



when an 18-year-old student, Q.W., forcibly abducted Ms. Doe, who was a minor, from MPHS's main campus into the surrounding woods, an area known by CMS to be the site of prior incidents of sexual violence, harassment, and coercion against female students at MPHS.

2. During the abduction, Ms. Doe frantically sent text messages to her classmates and mother while Q.W. dragged her deeper into the woods. Her messages conveyed that she had been "kidnapped," needed "help," was "scared," and needed someone to "call the cops" and "go to officer lee" [sic]. A panicked classmate immediately reported these alarming messages to Defendant Leak, who shared the report with Defendant Perkins. Upon information and belief, due to an institutional culture, which discounted the veracity and seriousness of sexual harassment and violence reported by female students on CMS's property, both Defendants Leak and Perkins disregarded this report, and both consciously and deliberately refused to immediately act or otherwise take reasonable steps to ensure Ms. Doe's safety. Even when Ms. Doe's father called MPHS and spoke directly to Defendant Leak about his daughter's safety, Defendant Leak dismissed these concerns by claiming, without any basis, that Ms. Doe – a student in good standing without any history of truancy – was merely skipping school.

3. Defendants Leak and Perkins' deliberate and conscious decision not to take immediate action, and their failure to otherwise reasonably respond to reports that Ms. Doe had been abducted and was in danger, gave Q.W. the time he needed to brutally rape Ms. Doe in the woods while she cried and desperately pleaded for him to stop.

4. Ms. Doe promptly reported the rape to Defendant Leak. Rather than conduct or facilitate a proper investigation into Ms. Doe's report, either through CMPD or CMS, Defendant Leak merely filed a report with CMPD that classified the incident as a non-criminal case of two students skipping school. In his report, Defendant Leak omitted any mention of the abduction or Ms. Doe's report of rape. Defendant Leak's false report caused CMPD to unreasonably delay a

criminal investigation into the rape or otherwise offer assistance or protection to Ms. Doe. Defendant Perkins likewise intentionally omitted material information that he had obtained about the sexual attack in an incident report he submitted to CMS and falsely classified the incident as “mutual sexual contact between two students.”

5. Frustrated by Defendants Leak and Perkins discounting (without basis), or otherwise covering up the sexual attack of their daughter, and fearing further injustices if they pursued the matter based on warnings from Defendant Leak that Ms. Doe could be charged with truancy or even arrested if she did, Ms. Doe’s parents temporarily withdrew her from MPHS and then transferred her to another school away from Q.W. and the hostile educational environment at MPHS.

6. Upon information and belief, the actions and inactions of Defendants Leak and Perkins to discount Ms. Doe’s abduction and subsequent rape by a fellow student were driven by endemic and discriminatory sex-based stereotypes and gender biases held by officials at MPHS. Upon information and belief, these discriminatory views are part of a widespread institutional culture contributing to the hostile educational environment which pervaded MPHS before, during, and after Ms. Doe’s abduction and rape. Such stereotypes and biases included the harmful belief that teenage girls are overly sensitive and dramatic, and thus likely to falsely accuse their male counterparts of sexual harassment and violence – a classic rape myth. As a result of these discriminatory beliefs and attitudes, agents and employees of CMS routinely and automatically discounted female students who reported student-perpetrated sexual misconduct.

7. Due to the unchecked and pervasive sex-based discriminatory culture at MPHS, Defendant CMS, as a matter of policy, practice and/or custom by and through its agents and employees –including Defendants Leak and Perkins – discouraged female students from reporting rape or otherwise pursuing investigations into their reports, whether criminally, through the school

disciplinary process, or pursuant to Title IX. Among other things, officials at MPHS warned girls who reported sexual misconduct that they themselves could be charged with crimes or misconduct if they were found to be lying. This policy, practice, and/or custom, born out of sex-based stereotypes and gender biases against teenage girls, allowed rampant sexual harassment and violence to go unaddressed within CMS. This pervasive and sexually hostile educational environment substantially and dramatically increased Ms. Doe's chances of being sexually assaulted while attending MPHS.

8. By failing to address the known and dangerous conditions on MPHS's campus, CMS maintained an ongoing hostile educational environment which left Ms. Doe at risk of student-perpetrated sexual violence, directly contributed to her abduction and rape, and effectively denied her equal access to education on the basis of sex.

#### **JURISDICTION & VENUE**

9. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over this action because Plaintiff's claims assert federal questions regarding her rights under Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. §§ 1681, *et seq.*, and 42 U.S.C. § 1983.

10. Pursuant to 28 U.S.C. § 1343(a)(3) & (4), this Court also has subject matter jurisdiction over this action because this case seeks damages for Plaintiff's claims regarding the deprivation of federal rights under 42 U.S.C. § 1983.

11. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff's state law claims because the state law claims are so related to the federal law claims in this action to form part of the same case and controversy under Article III of the U.S. Constitution.

12. Pursuant to FED. R. CIV. P. 4(k)(1), this Court has personal jurisdiction over Defendants as they are located and/or regularly conduct business in this jurisdiction and because the conduct giving rise to the claims in this case occurred within this judicial district.

13. Pursuant to 28 U.S.C. § 1391, venue in this District is proper because Defendants reside within this District and a substantial part of the events and omissions which form the basis of this Amended Complaint occurred within this District.

### **PARTIES**

14. Plaintiff, Jane Doe, is a 20-year-old college student whose permanent residence is in Charlotte, North Carolina. At all times relevant to this Amended Complaint, Ms. Doe was a minor and a student in her junior year at MPHS in Charlotte, North Carolina. The Court has granted Plaintiff leave to proceed under pseudonym to protect her identity and dignity in this highly personal and sensitive matter as the victim of rape and a minor student during all relevant times. *See* November 1, 2018 Order (Doc. 6).

15. Defendant CMS is a corporate body located in Charlotte, North Carolina. The State of North Carolina has granted CMS powers to “general[ly] control and supervis[e] . . . all matters pertaining to the public schools in their respective administrative units and . . . [to] enforce the school law in their respective units.” N.C. Gen. Stat. §§ 115C-36, 115C-40. MPHS is a public educational institution under the control and supervision of CMS, and a recipient of federal funding from the U.S. Department of Education subject to Title IX, 20 U.S.C. §§ 1681, *et seq.* Upon information and belief, CMS has purchased, obtained, and/or otherwise secured liability insurance to waive any governmental immunity which may apply to the state law claims asserted against it in this case.

16. Defendant Anthony Perkins is, upon information and belief, a resident of Pasquotank County, North Carolina, and a citizen of North Carolina. At all times relevant to this Amended Complaint, Defendant Perkins served as Assistant Principal of MPHS, was an employee of CMS, and was acting under the color of state law. Defendant Perkins is sued in his individual capacity and in his official capacity as the Assistant Principal of MPHS.

17. Defendant Bradley Leak is, upon information and belief, a resident of Mecklenburg County, North Carolina, and a citizen of North Carolina. Pursuant to N.C. Gen. Stat. §115C-47(61), Defendant CMS entered into an agreement with CMPD Chief of Police, Defendant Putney, to obtain an SSRO. Pursuant to N.C. Gen. Stat. § 160A-288.4, Defendant Putney selected and assigned Defendant Leak to serve as a SSRO at MPHS. At all times relevant to this Amended Complaint, Defendant Leak, in his official capacity, acted under color of state law, both as an agent of CMS and as an employee of CMPD and thus the City. Defendant Leak is sued in his individual capacity and in his official capacity as an officer of the CMPD and as an SSRO at MPHS. *See* N.C. Gen. Stat. § 160A-288.4(d).

18. Defendant City of Charlotte is a municipal corporation located in Mecklenburg County, North Carolina. Pursuant to the provisions of N.C. Gen. Stat. § 160A-11, the City is duly chartered and vested with corporate powers and rights, including, but not limited to, the capacity to sue and be sued. Pursuant to the provisions of N.C. Gen. Stat. § 160A-281, the City appointed police officers and a police chief to CMPD, which is maintained and operated as a component department of the City and as one of its municipal functions at all times relevant to this action. Pursuant to the authority granted under N.C. Gen. Stat. § 160A-485.5, the City of Charlotte has expressly waived its governmental immunity to the extent provided by the North Carolina State Tort Claims Act. In addition, or in the alternative, the City has waived immunity by purchasing liability insurance or by participating in a governmental risk pool which indemnify it for liabilities incurred as a result of the claims in this case.

