

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

CAMIKA SHELBY, as heir of Nigel Shelby
and personal representative of the ESTATE
OF NIGEL SHELBY,

and

PATRICK CRUZ, as heir of Nigel Shelby,

Plaintiffs,

v.

Civil Action No. 5:21-cv-520-CLS

HUNTSVILLE CITY BOARD OF
EDUCATION

and

JO STAFFORD,
in her individual capacity,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs Camika Shelby, as personal representative of the Estate of Nigel Shelby and on behalf of Nigel Shelby's heirs, including herself, and Patrick Cruz, as Nigel Shelby's heir, file their First Amended Complaint against Defendants Huntsville City Board of Education and Jo Stafford, in her individual capacity, and allege as follows:

INTRODUCTION

1. This is a civil rights action brought by the Estate and heirs of Nigel Shelby, a black, openly gay student at Huntsville High School who was deprived of equal access to educational opportunities and, ultimately, his life, because of Defendants' deliberate indifference to relentless

harassment by other students based on his sexual orientation and failure to conform to male sex stereotypes, and because Defendants blamed Nigel for the abuse he was experiencing and further discriminated against him themselves.

2. Nigel never felt safe at Huntsville High School. Throughout the six months he spent there as a freshman, Nigel was subjected to anti-gay slurs nearly every day and was routinely told that nobody cared about him and that he should kill himself for being gay. These verbal attacks happened in classrooms and hallways, sometimes in the presence of school officials. On at least one occasion, a student also physically battered Nigel on the school bus because of Nigel's sexual orientation.

3. Nigel and some concerned classmates reported at least some of the harassment—and the serious impact it was having on Nigel—to the school's lead administrator for the freshman class, Jo Stafford.

4. The harassment caused Nigel's grades to drop precipitously. In addition, Nigel suffered serious emotional harm from the incessant harassment, which triggered depression, self-harm, and suicidal thoughts. And, ultimately, it played a role in Nigel's taking his own life.

5. Defendants' response to the abuse was both grossly inadequate and discriminatory. Contrary to her obligation as a school official entrusted with the safety and education of all freshmen, including vulnerable ones like Nigel, Stafford's response was to ignore, dismiss, mock, and sometimes blame Nigel for the abuse he was suffering.

6. For example, on April 11, 2019, one week before Nigel's suicide, Nigel met with Stafford and told her how deeply upset he was about anti-gay comments being made to him online—including that he didn't deserve to live because he was gay. According to a student who initiated and attended most of this meeting—and told Stafford that Nigel had been engaging in

self-cutting and had expressed suicidal thoughts—Stafford told Nigel that he would have to deal with the comments made in response to his “adult” social media posts about being gay. In short, Stafford refused to help Nigel because she viewed the harassment as a price he had to pay for being gay.

7. According to the classmate who attended the April 11, 2019 meeting, Stafford also asked Nigel if this was “another one of his episodes where life is getting too hard and things get tough and we want to kill ourselves.” Piling on, Stafford suggested that Nigel and his classmate get up and dance to “black people’s music” to make Nigel feel better. Needless to say, this racist comment made matters worse.

8. Nigel died by suicide at age fifteen on April 18, 2019.

9. Before he died, Nigel told his classmates that whenever he went to Stafford for help, she treated him as “a joke” and simply dismissed his reports as another one of his “episodes.” Stafford never took action to help Nigel. She didn’t offer him counseling or emergency mental health services. She didn’t investigate any harassment allegations. She didn’t call local authorities. And she never called Nigel’s parents to inform them about the harassment or Nigel’s resulting mental health crisis.

10. Nigel was not the only gay student at Huntsville High School who was harassed, then denigrated and blamed by school administrators. After Nigel’s death, another openly gay student spoke out about his own experiences with school administrators and staff, saying they treated his sexual orientation as a “choice,” blamed him for being bullied, and told him he would have to grow a thicker skin if he was going to live a gay “lifestyle.”

11. The anti-gay harassment at Huntsville High School—and its consequences—were predictable, given the inadequate district-wide policies and the lack of adequate training for administrators, staff, students, and families to address and prevent such harassment.

12. For example, although the district’s policies during the 2018-2019 academic year appeared to prohibit student harassment and bullying based on “sex or gender,” they did not expressly prohibit harassment or bullying based on a student’s sexual orientation or gender non-conformance. Nor did the policies offer any example to explain that harassment based on a student’s sexual orientation or gender non-conformance was a form of prohibited harassment based on “sex or gender.”

13. The district’s training also failed to make clear that harassment of gay and gender non-conforming students was prohibited. In the four-year period preceding Nigel’s death, the only training offered by the district that specifically focused on issues involving lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students was a three-hour program in 2017 limited to school counselors.

14. The district’s lack of adequate policies and training significantly harmed Nigel and placed him at unreasonable risk of harm. And, now, Nigel is gone.

15. Plaintiffs bring this suit to vindicate Nigel’s rights under Title IX of the Education Amendments of 1972 (“Title IX”), Title VI of the Civil Rights Act of 1964 (“Title VI”), and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, as well as their own rights. They seek damages for Nigel’s loss of educational benefits, and his emotional and physical injuries, as well as damages for the loss of their son. And their hope is that this suit will lead to much-needed change within the district, so all students—including vulnerable students like Nigel—feel safe in Huntsville City Schools.

JURISDICTION AND VENUE

16. The Court has subject matter jurisdiction over this matter pursuant 28 U.S.C. § 1331 because this litigation involves matters of federal law. Specifically, Plaintiffs assert claims under Title IX, 20 U.S.C. § 1681 *et seq.*; Title VI, 42 U.S.C. § 2000d; and 42 U.S.C. § 1983 for Defendants’ violations of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

17. The Court also has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1343(a)(3) & (4) because Plaintiffs seek redress and damages for deprivation of constitutional and federal civil rights under 42 U.S.C. §1983.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants reside within this judicial district and the events or omissions giving rise to the claims occurred in this district.

