

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

E.R., by her next friend and parent, Quana
Hollie;

Civil No. _____

Plaintiff,

vs.

Anoka-Hennepin School District No. 11;
Anoka-Hennepin School Board; Dennis
Carlson and Tom Hagerty, in their official
capacities,

COMPLAINT

JURY DEMAND

Defendants.

COMES NOW Plaintiff E.R., by her next friend and parent, Quana Hollie, and states the following as and for her Complaint against Defendants Anoka-Hennepin School District No. 11 (the “School District” or “District”), Anoka-Hennepin School Board, Dennis Carlson, and Tom Hagerty (collectively “Defendants”).

PRELIMINARY STATEMENT

1. This is a civil rights case brought by a current student of Defendant Anoka-Hennepin School District No. 11 in Minnesota. Plaintiff seeks to vindicate her constitutional and statutory rights to equal access to educational opportunities, rights that Defendants have violated and will continue to violate absent relief from this Court. Defendants’ violation of these rights include the intentional enactment and enforcement of policies that unlawfully discriminate against Plaintiff based on her sexual orientation. These policies exist only because of community animus toward lesbian, gay, bisexual, and

transgender (“LGBT”) people – an interest that can never justify discrimination by the government.

2. Plaintiff has suffered severe and pervasive gender-based harassment and harassment on the basis of her sexual orientation at school. She has been subjected to slurs from other students because of her sexual orientation and perceived gender nonconformity, including “dyke,” “fag,” “faggot,” “he/she,” and “it,” nearly every school day.

3. The harassment suffered by Plaintiff was not limited to verbal insults. Other students also physically attacked her because of her sexual orientation or perceived failure to conform to sex stereotypes.

4. These acts occurred on school grounds and some occurred in plain view of school officials. Plaintiff also regularly reported the harassment to school staff and administrators.

5. Far from being isolated incidents, this type of verbal and physical abuse was a relentless and inescapable aspect of Plaintiff’s school experience. The harassment caused Plaintiff’s grades to drop and led her to stay home from school at times to avoid the constant harassment. As a result of the harassment, Plaintiff is considering transferring to a school outside of the District and away from her friends and community. Being ostracized, humiliated, threatened, and attacked as a daily routine at school also caused Plaintiff to suffer serious emotional harm, including anxiety, anger, and

depression. Within a nine month period, between November 2009 and July 2010, at least four other LGBT students within the District took their own lives.

6. Despite knowledge of the severe and pervasive anti-gay and gender-based harassment being suffered by Plaintiff and other students throughout the District, Defendants' response to the abuse was grossly inadequate. Contrary to their obligations as school officials entrusted with the safety and education of *all* students, including vulnerable ones such as Plaintiff, the response of District administrators and teachers was to ignore, minimize, dismiss, or to blame the victim for the other students' abusive behavior. When school officials did take action, the action was patently ineffective and in many instances extended to no more than telling the abusive students to "knock it off," thereby sending the message to the harassing students that there would be no significant consequences for their behavior and thus encouraging the harassment to continue.

7. The epidemic of anti-gay and gender-based harassment within District schools is rooted in and encouraged by official District-wide policies singling out and denigrating LGBT people. For many years, these policies have deemed LGBT people, and them alone, as unworthy of being mentioned, let alone protected, in District classrooms. In the mid-1990s, the District adopted a health curriculum policy prohibiting teachers from teaching that homosexuality is "normal" or a "valid lifestyle." According to the anti-gay organization that lobbied the District to adopt that rule, such a policy was necessary because "[t]he homosexual lifestyle does not reflect the community standards of District #11, nor is it regarded as a norm in society."

8. In 2009, the School Board amended and expanded the District's anti-gay policy to go beyond the health curriculum. That revised policy is still in effect today. The so-called "Sexual Orientation Curriculum Policy" ("SOCP") states in relevant part: "Teaching about sexual orientation is not a part of the District adopted curriculum; rather, such matters are best addressed within individual family homes, churches, or community organizations. Anoka-Hennepin staff, in the course of their professional duties, shall remain neutral on matters regarding sexual orientation including but not limited to student led discussions." Written guidance from the District makes clear that the term "sexual orientation" in the SOCP is used as a synonym for LGBT people, and that the policy does not bar discussions of issues relating to heterosexual people.

