

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

L.W. as parent and guardian, on behalf of her infant  
daughter K.M.,

**COMPLAINT WITH  
JURY DEMAND**

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF EDUCATION, CARMEN FARIÑA,  
as Chancellor of THE NEW YORK CITY DEPARTMENT  
OF EDUCATION,

Defendants.

-----X

Plaintiff L.W. initiates this suit on behalf of her minor daughter K.M., by her attorneys  
C.A. Goldberg PLLC, against Defendants the City of New York, the New York City Department  
of Education, and Carmen Farina, Chancellor of the New York City Department of Education as  
follows:

**PRELIMINARY STATEMENT**

1. The New York City Department of Education (“Defendant DOE”) punishes victims of sexual assault.
2. Defendant DOE has a pattern and practice of exacting particular punishment on girls of color who report experiencing an incident of sexual violence.
3. During the time in question, K.M., was a black Hispanic fifteen-year old sophomore at Teachers Preparatory School in Brooklyn, New York with well-documented developmental disabilities. With an IQ of 71, K.M. is painfully shy and rarely socializes outside her family. At school, she had an unblemished disciplinary record until February 2016.

4. On February 5, 2016, approximately seven students surrounded K.M. and led her into a school stairwell where she was forced to perform oral sex on two boys. K.M. was traumatized and scared, but knew enough to report the horrific incident to her guidance counselor. After she did so, school administrators did not offer K.M. care. They did not offer K.M. support. They did not arrange for referrals to medical or social services for K.M. That's not to imply that school administrators flat-out ignored this student's gang-rape. School administrators *did* take action: they suspended K.M.

5. This wasn't just any suspension. It was a "superintendent's suspension," with a maximum punishment up to one year of suspension. Accordingly, the discipline was meted out after obtaining approval from the district's highest level of bureaucracy.

6. Less than 24 hours after K.M. reported the assault, a school administrator inexplicably decided the sexual assault had been consensual and therefore disciplined K.M. with a suspension for having consensual sexual relations on school grounds. Logic defies how administrators could arrive at the conclusion they did – K.M. was grossly outnumbered by the perpetrators, was unable to consent given her age and her developmental disabilities, had no history of dishonesty or engaging in sexual acts on campus, nor prior relationships with any of these individuals (not that any of those factors would justify administrators' appalling response).

7. Rather than investigate the matter and provide compassion and follow-up care to K.M. as required by federal and civil rights – and basic humanity – school officials inexplicably and harshly punished her. Later the assistant principal would admit she did not investigate the matter and instead was relying on an investigation, if any, to happen only after K.M. challenged the suspension.

8. K.M. suffered dearly from the pain, terror, and humiliation of the gang-rape. Her suffering was exponentially worsened when she was further victimized by an institution charged with her care and safety.

9. Defendant DOE continued to proactively fight for K.M.'s suspension to remain in place even after the New York Police Department had arrested one of K.M.'s assailants and the Kings County District Attorney had initiated a prosecution against him.

10. Defendant DOE does not care about sexual assaults. It fails to enforce its relevant regulations about sexual violence and has never promulgated regulations that comply with federal mandates. The level of sexual violence in New York City public schools is astonishing. The 2014-15 school year (the last reported statistics prior to K.M.'s assault), showed that forcible sex offenses increased by 90% from the prior year.<sup>1</sup>

11. Defendant DOE is the largest public school district in the country with 1.1 million students. The borough of Brooklyn has the highest number of public school students (approximately 340,000) in New York City. It is home to the most violent school district: District 23, which averages 36 violent and 33 disruptive incidents per 1000 students. It also has the highest percentage of Black and Hispanic students in the city (96.9%).<sup>2</sup>

12. Defendant DOE's culture of tolerating sexual violence, especially against girls of color, is enshrined in its failure to not only supervise the school areas where sexual violence is

---

<sup>1</sup> See, Jensen Declaration at para. 4, attached to Amended Complaint in matter of *John Doe et. al. v. New York City Department of Education*, 16-CV-684 (Eastern District of New York) citing N.Y. State Educ. Dep't, *NYC Violent and Disruptive Incidents 2014-2015*, available at [http://www.p12.nysed.gov/irs/school\\_safety/2015/DATA/VADIR-INCIDENTS-NYC-2015.xls](http://www.p12.nysed.gov/irs/school_safety/2015/DATA/VADIR-INCIDENTS-NYC-2015.xls)

<sup>2</sup> Id. at paras. 12-15.

predictable, but also in its failure to prioritize its handling of sexual assaults when they are reported.

13. That Defendant DOE even has a Title IX Coordinator as federally mandated, but this is the worst kind of tokenism. In reality, the office is asleep at the wheel; if it is even at the wheel.

14. K.M.'s is one of three Title IX complaints made by this office to the United States Department of Education Office for Civil Rights against the New York City Department of Education. Against all odds, all three are under federal investigation. In each of the three cases the complainant, like K.M., is a low-income girl of color who reported a peer-to-peer (or peers-to-peer, in K.M.'s case) sexual assault at a Brooklyn public school and who then experienced extreme retaliation by school officials.

15. This, despite the fact that a 2015 Dear Colleague Letter issued by the United States Department of Education recommends the designation of at least one Title IX coordinator for each building, school, or campus to achieve the best outcome for safety.

16. While Defendant DOE may claim it meets Title IX's requirement by having one Title IX coordinator per district, these policies contemplate districts vastly smaller than Defendant DOE's.

17. According to the United States Department of Education, National Center for Education Statistics ("NCES"), 95.7% of public school districts have 19 or fewer schools.<sup>3</sup> Defendant DOE has "over 1,800 schools."<sup>4</sup>

---

<sup>3</sup> <https://nces.ed.gov/pubs2013/2013311.pdf> (last visited October 30, 2017)

<sup>4</sup> <http://schools.nyc.gov/AboutUs/default.htm> (last visited October 30, 2017)

18. According to NCES, 94.8% of school districts have fewer than 10,000 students.<sup>5</sup>

Defendant DOE has 1.1 million.<sup>6</sup>

19. K.M. now files this complaint to seek damages for Defendants' discrimination and retaliation on the basis of her sex, race, and disabilities in violation of (1) Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88; (2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d; (3) Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, as implemented by 28 CFR Part 35; (4) Section 504 of the Rehabilitation Act of 1973; and (5) the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.

20. K.M. further files this complaint to seek compensatory and/or punitive damages on state tort claims including negligence, gross negligence, and the negligent infliction of emotional distress.

### **JURISDICTION AND VENUE**

21. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(3), and 42 U.S.C. §§ 1983 & 1988.

22. This Court has supplemental jurisdiction over this action under 28 U.S.C. § 1367, because the claims that arise under the laws of New York are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

---

<sup>5</sup> <https://nces.ed.gov/pubs2013/2013311.pdf> (last visited October 30, 2017)

<sup>6</sup> <http://schools.nyc.gov/AboutUs/default.htm> (last visited October 30, 2017)

23. Venue is proper pursuant to 28 U.S.C. §1396(b) because Defendant The New York City Department of Education (“DOE”) is located in this district and the plaintiff currently resides in New York County.

**NOTICE OF CLAIM**

24. On April 11, 2016, a Notice of Claim was presented to defendants CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF EDUCATION by L.W. on behalf of K.M.

25. L.W. and K.M. have complied with all conditions precedent for filing suit, including but not limited to being examined under oath pursuant to Section 50-h of the General Municipal Law.

26. More than 30 days have elapsed since the Notice of Claim was presented, and plaintiff’s claim has not been settled or adjusted.

**PARTIES**

27. Plaintiff L.W. is the natural parent and sole legal guardian of K.M., a minor. L.M. and K.M. reside in New York County and State of New York.

28. At all times relevant to this action K.M. was a student enrolled in Teachers Preparatory School (“Teachers Prep”), P.S. 23K697, a public school located at 226 Bristol Street Brooklyn, New York, 11212.

29. At all times relevant to this proceeding, Teachers Prep was a public school under the jurisdiction and control of defendants CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF EDUCATION.