PARTIES

19. Plaintiff Camika Shelby (“Ms. Shelby”) is the biological mother of Nigel Shelby (“Nigel”) and a resident of Madison County, Alabama.

20. Ms. Shelby is the court-appointed personal representative of the Estate of Nigel Shelby.

21. As personal representative, Ms. Shelby has the right to bring survival claims on behalf of the Estate of Nigel Shelby and claims on behalf of Nigel’s surviving heirs and next of kin: his biological parents, Camika Shelby and Patrick Cruz.

22. Plaintiff Patrick Cruz (“Mr. Cruz”) is the biological father of Nigel and a resident of Madison County, Alabama. He is asserting claims as Nigel’s heir and next of kin.

23. Defendant Huntsville City Board of Education (“HCBOE” or “Board”) is a public school board that, at all relevant times, was responsible for the “general administration and supervision of the public schools and educational interest of” Huntsville City Schools (sometimes referred to as “the District”), within the meaning of Al. Code § 16-11-2(b).

24. At all relevant times, Defendant HCBOE was “vested with all the powers necessary and proper for the administration and management of the free public schools” that are part of Huntsville City Schools, including Huntsville High School. Al. Code § 16-11-9.

25. Defendant HCBOE is a recipient of federal financial assistance within the meaning of 20 U.S.C. § 1681(a) and a “person” within the meaning of 42 U.S.C. § 1983.

26. Defendant Jo Stafford, sued in her individual capacity, was at all relevant times the Administrator of the Freshman Academy and an Assistant Principal at Huntsville High School. At all relevant times, Stafford was an employee of Huntsville City Schools, operated by Defendant HCBOE, and was acting within the scope and course of her employment.

FACTS

Background on Huntsville City Schools’ History of Race Discrimination

27. Huntsville City Schools has been operating under a desegregation order for approximately 58 years to eliminate the effects of state-mandated racial segregation in Huntsville.

28. The desegregation order was amended by a consent order in 2015, filed by the U.S. Department of Justice and Huntsville City Schools, which requires the District to provide equal educational opportunities to black students by, among other things, reconfiguring attendance zones, improving access to quality course offerings, and addressing racial discrimination in student discipline.

29. One of the district's biggest hurdles to achieving unitary status and being released from the desegregation order is the racial disparity in student discipline: black students in Huntsville continue to be disciplined at much higher rates than white students. For example, in Huntsville High School in 2019, 52% of black students received a disciplinary referral, compared to just 12% of white students. (At that time, approximately 21% of enrolled students were black and approximately 65% of enrolled students were white.)

30. Although the District has revised its student code of conduct several times over the past few years, the racial disparities in student discipline continue.

Background on HCBOE's Anti-Harassment and Suicide Prevention Policies

31. During the 2018-2019 academic year, while Nigel attended Huntsville High School, HCBOE's Policy Manual included policies prohibiting harassment by employees and students, as well as a suicide awareness and prevention policy.

32. Under the anti-harassment policy applicable to the District's personnel, the Board prohibited "unlawful harassment of any person or group of persons on the basis of a legally protected characteristic or status," which included, but was not limited to, "race, color, religion, sex, pregnancy, national origin, citizenship, age, disability, genetic composition or background, FMLA activity, military service or veteran status, and participation in legally-protected activity." (HCBOE Policy Manual ("Policy Manual"), revised Sept. 21, 2018, § 5.14)

33. The policy defined "Unlawful Harassment" to include "unwelcome verbal . . . conduct directed against any person or group, upon characteristics or activities protected by federal or state law that has the purpose or effect of . . . creating an offensive, demeaning, or intimidating environment for that person or group of persons." (Policy Manual, § 5.14.1)

34. Verbal harassment included, but was not limited to, “epithets, derogatory comments or slurs based upon of the characteristics noted above.” (*Id.* at § 5.14.2.a)

35. With respect to students, the Board prohibited “bullying, harassment, violence, threats of violence, and intimidation.” (*Id.* at § 6.11)

36. The policy defined “harassment” as “conduct that is based on a protected classification; is physically or verbally threatening, intimidating, harmful, or humiliating; and has the purpose or effect of limiting or interfering with a student’s educational performance or access to educational programs and activities, or otherwise disrupting the learning environment.” (*Id.* at § 6.11.4.b)

37. One form of prohibited harassment was “verbal,” defined as “[t]he making of offensive written or oral innuendos, comments, jokes, insults, threats, or disparaging remarks concerning a person’s race, color, national origin, religious beliefs, disability, or other protected classifications.” (*Id.* at § 6.11.4.b.1)

38. One notable difference between the employee and student anti-harassment policies is that the policy applicable to employees explicitly lists “sex” as a protected characteristic, but the policy applicable to students does not. (Compare *id.* at § 5.14 with *id.* at § 6.11.4.b.1).

39. The Policy Manual did mention a student’s “sex or gender” in other sections, such as the description of behavior expected of students and the Title IX provision (*Id.* at §§ 6.11.5.b.2, 6.13.1)

40. However, none of the Board’s policies expressly enumerated sexual orientation as a protected characteristic. Nor did the policies provide a single illustrative example indicating that the Board prohibited harassment or bullying based on a student’s sexual orientation or failure to conform to sex-stereotypes.

