

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**N.G. B/N/F
KEVIN GABLE**
Plaintiffs,

v.

**KILLEEN INDEPENDENT
SCHOOL DISTRICT**
Defendant

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ORIGINAL COMPLAINT

NOW COMES N.G. and Kevin Gable as next friend of N.G. (collectively termed Plaintiffs herein), by and through their attorney Martin J. Cirkiel from the law firm of Cirkiel & Associates, P.C., and bring this their *Original Complaint* alleging that the Killeen Independent School District (“Killeen”) violated the various rights of N.G., as more specifically pled herein. Plaintiffs reserve the right to replead if new claims and issues arise upon further development of the facts, and as permitted by law. In support thereof, Plaintiffs respectfully show the following:

**I.
PROLOGUE**

1. The vast majority of students who are bullied and harassed at school suffer in silence, attending school each with the simple hope and prayer that they simply, will be left alone. It is well-known across the professional education community that those who are not left alone, and continue to be victims of bullying and harassment, unfortunately turn their rage inward. They become angry, then depressed and often suicidal, just like what has occurred with N.G.

2. For the child and families, families left behind, there is nothing more disturbing than knowing your children was a victim of sexual harassment, that you complained about and essentially nothing was done. To give meaning to their child's experience, they feel compelled to tell their story. They feel a duty to do so in the hope the presentation of their story will prevent the same from happening to another child and another family. In the course of this telling, these victims benefit from a healing effect. The healing and empowerment is even more pronounced, when the effort to tell their story is before a Federal Judge and in Federal Court, where the bright light and sanitizing effect of federal law and the Judge's gaze is forced to shine upon the issue and the Defendant School District, as Mr. Gable has chosen in his daughter's case.

II.
BRIEF INTRODUCTION TO THE CASE

3. N.G. is now 14 years old. This fall she will be entering the 9th grade at the Killeen Independent School District. Over the course of the last three years, N.G. was bullied, assaulted and harassed, physically and sexually, numerous times, by a number of different male students. Both she and her father spoke with school officials about the assaults she was experiencing but no investigations were ever initiated, or any interventions ever undertaken to address the problem. Due to the incessant sexual harassment N.G. began to experience an increase in depression and anxiety. In a related vein, she began to recede from participation in school-related activities, and even went from an A student to one with failing grades in some areas. Finally, her father complained so much so, that she was transferred to another school. While there N.G. experienced retaliation because she was now seen as "tattle-tale."

4. For the families there is nothing more sad then seeing their own child suffer. To give meaning to their child's experience they feel compelled to tell their story. They feel a duty to do so in the hope the presentation of their story will prevent the same from happening to another family. In the course of this telling, these victims benefit from a healing effect. The healing and empowering effect is even more pronounced when the story is told before a neutral Hearing Officer, as the Petitioners have chosen to do in his case, so that the bright light and sanitizing effect of federal law and the Hearing Officer's gaze is focused on this important issue and the School District's failures.
5. With all this in mind, Plaintiff's ask that NG's sexual harassment injuries be addressed and remedied, due to the acts and omissions of Killeen ISD, and the discrimination N.G. experienced. As such, Plaintiffs brings forth this lawsuit pursuant to 20 U.S.C. §§ 1681-1688, (Title IX, Education Amendments of 1972).

III.
JURISDICTION

6. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C.A. §§ 1331 and 1343 because the matters in controversy arise under the laws and rules of the United States as noted above.

IV.
VENUE

7. Under 28 U.S.C. § 1391, venue is proper before this Court because the events and omissions giving rise to the Plaintiff's claims occurred in the Western District of Texas and in the Waco Division.

V.
CONDITIONS PRECEDENT AND
ADMINISTRATIVE EXHAUSTION

8. Plaintiffs have exhausted their special education related claims pursuant to the *Individuals*

With Disabilities Education Act, (“IDEA”), 20 U.S.C. § 1415(1) and 19 T.A.C. § 89.1185(p) and as such all conditions precedent to the filing of this lawsuit have been fulfilled. Claims related to discrimination and sexual harassment based upon gender and gender stereotypes are not within the purview of a Texas Education Agency Due Process Hearing Officer.

