graduated consequences for any student who commits an act of intimidation, bullying, violence, or threats of violence. Punishment shall conform with applicable federal and state disability, antidiscrimination, and education laws and school discipline policies.
- (5) A procedure for reporting an act of intimidation, threat of suicide, bullying, violence, or threat of violence. An anonymous report may not be the basis for imposing formal disciplinary action against a student.
- (6) A procedure for the prompt investigation of reports of serious violations and complaints, specifying that the principal, or his or her designee, is the person responsible for the investigation.
- (7) A response procedure for a school to follow upon confirmation of an incident of intimidation, bullying, violence, or threats of violence.
- (8) A statement prohibiting reprisal or retaliation against any person who reports an act of intimidation, violence, threat of violence, or bullying, including the consequences of and any appropriate remedial action that may be taken against a person who engages in such reprisal or retaliation.
- (9) A statement of the consequences of and appropriate remedial action that may be taken against a person who has deliberately and recklessly falsely accused another.
- (10) A procedure for publicizing local board policy through publication in the student handbook, including providing notice that the policy applies to behavior occurring off of school property and to participation in school-sponsored functions, whether the conduct occurs on or off school property, online, or electronically.
- (11) A clearly defined procedure for students to use in reporting bullying, including, but not limited to, written reports on local board approved complaint forms and written reports of instances of bullying, intimidation, violence, and threats of violence based on the personal characteristics of a student. The complaint form may be served in person or by mail on the principal, or his or her designee, or his or her office. The procedures shall be made known and be readily available to each student, employee, and the parent or guardian of each student. It is the sole responsibility of the affected student, or the parent or guardian of the affected student, to report incidences of bullying to the principal, or his or her designee.
- (12) A procedure for promulgating rules to implement this chapter, including the development of a model student complaint form. The department shall seek public input in developing and revising the model policy, model complaint form, and any other necessary forms.

⁴ 2018 Al. HB 366 indicates the edits that were made to this components list.

(13) A procedure for the development of a non-exhaustive list of the specific personal characteristics of a student which may often lead to bullying. Based upon experience, a local board of education may add, but not remove, characteristics from the list. The additional characteristics or perceived characteristics that cause bullying shall be identified by the local board on a case-by-case basis and added to the local board policy. The list shall be included in the code of conduct policy of each local board and included in the student handbook.

Ala. Code § 16-28B-5.

[E]ach school shall programmatically address the issue of bullying and school violence with faculty and students.” Ala. Code §16-28B-4(d).

32. At the time relevant to this Complaint, Defendant Kallhoff failed to comply with the requirements of the Act, including but not limited to, (1) failing to ensure and enforce a thorough policy compliant with the Act at the time of the events giving rise to this Complaint; (2) failing to create, develop, implement or enforce a procedure for publicizing local board policy through publication in the student handbook as required by the Act, at the time of the events giving rise to this Complaint; (3) failing to draft, implement or enforce a clearly defined procedure for students to use in reporting bullying, including, but not limited to, written reports on local board approved complaint forms and written reports of instances of bullying, intimidation, violence, and threats of violence based on the personal characteristics of a student, at the time of the events giving rise to this Complaint; (4) failing to seek public input through the development of a model student complaint form and other necessary forms, at the time of the events giving rise to this Complaint; (5) failing to create, develop, implement or enforce a procedure for the development of a non-exhaustive list of the specific personal characteristics of a student which may often lead to bullying, and failing to place said list in the student handbook in effect at the time of the events giving rise to this Complaint.

33. In affirmatively failing to comply with the provisions of the Act, Defendant Kallhoff

acted in direct contravention of the Act.

34. In so far as there were bullying policies, however inadequate, which were promulgated by Defendant Kallhoff, Defendant Kallhoff acted in direct contravention of said rules and regulations, allowing continued, persistent and repetitive student-on-student race and gender based bullying, which ultimately led to Mckenzie's death.

35. During the time period leading up to Mckenzie's death, the Defendant Kallhoff failed to comply with the Act.

36. During the time period leading to Mckenzie's death, the Defendant Kallhoff failed to comply with rules and regulations promulgated by the Defendant Demopolis Schools, however inadequate and limited, to address instances of bullying, and to address race and gender based harassment.

37. As a result of the Defendant Kallhoff's wrongful, reckless and indifferent conduct, a nine-year old child took her life.

III. Mckenzie Adams

38. Mckenzie was nine (9) years old at the time of the bullying. The Defendants ignored the racial and gender specific abuse and venom to which she was subject. Mckenzie discussed the issue with her mother, Jasmine Adams, and grandmother, Janice Adams.

39. Mckenzie was enrolled at US Jones for the 2018-2019 school year, and at all times relevant hereto Mckenzie was a student at US Jones.

40. At all times relevant hereto Mckenzie was assigned to Defendant Mims' fourth-grade class and was placed under her care and supervision.

41. As the 2018-2019 year commenced, McKenzie was targeted and taunted by a

Caucasian male student in her class, who is referred to herein as “Student 1”.⁵ Upon information and belief, Student 1 was nine years old at the time of Mckenzie’s death.

