No. 19-10815

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ARVILLA STINSON,
as next friend of K.R., a minor,

Plaintiff-Appellant,

v.

TRAMENE MAYE, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Alabama
(No. 2:15-cv-924-WKW)

JOINT APPENDIX

Volume 1 (of 1)

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1, counsel for Plaintiff-Appellant, Arvilla Stinson, certifies that the following have an interest in the outcome of this appeal:

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* Walker, Hon. Susan R. (Magistrate Judge)

* Watkins, Hon. W. Keith (District Judge)

Dated: April 19, 2019

/s/ Nicolas Y Riley
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Counsel for Plaintiff-Appellant

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ARVILLA STINSON, as next friend of K.R., a minor,	§	
Plaintiff,	§	
vs.	§	**CIVIL ACTION NO.: 2:15-cv-924-WKW**
MOTGOMERY COUNTY BOARD OF EDUCATION; TRAMENE MAYE, in his individual and official capacities; RAFIQ VAUGHN, in his individual and official capacities; and FICTITIOUS DEFENDANT COACH, whose identity is not currently known and who will be named later,	§	:
Defendants.	§	

PLAINTIFF'S NOTICE OF APPEAL

Plaintiff Arvilla Stinson appeals to the U.S. Court of Appeals for the Eleventh Circuit from the final judgment and order entered by the U.S. District Court for the Middle District of Alabama on February 5, 2019 dismissing this case. Docket Nos. 48 & 49.

Respectfully submitted,

/s/Abbey Clarkson
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CERTIFICATE OF SERVICE

I hereby certify that I have filed the above and foregoing via the CM/ECF system, which will automatically provide notice to counsel for all parties in this case.

/s/Abbey Clarkson

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARVILLA STINSON, as next friend of K.R., a minor, Plaintiff, v. MONTGOMERY COUNTY BOARD OF EDUCATION; TRAMENE MAYE, in his individual and official capacities; and RAFIQ VAUGHN, in his individual and official capacities, Defendants.	)	CASE NO. 2:15-CV-924-WKW

FINAL JUDGMENT

In accordance with the Memorandum Opinion and Order entered on this date, it is the ORDER, JUDGMENT, and DECREE of the court that this case is DISMISSED with prejudice as to Count One of the Second Amended Complaint and DISMISSED without prejudice as to Counts Two and Three of the Second Amended Complaint. The Clerk of the Court is DIRECTED to enter this document on the civil docket as a Final Judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DONE this 5th day of February, 2019.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARVILLA STINSON, as next friend of K.R., a minor,	)	
Plaintiff,	)	
v.	)	CASE NO. 2:15-CV-924-WKW [WO]
MONTGOMERY COUNTY BOARD OF EDUCATION; TRAMENE MAYE, in his individual and official capacities; and RAFIQ VAUGHN, in his individual and official capacities,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Chief Justice Earl Warren penned those words in 1954. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). They remain true in 2019. So year after year, for those reasons and more, parents across Alabama send their children to public school.

When parents send their children to school, they essentially delegate some of their parental authority to teachers and school administrators. There is a Latin phrase

for that concept: "*in loco parentis*," which translates "in the place of a parent." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654–56 (1995); *Smith v. Smith*, 922 So. 2d 94, 98 (Ala. 2005); 1 William Blackstone, *Commentaries* *453. But the power to act in the place of a parent comes with solemn responsibilities. Educators must educate students. They must also protect students.

At least that is how things should be. If the allegations in this case are true, Southlawn Middle School in Montgomery, Alabama, is a place where rape is not taken seriously.

K.R. was a student at Southlawn Middle when her fellow students allegedly gang-raped her. K.R.'s mother, Arvilla Stinson, filed this suit on K.R.'s behalf. According to Stinson's complaint, Assistant Principal Tramene Maye *saw* three boys drag K.R. into an abandoned building. The boys then raped K.R. But Maye ignored the incident and told K.R.'s stepsister to "go on about her business." When Principal Rafiq Vaughn learned about the rape later that day, he was allegedly more worried about bad press than he was about K.R. He also told K.R. to "love her body" and remarked that she looked like his girlfriend. K.R. eventually changed schools, but the three boys stayed at Southlawn Middle. They were never punished.

In her lawsuit, Stinson claims the Montgomery County Board of Education is liable under Title IX because it was deliberately indifferent to sexual harassment. Stinson also claims that Principal Vaughn and Assistant Principal Maye committed

common-law torts. All three Defendants moved to dismiss the Second Amended Complaint (Doc. # 33) for failure to state a claim (Docs. # 34, 36).

For the reasons below, the Board's motion to dismiss Stinson's Title IX claim is due to be granted. Title IX imposes a "rigorous and hard to meet" standard, *Hill v. Cundiff*, 797 F.3d 948, 975 (11th Cir. 2015), and despite the appalling allegations in Stinson's complaint, that standard is not met here. That leaves Stinson with her tort claims against Principal Vaughn and Assistant Principal Maye. Because those claims are based entirely on Alabama common law, the court determines that Stinson should pursue them in state court. This case is therefore due to be dismissed.

I. JURISDICTION AND VENUE

The court has federal-question subject-matter jurisdiction over Stinson's Title IX claim. 28 U.S.C. §§ 1331, 1343(a). The court declines to exercise supplemental jurisdiction over her common-law claims. *Id*. § 1367(c). The parties do not contest personal jurisdiction. Venue is proper under 28 U.S.C. § 1391(b).

II. STANDARD OF REVIEW

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a complaint. To survive a Rule 12(b)(6) motion, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*

Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).[1] "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

In ruling on a motion to dismiss, a court must take the facts alleged in the complaint as true and construe them in the light most favorable to the plaintiff. *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1321–22 (11th Cir. 2012). But a court need not accept mere legal conclusions as true. *Id.* at 1325.

III. FACTUAL ALLEGATIONS

Southlawn Middle School is a public school in Montgomery, Alabama, under the control of the Montgomery County Board of Education. At all material times, Rafiq Vaughn was Southlawn Middle's principal, making him the highest-ranking on-campus official. Tramene Maye was the school's assistant principal.

One day after school, K.R. and her stepsister were walking off the Southlawn Middle campus when three boys grabbed K.R. and dragged her into an abandoned building. The court infers from the Second Amended Complaint that the boys were three of K.R.'s fellow Southlawn Middle students. (*See* Doc. # 33, at 11.) Stinson does not specify whether the abandoned building was on school property; she simply

[1] Stinson argues that her complaint "should not be dismissed unless it appears that [she] can prove *no* set of facts in support of her claim which would entitle her to relief." (Doc. # 40, at 3; Doc. # 41, at 3.) But the Supreme Court "categorically retired" the "no set of facts" test a decade ago. *Simpson v. Sanderson Farms, Inc.*, 744 F.3d 702, 714 (11th Cir. 2014) (citing *Twombly*, 550 U.S. at 562–63). The *Twombly* and *Iqbal* plausibility standard now governs.

alleges it was "on the perimeter of the school property." (Doc. # 33, at 8.) But construing the allegations in the light most favorable to Stinson, the court assumes that the building was on campus — inside, not outside, the perimeter. K.R.'s age is not alleged.

K.R.'s stepsister told Assistant Principal Maye what the boys were doing to K.R., and Maye had witnessed the boys grab and drag K.R. According to Stinson, what Maye observed met the Board's definition of bullying and harassment. But Maye did not intervene. Nor did he report the incident to Principal Vaughn. Instead, Maye told K.R.'s stepsister to "go on about her business." (Doc. # 33, at 8.) Two of the boys then gang-raped K.R. while the third boy kept a lookout.

Stinson happened to be on campus at the time. She soon learned about K.R.'s rape and immediately went to discuss it with Principal Vaughn. But Vaughn showed "little concern for K.R." He "pleaded" with Stinson not to call the media. Vaughn also told K.R. that she needed to "love her body," and he remarked that K.R.'s adult figure was like his girlfriend's. (Doc. # 33, at 8–9.) Assistant Principal Maye was in the room when Stinson met with Vaughn.

Principal Vaughn called the police, who "deemed the rape 'consensual sex' and took no further action." (Doc. # 33, at 9.) But otherwise, Vaughn did not investigate or write a report about the rape. Nor did anyone else from Southlawn Middle or the Board investigate or write a report. K.R. did not receive notice of

Title IX, of her right to file a grievance, or of any grievance procedures. The school did not discipline the boys. Instead, the boys continued to attend Southlawn Middle without repercussion.