9. Despite its language the SOCP is not neutral. In reality, the SOCP acts as a gag policy that prevents school officials from complying with their legal obligations to keep safe students like Plaintiff who are perceived as LGBT or gender non-conforming. This gag policy requires District officials to enforce anti-harassment policies in the case of anti-LGBT bullying differently from other types of bullying. Teachers have understood the SOCP as inhibiting them from aggressively responding to anti-gay harassment, inside or outside the classroom. The gag policy also prohibits school staff from countering anti-gay stereotypes or presenting basic factual information about LGBT people, even when necessary to address anti-gay hostility within the student body. For example, pursuant to District guidance, the SOCP prohibits staff from even mentioning the fact that it is the position of the American Psychological Association that being gay is

not a choice—a position that is the consensus of all major accredited and professional mental health organizations. The SOCP severely limits or outright bars *any* discussion by school officials of issues related to LGBT people in or out of the classroom, a limitation that is not placed on any other category of persons.

10. The SOCP sends the unmistakable message to Plaintiff and LGBT students throughout the District that they are not a welcome part of the school community and that their very existence is shameful and must be kept hidden. Both the implementation of the SOCP and its very existence perpetuate the hostile anti-LGBT climate within the District and enables abusive students to taunt and attack their LGBT classmates and those perceived as LGBT or gender non-conforming.

11. Because of Plaintiff's sexual orientation and perceived gender nonconformity, Defendants have been deliberately indifferent to the severe and pervasive anti-gay and gender-based harassment endured by Plaintiff and other students, and have failed to create adequate policies or procedures to protect Plaintiff from the severe harassment and abuse they have suffered. They have failed to adequately train District staff to address and prevent that harassment, and have also failed to adequately inform students about any District policies—to the extent they exist—that purport to prohibit these types of harassment. Defendants have also intentionally discriminated against Plaintiff by adopting policies and practices that require District staff to ignore or fail to adequately address harassment of students who are or are perceived to be LGBT and that restrict the remedial measures that the District, schools, or staff can take to address and

prevent such harassment. Defendants knew or should have known that the lack of adequate policies and training, and the District's affirmative policies prohibiting discussion of LGBT people in the classroom, including the SOCP in particular, significantly harmed Plaintiff and other students and placed them at unreasonable risk of future harm.

12. Plaintiff brings this suit to vindicate her rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title IX, and the Minnesota Human Rights Act. She seeks relief in the form of compensatory and punitive damages, as well as injunctive and declaratory relief to strike down the SOCP and other District policies and practices that encourage and perpetuate the anti-gay and gender-based harassment suffered by Plaintiff and other students throughout the District.

JURISDICTION AND VENUE

13. This Court has jurisdiction over Plaintiff's complaint pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States. Jurisdiction is also proper over Plaintiff's claims under 28 U.S.C. §§ 2201-2202 because Plaintiff seeks a declaration of her civil rights. This Court has supplemental jurisdiction over Plaintiff's related state law claims under 29 U.S.C. § 1367(a) because those claims arise out of the same case or controversy as Plaintiff's federal claims.

14. Venue is appropriate in this Court since one or more of the Defendants reside within this Court's judicial district and a substantial part of the events or omissions

giving rise to the claims occurred within this judicial district, in accordance with 28 U.S.C. §1391(b).

PARTIES

Plaintiff

15. Plaintiff E.R. is a 15-year-old female and sues here by and through her next friend, parent, and guardian, Quana Hollie. She identifies as a lesbian, and her appearance and behavior are often perceived by others as not stereotypically feminine. She was a student at Jackson Middle School, a school within the District, from September 2010 until June 2011. E.R. has not yet determined whether she will attend Champlin Park High School, a school within the District, beginning in the 2011-2012 school year, or whether she will be able to transfer to a school outside the District. E.R. is a natural person, a current resident of Hennepin County, and a citizen of the State of Minnesota.