41. Pursuant to the Policy Manual, if “a principal or the principal’s designee learn[ed] of bullying, alleged harassment, violence, threats of violence or intimidation,” he or she was supposed to meet with the alleged victim to help them complete a complaint form and then investigate the complaint. (*Id.* at § 6.11.7)

42. The Policy Manual also included a suicide awareness and prevention policy, stating the Board’s goal of providing “its employees with the information and training to recognize and act on the signs of suicide risk in order to provide prevention, intervention and postvention with students at risk, their families, and the communities which may be affected.” (*Id.* at § 4.17.1)

43. The suicide awareness and prevention policy also listed actions the Board would take, such as training for school employees and informing students of available services related to suicide prevention, to the extent the resources were provided or available. (*Id.* at § 4.17.2)

Nigel Was Harassed by Classmates on the Basis of His Sexual Orientation

44. Nigel was Ms. Shelby’s only child. He was, in her words, “full of light, like sunshine, and loving to everybody.”

45. Nigel was black and gay.

46. Nigel enrolled as a ninth grade student at Huntsville High School on October 15, 2018, and he attended Huntsville High School at all material times.

47. When Nigel enrolled at Huntsville High School, he was openly gay.

48. Nigel was also vulnerable, having struggled with his sexuality and having engaged in self-cutting.

49. When enrolling Nigel at Huntsville High School, Ms. Shelby discussed Nigel’s history with two HCBOE officials, Stafford and guidance counselor David Whitener, and told them that Nigel had struggled with depression and had engaged in self-harm.

50. Soon after he began attending Huntsville High School, Nigel experienced incessant harassment by other students based on his sexual orientation and failure to conform to male sex stereotypes, including that “real” boys should date girls, not other boys.

51. Nearly every day for the sixth months he attended Huntsville High School, Nigel was subjected to slurs from other students, including “faggot” and “gay,” because of his sexual orientation and failure to conform to sex stereotypes.

52. The verbal harassment of Nigel also included being told, “Nobody cares about you”; “I hope you kill your ugly ass”; “I hope you die”; and “I hope you kill yourself”—all because Nigel was gay and didn’t conform to male sex stereotypes.

53. One particular student in Nigel’s theatre class routinely called Nigel anti-gay epithets and told Nigel to kill himself, making no secret of his anti-gay animus toward Nigel.

54. But the harassment was not perpetrated by just one classmate.

55. Students regularly and openly hurled anti-gay epithets at Nigel in classrooms and hallways, sometimes in the presence of school officials.

56. Nigel also experienced similar sex-based harassment on social media, being told he should kill himself because he was gay.

57. In addition, a student physically battered Nigel on the school bus after she and another male student had verbally harassed Nigel for being gay.

58. The sex-based abuse was a relentless and inescapable aspect of Nigel’s experience at Huntsville High School, creating a hostile educational environment for him.

59. In the words of one classmate, “Nigel never felt safe at school.”

60. The sex-based harassment took a serious toll on Nigel academically, emotionally, and psychologically.

61. Nigel's grades plummeted at Huntsville High School.

62. While in middle school, Nigel achieved mostly As, Bs, and the occasional C in his core academic courses.

63. In contrast, while at Huntsville High School, Nigel received mostly Fs and a D in his core academic courses during the first term, and received Cs, Ds, and an F in his core courses during the second term.

64. The educational impact of the harassment was not limited to Nigel's grades. While at Huntsville High School, and in contrast to his years in middle school, Nigel was also subjected to disciplinary action throughout the academic year, including a ten-day in-school-suspension by Stafford approximately one month before he died by suicide.

65. Nigel was also unraveling emotionally and psychologically from the harassment: he suffered from depression and suicidal thoughts, and he began self-cutting again.

66. Ultimately, the severe and pervasive sex-based discrimination played a role in Nigel's suicide.

67. Indeed, after Nigel's death, one of his teachers, Malcolm Parker, expressed the view that bullying was a factor in Nigel's suicide.

HCBOE Responded to Reports of the Harassment with Further Discrimination

68. Nigel did not suffer in silence at school.

69. Facing this onslaught of harassment based on his sex, Nigel sought help from an HCBOE official in whose care he was entrusted, Stafford.

70. Some of Nigel's classmates were so concerned about Nigel that they also sought help for him from Stafford.

71. Stafford, as the Freshman Academy Administrator, was the lead administrator for ninth-grade students and had the power and authority to remediate the harassment, including by disciplining harassing students and offering Nigel accommodations and services.

72. However, instead of supporting and protecting Nigel, Stafford's response was to ignore, minimize, dismiss or, in some instances, blame and further victimize Nigel for the abuse he was experiencing.

73. On information and belief, Nigel and/or his classmates spoke with Stafford about Nigel's sexuality, the anti-gay harassment he was experiencing at school, on the bus, and on social media, and the impact the harassment was having on him—including self-harming behavior and suicidal thoughts.

74. On information and belief, throughout his six months at Huntsville High School, Nigel met informally with Stafford on multiple occasions to discuss the anti-gay harassment he was experiencing. Until Nigel's death, however, Stafford never told Nigel's mother about the meetings she had with Nigel to discuss his reports of anti-gay harassment.

75. In or about December of 2018, Student A met with Stafford to report her concerns about Nigel. Among other things, the student told Stafford that Nigel was "cutting himself again", "talking suicidal", and "wasn't doing good overall."

76. Stafford's only response to this disturbing report was to tell Student A that she already knew about this, Nigel was fine, and to go back to class.

77. In short, Stafford dismissed and ignored Student A's report, taking no action to help Nigel.

78. On or about April 11, 2019, approximately one week before Nigel's suicide, Student B became understandably alarmed when Nigel told him that he didn't want to be on this

earth anymore and had tried to kill himself earlier in the week, and when Student B saw self-inflicted cuts on Nigel's arms.

79. Soon afterwards, Student B relayed this information to Stafford and brought Nigel to her office to get Nigel help.

80. Shortly after Student B and Nigel arrived at Stafford's office, Stafford told Nigel he only had as much time as an hourglass sand-timer would allow, then flipped the hourglass over to start the timer.