K.R. became depressed and missed seven or eight days of school because of the rape. Yet no one from Southlawn Middle or the Board reached out to her or offered her counseling. One day during K.R.'s absence, Stinson went to Southlawn Middle to pick up K.R.'s schoolwork. While there, she spoke with Principal Vaughn. Vaughn told Stinson that students were saying the three boys had "run a train" on K.R.,[2] and he advised Stinson not to let K.R. return to Southlawn Middle. (Doc. # 33, at 10.) K.R. then transferred to a different public school in Montgomery. But word of the gang-rape traveled to her new school, and students "teased" K.R. about it. Because of the rape, K.R. takes medication and receives mental health treatment. Her grades have dropped. Her social life has declined.

The Board has no policy for addressing Title IX grievances about student-on-student sexual harassment. It does have a general policy for addressing bullying and harassment. That policy requires teachers and staff who witness harassment (including sexual harassment) to document the incident on a certain form and "promptly" notify the principal. (Doc. # 33, at 4, 17.) The principal must then

[2] "'Running a train' is a slang expression for a gang rape." *Williams v. Bd. of Regents*, 477 F.3d 1282, 1288 n.3 (11th Cir. 2007).

investigate the incident and write a report. Verified acts of harassment must result in disciplinary or corrective action. (Doc. # 33, at 5.) The school may expel rapists.

According to the Second Amended Complaint, K.R.'s rape was not the first time that Principal Vaughn failed to investigate sexual harassment. The school year before K.R.'s rape, a Southlawn Middle teacher sexually harassed several students. Parents complained to Principal Vaughn. But because the teacher was Vaughn's former fraternity brother, Vaughn did not investigate the allegations or take any other action. Toward the end of the school year, though, the teacher was fired after police arrested him for indecent exposure.

IV. PROCEDURAL HISTORY

Stinson sued in 2015 (Doc. # 1) and twice amended her complaint (Docs. # 21, 33). Her Second Amended Complaint (Doc. # 33) is now the operative pleading. It has three counts. Count One is against the Board for violating Title IX, 20 U.S.C. § 1681. It is based on Vaughn and the Board's response (or lack thereof) to K.R.'s rape. Count Two is a tort claim against Assistant Principal Maye, in his individual and official capacities, for "negligence/wantonness." It is based on his failure to intervene when he saw K.R. being dragged into the abandoned building, as well as his failure to report what he saw to Principal Vaughn. Count Three is a claim against Principal Vaughn, in his individual and official capacities, for the tort of outrage. It is based on his response to K.R.'s rape, particularly his comments about K.R.'s body.

The Board moved to dismiss the Second Amended Complaint under Federal Rule of Civil Procedure 12(b)(6). (Doc. # 36.) So did Vaughn and Maye. (Doc. # 34.) Those motions are the subject of this decision.

V. DISCUSSION

Taking the allegations in the Second Amended Complaint as true, which the court is required to do, a middle-school student was the victim of a horrible act of sexual violence, and her attackers suffered no consequences. Assistant Principal Maye was entrusted with protecting K.R. He could have intervened, but instead he watched as attackers dragged her away. Later, Principal Vaughn told K.R. that she looked like his girlfriend and needed to "love her body."

Even so, a school board is not vicariously liable for everything its teachers and administrators do. To the contrary, the standard for holding a school board liable under Title IX is "rigorous and hard to meet." *Hill v. Cundiff*, 797 F.3d 948, 975 (11th Cir. 2015). The question is whether Stinson has alleged enough facts to allow the court to reasonably infer that the Board is liable. For the reasons below, Stinson has not met that burden. The Board's motion to dismiss is therefore due to be granted. And with no federal-law claim on which relief can be granted, the court declines to exercise supplemental jurisdiction over the tort claims against Principal Vaughn and Assistant Principal Maye. A state court should be the one to address those claims in the first instance.

A. Title IX

Title IX is a federal statute that prohibits gender discrimination in education.[3] It provides: "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). Sexual harassment, including sexual assault, is a form of gender discrimination under Title IX. *Williams v. Bd. of Regents*, 477 F.3d 1282, 1293 (11th Cir. 2007).

Title IX does not expressly allow students to sue school boards. But the Supreme Court has penciled a private right of action into the statute. *See Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 76 (1992); *Cannon v. Univ. of Chi.*, 441 U.S. 677, 717 (1979). So in certain narrow circumstances, a school board may be liable for damages if it inadequately responds to student-on-student sexual harassment. *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 633 (1999).[4]

There are five elements of a successful Title IX claim based on student-on-student sexual harassment. *See Hill*, 797 F.3d at 970. To survive the Board's motion to dismiss, Stinson must plausibly allege that all five elements are met. First, the

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[3] The statute has a few exceptions, *see* 20 U.S.C. § 1681(a)(1)–(9), but none apply here.

[4] "Title IX does not allow claims against individual school officials; only funding recipients can be held liable for Title IX violations." *Williams*, 477 F.3d at 1300 (citing *Hartley ex rel. Hartley v. Parnell*, 193 F.3d 1263, 1270 (11th Cir. 1999)). Any Title IX claim against Vaughn or Maye is therefore due to be dismissed.

Board must receive federal funding. *Id*. Second, the harassment K.R. experienced must have been "severe, pervasive, and objectively offensive." *Id*. at 972. Third, an "appropriate person" at the school must have had "actual knowledge" of the harassment. *Id*. at 971. Fourth, the Board must have been "deliberately indifferent" to the harassment. *Id*. at 973. And fifth, the harassment must have "effectively barred" K.R. from accessing an educational opportunity or benefit. *Id*. at 975 (cleaned up).

The fourth element — deliberate indifference — is the most important element here. Under the deliberate indifference standard, the Board is liable only if its actions were "clearly unreasonable in light of known circumstances." *Davis*, 526 U.S. at 648. The Board must also, "at a minimum, cause students to undergo harassment or make them liable or vulnerable to it." *Id*. at 645 (cleaned up). Deliberate indifference demands more than mere negligence, *see id*. at 649, and it cautions courts against "second-guessing the disciplinary decisions made by school administrators," *id*. at 648. The test is "exacting," "rigorous," and "hard to meet." *Hill*, 797 F.3d at 975; *Doe v. Sch. Bd. of Broward Cty.*, 604 F.3d 1248, 1259 (11th Cir. 2010). In essence, deliberate indifference amounts to "an official decision by the [school board] not to remedy the violation." *Davis*, 526 U.S. at 642 (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998)).

The court finds that Stinson has not adequately alleged that the Board was

deliberately indifferent to sexual harassment. To be sure, the Board's alleged response fell below what other school boards might have done. *See, e.g.*, *Carabello v. N.Y. City Dep't of Educ.*, 928 F. Supp. 2d 627, 642 (E.D.N.Y. 2013); *Wilson v. Beaumont Indep. Sch. Dist.*, 114 F. Supp. 2d 690, 693 (E.D. Tex. 2001). But neither is this a case in which the Board did nothing. *See Davis*, 526 U.S. at 654 (noting the school board there "made no effort whatsoever to investigate or to put an end to the harassment"). Instead, the Board may use Principal Vaughn's call to the police as a defense. The police "deemed the rape 'consensual sex' and took no further action." (Doc. # 33, at 9.) That finding keeps the Board from being liable here.

The court assumes the police reached the wrong conclusion. But even then, Stinson does not allege that the police investigation was inadequate. *See Rex v. W. Va. Sch. of Osteopathic Med.*, 119 F. Supp. 3d 542, 551 (S.D. W. Va. 2015) (finding deliberate indifference where school allegedly "engaged in the investigation with the intention of minimizing the incident, protecting the school's reputation, and putting the incident behind the institution"). Nor does she allege that Vaughn waited too long to call the police. Nor does she allege that Vaughn called the police knowing that officers would reach the wrong conclusion. *Cf. Doe v. Bibb Cty. Sch. Dist.*, 126 F. Supp. 3d 1366, 1378 (M.D. Ga. 2015), *aff'd*, 688 F. App'x 791, 798 (11th Cir. 2017) (per curiam). Nor does she allege that the police investigation, which resulted in an affirmative finding of "consensual sex," was "inconclusive." *See Broward*

Cty., 604 F.3d at 1262 (stating that if an investigation is "inconclusive," schools may have to take "informal corrective action in an abundance of caution").