30. Defendant CITY OF NEW YORK is, and was at all times relevant to this action, a municipal corporation existing under and by virtue of the laws of the State of New York.

31. Defendant NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”), is and was at all times relevant to this action, an agency of Defendant CITY OF NEW YORK, with jurisdiction and control over the public schools therein.

32. Defendant DOE is organized and exists pursuant to, the laws of the State of New York and is responsible for the administration of educational services for all students enrolled in public schools in the City of New York. According to its own published statistics, Defendant DOE is the largest public school district in the country serving 1.1 million students in over 1,800 schools.<sup>7</sup> It is comprised of 32 districts, plus a Special Education District and Alternative High Schools.<sup>8</sup> Almost 135,000 people work full-time in DOE’s system.<sup>9</sup>

33. Defendant DOE is a public entity and recipient of Federal financial assistance and, therefore, is subject to Title IX of the Education Amendments of 1972; Title VI of the Civil Rights Act of 1964; Title II of the Americans with Disabilities Act of 1990; and, Section 504 of the Rehabilitation Act of 1973.

34. Defendant CARMEN FARIÑA (“Chancellor”), is the Chancellor of the New York City Department of Education. The Chancellor is the highest ranking official in the New York City Department of Education.

---

<sup>7</sup> *Id.* (last visited October 30, 2017)

<sup>8</sup> 2016-2017 Attendance and Enrollment (Unaudited by District) as of December 31, 2016, <http://schools.nyc.gov/NR/rdonlyres/B7CC89D2-F7B0-4DFA-92A0-3AA5BBFB597D/207586/201617AttendanceEnrollmentUnauditedbyDistrictAsofD.pdf> (last visited October 30, 2017)

<sup>9</sup> <http://schools.nyc.gov/Employees/default.htm> (last visited October 30, 2017)

## **FACTUAL BACKGROUND**

### **NYC Department of Education Sexual Discrimination Procedures**

35. According to Defendant DOE's website, the Diversity Management Unit oversees Defendant DOE's Title IX compliance.<sup>10</sup>

36. Upon information and belief, Keaton Wong is currently Defendant DOE's single Title IX Coordinator. However, during the events set forth herein, the Title IX Coordinator was Jennifer Becker, Esq.

37. Defendant DOE's website directs those wishing to file a Title IX complaint to Chancellor's Regulation A-830 ("Regulation A-830").<sup>11</sup> Regulation A-830, issued on August 21, 2013, is the DOE's non-discrimination policy and it "outlines the [internal complaint] procedures for filing complaints of discrimination, including complaints of sex discrimination and sexual harassment." However, Regulation A-830 provides DOE's anti-discrimination policy and complaint procedures by and of employees -- not students.

38. The student-to-student sexual harassment policy, Chancellor's Regulation A-831 ("Regulation A-831), issued on October 12, 2011, is not contained on Defendant DOE's Title IX website.

39. Regulation A-831's policy includes "engaging in sexually violent or coercive behavior (assault, rape)" as among the forms sexually harassing behavior may take.

40. Regulation A-831 provides for each principal to designate a staff member to whom reports of student-to-student sexual harassment can be made. It states that complaints of sexual harassment may "be made verbally or in writing."

---

<sup>10</sup> <http://schools.nyc.gov/Offices/GeneralCounsel/Investigative/OEO/default.htm> (last visited on October 30, 2017)

<sup>11</sup> <http://schools.nyc.gov/Offices/GeneralCounsel/Investigative/OEO/KeyDocuments/Title+IX+Summary.htm> (last visited on October 30, 2017)



41. Per Regulation A-831, when a report is made to a staff member other than the designated staff member, the designated staff member must be notified.

42. Regulation A-831 requires immediate notification of parents and if the designee believes the alleged conduct constitutes criminal activity, the police must be contacted and the designee “may consult with the Office of Legal Services and/or the Field Support Center Deputy Director for Student Services.”

43. Regulation A-831 assumes the school will do the investigation, but suggests the designee consult “the Office of Equal Opportunity” if the allegation is “serious.”

44. Regulation A-831 requires that complaints of sexual harassment be “investigated promptly and entered into [DOE’s Online Occurrence Reporting Safety System] within 24 hours.”

45. Regulation A-831 details the procedure to be followed during the investigation and requires the designee to issue a written report within ten days of receipt of the complaint. This report must be sent to the Field Support Center Deputy Director for Student Services and the determination must be conveyed to the parents as well. A-831 recommends that complaining students be referred to “the school social worker, psychologist or other appropriate school staff, or referred to community-based agencies for counseling, support, and/or education.”

46. Nowhere in Regulation A-831 is there a single mention of a “Title IX Coordinator” or any employee having such a role.

#### The Assault

47. In February 2016 K.M. was 15 years old and a tenth-grade student at Teachers Prep, a school serving students in grades six through twelve. During all relevant times, K.M. and her

younger brother resided with their mother, L.W. L.W. essentially raised K.M. and her brother as a single parent.

48. Due to various developmental delays, K.M. received an Individualized Education Plan (“IEP”) during her enrollment at Teacher’s Prep. K.M.’s IEP classified her as having “speech or language impairment” and K.M. regularly attended occupational and speech therapy while enrolled at Teachers Prep. K.M.’s IEP required that techniques of “repetition”, “decoding strategies”, and “clear directions” be used for her to learn and understand.

49. In addition to her speech and language impairments, K.M. has a measured Intelligence Quotient (IQ) of 71, which falls into the third percentile of measured IQs. Individuals with IQs that fall within the range of 70-79 are considered to be borderline impaired or delayed.

50. Prior to the incidents described more fully herein, K.M. had an unblemished disciplinary record and, as reflected in IEP reports, was highly deferential to her teachers.

51. K.M. was known to be a quiet, obedient, and sweet person. She did not socialize much at school and did not have very many friends. She did not date, was not sexual, and hadn’t so much as kissed anyone before the incident in question.

52. On February 5<sup>th</sup>, 2016 at approximately 11:30 AM, K.M. walked through the first floor hallway of Teachers Prep. She was on her way to seek assistance from a teacher on an essay she was having trouble with.

53. K.M. was confronted by a group of students some of whom she recognized by sight and others whom she recognized by first name because they were in her class. But she was not friends with or otherwise acquaintances with any of them. Some of the students later confirmed to be involved were: Kevin Johnson (tenth grade), O.M. (tenth grade), J.M.C (tenth grade), J.P.

(tenth grade), E.R. (tenth grade), A.P. (ninth grade), and K.T. (seventh grade).<sup>12</sup> Upon information and belief, other unidentified students may have been involved in and/or abetted in some capacity the events that unfolded.

54. The group of students surrounded K.M. at which point Johnson tried to coax her into leaving the school grounds. K.M. initially refused and then, because of her growing fear as well as her difficulties in communicating, she became quiet and nonresponsive. At some point Johnson grabbed K.M. by the arm and pulled her into a nearby stairwell.

55. The stairwell into which Johnson led K.M. was located between the first and second floor of the school. This stairwell was largely known not to be monitored by any school security guards and/or cameras. In the stairwell, a number of the students surrounded K.M. Others positioned themselves as “lookouts”. The stairwell was otherwise empty.

56. Johnson used his hands to push K.M. to her knees. He then lowered his pants and underwear, and exposed his penis. Johnson grabbed K.M. by the back of her head, told her to “open her mouth” and aggressively forced his penis into her mouth. K.M. felt as if she were choking and thought she would vomit. She was terrified.

57. At some point male student O.M. stated that he “want[ed] some too” and Johnson stopped. O.M. then lowered his pants and underwear, grabbed K.M. by the hair and pulled her mouth towards his penis. He brutally forced his penis into her mouth.

58. K.M. was terrified, frozen, and fearful that if she tried to run, she would be beaten. Other students observed what was taking place, as if it were entertainment, without interrupting or coming to K.M.’s aid. Some students continued to act as lookouts so that the perpetrators could continue assaulting K.M.

