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CV-N-00-0050-HDM-RAM

Attorneys for Plaintiff Derek R. Henkle

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEREK R. HENKLE,	)	Docket No.
	)	
Plaintiff,	)	COMPLAINT
	)	
vs.	)	DEMAND FOR JURY
	)	
ROSS GREGORY, in his official and	)	
individual capacity, and DENISE	)	
HAUSAUER, LORETTA RENDE, JOE	)	
ANASTASIO, ROBERT FLOYD, SERENA	)	
ROBB, ARNEL RAMILO, and GLEN SELBY,	)	
in their individual capacities,	)	
	)	
Defendants.	)	
	)	

JURISDICTION AND VENUE

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. Sections 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States. This Court has supplemental jurisdiction to hear the state claims of Plaintiff Derek R. Henkle ("Plaintiff") under 28 U.S.C. Section 1367(a).

2. Jurisdiction also is conferred upon this Court pursuant to 28 U.S.C. Section 1332 because, as alleged below, there is complete diversity of citizenship between the Plaintiff and all Defendants and the matter in controversy, exclusive of interest and costs, exceeds the sum of seventy-five thousand dollars.

3. Plaintiff has complied with the requirements of Nevada law waiving sovereign immunity, set forth in Nev. Rev. Stat. Ann. Sections 41.031 et seq.

4. Venue is proper in this Court under 28 U.S.C. Section 1391(b) because a substantial part of the events that gave rise to Plaintiff's claims took place within the Northern Division of the District of Nevada.

PRELIMINARY STATEMENT

5. This is a civil rights action against employees and officials of the Washoe County School District for depriving Plaintiff Derek R. Henkle of established constitutional, statutory and common law rights.

6. Plaintiff attended Galena High School, Washoe High School, and Wooster High School, all of which are public high schools in the Washoe County School District. While

attending these schools, Plaintiff's classmates routinely subjected him to severe and pervasive verbal and physical harassment on school grounds. This harassment occurred on a near-daily basis beginning in the Fall of 1995 and continued until he was forced to leave the public school system in February of 1997. Plaintiff continually was harangued by his classmates, who referred to him using anti-gay terms such as "faggot," "queer," "fairy," "butt-pirate," "sissy," "ass licker," "AIDS whore," and "fucking faggot" and threatened to assault, injure, or kill Plaintiff. On more than one occasion, Plaintiff was physically assaulted by fellow students while on school property. Defendants were aware of the verbal and physical harassment and abuse, and had the authority to institute corrective and preventative measures, but Defendants repeatedly and intentionally failed to take the necessary measures to stop it. Rather than appropriately addressing the harmful behavior of other students, Defendants shifted Plaintiff from school to school throughout the District. Defendants failed to act, and took affirmative actions detrimental to Plaintiff, because of Plaintiff's sexual orientation, sex, and expression about his sexual orientation. Defendants deprived Plaintiff of the benefits of a high school education, and caused his transfer at the age of 16 out of the Washoe County School District to an adult education program that could not provide Plaintiff with a high school diploma.

7. Specifically, this action challenges Defendants' denial of Plaintiff's rights secured under the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. Section 1983, and Defendants' tortious negligence, negligent supervision and training, intentional infliction of emotional distress, and negligent infliction of emotional distress under Nevada state law.

PARTIES

8. From August 1994 until February 1997, Plaintiff DEREK HENKLE was a student attending public schools in the Washoe County School District, County of Washoe, State of Nevada. Plaintiff currently is a citizen of the State of Georgia. Plaintiff is gay.

9. Defendants ROSS GREGORY, Principal, Galena High School; DENISE HAUSAUER, Assistant Vice Principal, Galena High School; LOUISE RENDE, Teacher, Galena High School; JOE ANASTASIO, Washoe County School District Director of Student Services; BOB FLOYD, Principal, Washoe High School; SERENA ROBB, Principal, Wooster High School, ARNEL RAMILO, Officer, Washoe County School Police; and GLEN SELBY, Officer, Washoe County School Police, are or were at all relevant times individuals working as employees and agents of the Washoe County School District, a public school district organized and operated under the laws of the State of Nevada. All Defendants currently are citizens of Nevada.

10. Plaintiff alleges that each of the Defendants performed, participated in, aided and/or abetted in some manner the acts averred herein, proximately caused the damages averred below, and is liable to Plaintiff for the damages and other relief sought herein.