Instead, the only fair reading of the Second Amended Complaint is that Vaughn called the police the afternoon of the rape. The police then determined that no rape had occurred. Again, it is assumed the police got it wrong. But the relevant inquiry is not whether the investigation reached the right conclusion, but whether the Board was deliberately indifferent. *Cf. Sauls v. Pierce Cty. Sch. Dist.*, 399 F.3d 1279, 1285 (11th Cir. 2005) (stating "the relevant inquiry is not whether the measures taken were effective in stopping discrimination") (citing *Davis v. DeKalb Cty. Sch. Dist.*, 233 F.3d 1367, 1375 (11th Cir. 2000)). And once the police cleared the boys of rape, it was not clearly unreasonable for the Board to act as if they had no further obligation to report or investigate the rape claim.

Stinson's counter-arguments are not persuasive. First, Stinson alleges that Principal Vaughn broke school policy when he failed to write a report or conduct his own investigation. She also points out that the Board failed to provide counseling and did not discipline the three boys. But none of that makes the Board deliberately indifferent given that the police found that K.R. had not been raped.

Second, Stinson relies on *Williams v. Board of Regents*, 477 F.3d 1282. That case is distinguishable. In *Williams*, a university knew that a particular student-athlete had harassed women at other schools, but it still recruited the athlete to play

on the basketball team. The athlete then coordinated a gang rape in his dorm room. The victim called the police, and a grand jury soon indicted the rapists. *Id.* at 1288–90. Yet the university held no disciplinary hearing for nearly a year. *Id.* at 1296. This case is the inverse of *Williams*. There is no allegation that the Board knew that K.R.'s attackers had harassed other students. It was Vaughn, not Stinson or K.R., who called the police. And the police investigation contradicted K.R.'s story rather than giving the Board a reason to believe her.

Third, Stinson alleges that Vaughn showed "little concern" for K.R. and that he made comments about her body. But Vaughn still called the police. That he made offensive comments along the way "does not transform the Board's reasonable response into deliberate indifference." *GP ex rel. JP v. Lee Cty. Sch. Bd.*, 737 F. App'x 910, 916 (11th Cir. 2018).

Fourth, Stinson cites the Board's lack of a Title IX policy and the violations of the Board's harassment policy. But the mere failure to obey a policy "does not establish the requisite actual notice and deliberate indifference." *Gebser*, 524 U.S. at 291–92. Also, "the failure to promulgate a grievance procedure does not itself constitute 'discrimination' under Title IX." *Id.* at 292. By extension, defects in notifying K.R. of grievance procedures do not constitute deliberate indifference under the circumstances.

Fifth, Stinson alleges that Southlawn Middle students said the three boys had

"run a train" on K.R. She also alleges that students at her new school "teased" her about the rape.[5] But at that point, the police had already determined that K.R. was not raped. And though gossip can be factual, it is often fiction. Given the police investigation and the unreliability of hallway chatter, the failure to investigate or report based on what other students were saying did not constitute deliberate indifference. Vaughn did tell Stinson about the gossip, and he advised her to change schools. But that does not mean Vaughn believed the gossip; he could have been trying to protect K.R. from false rumors. *See Wilson*, 114 F. Supp. 2d at 693.

Finally, Stinson alleges that Vaughn has a history of indifference because he failed to investigate other complaints. But those complaints were about a teacher who harassed students. They were about inappropriate touching, comments, and requests — not rape. There is no allegation that teacher did anything in the abandoned building. And this time around, Vaughn called the police. So this case is not like *Williams*, 477 F.3d at 1290, or *Hill*, 797 F.3d at 959–61, where the school had prior knowledge of harassment by the same individual. Under the facts alleged, Vaughn's prior indifference does not save Stinson's complaint.

Today's decision in no way condones what Stinson says the Board, Vaughn, and Maye did. But as for Title IX liability, Stinson does not adequately allege that

[5] Teasing and name-calling are not independently actionable under Title IX. *Davis*, 526 U.S. at 652; *cf. Hawkins v. Sarasota Cty. Sch. Bd.*, 322 F.3d 1279, 1289 (11th Cir. 2003).

the Board was deliberately indifferent to student-on-student sexual harassment. One might think that deliberate indifference is too stringent of a test.[6] But the Supreme Court adopted that "high standard," *Davis*, 526 U.S. at 643, and it must be followed. The Board's motion to dismiss is thus due to be granted.

B. Supplemental Jurisdiction

The court now turns to the claims against Principal Vaughn and Assistant Principal Maye. Stinson sued Vaughn for the tort of outrage, also known as the intentional infliction of emotional distress. That claim is based mostly on Vaughn's comments about K.R.'s body. Stinson sued Maye for negligence and wantonness based on his failure to protect K.R. and his failure to report that she was harassed.

But federal courts have limited jurisdiction. There is never federal-question jurisdiction over common-law claims. 28 U.S.C. § 1331. And because all parties are from Alabama, diversity jurisdiction is impossible here. *Id.* § 1332. So if the court has jurisdiction over the claims against Vaughn and Maye, it must be supplemental jurisdiction. *Id.* § 1367(a).

If Stinson had a valid Title IX claim, there would be supplemental jurisdiction over her common-law claims; her claims all "arise out of a common nucleus of operative fact." *Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 743 (11th

[6] *See* Catharine A. MacKinnon, *In Their Hands: Restoring Institutional Liability for Sexual Harassment in Education*, 125 Yale L.J. 2038, 2068 (2016) (criticizing the deliberate indifference standard because it is "easy for schools to satisfy, including on motions to dismiss").

Cir. 2006). But where, as here, a district court "has dismissed all claims over which it has original jurisdiction," it "may decline to exercise supplemental jurisdiction." 28 U.S.C. § 1367(c)(3). Stinson's common-law claims raise difficult and important issues of Alabama law that a state court should address in the first instance. So to promote judicial economy and comity, the court declines to exercise supplemental jurisdiction. Stinson may refile those claims in state court. *See* 28 U.S.C. § 1367(d).

VI. CONCLUSION

For the reasons above, it is ORDERED that:

1. The Board's Motion to Dismiss Count One (Doc. # 36) is GRANTED with prejudice.

2. Stinson's common-law claims are DISMISSED for lack of jurisdiction without prejudice.

3. Vaughn and Maye's Motion to Dismiss (Doc. # 34) is DENIED as moot.

4. The motion for a status conference (Doc. # 47) is DENIED.

5. This case is DISMISSED.

DONE this 5th day of February, 2019.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ARVILLA STINSON, as next friend of K.R., a minor	§	
Plaintiff,	§	
vs.	§	**CIVIL ACTION NO: 2:15-cv-924-WKW**
MONTGOMERY COUNTY BOARD OF EDUCATION, TRAMENE MAYE in his individual and official capacities, RAFIQ VAUGHN in his individual and official capacities, and FICTITIOUS DEFENDANT COACH, whose identity is not currently known and who will be named later	§	
Defendants.	§	

MOTION FOR STATUS CONFERENCE

Plaintiff hereby moves this Court set a status conference in this case. In support thereof, Plaintiff states as follows:

1. Plaintiff filed the instant action on December 15, 2015 [Doc. 1], with the events forming the basis of this lawsuit occurring on or about October 23, 2014.

2. Defendants responded by filing motions to dismiss on January 7, 2016 [Docs. 7 and 9].

3. By order dated September 16, 2016, this Court gave Plaintiff leave to amend her complaint to further flesh out certain constitutional claims under § 1983 [Doc. 20].

4. Plaintiff filed her amended complaint on September 27, 2016 [Doc. 21].

5. Defendants again filed motions to dismiss in response to Plaintiff's amended complaint [Docs. 22-25].

6. By order dated August 30, 2017, this Court granted Plaintiff leave to amend in order to flesh out certain constitutional claims under § 1983 [Doc. 32].