---

<sup>12</sup> With the exception of Kevin Johnson, these individuals will be referred to by their initials as they are still believed to be minors. Federal Civil Procedure Rule 5.2(a).

59. The assault ended abruptly when O.M. pulled away. He and Johnson both told K.M. that she should leave the school with them to go to Johnson's home. The boys stalked her menacingly and invaded her personal space as they attempted to lure her outside. K.M., fearful that she would be further sexually assaulted if she went somewhere else with them, finally managed to escape them by slipping into a girls' bathroom.

60. In the bathroom, K.M. encountered another female student, Y.S., and recounted what had occurred. Y.S., a ninth grader, replied that Kevin Johnson had previously done the same thing to her.

61. K.M. was deeply traumatized by this violent sexual assault and experienced overwhelming feelings of fear and shame. Despite having a close relationship with her mother, L.W., K.M. did not tell her about what had occurred as she was deeply ashamed, embarrassed and fearful of retaliation by the perpetrators.

62. For the next few days, while at school, Johnson continued to harass K.M. by following her around constantly and calling out her name. K.M. would also frequently see the other students involved in the assault and who had abetted the perpetrators.

63. On February 11, 2016, five days after the sexual assault, K.M. was in the school lunchroom when she was confronted by Johnson who intimated that he planned to commence another (forced) sexual encounter with her.

64. K.M., fearful of Johnson, exhausted by his persistent stalking, and terrified of his threats of another assault, made her way to the school guidance counselor's office. K.M. paced back and forth in front of the guidance counselor's office until he came out.

The School's Response

65. On February 11<sup>th</sup>, 2016 K.M. reported the February 5<sup>th</sup> assault to Mr. Wayne Glaude, the school's guidance counselor. In notes dated February 12<sup>th</sup>, 2016 Mr. Glaude recounted that "student stated two other student's [sic] approached her in the stairway and [she] was told to perform sex acts on them authorities were called immediately. Investigation is being done."

66. Glaude reported the incident to Assistant Principal Felina Backer ("Ms. Backer"). Backer's February 23<sup>rd</sup>, 2016 notes in a "Student Intervention Log Report" state that on February 11<sup>th</sup>, "Ms Jackson and Mr Glaude informed me that [K.M.] reported an incident that took place in a staircase involving two other boys. I directed him to call her parents. I questioned [K.M.] in the presence of Mr Jamison about the incident. Since PD was present at the school for a school safety meeting, I informed them of the incident."<sup>13</sup>

67. Meanwhile, K.M.'s mother, L.W. was waiting outside to pick K.M. up from school as was their daily routine. L.W. had in fact never been called.

68. L.W. had a few days prior verified that the school had up to date contact information for her – yet *she received no missed calls or text messages on her cell phone* that would have been indicia of efforts by the school to contact her.

69. While L.W. waited for her daughter outside of the school, K.M. was being questioned by a crowd of school administrators and law enforcement officers, without any parent or legal guardian present. She was forced to make a written statement at that time.

70. During the interview, K.M. repeatedly stated that the sexual encounter had been forced and was nonconsensual.

---

<sup>13</sup> To date, plaintiff's counsel has not been able to identify the "Ms Jackson" and "Mr Jamison" referenced in this note.

71. K.M.'s written statement made on February 11, 2016 states that, Johnson, "took his penis and grab [sic] my face and made me suck it. Then [O.M.] came and did the same thing that Kevin did."

72. At some point, L.W. finally made her way into the school and demanded to know where her daughter was. She was eventually taken to the guidance counselor's office where she discovered K.M. surrounded by police officers and school officials, including Principal Carmen Simon and Assistant Principal Backer. The school officials would not answer her when she asked why K.M. was there. Instead it was K.M. who explained to her mother what had occurred.

73. Upon learning of the sexual assault, L.W. accompanied her daughter to an office of the New York City Police Department's Special Victims Unit in Brooklyn. There K.M. told police officers the same version of events as she had described earlier in the day.

74. Upon information and belief, charges would eventually be brought against Kevin Johnson. Johnson was charged with sexual abuse in the third degree (NY Penal Law §130.55); sexual misconduct (NY Penal Law §130.20); forcible touching; endangering the welfare of a child; and harassment in the second degree.

75. Then, on February 12<sup>th</sup>, 2016, Assistant Principal Backer unilaterally and without any reasonable basis, revised K.M.'s story.

76. On that date, Ms Backer paged K.M. and instructed her to meet in a conference room on the school's first floor. When K.M. entered the room, she saw that J.M.C., one of the students who had stood as look-out during the assault on K.M., was present and speaking to Ms. Backer. K.M. did not understand most of the conversation between J.M.C. and Ms. Backer as they were speaking to each other in Haitian Creole, a language foreign to K.M. But at one point K.M. did hear J.M.C. say in English that K.M. had been "following boys around." K.M. was confused by

this statement as it was completely untrue. Ms. Backer did not give K.M. an opportunity to respond the statement and did not otherwise question K.M. about this conversation between Backer and J.M.C.

77. Also present in the conference room was a school security guard known to K.M. as “Ms. Miller.” At one point, while Backer was interrogating K.M., the security guard suggested that K.M. had “went for it”, insinuating that the sexual acts had been consensual. K.M. never uttered those words. Yet an additional Occurrence Report completed almost two weeks after the fact by Backer on February 24<sup>th</sup> read that “on Friday, 2/12/16, [K.M.] stated that she willingly, using her own words, “went for it” when they pulled their pants down.”

78. Upon information and belief, despite the school’s awareness of K.M.’s serious communication disabilities, no accommodations were made for K.M.’s speech teachers or mother to be in the room to assist K.M. in communicating about an issue as sensitive as sexual assault.

79. The school had extensive documentation of K.M.’s history in struggling to understand complex words and her limitations in expressing difficult or complicated concepts. The school was also well aware of her documented history of deferring to authority figures.

80. For reasons pernicious at worst or grossly negligent at best, Assistant Principal Backer exploited K.M.’s disabilities as well as K.M.’s submissive orientation towards authority figures to put words into K.M.’s mouth so as to convey the impression that K.M. had been a willing participant in her own sexual assault.

81. Notably, in an apparent attempt at revisionism, Backer appears to have edited her February 11, 2016 Occurrence Report. That report states “Occurrence Data Entered at: 2/11/2016 at 4:46pm” and memorializes Backer’s impression of how events were described to

her by K.M. (e.g. “grabbed her arm” “grabbed her face” “made her suck his penis”) However, even though the data was purportedly entered on the 11th, the report ends with a sentence about Ms. Backer’s new belief “on 2/12/16” that it “was a consensual not forced.” DOE regulations require that school administrators complete written reports of any statements within 24 hours. (Chancellor’s Regulation 831-A). However, here, the reports that do exist appear to be doctored, are not contemporaneous, and/or are dishonest.

82. Backer’s entries into a “Student Intervention Log Report (RSIV)” are also suspect as the entries are all dated February 23<sup>rd</sup> 2016 though they describe occurrences from February 11<sup>th</sup>, February 12<sup>th</sup>, and February 22<sup>nd</sup>. In one of her February 23<sup>rd</sup> entries, Backer notes that on February 12<sup>th</sup> “[she]called [L.W.] to confirm the outcome of the Special Victims Unit investigation, as per PD, and informed her that because of her daughter recanting her story, she is no longer a victim but a suspect; therefore, she will get suspended.” In these February 23<sup>rd</sup> entries, and unlike in the Occurrence Report, Backer makes no mention of the February 12<sup>th</sup> conversation she had with K.M. or of K.M.’s alleged “admission”. Another February 23<sup>rd</sup> entry by Backer refers to a meeting Backer had with L.W. and K.M.’s step-father and Backer’s notes read that “Mother and Step Father of [K.M.] came in the building to again retract the story. [K.M.] changed the story and stated that the act was not consensual.”

83. K.M. never changed her story. To numerous school officials and police officers, she repeatedly stated that she had been forced and that the sexual assault had been nonconsensual. Backer fabricated K.M.’s “admission” by putting words in the mouth of a traumatized, language and speech impaired, terrified, and completely confused young girl.