19. Defendant Kerr Putney is the Chief of Police for the CMPD and, upon information and belief, a resident of Mecklenburg County, North Carolina, and a citizen of North Carolina. Pursuant to N.C. Gen. Stat. § 160A-288.4, Defendant Putney, in his official capacity as Chief of

Police, has final policymaking authority regarding the development of, and training for, the SSRO program within CMS. Defendant Putney is sued in his official capacity only.

## **FACTS**

### ***The Abduction of Jane Doe***

20. During the fall of 2015, Ms. Doe was enrolled as a junior and attending MPHS.

21. On November 3, 2015, around 6:30 am, Ms. Doe and several friends were in the Language Arts (“LA”) building at MPHS, waiting for classes to begin, when Q.W. sent her text messages asking her to skip class with him that day. Ms. Doe declined and informed her classmates of the same.

22. Q.W. then offered to walk Ms. Doe from the LA building to her first period weightlifting class at the gym across campus, which started at 7:15 a.m. Ms. Doe accepted.

23. Q.W. met Ms. Doe at the LA building and the two began walking to the gym around 7:00 a.m. As they walked, Q.W. continued to pressure Ms. Doe to skip class with him. Ms. Doe clearly and repeatedly declined.

24. As the two walked near a parking area on campus, Defendant Leak was present and on duty as the SSRO for MPHS.

25. When Defendant Leak saw Ms. Doe and Q.W., he called out to Ms. Doe asking where she was going.

26. Q.W. then immediately grabbed and squeezed Ms. Doe’s arm and pulled her into the woods on CMS property and adjacent to MPHS’s main campus. Frightened by Q.W.’s increased aggressiveness, Ms. Doe did not respond to Defendant Leak’s question.

### ***Known Risk of Student-Perpetrated Sexual Violence Occurring in the Woods***

27. At that time, Defendant Leak, as well as other agents and officials of CMS, including Defendant Perkins, had actual notice of the routine nature of student-perpetrated sexual

misconduct committed by male students against female students in the woods adjacent to MPHS's main campus. For example, Defendant Leak, Principal Mark Bosco, and Counselor Kimberly Folk received a report in December 2014 from a female student that a male student (her ex-boyfriend) had coerced her to enter the woods by threatening to shoot himself with a gun, which he claimed to have in his backpack. Fearing for the safety of the male student, herself, and others, she met her ex-boyfriend after classes on or about October 22, 2014. He then took her into the woods and raped her.

28. When this female student reported the coercion and rape, Counselor Folk sent her to Defendant Leak. Defendant Leak asked her to meet with him and Principal Bosco after school. During this meeting, the female student showed them a series of threatening and harassing messages from her ex-boyfriend, including the one leading up to the rape. Upon information and belief, due to the unchecked and pervasive sex-based discriminatory culture at MPHS, which viewed teenage girls as overly sensitive, and dramatic, and thus likely to falsely accuse their male counterparts of sexual harassment and violence, Defendant Leak discounted the ex-boyfriend's threats. He stated that the threat to use a gun was not "reasonable duress" because the male student had routinely used similar threats in the past to control the female student as part of a pattern of dating violence and abuse. Principal Bosco then told the female student that, while she could formally report the rape to CMS, if her perpetrator was "found innocent" she would be suspended for having sex on campus. Principal Bosco then implied she should let the whole thing blow over. Due to this pressure, in addition to the statements made by Defendant Leak and Principal Bosco in response to her report, the female student reluctantly chose not to pursue further action regarding the rape through the school disciplinary process, under Title IX, or through CMPD, based on her fear that the accused student would not be found responsible and she would lose her good standing at MPHS.

29. Upon information and belief, this report of rape in the fall of 2014 was not the only report CMS received by and through its agents and employees of male students committing sexual misconduct against female students in the woods adjacent to MPHS's main campus. Upon information and belief, CMS had received so many reports of alleged sexual misconduct in the woods that Principal Bosco convened a student assembly in the fall of 2015 to discuss the issue. This assembly was held before Q.W. abducted and raped Ms. Doe.

30. Rather than implementing new policies, procedures, educational efforts, or security measures that were reasonably calculated to address or mitigate the risk of sexual harassment and violence against female students at MPHS in response to numerous reports – such as increasing security in or around the woods adjacent to MPHS's main campus – CMS merely held a student assembly at the start of the 2015-2016 school year.

31. During this assembly, Principal Bosco reportedly told the students “some people go into the woods and don't come back happy.” He warned female students that MPHS could not protect them if they went into the woods, and told male students that “in these cases, you're guilty until proven innocent because that's just the price we pay for being men.” These remarks, which minimized the seriousness of sexual harassment and violence against female students and implied that female students routinely falsely accused males of sexual assault, evidenced the gender bias and sex-based stereotypes pervading the institutional culture at MPHS. Upon information and belief, Principal Bosco's remarks and CMS's subsequent failure to take meaningful action to reasonably calculated to address the hostile sexual environment at MPHS emboldened male students to continue perpetrating sexual violence in the woods, like Q.W. did when he targeted Ms. Doe.

32. Despite the known risk of sexual violence towards female students at MPHS, the only steps CMS took beyond convening the assembly was to promulgate a school policy in its

2015-2016 Student Handbook, which states: “Students may not leave campus without permission from an administrator, doing so will result in the student being considered truant.” These steps were plainly inadequate, unreasonable, and deliberately indifferent to the dangers and known risks female students faced of being coerced into the woods against their will for the purposes of sexual violence and harassment. This school policy itself is discriminatory to the extent that it allows school officials a pretext to discourage female students from making formal reports of sexual violence and harassment under threat of truancy.

### *The Rape of Jane Doe*

33. While in the woods, Ms. Doe again told Q.W. that she did not want to skip class and get in trouble. She was fearful for her safety and verbally protested Q.W.’s actions during the abduction, but he did not relent and instead pulled her further into the woods.

34. As Q.W. forcibly led her through the woods, Ms. Doe furtively sent text messages to her classmates conveying the abduction and her need for help:

“Help me;”

“Call the cops;”

“Somebody go to officer lee” [sic];

“I’m so scared;”

“Seriously go to officer lee” [sic];

“Quit calling me; He’s watching me;”

“Please I’m being serious;”

“IDK WHERE WE ARE;” and

“Guys I’m being serious; I’m really scared; Nobody is helping.”

Ms. Doe requested help from Defendant Leak because she reasonably viewed him, based on his position as the SRRO at MPHS, and the fact that CMS officials routinely held out Defendant Leak

as the person in charge of security, as the MPHS official responsible and most readily equipped to respond to her abduction.

35. In response to these text messages, consistent with the known dangers to female students at MPHS, one of her classmates worried: “What if she’s getting raped; Cause he’s like following her around.” Ms. Doe’s classmates knew Q.W. had been aggressive in sexually pursuing Ms. Doe previously, and as recently as that morning, and this increased their alarm when they received her text messages pleading for help.

36. Ms. Doe’s friend and classmate, J.D., immediately sought out Defendant Leak and reported the abduction and Ms. Doe’s text messages.

37. Despite the urgency and seriousness of this report, and despite knowing about multiple, recent prior complaints of sexual assault and other misconduct involving coercion against female students in the woods adjacent to MHPS’s main campus, Defendant Leak made the deliberate, conscious and deliberately indifferent decision not to take immediate action in response to the report. In fact, Defendant Leak challenged Ms. Doe’s friend about the veracity of the report consistent with the institutional culture at MPHS.

38. Both J.D.’s pleas to Defendant Leak, and his refusal to take immediate action, are documented in an audio recording. J.D. then sent a text message to Ms. Doe indicating that Defendant Leak refused to help.