11. Based upon information and belief, Plaintiff alleges that Defendant Gregory was responsible for the training and supervision of Defendants Hausauer and Rende.

12. Based upon information and belief, Plaintiff alleges that Defendant Hausauer was responsible for the training and supervision of Defendant Rende.

13. Based upon information and belief, Plaintiff alleges that Defendant Robb was

responsible for the training and supervision of Defendants Ramilo and Selby.

STATEMENT OF FACTS

14. Galena High School ("Galena"), Washoe High School ("Washoe"), and Wooster High School ("Wooster") are public high schools in the Washoe County School District (the "District").

Galena High School

15. Plaintiff Derek R. Henkle attended Galena from August 1994 until January 1996. During that time, Ross Gregory ("Gregory") was the Principal at Galena, Denise Hausauer ("Hausauer") was the Assistant Vice Principal at Galena, and Louise Rende ("Rende") was a teacher at Galena.

16. Prior to attending Galena, Plaintiff was enrolled at Washoe County School District's Pine Middle School, in a gifted and talented program. Due to Plaintiff's intellectual abilities, Plaintiff skipped eighth grade and was enrolled at Galena in a special program for gifted and talented students.

17. In the early Fall of 1995, Plaintiff appeared on a local public access television program entitled "Set Free." On the show, he participated in a discussion on the subject of gay students and their experiences in high school.

18. From that point on until he was forced to leave Galena, Plaintiff experienced a constant barrage of anti-gay harassment, assaults, intimidation, and discrimination from Galena

students.

19. The harassment, assaults, intimidation, and discrimination occurred during school hours and on school grounds.

20. Plaintiff made repeated reports directly to Defendants Hausauer and Rende about the incidents of harassment, assault, intimidation and discrimination.

21. Defendants Gregory, Hausauer and Rende were aware of the harassment, assaults, intimidation, and discrimination suffered by Plaintiff.

22. Defendants Gregory, Hausauer, and Rende had the authority to take corrective and preventative action to stop the harassment, assaults, intimidation, and discrimination suffered by Plaintiff.

23. Defendants Gregory, Hausauer, and Rende deliberately, purposefully and intentionally failed to take steps to end the harassment, assaults, intimidation, and discrimination suffered by Plaintiff.

24. Defendants Gregory, Hausauer and Rende failed to take the steps necessary to prevent future incidents of harm to Plaintiff that were foreseeable given the past incidents of harassment, assault, intimidation and discrimination.

25. Based upon information and belief, this failure to take action departed from school and district procedures for dealing with harassment, violence, abuse and/or discrimination.

26. The incidents at Galena included:

a. In the fall semester of 1995, Plaintiff was approached by several male Galena

students on school property who called him “fag,” “butt pirate,” “fairy” and “homo.” One of the students suggested that the group tie Plaintiff to the back of a truck and drag him down a nearby road. While on school property, the students pursued Plaintiff and succeeded in lassoing him around the neck with a rope three separate times. Plaintiff finally was able to escape to a classroom and immediately used an internal phone to contact Defendant Hausauer’s office. Plaintiff waited almost two hours for anyone to come to the classroom where he hid in fear. When Defendant Hausauer finally arrived, she responded to Plaintiff’s recounting of the incident with laughter. Defendant Gregory also was aware of the incident. Instead of conducting an immediate investigation and punishing the harassers, Defendants Gregory and Hausauer took no action against the students who assaulted Plaintiff for several months, despite knowing the identities of some of the students who were involved. Actions belatedly taken by Defendants Gregory and Hausauer occurred only after Plaintiff had been driven from Galena.

- b. During the fall semester of the 1995-1996 school year, Plaintiff was enrolled in a mandatory English class taught and supervised by Louise Rende. Throughout the semester, Plaintiff repeatedly was harassed, intimidated, and subjected to discrimination by other students based upon Plaintiff’s sexual orientation, sex, and expression. Students in the class repeatedly wrote the word “fag” on the “white board” and sent notes to Plaintiff calling him a “fag.” Students also drew

pictures of men engaged in explicit sex acts on the "white board" and would call Plaintiff's attention to the pictures in front of other students. Defendant Rende was fully aware of the harassment, intimidation and discrimination as well as the identity of the harassers, but deliberately and purposefully took no steps to end the harassment or to discipline the harassers. Instead, Plaintiff was admonished by Defendant Rende that his sexuality was a private matter and he should not discuss it with other students. Defendant Hausauer also was aware of the incidents in Defendant Rende's English class and of Defendant Rende's acts and omissions, but made no effort to stop the harassment or to correct Defendant Rende's handling of the situation. Based on information and belief, Defendant Gregory also was aware of the incidents in Defendant Rende's English class and was aware of and endorsed Defendant Rende's acts and omissions, but made no effort to stop the harassment or to correct Defendant Rende's handling of the situation.