42. For almost four (4) months Student 1 repeatedly called Mckenzie “nigg***” and an “ugly a** bit***” during the 2018-2019 academic year. He taunted her in the classroom and in the gymnasium. Student 1 relentlessly bullied Mckenzie generally, and on the basis of her gender and race.

43. According to information and belief, on October 24, 2018, Student 1 passed a note to Mckenzie in which he called her a “bit***” while in the classroom of Defendant Mims (“the Note”). He also referred to her as a “pus** sucker” in the Note.

44. On November 5, 2018, Mckenzie noted, in her diary, that two boys had been bullying her at school.

45. According to information and belief, Mckenzie was also bullied by Student 1 because she traveled to school with a Caucasian friend and the friend’s mother.

46. Upon information and belief, on the date of her death, December 3, 2018, Student 1 told McKenzie to kill herself, told her that she was better off dead, and instructed her on the manner to take her own life.

IV. Defendants Mims, Infinger, and Stewart were on Notice of Persistent Bullying but Refused to Take Any Action

a. Defendant Mims was on Notice of Persistent Bullying, Refused to Take Any Action, and Refused to Comply with the Rules and Regulations as they Existed at that Time

47. Upon information and belief, Defendant Mims was Mckenzie’s teacher and had actual

⁵ “Student 1” is used to protect the anonymity of the minor child referred to, whose identity is known to both the Plaintiffs and the Defendants.

notice of the student-on-student bullying. Mims was deliberately indifferent to the obligation to address Mckenzie's bullying pursuant to the school's existing rules and regulations.

48. According to information and belief, Mims had actual and repeated notice that Student 1 was targeting Mckenzie and other children.

49. In August 2018, Plaintiff Janice Adams, Mckenzie's grandmother, contacted Mims. Plaintiff Janice Adams requested a meeting with Mims to discuss Student 1's actions towards Mckenzie and Mckenzie's state of mind. Plaintiff Janice Adams never received a return call from Mims.

50. In September 2018, Plaintiff Janice Adams contacted Mims and requested a meeting with Mims to discuss Student 1's actions towards Mckenzie and Mckenzie's state of mind. Plaintiff Janice Adams did not receive a response. On October 1, 2018, she received a generic notice that there was no need for a parent teacher conference.

51. In October 2018, after the publication of Mckenzie's first progress report from US Jones, Plaintiff Janice Adams sent a written request in response to the progress report to set a meeting with Mims and Defendant Principal Infinger. The progress report indicated that Mckenzie was failing in math, which is the subject that Mims taught. Plaintiff Janice Adams was aware that Mckenzie was struggling in the course due to emotional challenges resulting from the bullying and harassment that McKenzie was experiencing in her class.

52. Concerned about Mckenzie's state of mind, Plaintiff Janice Adams went to Mims' classroom on October 12, 2018 to request a meeting with Mims. At that time, Plaintiff Janice Adams identified Student 1, informed Mims that Mckenzie was being bullied by him, and asked that the school address the bullying. Plaintiff Janice Adams left her contact information for a follow up meeting. Mims failed to call her back.

53. On October 24, 2018, Mims was in possession of the Note passed between Mckenzie and Student 1 wherein Mckenzie responded to Student 1 referring to her as a “bit***” and a “pus** sucker”. At that time, Mims contacted Plaintiff Janice Adams and informed her that instead of disciplining Student 1, Mckenzie would be disciplined for responding to the gender-based harassment and bullying. Upon information and belief, Mims then gave the note to Defendant Stewart.

54. Despite being aware that Mckenzie had been referred to as a “bit***” and a “pus** sucker” by Student 1, Mims failed to take any action. Specifically, Mims failed to comply with the rules and regulations as promulgated by Defendant Demopolis Schools by failing to take any action whatsoever to address the bullying.

55. Upon information and belief, in communicating with local law enforcement, Mims represented that she was aware, prior to Mckenzie’s death, that there were two boys in the classroom who “bothered” everyone in the classroom. Upon information and belief, one of the boys to whom Mims referenced was Student 1.

56. Upon information and belief, in communicating with law enforcement, Mims represented that Student 1 was often jumping around and striking other children, that she referred to him as “a clown,” and that Student 1 was constantly in trouble. Despite this knowledge, Mims did not indicate that she took no action to address Student 1’s wrongful conduct towards Mckenzie.

57. Prior to October 24, 2018, Mckenzie informed Mims, on many occasions that Student 1 was bullying her. Upon information and belief, on numerous occasions, Mims instructed Mckenzie to “tell it to the wall because I do not want to hear it.”

58. Mims was aware that Student 1 was engaged in conduct defined as bullying by Defendant Demopolis Schools by her own admission to law enforcement.

59. Mims was aware that Student 1 targeted Mckenzie specifically prior to and on October 25, 2018.

60. Mims was aware that Mckenzie's mother and grandmother were concerned about the bullying and its emotional impact upon Mckenzie.