39. Instead of responding to the exigent circumstances of Ms. Doe’s abduction, while knowing, as he did, about the risk of sexual violence by male students against female students in the woods, upon information and belief, Defendant Leak radioed for Defendant Perkins to come down to confer in his office. During this time, Q.W. pulled Ms. Doe deeper and deeper into the woods. When Defendant Perkins arrived, Defendant Leak informed him that J.D. was “saying that her friend has been kidnapped.” Upon hearing this information, Defendant Perkins made the

deliberate and conscious decision not to respond immediately to the report. At one point, while Defendants Leak and Perkins dithered in front of J.D., she sent a text message to Ms. Doe and their friends: “Their [sic] not believing her.”

40. During this time, Ms. Doe was also furtively sending text messages to her mother, pleading for help:

“Mom I’m being kidnapped; Call somebody. Dont call me” [sic];

“Officer Lee saw me; Mom Fr don’t call me I’m scared; Mom don’t call me” [sic];

“Yes mom I’m being serious; I’m so serious;”

“Mom call the police;”

“All I know is. I’m scared asf. I told him I didn’t want to do this” [sic]; and

“I think he’s crazy.”

41. Ms. Doe also attempted to provide her mother with information about her location to aid in her rescue.

42. Ms. Doe’s mother asked her husband, Ms. Doe’s father, to contact MPHS in order to locate and protect their daughter.

43. When Ms. Doe’s father called MPHS, he spoke directly to Defendant Leak who was still talking with J.D. Upon information and belief, Defendant Perkins first arrived in Defendant Leak’s office at some point during Defendant Leak’s phone conversation with Ms. Doe’s father.

44. During the call with Ms. Doe’s father, Defendant Leak confirmed that he had observed Q.W. and Ms. Doe walking on campus earlier that morning. Defendant Leak then falsely stated – without any basis – that Ms. Doe was skipping class voluntarily, despite her being a student in good standing without any disciplinary or truancy history at MPHS whatsoever. This

discouraged Ms. Doe's father from taking any further action at that time to locate or rescue his daughter.

45. During the time Defendants Leak and Perkins were unreasonably debating whether to respond at all to the report of Ms. Doe's abduction, Q.W. raped Ms. Doe.

46. Q.W. forcibly kissed Ms. Doe after ignoring her protests. When Ms. Doe pulled away, saying "I don't want to do this," Q.W. unzipped his pants, pulled out his genitals, and repeatedly demanded that Ms. Doe "kiss it like you kissed me." Ms. Doe kept saying "no." Q.W. then pushed her to her knees and forced her head near his genitals. She begged him to stop and looked toward the path to see if anyone was coming to rescue her given her numerous requests for help via text message. Q.W. then forced his penis into Ms. Doe's mouth and proceeded to pull her hair to force her head back and forth. Ms. Doe repeatedly struggled to turn her head away and stop the rape.

47. At one point during the sexual attack, a group of students came upon Q.W. and Ms. Doe in the woods. Q.W. stopped raping Ms. Doe until the students walked past, and Ms. Doe began crying when he continued again. Q.W. then ejaculated. To preserve evidence of the rape, Ms. Doe intentionally spit out his semen onto her shirt. This caused Q.W. to panic and he attempted to rub off the semen.

48. Around 7:50 am, Ms. Doe informed her mother via text message of the sexual assault: "I was attacked." Her parents again contacted MPHS to demand that officials locate and help their daughter.

***Defendants had a Duty to Ensure a Safe School Environment for Ms. Doe***

49. North Carolina's General Assembly has held "that all schools should be safe, secure, and orderly." N.C. Gen. Stat. § 115C-105.45.

50. Consistent with this state policy, the State of North Carolina has created a legal duty for local boards of education, including Defendant CMS, “**To Provide a Safe School Environment.**” N.C. Gen. Stat. §115C-47(61) (emphasis in original).

51. To fulfill this duty, the State has authorized local boards of education, including Defendant CMS, to enter into agreements with local law enforcement to “provide security at the schools by assigning volunteer school safety resource officers who,” *inter alia*, will “meet the selections standards and criteria developed by the head of the appropriate law enforcement agency.” *Id.*

52. North Carolina’s General Assembly has defined a “school resource officer,” such as Defendant Leak, as a “person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools.” N.C. Gen. Stat. § 14-202.4(d)(3a).

53. Under N.C. Gen. Stat. § 160A-288.4(a), “the chief of police of a local police department or of a county police department may establish a volunteer school safety resource officer program to provide nonsalaried special law enforcement officers to serve as school safety resource officers in public schools.”

54. When a chief of police enters into an agreement with the local board of education to provide volunteer school safety resource officers, the chief of police is “responsible for the assignment of any volunteer school safety resource officer assigned to a public school and for the supervision of the officer.” N.C. Gen. Stat. § 160A-288.4(c).

55. Defendant Putney, who was sworn as the Chief of Police of the CMPD on June 29, 2015, was responsible for the assignment of SSROs at CMS.

56. Defendant Putney selected Defendant Leak as the SSRO for MPHS. The City of Charlotte hired, trained, and supervised Defendant Leak as an officer of CMPD. Furthermore, upon information and belief, CMS had an obligation to train and supervise Defendant Leak to

ensure he promoted and maintained a safe and orderly school consistent with MPHS's safe school plan, as well as all applicable federal and state laws.

57. Furthermore, the City also had the responsibility to hire, train, and supervise Defendant Leak as an employee of CMPD.

58. Defendant Leak acted under color of law in his official capacity as a police officer of CMPD, and also as an agent of CMS, while serving as an SSRO at MPHS.

59. Defendant Leak was deliberately indifferent, negligent, and acted both with reckless disregard and in bad faith when he refused to take any action to assist or otherwise rescue Ms. Doe after witnessing her forcible abduction from MPHS's campus, and when he responded with conscious and deliberate indifference by failing to act immediately when Ms. Doe's friend and father reported that Ms. Doe had been abducted. Defendant Leak refused to act despite the urgency and seriousness of these reports, and despite the known risks of sexual violence to female students in the woods adjacent to MPHS. Defendant Leak had the legal authority, duty, obligation, and ability to take action, without delay, and to attempt to rescue or otherwise protect Ms. Doe, including the authority to make an arrest or otherwise detain the perpetrating student, Q.W., and he deliberately, consciously, and unreasonably failed to do so until it was too late.

60. Similarly, Defendant Perkins was deliberately indifferent, negligent, and acted both with reckless disregard and in bad faith when he, like Defendant Leak, made the conscious and deliberate decision not to respond immediately when he was notified by Defendant Leak that Ms. Doe, a minor student, had reported to her friends and family that she was being abducted. Defendant Perkins refused to act despite the urgency and seriousness of the reported abduction, and despite the known risks of sexual violence to female students in the woods adjacent to MPHS. Defendant Perkins had the legal authority, duty, obligation, and ability to take action, without

delay, and to attempt immediately to rescue or otherwise protect Ms. Doe, and he deliberately, consciously, and unreasonably failed to do so until it was too late.

***Defendants Leak and Perkins Fail to Investigate the Rape***

61. After an unreasonable and unjustifiable delay, the pleas from J.D. and Ms. Doe's father eventually compelled Defendants Leak and Perkins in a patrol vehicle to look for Ms. Doe.

62. Defendant Perkins took J.D.'s cell phone with him in case Ms. Doe tried to contact her.

63. Defendants Leak and Perkins located Q.W. and Ms. Doe outside the woods.

64. Ms. Doe appeared both distressed and disheveled. Her hair was in disarray, she had mud on her clothing, her glasses were broken, and there was semen on her shirt. Despite her obvious distress, Defendant Leak directed Ms. Doe to sit next to Q.W. in the patrol vehicle, which she refused to do. Defendant Leak then put her in the front seat next to him to interrogate her while Q.W. remained in the back of the vehicle with Defendant Perkins, who still had J.D.'s cell phone. Ms. Doe was in shock, and terrified of Q.W., who was seated directly behind her, so she was unable to report the rape to Defendants Leak and Perkins at that time.