VI.
PARTIES

9. N.G. is a citizen of the State of Texas and lives with her father, Kevin Gable, at 2704 Blackburn Drive, Killeen, Texas. They live within the Killeen Independent school District catchment area. At all pertinent times relevant to this lawsuit, N.G. was a pupil in the Killeen Independent School District and lived at 2704 Blackburn Drive, Killeen, Texas. It is uncontroverted that N.G. is a female student.
10. In addition, Kevin Gable was at all pertinent times, a citizen of the State of Texas and also resident of Bell County and brings forward this complaint as N.G.’s parent, guardian, and next friend.
11. Defendant Killeen Independent School District is a school district organized under the laws of the State of Texas and at all times is required to follow the policies and procedures as set forth by the School Board. District personnel are thus responsible for the care, management and control of all public school business within its jurisdiction as to Plaintiff N.G., the training of teachers at the School as to safety, supervision of students within the district, and for the course of study. They may have been ssserved by and through Killeen Independent School District’s Superintendent, Dr. John M. Craft at 200 North WS Young Drive, Killeen, Texas, 76543-4025.

VII.
STATEMENT OF FACTS ABOUT N.G.

12. During a significant period made the basis of this complaint N.G. was a student at Rancier Middle School at the Killeen Independent School District.
13. During the period when N.G. first entered the 6th grade at the Rancier Middle School she was soon an object attention by many of the boys. There was one in particular, Cameron Dykes who was particularly intrusive. In fact over time, what might be considered normal "playground games" soon became harassment and even physical touching, with sexual connotations.
14. On almost a daily basis, and multiple times during the day, he would slap her on the buttocks and touch her breasts. For the most part she suffered the indignities in silence or tell him to leave her alone.
15. In addition, and at least a few occasions she filled out a complaint form and filed it with the Assistant Principal, Mrs. Maje. To her knowledge, she never completed an investigation into N.G.'s complaints.
16. During this period Mr. Gable also complained to Mrs. Skillet, the School Principal, about his daughter's safety concerns. He also spoke, at least one time, to the Guidance Counselor, Mrs. Adams.
17. Later that school year, in what was (then) considered typical adolescent playground antics as explained by Killeen ISD, N.G. had a her clavicle broken, after an assault.
18. The following school year the sexual harassment continued and even worsened. The sexual harassment had names; "touch-titty Tuesday," "hump Wednesday," "Twerk Thursday" and "Slap-butt Friday." It was well-known to school officials.

19. On or about August 30, 2013 N.G.'s step-mother, Lydia sent an email to Mrs. Torres, complaining about the fact N.G. was a frequent victim of physical harassment and assault. Lydia noted she reported the abuse to Ms. Patrick, who told her that if it happened again, she should go to the Assistant Principal. To the families knowledge, she never completed an investigation into N.G.'s complaints, as well.
20. N.G. reported the sexual harassment a number of times to the Assistant Principal and again no investigation was ever completed, or any action taken. Due to the ongoing failure of the School District to control the harassment she experienced, N.G. continued to suffer the indignities in silence or to tell her assaulters to leave her alone.
21. In the 2014-2015 school year, her 8th grade the sexual harassment by Dykes continued. Two other boys then joined him, in his harassment. The harassment also seemed to be related to gang-like activities, where some students wore red flags on their shirts, and others wore blue flags. During the Fall of that school year, N.G. made at least one complaint to the Assistant Principal and again no investigation was ever completed, or any action taken. Due to the ongoing failure of the School District to control the harassment she experienced, N.G. continued to suffer the indignities in silence or to tell her assaulters to leave her alone. She tried to concentrate on her school work but she found that difficult.
22. During this period, N.G. would often take circuitous routes around the campus, so as to avoid the sexual harassment.
23. During this period N.G. began to experience significant anxiety at school.
24. During this period she stopped participating in extra-curricular activities. She was on a cheerleading squad and stopped participating in this program as well.
25. During this period, N.G.'s grades significantly deteriorated, from A's to D's and even F's.

