

**IN THE CIRCUIT COURT OF MONONGALIA COUNTY,
WEST VIRGINIA**

H.L., a minor, by her next friend and
parent, MELISSA HAWKINS,

Plaintiff,

v.

MONONGALIA COUNTY BOARD OF
EDUCATION; and MONONGALIA
COUNTY SHERIFF'S DEPARTMENT,

Defendants.

Civil Action No. 17C-81
Judge _____

COMPLAINT

Plaintiff, H.L., a minor, by her next friend and parent, Melissa Hawkins, states the following as her Complaint against Defendants Monongalia County Board of Education and Monongalia County Sheriff's Department:

INTRODUCTION

1. This is a civil rights and tort case brought by H.L., a biracial student in the Monongalia County school district who suffered persistent race-based discrimination, harassment and bullying by a white student during her freshman year at University High School ("UHS"), but was unable to get school administrators or the school resource officer ("SRO") from the Monongalia County Sheriff's Department to take appropriate action to protect her.

2. The racial harassment and bullying H.L. experienced at UHS included being targeted by a white student with racial slurs, intimidating posts on social media,

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and threats that ultimately escalated to a violent physical assault with a blade on school grounds.

3. Prior to the assault, H.L. reported the harassment to UHS's Assistant Principal and SRO, and showed them some of the intimidating and threatening videos posted on social media, including one where H.L.'s tormentor repeatedly called H.L. a "nigger."

4. The Defendants failed to investigate H.L.'s pre-assault reports of racial harassment or take any steps reasonably calculated to stop the harassment and ensure H.L.'s safety.

5. The Defendants' lack of action on H.L.'s complaints about racial bullying was consistent with the culture of racial hostility that they have allowed to permeate UHS. Some UHS students regularly taunt minorities with racial slurs in classrooms, hallways and other common areas, at school sports events, and on school buses, with no meaningful consequences.

6. After H.L. reported the assault, and showed UHS employees and the SRO the resulting slashes on her torso, the Defendants failed to investigate the assault thoroughly and impartially. After a hasty, slipshod investigation that appears to have been completed within hours of H.L.'s report, the Defendants concluded that H.L.'s injuries were self-inflicted.

7. UHS's Assistant Principal communicated this conclusion to H.L.'s mother the day of the attack, while she and H.L. were at a hospital waiting for a doctor to examine H.L.'s wounds. The Defendants also appear to have shared this conclusion with

UHS students and others in the community, as social media posts appeared that named H.L. and said her wounds were self-inflicted. This further traumatized H.L.

8. To make matters worse, because the Defendants refused to acknowledge that H.L. had been assaulted, UHS initially refused to provide her with medically ordered accommodations that would allow her to continue her education in a safe environment. UHS eventually agreed to those accommodations, but only after H.L.'s mother retained counsel.

9. Contrary to their obligations under West Virginia statutory and common law, as well as the school district's own policies on harassment and violence, the Defendants ignored, minimized or dismissed H.L.'s reports of race-based harassment. Apart from the trauma H.L. suffered as a result of the harassment and violence, the Defendants' response to H.L.'s reports of these incidents caused her to suffer further psychological and emotional trauma.

10. H.L. brings this action pursuant to the West Virginia Human Rights Act ("WVHRA"), W. Va. Code §§ 5-11-1 *et seq.*, and West Virginia common law, to seek damages for her injuries, and to obtain equitable relief to ensure that the Defendants take appropriate action to address discrimination, harassment and bullying in Monongalia County Schools.

JURISDICTION AND VENUE

11. This Court has jurisdiction over Plaintiff's claims pursuant to W. Va. Code § 51-2-2(b) and (d), because they involve matters of law and equity under the statutory and common law of West Virginia, and the amount in controversy exceeds \$2,500.

Jurisdiction is also proper because, to the extent Plaintiff seeks monetary relief from the Defendants implicating the State of West Virginia's financial liability, it would not exceed the applicable insurance policy limits.

12. Venue is proper in this Court under W. Va. Code § 56-1-1(a)(1) because Plaintiffs' claims arose in Monongalia County, West Virginia, where both the Plaintiff and the Defendants reside.

PARTIES

13. Plaintiff, H.L., is a 16-year-old biracial (African-American and Caucasian) female, suing by and through her next friend, parent and guardian, Melissa Hawkins. At all relevant times, H.L. resided with Hawkins and was 15 years old when she attended UHS in Morgantown, West Virginia, which is part of Monongalia County Schools ("MCS" or "School District").

14. Defendant Monongalia County Board of Education ("MCBOE"), is a political subdivision of the State of West Virginia charged with overseeing and administering all primary and secondary schools in the School District, including UHS.

15. Defendant Monongalia County Sheriff's Department ("MCSD" or "Sheriff's Department") is a political subdivision of the State of West Virginia that provides Monongalia County with "programs and actions directed at the causes and conditions of delinquency and crime that will result in prevention of juvenile delinquency, criminal deviancy and crime." A Sheriff's Department employee served as the SRO at UHS when H.L. matriculated there.

FACTUAL ALLEGATIONS

The Race-Based Harassment H.L. Suffered and Defendants' Failure to Address It

16. H.L. began her freshman year at UHS on or about August 19, 2015.
17. While H.L. was a freshman at UHS, she observed minority students being targeted for racial harassment by other students, was subjected to racial harassment herself, and was physically assaulted by her primary harasser, S.P.
18. S.P. is a Caucasian female who was a student in the School District during the 2015-16 school year.
19. On information and belief, S.P. attended UHS at the beginning of the 2015-16 academic year, but the School District then placed her in its Alternative Learning Center ("ALC"), a program for students with behavioral and/or disciplinary problems.
20. On information and belief, the School District assigned S.P. to the ALC, at least in part, because she had threatened a fellow student with a knife.
21. Even when S.P. was no longer taking classes at UHS, she was on UHS grounds for approximately 20-30 minutes each school morning, while she waited for a bus to take her to the ALC.
22. While at UHS, H.L. witnessed S.P. harassing minority students, including H.L.'s friend A.G., who is African-American. H.L. observed S.P. calling A.G. a "nigger" in person, on social media and in text messages. H.L. also witnessed S.P. taunting a student of Middle Eastern descent as a "towel head."
23. At approximately 7:20 a.m. on December 9, 2015, H.L. and two of her friends, A.G. and R.W., were in a girls' bathroom at UHS. S.P. was also in the bathroom.