65. During the drive back to campus, Ms. Doe sent the following text messages to J.D. in quick succession:

"I was attacked."

"I feel so gross"

"If I have aids ima kill myself"

66. Unbeknownst to Ms. Doe, Defendant Perkins received these text messages on J.D.'s cell phone and read them in real time.

67. Once back on campus, Defendant Perkins removed Q.W. from the patrol vehicle and took him to Defendant Leak's office.

68. Defendant Leak then asked Ms. Doe and she confirmed that Q.W. had sexually assaulted her.

69. Back in Defendant Leak's office, Q.W. claimed to Defendant Perkins that he had consensual oral sex with Ms. Doe. Despite having knowledge that Ms. Doe had reported both an abduction and that Q.W. had "attacked" her, Defendant Perkins failed to ask Q.W. for pertinent details, such as whether Q.W. had abducted, attacked, coerced, pressured or otherwise sexually assaulted Ms. Doe. Instead, consistent with MPHS's discriminatory culture, he immediately discounted her report of sexual violence and readily accepted Q.W.'s version of events without any real or meaningful investigation. In fact, on the day of Ms. Doe's rape, Defendant Perkins described the incident in CMS's reporting system as "mutual sexual contact between two students," as noted in Ms. Doe's education record.

70. Despite each having actual notice that Ms. Doe reported a sexual assault and/or "attack" by Q.W. in the woods, neither Defendant Leak nor Defendant Perkins took a statement from Ms. Doe or otherwise meaningfully investigated her complaint, as required under Title IX. Furthermore, none of the Defendants offered to transport Ms. Doe to a hospital or otherwise assist her in reporting the rape to local law enforcement.

71. Upon information and belief, the decision to accept Q.W.'s version of events as true, without any meaningful investigation, is part of the broader discriminatory practice at MPHS based on stereotypical views and gender biases against teenage girls, which led school officials to discount and discourage their reports of sexual misconduct on CMS property, including in the woods adjacent to MPHS's main campus. Upon information and belief, this broader discriminatory practice effectively condones the sexual abuse of minor female students by discouraging them from reporting or pursuing investigations into their sexual assaults, while

emboldening male students to target female students for such harassment and abuse on or around MPHS's campus.

72. Defendant Perkins, acting under color of law and as an employee of CMS within his official capacity as Assistant Principal, failed and refused to take appropriate action under Title IX to investigate or resolve Ms. Doe's complaint of sexual violence. Defendant Perkins had the legal authority, duty, and obligation to address this complaint, and he failed to do so in a manner consistent with CMS's obligations as a funding recipient under Title IX.

***Defendants Leak and Perkins Obstructed Investigations into the Rape***

73. Despite this authority, duty, and obligation to investigate Ms. Doe's complaint, upon information and belief, Defendants Leak and Perkins not only acted with deliberate indifference, they also each took actions which stymied and impeded a fair, thorough, impartial, and accurate investigation into Ms. Doe's complaint by CMS or CMPD.

74. In particular, despite having seen and read Ms. Doe's text messages to J.D. stating that she had been "attacked," Defendant Perkins intentionally omitted any reference to the attack in a statement he prepared for CMS, which states as follows: "[Ms. Doe] text[ed] that she feels gross and she better not have an STD." And, in an incident report he prepared on the morning of Ms. Doe's rape, Defendant Perkins classified the incident "offense type" as "mutual sexual contact between two students," notwithstanding his knowledge that Ms. Doe was claiming that she had been "attacked" by Q.W.

75. Furthermore, when Ms. Doe's father arrived at MPHS, he immediately observed his daughter's trauma and disheveled appearance, yet Defendant Perkins curiously and falsely reported in his statement to CMS that Ms. Doe's "clothes were not dirty, and her hair was not out of place."

76. Similar to the warning Principal Bosco and Defendant Leak had given to the alleged victim of sexual assault the year before at MPHS, Defendant Leak warned Ms. Doe that if she was not telling the truth about the sexual assault she could be charged with a crime.

77. Upon information and belief, Defendant Leak then filed a report with the CMPD which made no mention of the reported abduction or rape of Ms. Doe, and instead classified the matter as a non-criminal case of two students skipping school.

78. After overhearing Defendant Leak's remark to his daughter about potential criminal liability if she filed a report about her rape, Ms. Doe's father promptly took her out of MPHS and to Carolinas Health Care System for emergency medical attention and a rape kit to preserve forensic evidence of the rape for a criminal investigation.

79. Both of Ms. Doe's parents and the emergency room nurses repeatedly called CMPD without any officer responding to take Ms. Doe's statement or collect the rape kit. In total, there were eight calls made to 911.

80. Upon information and belief, CMPD did not respond to the calls because of the report Defendant Leak had filed stating that Ms. Doe skipped class (with no indication of the reported rape or abduction). Upon information and belief, this was the precise result Defendant Leak was hoping for when he filed his report. In fact, at or around 10:00 a.m. on November 3, 2015, Defendant Leak even called Ms. Doe's parents to tell them that he had filed a report and there was no need for a sexual assault detective to go to the hospital.

81. CMPD never responded to the emergency room to collect the rape kit or take Ms. Doe's criminal complaint.

82. On November 23, 2015, WBTV ran a report by Nick Ochsner entitled: “*Parents Question CMPD Handling of Daughter’s Reported Sexual Assault*,” WBTV (Nov. 23, 2015).<sup>1</sup>

83. Upon information and belief, CMPD did not even classify Ms. Doe’s report as a sexual offense despite the eight 911 calls made the day of the attack until contacted by the local media about CMPD’s failure to investigate the rape and the role Defendant Leak played in obstructing Ms. Doe’s criminal complaint. According to CMPD records, the first record indicating the reported rape was on November 18, 2015 (15 days after Ms. Doe reported being raped).

***U.S. Department of Education found CMS in Violation of Title IX***

84. Ms. Doe’s family reported the circumstances of the rape and CMS’s response to the U.S. Department of Education’s Office for Civil Rights (“OCR”). At that time, neither Ms. Doe nor her family had any knowledge of, or information about, the widespread discriminatory culture within CMS.

85. On December 5, 2017, following a federal investigation, OCR released its finding (Case No. 11-16-1348), which held that Defendant CMS was not in compliance with Title IX during the time of the reported rape.<sup>2</sup>

86. Through an admission, OCR had found that CMS “did not have a designated Title IX Coordinator or anyone specifically designated or responsible for investigation or responding to complaints/reports alleging discrimination on the basis of sex, including sexual harassment and sexual assault/violence” at all times relevant to this Amended Complaint.

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<sup>1</sup> Available at <http://www.wbvtv.com/story/30583871/parents-question-cmpd-handling-of-daughters-reported-sexual-assault/>.

<sup>2</sup> Since February 2, 2018, Ms. Doe and her family have had an appeal pending with the U.S. Department of Education regarding part of OCR’s finding.

87. This is at least the second time that OCR has found Defendant CMS out of compliance with Title IX regarding its response to complaints of sexual harassment and violence by its students.

***Damages Suffered by Ms. Doe***

88. After the rape, Ms. Doe's family temporarily withdrew her from MPHS due to the lack of meaningful investigation and intentional efforts by Defendants Leak and Perkins to obstruct such an investigation, including blaming Ms. Doe for truancy, obstructing the criminal investigation, and accusing her of "mutual sexual contact" despite her report that she had been sexually assaulted.

89. Ms. Doe's family eventually transferred Ms. Doe to another school in order for her to continue seeking access to education free from the ongoing hostile environment created both by Q.W.'s presence at MPHS and MPHS's discriminatory culture towards female students who report sexual assault, which was exemplified by the deliberate indifference which Defendants Leak and Perkins showed towards Ms. Doe's report of sexual assault. This transfer caused Ms. Doe to miss her senior year of high school with her classmates and friends.

90. Ms. Doe also sought psychological care for the extreme emotional distress she suffered as a result of the preventable sexual assault, CMS's deliberate indifference to it, and other related harms.