Defendants

16. Defendant ANOKA-HENNEPIN SCHOOL DISTRICT NO. 11, an education corporation and existing pursuant to Minn. Stat. § 123A.55, *et seq.*, is a public independent school district in Anoka and Hennepin Counties, Minnesota. The School District is a “person” within the meaning of 42 U.S.C. § 1983. Upon information and belief, the School District and each of its component schools are recipients of federal financial assistance. The School District is a non-sectarian public corporation and exempt from taxation pursuant to Minn. Stat. §§ 290.014 and 297A.70, Subd. 2(a)(1). Anoka

High School, Anoka Middle School for the Arts, and Jackson Middle School are all schools in the School District.

17. Defendant ANOKA-HENNEPIN SCHOOL BOARD (the “School Board” or “Board”) is a public education corporation governing the School District pursuant to the laws of the State of Minnesota. The School Board is a “person” within the meaning of 42 U.S.C. § 1983. Upon information and belief, the Board receives federal financial assistance.

18. Defendant DENNIS CARLSON (“Superintendent Carlson”), sued in his official capacity, is the current Superintendent of the School District. He has held this position, first as interim Superintendent, since November 2008. As Superintendent, he holds final policymaking authority for the School District with respect to the day-to-day enforcement of the SOCP, equal opportunity, anti-harassment, and anti-bullying policies within the School District as its chief executive officer. As Superintendent, he has the ability and authority to take corrective action on behalf of the School District to stop discrimination and harassment within the School District and to discipline perpetrators of such discrimination and harassment. Superintendent Carlson is a natural person and, upon information and belief, resides in Minnesota.

19. Defendant TOM HAGERTY (“Principal Hagerty”), sued in his official capacity, is Principal of Jackson Middle School. He has held this position since 2010 and previously was Principal of Sandburg Middle School. Principal Hagerty has final policy making authority with respect to the day-to-day enforcement of the SOCP, equal

opportunity, anti-harassment, and anti-bullying policies within Jackson Middle School as its Principal. Principal Hagerty has the ability and authority to take corrective action on behalf of the School District to stop discrimination and harassment within Jackson Middle School and to discipline perpetrators of such discrimination and harassment. Principal Hagerty is a natural person and, upon information and belief, resides in Minnesota.

STATEMENT OF FACTS

Plaintiff E.R.

20. Plaintiff E.R. is a 15-year-old female. She identifies as a lesbian, and her appearance and behavior are often perceived by others as not stereotypically feminine. She was a student at Jackson Middle School, a school within the District, from September 2010 until June 2011.

21. Plaintiff E.R. entered Jackson Middle School as an eighth-grader soon after the 2010-2011 school year began. She had previously attended Brooklyn Junior High and North View Junior High in the neighboring Osseo Area School District Number 279. E.R. first came out as a lesbian in the summer between sixth and seventh grades, when she was 12 years old. She first told her mother she was a lesbian at that time. At neither Brooklyn Junior High nor North View Junior High was E.R. ever harassed based on her sexual orientation or her perceived gender nonconformity.

22. E.R. began attending Jackson Middle School around September 20, 2010, because her family had moved to the Anoka-Hennepin School District in February 2010 and Jackson Middle School was the closest school to her home. Beginning on her first

day of school at Jackson Middle School, E.R. was subjected to a constant barrage of name-calling, obscene gestures, stares, and dirty looks in the hallways, the lunchroom, and classrooms, based on her sexual orientation and perceived gender nonconformity. On her first day of school, other students called her names including “faggot,” “dyke,” and “he/she.” Throughout the school year, students regularly called her names including “faggot,” “dyke,” “he/she,” “he,” and “it,” multiple times virtually every day. Students also called out to E.R. as she was passing in the hallways insults such as “Why don’t you watch a movie or something so you know how to be?”; “There’s that it,”; and “You fucking faggot – get out of our school.”

23. Male students also regularly harassed E.R. with comments and gestures that were sexual in nature. For instance, on one occasion, a male student passing E.R. in the hallway grabbed his crotch while saying, “I’ve got a dick and I’m real, not like you.” On another occasion, a male student sitting next to E.R. on the school bus repeatedly made lewd comments, including telling her that her mother “needs to stop sucking [his penis] raw.” At least twice, a male student in the hallway saw E.R. and then started rubbing his body on another male student’s body in a suggestive fashion in a parody of being gay.