- a. On or around December 1995, Plaintiff was in the Galena discipline office reporting another incident of harassment when several students ran by the office, shouted anti-gay epithets at him, and threw a metal object at him that missed Plaintiff and stuck in the wall. A school administrator witnessed the incident and filed a report. Defendant Hausauer was aware of the incident and deliberately and intentionally made no effort to investigate or discipline Plaintiff's attackers. This incident resulted in Plaintiff having an emotional breakdown in Defendant Hausauer's office. Based upon information and belief, Defendant Gregory also

was aware of the incident and deliberately and intentionally made no effort to investigate or discipline Plaintiff's attackers.

27. During the fall semester of 1995, Plaintiff expressed himself about his gay sexual orientation. For example, he wore buttons on his backpack that stated "We Are Everywhere" and "Out." Plaintiff also spoke about his pro-gay viewpoints on various topics while at school.

28. Plaintiff's expression was fully protected by the First Amendment.

29. Defendants Gregory, Hausauer, and Rende were aware of the content and viewpoint of Plaintiff's expressive activity.

30. On more than one occasion, Defendants Hausauer and Rende told Plaintiff not to discuss his sexual orientation with other students.

31. Based upon information and belief, Defendant Gregory was aware of and endorsed Defendant Hausauer's acts and omissions in response to Plaintiff's repeated complaints of harassment, assault, intimidation, and discrimination, and to Plaintiff's expression.

32. Because of Defendants Gregory, Hausauer and Rende's failure to provide Plaintiff with an educational environment free from harassment and assaults and Plaintiff's resulting fear of further harassment and assaults, Plaintiff was unable to attend Galena any longer and Plaintiff asked to leave Galena at the end of the fall 1995 semester.

Washoe High School

33. Washoe High School is an alternative high school.

34. Washoe was not a suitable placement for Plaintiff.

35. Defendant Anastasio made the decision to transfer Plaintiff to Washoe High.

36. As a condition for a transfer out of Galena, Plaintiff was told by Defendant Anastasio that Plaintiff must treat his sexuality as a private matter and that he must not discuss it with anyone at his next school.

37. As a result of Defendants' purposeful efforts to silence Plaintiff's protected speech, Plaintiff was chilled and deterred from engaging in protected speech at Washoe on the subject of his sexual orientation, and, among other things, removed the buttons stating "We Are Everywhere" and "Out" from his backpack when he began attending Washoe.

38. Plaintiff attended Washoe High School from January 1996 through May of 1996. During that time, Defendant Bob Floyd was the principal at Washoe.

39. During his attendance at Washoe High, Defendant Floyd repeatedly told Plaintiff not to discuss his sexual orientation with others. In addition, during a meeting in Defendant Floyd's office, Defendant Floyd told Plaintiff to stop acting like a "fag."

40. While Plaintiff diminished his expression about his sexual orientation and of his pro-gay viewpoints, he did not totally succumb to Defendants' censorship efforts and still expressed his identity and viewpoints on certain occasions.

41. Plaintiff's expression was fully protected by the First Amendment.

42. Defendant Floyd was aware of the content and viewpoint of Plaintiff's expressive activity.

43. Frustrated by the lack of educational opportunity at Washoe, Plaintiff requested a transfer to a traditional high school that would provide him with an education suited to his

intellectual abilities.

44. Plaintiff initially was told by Defendant Floyd that such a transfer was not possible because he was openly gay and that a traditional high school therefore would not be appropriate for him.

Wooster High School

45. Eventually, it was decided that Plaintiff would transfer to Wooster High School for the Fall 1996 school year.

46. Plaintiff was told by Defendant Floyd not to disclose his sexual orientation to others while at Wooster.

47. As a result of Defendant Floyd's purposeful effort to silence Plaintiff's speech, Plaintiff was chilled and deterred from engaging in protected expression related to his sexual orientation. He did not discuss his sexual orientation with or express pro-gay viewpoints to other students at Wooster during his first months there.