24. While in the bathroom, H.L. witnessed an argument between S.P. and R.W., during which S.P. tried to crawl under the locked door of a bathroom stall where R.W. was hiding to protect herself from S.P.

25. H.L. intervened to defend R.W. and soon became S.P.'s target.

26. On December 9, 2015, soon after the confrontation in the bathroom, S.P. sent H.L. a Snapchat video in which she repeatedly shouted the racial slur "nigger" at H.L.

27. S.P. also left a threatening message on R.W.'s cell phone that day, saying that if R.W. and H.L. thought S.P. was "crazy," they would see how "fucking crazy" she was.

28. Later that same day, H.L. and R.W. reported the bathroom incident, the Snapchat video, and the voicemail message to police officer Randy Spangler, a Captain with Defendant MCSD who was the SRO assigned to provide security at UHS.

29. Spangler declined to watch the Snapchat video, but assured H.L. that he would address the issue.

30. That evening, H.L. received another Snapchat video from S.P., taunting H.L. that Spangler wouldn't do anything to discipline S.P. and didn't even talk to her about the bathroom incident.

31. On December 10, 2015, H.L. and R.W. reported the bathroom confrontation to UHS Assistant Principal Pete Cheesebrough.

32. During that meeting, H.L. showed Cheesebrough the video in which S.P. repeatedly called H.L. a "nigger." Cheesebrough directed the girls to talk to Spangler.

33. On December 10, 2015, H.L. spoke with Spangler again, this time showing him the video. After viewing the video, Spangler said S.P. was an “asshole” and told H.L. he would take care of the problem.

34. Beginning on December 9, 2015, and continuing through January 27, 2016, S.P. repeatedly harassed, intimidated and threatened H.L., primarily through approximately 20-25 Snapchat videos. In some of these videos, S.P. threatened H.L. with physical violence.

35. Despite the overtly racist slur S.P. directed at H.L. and the continuing threats, Cheesebrough and Spangler failed to treat S.P.’s conduct as bullying or race-based harassment, and they took no meaningful steps to address it.

36. When the bullying and harassment began, H.L. reported several of the incidents to Cheesebrough and Spangler. They assured her that, because S.P. was not a UHS student, she would not be allowed on campus and could not carry out her threats.

37. However, on information and belief, UHS did not discipline S.P. in response to any of H.L.’s complaints about S.P.’s harassment, intimidation or threats.

38. Moreover, UHS continued to permit S.P. to be on school grounds each day to take a bus to the ALC.

39. As a result, H.L. lost faith in the willingness of Cheesebrough, Spangler, or any other employees of the Defendants to take steps to protect her, and she stopped reporting the continuing harassment and threats by S.P.

40. S.P.’s persistent, unchecked harassment of H.L. took a serious toll on H.L.’s emotional health and academic performance.

41. It exacerbated a previously diagnosed anxiety disorder, and H.L. became terrified of encountering S.P.

42. H.L.'s grades also dropped significantly.

The Assault and Defendants' Inappropriate Response

43. On the evening of January 26, 2016, S.P. sent H.L. a Snapchat video threatening that, "snitches get stitches."

44. The next morning at UHS, before classes had started, H.L. received a text from an unknown number claiming that her friend, A.G., had been hurt and was on UHS's campus, just beyond the student parking lot.

45. H.L. went to investigate, but did not see A.G. Instead she saw S.P. and a teenage boy she did not recognize. S.P. then attacked H.L., swinging at her and striking her with her fists.

46. H.L. fought back to defend herself, but the unknown boy intervened, holding H.L. down while S.P. lifted up H.L.'s shirt. S.P. then used a bladed instrument to slash H.L.'s stomach approximately 12-15 times.

47. S.P. and her accomplice then fled in a car parked nearby.

48. After the assault, H.L. was terrified and did not know what to do.

49. H.L. was afraid that S.P. would retaliate against her if she reported the assault. She also did not trust UHS administrators or the SRO to take any action to help her. So, instead of reporting the assault and seeking medical attention, H.L. closed her jacket and went to class.

50. At the beginning of her second period class, H.L. texted her friend A.G. that someone had cut her.

51. H.L. also texted her mother, Hawkins, saying someone had cut her. Hawkins told H.L. to report this to the UHS office, but H.L. replied that she didn't want to go because she felt there was no point.

52. After the assault, H.L. also told her friend, T.C., about the attack and showed T.C. her wounds while they were in a girls' bathroom at UHS.

53. By the end of the second period, rumors that someone had been stabbed at UHS were beginning to spread. Spangler and a UHS guidance counselor then pulled H.L. out of class. They asked her what had happened and if she had been cut.

54. Not trusting Spangler, and fearful of retaliation by S.P., H.L. initially denied that anything had happened. Spangler and the guidance counselor allowed H.L. to leave and she went to her third period class.

55. At the end of her third period class, Spangler, Cheesebrough, and UHS School Nurse Lisa Azzaro insisted that H.L. speak with them. They explained to H.L. that rumors of a student being stabbed had leaked out beyond the school grounds, and anxious parents were calling UHS to learn what was happening.

56. During this meeting, Spangler and Cheesebrough demanded that H.L. lift up her shirt to show them her stomach.

57. Feeling overwhelmed and intimidated, H.L. eventually complied, revealing the cuts on her torso.

58. Nurse Azzaro said she thought an ambulance should be called. Cheesebrough rejected the idea, downplaying the seriousness of H.L.'s injuries.

59. Eventually, Nurse Azzaro was able to take H.L. to the nurse's office and clean up the cuts.

60. After H.L.'s cuts were cleaned, Spangler took H.L. into the security office and told her to write a statement about what happened and describe who was involved. Spangler informed H.L. that if she provided the written statement, she would be allowed to leave.