91. Ms. Doe resigned her job at a local mall given her ongoing and persistent fear of potentially running into Q.W., especially when she had to close up and walk to her car alone in the parking lot. To this day, Ms. Doe's ongoing fear of running into Q.W., given the lack of consequences for his sexual attack against her, has affected what jobs she takes, where she works, and what shifts she accepts.

***CMS Failed to Provide Essential Title IX and Sexual Harassment  
Training to Employees, Agents, Students, and Students' Parents***

92. In 1998, the U.S. Supreme Court stated: “[t]he number of reported cases involving sexual harassment of students in schools confirms that harassment unfortunately is an all too common aspect of the educational experience.” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (1998).

93. In 1999, the U.S. Supreme Court determined that schools may be held liable in private Title IX actions for monetary damages when they are deliberately indifferent to student-against-student sexual misconduct and harassment. *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999).

94. In 2001, the U.S. Department of Education Office for Civil Rights (“OCR”) issued the *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (“2001 OCR Guidance”), informing all U.S. schools receiving Federal financial assistance, including School Defendants, that “[p]reventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn.” OCR reminded schools that student-against-student sexual misconduct constitutes prohibited sexual harassment. OCR also stated:

“[S]chools need to ensure that employees are **trained** so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. **Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.**”

95. The 2001 OCR Guidance stated, with respect to student-against-student sexual harassment:

“If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student’s ability to participate in or benefit from the program, and if the school knows . . . about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile

environment and prevent its recurrence. . . . [I]f, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex."

96. In 2006, OCR issued *Dear Colleague Letter – Sexual Harassment Issues*, to U.S. public schools, including School Defendants, stating, "[u]nfortunately, a significant number of students are still subjected to sexual harassment, which can interfere with a student's education as well as his or her emotional and physical well-being." OCR reminded public schools of their obligation "to take immediate and effective steps to end sexual harassment when it occurs, prevent its recurrence, and remedy its effects."

97. In 2008, OCR issued the guidance entitled *Sexual Harassment: It's Not Academic*, reiterating that unwelcome student-against-student sexual touching is sexual harassment, and that sexual harassment includes rape, sexual assault, dating violence, and sexually motivated stalking.

98. In 2011, OCR sent *Dear Colleague Letter: Sexual Violence* ("2011 OCR Guidance"), to all U.S. public schools, including School Defendants, that issued a "call to action" to the nation's schools because of "deeply troubling" data regarding school-place sexual violence. OCR informed schools, "[d]uring the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools." The Guidance stated, "[a] number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX."<sup>3</sup>

99. The 2011 OCR Guidance reminded schools they have an obligation to investigate reports of sexual harassment, must designate at least one employee to coordinate and comply with

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<sup>3</sup> The U.S. Department of Education withdrew this Dear Colleague Letter on September 22, 2017. However, the statistics cited above have not changed, and the requirements set forth above have not been formally revised or otherwise superseded by the U.S. Department of Education.

Title IX responsibilities, and recommended schools provide **training and education** to employees and students on sexual harassment and violence.

100. In 2015, OCR sent the *Dear Colleague Letter: Title IX Coordinators* and issued a *Title IX Resource Guide* to all U.S. public schools, including Defendant CMS. OCR reminded schools of their obligation to designate at least one employee as a Title IX Coordinator who is responsible for coordinating the school's efforts to comply with and carry out the school's Title IX responsibilities, pursuant to 34 C.F.R. §106.8(a). OCR stated, "In our enforcement work, OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient **fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX.**"

101. Upon information and belief, despite clear notice by the U.S. Supreme Court and OCR regarding Defendant CMS's obligations to prevent and remediate the effects of sexual harassment, at all times relevant hereto, Defendant CMS failed to provide training or education to its employees, agents, or students and their parents regarding Title IX to ensure a proper and lawful response to student-against-student sexual harassment.

102. Upon information and belief, Defendant CMS, at all times relevant hereto, failed to provide training or education to its employees, agents, or students and their parents on protecting students from sexual harassment and violence, interviewing victims and potential witnesses of sexual harassment, investigating reports of sexual harassment, remediating sexual harassment and violence, and proper reporting of suspected sexual harassment or violence to CMS.

103. At all times relevant hereto, Defendant CMS had no Title IX coordinator or other employees designated to handle complaints of sexual harassment. Thus, no employees or agents

at CMS were adequately trained in receiving, coordinating or investigating reports of sexual harassment and discrimination against students.

104. At all times relevant hereto, CMS's policies towards sexual harassment were inequitable and inadequate with respect to investigating and properly responding to reports of student-against-student sexual harassment, and, in any event, based upon information and belief, Defendant CMS failed to provide training or education on those policies to employees, agents, students, and parents.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### ***(Pre- and Post-Report Violations of Title IX, 20 U.S.C. §§ 1681, et seq., against Defendant CMS)***

105. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs, as if fully set forth herein.

106. At all relevant times to this Amended Complaint, Ms. Doe was a minor student enrolled at MPHS seeking access to educational opportunities and benefits provided by Defendant CMS.

107. Defendant CMS and/or MPHS receives federal funding from the U.S. Department of Education and thus is subject to the requirements of Title IX, 20 U.S.C. §§ 1681, *et seq.*

108. Defendant CMS had actual notice through its agent and employee, Defendant Leak and Defendant Perkins, that Q.W. abducted Ms. Doe. Defendant Leak observed Q.W. abducting Ms. Doe, and both Defendants Leak and Perkins were informed by J.D. and Ms. Doe's father of her abduction and her fear that Q.W. would harm her further. Upon locating Ms. Doe, Defendant Leak received a direct report of the rape, and Defendant Perkins saw a text message which put him on actual notice that Ms. Doe claimed Q.W. had "attacked" her in the woods, and that the "attack" made her "feel gross" and worry about contracting AIDS.

109. Defendant Leak is an appropriate official under the meaning of Title IX as he was an SSRO contracted to “provide security” and thus ensure a “safe school environment,” and thus was both able to address the sexual violence and institute corrective action on behalf of CMS. *See* N.C. Gen. Stat. §115C-47(61).

110. Defendant Perkins was an appropriate official under the meaning to Title IX as he was an Assistant Principal and was both able to address the sexual harassment and institute corrective action on behalf of CMS.

111. The abduction and rape of Ms. Doe by Q.W. constitutes sexual harassment under Title IX, 20 U.S.C. § 1681(a).

112. Defendant CMS exercised substantial control over Q.W., a male student at MPHS. CMS also had substantial control over the context of the sexual harassment, which started on MPHS’s main campus as a forcible abduction and resulted in a subsequent rape in the woods adjacent to and part of that campus, which is on CMS property.

113. The abduction and rape of Ms. Doe was sufficiently severe, and it dramatically worsened the pervasive discriminatory and hostile educational environment at MPHS, which Ms. Doe already suffered from as a female student attending MPHS.

114. Upon information and belief, before Q.W. raped Ms. Doe, Defendant CMS had actual notice of pervasive sexual harassment and violence by male students against female students occurring in the woods adjacent to MPHS’s main campus.

115. Despite actual knowledge, Defendant CMS not only failed to address the pervasive sexual harassment of, and violence against, female students at MPHS, it fostered the resulting hostile educational environment through a policy of deliberate indifference to known reports of sexual misconduct. Upon information and belief, this discriminatory institutional culture is the

result of gender bias and sex-stereotyping of teenage girls used to systemically discount their reports of sexual harassment and violence.

116. Defendant CMS further perpetuated the hostile educational environment at MPHS, which Ms. Doe suffered, by: (i) failing to promulgate and adopt policies and procedures aimed at reasonably, appropriately and effectively addressing the known risks of sexual misconduct and coercion faced by female students at MPHS, including in the woods adjacent to MPHS's main campus; and (ii) discouraging and failing to properly investigate or otherwise reasonably respond to sexual harassment and violence at MPHS due to its deliberate indifference.

117. The hostile educational environment at MPHS substantially increased Ms. Doe's risk of rape by a fellow student, and the resulting deliberate indifference by Defendants Leak and Perkins upon actual notice of the resulting rape of Ms. Doe, all interfered with and ultimately impeded her equal access to education at MPHS.