61. Upon information and belief, Mims was aware that one risk factor for suicidal ideation was bullying.

62. Mims exhibited a deliberate indifference to her official duties as an educator at US Jones when she failed to take action, including but not limited to:

- a. Failing to notify Defendants Infinger or Kallhoff of when Mckenzie initially notified her of the first instance of bullying, in violation of rules and regulations promulgated by Defendants US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint;
- b. Failing to take any action to prevent Student 1 from harassing and bullying Mckenzie in violation of rules and regulations promulgated by Defendants US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint;
- c. Failing to report the continual gender and race specific bullying to her superiors in violation of rules and regulations promulgated by Defendants US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint;
- d. Failing to take any action regarding the continual gender and race specific bullying in violation of rules and regulations promulgated by Defendants US

Jones, Demopolis Schools and/or other governing entities in effect at the time of the events were both subjectively and objectively unreasonable, exhibited deliberate indifference for Mckenzie's rights that have given rise to this Complaint; and

- e. Deliberately acting indifferently to Mckenzie's rights under the Constitution of the United States, violating the 14th Amendments and due process and equal protection rights.

63. Defendant's deliberate indifference created a dangerous environment and barred Mckenzie's access to a safe learning environment. As the direct result of Mims' conduct, Mckenzie committed suicide.

b. Defendant Principal Infinger was on Notice of Persistent Bullying, Refused to Take Any Action, Failed to Promulgate Rules in accordance with the Act, and Refused to Comply with the Rules and Regulations as they Existed at that Time

64. Defendant Infinger was the Principal at US Jones during the period leading to Mckenzie's death, and as such, was the highest-ranking school official present at US Jones. Alabama Code § 16-1-24(b) (1975) requires the Principal "to make reports of violent disruptive incidents occurring on school property during school hours or during school activities conducted on or off school property after school hours or at any other time when such incident can be reasonably related to school or school functions and to provide for penalties for failure to report such incidents." Further, Alabama Code § 16-1-24(c) mandates that the Principal "shall file a report within 72 hours with the superintendent of education of any incident of which they have knowledge."

65. Upon information and belief, Defendant Infinger had actual notice of the student-on-

student race and gender based bullying that Mckenzie experienced, and was deliberately indifferent to the need to protect Mckenzie in the face of such bullying.

66. At all times relevant hereto, Defendant Infinger acted under color of state authority, and stood *in loco parentis* of Mckenzie while she was attending US Jones, as she assumed the obligations of a parent under the applicable, limited circumstances.

67. Months prior to Mckenzie's death, after US Jones sent home Mckenzie's first progress report, Plaintiff Janice Adams requested a meeting with Mims. At that time, Plaintiff Janice Adams met with Mims and Infinger was present. Plaintiff Janice Adams identified Student 1, informed Mims and Infinger that Mckenzie was being bullied by him, and asked that the bullying be addressed by the school. Defendant Infinger failed to take any action.

68. Defendant Infinger and her employees at US Jones failed to address known and persistent bullying, and known and persistent harassment based on gender and race throughout US Jones. Defendant's deliberate indifference created a dangerous environment and barred Mckenzie's access to a safe learning environment.

69. As a direct result of the Defendant Infinger's unlawful conduct, Mckenzie committed suicide.

70. Defendant Infinger exhibited a deliberate indifference to her official duties as the highest-ranking official and as an educator at US Jones when she failed to take action, including but not limited to:

- a. Failing to train teachers and administrators regarding bullying;
- b. Having actual knowledge of students' continuous harassment of Mckenzie, failing to adequately train teachers and administrators regarding gender and race specific conduct and bullying;

- c. Failing to investigate complaints by Mckenzie, her mother, her grandmother and from other similarly situated students who were subject to race and gender specific bullying;
- d. Permitting and facilitating known discriminatory harassment of Mckenzie and other similarly situated students who attended US Jones;
- e. Failing to take any action to prevent Student 1 from harassing and bullying Mckenzie in violation of rules and regulations promulgated by Defendants US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint;
- f. Failing to report gender and race specific bullying to her superiors in violation of rules and regulations promulgated by Defendants US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint;
- g. Failing to take any action regarding gender and race specific bullying in violation of the rules and regulations promulgated by Defendants US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint; and
- h. Deliberately acting indifferently to Mckenzie's rights under the Constitution of the United States, violating the 14th Amendments and due process and equal protection rights.

71. Defendant Infinger's omissions and/or commissions were both subjectively and

objectively unreasonable and exhibited deliberate indifference to Mckenzie's safety and well-being, which created a dangerous environment and barred Mckenzie's access to a safe learning environment. Defendant Infinger's deliberate indifference led to Mckenzie's death.

c. Defendant Stewart was on Notice of Persistent Bullying, Refused to Take Any Action, Failed to Promulgate Rules in accordance with the Act, and Refused to Comply with the Rules and Regulations as they Existed at that Time

72. Upon information and belief, Defendant Stewart was the Vice Principal of US Jones, had actual notice of the Student 1's bullying and gender and race based harassment and was deliberately indifferent to the obligation to address Mckenzie's bullying pursuant to existing rules and regulations. Stewart is no longer the Vice Principal of US Jones.

73. Upon information and belief, Stewart had actual and repeated notice that Student 1 was targeting Mckenzie and other children.

74. Upon information and belief, prior to Mckenzie's death, Stewart was on notice of the Note, and the contents of the Note.