84. Despite ample testimony, contextual information, and actual evidence to the contrary, Ms. Backer continued to zealously insist that this developmentally disabled child with no history



of breaking rules consented to give oral sex to two boys during a confrontation with at least seven male students in a school stairwell. When K.M. denied it was consensual, Backer bizarrely deemed the denial a “recanting.” Refusing to modify her own highly botched assessment of events, Backer transferred the blame to K.M., saying K.M. “recanted” and “recanted her story again.”

85. Further, Backer, the only school official who seemed to be undertaking any kind of “investigation” did not indicate that she had made any attempt to interview any of the other student participants and/or witnesses, despite K.M. having identified at least six or seven of them. Upon information and belief, Backer and other school officials failed to procure a written statement from any involved student other than Kevin Johnson. There is no evidence that any attempt was made to procure a statement from O.M., the other student accused of sexual assault. This limited and deficient “investigation” failed to comply with Chancellor’s Regulation A-831(III)(B)) which requires a school designee investigating a sexual harassment claim to interview all accused students and any witnesses and to obtain their written statements.

86. There is also no indication that Backer or any other school official at Teachers Prep, consulted the Office of Equal Opportunity due to the serious nature of the allegations brought forth by K.M., in violation of Chancellor’s Regulation A-831.

87. What the evidence does show is that within a mere 24 hours of K.M. reporting the horrific sexual assault perpetrated against her, she found herself attacked and punished by school administrators who seemed harried and hell-bent on finding her, the victim, at fault.

88. At the conclusion of the February 12<sup>th</sup> meeting, the day after K.M. had reported the assault, Assistant Principal Backer informed K.M. that she was going to be suspended from school for engaging in a sexual act. Backer told K.M. that she’d be suspended for a period of at

least 30 days and for possibly up to one year. Backer called K.M.'s mother, L.W., and told her that K.M. was going to be suspended because she had engaged in a consensual sexual act at school. She informed L.W. that she would be receiving a suspension packet from the school. Incredulous at the turn of events, L.W. told Backer that she should not have questioned K.M. without a guardian present. Backer told L.W. that she could because she was a "school official".

89. L.W. did not have an opportunity to speak further with Backer as February 12<sup>th</sup> was a Friday and Teachers Prep was closed during the following week for mid-winter break. Having received no official communication from the school regarding K.M.'s alleged suspension, L.W. sent K.M. back to school on February 22, 2017. That day, L.W. was contacted by Backer in the early afternoon and was told to come pick K.M. up from school because K.M. had been suspended. Backer also told L.W. that she could pick up a related Suspension Notice and Packet.

90. At no point did the school refer K.M. to "the school social worker, psychologist or other appropriate school staff, or ... to community-based agencies for counseling, support, and/or education." (Chancellor's Regulation 831-A).

91. At no point was K.M. ever notified of her rights under Title IX. She was never contacted by a Title IX Coordinator, any investigator, or higher administrator.

#### The Suspension Hearing

92. L.W. came to Teachers Prep on February 22, 2016, to collect the Suspension Notice, as instructed by Ms Backer. L.W. had not been provided with the Suspension Notice prior to that date, even though the Notice was dated February 17<sup>th</sup>. Contrary to DOE regulations, Teachers Prep failed to give L.W. immediate written notice of the suspension. Chancellor Regulation A-443 (III)(B)(3) requires that such notice shall be provided by personal delivery, express mail

delivery, mailgram or any other equivalent form of communication reasonably calculated to assure receipt of such notice within 24 hours.

93. The Suspension Notice stated that K.M. had “engaged in consensual sexual conduct on school premises in the staircase with Kevin Johnson (student)” and “engaged in consensual sexual conduct on school premises in the staircase with [O.M.] (student).” According to the Notice, “this behavior constitute[d] a danger to health, safety, welfare and morals of your child and others at the school.” The suspension went into effect Monday, February 22, 2016 and the notice stated that a suspension hearing would be held on February 26, 2016.

94. During her visit to the school on February 22<sup>nd</sup>, L.W. met with Ms. Backer and informed her that K.M. had again told L.W. that the sexual assault had not been consensual. At this meeting, L.W. told Backer that K.M. didn’t understand and was confused by the questions and insinuations (compounded by the fact K.M. does not speak Creole) made during the February 12<sup>th</sup> interrogation. L.W. alluded to K.M.’s speech and language impairments in expressing her doubts about K.M.’s alleged “confession”.

95. Despite L.W.’s reiteration of K.M.’s innocence, K.M. was suspended from Teachers Prep for the period of February 22 to February 29, 2016.

96. During this period K.M. was forced to attend “suspension school” at an alternate placement site, specifically ALC-W.E. B Dubois (88K981). At this Alternate Learning Center, K.M. was expected to sit in a punitive study hall for an entire day.

97. K.M., who prior to her suspension had a perfect attendance record at Teachers Prep, had always taken full advantage of her IEP services. The disruption caused by the suspension was extreme and the consequences outstripped what would have been felt by a non-disabled person. K.M. could not tolerate serving time at the alternate suspension site because her IEP resources,

so crucial to her success, were denied to her. Among other IEP mandated resources, K.M. did not receive the twice weekly occupational therapy and speech-language classes that she required.

98. On February 26, 2017, the date of the suspension hearing, L.W. and K.M. arrived at the Brooklyn Office of Student Suspensions without representation and were asked if they would plead no contest. When L.W. stated that they wouldn't, they were told that the hearing would be postponed for another date.

99. Defendant DOE caused numerous needless delays during the suspension hearing process, prolonging K.M.'s suffering.

100. K.M. was deeply upset and anxious by the suspension and feared that it would last an entire year, as threatened.

101. When K.M. was instructed to return to Teacher's Prep, she suffered new punishments.

102. For instance, she was listed as absent from Teachers Prep between March 2 and March 4, 2016, despite being present at school those full days. These recorded absences negatively impacted her grades.

103. On March 2, 2016, Assistant Principal Backer approached K.M. in the school lunchroom and said to her, "you are in this situation because you changed your story." K.M. understood this comment to be in reference to her suspension. K.M. was confused and dismayed by Backer's statement. Ms. Backer's baseless accusations and finger pointing made K.M. feel hopeless, alone, and further victimized.

104. The suspension hearing process was a disaster. To represent K.M. at the suspension hearing, L.W. had retained pro bono advocacy from New York University School of Law's Suspension Representation Project ("SRP"), a respected organization that was listed as a resource on Defendant DOE's suspension packet.

105. Between February 17<sup>th</sup>, 2016 and March 25<sup>th</sup> 2016 the Suspension hearing was delayed and adjourned by Defendant DOE no fewer than five times. On several occasions, K.M.'s advocates were given less than twelve hours' notice of adjournments.

106. Kyndell A. Reid, Supervising Attorney at the Suspension Office directly contacted L.W. during the process to implore her to fire the advocates and to plead "no contest" to the charges. Ms. Reid informed L.W. this would "all go away" if she pled out. L.W. refused. Ms. Reid did not receive authorization from the SRP advocates to speak directly with their client.

107. Despite the advocates informing Ms. Reid that the matter should be an investigation into a sexual assault – not a suspension of the victim -- Ms. Reid forged ahead in preparing the prosecution.

108. Ms. Reid wrongly interfered with the SRP advocates' representation of K.M. in preparation for the hearing. In addition to giving unreasonably late notice of adjournments, Ms. Reid provided misleading information to the SRP advocates, at times stating that she had subpoenaed somebody when she had not actually done so, and claiming to have confirmed rescheduling dates that had never been confirmed.

109. On February 29<sup>th</sup> 2016, one of the SRP advocates spoke with Assistant Principal Backer. During that conversation Backer admitted that the impetus for accusing K.W. of engaging in consensual sexual activity was that Backer had "heard" that the NYPD had declined to make an arrest and had "closed the case" (a fact later belied by Johnson's arrest). Backer further admitted that K.W. never used the specific words, "went for it" in reference to willingly participating in the sexual assault.