48. Plaintiff attended Wooster High School from August 1996 to February 1997. During that time, Defendant Serena Robb was principal of Wooster.

49. While at Wooster, Plaintiff experienced a constant barrage of anti-gay harassment, assaults, intimidation, and discrimination from his classmates, who learned of his sexual orientation from students who previously had attended Galena with Plaintiff.

50. The harassment, assaults, intimidation, and discrimination at Wooster occurred during school hours and on school grounds.

51. Plaintiff made repeated reports to school administrators about the incidents of harassment, assaults, intimidation and discrimination.

52. Defendant Robb was aware of the harassment, assaults, intimidation, and discrimination suffered by Plaintiff.

53. Defendant Robb had the authority to take corrective and preventative action to stop the harassment, assaults, intimidation, and discrimination suffered by Plaintiff.

54. Defendant Robb deliberately, purposefully, and intentionally failed to take steps necessary to end the harassment, assaults, intimidation, and discrimination suffered by Plaintiff.

55. Defendant Robb failed to take steps necessary to prevent future incidents of harm to Plaintiff that were foreseeable given the past incidents of harassment, assault, intimidation and discrimination.

56. Based upon information and belief, this failure to take action departed from district and school procedures for dealing with harassment, violence, abuse, and/or discrimination.

57. While at Wooster, Plaintiff was approached on school property by several students who began laughing at him and barraging him with anti-gay epithets. One of the students approached Plaintiff and began punching him in the face, calling him "bitch." The other students encouraged the student punching Plaintiff to continue his attack. As a result of the attack, Plaintiff began bleeding profusely from his lip, nose and head.

58. The attack on Plaintiff was witnessed by Defendants Ramilo and Selby, who were present at the scene but deliberately, purposefully and intentionally took no action to assist

Plaintiff or discipline Plaintiff's harassers, despite having the authority and ability to do so.

59. Subsequently, Defendants Ramilo and Selby deliberately, purposefully and intentionally discouraged Plaintiff from filing a report and would not let him file a complaint without his mother's permission.

60. Defendants Ramilo and Selby also deliberately, purposefully, and intentionally discouraged Plaintiff from describing the incident as a hate crime and discouraged him from calling the Reno Police Department to report the incident. They further refused to arrest his attacker despite knowing the identity of the attacker.

61. Based upon information and belief, Defendant Robb was aware of Defendants Ramilo and Selby's failure to take appropriate action in response to the attack on Plaintiff.

62. Plaintiff was forced to seek medical attention and to miss days of school as a result of the attack.

63. After his initial months of silence to other students, and in light of others' attacks on him, Plaintiff expressed himself about his sexual orientation to other students. Plaintiff also expressed pro-gay viewpoints to other students.

64. Plaintiff's expression was fully protected by the First Amendment.

65. Defendant Robb was aware of the content and viewpoint of Plaintiff's expressive activity.

66. Defendant Robb failed to provide Plaintiff with a safe educational environment free from constant harassment, discrimination and abuse.

67. Defendants Floyd and Anastasio agreed that Plaintiff should return to Washoe

High School for the spring 1997 semester.

68. Defendant Floyd later reversed himself and would not accept Plaintiff at Washoe notwithstanding that there was space available at Washoe for Plaintiff at the time.

69. In February 1997, systematically deprived of the benefits of a high school education, 16 year-old Derek Henkle was placed in an adult education program at Truckee Meadows Community College at the direction of Defendants Anastasio and Floyd.

70. Because he was not enrolled in a public high school, Plaintiff was rendered ineligible for a high school diploma.

General Factual Allegations

71. Defendants' discriminatory conduct, their intentional, reckless, and negligent failure to take action to remedy the harassment and abuse of Plaintiff, and their failure to provide Plaintiff with a safe education in a suitable environment caused Plaintiff to suffer severe and extreme emotional distress and psychological damage, including but not limited to, an inability to concentrate on his studies, depression, debilitating fear, despair, anger, humiliation, and anxiety. Plaintiff also suffered bodily injury, including, but not limited to, physical injury, disruption of sleep, insomnia, loss of appetite, and suicide attempts. As a result of Defendants' actions, Plaintiff sought psychological counseling, and has been diagnosed with post-traumatic stress disorder. Furthermore, Plaintiff lost substantial amounts of school time as a result of Defendants' actions.