24. The students who called her anti-gay and gender-based slurs also physically harassed her, for instance by intentionally bumping into her in the hallways and then laughing. One time, another male student who had previously called E.R. a “he/she” punched her in the stomach in the hallway.

25. E.R. was also subject to severe and pervasive harassment in gym class. When E.R. attempted to use the girls' locker room for the first time, other female students openly mocked her, saying things like, "That's a boy – there's no boys allowed in here," and calling her a "he/she."

26. Rather than addressing the other students' misconduct and harassment of E.R., the school further stigmatized E.R. by instructing her to change into her gym clothes at a separate time from the other girls. Predictably, further isolating and stigmatizing E.R. served only to increase the harassment. The other students continued to mock her in class, saying that she had to use the locker room separately from other students because she "doesn't know what locker room to use" and calling her slurs like "he/she" and "faggot." The gym teacher, Barry Boevers, took no significant steps to intervene in the harassment. As a result of the school's failure to protect her, E.R. began refusing to change for gym at all, which results in an automatic failing grade for the day, and avoided going to gym class at all many days to avoid the constant harassment, which resulted in automatic detention. As a result, she ultimately failed gym.

27. E.R. was also frequently harassed during lunch. Prior to entering the cafeteria, students are required to line up in separate lines based on sex. When E.R. stood in the girls' line, she was consistently mocked by the other girls who would tell her she didn't belong there and call her names like "faggot" and "he/she."

28. E.R. complained about the harassment numerous times to teachers and administrators at Jackson Middle School, but the harassment continued unabated. Rather

than taking her reports seriously and investigating them, school officials punished E.R. for having upset or angry reactions to being harassed. A paraprofessional who worked closely with E.R. once told E.R. that the paraprofessional had overheard other school staff talking about E.R., saying that they wished the school could “get rid of her.”

29. Although school officials were in frequent contact with E.R.’s mother about her disciplinary issues, and Associate Principal Anita Udager was aware that E.R.’s mother knew that E.R. was a lesbian, school officials never informed E.R.’s mother that E.R. was being harassed at school.

30. Throughout her eighth grade year, E.R. continued to experience anti-gay and gender-based harassment multiple times every day whenever she was around other students in the hallways, cafeteria, gymnasium, and classrooms.

31. On one occasion, other students wrote anti-gay slurs on E.R.’s math assignment binder, which contained photocopies of math problems. When E.R. reported that to her math teacher, Dan Pernula, he took the binder to Associate Principal Udager and Special Ed Lead Melissa Schad, and they confiscated the binder. E.R. asked for the binder back several times but never received it. She was without the binder for approximately two weeks, and as a result, was unable to do her math assignments.

32. E.R. regularly reported the harassment to teachers and administrators, including her case manager Heather Bushard, Associate Principal Anita Udager, and Associate Principal John Peña, and a school employee named Ann Lindsey, whom E.R. regularly confided in. At all times relevant to the complaint, Associate Principals Peña

and Udager had the ability and authority to take corrective action on behalf of the District to stop discrimination and harassment within Jackson Middle School and to discipline perpetrators of such discrimination and harassment. Some of the incidents of harassment took place within plain view or earshot of teachers, including E.R.'s math teacher Mr. Pernula, administrators, or the school bus driver, who often either ignored the harassment or responded with at most a cursory verbal reprimand for the other student's language. School staff and administrators frequently ignored E.R.'s complaints of harassment or told her they would deal with it later. To Plaintiff's knowledge and belief, other students were rarely, if ever, reprimanded or disciplined for harassing her. By the end of the school year, E.R. generally stopped reporting harassment to her teachers and administrators, because she had learned that doing so was futile.

33. Ms. Lindsey, the District employee that E.R. frequently confided in about the harassment against her, also regularly reported the abusive behavior against E.R. to administrators, including Principal Tom Hagerty, and urged them to take serious action to address the school's systemic problem of anti-LGBT harassment. Based on the reactions by administrators, Ms. Lindsey was left with the impression that they failed to take serious action in whole or in part because of the SOCP. For example, in response to one report by Ms. Lindsey of the anti-gay harassment against E.R., Associate Principal Peña explained, "This is an issue we have to be so careful with, Ann," which Ms. Lindsey understood to be a reference to the SOCP.