75. Stewart contacted Mckenzie's family on October 25, 2018 regarding the Note. At that time, Plaintiff Janice Adams informed Stewart that Mckenzie was being bullied and had been bullied since the commencement of the school year. Stewart informed Plaintiff Janice Adams that Mckenzie would be disciplined for responding to the gender-based written bullying.

76. Following the phone call with Plaintiff Janice Adams, Stewart spoke on a three-way phone call with Plaintiff Janice Adams and Mckenzie's mother, Plaintiff Jasmine Adams, to discuss Mckenzie's discipline regarding the Note. Plaintiff Jasmine Adams expressed concern about the bullying, the harassment and the fact that Mckenzie was being disciplined by US Jones. Plaintiff Jasmine Adams informed Stewart that she planned to contact the State Department about the persistent bullying and harassment. Stewart asked Plaintiff Jasmine Adams not to contact the

State Department, and stated that US Jones would handle the matter. However, US Jones did not handle the matter.

77. Stewart failed to address known and persistent bullying, and known and persistent harassment based on gender and race that was targeted to Mckenzie. Defendant Stewart's deliberate indifference created a dangerous environment and barred Mckenzie's access to a safe learning environment. As a direct result of Stewart's unlawful conduct, Mckenzie committed suicide.

78. Defendant Stewart exhibited a deliberate indifference to her official duties as the second highest-ranking administrator and as an educator at US Jones when she failed to take action, including but not limited to:

- a. Failing to adequately train teachers and administrators regarding bullying;
- b. Having actual knowledge of students' continuous harassment of Mckenzie, failing to adequately train teachers and administrators regarding gender and race specific bullying;
- c. Failing to investigate complaints by Mckenzie, her mother, her grandmother and from other similarly situated students who were subject to race and gender specific bullying;
- d. Permitting and facilitating known discriminatory harassment of Mckenzie and other similarly situated students who attended US Jones;
- e. Failing to notify Defendants Infinger or Kallhoff of when Mckenzie initially notified her of the bullying, in violation of rules and regulations promulgated by Defendant US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint;

- f. Failing to take any action to prevent Student 1 from harassing and bullying Mckenzie in violation of rules and regulations promulgated by US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint;
- g. Failing to report gender and race specific bullying to her superiors in violation of rules and regulations promulgated by US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint;
- h. Failing to take any action regarding gender and race specific bullying in violation of rules and regulations promulgated by US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events which have given rise to this Complaint; and
- i. Deliberately acting indifferently to Mckenzie's rights under the Constitution of the United States, violating the 14th Amendments and due process and equal protection rights.

79. Stewart's omissions and/or commissions were both subjectively and objectively unreasonable and exhibited deliberate indifference, which created a dangerous environment and barred Mckenzie's access to a safe learning environment. Defendant's deliberate indifference ultimately led to Mckenzie's death.

V. Mckenzie's Death Was Foreseeable As Acknowledged by the Defendants

80. Upon information and belief, in documents entitled "Jason Flatt Suicide Prevention Program", which were developed, utilized, collected and/or disseminated by US Jones and Demopolis Schools, and ultimately collected by law enforcement, sixteen (16) teachers employed

by US Jones and Demopolis Schools affirmatively identified bullying as a reason for suicidal thoughts.

81. Upon information and belief, Mims completed a worksheet while participating in the Jason Flatt Suicide Prevention Program.

82. Upon information and belief, Infinger completed a worksheet while participating in the Jason Flatt Suicide Prevention Program. In completing the worksheet, Infinger identified bullying as a reason for suicidal thoughts.

83. In addition to the facts set forth above, Mims and Infinger were aware that a factor that may lead to suicide is being subject to bullying. Despite this knowledge, Defendants Mims and Infinger acted in direct contravention to the rules and regulations as promulgated by Defendant US Jones and Defendant Demopolis Schools, and acted in violation of federal and state law when they failed to investigate and address known instances of gender and race based harassment and bullying. The result was terminal.

CAUSES OF ACTION

COUNT I

20 U.S.C. § 1681, *et seq.*

Violation of Title IX

as to Defendants US Jones and Demopolis Schools

84. Paragraphs 1 through 83 are incorporated herein as if set out in full.

85. Title IX provides that “[n]o 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).

86. Title IX liability arises when a school district official is an appropriate person with the

authority to take corrective measures in response to sufficient, actual notice of student-on-student harassment or assault, but instead who responds thereto with deliberate indifference and acts unreasonably in light of known circumstances.

87. Defendants US Jones and Demopolis Schools are considered educational institutions, the recipients of federal financial assistance, and are subject to private causes of action under Title IX.

88. Defendants US Jones and Demopolis Schools, each of them collectively or separately and severally, while acting under and/or pursuant to color of state law, while having knowledge of Student 1's gender-based harassment towards Mckenzie occurring on its campus, exhibited a deliberate indifference to the abuse, discrimination and harassment by students at US Jones, which was directed at Mckenzie and which was based on her gender, in violation of Title IX, 20 U.S.C. § 1681, *et seq.* These omissions and/or commissions by Defendants US Jones and Demopolis Schools were both subjectively and objectively unreasonable and resulted in harm to and the death of Mckenzie.