118. The hostile educational environment at MPHS effectively forced Ms. Doe to take a temporary leave of absence from school and then permanently transfer out of MPHS. She missed her senior year of high school with her classmates and friends.

119. In addition to Defendant CMS's policy of deliberate indifference towards reports of sexual misconduct by female students, its responded, through its agents, with deliberate indifference to the abduction and rape of Ms. Doe when Defendants Leak and Perkins actions were clearly unreasonable in light of the known circumstances. Upon locating Ms. Doe after the rape, Defendants Leak and Perkins observed her disheveled appearance, which included semen on her shirt to evidence the attack, and both learned about the rape from Ms. Doe. Despite this, CMS, by and through its agents and employees, failed to take her complaint, automatically accepted Q.W.'s version of events, and failed to adequately investigate the sexual misconduct as required under Title IX.

120. In fact, Defendant CMS, by and through its agent Defendant Leak, attempted to discourage Ms. Doe from formally reporting the sexual attack by stating she could be arrested for making a false report. Both Defendants Leak and Perkins then filed reports with CMPD and CMS, respectively, claiming Ms. Doe skipped school, in one report, and engaged in “mutual sexual contact” in the other report, without any mention of the reported rape or abduction. Upon information and belief, Defendants Leak and Perkins took these deliberate, conscious acts to delay or otherwise stymie appropriate and fair investigations into Ms. Doe’s reported abduction and rape.

121. As a direct and natural consequence of Defendant CMS’s actions, inactions, and overall deliberate indifference to, and violation of, Ms. Doe’s clearly established rights under Title IX, Ms. Doe suffered and continued to suffer injuries, including, without limitations, emotional distress, psychological trauma, and mortification.

122. As a direct and proximate result of Defendant CMS’s deliberate indifference and intentional discrimination, by and through its agents and employees, Ms. Doe sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. Past, present, and future physical and psychological pain, suffering, and impairment;
- b. Medical bills, counseling, and other costs and expenses for past, present, and future medical and psychological care;
- c. Loss of educational access and opportunity;
- d. Past, present, and future economic losses, including lost wages;
- e. Attorneys’ fees and costs; and
- f. Such other and further relief that this Court deems just and proper.

## COUNT II

***(Violation of Federal and Constitutional Rights under the Fourteenth Amendment and pursuant to 42 U.S.C. § 1983, against Defendants CMS, Leak and Perkins)***

123. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs as if fully set forth herein.

124. Defendant CMS is a local governing body with final policymaking authority over MPHS. *See* N.C. Gen. Stat. §§ 115C-36, 115C-40. At all times relevant to this Amended Complaint, CMS acted under color of state law.

125. Defendant Leak, at all relevant times, was an employee of CMPD and the City, as well as an agent of CMS, acting under the color of state law and within the scope of his employment and authority while serving in his official capacity as an SSRO at MPHS.

126. Defendant Perkins, at all relevant times, was an employee of CMS acting under the color of state law and within the scope of his employment and authority at CMS while serving as an Assistant Principal in his official capacity.

127. Both the Equal Protection Clause and Title IX provide protection against sex discrimination, including in the form of sexual harassment and violence.

128. Title IX is a federal civil rights statute intended to benefit students, including Ms. Doe. It has historically ensured equal access to education for female students, like Ms. Doe.

129. Title IX provides students, including Ms. Doe, clear civil rights, which are not amorphous or vague, to be free from sexually hostile educational environments created by known sex-based discrimination, harassment or violence.

130. Defendant CMS, by and through its agents and employees, which includes Defendants Leak and Perkins, is obligated by its receipt of federal funding to comply with Title IX. Through OCR, CMS had regular information about the mandates of Title IX regarding student-on-student sexual harassment and violence, including the requirement to appoint a Title IX Coordinator and train its employees, agents, students, and parents about their rights and obligations under Title IX.

131. By and through its official policy and practice of institutional discrimination against female students who report sexual harassment and violence, as well as its deliberate indifference to such reports, which resulted in widespread abuses as well as pervasive and ongoing risk of sexual harassment of female students, Defendant CMS acted in bad faith to deprive Ms. Doe of her constitutional right to equal protection pursuant to the Fourteenth Amendment.

132. By and through his deliberate indifference to Ms. Doe's abduction and subsequent rape, Defendant Leak, in both his official and individual capacity, acted in bad faith to deprive Ms. Doe of her constitutional right to equal protection under the Fourteenth Amendment.

133. By and through his deliberate indifference to Ms. Doe's abduction and subsequent rape, Defendant Perkins, in his individual capacity, acted in bad faith to deprive Ms. Doe of her constitutional right to equal protection under the Fourteenth Amendment and her federal civil rights under Title IX.

134. As a direct and natural consequence of the actions, inactions, and overall deliberate indifference to and violation of Ms. Doe's clearly established constitutional and federal rights by Defendants CMS, Leak, and Perkins, Ms. Doe suffered and continues to suffer injuries, including, without limitations, emotional distress, psychological trauma, and mortification.

135. As a direct and proximate result of the deliberate indifference by Defendants CMS, Leak, and Perkins, Ms. Doe sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. Past, present, and future physical and psychological pain, suffering, and impairment;
- b. Medical bills, counseling, and other costs and expenses for past, present, and future medical and psychological care;
- c. Loss of educational access and opportunity;
- d. Past, present, and future economic losses, including lost wages;

- e. Attorneys' fees and costs; and
- f. Such other and further relief that this Court deems just and proper.

### **COUNT III**

***(Failure to Train in Violation of Federal and Constitutional Rights under the Fourteenth Amendment and pursuant to 42 U.S.C. § 1983, against Defendants CMS, City, and Putney)***

136. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs as if fully set forth herein.

137. Defendant CMS is a local governing body with final policymaking authority over MPHS. *See* N.C. Gen. Stat. §§ 115C-36, 115C-40. At all times relevant to this Amended Complaint, CMS acted under color of state law.

138. Defendant City is a local governing body with final policymaking authority over CMPD. *See* N.C. Gen. Stat. § 160A-281. At all times relevant to this Amended Complaint, the City acted under color of State law.

139. Defendant Kerr Putney is a person who, in his official capacity as the Chief of Police for CMPD, has final policymaking authority regarding the development of and training for the SSRO program. *See* N.C. Gen. Stat. § 160A-288.4. At all times relevant to this Amended Complaint, Defendant Putney acted under color of State law.

140. Upon information and belief, at all relevant times, Defendant CMS engaged in policy-making to supervise and control all policies, practices, customs, and regulations regarding MPHS and its students. These policies included reporting and responding to crimes and related misconduct, such as abductions and rapes, as well as ensuring compliance with related constitutionally and federally protected rights, such as those found under the Equal Protection Clause of the Fourteenth Amendment and Title IX.

141. Upon information and belief, at all relevant times, Defendant City engaged in policy-making to supervise and control all policies, practices, customs, and regulations regarding

CMPD and its police officers. These policies included reporting and responding to crimes and related misconduct, such as abductions and rapes, as well as ensuring compliance with related constitutional rights, such as those found under the Equal Protection Clause of the Fourteenth Amendment.

142. Upon information and belief, at all relevant times, Defendant Putney engaged in policy-making to supervise and control all policies, practices, customs, and regulations regarding SSROs assigned to work at CMS. These policies included reporting and responding to crimes and related misconduct, such as abductions and rapes, as well as ensuring compliance with related constitutional and federally protected rights, such as those found under the Equal Protection Clause of the Fourteenth Amendment and Title IX.

143. Upon information and belief, at all relevant times, Defendant CMS had a duty to train its employees, such as Defendant Perkins, on how to prevent and address crimes and related misconduct, such as abductions, rapes, and sexual harassment, as well as comply with related constitutional and federally protected rights, such as those found under the Equal Protection Clause of the Fourteenth Amendment and Title IX.