81. On information and belief, during this meeting, Nigel talked openly about his sexual orientation and told Stafford about the anti-gay harassment he was experiencing at school and on social media, and the impact it was having on him, including self-harming behavior and suicidal thoughts.

82. Instead of taking action on Nigel's report and offering to help him, Stafford mocked blamed Nigel for the abuse he was experiencing.

83. On information and belief, Stafford told Nigel that being gay was a choice and that he would have to accept the consequences of that choice—which included having to deal with “adult comments” telling Nigel he didn't deserve to live in response to Nigel's “adult” social media posts about being gay.

84. In essence, Stafford's response to Nigel was that fielding such abuse was just part of the price Nigel had to pay for being gay.

85. According to Student B, Stafford also responded to Nigel by asking if this was “another one of his episodes where life is getting too hard and things get tough and we want to kill ourselves.”

86. What was Stafford’s “solution” to Nigel’s alarming reports of harassment and the impact it was having on him? According to Student B, Stafford, who is white, told Nigel and him to get up and dance to “black people’s” music to make Nigel feel better.

87. This racist statement had the opposite effect.

88. At some point during this meeting with Stafford, Sam Baker—a mental health specialist with whom the District had a contract—came into Stafford’s office and took Student B to a conference room, leaving Nigel alone with Stafford for a brief period.

89. When Student B met with Mr. Baker, Student B told him that Stafford was “being very aggressive towards Nigel and his situation.”

90. In Student B’s view, Stafford should have taken action to help Nigel, such as by calling a parent and calling local authorities; instead, she made things worse for Nigel.

91. In Student B’s view, Stafford could have prevented Nigel’s suicide if she had taken action in response to Nigel’s report and request for help.

92. But Stafford never took any action to help Nigel. She never offered him counseling or connected him to emergency mental health services. She never helped him complete a bullying complaint form, investigated the harassment allegations, or took any action to stop the harassment from recurring. And she never called his parents to inform them of the harassment or Nigel’s resulting mental health crisis.

93. Nigel told his classmates that whenever he went to Stafford for help, she treated him as “a joke” and dismissed his reports as just another one of his “episodes.”

Nigel’s Suicide

94. At the age of fifteen, Nigel hung himself and died on April 18, 2019.

95. Ms. Shelby and Mr. Cruz were shocked and devastated by Nigel’s suicide.

96. After learning of Nigel’s suicide, HCBOE opened an investigation.

97. Before HCBOE’s investigation, neither Ms. Shelby nor Mr. Cruz were aware that Nigel had been experiencing sex-based harassment at school, on the bus, and on social media. Nor were they aware of the impact this had been having on Nigel’s education and mental health, or that Nigel and some of his classmates had met with Stafford multiple times to discuss these issues.

98. Learning that, approximately one week before Nigel took his life, Nigel and a classmate had sought help from Stafford and had specifically discussed Nigel’s self-harming conduct and suicidal thoughts—and hearing about Stafford’s callous and discriminatory response to their pleas for help—was particularly devastating for Ms. Shelby and Mr. Cruz.

99. In the wake of Nigel’s death, other students spoke out about discrimination at Huntsville High School. One openly gay student explained:

The way this school treats the people of our community is not acceptable. They turn victims into perpetrators and blame them for being bullied. . . . I’ve gone to administration, I’ve gone to counselors. They blame you for the problems that you face, sometimes they even put in there that it’s your choice, that you’re too sensitive, that if you’re going to live this lifestyle that you’ll have to grow thick skin.

100. As reported, the student said: “he did not think the staff and administrators were equipped to handle the bullying of LGBTQ students, questioning if they’re ‘ignorant’ or ‘indifferent.’” Chris Joseph, Openly Gay Huntsville High School Student Questions Administrative Response To LGBTQ Bullying, WBRC (Apr. 22, 2019), <https://www.wbrc.com/2019/04/23/openly-gay-huntsville-high-school-student-questions-administrative-response-lgbtq-bullying>.

101. In addition, prior to Nigel’s death, a transgender student attending another District high school filed a lawsuit against HCBOE and several school administrators and teachers,

alleging that they refused to address her reports of student-on-student sex-based harassment and personally participated in discriminating against her based on her gender identity and non-conformance with gender stereotypes.

102. HCBOE, by and through Stafford, could have prevented Nigel's suicide if Stafford had taken appropriate action in response to Nigel's and his classmates' reports, as required by Title IX and HCBOE's own policies—including its policy on suicide awareness and prevention and its policy prohibiting bullying and harassment.

HCBOE Failed to Provide Adequate Training to Prevent and Address LGBTQ Harassment

103. For over two decades, schools, including the District, have known from federal court decisions and guidance from the U.S. Department of Education's Office for Civil Rights ("OCR") that their failure to take appropriate action to address harassment of gay and gender non-conforming students (hereinafter "LGBTQ harassment") could constitute unlawful discrimination on the basis of sex.

104. Since 2001, in policy guidance and public communications, OCR has repeatedly reminded schools of their responsibility under Title IX to address sex-based harassment, including LGBTQ harassment, and to train their staff accordingly.

105. On information and belief, despite clear notice of its obligations to prevent and remediate sex-based harassment, including LGBTQ harassment, HCBOE failed to provide adequate training or education to administrators, teachers, staff, students, and families regarding Title IX and LGBTQ harassment.

106. On information and belief, in the four-year period preceding Nigel's death, the only training offered by HCBOE that specifically focused on issues involving LGBTQ students was a three-hour program for school counselors on December 5, 2017.