89. Student 1 who attended US Jones intentionally and repeatedly harassed, discriminated against, and provoked Mckenzie at US Jones, including by subjecting her to gender and race specific harassment, and subjecting her to general, pervasive and persistent harassment.

90. The abuse and harassment that Mckenzie experienced was unwelcome and was sufficiently severe, pervasive and objectively offensive so as to routinely and systematically deprive Mckenzie of equal access to an educational activity and/or program. For approximately four months Mckenzie, a 9-year-old girl, was repeatedly called a "bit**," a "black bit**", and was called ugly. She was also referred to as a "pus** sucker". Upon information and belief, Student 1

then instructed Mckenzie on how to kill herself after he had spent months taunting and harassing her based on her gender and race.

91. The harassment was so vicious, severe, pervasive and objectively offensive that it barred Mckenzie's access to the educational opportunities to which she was entitled while a student at US Jones.

92. Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally, had actual knowledge of the harassment and misconduct by other Student 1 towards Mckenzie.

93. As alleged *supra*, Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally, were on actual notice of the other students' harassment of Mckenzie at US Jones.

94. Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally, had the authority to initiate corrective action to stop the Student One's unlawful conduct at US Jones to prevent the continued and repetitive harassment of Mckenzie based on her race and gender.

95. Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally, had the authority to institute corrective measures on behalf of US Jones and to remedy the willful violations of Title IX. However, they failed to undertake such actions.

96. Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally, in their individual and official capacities, acted with deliberate indifference to the sufficient, actual notice of the Student 1's harassment, belittling, and intimidation of Mckenzie, at US Jones, inasmuch as the Defendants acted unreasonably in light of the known circumstances.

97. At the time of the events that made the basis of this claim, Defendant Infinger was the highest-ranking school official present at US Jones every day, and, consequently, had the first line of responsibility for ensuring that the students in her school are safe and not subject to known persistent race and gender based harassment and bullying.

98. Defendant Infinger, as the highest-ranking school official on site at US Jones at the time of the events, was high enough in the chain-of-command to impute liability to US Jones for purposes of Title IX liability.

99. Defendant Infinger knew or had reason to know that Student 1 was harassing and intimidating Mckenzie at US Jones and was creating a hostile environment, depriving Mckenzie of educational opportunities.

100. Defendants US Jones and Demopolis Schools knew or should have known that the Student 1 was an imminent danger and threat to Mckenzie.

101. As a direct and proximate result of Defendants' wrongful conduct, Mckenzie was harassed and intimidated, based on her gender, race and other characteristics, by students at US Jones and deprived of educational opportunities, causing Mckenzie severe emotional distress, which ultimately lead to her death.

WHEREFORE, the Plaintiffs demand judgment against Defendants in a sum in excess of the jurisdictional limits of this Court, to be determined by a jury, which will fairly and adequately compensate the Plaintiffs for Mckenzie's death and other damages, together with interest from the date of injury, and the costs of this proceeding. Further, the Plaintiffs request that the jury selected to hear this case render a verdict for the Plaintiffs and against each Defendant named or identified herein and that it award punitive damages to Plaintiffs in an amount which will adequately reflect

the enormity of the Defendants' wrongful acts, and which will effectively prevent the death of other children in our community as a result of similar conduct.

COUNT II
42 U.S.C. § 2000d, et. seq.
Violation of Title VI
as to Defendants US Jones and Demopolis City Schools

102. Paragraphs 1 through 101 are incorporated herein as if set out in full.

103. Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, 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.” 42 U.S.C. § 2000d, *et seq.*

104. Title VI liability arises when a school district official is an appropriate person with the authority to take corrective measures in response to sufficient, actual notice of student-on-student harassment or assault, but instead who responds thereto with deliberate indifference and acts unreasonably in light of known circumstances.

105. Defendants US Jones and Demopolis Schools are considered educational institutions, the recipients of federal financial assistance, and are subject to causes of action under Title VI.

106. Defendants US Jones and Demopolis Schools, each of them collectively or separately and severally, while acting under and/or pursuant to color of state law, while having knowledge of the student-on-student harassment occurring on its campus, exhibited a deliberate indifference to the abuse, discrimination and harassment by students at US Jones that was directed at McKenzie and which was based on her race, in violation of Title VI. Defendants were on notice that McKenzie was called a “nig**” and “black bit**” by Student 1 and failed to take action.

107. Student 1, who attended US Jones with McKenzie during the 2018-2019 school

year, intentionally and repeatedly harassed, discriminated against, and provoked Mckenzie at US Jones Elementary School, including by subjecting her to race specific harassment, and subjecting her to general, pervasive and persistent harassment.

108. The abuse and harassment that Mckenzie experienced was unwelcome and was sufficiently severe, pervasive and objectively offensive so as to routinely and systematically deprive Mckenzie of equal access to an educational activity and/or program. For almost four months Mckenzie, a 9-year-old girl, was repeatedly called a “bit**,” a “black bit**”, and was called ugly.