144. Upon information and belief, at all relevant times, Defendants CMS, City, and Putney had a duty to train their agents and employees, such as Defendant Leak, on how to prevent and address crimes and related misconduct, such as abductions, rapes, and sexual harassment, as well as comply with related constitutional and federally protected rights, such as those found under the Equal Protection Clause of the Fourteenth Amendment and Title IX.

145. Numerous authorities, including the U.S. Supreme Court and the U.S. Department of Education, have made clear that schools, along with their employees and agents, will confront student-on-student sexual harassment and violence with regularity, given the high predictability, recurrence, and prevalence in educational settings. Furthermore, Defendants CMS, City and

Putney had specific reason to know of the high predictability, recurrence, and prevalence of sexual harassment and violence perpetrated by male students against female students in the woods adjacent to MPHS's main campus. Therefore, it was inevitable that Defendants CMS, City and Putney, through providing student security through police officers serving as SSROs, would encounter recurrent situations involving sexual harassment and violence that implicated students' Constitutional and federal rights. In fact, they did encounter those recurring situations at MPHS.

146. Through its failure to train employees and agents assigned to MPHS, including Defendants Leak and Perks, Defendant CMS had a policy, practice and custom of deliberate indifference to the rights of students who Defendants Leak and Perkins would come in contact with during the course of their respective duties at MPHS. The lack of training left school officials at CMS unequipped to prohibit or discourage readily foreseeable conduct, despite the clearly established and well-known dangers of sexual harassment and violence in public schools, and at MPHS in particular. The result was that Defendants Leak and Perkins subjected Ms. Doe to the deprivation of her constitutional rights to equal protection under the Fourteenth Amendment and her federal civil rights under Title IX.

147. Through its failure to train police officers within CMPD, including Defendant Leak, Defendant City had a policy, practice, and custom of deliberate indifference to the rights of persons that Defendant Leak would come in contact with during the course of his duties. The lack of training for police officers left them unequipped to prohibit or discourage readily foreseeable conduct, despite the clearly established and well-known dangers of sexual harassment and violence in public schools, and at MPHS in particular. The result was that Defendant Leak subjected Ms. Doe to the deprivation of her Constitutional rights to Equal Protection under the Fourteenth Amendment.

148. Through his failure to train SSROs assigned to CMS, including Defendant Leak, Defendant Putney had a policy, practice, and custom of deliberate indifference to the rights of students that Defendant Leak would come in contact with during the course of his duties. The lack of training for SSROs left Defendant Leak unequipped to prohibit or discourage readily foreseeable conduct, despite the clearly established and well-known dangers of sexual harassment and violence in public schools, and at MPHS in particular. The result was that Defendant Leak subjected Ms. Doe to the deprivation of her Constitutional rights to Equal Protection under the Fourteenth Amendment and her federal civil rights under Title IX.

149. As a direct and natural consequence of the actions, inactions, and overall deliberate indifference to and violation of Ms. Doe's clearly established constitutional and federal rights by Defendants CMS, City, and Putney, Ms. Doe suffered and continues to suffer injuries, including, without limitations, emotional distress, psychological trauma, and mortification.

150. As a direct and proximate result of the deliberate indifference resulting from Defendants CMS, City, and Putney's failure to train, by and through its agents and employees, Ms. Doe sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. Past, present, and future physical and psychological pain, suffering, and impairment;
- b. Medical bills, counseling, and other costs and expenses for past, present, and future medical and psychological care;
- c. Loss of educational access and opportunity;
- d. Past, present, and future economic losses, including lost wages;
- e. Attorneys' fees and costs; and
- f. Such other and further relief that this Court deems just and proper.

**COUNT IV**  
***(Negligence against Defendants Leak and Perkins)***

151. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs as if fully set forth herein.

152. Defendant Leak, as an agent of CMS and an employee of the City assigned as an SSRO to MPHS, owed, assumed and undertook common law and contractual duties of care to act reasonably and with ordinary prudence to protect and safeguard Ms. Doe from reasonably foreseeable dangerous acts of fellow students, including abduction and sexual assault, and to provide a “safe school environment” for Ms. Doe at MPHS, including, *inter alia*, pursuant to N.C. Gen. Stat. § 115C-1.

153. Defendant Perkins, as an employee of CMS, owed, assumed, and undertook common law duties of care to act reasonably and with ordinary prudence to protect and safeguard Ms. Doe from reasonably foreseeable dangerous acts of fellow students, including abduction and sexual assault, and to provide a “safe school environment” for Ms. Doe at MPHS, including, *inter alia*, pursuant to N.C. Gen. Stat. §115C-47(61).

154. Defendants Leak and Perkins breached their respective duties of care owed to Ms. Doe, and acted unreasonably, and in bad faith, when they willfully and deliberately decided not to respond immediately to urgent and serious reports that Ms. Doe had been abducted and was in danger.

155. Furthermore, Defendants Leak and Perkins both knew about the dangerous conditions on MPHS’s campus, which consisted of pervasive student-perpetrated sexual misconduct by male students against female students in the woods adjacent to MPHS’s main campus.

156. An SSRO of ordinary prudence would have reasonably foreseen that Ms. Doe would suffer harm, such as the sexual assault, or that the likelihood of such harm would materially increase, as a result of failing to immediately respond to reports of her abduction.

157. An Assistant Principal of ordinary prudence would have reasonably foreseen that Ms. Doe would suffer harm, such as the sexual assault, or that the likelihood of such harm would materially increase, as a result of failing to immediately respond to reports her abduction.

158. The foreseeability of the resulting harm to Ms. Doe is evidenced by, among other things, the repeated efforts of others to persuade Defendants Leak and Perkins to act reasonably and respond to Ms. Doe's reports that she had been abducted and was afraid that Q.W. was going to attack her in the woods adjacent to MPHS's main campus, and the fact that Defendants Leak and Perkins had actual knowledge of pervasive student-perpetrated sexual misconduct and coercion against female students in the woods.

159. These breaches by Defendant Leak and Defendant Perkins constituted bad faith under the circumstances, and they directly and proximately caused great injury and damage to Ms. Doe. Bad faith is further demonstrated by both Defendants Leak and Perkins submitting reports, to CMPD and CMS respectively, that omitted the reported sexual attack to thus cover up their own wrongdoing.

160. As a direct and natural consequence of the willful, deliberate, conscious and bad faith decisions by Defendants Leak and Perkins not to immediately respond to reports that Ms. Doe had been abducted and was in danger, Ms. Doe suffered and continues to suffer injuries, including, without limitations, emotional distress, psychological trauma, and mortification.

161. As a direct and proximate result of the breaches of the duty of care both Defendants Leak and Perkins owed to Ms. Doe, she sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. Past, present, and future physical and psychological pain, suffering, and impairment;
- b. Medical bills, counseling, and other costs and expenses for past and future medical and psychological care;

- c. Loss of educational access and opportunity;
- d. Past, present, and future economic losses, including lost wages; and
- d. Such other and further relief that this Court deems just and proper.

#### **COUNT V**

#### ***(Negligent Infliction of Emotional Distress against Defendants Leak and Perkins)***

162. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs as if fully set forth herein.

163. Defendants Leak and Perkins acted negligently, recklessly, and in bad faith when they failed to immediately intervene, rescue, or otherwise reasonably respond to reports that Ms. Doe had been forcibly abducted from MPHS's main campus into the adjacent woods during school hours by a male student.

164. Defendants Leak and Perkins had actual knowledge of pervasive student-perpetrated sexual misconduct against female students in the woods, and their failure to act left Ms. Doe at a substantial risk and high likelihood of being sexually harmed by Q.W. upon his forcible abduction of her into those woods, which was confirmed upon notice of her abduction and fears of Q.W. through reports to them by J.D. and Ms. Doe's father.

165. Defendant Leak falsely claimed that Ms. Doe voluntarily skipped class to discourage Ms. Doe's father from locating or otherwise rescuing her, threatened that Ms. Doe that she could be arrested for a false report when she reported the rape to him, and he issued a false report to CMPD which effectively impeded a criminal investigation into the rape.