61. Spangler did not call H.L.'s mother to inform her of the incident. Nor did Spangler tell H.L. that she could wait to give a statement until her mother or another witness was present.

62. Traumatized and anxious, H.L. wrote a general statement about the assault.

63. Spangler did not ask H.L. questions about the written statement or follow up with H.L. to fill in any missing information. Nor did Spangler complete, or ask H.L. to complete, the School District's incident report form for harassment, intimidation and bullying.

64. In the meantime, after Hawkins received H.L.'s troubling text message, she left work to check on her daughter at UHS.

65. Nurse Azzaro called Hawkins as she was getting into her car, and told Hawkins to get to the school as fast as possible because H.L. had been cut badly by another student.

66. When Hawkins arrived at UHS, she found Spangler and H.L. in the security office.

67. Cheesebrough soon joined them and downplayed the assault, telling Hawkins not to “make a big deal” about it.

68. Hawkins asked why an ambulance wasn’t called, and Cheesebrough replied that H.L.’s cuts did not warrant serious medical attention.

69. Disagreeing, Hawkins took H.L. to nearby Monongalia General Hospital.

70. Approximately one hour after leaving UHS for the hospital, while Hawkins was in the hospital waiting room, she received a phone call from Cheesebrough and Spangler.

71. Cheesebrough stated that school officials had investigated the site of the alleged assault and had not found evidence of a fight.

72. Cheesebrough further stated that he and Spangler had concluded that the attack never occurred and H.L.’s cuts were self-inflicted.

73. Cheesebrough then chastised Hawkins, accusing her and H.L. of wasting his and Spangler’s time.

Defendants’ Investigation of the Assault and Their Violations of MCBOE’s Harassment and Violence Policy

74. After H.L. reported the assault by S.P., Spangler generated an incident report dated January 29, 2016 (the “Incident Report”).

75. On information and belief, the Incident Report is the only written report the Defendants prepared in response to H.L.’s report of the assault.

76. Defendants' investigation of the assault, as reflected in the Incident Report, violated MCBOE's Harassment and Violence Policy.

77. As required by West Virginia's anti-bullying law, W.Va. Code §§ 18-2C-1 *et seq.* (the "Anti-Bullying Law"), Defendant MCBOE adopted a policy prohibiting "harassment, intimidation or bullying," found in Monongalia County File 9-32 and 7-04 (the "Harassment and Violence Policy" or "Policy").

78. Under the Policy, harassment, intimidation or bullying "means any intentional gesture, or any intentional electronic, written, verbal or physical act, communication transmission or threat that a reasonable person under the circumstances should know will have the effect of:

- A. Harming a student;
- B. Damaging a student's property;
- C. Placing a student in reasonable fear of harm to his or her person; or is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening, or emotionally abusive educational environment for a student;
- D. Disrupts or interferes with the orderly operation of the school."

79. Under the Policy, "[h]arassment, intimidation or bullying may include but is not limited to:

- Physical contact or threats of physical contact (striking, shoving, kicking, etc.);
- Use of offensive coarse utterance, gesture, display or abusive language to any person;

- Following a person in or about a place;
- Assembling with other students to engage in disorderly conduct;
- Making malicious remarks designed to intimidate, insult, humiliate, embarrass or in any other manner abuse verbally or in writing any School District Employee, administrator, or student; or
- An electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device [sic].”

80. The assault that H.L. reported to Cheesebrough, Spangler and Nurse Azzaro qualifies as an allegation of “harassment, intimidation or bullying,” as defined under the Policy and West Virginia’s Anti-Bullying Law, W. Va. Code § 18-2C-2.

81. To determine whether the reported assault violated the Policy, the Policy’s investigation procedures required the Defendants to consider, among other things, “past or continuing patterns of behavior” and “the relationship between the parties involved.”

82. The Incident Report does not discuss or mention S.P.’s past harassment of H.L. Nor do the Defendants appear to have considered S.P.’s past patterns of behavior with other UHS students, some of which, on information and belief, resulted in her transfer from UHS to the ALC.

83. Had the Defendants considered the totality of the circumstances, as required by the Policy, they would have investigated whether the reported assault was an act of

racial violence, as defined under the Policy, given S.P.'s known history of calling H.L. a "nigger."

84. When investigating H.L.'s reported assault, the Defendants also failed to comply with the Policy's requirements that the designated investigator interview the accused party and have a witness present during each interview.

85. On information and belief, during Spangler's investigation of the reported assault, he did not interview S.P. or have a witness present when he interviewed H.L.

86. When investigating H.L.'s reported assault, the Defendants also failed to comply with the Policy's requirements that the investigating employee complete a Form E-1 (Harassment, Intimidation, and Bullying Incident Report Form) within 24 hours of receiving the report, then forward the Form E-1 and any written report by the complainant to the school's Title IX Director or designee who, in turn, must inform the School District's Superintendent of the investigation.

87. On information and belief, neither Spangler nor any UHS or School District employee prepared a Form E-1 regarding H.L.'s reported assault.

88. On information and belief, neither UHS's Title IX Director or designee, nor the School District's Superintendent, was notified about the investigation.

89. The Defendants also failed to comply with the Policy's requirements that the school's principal or designee provide the complainant with a Form E-2, a written report of the outcome of the investigation, within 20 working days of receiving the complaint.

90. Neither H.L. nor her mother received a Form E-2 or any other written statement explaining the outcome of the investigation.

91. At her request, Hawkins received a copy of the Incident Report, but the Incident Report does not indicate whether H.L.'s allegations were substantiated, what conclusions were reached about the allegations, or make any recommendations

92. The Defendants also failed to comply with the Policy's requirement to maintain the confidentiality of information collected during an investigation and the resolution of a complaint.

93. Soon after H.L. reported the assault by S.P., news and rumors about H.L. – particularly the Defendants' conclusion that her wounds were self-inflicted – circulated widely among students, staff and the community.