34. During the year that E.R. attended Jackson Middle School, the school never organized a meeting of E.R.'s teaching team or administrators to address the issue of the constant harassment she was experiencing. To Plaintiff's knowledge, the school never instituted any training for teachers or students to address the pervasive hostile climate for LGBT students at Jackson Middle School or the specific anti-gay and gender-based harassment that E.R. experienced.

35. By approximately January, school officials further stigmatized E.R. by instituting a requirement that E.R. walk through the hallways at a separate time from other students, accompanied by a paraprofessional. They also eventually prohibited her from eating lunch in the cafeteria with the other students. School officials made clear that these steps were taken as disciplinary measures against E.R., and never suggested that these steps were intended to protect her from harassment. In April, school officials cut E.R.'s class schedule to a half day.

36. By the end of the school year, E.R. was staying home from school regularly, to avoid the harassment as well as the frequent negative interactions she had with particular teachers and administrators.

37. E.R. is assigned to begin high school in the 2011-2012 school year at Champlin Park High School, which is very close to her home. E.R. does not want to attend school within the District, in significant part because of the constant harassment she experienced at Jackson Middle School. Her mother is looking into the possibility of transferring E.R. back to the Osseo Area School District, but she is not certain that she

will be able to do so, in part because E.R. would need to find her own transportation to school in that district.

The District's Anti-Gay Policies, Including the SOCP

38. For close to two decades, the District has maintained policies that expressly single out and stigmatize LGBT people, treating them, and only them, as unworthy of even being discussed in school. Through these policies and actions, the District has perpetuated and helped create an environment that legitimizes perceptions that LGBT students are outsiders who are different from and unequal to their peers. In so doing, the District has substantially contributed to and exacerbated the epidemic of anti-gay and gender-based harassment within its schools. The District's policies impede efforts to curb harassment and prevent school officials from complying with their constitutional and statutory obligations to treat equally Plaintiff and other students who are or are perceived to be LGBT.

39. The District's anti-gay policy originated in 1995 at the urging of an outside group that eventually became known as the Parent Action League ("PAL"). PAL is still in existence today.

40. PAL's primary agenda is to promote anti-gay policies and practices within the District, including so-called "reparative therapy" – an approach that maintains, contrary to the conclusions of every major mental health organization in the nation, that sexual orientation can be changed through counseling or other treatment. PAL's leader recently reaffirmed in an interview that PAL has urged the District to teach that gay

people can become heterosexual and to offer resources to LGBT students to lead them out of the “homosexual lifestyle.” Among the “reparative therapy” resources that PAL has promoted as appropriate for District students are Eagles’ Wings Ministry, Outpost Ministries, and Homosexuals Anonymous—all organizations that advocate that being gay is a sin or against God’s will.

41. In 1995, PAL successfully advocated for the District to adopt a health curriculum policy prohibiting teachers from teaching that homosexuality is a “normal” or a “valid lifestyle.” According to PAL, the policy was necessary because “[t]he homosexual lifestyle does not reflect the community standards of District #11, nor is it regarded as a norm in society.”

42. At the same time, PAL succeeded in convincing the School Board to adopt other policies that would allow PAL to mobilize against any content within District schools that reflected positive views of LGBT people, regardless whether such content was necessary to present accurate information about a particular topic or to foster a safe and equal learning environment for LGBT students. At PAL’s urging, the District passed a policy requiring that schools “clearly identif[y]” any content related to lesbian, gay, or bisexual people included within any class—a requirement not imposed on any other type of educational materials. Upon information and belief, PAL has used this policy over the years to monitor and censor material about LGBT issues within District schools and to prevent accurate information about LGBT people and issues from being presented. Similarly, PAL successfully urged the District to remove LGBT support services,

including the Gay and Lesbian Helpline for Youth and Adults, from District health resource lists. These policies, and the influence that PAL exerts on the School Board, have played a substantial role in creating and perpetuating an atmosphere hostile to LGBT youth and those perceived to be LGBT within District schools.