72. As a result of Defendants' actions, Plaintiff was deprived of a high school

diploma. The lack of a high school diploma has had a serious adverse impact on Plaintiff's professional, economic, and academic future.

73. Absent Defendants actions alleged herein, Plaintiff would have received a high school diploma from Galena High School and the Washoe County School District.

74. Based upon information and belief, Defendant Gregory, in his official capacity as Principal of Galena High School, is responsible for ensuring that all Galena students who are entitled to receive a Washoe County School District diploma obtain one.

75. At all relevant times, Defendants Anastasio, Gregory, Hausauer, Rende, Floyd, Robb, Ramilo and Selby were acting within the course and scope of their employment and under color of state and local law.

76. The specific incidents of discrimination, harassment and failure to take action alleged herein are merely representative, not exhaustive. A complete list of the incidents suffered by Plaintiff during his high school years in the Washoe County School District would be too lengthy to detail in this complaint.

77. On numerous occasions, Plaintiff reported the incidents of harassment and abuse he suffered to individual Defendants.

78. Defendants failed to take steps to address or prevent the harm to Plaintiff, including, but not limited to, disciplining students who harassed Plaintiff; fully investigating Plaintiff's complaints of harassment; educating faculty and students about District policies and procedures; and training faculty and students so as to prevent discrimination or harassment in the future.

79. The acts and omissions of Defendants not only failed to remedy, but also fostered and promoted, the harassment of Plaintiff by other students.

80. Defendants' direct actions in providing inappropriate educational placements for Plaintiff and censoring Plaintiff further harmed him.

81. As a direct, legal, and proximate result of Defendants' violations of Plaintiff's legal rights, Plaintiff has been damaged in an amount well in excess of seventy-five thousand dollars.

Additional Allegations – Federal Constitutional Claims

82. Upon information and belief, Defendants have policies and procedures to prevent and remedy harassment, discrimination, and/or violence suffered by all students, and take appropriate action to prevent and remedy such harms for non-gay students, yet did not do so for Plaintiff.

83. Upon information and belief, Defendants have policies and procedures to prevent and remedy harassment, discrimination, and/or violence suffered by all students, and take appropriate action to prevent and remedy such harms for female students, yet did not do so for Plaintiff.

84. The acts and omissions alleged above by Defendants were committed with deliberate indifference towards the well-being and rights of Plaintiff.

85. All of the acts or omissions alleged above by Defendants were committed intentionally and purposefully because of Plaintiff's sexual orientation.

86. The acts and omissions alleged above by Defendants were committed intentionally and purposefully because of Plaintiff's sex.

87. The acts and omissions alleged above by Defendants were committed intentionally and purposefully because of the content and viewpoint of Plaintiff's expression about his sexual orientation.

Additional Allegations – State Tort Claims

88. At all times relevant herein, Defendants were acting in a ministerial, operational, and non-discretionary capacity and/or performing ministerial, operational, and non-discretionary functions or duties.

89. Defendants owed Plaintiff a duty of care to ensure the safety and well-being of Plaintiff and all students. This overall duty of care encompassed a duty to supervise the conduct of all students, to enforce rules and regulations necessary for the protection of students, and to take appropriate measures to protect students from the misconduct of other students. Defendants, in the course and scope of their duties as employees of District, had a duty to exercise due care to protect Plaintiff from harassment and other misconduct by students and by other Defendants. Encompassed within Defendants' duty to protect Plaintiff and other students was a duty to exercise due care in investigating Plaintiff's complaints of assault, harassment, and discrimination by other students; to take reasonable precautions to protect Plaintiff from harassment, assaults, abuse and discrimination that reasonably could be anticipated; to make police reports of the crimes; to take prompt and appropriate action to protect Plaintiff from

further harassment and fear; and to remove dangerous students from the school, if necessary.

Defendants owed every duty alleged in this paragraph to Plaintiff.

90. At all relevant times herein, Defendants Gregory, Hausauer, and Robb owed a ministerial, operational, and non-discretionary duty to Plaintiff to take reasonable care in training and supervising their employees and subordinates.