94. On information and belief, these breaches in confidentiality came from Cheesebrough and Spangler.

95. The day after the assault, H.L. received a text message from her friend A.G., saying that Cheesebrough and Spangler were "telling everyone that you did it to yourself."

96. On January 30, 2016, just three days after H.L. reported that S.P. assaulted her, an anonymous Facebook user created a post about the assault on a Facebook page called the "Mon and Preston County Rumor Mill" (the "Rumor Mill"), which is used by Monongalia County residents to share news and gossip. Numerous users commented on the post, some of whom indicated that they knew the identities of H.L. and S.P.

97. One comment posted on the Rumor Mill identified H.L. by name. Although the Rumor Mill deleted the comment identifying H.L.'s name, it kept the rest of the thread.

98. Another comment was posted by the wife of a deputy at the MCSD. She promoted the story that H.L. had cut herself at UHS. Though she didn't name H.L., it was clear from the thread that she was talking about H.L.

Defendants' Failure to Investigate H.L.'s Pre-Assault Reports of Harassment

99. The Defendants' failure to investigate H.L.'s pre-assault complaints about S.P.'s race-based harassment, intimidation and threats also violated MCBOE's Harassment and Violence Policy.

100. The pre-assault harassment that H.L. reported to Cheesebrough and Spangler, which included Snapchat videos where S.P. threatened H.L. and repeatedly called her a "nigger," qualify as an allegation of "harassment, intimidation or bullying," as defined under the Policy and West Virginia's anti-bullying law, W. Va. Code § 18-2C-2.

101. H.L.'s pre-assault reports also qualify as "racial harassment" and "cyberbullying" under the Policy.

102. Under the Policy, racial harassment includes, but is not limited to, "[u]se of demeaning language with racial connotations" and "[u]nwelcome behavior, verbal or written words or symbols directed at an individual because of race."

103. Under the Policy, cyberbullying "means harassment, intimidation, or bullying, in any form, which is directed toward any student...by using Computer,

Internet, electronic mail, telephone, mobile telephone, pager or any other technology or digital device.” The Policy also covers cyberbullying initiated “on or off school property.”

104. The Snapchat video that H.L. showed to Cheesebrough and Spangler, where S.P. repeatedly yelled “nigger” at H.L., should have triggered an investigation of racial harassment and cyberbullying, pursuant to the Policy.

105. At a minimum, the intimidating and threatening conduct that followed S.P.’s race-based cyberbullying of H.L. should have triggered an investigation by the Defendants.

106. The Defendants’ failure to investigate H.L.’s pre-assault complaints about S.P.’s harassment, intimidation and bullying violated the Policy.

107. On information and belief, the Defendants did not document any of the pre-assault incidents of harassment reported by H.L. Nor did they notify H.L.’s mother about the incidents, interview the involved students, document those interviews, open an investigation, or communicate the results of an investigation to H.L. or her mother, as required by the Policy.

Defendant MCBOE’s Refusal to Provide Reasonable Accommodations to H.L.

108. On January 28, 2016, the day after the assault, H.L. did not attend classes at UHS. Instead, H.L. and her mother met with UHS officials.

109. H.L. and Hawkins met with Cheesebrough, Spangler and Nurse Azzaro, and were later joined by then-UHS Principal Shari Burgess. Burgess claimed she didn’t know about the assault reported by H.L.

110. During the meeting, Hawkins tried to learn more about what had happened and asked why an ambulance wasn't called after H.L. showed her wounds.

111. Cheesebrough became argumentative and dismissive of Hawkins's concerns, repeatedly asserting that H.L. had cut herself. Cheesebrough also interrupted Hawkins frequently, shook his head, sighed loudly, and walked in and out of the room in apparent exasperation.

112. When Hawkins asked the school officials what they would do to keep H.L. safe, they said they couldn't ensure anybody's safety and that anything could happen at school.

113. After the meeting, Nurse Azzaro took H.L. to the nurses' office to check on her injuries. While there, H.L. told Nurse Azzaro that employees of the Defendants were telling people that H.L. had cut herself, and she felt humiliated by these accusations.

114. A few days later, on February 2, 2016, H.L. saw a doctor to have her wounds checked. The doctor expressed her opinion to Hawkins that H.L.'s wounds were not, and could not have been, self-inflicted.

115. The doctor also informed Hawkins that H.L. was expressing "severe anxiety associated with recent events involving other students at school," and recommended that she be placed on homebound instruction for a period of three months.

116. H.L.'s treating psychiatrist, who had earlier diagnosed H.L. with generalized anxiety disorder, subsequently diagnosed her with panic disorder resulting from the harassment and assault.

117. H.L.'s treating psychiatrist wrote a letter ordering that H.L. be placed in homebound instruction for at least 90 days.

118. Despite two physicians' orders that H.L. receive three months of homebound instruction, on February 11, 2016, the School District approved just 30 days of homebound instruction for H.L.

119. That decision violated Defendant MCBOE's homebound instruction policies, which state that homebound instruction will run until the end date ordered by the student's healthcare and/or mental health providers.

120. Hawkins obtained a third opinion from H.L.'s pediatric care physician before a March 14, 2016, homebound review meeting with UHS and School District officials. The physician concurred with the previous opinions from two of H.L.'s medical providers, stating that H.L. required a minimum of three months of homebound instruction for "appropriate medical and other therapeutic interventions."

121. Nevertheless, UHS and School District officials denied the request to permit homebound instruction for three months, arguing that H.L.'s injuries were self-inflicted and the assault never happened. They then ordered H.L. to return to class at UHS by April 1, 2016.

122. After H.L.'s family retained legal counsel, who demanded that the School District follow the recommendations of H.L.'s physicians, Defendant MCBOE permitted H.L. to extend her homebound instruction.

123. Pursuant to the advice of her healthcare and mental health providers, H.L. ultimately completed the remainder of her freshman year in homebound instruction.

The Impact of the Harassment and Defendants' Conduct on H.L.

124. H.L. went from being an able and eager student at UHS to being driven from the school by persistent harassment by S.P., the Defendants' failure to take any meaningful action to stop the race-based harassment, and the Defendants' accusations that H.L.'s wounds were self-inflicted.