110. Backer told the SRP advocate that she did not truly understand what had happened, but claimed the purpose of the hearing was to *make* a determination. Backer refused to withdraw the

charges against K.W. despite her admission that she viewed the suspension hearing as a fact-finding mission – and not the result of what should have been an actual investigation conducted by the school.

111. On March 24, 2016, newly retained counsel for K.M., C. A. Goldberg, PLLC, put the Defendant DOE on notice that counsel was filing an emergency Order to Show Cause in Supreme Court Kings County to restrain Defendant DOE from continuing to pursue disciplinary measures against K.M.

112. On March 25, 2016, Defendant DOE notified counsel for K.M. that the suspension had been discontinued.

113. On April 5, 2016, K.M.'s mother was informed that a safety transfer was underway, despite this process never having been consented to by K.M., her mother, or her legal counsel. L.W. ultimately decided not to transfer K.M. at that time because K.M. was close to completing the school year and a teacher at Teachers Prep had told L.W. that transferring K.M. right then would interrupt K.M.'s preparation for the Regents Exams and would likely cause her to fail them. L.W. continues to experience guilt and remorse about keeping K.M. at Teachers Prep through the remainder of the school year but felt that she had no other choice.

114. By letter dated April 4, 2016, counsel for K.M. notified Principal Carmen Simon that they would be seeking all relevant information with regards to the sexual assault perpetrated against K.M. on February 5<sup>th</sup>, 2016. The letter instructed Principal Simon to preserve any and all items, documents, records (electronic or otherwise) related to the sexual assault and all individuals involved. Counsel demanded that the school turn over disciplinary records for the perpetrators, including all abettors and/or witnesses, and all security camera footage of the areas

where and close to where the assault took place. Upon information and belief, the school never responded to this request.

115. By letter to Defendant DOE dated April 5, 2016, counsel for K.M. requested numerous records related to the assault, the individuals involved, and the subsequent investigation and suspension hearing pursuant to the Freedom of Information Law (“FOIL”). This letter specifically referenced and put DOE on notice of the sexual assault that occurred on February 5th. As of this date, Defendant DOE has not produced records pursuant to the FOIL request. Approximately once a month, counsel receives a notification from Defendant DOE that the FOIL request is delayed. Without any explanation, it has unreasonably delayed production of records in violation of §89(3)(a) of the Freedom of Information Law. Upon information and belief, DOE has engaged in these delay tactics to dissuade plaintiff from pursuing her claims.

116. On June 1, 2016, counsel for K.M. filed a Discrimination Complaint with the United States Department of Education Office of Civil Rights (“OCR”). By letter dated November 23, 2016, OCR informed counsel that an investigation on K.M.’s discrimination complaint had been opened. Upon information and belief, that investigation is ongoing and a determination is pending.

117. Neither L.W. or K.M. were ever referred to a Title IX Coordinator. Nor were they informed of K.M.’s rights under Title IX. Both omissions were in violation of 34 CFR § 106.8(a).

118. K.M.’s experience mirrors those of many other young black girls’ in the NYC public school system. Defendant DOE systematically fails to comply with Title IX. It fails to train its employees on how to properly investigate and respond to claims of sexual harassment. It fails to inform victims of their rights; the Title IX Coordinator never gets involved, it does not provide

social service resources to help them recover from sexual assault, and it does not inform victims that they cannot be retaliated against.

119. Upon information and belief, NYC DOE has but one Title IX coordinator for 1.1 million students and additional staff. This is an outrageous shirking of its duties under Title IX given that the 2015 Dear Colleague letter recommends the designation a Title IX coordinator for *each building, school, or campus* provides the best outcome for safety (emphasis added, see OCR 2015 Dear Colleague Letter, page 3).

#### K.M.'s Injuries

120. K.M., a fifteen-year old girl with diagnosed disabilities suffered a tortuous and traumatic event no person should ever have to endure. Her emotional and psychological injuries are likely permanent.

121. After the sexual assault, K.M. experienced tremendous physical, emotional, and psychological suffering. She suffered from sleeplessness, hair loss and skin irritation attributable to the stress and emotional suffering caused by the sexual assault.

122. On or around February 19<sup>th</sup>, because of the assault, K.M. had to visit a pediatric gynecologist and undergo a number of tests for sexually transmitted diseases. For a young girl with no prior sexual experience, this was a harrowing and stressful procedure.

123. K.M. saw a substantive drop in her academic performance in the months after the sexual assault. There was a notable decrease in her grades for the period following the assault. She failed most of her classes during this time and was forced to stay after school for supplemental instruction many times. Prior to the sexual assault, K.M. had very rarely if ever failed a class.



124. Her mother, L.W., observed that K.M. became withdrawn, holed up in her room, temperamental, and easily lost patience with her younger brother. She didn't sleep and seemed extremely stressed out. L.W. noted K.M. physically shaking at times.

125. K.M. started going to a therapist weekly and continues to attend therapy sessions once a week. She was found to suffer from Post-Traumatic Stress Disorder (PTSD) and continues to be treated for the disorder. K.M. receives annual psychiatric follow ups as well.

126. In addition to having endured a horrendous sexual assault, K.M.'s pain and suffering was compounded by the inexplicable and harmful actions taken by school and DOE officials in response to the assault. These officials, fully aware of K.M.'s developmental disabilities, specifically in the areas of language and speech, twisted her words, blamed her for the assault, accused her of being a willing participant in her own sexual assault despite her many statements to the contrary, falsely informed K.M.'s mother that the police had closed the case against K.M.'s perpetrators, forced K.M., without her mother or other representative present, into a confrontation with one of the perpetrators' accomplices during which the accomplice conversed with school officials in a language K.M. could not understand, accused K.M. of lying and "changing her story", suspended K.M. from school, accused her of engaging in behavior that was "a danger to [the] health, safety, welfare and morals of [K.M.] and others at the school", unreasonably delayed her suspension hearing, interfered with K.M.'s advocates' representation of K.M. in preparation for the suspension hearing, attempted to bully K.M.'s mother into pleading no contest to a suspension, abruptly dropped the suspension hearing after it had been pending for more than a month, and arbitrarily instituted a safety transfer process without K.M. or L.W.'s consent.

127. K.M.'s pain and suffering, along with her physical, emotional, and psychological deterioration were directly caused and/or exacerbated by a systematic failure of the Defendants to supervise students who pose a real and immediate danger to fellow students.

128. K.M.'s pain and suffering, along with her physical, emotional, and psychological deterioration were directly caused and/or exacerbated by a systematic failure of Defendants to protect its students from harassment, intimidation and sexual assault.

129. K.M.'s pain and suffering, along with her physical, emotional, and psychological deterioration were directly caused and/or exacerbated by a systematic failure of Defendants to protect victims by disproportionately punishing students who report incidents of violence.

130. K.M.'s pain and suffering, along with her physical, emotional, and psychological deterioration were directly caused and/or exacerbated by school officials' utter incompetence and deliberate indifference in their response to the harassment; and their creation of, and active participation in, an inept, reckless, and callous scheme whereby one of their female students was branded a consensual participant in a matter that was actively being investigated by the New York Police Department and the Kings County District Attorney precisely because the assault was nonconsensual.

131. The acts of sexual harassment perpetrated on K.M. and the actions and/or omissions taken by school officials and Defendant DOE after the acts of sexual harassment created a hostile and abusive educational environment.

132. School officials and Defendant DOE received actual notice of the sexual harassment perpetrated on K.M. and had or should have had actual knowledge of the risk of sexual harassment based on prior acts committed by at least one of the perpetrators on school grounds.

133. School officials and Defendant DOE acted with wanton and deliberate indifference to the sexual harassment suffered by K.M., thereby depriving her of access to educational opportunities and benefits.

134. Defendants and school officials under their control negligently breached their duty to protect students at Teachers Prep by failing to monitor stairwells and other areas of the school premises. Had the school provided monitoring rotations or surveillance cameras in these areas, K.M. may very well have escaped the severe assault she was subjected to.