26. In February of 2015 N.G. again complaint to the Assistant Principal, Mrs. Maje. She reports that she had "enough of it," the daily abuse of "touch-titty Tuesday," "hump Wednesday," "Twerk Thursday" and "Slap-butt Friday" continued. She even completed a written complaint form. To her knowledge, the Assistant Principal never completed an investigation into N.G.'s complaints, nor was any intervention undertaken. A day later was "slap butt Friday" and Cameron didn't say a word to her, but came up and slapped her on the butt again. The sexual harassment continued.
27. On or about March 1, 2015, N.G. confided in her father about these sexual assault that happened at school in which she was slapped on her buttock by male students. During the conversation N.G. told her father that a similar incident occurred on February 27, 2015 at school and that the boys had given names to these types of sexual harassment activities, as noted above. What was particularly disturbing to Mr. Gable was that N.G. and other female students had endured this type of harassment for the prior three years while attending Rancier Middle School, and she had complained numerous time about the problem to the administration.
28. Concerned about the harassment his daughter was experiencing, Mr. Gable went to Rancier Middle on March 2, 2015 to report the bullying and sexual harassment that his daughter had told him about.
29. Mr. Gable met with the school's principle, Amanda Silkitt. Ms Silkitt response to the N.G.'s statement about the length of time these activities have been going on was, "What happened this time?"
30. Mr. Gable expressed his frustration with Ms. Silkitt's indifference to the abuse and harassment his daughter experienced, in spite of making at least six separate reports over the

prior three years about these activities. In one response, Ms. Silkitt dismissed the boy's conduct as being "just something boys do" and that the family was "blowing things out of proportion." She also said "... They are boys, Mr. Gable, I've told them to stop. What do you want me to do about it?"

31. Mr. Gable then demanded that the police be called so that a report of the activity could be filed. Ms Silkitt said that she would call later.
32. Mr Gable then had a similar conversation with Superintendent Kraft who also stated that he would contact the police when he wasn't so busy.
33. Frustrated with their lack of responsiveness, he went to the media with his complaints. Soon N.G. was known as a "tattle tale." On her last day in attendance at the Rancier Middle School, and after being verbally harassed and bullied by other students, she had to dive into a classroom for safety. The teacher, Ms. Vinnejas, called Mr. Gable and told him he needed to come pick up his daughter, as "these kids are going to get her" and the school officials could not protect her at the middle school.
34. After the issue became public N.G. began to experienced a hostile environment in the classroom as retaliation for going to the news with the story.
35. In addition to the harassment N.G. endured on school property, the offending student's approached her at home with threats of violence for reporting their misconduct.
36. Mr. Gable made an appointment to meet with Superintendent Kraft on March 5th, 2015. Instead of taking steps to help correct the situation at Rancier, Mr. Gable was told that N.G. was to blame for the harassment and he encouraged Mr. Gable to transfer his children to a new school district.

37. N.G. and her siblings were transferred to a new school, Palo Alto Middle School in the Killeen Independent School District, on March 12th, 2015, even though Mr. Gable was assured by Superintendent Kraft that he would personally handle the transfer at the March 5th meeting. N.G. and her siblings were all given unexcused absences during the transition period.
38. At first the transition went well but after time, it was well known in the new school that N.G. had complained about some of the boys at the Rancier Middle School. Soon she became an object of derision. Her brother became an object of physical assaults and retaliation.
39. After her experiences at Rancier, N.G. continues to require extensive counseling and continues to experience depression, anxiety, and anger.

VIII.
CLAIMS PURSUANT TO 20 U.S.C. §§ 1681-1688 AND TITLE IX
OF THE EDUCATION AMENDMENTS ACT OF 1972

40. Plaintiffs incorporate by reference all the above related paragraphs above with the same force and effect as if herein set forth.
41. Plaintiffs contend the School District, acting under color of law and acting pursuant to customs and policies of the district, deprived N.G. of rights and privileges secured to her by Title IX of the Education Amendments Act of 1972 and by other laws of the United States by discriminating against her on the basis of gender and gender stereotypes.
42. The acts and omissions of the school district deprived N.G. of her right to not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, on the basis of her sex or gender stereotypes for which the School District Defendant is liable to N.G. pursuant to 20 U.S.C §§ 1681-1688 for compensatory damages.

IX.
RATIFICATION

43. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.
44. Killeen ISD ratified the acts, omissions and customs of school district personnel and staff.
45. As a result, Killeen ISD is responsible for the acts and omissions of staff persons who were otherwise responsible for the safety of N.G.