7. On September 11, 2017, Plaintiff filed her second amended complaint [Doc. 33].

8. On September 25, 2017, Defendants filed their third motions to dismiss [Docs. 34-37].

9. Those motions have been fully briefed since October 24, 2017 [Doc. 43] but have not yet been ruled upon.

10. Much earlier in this litigation, Plaintiff's counsel contacted Defendants' counsel about setting up a Rule 26(f) planning meeting; however, defense counsel declined to participate in same, asserting that they

would not participate in discovery until all dispositive motions had been resolved.

11. There has been no scheduling order entered by this Court.

12. We are now more than four years removed from the events that form the basis of this lawsuit, and nearly three years removed from the filing of this lawsuit.

13. The delay in moving forward with discovery puts Plaintiff at risk of being severely prejudiced in this matter as witnesses move, documents get lost, and memories fade.

14. Thus, it has become imperative that Plaintiff be permitted to conduct, at a minimum, some limited fact-finding in order to preserve key documents and witnesses. *See K.M. v. Ala. Dept. of Youth Svcs.*, 209 F.R.D. 493 (M.D.Ala. 2002).

15. In *K.M.*, even though discovery was stayed pending resolution of defendants' qualified immunity arguments, the court ordered the parties to enter into a written preservation plan that would ensure that information needed by plaintiffs was not destroyed or lost while discovery was stayed, noting that "this discovery stay should not result in unfair prejudice to the rights of the plaintiffs and their claims against [defendants], from the loss of records or witnesses occasioned by the delay…" The court went on to find

that plaintiffs "should be allowed to collect limited information in order to identify potentially critical witnesses and to preserve documents" that may be central to their case.

16. Moreover, Defendant Montgomery Public Schools Board of Education has not and cannot allege an immunity defense, and there is no reason by Plaintiff cannot move forward with discovery as it relates to claims against the Board.

17. Given the foregoing, Plaintiff respectfully asks this Court to set a status conference where the parties can discuss moving forward with discovery, or a at a minimum, entering into a preservation plan so that Plaintiff is not unfairly prejudiced by the delay in moving this case forward.

Respectfully submitted, this the 5th day of December, 2018.

/s/Abbey Clarkson
Abbey Clarkson (MAS038)

/s/Andrew R. Salser
Andrew R. Salser (SAL027)

/s/Cameron L. Hogan
Cameron L. Hogan (HOG010)

OF COUNSEL:

LLOYD & HOGAN
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CERTIFICATE OF SERVICE

I certify that I have served this document on all parties of record by e-filing it through the CM/ECF system on December 5, 2018.

/s/Abbey Clarkson

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARVILLA STINSON, as next friend of K.R., a minor, Plaintiff, *-vs-* MONTGOMERY PUBLIC SCHOOLS BOARD OF EDUCATION, *et al.*, Defendants.	Case No. 2:15-cv-924-SRW

MOTION TO DISMISS ON BEHALF OF DEFENDANT MONTGOMERY COUNTY BOARD OF EDUCATION

COMES NOW**,** Defendant, Montgomery County Board of Education (hereinafter the "Board" or "Defendant") by and through undersigned counsel and pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, and respectfully moves this Court to dismiss the Plaintiff's *Second Amended Complaint* (Doc. 33). This motion is further supported by arguments and authorities set forth in the Defendant's brief filed concurrently herewith. Defendant Board asserts the following grounds for this motion:

1. The *Second Amended Complaint* fails to state a claim against the Board upon which relief can be granted.

2. The *Second Amended Complaint* fails to state a claim for violation of any of the Plaintiff's rights under federal law.

3. Plaintiff Stinson has not made the allegations necessary to allow her Title IX claim against the Montgomery County Board of Education to proceed.

4. The plaintiff's *Second Amended Complaint* is insufficient with regard to the second (actual notice or knowledge by an appropriate person), third (deliberate indifference

to known acts of harassment within the Board's programs) and fourth (severe and pervasive discrimination effectively barring access to an educational benefit) Title IX elements. See also *Hill v. Cundiff*, 797 F.3d 948, 970 (11th Cir. 2015).

5. There are no allegations that an "appropriate person" with the Board had "actual knowledge of discrimination in the recipient's programs and failed to adequately respond." *See Gebser v. Lago Vista Independent School Dist.,* 524 U.S. 274, 290, 118 S.Ct. 1989 (1998).

6. The Board cannot be held liable under Title IX based upon some general allegation of constructive notice. See *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).

7. The *Second Amended Complaint* allegations do not establish that the Board acted with "deliberate indifference to known acts of harassment in its programs and activities." To impose liability on the Board under Title IX, the standard requires the harassment to take place in a context subject to the Board's control, in circumstances wherein the Board exercises substantial control over both the alleged harasser and the context in which the known harassment occurs. See *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 650 (1999).

8. There are no allegations that Plaintiff K.R. faced any additional discrimination as a result of Vaughn's alleged failure to respond adequately to her complaint.

9. The allegations by the Plaintiff do not support a deliberate choice by the Board not to take any action to rectify the alleged sexual discrimination of Plaintiff K.R.

10. The alleged discrimination was not "severe, pervasive, and objectively offensive" so as to establish Title IX liability as defined under federal law. *Williams v. Board of Regents of Univ. System of Ga.,* 477 F.3d 1282, 1297-1298 (11th Cir. 2007).

11. The Plaintiff's *Second Amended Complaint* is due to be dismissed because there are no allegations showing any effect of the alleged harassment touched the Board's entire educational program or activity. See *Hawkins v. Sarasota County*, 322 F.3d 1279, 1288 (11th Cir. 2003).

12. The Plaintiff lacks standing to seek injunctive relief.

13. Punitive damages under Title IX may not be imposed upon governmental entities like the Montgomery County Board of Education.

14. The Defendant Board hereby adopts by reference any applicable legal arguments asserted by the co-defendants in response to the Plaintiff's *Second Amended Complaint.* If such arguments are contradictory, Defendant Board hereby conditionally adopts such arguments.

WHEREFORE, ABOVE PREMISES CONSIDERED, the Defendant Montgomery County Board of Education respectfully requests this Court dismiss the Plaintiff's action against it in its entirety.

Respectfully submitted this the 25th day of September, 2017.

/s/ James R. Seale

James R. Seale (3614-E-68J)
Attorney for Defendant, Montgomery County Board of Education

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CERTIFICATE OF SERVICE

I hereby certify that I have e-filed the above and foregoing which will electronically notify that following:

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This the 25th day of September, 2016.

/s/ James R. Seale
Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARVILLA STINSON, as next friend of K.R., a Minor,	)	
Plaintiff,	)	
v.	)	**Civil Action No.: 2:15-cv-924-WKW-SRW**
MONTGOMERY PUBLIC SCHOOLS BOARD OF EDUCATION, TRAMENE MAYE in his individual and official capacities; RAFIQ VAUGHN in his individual and official capacities, and FICTITIOUS DEFENDANT COACH, whose identity is not currently known and who will be named later,	)	
Defendants.	)	

MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

COME NOW, the defendants, Assistant Principal Tramene Maye, and Principal Rafiq Vaughn, (hereinafter "School Officials"), and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, move this Court to dismiss this action in its entirety. This Motion is accompanied by the arguments and authorities contained in defendants' brief filed herewith. Defendants assert the following grounds for this Motion separately and severally.

1. The defendants are entitled to Absolute Immunity for the state law claims brought against them in their official capacities.

2. The defendants are entitled to state agent immunity for the state law claims brought against them in their individual capacities.

3. The Complaint fails to state a claim against the defendants upon which relief can be granted.

/s/ Emily C. Marks
EMILY C. MARKS
Attorney for defendants Assistant Principal
Tramene Maye and Principal Rafiq Vaughn

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the following counsel of record via CM/ECF electronic transmission and/or by placing same in the U.S. Mail, postage prepaid this the 25th day of September, 2017.

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/s/ Emily C. Marks
OF COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ARVILLA STINSON, as next friend of K.R., a minor	§	
Plaintiff,	§	
vs.	§	**CIVIL ACTION NO: 2:15-924-WKW-SRW**
MONTGOMERY COUNTY BOARD OF EDUCATION, TRAMENE MAYE in his individual and official capacities, and RAFIQ VAUGHN in his individual and official capacities	§	
	§	**JURY TRIAL DEMANDED**
Defendants.	§	

SECOND AMENDED COMPLAINT

JURISDICTION

This is an action at law pursuant to Title IX (20 U.S.C. § 1681), in addition to claims under Alabama State Law.