135. Defendants and school officials under their control negligently breached their duty to protect students, including K.M., by failing to comply with Title IX and not having adequate resources dedicated to enforcing Title IX in a school district 1.1 million students strong.

136. Defendants and school officials under their control negligently breached their duty to protect students, including K.M., by budgeting for its Title IX department at the same rate as a district that is .09% of its size.

137. Defendants and school officials under their control discriminated against K.M. on the basis of her sex, race, and disabilities through their actions and/or omissions prior to and subsequent to the sexual assault.

138. Defendants and school officials under their control retaliated against K.M. for engaging in protected activities when she reported the assault, in violation of K.M.'s civil and federal rights.

139. Defendants and school officials under their control breached the duty of care they owed to K.M. This breach directly and proximately caused K.M. further physical, emotional, and psychological injury.

140. K.M. needlessly suffered a vicious sexual assault in a place where she should have been safe and secure. Then the school administrators charged with caring for K.M., her *loco parentis*, perpetrated further unconscionable harm in their response to the assault. It is these actions for which K.M. now seeks appropriate redress.

**AS A FIRST CLAIM FOR RELIEF**

(Discrimination in violation of K.M.'s rights under Title IX of the  
Educational Amendments Act of 1972)

141. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1 - 140 above.

142. Title IX 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 educational program or activity receiving Federal financial assistance." 20 U.S.C. §1681 (a).

143. Sexual harassment is deemed a form of discrimination for Title IX purposes.

144. Defendant DOE is a recipient of Federal financial assistance.

145. K.M. endured a severe sexual assault at the hands of other students on the basis of her sex and disabilities, while in school during regular school hours.

146. The sexual assault perpetrated on K.M. was so severe, pervasive, and objectively offensive that it barred her access to an educational opportunity or benefit.

147. Defendant DOE and the school officials under its control had the authority and obligation to address the severe sexual harassment and discrimination perpetrated against K.M. and to institute remedial and corrective measures so as to preserve K. M.'s access to her education.

148. Instead, Defendant DOE and school officials under its control contributed to, condoned, and/or acquiesced in creating a hostile and inaccessible educational environment by engaging in

conduct that included, but is not limited to: (1) failing to properly investigate the sexual harassment; (2) unreasonably and callously blaming K.M. for the sexual assault perpetrated against her; (3) baselessly accusing K.M. of lying and of consenting to the sexual assault; (4) refusing to accommodate K.M.'s known disabilities during the investigatory and remedial processes; (5) forcing K.M. to confront a known perpetrator without a legal guardian or other appropriate representative; (6) suspending K.M. on the basis of unsupported, false, and/or manipulated evidence; (7) unreasonably delaying a suspension hearing; (8) interfering with K.M.'s advocates' representation of K.M. in preparation for the suspension hearing; (9) attempting to coerce L.W. into pleading no contest to a suspension; and (10) arbitrarily instituting a safety transfer process without K.M. or L.W.'s consent.

149. Defendant DOE and school officials under its control, in their response to the assault, engaged in actions and/or omissions that effectively barred K.M. from equal access to an educational opportunity or benefit.

150. The acts and/or omissions described *supra* by school officials and Defendant DOE violated K.M.'s right to be free from sexual harassment and sex discrimination within her school.

151. Defendant DOE, and school officials under its control, had actual knowledge of the sexual harassment perpetrated against K.M. almost immediately following the incident of sexual harassment, and otherwise should have or had actual knowledge of the risk of sexual harassment based on prior acts committed by at least one of the perpetrators on school grounds.

152. Defendant DOE and school officials' deliberate indifference, through their actions and/or omissions following the report of the sexual assault, made K.M. liable and vulnerable to sexual harassment and subjected her to a hostile and abusive school environment.

153. Defendant DOE and school officials under its control exhibited deliberate indifference in that their response to the discrimination against K.M. was clearly unreasonable in light of the known circumstances.

154. Defendant DOE and school officials' deliberate indifference to the severe, pervasive, and objectively offensive sexual harassment suffered by K.M. violates Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-88.

155. As a result of Defendants' violation of Title IX, Plaintiff has suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS A SECOND CLAIM FOR RELIEF**

(Retaliation in violation of K.M.'s rights under Title IX of the Educational Amendments of 1972)

156. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-155 above.

157. K.M. was engaging in a protected activity, learning through her attendance at school, when she was attacked by fellow students who severely sexually assaulted her on school grounds during school hours.

158. K.M. was engaging in a protected activity when she reported the sexual assault to school officials on February 11<sup>th</sup>, 2016. L.W., K.M.'s mother, also engaged in a protected activity on February 22<sup>nd</sup> when she advocated on behalf of her daughter in response to the threat of suspension and confirmed to school officials that her daughter had been victim to a nonconsensual sexual assault.

159. K.M., through her SRP advocates, engaged in a protected activity when she challenged Teachers Prep's decision to suspend her.

160. K.M., L.W., and K.M.'s advocates were seeking corrective and remedial measures in response to sexual harassment perpetrated against K.M. This protected activity was taken in response to discrimination against K.M. on the basis of her sex.

161. Defendant DOE and school officials under its control were aware of this protected activity and took adverse action against it by wrongly and without justification turning K.M. into a perpetrator rather than the victim that she was, suspending her from school, unreasonably delaying and interfering with the preparation of her representation for the suspension hearing; and arbitrarily triggering a safety transfer without her or her mother's consent.

162. Defendant DOE's actions and/or omissions were sufficiently adverse that they would have dissuaded an individual of ordinary firmness from engaging in a protected activity.

163. Defendant DOE and school officials under its control retaliated against K.M. in violation of her rights under Title IX of the Educational Amendments of 1972.

164. As a result of Defendants' retaliation in violation of Title IX, K.M. suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS A THIRD CLAIM FOR RELIEF**

(Discrimination in violation of K.M. rights under Title II of the Americans  
with Disabilities Act of 1990)

165. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-164 above.

166. Title II of the ADA provides that "[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity."

167. K.M. is a qualified individual with a disability in that she suffers from various developmental disabilities, including language and speech impairments. K.M.'s disabilities place significant limitations on her ability to access her education.

168. Defendant DOE is a public entity as defined by Title II of the Americans with Disabilities Act ("ADA").

169. Title II of the ADA provides that persons with disabilities shall be afforded meaningful access to the programs and activities of public entities.

170. K.M. endured a severe sexual assault at the hands of other students on the basis of her sex and disabilities, while in school during regular school hours.

171. Upon information and belief, it was common knowledge that K.M. was an IEP student and the perpetrators of the sexual assault targeted her on that basis, as well as on the basis of her sex.

172. Furthermore, school officials, namely Assistant Principal Backer, exploited K.M.'s known speech and language disabilities during their "investigation" of the assault when they coerced K.M. into allegedly "admitting" that she was a willing participant in the assault.

173. K.M.'s disabilities were exploited to justify the unconscionable decision to suspend her from school.

174. The sexual assault perpetrated on K.M. was so severe, pervasive, and objectively offensive that it barred her access to an educational opportunity or benefit.

175. Defendant DOE and the school officials under its control had the authority and obligation to address the severe sexual harassment and discrimination perpetrated against K.M. and to institute remedial and corrective measures so as to preserve K.M.'s access to her education.



176. Rather than protect K.M., Defendant DOE's and school officials' unreasonable acts and/or omissions in their response to the sexual assault barred K.M. from equal access to an educational opportunity or benefit.

177. The acts and/or omissions described *supra* by school officials and Defendant DOE violated K.M.'s right to be free from sexual harassment and sex discrimination within her school.

178. With actual knowledge of the sexual harassment, Defendant DOE and its agents evinced deliberate indifference in their response to the assault subjecting K.M. to an abusive and inaccessible educational environment.

179. The severe sexual harassment suffered by K.M. and the school officials' deliberate indifference to the sexual harassment further exacerbated her learning disabilities and impeded K.M.'s ability to access her education.

180. Defendant DOE and school officials under its control exhibited deliberate indifference in that their response to the discrimination against K.M. was clearly unreasonable in light of the known circumstances.