43. In 2009, shortly after the District settled an anti-gay harassment case, the School Board purported to change its policy against homosexuality. The Board reworded the policy to state, in relevant part: “[t]eaching about sexual orientation is not a part of the District adopted curriculum; rather, such matters are best addressed within individual family homes, churches, or community organizations. Anoka-Hennepin staff, in the course of their professional duties, shall remain neutral on matters regarding sexual orientation including but not limited to student led discussions.” The District terms this policy the “Sexual Orientation Curriculum Policy” or “SOCP.”

44. Although it purports to require “neutrality” on questions of sexual orientation, the SOCP in fact operates exclusively as an anti-gay policy, barring discussions of LGBT people from the classroom while imposing no similar restrictions on the discussion of heterosexuals or heterosexuality. A District spokesperson recently confirmed that the SOCP does not require “neutrality” with respect to the topic of heterosexuality, but only with respect to “discussions of GLBT [gay, lesbian, bisexual, and transgender] issues.”

45. Moreover, the SOCP, which was borne out of PAL’s anti-gay agenda, perpetuates anti-gay prejudice within District schools. As with its prior iteration, the

SOCP acts as a gag policy by barring school staff from discussing LGBT people or expressing the view, regardless of the purpose for doing so, that being gay, lesbian, or bisexual is a valid or normal “lifestyle.” In other words, District personnel are prevented from discussing or treating homosexuality or bisexuality in the same way that they treat heterosexuality—that is, as an ordinary personal trait that many people share and that does not need to be “repaired.” The SOCP plainly and purposefully hamstring school officials in any efforts to counter the hostile climate for LGBT students, at great expense to the well-being and education of Plaintiff and other students who are LGBT or perceived to be LGBT and who face harassment by peers on that basis.

46. As made clear not only from District-issued guidance but the enforcement of the policy, the SOCP acts to prevent even the most basic, factual information about LGBT people to be presented—or even discussed—within District schools. A letter from Superintendent Carlson to the teachers’ union to explain the scope of the SOCP, dated January 24, 2011, states that the mere mention by teachers that the American Psychological Association’s official position is that sexual orientation is not a choice and that there is no scientific evidence that a person can change sexual orientation would violate the SOCP. The same letter instructed that teaching about persecution of LGBT people in Nazi Germany is not permissible because “this fact is not a part of the District-adopted curriculum.” Teachers were not forbidden from referring to any other category of facts or group of people.

47. In 2005, teachers on the history curriculum committee approved the addition of a unit about the way that the strategies used by the African American civil rights movement had influenced subsequent movements of “disenfranchised groups” to gain rights, and specifically named “LGBT” people as one of the groups. In January 2010, however, District administrators refused to permit a teacher to show a video about students’ experiences with anti-LGBT harassment in school as part of a lesson plan on the impact of the African American model of civil rights on the LGBT rights movement because it would have violated the SOCP. On March 30, 2011, in a meeting with members of the teachers’ union, District administrator Berry Arrowsmith, who oversees the secondary social studies curriculum, informed the teachers that the District had unilaterally removed the reference to the LGBT movement from the curriculum because it violated the SOCP.

48. The District has also applied the SOCP to limit the information about LGBT people that could be presented in a voluntary monthly diversity training program for teachers called SEED (Seeking Educational Equity and Diversity). For the unit on anti-LGBT bias, SEED organizers initially selected a book entitled *Am I Blue?*, which included fiction and nonfiction writing about LGBT teens. The School Board then issued guidance saying that SEED materials about sexual orientation could be only nonfiction; for discussions about other groups, however, there was no such restriction. SEED organizers then selected a book entitled *How Homophobia Hurts Kids*, and District officials soon informed them that this book was not acceptable either, telling them that

they had to “include an opposing viewpoint.” No such restriction was imposed on other topics of discussion. SEED then selected a book entitled *Homosexuality: Opposing Viewpoints*, which finally passed muster at the District.

49. The reach of the SOCP has even extended to bar students from presenting information about LGBT people as part of school assignments, even when such information is appropriate and related to the curriculum. For example, a teacher abruptly ended one student’s presentation in a law class about the Equal Protection Clause when she mentioned an example involving a same-sex couple. No other student’s presentation was cut short. Similarly, the District terminated a gay student’s senior project consisting of a survey on the school climate for LGBT students, even though the project was supported by the student’s teacher.