FIRST CLAIM FOR RELIEF

U.S. Constit. Amend. XIV, Equal Protection on the Basis of Sexual Orientation

42 U.S.C. Section 1983

**(Against Defendant Gregory in his official capacity and Defendants Anastasio, Gregory,
Hausauer, Rende, Floyd, Robb, Ramilo and Selby in their individual capacities)**

91. Plaintiff incorporates by reference and realleges paragraphs 1 to 87 of this complaint.

92. The above-described conduct by Defendants violated the right of Plaintiff not to be deprived of equal protection of the laws on the basis of sexual orientation under the Fourteenth Amendment to the United States Constitution.

93. Plaintiff requests that the Court issue an injunction ordering Defendant Gregory in his official capacity to ensure that Plaintiff is awarded a Washoe County School District diploma, and that the Court award compensatory and punitive damages in an amount to be determined according to proof by Plaintiff against Defendants Anastasio, Gregory, Hausauer, Rende, Floyd, Robb, Ramilo and Selby in their individual capacities.

SECOND CLAIM FOR RELIEF

U.S. Constit. Amend. XIV, Equal Protection on the Basis of Sex

42 U.S.C. Section 1983

**(Against Defendant Gregory in his official capacity and Defendants Anastasio, Gregory,
Hausauer, Rende, Floyd, Robb, Ramilo and Selby in their individual capacities)**

94. Plaintiff incorporates by reference and realleges paragraphs 1 to 87 of this complaint

95. The above-described conduct by Defendants violated the right of Plaintiff not to be deprived of equal protection of the laws on the basis of sex under the Fourteenth Amendment to the United States Constitution.

96. Plaintiff requests that the Court issue an injunction ordering Defendant Gregory in his official capacity to ensure that Plaintiff is awarded a Washoe County School District diploma, and that the Court award compensatory and punitive damages in an amount to be determined according to proof by Plaintiff against Defendants Anastasio, Gregory, Hausauer, Rende, Floyd, Robb, Ramilo and Selby in their individual capacities.

THIRD CLAIM FOR RELIEF

U.S. Constit. Amend. I, Freedom of Speech

42 U.S.C. Section 1983

(Against Defendant Gregory in his official capacity and Defendants Anastasio, Gregory, Hausauer, Rende, Floyd, Ramilo and Selby in their individual capacities)

97. Plaintiff incorporates by reference and realleges paragraphs 1 to 87 of this complaint.

98. The above-described conduct by Defendants violated Plaintiff's right to freedom of speech under the First Amendment of the United States Constitution by censoring and chilling Plaintiff's speech and deterring him from exercising his First Amendment rights.

99. Plaintiff requests that the Court issue an injunction ordering Defendant Gregory in his official capacity to ensure that Plaintiff is awarded a Washoe County School District diploma, and that the Court award compensatory and punitive damages in an amount to be determined according to proof by Plaintiff against Defendants Anastasio, Gregory, Hausauer, Rende, Floyd, Ramilo and Selby in their individual capacities.

FOURTH CLAIM FOR RELIEF

U.S. Constit. Amend. I, Freedom of Speech

42 U.S.C. Section 1983

(Against Defendant Gregory in his official capacity and Defendants Anastasio, Gregory, Hausauer, Rende, Floyd, Robb, Ramilo and Selby in their individual capacities)

100. Plaintiff incorporates by reference and realleges paragraphs 1 to 87 of this complaint.

101. The above-described conduct by Defendants violated the right of Plaintiff to be free from retaliatory treatment based upon the exercise of his freedom of speech under the First Amendment to the United States Constitution.

102. Plaintiff requests that the Court issue an injunction ordering Defendant Gregory in his official capacity to ensure that Plaintiff is awarded a Washoe County School District diploma, and that the Court award compensatory and punitive damages in an amount to be determined according to proof by Plaintiff against Defendants Anastasio, Gregory, Hausauer, Rende, Floyd, Robb, Ramilo and Selby in their individual capacities.

FIFTH CLAIM FOR RELIEF

State Common Law Claim for Negligence

**(Against Defendants Gregory, Hausauer, Rende, Anastasio, Floyd, Robb, Ramilo and Selby in
their individual capacities)**

103. Plaintiff incorporates by reference and realleges paragraphs 1 to 81 and 88 to 90 of this complaint.

104. Defendants negligently failed to protect Plaintiff from harassment, abuse, assaults, and discrimination. Defendants' negligent failure to protect Plaintiff from harassment, abuse, assaults, and discrimination was done in bad faith.

105. As a result of defendants' negligence, plaintiff was deprived of the benefits of a high school education and diploma, and suffered physical and emotional injuries alleged herein.