107. On information and belief, in the four years preceding Nigel's death, HCBOE provided little or no training or education to administrators, teachers, the majority of staff, students, and families on protecting LGBTQ students from harassment, investigating reports of LGBTQ harassment, remediating LGBTQ harassment, and proper reporting of LGBTQ harassment to District employees.

108. HCBOE's lack of adequate training is evidenced by, among other things, HCBOE's failure to enumerate LGBTQ harassment in its Policy Manual; HCBOE's failure to enumerate in its Policy Manual that the District's Title IX coordinator had a duty to respond to inquiries and complaints about LGBTQ harassment; Stafford's failure to treat Nigel's and his classmates alleged reports as reports of harassment or bullying on the basis of "sex or gender" under HCBOE's Policy Manual; HCBOE's failure to take any meaningful action to protect Nigel from LGBTQ harassment at Huntsville High School; HCBOE's failure to offer any accommodations or counseling to Nigel after learning about the harassment he was experiencing at school and online, and the impact it was having on him; and HCBOE's discriminatory response to Nigel's reports, wherein Stafford treated the abuse Nigel suffered as a price he had to pay for being gay and thus refused to take any action to help him.

109. Given HCBOE's lack of adequate training on LGBTQ harassment, and its lack of any policy expressly prohibiting LGBTQ harassment, the adverse effects on Nigel were predictable.

110. LGBTQ students—especially black LGBTQ students—are bullied and harassed at dramatically higher rates than other students, and the overwhelming majority of LGBTQ students routinely hear anti-LGBTQ language and experience discrimination at school. As a result, many LGBTQ students miss school, get lower grades, and suffer higher levels of depression.

111. According to a 2019 national survey on LGBTQ youth mental health conducted by the Trevor Project, involving over 34,000 respondents, 70% of LGBTQ youth reported experiencing discrimination due their sexual orientation. In addition, 47% of lesbian, gay, and bisexual (“LGB”) youth ages 13-17 had considered suicide in the previous 12 months.

112. According to a 2015 national survey of more than 15,000 students conducted by the Centers for Disease Control and Prevention, nearly 43 percent of LGB high school students had seriously considered attempting suicide, compared to about 15 percent of their heterosexual peers. And researchers reviewing epidemiological literature in 2014 found that LGB youth were between two and seven times more likely to attempt suicide than their heterosexual peers.

COUNT I
Deliberate Indifference to Student-on-Student Sex-Based Harassment
in Violation of Title IX of the Education Amendments of 1972,
20 U.S.C. § 1681, *et seq.*
(Against HCBOE)

113. Plaintiffs incorporate all preceding paragraphs by reference as though fully stated here.

114. Nigel experienced severe, pervasive, and objectively offensive sex-based harassment by his classmates.

115. HCBOE had substantial control over the students who harassed Nigel and the context in which they harassed him.

116. HCBOE had actual notice that Nigel experienced sex-based harassment by his classmates based on Nigel and his classmates’ reports to Stafford.

117. Stafford was an “appropriate person” within the meaning of Title IX, as she had the authority to address the sex-based harassment Nigel was experiencing and to take corrective action on HCBOE’s behalf.

118. HCBOE, through Stafford, acted with deliberate indifference to Nigel and his classmates' reports about the sex-based harassment Nigel was experiencing by, among other things:

- a. Failing to take any action to investigate the reports and remediate the harassment;
- b. Failing to offer or provide educational accommodations, such as academic and psychological counseling, to Nigel after learning about the harassment and its impact on him;
- c. Failing to inform Nigel and his parents about Nigel's rights under Title IX or the identity of the District's Title IX coordinator, if there was such a person in 2018-19;
- d. Blaming and further victimizing Nigel for the harassment he was experiencing; and
- e. Ignoring, dismissing, and/or mocking Nigel and his classmates' reports of the serious impact the harassment was having on Nigel's mental health.

119. The unchecked sex-based harassment created a hostile educational environment for Nigel, depriving him of the educational opportunities and benefits provided by HCBOE. For example, his grades dropped dramatically; he received disciplinary referrals; and he suffered serious emotional and psychological harm, including depression, self-cutting, and suicidal thoughts.

120. If HCBOE had taken appropriate steps to address the harassment and protect Nigel, his educational losses and tragic death could have been avoided.

121. As a direct and proximate result of HCBOE's deliberate indifference, Nigel suffered injuries, damages, and losses as set forth in the Prayer for Relief.

122. Because of Nigel's death, these injuries, damages, and losses are recoverable by his Estate, through its personal representative.

COUNT II
Intentional Sex-Based Discrimination by School Administrator
in Violation of Title IX of the 1972 Education Amendments,
20 U.S.C. § 1681, *et seq.*
(Against HCBOE)

123. Plaintiffs incorporate all preceding paragraphs by reference as though fully stated here.

124. While Nigel was a student at Huntsville High School, HCBOE, through Stafford, knew that Nigel was gay. Not only was Nigel openly gay, but he discussed his sexual orientation with Stafford.

125. While Nigel was a student at Huntsville High School, HCBOE, through Stafford, also knew that Nigel was experiencing serious mental health issues, including depression, suicidal ideation, and self-harming behavior.

126. Ms. Shelby had informed Stafford about Nigel's history of depression and self-harm upon enrolling him at Huntsville High School. In addition, Nigel and some of his classmates told Stafford that he was struggling once again with depression and self-cutting, as well as suicidal thoughts.

127. As the leading administrator for the freshman class, Stafford had the authority to take action on HCBOE's behalf to address Nigel's mental health issues, including the imminent danger for self-harm.

128. HCBOE, through Stafford, intentionally failed to take action to help Nigel, motivated at least in part by Nigel's sexual orientation and/or failure to conform with male sex-stereotypes.