50. The implementation of the SOCP, and its very existence, demean LGBT students, including Plaintiff, by sending the unmistakable message that a core part of their identity is so controversial, shameful, or inappropriate that it may not be part of the dialogue about issues that fundamentally affect a school’s students. By singling out issues concerning LGBT people as inappropriate for discussion, the SOCP also perpetuates intolerance, hostility, and violence by other students against their peers who are perceived to be LGBT.

51. The District’s rigid insistence in preserving the SOCP violates its well-established legal obligations to provide equal educational opportunities to LGBT students or those perceived to be LGBT. In light of the District’s actual notice of the severe and

pervasive anti-gay harassment suffered by Plaintiff and other LGBT students, the continuation of the SOCP is unreasonable and serves no legitimate government interest.

FIRST CLAIM FOR RELIEF

**U.S. Constitution Amendment XIV
Denial of Equal Protection on the Basis of Sexual Orientation**

(Brought Pursuant to 42 U.S.C. § 1983 Against the School District; School Board;
Dennis Carlson and Tom Hagerty, in their official capacities)

52. Plaintiff incorporates by reference all preceding paragraphs.

53. Defendants, acting under color of state law, have deprived E.R. of the rights, privileges, or immunities secured by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, in that Defendants, without justification, have treated E.R. differently than other similarly situated students and student groups on the basis of actual or perceived sexual orientation.

54. Defendants' policies single out gay, lesbian, and bisexual students, students with gay, lesbian, or bisexual parents, and students perceived as gay, lesbian, and bisexual for differential and adverse treatment on the basis of their or their parents' actual or perceived sexual orientation. Defendants' policies prevent presentation of accurate information concerning gay, lesbian, and bisexual people even when such information serves important educational purposes, while imposing no similar restrictions on discussion of heterosexuality or heterosexual people. The District's policy of banning wholesale the discussion of gay, lesbian, and bisexual people and issues from the classroom stigmatizes gay, lesbian, and bisexual students and those with gay, lesbian, or

bisexual parents and denies them equal educational opportunities on the basis of their sexual orientation.

55. Defendants' policies have substantially contributed to the creation of a pervasive anti-gay climate in the District and exacerbated the epidemic of anti-gay harassment in District schools. By forbidding presentation of accurate information concerning gay, lesbian, and bisexual people, Defendants' policies prevent school officials from taking effective measures to prevent anti-gay harassment and from complying with their constitutional obligations to treat all students equally, without regard to actual or perceived sexual orientation.

56. Defendants had actual notice that harassment based on actual or perceived sexual orientation was so severe, pervasive, and objectively offensive that it created a hostile climate that deprived E.R. of access to educational programs, activities, and opportunities.

57. Defendants were deliberately indifferent to the harassment of E.R. based on actual or perceived sexual orientation in violation of Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. Defendants also failed to adequately train school staff about any policies prohibiting harassment and discrimination on the basis of actual or perceived sexual orientation. Defendants' deliberate indifference and/or failure to train caused E.R. to be subjected to the described anti-gay discrimination and harassment.

58. As an actual and proximate result of Defendants' conduct, E.R. has been injured and suffered damages to be determined according to proof.

59. E.R. requests judgment in her favor against Defendants as set forth in the Prayer for Relief.

SECOND CLAIM FOR RELIEF

**Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*
Discrimination Based on Sex**

(Brought Pursuant to 20 U.S.C. § 1681 Against the School District; School Board;
Dennis Carlson and Tom Hagerty, in their official capacities)

60. Plaintiff incorporates by reference all preceding paragraphs.

61. The School District and each school within the District attended by E.R. are recipients of federal financial assistance.

62. The acts and omissions of Defendants violated E.R.'s rights under Title IX by discriminating against her on the basis of sex.

63. Defendants had actual notice that harassment based on sex was so severe, pervasive, and objectively offensive that it created a hostile climate based on sex that deprived E.R. of access to educational programs, activities, and opportunities.

64. Defendants exhibited deliberate indifference to the harassment of E.R. based on sex in violation of Title IX. This indifference caused E.R. to be subjected to the described sex discrimination, sexual harassment, and gender-based harassment.

65. Defendants' violations of Title IX were the actual, direct, and proximate cause of injuries suffered by E.R. as alleged.