109. Upon information and belief, on the day of Mckenzie’s suicide, she was instructed to kill herself by Student 1, who spent months taunting and harassing her based on her race and gender.

110. The harassment was so vicious, severe, pervasive and objectively offensive that it barred Mckenzie’s access to the educational opportunities to which she was entitled while a student at US Jones.

111. Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally had actual knowledge of the harassment and misconduct by the Student 1 towards Mckenzie.

112. As alleged *supra*, Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally, were on actual notice of Student 1’s harassment of Mckenzie at US Jones based on her race.

113. Defendants US Jones and Demopolis Schools, and each of them collectively or

separately and severally, had the authority to initiate corrective action to stop Student 1's unlawful conduct at US Jones to prevent the continued and repetitive harassment of Mckenzie based on her race and gender.

114. Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally, had the authority to institute corrective measures on behalf of US Jones and to remedy the willful violations of Title VI; however, they failed to undertake such actions.

115. Defendants US Jones and Demopolis Schools, and each of them collectively or separately and severally, in their individual and official capacities, acted with deliberate indifference to the sufficient, actual notice of the Student 1's harassment, belittling, and intimidation of Mckenzie, at US Jones, inasmuch as the Defendants acted unreasonably in light of the known circumstances.

116. At the time of the events that made the basis of this claim, Defendant Infinger was the highest-ranking school official present at US Jones every day, and, consequently, had the first line of responsibility for ensuring that the students in her school are safe from known and persistent racial and gender harassment and bullying.

117. Defendant Infinger, as the highest-ranking school official on site at US Jones at the time of the events, was high enough on the chain-of-command to impute liability to US Jones for purposes of Title VI liability.

118. Defendant Infinger knew or had reason to know that Student 1 and other students were harassing and intimidating Mckenzie at US Jones and were creating a hostile environment, depriving Mckenzie of educational opportunities.

119. Defendants US Jones and Demopolis Schools knew or should have known that Student 1 was an imminent danger and threat to Mckenzie.

120. As a direct and proximate result of Defendants wrongful conduct Mckenzie was harassed and intimidated, based on her race and gender, by students at US Jones and deprived of educational opportunities, causing Mckenzie severe emotional distress, which ultimately lead to her death.

WHEREFORE, the Plaintiffs demand judgment against Defendants in a sum in excess of the jurisdictional limits of this Court, to be determined by a jury, which will fairly and adequately compensate the Plaintiffs for Mckenzie's death and other damages, together with interest from the date of injury, and the costs of this proceeding. Further, the Plaintiffs request that the jury selected to hear this case render a verdict for the Plaintiffs and against each Defendant named or identified herein and that it award punitive damages to Plaintiffs in an amount which will adequately reflect the enormity of the Defendants' wrongful acts, and which will effectively prevent the death of other children in our community as a result of similar wrongful conduct.

COUNT III
42 U.S.C. § 1983
Violation of the 14th Amendment, Due Process,
Equal Protection, 42 U.S.C. § 1983
as to all Defendants

121. Paragraphs 1 through 120 are incorporated herein as if set out in full.

122. The inappropriate abuse, harassment and conduct toward Mckenzie occurred on school property and while the students were under the authority and control of Defendants US Jones, Demopolis Schools, Kallhoff, Infinger, Mims, and Stewart.

123. Defendants US Jones, Demopolis Schools, Kallhoff, Infinger, Mims, and Stewart, and each of them collectively or separately and severally, in their official and individual capacities, violated Mckenzie's rights under 42 U.S.C. § 1983 and her Fourteenth Amendment Equal

Protection rights by failing to protect her from harassment and intimidation based on her race and gender by students at US Jones.

124. The Defendants' omissions and/or commissions were both subjectively and objectively unreasonable and in reckless disregard for Mckenzie's rights resulting in harm to and the death of Mckenzie. Further, the Defendants' omissions and/or commissions exhibited deliberate indifference for Mckenzie's rights and basic human needs under 42 U.S.C. § 1983 and resulted in harm to and the death of Mckenzie.

125. Defendants maintained a policy, custom and/or practice of ignoring systematic student-on-student bullying within US Jones based on gender and race. Defendants maintained a custom of deliberate indifference to student-on-student bullying based on gender and race.

126. Defendants US Jones, Demopolis Schools, Kallhoff, Infinger, Mims, and Stewart, collectively or separately and severally, in their official and individual capacities, violated Mckenzie's rights under 42 U.S.C. § 1983, and her Equal Protection and Due Process rights by, amongst other wrongful conduct:

- a. Failing to protect her from harassment and intimidation based on her race and gender by students at US Jones despite the Defendants actual knowledge of the race and gender specific harassment. Mckenzie was a 9-year-old girl systematically being subject to the words "bit**" and "nigg**." In response to her pleas for help, Mims told Mckenzie to "go tell it to the wall because I don't want to hear it". Other Defendants with actual knowledge, as described herein above, ignored the pleas of Mckenzie, her mother and her grandmother, and facilitated the intense, pervasive and shocking harassment of a child. As

Defendants' conduct shocks the conscience, Mckenzie's due process rights were summarily violated.