181. Defendant DOE discriminated against K.M. on the basis of her disability in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. §12132, and is therefore liable for the injuries and damages described herein.

182. As a result of Defendants' violation of Title II of the Americans with Disabilities Act, Plaintiff suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS A FOURTH CLAIM FOR RELIEF**

(Retaliation in violation of K.M.'s rights under Title II of the Americans with Disabilities Act of 1990)

183. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1 - 182 above.

184. The ADA prohibits retaliation "against any individual because such individual has opposed any act or practice made unlawful by [the ADA]...." 42 U.S.C. § 12203(a).

185. K.M. was engaging in a protected activity, learning through her attendance at school, when she was attacked by fellow students who severely sexually assaulted her on school grounds during school hours.

186. K.M. was also engaging in a protected activity for purposes of the ADA when she reported the sexual assault to school officials on February 11<sup>th</sup>, 2016. L.W., K.M.'s mother, also engaged in a protected activity on February 22<sup>nd</sup> when she advocated on behalf of her daughter in response to the threat of suspension and confirmed to school officials that her daughter had been victim to a nonconsensual sexual assault.

187. K.M., through her SRP advocates, engaged in a protected activity when she challenged the Teachers Prep's decision to suspend her.

188. Defendant DOE, through school officials under its control, was aware of K.M.'s disability due to her participation in IEP.

189. K.M.'s mother and SRP advocates referred to K.M.'s speech and language impairments to reiterate that the sexual assault had been nonconsensual and to correct school administrators' unreasonable conclusion that K.M. had willingly participated in the assault.

190. Defendant DOE and school officials under its control were aware of this protected activity and took adverse action against it by suspending K.M. from school without any

reasonable justification and engaging in an unreasonable long and improper suspension hearing process.

191. Defendant DOE's actions and/or omissions were sufficiently adverse that they would have dissuaded an individual of ordinary firmness from engaging in a protected activity.

192. Defendant DOE retaliated against K.M. on the basis of her disability in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. §12203(a) and is therefore liable for the injuries and damages described herein.

193. As a result of Defendants' violation of Title II of the Americans with Disabilities Act, Plaintiff suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS A FIFTH CLAIM FOR RELIEF**

(Discrimination in violation of K.M.'s rights under Section 504  
of the Rehabilitation Act)

194. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1 - 193 above.

195. Section 504 of the Rehabilitation Act requires recipients of federal funding to provide an appropriate education to all qualified handicapped persons who are in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

196. Section 504 provides that "No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

197. K.M. is a qualified handicapped person as defined in Section 504 of the Rehabilitation Act.

198. Defendant DOE is a recipient of federal financial assistance, including federal assistance provided to public schools under its purview, special education, and Section 504 programs.

199. Defendant DOE has a duty to provide disabled students with a safe, accessible, nondiscriminatory and productive school environment.

200. Defendant DOE and the school officials under its control had the authority and obligation to address the severe sexual harassment and discrimination perpetrated against K.M. to ensure that K.M. would not be excluded from participating in or be denied the benefits of an education.

201. Rather than protect these rights, DOE and its agents callously and unreasonably punished K.M. after she reported the sexual assault. They deliberately and purposefully deprived her of participating in and benefiting from an education. In turning the tables on K.M. after she reported the sexual assault, school officials exploited K.M.'s disabilities. School officials put words in K.M.'s mouth, otherwise twisted her words, and coerced her into a false "admission" of consensual sexual conduct. Without properly investigating the sexual assault perpetrated against one of their students, school officials wantonly and recklessly re-victimized K.M. by punishing her through an immediate suspension and an unreasonably prolonged and improper hearing process.

202. Defendants discriminated against K.M on the basis of her disability in violation of Section 504 of the Rehabilitation Act.

203. As a result of Defendants' violation of Section 504 of the Rehabilitation Act, K.M. suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS A SIXTH CLAIM FOR RELIEF**

(Retaliation in violation of K.M.'s rights under Section 504 of the Rehabilitation Act of 1973)

204. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-203 above.

205. Defendant DOE retaliated against K.M. on the basis of her disability in violation of Section 504 of the Rehabilitation Act of 1973 and is therefore liable for the injuries and damages described herein.

206. As a result of Defendants' retaliation in violation of Section 504 of the Rehabilitation Act, K.M. suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS A SEVENTH CLAIM FOR RELIEF**

(Violation of K.M.'s rights under Title VI of the Civil Rights Act of 1964)

207. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-206 above.

208. K.M. is a black Hispanic girl. She has a protected right to be free from discrimination and harassment under Title VI of the Civil Rights Act of 1964.

209. While a student at Teachers Prep, a public school under the purview of Defendant NYC and DOE, K.M. was subjected to discriminatory actions, disparate treatment, and a hostile educational environment on account of her race.

210. Defendants, and school officials under their control, were aware of a severe sexual assault perpetrated against K.M.

211. Defendant DOE, and school officials under its control, discriminated against K.M. on the basis of her race by suspending her through a mishandled, unreasonable, reckless, and callous "investigation" of K.M.'s claims of sexual assault, in violation of its own policies.

212. These discriminatory actions and/or omissions were undertaken on account of K.M.'s race (among other factors).

213. Defendant DOE has evinced an established pattern of racial discrimination in its schools.

214. Defendant DOE has an established custom and practice of punishing victims of violence in their schools by suspending the victim, and/or forcing the victim to transfer schools. These practices are in contravention of DOE's own policies.

215. Federal statistics reveal that black students are suspended and expelled at a rate three times greater than white students.<sup>14</sup> These same statistics reveal black girls are suspended at higher rates (12%) than girls of any other race or ethnicity and most boys.<sup>15</sup>

216. Further statistics show that in-school violence in NYC schools are disproportionately higher in schools with larger black and/or Hispanic populations and that school administrators often take retaliatory and punishing actions towards those students who report in-school violence.<sup>16</sup>

217. It would follow that a disproportionate number of black students who report in-school violence, like K.M., are retaliated against and punished by school officials.

218. DOE's patterns and practices have a disparate impact on young black girls, such as K.M.

219. Because of Defendant DOE's discriminatory actions and/or omissions, K.M. was subjected to an educational environment that was abusive, hostile, inaccessible, and damaging to K.M.'s well-being.

---

<sup>14</sup> U.S. Dep't of Educ. OCR, Civil Rights Data Collection: Data Snapshot: School Discipline, Issue Brief No. 1, March 2014 available at <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>

<sup>15</sup> *Id.*

<sup>16</sup> *See*, Jensen Declaration at para, attached to Amended Complaint in matter of *John Doe et. al. v. New York City Department of Education*, 16-CV-684 (Eastern District of New York) *citing* N.Y. State Educ. Dep't, *NYC Violent and Disruptive Incidents 2014-2015*, available at [http://www.p12.nysed.gov/irs/school\\_safety/2015/DATA/VADIR-INCIDENTS-NYC-2015.xls](http://www.p12.nysed.gov/irs/school_safety/2015/DATA/VADIR-INCIDENTS-NYC-2015.xls)

220. Defendant Doe's actions and/or omissions violated K.M.'s rights under Title VI of the Civil Rights Act of 1964.

221. As a result of Defendant DOE's violation of K.M.'s rights under Title VI of the Civil Rights Act of 1964, K.M. suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS AN EIGHTH CLAIM FOR RELIEF**

(Violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, through 42 U.S.C. §1983)

222. Plaintiff hereby re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1 - 221 above.

223. K.M.'s right to Due Process and Equal Protection of the Laws guaranteed by the Fourteenth Amendment to the United States Constitution was clearly established at all times relevant to this complaint.

224. Defendant DOE and school officials under its control had a duty to treat K.M. equally as to other students and to provide her with equal access to education.

225. Defendant DOE and school officials under its control had the authority and obligation to protect K.M. and other students from sex, race, and disability-based harassment and/or assault by other students.