106. Plaintiff requests that the Court award compensatory damages in an amount to be determined according to proof by Plaintiff against Gregory, Hausauer, Rende, Anastasio, Floyd, Robb, Ramilo and Selby in their individual capacities.

SIXTH CLAIM FOR RELIEF

Common Law Claim for Negligent Training and Supervision

(Against Defendants Gregory, Hausauer, and Robb)

107. Plaintiff incorporates by reference and realleges paragraphs 1 to 81 and 88 to 90 of this complaint.

108. Defendants Gregory, Hausauer, and Robb were negligent in failing to adequately train and supervise their employees and subordinates. Defendants negligent failure to train and supervise was done in bad faith.

109. As a result of defendants' negligence, plaintiff was deprived of the benefits of a high school education and diploma, and suffered physical and emotional injuries alleged herein.

110. Plaintiff requests that the Court award compensatory damages in an amount to be determined according to proof by Plaintiff against Gregory, Hausauer, and Robb.

SEVENTH CLAIM FOR RELIEF

State Common Law Claim for Intentional Infliction of Emotional Distress

(Against Defendants Gregory, Hausauer, Rende, Anastasio, Floyd, Robb, Ramilo and Selby)

111. Plaintiff incorporates by reference and realleges paragraphs 1 to 81 and 88 to 90 of this complaint.

112. In the course of performing their ministerial, operational, and non-discretionary job responsibilities, Defendants engaged in extreme or outrageous conduct with the intention of, and with reckless disregard for, causing emotional distress to Plaintiff.

113. As a result of Defendants' actions, Plaintiff suffered severe and extreme emotional distress alleged herein.

114. Plaintiff requests that the Court award compensatory damages in an amount to be determined according to proof by Plaintiff against Gregory, Hausauer, Rende, Anastasio, Floyd, Robb, Ramilo and Selby in their individual capacities.

EIGHTH CLAIM FOR RELIEF

State Common Law Claim for Negligent Infliction of Emotional Distress

(Against Defendants Gregory, Hausauer, Rende, Anastasio, Floyd, Robb, Ramilo and Selby)

115. Plaintiff incorporates by reference and realleges paragraphs 1 to 81 and 88 to 90 of this complaint.

116. Defendants owed Plaintiff a ministerial, operational, and non-discretionary duty to take reasonable precautions to protect Plaintiff from harassment, abuse, assaults and discrimination that can be reasonably anticipated.

117. Defendants negligently failed to protect Plaintiff from harassment, abuse, assaults, and discrimination based upon his sexual orientation and sex that could have been reasonably anticipated. Defendants' negligent failure to protect Plaintiff from harassment, abuse, assaults, and discrimination based upon his sexual orientation and sex was done in bad faith.

118. As a result of defendants' negligence, plaintiff experienced severe and extreme emotional distress that had a physical impact upon plaintiff alleged herein.

119. Plaintiff requests that the Court award compensatory damages in an amount to be determined according to proof by Plaintiff against Gregory, Hausauer, Rende, Anastasio, Floyd, Robb, Ramilo and Selby in their individual capacities.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- (a) Issue an injunction ordering Defendant Gregory in his official capacity to ensure that Plaintiff is awarded a Washoe County School District diploma.
- (b) Award compensatory damages in an amount to be determined according to proof by Plaintiff against all Defendants in their individual capacities;
- (c) Award punitive damages in such other amount as the jury may determine is sufficient to punish them for and deter others from committing the constitutional violations alleged herein.
- (d) Award Plaintiff his costs, expenses, and reasonable attorneys' fees pursuant to, inter alia, 42 U.S.C. § 1988 and other federal and state laws.
- (e) Grant such other and further relief as the Court may deem just and proper.

Dated: January 28, 2000

Respectfully submitted,

JON W. DAVIDSON
DONI GEWIRTZMAN
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

By Jon W. Davidson ps
Jon W. Davidson

Attorneys for Plaintiff Derek R. Henkle

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Federal Rules of Civil Procedure, and Rule 38-1, Local Rules, United States District Court, District of Nevada, Plaintiffs demand trial by jury for all of the issues pled herein so triable.

Dated: January 28, 2000

Respectfully submitted,

JON W. DAVIDSON
DONI GEWIRTZMAN
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

By Jon W. Davidson ps
Jon W. Davidson

Attorneys for Plaintiff Derek R. Henkle