- b. Acting with deliberate indifference and with reckless and callous disregard for Mckenzie's rights by refusing to address the Student 1's wrongful conduct after Mckenzie, her mother and her grandmother placed the Defendants on actual notice, as described in detail hereinabove.
- c. Refusing to implement policies and procedures as required by the Act despite widespread knowledge of the impact of bullying upon children, and specific knowledge by the Defendants that bullying is a factor that leads to suicide.
- d. Refusing to adequately train teachers and administrators regarding policies and procedures as required by the Act despite wide spread knowledge of the impact of bullying upon children, and specific knowledge by the Defendants that bullying is a factor that leads to suicidal ideation.
- e. Failing to treat Mckenzie similarly as other similarly situated students of the male gender and/or of another race.
- f. Refusing to afford her the same protections as afforded the white male students. Specifically, Mckenzie received a form of school discipline for defending herself against the gender specific written assault of a white male student, Student 1, as described hereinabove. Student 1 was not disciplined and/or was disproportionately disciplined for his written assault based on gender and race.
- g. Failing to train teachers and administrators regarding gender and race specific conduct and bullying;

- h. Failing to adequately investigate complaints by Mckenzie, her mother, her grandmother and from other similarly situated students who were subject to race and gender specific bullying; and
- i. Permitting and facilitating known discriminatory harassment of Mckenzie and other similarly situated students who attended US Jones.

127. As a proximate consequence thereof, Mckenzie sustained severe emotional distress, anguish, embarrassment, humiliation, anxiety, frustration, stress, and trauma, which ultimately led to her death. As a proximate cause thereof, Plaintiffs have suffered and are entitled to an award of compensatory damages against Defendants US Jones, Demopolis Schools, Kallhoff, Infinger, Mims, and Stewart, and each of them collectively or separately and severally, in their official capacities, and an award of compensatory and punitive damages against them in their individual capacities.

WHEREFORE, the Plaintiffs demand judgment against Defendants in a sum in excess of the jurisdictional limits of this Court, to be determined by a jury, which will fairly and adequately compensate the Plaintiffs for Mckenzie's death and other damages, together with interest from the date of injury, and the costs of this proceeding. Further, the Plaintiffs request that the jury selected to hear this case render a verdict for the Plaintiffs and against each Defendant named or identified herein and that it award punitive damages to Plaintiffs in an amount which will adequately reflect the enormity of the Defendants' wrongful acts, and which will effectively prevent the death of other children in our community as a result of similar conduct.

COUNT IV
Negligent/Reckless/Wanton
Hiring, Training, Retention, and Supervision
as to Defendant Demopolis School

128. Paragraphs 1 through 127 are incorporated herein as if set out in full.

129. Pursuant to Alabama law, Defendant Demopolis Schools had and has the authority to make, retain and supervise employees.

130. As such, Defendant Demopolis Schools owed a duty to all US Jones students, including Plaintiffs to properly hire, train and supervise all administrators, teachers and staff at US Jones.

131. Defendant Demopolis Schools negligently, recklessly, and/or wantonly breached their duty to all students at US Jones, including Mckenzie, to properly hire, train and supervise all staff at US Jones when they failed to hire, train, and supervise sufficient staff to protect the students, including Plaintiff, Mckenzie, from known and persistent harassment and bullying, often based on her gender and race.

132. Defendant Demopolis Schools acted in direct contravention to their obligations as required by the rules and regulations as promulgated by the Defendant Demopolis Schools, rules and regulations as promulgated by Defendant US Jones, and in direct contravention of Alabama and federal law.

133. Specifically, amongst other failures of duty, Defendant Demopolis Schools:

- a. Failed to adequately train teachers, staff and administrators regarding gender and race specific conduct and bullying, which is prohibited by federal and state law;
- b. Failed to adequately train teachers, staff and administrators and bullying, which is prohibited by federal and state law;
- c. Failed to adequately train teachers, staff and administrators regarding bullying in violation of rules and regulations, albeit limited, promulgated by Defendant

US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events that have given rise to this Complaint.

- d. Failed to supervise teachers, staff and administrators regarding the implementation and execution of rules and regulations, albeit limited, promulgated by Defendant US Jones, Demopolis Schools and/or other governing entities in effect at the time of the events that have given rise to this Complaint.
- e. Failed to train and supervise teachers, staff and administrators regarding their obligations to report and address race and gender based harassment, as required by state and federal law.

134. As a direct and proximate result of Defendant Demopolis Schools' negligent, reckless and/or wanton breach of duty they owed to Mckenzie, Mckenzie was assaulted and harassed by students at US Jones, which caused her personal injury and severe emotional distress.

WHEREFORE, the Plaintiffs demand judgment against Defendants in a sum in excess of the jurisdictional limits of this Court, to be determined by a jury, which will fairly and adequately compensate the Plaintiffs for Mckenzie's death and other damages, together with interest from the date of injury, and the costs of this proceeding. Further, the Plaintiffs request that the jury selected to hear this case render a verdict for the Plaintiffs and against each Defendant named or identified herein and that it award punitive damages to Plaintiffs in an amount which will adequately reflect the enormity of the Defendants' wrongful acts, and which will effectively prevent the death of other children in our community as a result of similar conduct.