129. As such, HCBOE intentionally discriminated against Nigel on the basis of sex, in violation of Title IX.

130. HCBOE’s intentional sex-based discrimination against Nigel is evidenced by, among other things:

- a. Stafford telling Nigel, in response to his reports about the anti-gay harassment he was experiencing and the negative impact this was having on him, that being gay was a choice and that he would have to accept the consequences of that choice—including having to deal with “adult comments” telling Nigel he didn’t deserve to live in response to Nigel’s “adult” social media posts about being gay;
- b. Stafford asking Nigel, in response to his reports about the anti-gay harassment he was experiencing and the negative impact this was having on him, whether this was “another one of his episodes where life is getting too hard and things get tough and we want to kill ourselves”;
- c. Stafford consistently dismissing and belittling Nigel’s mental health issues, caused at least in part by the anti-gay harassment and discrimination he was experiencing, as just another one of his “episodes,” and treating Nigel’s concerns as “a joke”;
- d. Stafford belittling Nigel’s mental health issues by using a minute-timer hourglass to limit his time to address those issues;
- e. Stafford being “very aggressive towards Nigel and his situation,” according to Student B;
- f. Stafford ignoring and dismissing other students’ reported concerns about Nigel’s self-cutting and expression of suicidal thoughts; and
- g. Stafford failing to offer Nigel any assistance (such as psychological counseling services), seek emergency mental health services for him, or inform Nigel’s parents of his mental health crisis.

131. In short, HCBOE, through Stafford, blamed Nigel for the anti-gay abuse he complained about, treating it as part of the price he had to pay for being gay or failing to conform to male sex-stereotypes.

132. Had HCBOE taken appropriate steps to address Nigel’s serious mental health issues, his educational losses and tragic death could have been avoided.

133. As a direct and proximate result of HCBOE's intentional sex-based discrimination, Nigel suffered injuries, damages, and losses as set forth in the Prayer for Relief.

134. Because of Nigel's death, these injuries, damages, and losses are recoverable by his Estate, through its personal representative.

COUNT III
Intentional Race-Based Discrimination by School Administrator
in Violation of Title VI of the Civil Rights Act of 1964,
42 U.S.C. § 2000d
(Against HCBOE)

135. Plaintiffs incorporate all preceding paragraphs by reference as though fully stated here.

136. HCBOE, through Stafford, intentionally failed to take action to help Nigel, motivated at least in part by Nigel's race.

137. As such, HCBOE intentionally discriminated against Nigel on the basis of race, in violation of Title VI.

138. HCBOE's intentional race-based discrimination against Nigel is evidenced by, among other things:

- a. Stafford belittling and dismissing Nigel and a classmate's reports of the serious mental health issues Nigel was experiencing, by telling them to dance to "black people's" music to make Nigel feel better;
- b. Stafford being "very aggressive towards Nigel and his situation," according to Student B, during the same meeting where she told Nigel and Student B to dance to "black people's" music;
- c. Stafford belittling Nigel's mental health issues by using a minute-timer hourglass to limit his time to address those issues, during the same meeting where she told Nigel and Student B to dance to "black people's" music;
- d. Stafford failing to offer Nigel any assistance (such as psychological counseling services), seek emergency mental health services for him, or inform Nigel's parents of his mental health crisis, following the same

meeting where she told Nigel and Student B to dance to “black people’s” music; and

- e. Stafford disciplining Nigel with a ten-day in-school suspension in March 2019, while Nigel was in the midst of experiencing serious mental health issues, instead of offering Nigel the help he needed—consistent with the District’s longstanding racial disparity in student discipline.

139. Had HCBOE taken appropriate steps to address Nigel’s serious mental health issues, his educational losses and tragic death could have been avoided.

140. As a direct and proximate result of HCBOE’s intentional race-based discrimination, Nigel suffered injuries, damages, and losses as set forth in the Prayer for Relief.

141. Because of Nigel’s death, these injuries, damages, and losses are recoverable by his Estate, through its personal representative.

COUNT IV
Failure to Train, in Violation of Plaintiff’s Constitutional
And Federal Rights, Pursuant to 42 U.S.C. § 1983
(Against HCBOE)

142. Plaintiffs incorporate all preceding paragraphs by reference as though fully stated here.

143. HCBOE is subject to 42 U.S.C. § 1983.

144. Student-on-student harassment based on sexual orientation and/or failure to conform to sex stereotypes that a school refuses to address is a form of unlawful sex discrimination that violates a student’s rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

145. Nigel also had federal rights secured by Title IX, which provides that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

146. Title IX was intended to benefit students like Nigel.

147. Title IX provides students like Nigel clear federal rights to be free from known sex discrimination at school.

148. In *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255-58 (2009), the U.S. Supreme Court concluded “that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools,” and held a plaintiff may bring causes of action under both Title IX and § 1983 for unlawful sex discrimination.

149. At all relevant times, HCBOE had unconstitutional customs, policies, or practices of failing to properly or sufficiently train administrators, teachers, staff, students, and families concerning sex discrimination and sex-based harassment against students, including LGBTQ harassment; Title IX and/or student-on-student sex-based harassment, including LGBTQ harassment; and identifying, investigating, reporting, preventing, stopping, and remedying the effects of discrimination and harassment against LGBTQ students.

150. At all relevant times, HCBOE had unconstitutional customs, policies, or practices of failing to properly or sufficiently train administrators, teachers, staff, students, and families concerning its policies on sex discrimination and sex-based harassment against students, including LGBTQ harassment; Title IX and/or student-on-student sex-based harassment, including LGBTQ harassment; and identifying, investigating, reporting, preventing, stopping, and remedying the effects of discrimination and harassment against LGBTQ students.

151. HCBOE failed to provide such training to its administrators, teachers, staff, students, and families, despite the patently obvious need for training on, among other things, sex-based harassment of students, including LGBTQ harassment, and identifying, investigating,

reporting, stopping, and remedying the effects of discrimination and harassment against LGBTQ students.