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. § 1331, § 1332, and §1343(a)(3); 28 U.S.C. § 1367.

PARTIES

1. Plaintiff Arvilla Stinson is an adult resident of Montgomery County, Alabama. She is the mother and next friend of K.R., a minor who sustained injuries as discussed herein.

2. Defendant Montgomery County Board of Education ("MCBOE") is a school district organized and existing under the laws of Alabama with offices located in Montgomery, Alabama.

3. At all material times, Defendant Tramene Maye was an employee of MCBOE acting in the scope of his employment. He is sued in his official capacity and his individual capacity.

4. At all material times, Defendant Rafiq Vaughn was an employee of MCBOE acting in the scope of his employment as the principal at Southlawn Middle School. Vaughn was and is the highest-ranking school official at Southlawn Middle, and is the first line of responsibility for ensuring that the students in his school are safe. He is sued in his individual capacity and his official capacity.

MCBOE POLICIES

5. The MCBOE Handbook[1] ("Handbook") contains grievance procedures for discrimination, including Title IX, ADA, Title VI, and Section 504. Handbook at 47.

6. The Handbook mandates an "informal but thorough" investigation of any Title IX violations.

7. The Grievance Procedures in the Handbook only address complaints by parents, guardians, third parties, and/or students against MCBOE employees. Handbook at 47.

8. There is no policy in the Handbook for addressing Title IX grievances relating to student-on-student harassment.

9. The Handbook does contain a section regarding bullying and harassment among students. See Section VII of Handbook, p. 43.

10. "Harassment" includes, but is not limited to, subjecting another student to physical contact. Handbook at 43.

[1] Plaintiff does not have a copy of the handbook that was in effect at the time of the acts complained of in this lawsuit. The allegations regarding the handbook that are set forth herein are taken from the 2015-2016 handbook that is available online. Upon information and belief, the policies will be similar, if not identical, to the policies in the 2014-2015 handbook. If necessary, Plaintiff will amend this complaint to comport to the 2014-2015 handbook upon receipt of same after initial disclosures in this case.

11. "Sexual harassment" includes unwelcome touching or other inappropriate physical acts of a sexual nature toward a student in school.

12. The Handbook states that any teacher or school staff who witnesses or receives reports regarding acts of bullying or harassment should promptly notify the school principal or his/her designated staff. Handbook at 44.

13. Any bullying or harassment should be documented on a Bullying/Harassment Complaint Form and that form must be mailed or personally delivered to the principal or his/her designee. Handbook at 44.

14. The principal or his/her designee is required to accept and investigate all reports of harassment or bullying.

15. The principal or his/her designee is required to notify the parent or guardian of a student who commits a verified act of harassment or bullying of the response of the school staff and consequences of the verified act and/or the consequences that may result from further acts of bullying. Handbook at 44.

16. The Handbook mandates that except for good cause shown, the investigation must be completed not more than five business days

after the administrator or designated investigator receives notice of the complaint. Handbook at 44.

17. The Handbook mandates that the principal or designated investigator must make a written report to the Chief Academic Officer upon completion of the investigation. The report shall include a determination of whether or not the allegations are factual, whether or not there has been a policy violation, and proposed discipline, if any. Handbook at 44-45.

18. The school administrator investigating the report must make every effort to notify the parents or guardians of the complainant and the individuals against whom the complaint was filed prior to beginning the investigation. Handbook at 45.

19. The Handbook lays out consequences for bullying or harassing behavior. Verified acts of bullying or harassment shall result in disciplinary action and/or corrective action reasonably calculated to end the identified conduct, deter future conduct, and protect the complainant and other similarly situated individuals. In imposing disciplinary measures, the district shall take into account the harm suffered by the victim and other members of the school community and any damage to school property. Handbook at 45.

20. Discipline should comply with the *Code of Student Behavior*. Handbook at 46.

21. The *Code of Student Behavior* categorizes forcible rape as "Sexual Battery," which is a Class D offense punishable by Proposal for Due Process/Expulsion. See Handbook at 36.

PRIOR TITLE IX VIOLATIONS COMMITTED BY RAFIQ VAUGHN

22. During the 2013-2014 school year, a teacher named DeAndre Hill was employed at Southlawn Middle School.

23. Upon information and belief, Hill sexually harassed a number of his female students at Southlawn Middle[2], creating a hostile environment under Title IX.

24. Upon information and belief, a number of parents complained about the inappropriate conduct of Mr. Hill to Principal Rafiq Vaughn, who represented that he would "investigate" the complaints.

25. Upon information and belief, Mr. Vaughn did not investigate these incidents or otherwise take any action because Mr. Hill was a former fraternity brother of his.

[2] Mr. Hill would rub certain students' backs in an inappropriate manner or make inappropriate remarks. On one occasion, he asked a student who had worn a dress to school that day to sit on the front row and to open her legs. Upon information and belief, Vaughn was notified of these incidents and took no action.

26. Upon information and belief, parents began checking their children out of school prior to Mr. Hill's class due to the harassment, thus depriving those students of their right to learn under Title IX.

27. Upon information and belief, Mr. Vaughn was aware that these students were leaving school early to avoid Mr. Hill's class, but he took no action against Mr. Hill. On one occasion, he told a concerned parent that there was nothing he could do about the situation.

28. According to a report from Fox 10 News, Mr. Hill was arrested in April 2014 for indecent exposure charges stemming from an incident where he showed a picture of his penis to one of his students at Southlawn Middle. He was thereafter terminated.

29. Mr. Hill was rehired to teach middle school in South Alabama, where he was arrested in 2015 for having sexual contact with a student.

THE GANG RAPE OF K.R.

30. Plaintiff K.R. is a minor. At all relevant times, she was a student at Southlawn Middle School in Montgomery, Alabama.

31. Defendant Maye, at all relevant times, was the assistant principal at Southlawn Middle School.

32. Defendant Vaughn, at all relevant times, was the principal at Southlawn Middle School.

33. On or about October 23, 2014, K.R. was walking off of the Southlawn Middle School campus at the end of the school day when a group of three boys grabbed her and dragged her into an abandoned building on the perimeter of the school property.

34. K.R.'s stepsister, who had been walking with her, alerted Defendant Maye to the conduct.

35. Rather than intervene on K.R.'s behalf, Maye told K.R.'s stepsister to "go on about her business" and did not take any other action.

36. Maye witnessed the three boys grabbing and dragging K.R. The conduct Maye witnessed met the Handbook definition of bullying, harassment, and sexual harassment.

37. Maye did not report the conduct to Principal Vaughn.

38. K.R. was thereafter gang raped by two of the boys while the third boy kept a lookout.

39. Plaintiff Arvilla Stinson was soon notified about the incident. Stinson was already at Southlawn Middle that day, participating in a parent-teacher meeting with some of K.R.'s teachers regarding her classroom performance.

40. Stinson immediately reported to Principal Vaughn's office to discuss the gang rape.

41. Maye and another coach whose name is not currently known were also present at the meeting.

42. During the meeting, Principal Vaughn exhibited little concern for K.R. and instead pleaded with Stinson to refrain from calling the media.

43. Principal Vaughn also told K.R. that she needed to "love her body."

44. Principal Vaughn also made a remark that K.R. had more of an adult body similar to Vaughn's girlfriend's body.

45. Principal Vaughn called local police, who deemed the rape "consensual sex" and took no further action.

46. Stinson thereafter took K.R. to Baptist East Hospital for further treatment.

47. Recognizing that K.R. had clearly been raped, Baptist East personnel called the police and notified Child Protective Services and DHR.

48. After completing all necessary examinations and reports, K.R. fell into a deep depression.

49. K.R. received psychological treatment as the result of the gang rape.

50. K.R. missed approximately 7-8 days of school as the result of the gang rape.

51. During this period, K.R. did not want to leave the house.

52. Neither Principal Vaughn nor anyone else from Southlawn Middle or the Board reached out to K.R. during her absence from school.

53. The Board did not offer counseling to K.R. or take any other steps to assist her in dealing with her grief after the gang rape.

54. Upon information and belief, Principal Vaughn completed no reports concerning the rape, did no investigation regarding the rape, and took no further action regarding K.R.'s gang rape.