125. H.L. is emotionally and psychologically damaged by her experience at UHS.

126. H.L.'s treating health care and mental health providers report that she suffers from numerous psychological conditions, including, but not limited to, heightened anxiety, conversion disorder and post-traumatic stress.

127. Following the assault and the Defendants' response to it, H.L. was admitted for in-patient treatment at mental health facilities twice: once after H.L. suffered a severe anxiety attack, and again after H.L. suffered an anxiety attack coupled with a seizure resulting from her diagnosed conversion disorder.

128. Moreover, because H.L. had to spend nearly half her freshman year in homebound instruction, she was isolated from her friends and peers, and unable to take advantage of on-campus educational opportunities and extracurricular activities.

129. Because of her emotional and psychological injuries, H.L. was unable to return to UHS. She transferred to Morgantown High School, another school in the School District, where she hopes to finish her high school education.

130. H.L. continues to struggle daily with the emotional and psychological damage she has suffered from the Defendants' acts and omissions.

The Culture of Racial Hostility and Bullying at UHS

131. In addition to H.L. personally observing and reporting race-based harassment while at UHS, expressions of racism among the student body were open and well-known to UHS teachers, staff, and administrators.

132. While H.L. attended UHS, African-American and other minority students were subject to widespread and frequent racial harassment, including taunts and racial slurs.

133. H.L. has personally observed a group of approximately 12 Caucasian students at UHS shouting racial epithets, including “nigger” and “porch monkey,” from the school bus when passing African-American motorists. This group of students also used these racial slurs in school hallways and other common areas at UHS.

134. One of these students was a classmate of H.L.’s. During a class discussion on the appropriateness of displaying the Confederate Flag, he shouted the word “nigger.” There were no consequences for this comment.

135. In H.L.’s history class, another one of these 12 students openly used the term “nigger” during a discussion, and was merely told by the teacher to “watch [his] language.”

136. H.L. also witnessed members of this group of students regularly shouting racial slurs at opposing team players and fans during school sports events. Again, there were no consequences for this behavior.

137. In this racially hostile educational environment, H.L. and other minority students became targets of race-based harassment and bullying.

138. A.G., an African-American friend of H.L.'s, experienced persistent racial bullying from Caucasian students at UHS. H.L. witnessed many of these incidents of harassment, which occurred both on social media and in face-to-face confrontations. On information and belief, A.G. left school early on at least five occasions in the first half of the 2015-16 school year to escape racial bullying. On further information and belief, A.G.'s father complained to school officials about the bullying, but UHS officials failed to investigate these complaints.

139. The United States Department of Education's most recent, publicly available data ("DOE Data") on student demographics and discipline at UHS are consistent with the racially hostile environment H.L. observed during her freshman year.

140. The DOE Data on student demographics at UHS shows that Caucasian students heavily outnumber students of any other racial or ethnic group. Of 1,255 students enrolled at UHS in the 2013-14 academic year, 92.1% of students were Caucasian, 3.4% were Black, 1.8% were of two or more races, 1.5% were Asian, 1.0% were Hispanic, and 0.2% were American Indian/Alaska Native.

141. On information and belief, the demographic percentages at UHS were substantially the same when H.L. attended UHS in the 2015-16 academic year.

142. According to the DOE Data, African-American, biracial, and other minority students at UHS are subjected to disproportionate rates of serious discipline compared to Caucasian students. In the 2013-14 academic year, despite only representing 7.9% of the student body, non-Caucasian students served 14.7% of the out-of-school suspensions and 20.4% of in-school suspensions.

COUNT I
RACE DISCRIMINATION
Violation of West Virginia Human Rights Act – W. Va. Code § 5-11-9(6)

143. The allegations in the preceding paragraphs are realleged and incorporated herein.

144. Each of the Defendants qualifies as a “place of public accommodations,” as defined in the WVHRA, W. Va. Code § 5-11-3(j).

145. Under the WVHRA, a place of public accommodations is prohibited from discriminating against any person “because of his or her race.”

146. H.L. suffered discriminatory harassment because of her race while she was a student at UHS.

147. S.P. harassed, intimidated and threatened H.L. because H.L. is biracial.

148. The Defendants knew or should have known that H.L. was suffering race-based harassment, based on H.L.’s reports to Cheesebrough and Spangler, which included showing them a Snapchat video where S.P. repeatedly called H.L. a “nigger,” and further informing them of subsequent threats by S.P.

149. A reasonable student in a position similar to H.L.’s would consider S.P.’s conduct sufficiently severe or pervasive to create a racially hostile educational environment.

150. The Defendants failed to take action reasonably calculated to end the discriminatory race-based harassment and allow H.L. to continue her education in a safe environment. These failures include, but are not limited to:

- (a) The Defendants' failure to investigate or otherwise take meaningful action to address H.L.'s pre-assault complaints about S.P.'s race-based harassment, intimidation and threats;
- (b) The Defendants' failure to investigate H.L.'s assault by S.P. in accordance with MCBOE's Harassment and Violence Policy;
- (c) The Defendants' failure to consider S.P.'s prior race-based harassment of H.L. and S.P.'s harassment of other UHS students when investigating H.L.'s assault;
- (d) The Defendants' failure to interview S.P. when investigating the assault reported by H.L.;
- (e) The Defendants' conclusion, without sufficient investigation or substantiation, that H.L.'s wounds were self-inflicted;
- (f) The Defendants' failure to maintain the confidentiality of their conclusion that that H.L.'s wounds were self-inflicted; and
- (g) Defendant MCBOE's initial refusal to place H.L. in homebound instruction for the length of time ordered by her treating physicians.

151. These failures created or facilitated a racially hostile educational environment for H.L. at UHS.

152. Moreover, the Defendants created or facilitated a racially hostile educational environment at UHS by, among other things, allowing UHS students to taunt minorities with racial slurs in classrooms, hallways and other common areas, at school

sports events, and on school buses, with no meaningful consequences; and disproportionately disciplining racial minority students at UHS.