166. Defendant Perkins omitted the text message he received from Ms. Doe through J.D.'s cell phone about the sexual attack when he filed his report with CMS. He likewise accepted Q.W.'s version of events and accused Ms. Doe of "mutual sexual contact between students" within her education records despite Ms. Doe's report of the abduction and rape.

167. This conduct by Defendants Leak and Perkins is so outrageous and beyond the conduct expected in normal society for school officials, such as Assistant Principals and SSROs, who are expected to be truthful in their reporting and not falsify critical reports. Such actions were with taken with deliberate indifference and reckless disregard to the resulting infliction of emotional distress upon Ms. Doe.

168. As a result of the negligent actions and inactions of Defendants Leak and Perkins, made with reckless disregard for the resulting harm on Ms. Doe, she suffered a preventable rape, faced accusations of truancy, lost her equal opportunity to access free public education, suffered from an unsafe campus environment, had CMS accuse her of “mutual sexual contact” with Q.W., and obstructed her criminal complaint and subsequent investigation for 15 days.

169. As a direct and natural consequence of their negligence and reckless actions, inactions, and overall deliberate indifference, both Defendants Leak and Perkins inflicted emotional distress upon Ms. Doe, which she suffered and continues to suffer injuries, including, without limitations, emotional distress, psychological trauma, and mortification.

170. As a direct and proximate result of negligence and reckless actions, inactions, and overall deliberate indifference of both Defendants Leak and Perkins, Ms. Doe sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. Past, present, and future physical and psychological pain, suffering, and impairment;
- b. Medical bills, counseling, and other costs and expenses for past and future medical and psychological care;
- c. Loss of educational access and opportunity;
- d. Past, present, and future economic losses, including lost wages; and
- d. Such other and further relief that this Court deems just and proper.

**COUNT VI**  
***(Negligent Hiring, Training, Retention, and Supervision  
against Defendants City and Putney)***

171. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs, as if fully set forth herein.

172. Defendant City, at all times relevant, employed Defendant Leak as a police officer for CMPD, which was a prerequisite for his eligibility as an SSRO.

173. Defendant Putney, at all times relevant, assigned Defendant Leak as an SSRO to MPHS given his standing as a police officer with CMPD.

174. At all times relevant to this Amended Complaint, as SSRO at MPHS, Defendant Leak acted under color of state law, both as an agent of CMS and as an employee of CMPD and thus the City.

175. Defendants Leak negligently, recklessly, and in bad faith failed to immediately intervene, rescue, or otherwise reasonably respond to reports that Ms. Doe had been forcibly abducted from MPHS's main campus into the adjacent woods during school hours by a male student, and to prevent the subsequent rape.

176. Defendants Leak had actual knowledge of pervasive student-perpetrated sexual misconduct against female students in the woods, and his failure to act left Ms. Doe at a substantial risk and high likelihood of being sexually harmed by Q.W. upon his forcible abduction of her into those woods, which was confirmed upon notice of her abduction and fears of Q.W. through reports to them by J.D. and Ms. Doe's father.

177. Defendant Leak also falsely claimed that Ms. Doe voluntarily skipped class to discourage Ms. Doe's father from locating or otherwise rescuing her, he threatened that Ms. Doe that she could be arrested for a false report when she reported the rape to him, and he issued a false report to CMPD that impeded effectively impeded a criminal investigation into the rape.

178. These actions and inactions, taken while a police officer assigned as an SSRO to monitor minor students at a high school, specifically MPHS, reveal that Defendant Leak is incompetent and inherently unfit for the position. In addition, or in the alternative, his deliberate indifference in light of the known circumstances, taken with conscious and reckless disregard and negligence, create a reasonable inference that he is incompetent.

179. Through use of ordinary care, Defendants City and Putney upon information and belief, had at least reason to know, if not actual knowledge, that Defendant Leak was incompetent and inherently unfit based upon well-known institutional culture of discrimination against female students and deliberate indifference towards female girls who reported sexual misconduct occurring in the woods, Ms. Doe and her family going to the media to expose Defendant Leak's deliberate indifference to her abduction and rape in those same woods, as well as through filing a complaint with OCR about the same.

180. An ordinary, cautious, and reasonably prudent employer, acting in the position of Defendants City and Putney, would have prevented this conduct by Defendant Leak upon actual or constructive notice, especially knowing that an SSRO is assigned to ensure the security and welfare of predominantly minor students.

181. As a direct and natural consequence of the negligent hiring, retention and supervision of Defendant Leak by Defendants City and Putney, Ms. Doe was abducted and raped, which resulted in harm that she suffered, and continues to suffer to result in injuries, including, without limitations, emotional distress, psychological trauma, and mortification.

182. As a direct and proximate result of the negligent hiring, retention and supervision of Defendant Leak, by Defendants City and Putney, Ms. Doe sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. Past, present, and future physical and psychological pain, suffering, and impairment;

- b. Medical bills, counseling, and other costs and expenses for past and future medical and psychological care;
- c. Loss of educational access and opportunity;
- d. Past, present, and future economic losses, including lost wages; and
- d. Such other and further relief that this Court deems just and proper.

#### **COUNT VII**

##### ***(Common Law Obstruction of Justice against Defendants Perkins and Leak)***

183. Plaintiff incorporates by reference the allegations of facts contained in the previous paragraphs, as if fully set forth herein.

184. Defendant Perkins acted to prevent, impede and hinder any investigation of Ms. Doe's abduction and rape, whether criminally, through CMS's disciplinary process, or under Title IX, by his willful, bad faith action to withhold critical information that Ms. Doe had reported being sexually attacked in his report to CMS. Defendant Perkins also ignored this information when he created an incident record describing what occurred as "mutual sexual contact between students," counter to text messages he had read from Ms. Doe asserting she had been "attacked" by Q.W. and was afraid she might have AIDS. Defendant Perkins' report to CMS also falsely stated that Ms. Doe's "clothes were not dirty, and her hair was not out of place," despite Ms. Doe having mud and semen on her clothing, as well as broken glasses, which her father observed upon arriving at MPHS after the attack.

184. Defendant Perkins' actions and inactions, which constituted deliberate indifference, effectively obstructed Ms. Doe and her family from obtaining justice. Frustrated by Defendant Perkins discounting and otherwise covering up the sexual attack of their daughter and fearing further injustices if they pursued the matter based on warnings from Defendant Leak that Ms. Doe could be charged with truancy or even arrested if she did, Ms. Doe's parents temporarily withdrew

her from MPHS and transferred her to another school away from Q.W. and the hostile educational environment at MPHS without pursuing formal proceedings under Title IX.

185. Similarly, Defendant Leak acted to prevent, impede and hinder any investigation of Ms. Doe's abduction and rape, whether criminally, through CMS's disciplinary process, or under Title IX, by his willful, bad faith actions to threaten Ms. Doe with potential arrest for submitting a false report in immediate response to her report of rape to him. Defendant Leak then submitted a report to CMPD that described the incident as a non-criminal case of two students skipping school while omitting any mention of the abduction or Ms. Doe's report of rape. CMPD then relied upon Defendant Leak's false report to unreasonably delay a criminal investigation into the rape or otherwise offer assistance or protection to Ms. Doe. These actions by Defendant Leak directly contributed to CMPD failing to respond to 911 calls from Ms. Doe's parents and the emergency room nurses, collect Ms. Doe's rape kit, take an initial statement from Ms. Doe, or even create an official report of the rape until 15 days after the attack.

186. As a direct and natural consequence of Defendant Leak and Perkins' actions, Ms. Doe efforts to pursue legal justice, accountability and redress for her abduction and preventable rape where obstructed, which resulted in harm that she suffered and continues to suffer to result in injuries, including, without limitations, emotional distress, psychological trauma, and mortification.

182. As a direct and proximate result of Defendant Leak and Perkins' obstruction, Ms. Doe sustained and continues to sustain injuries for which she is entitled to be compensated, including but not limited to:

- a. Past, present, and future physical and psychological pain, suffering, and impairment;
- b. Medical bills, counseling, and other costs and expenses for past and future medical and psychological care;



*Attorneys for Plaintiff*