66. E.R. requests judgment in her favor against Defendants as set forth in the Prayer for Relief.

THIRD CLAIM FOR RELIEF

**Minnesota Human Rights Act, Minn. Stat. § 363A.13-.14
Discrimination on the Basis of Sexual Orientation**

(Brought Pursuant to the Minnesota Human Rights Act Against the School District; School Board; Dennis Carlson and Tom Hagerty, in their official capacities)

67. Plaintiff incorporates by reference all preceding paragraphs.

68. The acts and omissions of Defendants violated E.R.'s rights under the Minnesota Human Rights Act by discriminating against her full utilization and benefit of an educational institution on the basis of sexual orientation.

69. Defendants had actual notice that its policies and practices constituted discriminatory acts and omissions and the effect such policies and practices had on E.R.'s ability to utilize and benefit from an educational institution.

70. Defendants had actual notice that harassment based on sexual orientation was so severe, pervasive, and objectively offensive that it created a hostile climate based on sexual orientation that deprived E.R. of full utilization and benefit of an educational institution on the basis of sexual orientation.

71. Defendants aided, abetted, and incited discrimination against E.R. based on sexual orientation that prevented her full utilization of and benefit from an educational institution.

72. Defendants' violations of the Minnesota Human Rights Act were the actual, direct, and proximate cause of injuries suffered by E.R. as alleged.

73. E.R. requests judgment in her favor against Defendants as set forth in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in its favor and against Defendants, providing the following relief:

1. Order granting an injunction restraining and enjoining Defendants from enforcing the Anoka-Hennepin School District's Sexual Orientation Curriculum Policy, 604.11, adopted on February 9, 2009.
2. Order granting Plaintiff nominal, compensatory, and punitive damages against Defendants for violations of the Equal Protection Clause of the 14th Amendment of the United States Constitution.
3. Order granting Plaintiff nominal, compensatory, and punitive damages against Defendants for violations of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.
4. Order granting Plaintiff nominal, compensatory, and punitive damages against Defendants for violations of the Minnesota Human Rights Act, Minn. Stat. § 363A.13-.14, as well as other available relief identified in Minn. Stat. §§ 363A.33, Subd. 6 and 363A.29, Subd. 4.
5. Order granting an injunction restraining and enjoining Defendants from failing to adequately protect Plaintiff, and other similarly situated students, from verbal and physical harassment within the school district.
6. Issue an injunction ordering Defendants to stop engaging in such unconstitutional and unlawful acts, and to develop policies and procedures for ending any such unconstitutional and unlawful acts and the hostile and intolerant environment, including but not limited to the following:
 - a. Require Defendants to implement mandatory and effective training programs for District faculty, staff, and students on issues relating to

diversity, homophobia, and methods to intervene to stop students from harassing other students who are LGBT or gender non-conforming or who are perceived to be LGBT or gender non-conforming;

b. Require Defendants to adopt policies with specific guidelines for instructing teachers, security guards, and administrators about how to address complaints by students who have been taunted, harassed, or discriminated against because of their actual or perceived sexual orientation or gender identity or expression;

c. Require Defendants to conduct immediately assemblies for all students addressing issues of diversity, homophobia, and tolerance, wherein students are instructed about laws and policies prohibiting harassment and discrimination based on actual or perceived sexual orientation and gender identity or expression;

d. Require Defendants to assign a peer mediator and/or other staff member to District schools to provide active monitoring for the school and to address immediately instances of harassment and/or discrimination that arise at the school;

e. Require Defendants to maintain statistical data concerning each complaint of harassment based on actual or perceived sexual orientation and gender identity or expression made by a student or staff member, as well as the specific action District teachers, security guards, and/or administrators took to resolve that complaint;

f. Require Defendants to take no reprisal or retaliatory action against Plaintiff or any administrator, teacher or staff member who speaks out in support of Plaintiff.

7. For interest, where appropriate, on any damages awarded to Plaintiff.
8. For attorneys' fees, expenses, and costs incurred in the prosecution of this action pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws.
9. For any other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED,

Dated: August 9, 2011

CULBERTH & LIENEMANN, LLP

s/ Celeste E. Culberth

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