153. Because of the Defendants' failure to take action reasonably calculated to end the race-based harassment H.L. suffered at UHS, H.L. suffered losses of educational opportunities and benefits, along with other injuries, damages and losses, including, but not limited to: emotional distress, fear, anxiety and trauma; lost future earnings and earning capacity; and damage to her pursuit of a high school education.

WHEREFORE, Plaintiff demands judgment against Defendants Monongalia County Board of Education and Monongalia County Sheriff's Department awarding:

- (a) Damages in amounts to be established at trial, including, without limitation, damages for deprivation of equal access to educational opportunities and benefits provided by Monongalia County Schools; damages for past, present and future emotional pain and suffering; ongoing and severe mental anguish; past, present and future healthcare expenses; loss of past, present and future enjoyment of life; and future lost earnings and earning capacity;
- (b) Injunctive relief to be determined at trial requiring, *inter alia*, that: the Defendants comply with the WVHRA and MCBOE's Harassment and Violence Policy; Defendant MCBOE provide mandatory training programs for MCS administrators, faculty, staff, and SROs on issues relating to race-based and other forms of bullying, harassment, and discrimination, and methods to intervene to stop students from bullying, harassing or discriminating against other students; Defendant MCBOE provide mandatory education and training programs for all MCS students on the prohibition against race-based and other forms of bullying, harassment and discrimination, the procedures for reporting it, the resources available to victims, and the consequences for engaging in this conduct; Defendant MCBOE offer professional counseling and other forms of mental, emotional and social support to students involved in incidents of race-based and other forms of bullying, harassment or discrimination; and Defendant MCBOE track and maintain data on all incidents of race-based and other forms of bullying, harassment, or discrimination;
- (c) Pre- and post-judgment interest;

- (d) Costs of litigation, including reasonable attorneys' fees and witness fees, pursuant to the WVHRA, W. Va. Code § 5-11-13(c); and
- (e) Such other and further relief as the Court deems just and proper.

COUNT II
RETALIATION/REPRISAL

Violation of West Virginia Human Rights Act – W. Va. Code § 5-11-9(7)

154. The allegations in the preceding paragraphs are realleged and incorporated herein.

155. Under the WVHRA, a place of public accommodations is prohibited from engaging in any form of reprisal or otherwise discriminating against any person because he or she has opposed practices or acts forbidden under the WVHRA.

156. The Defendants, through their employees, engaged in forms of reprisal, retaliation or discrimination against H.L. because she opposed acts of race discrimination forbidden under the WVHRA.

157. After H.L. reported that S.P. had assaulted her, the Defendants retaliated against H.L. by, among other things, failing to investigate the assault in accordance with MCBOE's Harassment and Violence Policy; concluding, without sufficient investigation or substantiation, that H.L.'s wounds were self-inflicted; and failing to maintain the confidentiality of their conclusion that H.L.'s wounds were self-inflicted.

158. Defendant MCBOE also retaliated against H.L. by initially refusing to place her in homebound instruction for the length of time ordered by her treating physicians.

159. Because of the Defendants' retaliation against her, H.L. has suffered losses of educational opportunities and benefits, along with other injuries, damages and losses, including, but not limited to: emotional distress, fear, anxiety and trauma; lost future earnings and earning capacity; and damage to her pursuit of a high school education.

WHEREFORE, Plaintiff demands judgment against Defendants Monongalia County Board of Education and Monongalia County Sheriff's Department awarding:

- (a) Damages in amounts to be established at trial, including, without limitation, damages for deprivation of equal access to educational opportunities and benefits provided by Monongalia County Schools; damages for past, present and future emotional pain and suffering; ongoing and severe mental anguish; past, present and future healthcare expenses; loss of past, present and future enjoyment of life; and future lost earnings and earning capacity;
- (b) Injunctive relief to be determined at trial requiring, *inter alia*, that the Defendants comply with the WVHRA and MCBOE's Harassment and Violence Policy; and Defendant MCBOE provide mandatory training programs for MCS administrators, faculty, staff, and SROs on issues relating to retaliation for reporting race-based and other forms bullying, harassment, and discrimination;
- (c) Pre- and post-judgment interest;
- (d) Costs of litigation, including reasonable attorneys' fees and witness fees, pursuant to the WVHRA, W. Va. Code § 5-11-13(c); and
- (e) Such other and further relief as the Court deems just and proper.

**COUNT III
NEGLIGENCE**

160. The allegations in the preceding paragraphs are realleged and incorporated herein.

161. The Defendants, through their employees, knew or should have known that S.P. was harassing, intimidating and/or bullying H.L. and that such conduct could cause H.L. to suffer emotional distress and physical injuries, and fear for her safety.

162. The Defendants had a common-law duty to exercise reasonable care in ensuring the safety of students at UHS, including H.L.

163. Defendant MCSD, through Spangler in his role as SRO at UHS, also had a special duty to protect H.L. from harm because, after H.L. reported S.P.'s harassment and threats to Spangler, (1) he affirmatively promised H.L. that he would take action to address the misconduct; (2) he knew that his inaction could cause harm to H.L.; (3) he had direct contact with H.L.; and (4) H.L. justifiably relied on Spangler's affirmative promises to take action to address the harassment and threats.

164. Defendants MCBOE and MCSD also had a statutory duty under West Virginia's Anti-Bullying Law, and a duty under MCBOE's Harassment and Violence Policy, to protect students at UHS from harassment, intimidation and bullying, and to respond appropriately to reports of such conduct.

165. The purpose of the Anti-Bullying Law and MCBOE's Policy is to ensure that students are educated in a safe, non-threatening environment, free from harassment, intimidation and bullying.

166. At all relevant times, H.L. was within the class of persons intended to be protected by the Anti-Bullying Law and MCBOE's Policy.