55. K.R. was not given notice of Title IX or her right to make a grievance regarding the gang rape.

56. K.R. was not advised of the grievance procedures available to her.

57. Approximately one week into K.R.'s absence from school, Stinson went to Southlawn Middle to give K.R.'s doctor's excuse and to get K.R.'s schoolwork. Stinson spoke with Principal Vaughn regarding K.R.'s distress. Vaughn advised that Stinson should probably not allow K.R. return to Southlawn Middle under the circumstances because all the students were saying that the three boys had "run a train" on K.R.

58. Since Stinson had already moved her family out of the school district earlier in the school year, Stinson was able to transfer K.R. into a different school within the MCBOE system.

59. K.R. thereafter had to deal with the stress of starting a new school in the middle of the school year.

60. Word of the gang rape traveled to her new school through social media. Students have teased K.R. about the incident, causing her to lash out violently.

61. Upon information and belief, neither Principal Vaughn nor any other administrative designee did any sort of report or investigation regarding the gang rape.

62. Upon information and belief, no legal or disciplinary action was taken against the three boys who gang raped K.R.

63. Upon information and belief, the three boys continued to attend Southlawn Middle without repercussion.

64. Upon information and belief, MCBOE did not change any of its policies or provide any additional training to staff after the incident complained of herein.

65. K.R. continues to take medication and receive treatment for mental health trauma subsequent to her gang rape and the Defendants' deliberate indifference thereto.

66. K.R.'s grades have dropped and her social life has declined as a result of being gang raped and the Defendants' deliberate indifference thereto.

67. K.R. is reluctant to leave her house as the result of being gang raped and the Defendants' deliberate indifference thereto.

68. K.R. has had violent outbursts toward her younger siblings since being gang raped and the Defendants' deliberate indifference thereto.

69. The actions and inaction of MCBOE interfered with K.R.'s ability to attend school and perform her studies and activities and indeed caused her to cease attending Southlawn Middle School due to the threatening, humiliating, abusive, unsafe and hostile environment.

70. MCBOE's failure to act on K.R.'s complaints, despite actual knowledge thereof, was a result of actual intent to discriminate against her on the basis of sex.

71. K.R. left behind her friends and life at Southlawn Middle after attending the school since 6th grade. She therefore missed out on her 8th Grade Graduation, which caused her great sadness and distress. Her new school did not have a graduation ceremony.

72. MCBOE's failure to act to remedy the harassment suffered by K.R. has deprived her of access to educational opportunities at Southlawn Middle in violation of Title IX.

COUNT I-TITLE IX (20 U.S.C. § 1681 ET SEQ.)
AGAINST MCBOE

73. Title IX liability arises when a school district official is an appropriate person with the authority to take corrective measures in response to sufficient, actual notice of student-on-student sexual harassment responds thereto with deliberate indifference and unreasonably in light of the known circumstances.

74. As the Eleventh Circuit has recognized, a school entity may be liable under Title IX when the school entity is deliberately indifferent in response to a single incident of student sexual harassment. *See Williams v. Bd. of Regents*, 477 F.3d 1282, 1296-1297 (11th Cir. 2007); *Hill v. Cundiff*, 797 F.3d 948, 973-974 (11th Cir. 2015).

75. Principal Vaughn, as principal of Southlawn Middle, is high enough on the chain of command to impute liability to MCBOE for purposes of Title X liability.

76. Vaughn is the highest ranking school official at Southlawn Middle who is present every day and he is the first line of responsibility for ensuring that the students in his school are safe. As such, he is an

"appropriate person" under Title IX. *See Hill v. Cundiff*, 797 F.3d 948, 971 (11th Cir. 2015) (where all parties stipulated that principal and assistant principal of school were "appropriate persons" under Title IX).

77. Principal Rafiq Vaughn was on actual notice of K.R.'s gang rape.

78. Principal Vaughn had the authority to initiate corrective action in response to K.R. being gang raped.

79. Rafiq Vaughn acted with deliberate indifference to his actual notice of K.R.'s gang rape inasmuch as Vaughn acted unreasonably in light of the known circumstances.

80. K.R. was deprived of educational opportunities enjoyed by her male colleagues—the right to attend public school on a daily basis without the fear, embarrassment, intimidation, physical and psychological injury associated with sexual assault.

81. Defendants are liable under Title IX for failure to implement policies and procedures to ensure compliance with Title IX; including, but not limited to, a failure to have a specific policy for addressing student-on-student grievances under Title IX framework. See Davis v. Monroe County, 526 U.S. 629, 647 (1999).

82. Defendants are liable under Title IX for failing to make grievance procedures, including where complaints may be filed, known and available to the Plaintiff.

83. Defendants are liable under Title IX for failing to process the complaints of sexual assault and rape alleged by K.R. as mandated by Title IX.

84. Defendants are liable under Title IX for failing to notify K.R. that her complaints of sexual assault and rape were covered under Title IX and that she was afforded protection thereunder.

85. Defendants are liable under Title IX for their failure to properly investigate K.R.'s allegations of sexual assault and gang rape.

86. Defendants are liable under Title IX for their failure to impose disciplinary measures or take remedial action against the individuals who raped K.R.

87. Defendants are liable under Title IX for their failure to reach a timely outcome of the investigation (because there was *no* investigation) and their subsequent failure to make Plaintiff aware of said outcome.

88. Defendants, through Vaughn, violated Title IX by making statements regarding K.R.'s body and how she should "love her body" after she was gang raped.

89. Due to Defendants' negligent, reckless and/or wanton breach of the duty they owed to K.R. pursuant to 20 U.S.C. § 1681, K.R. never returned to Southlawn Middle School. She has missed weeks of school and countless hours of instructional time dealing with the debilitating aftermath of her sexual harassment, sexual assault, and gang rape due to the actions and inactions of Defendants.

COUNT II: NEGLIGENCE/WANTONNESS AGAINST TRAMENE MAYE IN HIS INDIVIDUAL AND OFFICIAL CAPACITY

90. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

91. Standing *in loco parentis*, Maye owed a duty to K.R. to act in a reasonably prudent manner when executing his duties as an employee of Southlawn Middle to supervise students who pose a real and immediate danger to their fellow students and to protect students from harassment, intimidation, and sexual assault.

92. Maye does not have immunity from civil liability in his individual capacity. As the Alabama Supreme Court has routinely held:

> "'Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent *shall not* be immune from civil liability in his or her personal capacity
>
> (1) when the Constitution or laws of the United

> States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or
>
> (2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.' "

Ex parte Butts, 775 So.2d at 177–78 (quoting *Ex parte Cranman*, 792 So.2d 392, 405 (Ala.2000)).

93. Maye violated MCBOE policy by failing to report the harassment he witnessed to Principal Vaughn and by failing to complete the required, non-discretionary forms for an incident of harassment as set forth in the Handbook.

94. Maye acted negligently by failing to intervene when he saw K.R. being bullied and harassed by her three attackers.

95. As a proximate cause of Maye's negligence/wantonness, K.R. was caused to suffer physical injury, severe emotional distress, embarrassment, humiliation, anxiety, and concern.

96. Plaintiff seeks compensatory damages, punitive damages, costs, and any other relief available under Alabama law.

COUNT III: TORT OF OUTRAGE (INTENTIONAL/RECKLESS INFLICTION OF EMOTIONAL DISTRESS)

AGAINST RAFIQ VAUGHN IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES

97. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

98. As alleged *supra*, Defendants' conduct was intentional and/or reckless, extreme and outrageous and utterly intolerable in a civilized society.

99. Particularly, Vaughn's conduct in telling K.R.--a middle school-aged student at the school where he was the principal--that she should "love her body" and that she had an adult body that was similar to his girlfriend, is disgusting, outrageous, and disturbing.

100. As a direct result of Defendant's conduct, Plaintiff has suffered emotional distress so severe that no reasonable person could be expected to endure it.