152. Numerous authorities, including federal courts and OCR, made clear and gave notice to HCBOE and the District that school employees will confront LGBTQ harassment and discrimination with regularity, given the high predictability, recurrence, prevalence, and injurious nature of such harassment and discrimination in schools. Thus, it was foreseeable and inevitable that the District's administrators and employees would encounter recurring situations involving LGBTQ harassment and discrimination implicating students' Constitutional and federal rights, and they did, in fact, encounter those recurring situations.

153. HCBOE failed to adequately train its administrators, teachers, staff, students, and families, and thereby failed to prohibit or discourage foreseeable LGBTQ harassment and discrimination, despite the clearly established and well-known dangers of such harassment and discrimination faced by students in U.S. public schools.

154. HCBOE failed to provide such training despite the foreseeable consequences that could result from a lack of instruction, including, but not limited to, LGBTQ harassment and discrimination, as Nigel experienced, and adverse effects from such harassment and discrimination, which Nigel also experienced.

155. HCBOE's failure to train its administrators, teachers, staff, students, and families amounted to deliberate indifference to the rights of students, with whom HCBOE and the District's employees had routine and regular contact.

156. HCBOE's failure to train its administrators, teachers, staff, students, and families caused Nigel to suffer ongoing sex-based harassment in violation of his Constitutional and federal rights.

157. HCBOE's customs, policies, and practices for responding to reports of student-on-student LGBTQ harassment, including reports about the LGBTQ harassment Nigel and other gay students were experiencing at Huntsville High School, were so clearly inadequate that they give rise to a reasonable inference that HCBOE acquiesced in and ratified the harassment.

158. These customs, policies, and practices for responding to reports of student-on-student LGBTQ harassment included, but were not limited to, blaming the victim for being harassed; treating victims' sexual orientation as a choice of lifestyle for which they must accept all consequences, including harassment; refusing to take action to address LGBTQ harassment; and participating in sex-based discrimination against the victims.

159. As a direct and proximate result of HCBOE's deliberate indifference to and violation of Nigel's established Constitutional and federal rights, Nigel suffered injuries, damages, and losses as set forth in the Prayer for Relief.

160. Because of Nigel's death, these injuries, damages, and losses are recoverable by his Estate, through its personal representative.

161. As a direct and proximate result of HCBOE's deliberate indifference to and violation of Nigel's established Constitutional and federal rights, Nigel's heirs, Ms. Shelby and Mr. Cruz, have suffered injuries, damages and losses as set forth in the Prayer for Relief.

162. As personal representative of the Estate, Ms. Shelby seeks damages for these injuries and losses on behalf of Nigel's heirs—herself and Nigel's father, Mr. Cruz.

163. As Nigel's heir, Mr. Cruz also seeks damages for the injuries and losses he has suffered.

COUNT V
Sex-Based Discrimination in Violation of
Equal Protection Clause of Fourteenth Amendment
to U.S. Constitution, Pursuant to 42 U.S.C. § 1983
(Against HCBOE)

164. Plaintiffs incorporate all preceding paragraphs by reference as though fully stated here.

165. Because Nigel was gay and did not conform to male sex-stereotypes, HCBOE failed to enforce its anti-harassment and anti-bullying policies in response to Nigel's and his classmates' reports about the anti-gay harassment he was experiencing at school, treating Nigel differently from similarly situated students in violation of the Equal Protection Clause of the Fourteenth Amendment.

166. By blaming Nigel for the harassment he was suffering, treating his sexual orientation as a choice for which he must accept any consequences (including harassment), and refusing to take action to address the reported sex-based harassment in accordance with Board policies, HCBOE discriminated against Nigel on the basis of sex, which is subject to heightened scrutiny under the Equal Protection Clause.

167. HCBOE had unconstitutional customs, policies, or practices for responding to LGBTQ students' reports of sex-based harassment, including reports about the sex-based harassment Nigel and other LGBTQ students were experiencing in District schools.

168. These customs, policies, practices for responding to LGBTQ students' reports of sex-based harassment included, but were not limited to, blaming LGBTQ victims for being harassed; treating victims' sexual orientation, gender identity, and/or gender expression as a choice for which they must accept any consequences (including harassment); refusing to take action to

address the reported sex-based harassment in accordance with Board policies; and participating in sex-based discrimination against LGBTQ harassment victims.

169. It is reasonable to infer from these customs, policies, and practices that HCBOE acted with deliberate indifference to and/or intentionally discriminated against Nigel on the basis of sex, in violation of the Equal Protection Clause.

170. As a direct and proximate result of HCBOE's deliberate indifference to and/or intentional discrimination against Nigel, Nigel suffered injuries, damages, and losses as set forth in the Prayer for Relief.

171. Because of Nigel's death, these injuries, damages, and losses are recoverable by his Estate, through its personal representative.

172. As a direct and proximate result of HCBOE's deliberate indifference to and/or intentional discrimination against Nigel, Nigel's heirs, Ms. Shelby and Mr. Cruz, have suffered injuries, damages and losses as set forth in the Prayer for Relief.

173. As personal representative of the Estate, Ms. Shelby seeks damages for these injuries and losses on behalf of Nigel's heirs—herself and Nigel's father, Mr. Cruz.

174. As Nigel's heir, Mr. Cruz also seeks damages for the injuries and losses he has suffered.

COUNT VI
Discrimination on the Basis of Sex and Race in
Violation of Equal Protection Clause of Fourteenth Amendment
to U.S. Constitution, Pursuant to 42 U.S.C. § 1983
(Against Stafford)

175. Plaintiffs incorporate all preceding paragraphs by reference as though fully stated here.

176. At all relevant times, Stafford was a person acting under color of state law within the meaning of 42 U.S.C. § 1983.