167. Defendants MCBOE and MCSD, through their employees, breached their duties to H.L. by, among other things:

- (a) Failing to investigate or otherwise take meaningful action to address H.L.'s pre-assault complaints about S.P.'s harassment, intimidation and bullying;
 - (b) Failing to respond adequately to H.L.'s reports of harassment, intimidation and bullying by S.P.; stop S.P.'s harassment, intimidation and bullying of H.L.; and discipline S.P.;
 - (c) Failing to comply with the Anti-Bullying Law and/or MCBOE's Harassment and Violence Policy;
 - (d) Failing to investigate H.L.'s assault by S.P. in accordance with the Harassment and Violence Policy;
 - (e) Failing to consider S.P.'s prior harassment of H.L., and S.P.'s harassment of other UHS students, when investigating H.L.'s assault;
-
- (f) Failing to interview S.P. when investigating the assault reported by H.L.;
 - (g) Concluding, without sufficient investigation or substantiation, that H.L.'s wounds were self-inflicted;
 - (h) Failing to maintain the confidentiality of their conclusion that that H.L.'s wounds were self-inflicted;
 - (i) Failing to properly train employees – including, but not limited to, Cheesebrough of MCBOE and Spangler of MSCD – to take appropriate action to protect UHS students from harassment, intimidation and bullying;
 - (j) Relying on untrained agents to enforce the Anti-Bullying Law and MCBOE's Policy;

(k) Relying on untrained agents – including, but not limited to, Cheesebrough of MCBOE and Spangler of MSCD – to address harassment, intimidation and bullying; and

(l) Allowing H.L. to be assaulted by S.P. on UHS's grounds.

168. Defendant MCBOE also breached its duties to H.L. by initially refusing to place her in homebound instruction for the length of time ordered by her treating physicians.

169. The Defendants' negligent acts and omissions, described in the preceding paragraphs, were the direct and proximate cause of the damages that H.L. suffered and continues to suffer.

170. At all relevant times, the negligent acts and omissions of the Defendants' employees occurred on school grounds.

171. At all relevant times, Spangler was acting within the scope of his employment with MCSD when his negligent acts and omissions injured H.L.

172. At all relevant times, Cheesebrough and other UHS and School District staff and administrators were acting within the scope of their employment with MCBOE when their negligent acts and omissions injured H.L.

173. The Defendants, through their employees, violated their duties under the Anti-Bullying Law and MCBOE's Harassment and Violence Policy, which establishes a prima facie case of negligence.

WHEREFORE, Plaintiff demands judgment against Defendants Monongalia County Board of Education and Monongalia County Sheriff's Department awarding:

- (a) Damages in amounts to be established at trial, including, without limitation, damages for deprivation of equal access to educational opportunities and benefits provided by Monongalia County Schools; damages for past, present and future emotional pain and suffering; ongoing and severe mental anguish; present and future healthcare expenses; loss of past, present and future enjoyment of life; and future lost earnings and earning capacity;
- (b) Equitable relief to be determined at trial requiring, *inter alia*, that: the Defendants comply with West Virginia's Anti-Bullying Law and MCBOE's Harassment and Violence Policy; Defendant MCBOE provide mandatory training programs for MCS administrators, faculty, staff, and SROs on issues relating to race-based and other forms of bullying, harassment, and discrimination, and methods to intervene to stop students from bullying, harassing or discriminating against other students; Defendant MCBOE provide mandatory education and training programs for all MCS students on the prohibition against race-based and other forms of bullying, harassment and discrimination, the procedures for reporting it, the resources available to victims, and the consequences for engaging in this conduct; Defendant MCBOE offer professional counseling and other forms of mental, emotional and social support to students involved in incidents of race-based and other forms of bullying, harassment or discrimination; and Defendant MCBOE track and maintain data on all incidents of race-based and other forms of bullying, harassment, or discrimination;
- (c) Pre- and post-judgment interest;
- (d) Costs of litigation; and
- (e) Such other and further relief as the Court deems just and proper.

**COUNT IV
NEGLIGENT SUPERVISION**

174. The allegations in the preceding paragraphs are realleged and incorporated herein.

175. At all relevant times, West Virginia law required H.L. to attend school and submit to the care, custody, control and supervision of Defendant MCBOE while she matriculated at UHS.

176. The Defendants had a common-law duty to exercise reasonable care in supervising all School District students on UHS's grounds, including H.L., to protect them from harm.

177. Defendants MCBOE and MCSD, through their employees, breached their duty to supervise by, among other things:

- (a) Failing to respond adequately to H.L.'s reports of harassment, intimidation and bullying by S.P.; stop S.P.'s harassment, intimidation and bullying of H.L.; and discipline S.P.; and
- (b) Allowing H.L. to be assaulted by S.P. on UHS's grounds.

178. The Defendants' negligent supervision was the direct and proximate cause of the damages H.L. suffered and continues to suffer.

WHEREFORE, Plaintiff demands judgment against Defendants Monongalia County Board of Education and Monongalia County Sheriff's Department awarding:

- (a) Damages in amounts to be established at trial, including, without limitation, damages for deprivation of equal access to educational opportunities and benefits provided by Monongalia County Schools; damages for past, present and future emotional pain and suffering; ongoing and severe mental anguish; present and future healthcare expenses; loss of past, present and future enjoyment of life; and future lost earnings and earning capacity;
- (b) Equitable relief to be determined at trial requiring, *inter alia*, that: the Defendants comply with West Virginia's Anti-Bullying Law and MCBOE's Harassment and Violence Policy; Defendant MCBOE provide mandatory training programs for MCS administrators, faculty, staff, and SROs on issues relating to race-based and other forms of bullying, harassment, and discrimination, and methods to intervene to stop students from bullying, harassing or discriminating against other students; Defendant MCBOE provide mandatory education and training programs for all MCS students on the prohibition against race-based and other forms of bullying, harassment and discrimination, the procedures for reporting it, the

resources available to victims, and the consequences for engaging in this conduct; Defendant MCBOE offer professional counseling and other forms of mental, emotional and social support to students involved in incidents of race-based and other forms of bullying, harassment or discrimination; and Defendant MCBOE track and maintain data on all incidents of race-based and other forms of bullying, harassment, or discrimination;

- (c) Pre- and post-judgment interest;
- (d) Costs of litigation; and
- (e) Such other and further relief as the Court deems just and proper.