COUNT V
Negligence/Reckless/Wanton Conduct
as to Defendants Infinger, Stewart and Mims

135. Paragraphs 1 through 124 are incorporated herein as if set out in full.

136. Defendants Infinger, Stewart, and Mims owed a duty to all U.S. Jones students, including Mckenzie, amongst others, to (1) report instances of racial or gender based harassment; (2) to investigate instances of racial or gender based harassment; (3) to investigate incidents of bullying; and (4) to act in compliance with rules and regulations as promulgated by Defendant US Jones and Defendant Demopolis Schools. These requirements were not discretionary in function.

137. Defendants Infinger, Stewart and/or Mims had actual notice of the extraordinary race and gender based harassment to which 9-year old Mckenzie was systematically subject.

138. Defendants Infinger, Stewart and/or Mims had actual notice of the extraordinary bullying to which Mckenzie was systematically subject.

139. Defendants Infinger, Stewart and Mims failed to investigate numerous instances of bullying, and gender and race specific harassment that plagued Mckenzie's short life.

140. Defendants Infinger, Stewart and Mims acted in line with a system and practice of failing to investigate reports of bullying, and gender and race specific harassment.

141. Defendants Infinger, Stewart and Mims ignored and refused to comply with written rules and regulations promulgated by the Defendant Demopolis Schools and Defendant US Jones, however limited, which provided specific steps to be taken in the instance of racial harassment, gender harassment and bullying.

142. As such, Defendants Infinger, Stewart and Mims acted willfully, maliciously and in bad faith.

WHEREFORE, the Plaintiffs demand judgment against Defendants in a sum in excess of the jurisdictional limits of this Court, to be determined by a jury, which will fairly and adequately compensate the Plaintiffs for Mckenzie's death and other damages, together with interest from the date of injury, and the costs of this proceeding. Further, the Plaintiffs request that the jury selected to hear this case render a verdict for the Plaintiffs and against each Defendant named or identified herein and that it award punitive damages to Plaintiffs in an amount which will adequately reflect the enormity of the Defendants' wrongful acts, and which will effectively prevent the death of other children in our community as a result of similar conduct.

COUNT VI
Loss of Consortium
as to all Defendants

143. Paragraphs 1 through 142 are incorporated herein as if set out in full.

144. Plaintiff Jasmine Adams was the mother of Mckenzie Adams.

145. As a result of the wrongful acts of Defendants US Jones, Demopolis Schools, Kallhoff, Infinger, Mims, and Stewart, collectively or separately and severally, in their official and individual capacities, Plaintiff Jasmine Adams was caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and parental fellowship of her dearly beloved daughters.

146. All injuries and damages described above were proximately caused by the wrongful acts of Defendants US Jones, Demopolis Schools, Kallhoff, Infinger, Mims, and Stewart, collectively or separately and severally, in their official and individual capacities, the source/origin of which is the personal injury to and death of Mckenzie Adams.

WHEREFORE, the Plaintiff Jasmine Adams demands judgment against Defendants in a sum in excess of the jurisdictional limits of this Court, to be determined by a jury, which will fairly

and adequately compensate Plaintiff Jasmine Adams for Mckenzie's death and other damages, together with interest from the date of injury, and the costs of this proceeding. Further, Plaintiff Jasmine Adams requests that the jury selected to hear this case render a verdict for Plaintiff Jasmine Adams and against each Defendant named or identified herein and that it award punitive damages to Plaintiff Jasmine Adams in an amount which will adequately reflect the enormity of the Defendants' wrongful acts, and which will effectively prevent the death of other children in our community as a result of similar conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an Order which will:

- A. Declare the conduct engaged in by the Defendants to be in violation of Mckenzie's rights under federal and Alabama law;
- B. Award Plaintiffs compensatory damages against the Defendants, in an amount that will fully compensate Mckenzie and her family for all they suffered as a direct and/or proximate result of the statutory and common law violations as set out herein;
- C. Enter a judgment against all Defendants for such punitive damages as will properly punish them for the constitutional, statutory and common law violations perpetrated upon Mckenzie as alleged herein, in an amount that will serve as a deterrent to Defendants and others from engaging in similar conduct in the future;
- D. Award Plaintiffs prejudgment and post-judgment interest at the highest rates allowed by law;
- E. Award Plaintiffs costs, expert witness fees, and reasonable attorneys' fees;
- F. Award statutory damages pursuant to 42 U.S.C. § 1983;

G. Assume continuing and indefinite jurisdiction to ensure compliance with the terms of the Orders requested herein; and

H. Award Plaintiffs such other and further relief, including equitable, that this Court deems just and proper.

/s/ Diandra S. Debrosse Zimmermann
Diandra S. Debrosse Zimmermann
(ASB-2956-N76D)
Attorney for Plaintiff

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PLEASE SERVE THE SUMMONS AND COMPLAINT BY CERTIFIED MAIL ON THE DEFENDANTS AT THE FOLLOWING ADDRESSES:

DEMOPOLIS CITY SCHOOLS BOARD OF EDUCATION

U.S. JONES ELEMENTARY SCHOOL

% Kyle Kallhoff

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