101. Plaintiff seeks compensatory damages, punitive damages, costs, and any other relief available under Alabama law.

PRAYER FOR RELIEF

Wherefore, K.R. requests that this Court provide the following relief:

a. Declare the Defendants' conduct to be in violation of K.R.'s rights under federal and Alabama law;

b. Enter appropriate declaratory and injunctive relief against both MCBOE and Maye and Vaughn in their official capacities;

c. Award K.R. compensatory damages in an amount that will fully compensate her for the physical injuries, mental distress, anguish, pain, humiliation, embarrassment, suffering, and concern that she has suffered as a direct and proximate result of the statutory and common law violations set forth herein;

d. Enter a judgment against all Defendants for such punitive damages as will properly punish them for the constitutional, statutory, and common law violations perpetrated upon Plaintiff as alleged herein, in an amount that will serve as a deterrent to Defendants and others from engaging in similar conduct in the future;

e. Award K.R. with prejudgment and post-judgment interest at the highest rates allowed by law;

f. Award K.R. with costs, expert witness fees, and reasonable attorney's fees;

g. Assume continuing and indefinite jurisdiction to insure compliance with the terms of the Orders requested herein;

h. Award Plaintiff K.R. such other and further relief, including equitable, that this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL STRUCK BY JURY.

Respectfully submitted, this the 11th day of September, 2017.

/s/Abbey Clarkson
Abbey Clarkson (MAS038)

/s/Andrew R. Salser
Andrew R. Salser (SAL027)

/s/Cameron L. Hogan
Cameron L. Hogan (HOG010)

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that this Second Amended Complaint has been served on all interested parties by e-filing same on September 11, 2017.

/s/Abbey Clarkson

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARVILLA STINSON, as next friend of K.R., a minor,	)	
Plaintiff,	)	
v.	)	No. 2:15-cv-924-WKW-SRW
MONTGOMERY PUBLIC SCHOOLS BOARD OF EDUCATION, et al.	)	
Defendants.	)	

ORDER

This lawsuit stems from the alleged gang rape of a female student at Southlawn Middle School in Montgomery, Alabama. The suit is brought by plaintiff Arvilla Stinson, as next friend of her minor daughter, K.R. ("plaintiff"). There are three named defendants: Montgomery County Board of Education, Tramene Maye, and Rafiq Vaughn. Due to pleading deficiencies in the original complaint, which impeded the defendants' ability to respond to the complaint and the court's ability to rule on their motions to dismiss, this court ordered plaintiff to file an amended complaint. (Doc. 20). Presently before the court is the plaintiff's first amended complaint (Doc. 21), the Board's motion to dismiss (Doc. 24), and the individual defendants' motion to dismiss (Doc. 22). Also before the court are plaintiff's two motions for leave to amend, each contained within her responses to the defendants' respective motions to dismiss. (Doc. 28 at p. 16; Doc. 29 at p. 13). For the reasons stated below, plaintiff's motions for leave to amend her complaint are due to be GRANTED.

Plaintiff's first amended complaint is set out in five counts which are titled as follows: "42 U.S.C. § 1983 deliberate indifference against all defendants" (Count I); "Monell liability – failure to train/supervise/deliberately indifferent custom against Montgomery Public Schools" (Count II); "Title IX (20 U.S.C. § 1681 et seq.) against Montgomery Public Schools" (Count III); "Negligence/wantonness against Tramene Maye in his individual and official capacity" (Count IV); and "Tort of outrage (intentional/reckless infliction of emotional distress) against Rafiq Vaughn in his individual and official capacities" (Count V). (Doc. 21 at 12-20).

The first amended complaint requires additional amendment so that both the defendants and the court may properly evaluate and address it. Count One is problematic for several reasons. First, plaintiff appears to bring two separate deliberate indifference claims through the remedial vehicle of 42 U.S.C. § 1983 – one for deliberate indifference to a violation of K.R.'s right to substantive due process and one for deliberate indifference to a violation of K.R.'s right to equal protection. These claims should be stated in separate counts if plaintiff wishes to proceed on both of them. Moreover, plaintiff fails to make clear which facts contained in count one form the basis for each of the two deliberate indifference claims. In other words, it is unclear which facts contained under the heading of "Count One" plaintiff contends support her substantive due process claim and which of those facts plaintiff contends support her equal protection claim. In amending her complaint, plaintiff shall set out her deliberate indifference claim based on the alleged substantive due process violation(s) in a separate count from the deliberate indifference claim based on the alleged

equal protection violation(s). Furthermore, each count should set forth clearly the facts which plaintiff contends supports the claim contained therein.[1] *See* Fed. R. Civ. P. 10(b); 8.

Second, plaintiff purports to bring the two above-mentioned deliberate indifference claims against all three defendants, but does not explain which facts support her claims against each defendant. The defendants and the court should be able to read the complaint and understand which claims are stated against which defendant *and* understand the specific facts upon which plaintiff is basing her claim against *that* defendant. Therefore, in addition to setting out separately her two deliberate indifference claims, plaintiff shall make clear in each count the factual basis for making that claim against each defendant. For example, the count which contains her deliberate indifference claim based on an alleged substantive due process violation should make clear how defendant Maye was deliberately indifferent, how defendant Vaughn was deliberately indifferent, and how the Board was deliberately indifferent. The same applies to plaintiff's deliberate indifference claim based on an alleged equal protection violation. The count containing this claim should make it clear how *each* of three defendants was deliberately indifferent to K.R.'s right to equal protection. The Federal Rules of Civil Procedure do not require plaintiff to set out in separate counts her deliberate indifference claims as to each separate defendant; in other words, the Rules do not expressly require that plaintiff allege a separate count for her

[1] Plaintiff shall not merely incorporate into each count previously pled facts; rather, the court expects that plaintiff will allege or re-allege the specific facts relevant to the particular claim.

substantive due process claim against Maye and a separate count for her substantive due process claim against Vaughn. However, if framing the counts of the complaint in such a manner would assist plaintiff in demonstrating to the court with clarity the factual basis for each claim against each defendant, she is entitled and encouraged to do so.[2]

Moreover, with regard to plaintiff's substantive due process claim, plaintiff mentions "the Fourteenth Amendment" and "substantive due process," but fails to specify the constitutional right that she claims was violated. Indeed, it is evident from the individual defendants' briefing that defendants were forced to resort to guesswork in framing that portion of their motion to dismiss. *See* Doc. 23 at 9 ("The Plaintiff references § 1983 her [sic] substantive due process rights under the Fourteenth Amendment without identifying which of her rights under the Fourteenth Amendment was allegedly violated."). While plaintiff attempts to clarify the basis for her substantive due process claim in her brief in response to the individual defendants' motion to dismiss,[3] it is the plaintiff's *complaint* which should "give the defendant fair notice of what the … claim is *and the grounds upon which it rests*." *Hickman v. Hickman*, 563 Fed. Appx. 742 (11th Cir. 2014) (citing *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)) (emphasis added).

[2] Plaintiff should also be mindful that when she contends there are multiple bases for finding a defendant was deliberately indifferent – whether in the sphere of substantive due process or equal protection – she should state clearly each of those bases in the relevant count against that defendant. For instance, if plaintiff claims that a particular defendant was deliberately indifferent because he failed to protect her from being raped *and* because he did or failed to do something after the rape, she should make that clear in the count which contains the claim against that defendant. As the complaint is currently pled, it is difficult to determine which of the defendants' alleged actions or inactions form the basis of plaintiff's several claims against them.

[3] *See* Doc. 28 at p. 11 (discussing a "violation of K.R.'s bodily integrity").

Like defendants, the court is also hampered by plaintiff's failure to identify specifically in the complaint the constitutional basis for her substantive due process claim. This impediment is of particular concern given the individual defendants' arguments that they are entitled to qualified immunity from plaintiff's claims. In order for the court to analyze accurately and thoughtfully whether the individual defendants are entitled to qualified immunity, it must first know which specific right, or rights, plaintiff claims were violated. District courts have "the power and duty to define the issues at the earliest stages of litigation." *Johnson Enterprises of Jacksonville, Inc. v. FPL Group, Inc.*, 162 F.3d 1290, 1333 (11th Cir. 1998). This duty is even more pressing when the court is tasked with analyzing whether or not a party is entitled to qualified immunity. *See Brannon v. City of Gadsden*, 2013 WL 6284516, *5 (N.D. Ala. 2013) (ordering re-pleading because "vagueness [in the complaint] ma[de] an evaluation of the defenses of qualified immunity and quasi-judicial immunity impractical"); *Barnes v. Bolton*, 2014 WL 122437, 4 (N.D. Ala. 2014) (same).