COUNT V NEGLIGENT TRAINING

179. The allegations in the preceding paragraphs are realleged and incorporated herein.

180. The Defendants had a common-law duty to exercise reasonable care in adequately training their employees on applicable policies and procedures, including the Harassment and Violence Policy.

181. In response to H.L.'s reports of harassment, intimidation and bullying by S.P., the Defendants, through their employees, demonstrated their lack of adequate training by repeatedly failing to comply with the Harassment and Violence Policy.

182. Defendants MCBOE and MCSD, through their employees, breached their duty to train by, among other things:

- (a) Failing to adequately train Spangler, as UHS's SRO, on the Policy's definitions of the prohibited forms of harassment, intimidation or bullying, including, but not limited to, racial harassment and cyberbullying; reporting and investigation procedures; and confidentiality provisions;

- (b) Failing to adequately train Cheesebrough, as UHS's Assistant Principal, on the Policy's definitions of the prohibited forms of harassment, intimidation or bullying, including, but not limited to, racial harassment and cyberbullying; reporting and investigation procedures; and confidentiality provisions; and
- (c) Failing to adequately train MCBOE employees on the School District's homebound instruction policies and procedures.

183. The Defendants' negligent training was the direct and proximate cause of the damages H.L. suffered and continues to suffer.

WHEREFORE, Plaintiff demands judgment against Defendants Monongalia County Board of Education and Monongalia County Sheriff's Department awarding:

- (a) Damages in amounts to be established at trial, including, without limitation, damages for deprivation of equal access to educational opportunities and benefits provided by Monongalia County Schools; damages for past, present and future emotional pain and suffering; ongoing and severe mental anguish; present and future healthcare expenses; loss of past, present and future enjoyment of life; and future lost earnings and earning capacity;
- (b) Equitable relief to be determined at trial requiring, *inter alia*, that: the Defendants comply with West Virginia's Anti-Bullying Law and MCBOE's Harassment and Violence Policy; Defendant MCBOE provide mandatory training programs for MCS administrators, faculty, staff, and SROs on issues relating to race-based and other forms of bullying, harassment, and discrimination, and methods to intervene to stop students from bullying, harassing or discriminating against other students; Defendant MCBOE provide mandatory education and training programs for all MCS students on the prohibition against race-based and other forms of bullying, harassment and discrimination, the procedures for reporting it, the resources available to victims, and the consequences for engaging in this conduct; Defendant MCBOE offer professional counseling and other forms of mental, emotional and social support to students involved in incidents of race-based and other forms of bullying, harassment or discrimination; and

Defendant MCBOE track and maintain data on all incidents of race-based and other forms of bullying, harassment, or discrimination;

- (c) Pre- and post-judgment interest;
- (d) Costs of litigation; and
- (e) Such other and further relief as the Court deems just and proper.

**COUNT VI
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

184. The allegations in the preceding paragraphs are realleged and incorporated herein.

185. As detailed in the preceding paragraphs, Defendants MCBOE and MCSD engaged in negligent conduct.

186. As a result of the Defendants' negligent acts and omissions, H.L. suffered serious emotional distress, including, but not limited to, exacerbation of an anxiety disorder leading to heightened anxiety and severe anxiety attacks, a conversion disorder that sometimes leads to seizures, and post-traumatic stress.

187. H.L.'s emotional distress is so severe and debilitating that she had to be admitted for in-patient treatment at mental health facilities on two occasions, and continues to require extensive mental health counseling and treatment.

188. It was reasonably foreseeable that the Defendants' negligence – including, without limitation, their failure to respond adequately to H.L.'s reports of harassment, their accusations that H.L.'s wounds were self-inflicted and not caused by an assault, and their failure to maintain the confidentiality of their erroneous conclusion that H.L. wasn't assaulted – would cause H.L. to suffer emotional injuries.

189. An ordinarily sensitive person would be unable to cope adequately with the mental distress caused by the Defendants' negligence.

190. The Defendants' negligence was a cause of H.L.'s emotional distress.

WHEREFORE, Plaintiff demands judgment against Defendants Monongalia County Board of Education and Monongalia County Sheriff's Department awarding:

- (a) Damages in amounts to be established at trial, including, without limitation, damages for past, present and future emotional pain and suffering; and ongoing and severe mental anguish;
- (b) Pre- and post-judgment interest;
- (c) Costs of litigation; and
- (d) Such other and further relief as the Court deems just and proper.

COUNT VII INVASION OF PRIVACY

191. The allegations in the preceding paragraphs are realleged and incorporated herein.

192. The Defendants, through their employees, made public statements about the assault H.L. reported that unreasonably placed H.L. in a false light before the public.

193. On information and belief, the Defendants, through their employees, informed UHS students and staff, as well as members of the Monongalia County community, that H.L. wasn't assaulted by a student but, rather, had wounded herself.

194. These statements were false and invaded H.L.'s privacy.

195. On information and belief, the Defendants' statements denying that H.L. was assaulted, and asserting that H.L.'s wounds were self-inflicted, were published widely.

196. In addition to being a topic of discussion among UHS students and staff, Monongalia County residents posted comments about the incident on social media that initially identified H.L. by name and perpetuated the falsehood that her wounds were self-inflicted.

197. The false light in which H.L. was placed as a result of the Defendants' public statements would be highly offensive to a reasonable person.

198. The Defendants' public statements about H.L.'s reported assault caused H.L. to suffer emotional and mental injuries.

WHEREFORE, Plaintiff demands judgment against Defendants Monongalia County Board of Education and Monongalia County Sheriff's Department awarding:

- (a) Damages in amounts to be established at trial, including, without limitation, damages for past, present and future emotional pain and suffering; and ongoing and severe mental anguish;
- (b) Pre- and post-judgment interest;
- (c) Costs of litigation; and
- (d) Such other and further relief as the Court deems just and proper.


DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury as to all matters so triable, pursuant to Rule 38 of the West Virginia Rules of Civil Procedure.

Dated: February 16, 2017

H.L., a minor, by her next friend and parent, MELISSA HAWKINS, Plaintiff,

By: _____


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