X.
PROXIMATE CAUSE

46. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.
47. Each and every, all and singular of the foregoing acts and omissions, on the part of the School District, taken separately and/or collectively, jointly and severally, constitute a direct and proximate cause of the injuries and damages set forth herein.

XI.
DAMAGES

48. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.
49. As a direct and proximate result of the School District's conduct, N.G. has suffered injuries and damages, for which he is entitled to recover herein within the jurisdictional limits of this court, including but not limited to:
- a. Physical pain in the past;
 - b. Medical expenses in the past;
 - c. Mental anguish in the past;

- d. Mental anguish in the future;
- e. Mental health expenses in the past;
- f. Mental health expenses in the future;
- g. Physical impairment in the past, and
- h. Various out-of-pocket expenses incurred on behalf of N.G. by and through his family; and

all but for the acts and omissions of the School District.

XII.
ATTORNEY FEES

- 50. Plaintiffs incorporate by reference all the above related paragraphs, as if fully set forth herein.
- 51. It was necessary for Plaintiffs to retain the undersigned attorneys to file this lawsuit. Upon judgment, Plaintiffs are entitled to an award of attorney fees and costs pursuant to Title IX and pursuant to 42 U.S.C. §2000d et seq.

XIII.
EQUITABLE RELIEF

- 52. Plaintiff Kevin Gable, respectfully requests the Court considering ordering the Killeen Independent School District to:
 - a. Adopt an anti-bullying and harassment program that is provided by a third-party, like the Anti-Defamation League or the Southern Poverty Law Center;
 - b. Adopt policies, procedures, and practices commensurate with the “Dear Colleague Letter”, dated October 26, 2010, from the United States Department of Education Office for Civil Rights to include but not be limited to:
 - i. the provision of school assemblies and instruction on bullying, harassment

- and sexual harassment;
 - ii. addressing bullying, harassment and sexual harassment based upon disability or race or gender or common stereotypes that accompany those subjects in classroom intervention settings;
 - iii. conducting a bullying, harassment and sexual harassment assessment at each campus;
 - iv. forming a sexual harassment prevention coordination team at each school;
 - v. include language specifically identifying bullying, harassment and sexual harassment based upon disability or race or gender and common stereotypes that accompany those subjects in the school rules and student handbook;
 - vi. develop a strategy to prevent such bullying, harassment and sexual harassment in hot spots;
 - vii. post signs in classrooms prohibiting bullying, harassment and sexual harassment and listing its consequences; and
 - viii. provide a place and manner of confidential reporting and encouraging students to help classmates who are being bullied, harassed and sexually harassed and to report such bullying, harassment and sexual harassment;
- c. That for the next three years the District provide for a school-safety coordinator for each Campus, so as to assure that the program is enacted comprehensively;
 - d. That the District retain a neutral third party to complete a bullying assessment for each campus and have that person or entity report back to the President of the School Board and Superintendent so the District may address any issues noted in the assessment;

- e. That staff receive “Diversity training” by a third party to include information about gender, race, and disability stereotypes;
 - f. That the school provide a marker in the school library, where books and other materials would be made available to students dealing with bullying harassment, and related emotional concerns and issues related to gender, race, and disability along with common stereotypes that accompany those subjects;
 - g. That Anti-bullying month be recognized by the Killeen ISD;
 - h. That the school district help facilitate the provision of counseling services for students deemed to be at risk; and
53. That the School Board appoint a committee including interested members of the public to address the issues noted herein, report back to the Board and act accordingly.

XV.
DEMAND FOR JURY TRIAL

54. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a jury trial for all issues in this matter.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for judgment against the District in the manner and particulars noted above, and in an amount sufficient to fully compensate them for the elements of damages enumerated above, judgment for damages, recovery of attorney's fees and costs for the preparation and trial of this cause of action, and for its appeal if required, pursuant to Title IX, 42 U.S.C. §1988 and 42 U.S.C. § 2000d et seq.; together with pre- and post-judgment interest, and court costs expended herein, as well as the equitable issues noted above; and for such other relief as this Court in equity, deems just and proper and for such other relief as the

Court may deem just and proper in law or in equity.

Respectfully submitted,

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