226. Defendant DOE and school officials under its control violated K.M.'s rights under 42 U.S.C. § 1983 and her Fourteenth Amendment Due Process and Equal Protection rights by failing to protect her from sexual assault and then by attempting to shift the blame for the assault onto her, and ultimately punishing her for the crimes of which she was a victim.

227. Defendant DOE and school officials under its control rendered K.M. more vulnerable to sex and disability-based harassment by her peers by failing to respond appropriately to the report of sexual assault.

228. K.M. was wrongfully deprived of her ability to pursue an education because of school officials' actions and/or omissions in response to the report of sexual assault.

229. K.M. received a lower level of protection as compared with other students at Teachers Prep because of her speech and language disabilities, her race, and her gender, in violation of her right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

230. By their failure to engage in an appropriate response and undertake appropriate and reasonable corrective actions, Defendant DOE and its agents adopted and approved a custom, policy, or practice of condoning and otherwise failing to prevent abuse by other students.

231. By failing to undertake a proper investigation of the sexual assault and by recklessly and callously punishing the victim of the assault, Defendant DOE and its agents adopted and approved a policy, practice, and custom of silent acquiescence towards sexual harassment.

232. K.M. suffered a sexual assault that was sufficiently severe and pervasive to create an abusive educational environment.

233. Defendant DOE and school officials' response to the severe sexual harassment was entirely unreasonable in light of known circumstances, demonstrated deliberate indifference to K.M.'s rights, and was so extreme and egregious as to shock the conscience.

234. Defendant DOE's actions violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, in violation of 42 U.S.C. §1983. As a result of Defendant DOE's violation of K.M.'s rights under the Equal Protection Clause,



K.M. suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS A NINTH CLAIM FOR RELIEF**

(Negligence: Defendants' Breach of Duty to protect K.M.)

235. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1 - 234 above.

236. Defendant DOE and school officials under its control act *in loco parentis* with respect to public school students. It therefore owes a "special duty" to the students themselves. As *loco parentis* schools are expected to act with the same care as a parent of ordinary prudence would observe in comparable circumstances.

237. As a student under Defendant DOE's custody and control, K.M. was entitled to that special duty.

238. Defendants, through school officials under their control, had sufficient knowledge and/or notice of the violent conduct that caused injury to K.M. Moreover, Defendants inflicted further injury on K.M. through their response to the sexual assault.

239. Defendant DOE and school officials did not respond as a reasonable person would have responded under similar circumstances. And they certainly did not undertake the same care as "a parent of ordinary prudence would observe in comparable circumstances".

240. Defendant DOE and school officials' actions and/or omissions were a direct and proximate cause of the injuries suffered by K.M.

241. City data from 2015-2016 revealed that Teachers Preparatory High School was 16 percent more violent than the city's average and reported sex offenses at a rate 25 percent higher

than the city's average. The school also experienced a weapon recovery rate more than double the city's average.<sup>17</sup>

242. In light of the prevalent rate of violence in its school, it would be reasonable to expect Teachers Prep to institute appropriate safeguards such as security cameras and patrols in the school's stairwells to protect its students.

243. Teachers Prep's failure to reasonably monitor the stairwells, via security cameras and/or regular patrols, constitutes a breach of its duty to protect its students. Such failure was a substantial factor in bringing about foreseeable harm to K.M.

244. Furthermore, school administrators' and DOE employees' own actions and/or omissions in their response to the sexual assault breached the duty of care they owed to K.M. and caused her further physical, emotional, and psychological injuries.

245. Defendant was negligent and breached its duty to exercise reasonable care by not providing K.M. with a safe and nurturing environment at Teachers Prep.

246. As a result of Defendants' negligence, K.M. suffered physical, emotional, and psychological damages in an amount to be determined at trial.

**AS A TENTH CLAIM FOR RELIEF**

(Gross Negligence: Defendants' Breach of Duty with Reckless Indifference)

247. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-246 above.

248. Defendants and school officials under their control had a duty to exercise care as *loco parentis* over K.M., a student in their custody and control.

---

<sup>17</sup> N.Y. State Educ. Dep't, *NYC Violent and Disruptive Incidents 2015-2016* available at [http://www.p12.nysed.gov/irs/school\\_safety/2015/DATA/VADIR-INCIDENTS-NYC-2015.xls](http://www.p12.nysed.gov/irs/school_safety/2015/DATA/VADIR-INCIDENTS-NYC-2015.xls) (last visited and downloaded on October 30, 2017)

249. Instead, Defendant DOE, through school officials and DOE employees under its control, engaged in actions and/or omissions that evinced a reckless indifference to K.M.'s rights.

250. Defendant DOE and school officials under its control failed to exercise even the slightest care or diligence towards K.M., let alone the special duty they owed to her as *loco parentis*.

251. Defendant DOE, through school officials under its control, evinced a reckless indifference to K.M. by failing to properly investigate the sexual harassment and by cruelly and outrageously turning the tables on K.M. to punish her for the sexual assault committed against her. School officials' reckless and irrational actions towards K.M. held no basis in reason or fact.

252. As a result of Defendants' unreasonably punitive actions, K.M. suffered and continues to suffer from extreme anxiety exhibited by sleeplessness, hair loss, skin rashes, drop in school performance and grades, anger issues, and PTSD, among other injuries.

253. Defendants' failure to exercise even the slightest care or diligence towards K.M. was the proximate cause of K.M.'s physical, emotional, and psychological deterioration.

254. As a result of Defendants' gross negligence, K.M. suffered physical, emotional, and psychological damages in an amount to be determined at trial.

#### **JURY DEMAND**

255. Plaintiff demands a trial by jury on all issues pursuant to the Seventh Amendment to the United States Constitution and Rule 38 of the Federal Rules of Civil Procedure.

#### **ATTORNEYS FEES**

256. It is respectfully requested that Plaintiff is entitled to an award of attorneys' fees, pursuant to 42 U.S.C. 1983 & 1988.

**WHEREFORE**, Plaintiff demands the following relief:

- A. On the FIRST Claim, damages in an amount to be determined by the court against Defendant DOE for discrimination in violation of Title IX of the Educational Amendments Act of 1972;
- B. On the SECOND Claim, damages in an amount to be determined by the court against Defendant DOE for retaliation in violation of Title IX of the Educational Amendments Act of 1972;
- C. On the THIRD Claim, damages in an amount to be determined by the court against Defendant DOE for discrimination in violation of Title II of the American with Disabilities Act of 1990;
- D. On the FOURTH Claim, damages in an amount to be determined by the court against Defendant DOE for retaliation in violation of Title II of the American with Disabilities Act of 1990;
- E. On the FIFTH Claim, damages in an amount to be determined by the court against Defendant DOE for discrimination in violation of Section 504 of the Rehabilitation Act of 1973;
- F. On the SIXTH Claim, damages in an amount to be determined by the court against Defendant DOE for retaliation in violation of Section 504 of the Rehabilitation Act of 1973
- G. On the SEVENTH Claim, damages in an amount to be determined by the court against Defendant DOE for discrimination in violation of Title VI of the Civil Rights Act of 1964;

- H. On the EIGHTH Claim, damages in an amount to be determined by the court against Defendant DOE for violation of Plaintiff's rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;
- I. On the NINTH Claim, damages in an amount to be determined by the court against Defendants, for their negligence in breaching the duty of care owed to Plaintiff;
- J. On the TENTH Claim, damages in an amount to be determined by court against Defendants, for their gross negligence in breaching the duty of care owed to Plaintiff;
- L. Attorneys fees pursuant to 42 U.S.C. 1988(b); 42 U.S.C. 1983; and
- M. Together with such and further relief that this Court may deem just and necessary.

Dated: Brooklyn, New York  
October 31, 2017

Respectfully submitted,

By: /s/ Carrie Goldberg  
Carrie Goldberg (CA7873)  
Aurore DeCarlo (AD7498)  
Adam Massey (AM1988)

C.A. Goldberg PLLC  
16 Court Street, Suite 2500  
Brooklyn, NY 11241  
Tel. (646) 666-8908  
Fax. (718) 514-7436  
carrie@cagoldberglaw.com  
*Attorneys for Plaintiff*