177. It is clearly established that a school official's refusal to address student-on-student harassment based on sexual orientation and/or failure to conform to sex stereotypes is a form of unlawful sex discrimination that violates a student's rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

178. It is also clearly established that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits a school official from personally participating in intentional discrimination against a student based on race and sex, including discrimination based on sexual orientation and/or failure to conform to sex stereotypes.

179. As the lead administrator for the freshman class and an assistant principal at Huntsville High School, Stafford deprived Nigel of these clearly established equal protection rights in two ways: (i) by acting with deliberate indifference to reports that Nigel was experiencing sex-based harassment by his classmates, thereby acquiescing in and ratifying the unlawful student-on-student harassment; and (ii) personally participating in intentional discrimination against Nigel, motivated at least in part by his sex and/or race.

180. Had Stafford taken appropriate steps to address the reported sex-based harassment against Nigel, and had she not ignored and belittled Nigel's serious mental health issues because of his sexual orientation and/or race, Nigel's educational losses and tragic death could have been avoided.

181. As a direct and proximate result of Stafford's deliberate indifference to and intentional violation of Nigel's established Constitutional rights, Nigel suffered injuries, damages, and losses as set forth in the Prayer for Relief.

182. Because of Nigel's death, these injuries, damages, and losses are recoverable by his Estate, through its personal representative.

183. As a direct and proximate result of Stafford's deliberate indifference to and intentional violation of Nigel's established Constitutional rights, Nigel's heirs, Ms. Shelby and Mr. Cruz, have suffered injuries, damages, and losses as set forth in the Prayer for Relief.

184. As personal representative of the Estate, Ms. Shelby seeks damages for these injuries and losses on behalf of Nigel's heirs—herself and Nigel's father, Mr. Cruz.

185. As Nigel's heir, Mr. Cruz also seeks damages for the injuries and losses he has suffered.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, awarding the following relief:

- a. Compensatory damages against Defendant Huntsville City Board of Education for violations of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Counts I and II), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Count III), in an amount to be determined at trial, for the injuries suffered by Nigel Shelby and recoverable by the Estate of Nigel Shelby, through its personal representative, Plaintiff Camika Shelby, including, without limitation: damages for pre-death physical and emotional pain and suffering; lost future earnings and earning capacity; and physical loss of chance of survival.
- b. Compensatory damages against Defendant Huntsville City Board of Education for violations of federal rights and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, pursuant to 42 U.S.C. § 1983 (Counts IV and V), in an amount to be determined at trial, for the injuries suffered by Nigel Shelby and recoverable by the Estate of Nigel Shelby, through its personal representative, Plaintiff Camika Shelby, and for the injuries suffered by Nigel Shelby's heirs, Plaintiffs Camika Shelby and Patrick Cruz, including, without limitation: damages for pre-death physical and emotional pain and suffering; lost future earnings and earning capacity; and physical loss of chance of survival; loss of service, support, society, companionship, love, and affection of Nigel Shelby; and any medical, funeral, and/or burial expenses incurred due to Nigel Shelby's wrongful death.

- c. Compensatory damages against Defendant Jo Stafford for her violations of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, pursuant to 42 U.S.C. § 1983 (Count VI), in an amount to be determined at trial, for the injuries suffered by Nigel Shelby and recoverable by the Estate of Nigel Shelby, through its personal representative, Plaintiff Camika Shelby, and for the injuries suffered by Nigel Shelby's heirs, Plaintiffs Camika Shelby and Patrick Cruz, including, without limitation: damages for pre-death physical and emotional pain and suffering; lost future earnings and earning capacity; and physical loss of chance of survival; loss of service, support, society, companionship, love, and affection of Nigel Shelby; and any medical, funeral, and/or burial expenses incurred due to Nigel Shelby's wrongful death.
- d. Punitive damages against Defendant Jo Stafford for her violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, pursuant to 42 U.S.C. § 1983 (Count VI), in an amount to be determined at trial.
- e. Pre- and post-judgment interest, as appropriate, on any damages awarded to any plaintiff (All Counts).
- f. Attorneys' fees, expenses, and costs, pursuant to 42. U.S.C. § 1988 (All Counts).
- g. Any other and further relief as this Court may deem just and proper (All Counts).

JURY DEMAND

Plaintiffs respectfully demand a trial by jury on all triable issues, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: July 23, 2021

Respectfully submitted,

/s/Jasmine Rand
Jasmine Rand
(admitted *pro hac vice*)
Rand Law, L.L.C.
2525 Ponce de Leon Blvd.
Suite 300
Miami, Florida 33134
Telephone: (305) 906-6400
Fax: (305) 503-9235
Email: jasminerand@gmail.com

M. Lynn Sherrod
Kenneth B. Cole, Jr.
Conchin, Cole, Jordan & Sherrod
2404 Commerce Court
Huntsville, Alabama 35801
Telephone: (256) 705-7777
Fax: (256) 705-7778
Email: lynn@alainjurylaw.com
Email: kenny@alainjurylaw.com

Adele P. Kimmel*
Alexandra Z. Brodsky*
Public Justice, P.C.
1620 L Street NW
Suite 630
Washington, DC 20036
Telephone: (202) 797-8600
Fax: (202) 232-7203
Email: akimmel@publicjustice.net
Email: abrodsky@publicjustice.net

* *Pro hac vice* applications
forthcoming

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2021, I electronically filed the foregoing First Amended Complaint with the Clerk of the U.S. District Court using the Court's CM/ECF system, which will send electronic notifications to all parties who have appeared and are registered as CM/ECF participants in this matter.

/s/ Kenneth B. Cole, Jr.
Attorney for Plaintiffs