For these reasons, it is hereby

ORDERED that plaintiff's motions for leave to amend contained within her responses to the defendants' motions to dismiss (Docs. 28 and 29) are GRANTED. Plaintiff shall file a second amended complaint within 10 days of this order. The amended complaint shall comply with Fed. R. Civ. P. 8 and 10, shall present each claim discretely and succinctly, and shall make clear the factual basis for each claim as to each defendant. Moreover, the specific grounds for each claim – especially when constitutional violations are alleged – should be evident. It is further

ORDERED that the pending motions to dismiss (Docs. 22 and 24) are hereby DENIED as MOOT. Defendants have leave to file renewed motions to dismiss after the filing of plaintiff's second amended complaint.

DONE, on this the 30th day of August, 2017.

/s/ Susan Russ Walker
Susan Russ Walker
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

ARVILLA STINSON as next friend of K.R., a minor,	)	
Plaintiff,	)	
v.	)	**2:15-CV-00924-WKW-SRW**
MONTGOMERY PUBLIC SCHOOLS, et al.,	)	
Defendants.	)	

RENEWED MOTION TO DISMISS ON BEHALF OF DEFENDANT MONTGOMERY COUNTY BOARD OF EDUCATION

COMES NOW, Defendant, Montgomery County Board of Education (hereinafter the "Board" or "Defendant") by and through undersigned counsel and pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, and respectfully moves this Court to dismiss the Plaintiff's *First Amended Complaint* (Doc. 21). This motion is further supported by arguments and authorities set forth in the Defendant's brief filed concurrently herewith. Defendant Board asserts the following grounds for this motion:

1. Defendant is entitled to Eleventh Amendment immunity for any and all §1983 claims brought against it.

2. The Plaintiff lacks standing to seek injunctive relief.

3. The *First Amended Complaint* fails to state a claim against the Board upon which relief can be granted.

4. The *First Amended Complaint* fails to state a claim for violation of any of the Plaintiff's rights under federal law.

5. The Plaintiff has failed to adequately allege deliberate indifference by the Board to state a claim under Title IX. The Plaintiff has also failed to adequately allege discrimination that was severe, pervasive and objectively offensive so as to be actionable under Title IX.

6. The Plaintiff has failed to assert a claim for alleged violation of the Fifth Amendment of the United States Constitution. The Fifth Amendment applies to acts complained of which were allegedly committed by federal officials. The Board is not a federal actor or federal governmental agency. Moreover, there is no equal protection clause of the Fifth Amendment as alleged by the Plaintiff. The Plaintiff's claims under the Fifth Amendment are due to be dismissed.

7. There are no allegations to support a claim for alleged violation of the Plaintiff's substantive due process rights under the Fourteenth Amendment. The Board cannot be held liable for the alleged sexual harassment of the Plaintiff by third parties, as alleged. "Public schools generally do not have the requisite level of control over children to give rise to a constitutional duty to protect them from third party actors." *Worthington v. Elmore County Bd. of Educ.*, 160 Fed. Appx. 877, 881

(11th Cir. 2005); *See also Moore v. Chilton County Bd. of Educ.*, 936 F. Supp 2d 1300, 1312 (M.D. Ala. 2013).

8. Defendant Board cannot be held liable under 42 U.S.C. §1983 under a theory of respondeat superior. The Plaintiff's *First Amended Complaint* fails to show any violation of constitutional rights. The *First Amended Complaint* fails to show that the Board has a custom or policy that constituted deliberate indifference to any constitutional right of Plaintiff K.R. The *First Amended Complaint* fails to allege any policy or custom of the Defendant Board caused any violation of Plaintiff K.R.'s constitutional rights. *McDowell v. Brown,* 392 F.3d 1283, 1289 (11th Cir. 2004).

9. The Defendant Board hereby adopts by reference any applicable legal arguments asserted by the co-defendants in response to the Plaintiff's *First Amended Complaint.* If such arguments are contradictory, Defendant Board hereby conditionally adopts such arguments.

WHEREFORE, ABOVE PREMISES CONSIDERED, the Defendant Montgomery County Board of Education respectfully requests this Court dismiss the Plaintiff's action in its entirety.

Respectfully submitted this the 11th day of October 2016.

/s/James R. Seale
James R. Seale (3617-E-68J)
Attorney for Defendant, Montgomery County Board of Education

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CERTIFICATE OF SERVICE

I hereby certify that I have e-filed the above and foregoing which will electronically notify that following:

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This the 11th day of October 2016.

/s/James R. Seale
Of Counsel

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

ARVILLA STINSON, as next friend of K.R., a Minor,	)	
Plaintiff,	)	
v.	)	**Civil Action No.: 2:15-cv-924**
MONTGOMERY PUBLIC SCHOOLS BOARD OF EDUCATION, TRAMENE MAYE in his individual and official capacities; RAFIQ VAUGHN in his individual and official capacities, and FICTITIOUS DEFENDANT COACH, whose identity is not currently known and who will be named later,	)	
Defendants.	)	

MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

COME NOW, the defendants, Assistant Principal Tramene Maye, and Principal Rafiq Vaughn, (hereinafter "School Officials"), and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, move this Court to dismiss this action in its entirety. This Motion is accompanied by the arguments and authorities contained in defendants' Brief filed herewith. Defendants assert the following grounds for this Motion separately and severally.

1. The defendants are entitled to Eleventh Amendment immunity for the federal claims brought against them in their official capacities. The defendants are entitled to Absolute Immunity for the state law claims brought against them in their official capacities.

2. The defendants are entitled to qualified immunity for the federal claims brought against them in their individual capacities. The defendants are entitled to state agent immunity for the state law claims brought against them in their individual capacities.

3. The Complaint fails to state a claim against the defendants upon which relief can be granted.

/s/ Emily C. Marks
EMILY C. MARKS
Attorney for defendants Assistant Principal Tramene Maye and Principal Rafiq Vaughn

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the following counsel of record via CM/ECF electronic transmission and/or by placing same in the U.S. Mail, postage prepaid this the 11th day of October, 2016.

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/s/ Emily C. Marks
OF COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ARVILLA STINSON, as next friend of K.R., a minor	§	
Plaintiff,	§	
vs.	§	**CIVIL ACTION NO: 2:15-924-WKW-SRW**
MONTGOMERY COUNTY BOARD OF EDUCATION, TRAMENE MAYE in his individual and official capacities, RAFIQ VAUGHN in his individual and official capacities, and FICTITIOUS DEFENDANT COACH, whose identity is not currently known and who will be named later	§	
	§	**JURY TRIAL DEMANDED**
Defendants.	§	

FIRST AMENDED COMPLAINT

JURISDICTION

This is an action at law to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a right, privilege and immunity secured to Plaintiff by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. Plaintiff is also bringing this action pursuant to Title IX (20 U.S.C. § 1681), in addition to claims under Alabama State Law.

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. § 1331, § 1332, and §1343(a)(3); 28 U.S.C. § 1367; and 42 U.S.C. § 1983.

PARTIES

1. Plaintiff Arvilla Stinson is an adult resident of Montgomery County, Alabama. She is the mother and next friend of K.R., a minor who sustained injuries as discussed herein.

2. Defendant Montgomery County Board of Education ("MCBOE") is a school district organized and existing under the laws of Alabama with offices located in Montgomery, Alabama.

3. At all material times, Defendant Tramene Maye was an employee of MCBOE acting in the scope of his employment. He is sued in his official capacity and his individual capacity.

4. At all material times, Defendant Rafiq Vaughn was an employee of MCBOE acting in the scope of his employment as the principal at Southlawn Middle School. Vaughn was and is the highest-ranking school official at Southlawn Middle, and is the first line of responsibility for ensuring that the students in his school are safe. He is sued in his individual capacity and his official capacity.

MCBOE POLICIES

5. The MCBOE Handbook[1] ("Handbook") contains grievance procedures for discrimination, including Title IX, ADA, Title VI, and Section 504. Handbook at 47.

6. The Handbook mandates an "informal but thorough" investigation of any Title IX violations.

7. The Grievance Procedures in the Handbook only address complaints by parents, guardians, third parties, and/or students against MCBOE employees. Handbook at 47.

8. There is no policy in the Handbook for addressing Title IX grievances relating to student-on-student harassment.

9. The Handbook does contain a section regarding bullying and harassment among students. See Section VII of Handbook, p. 43.

10. "Harassment" includes, but is not limited to, subjecting another student to physical contact. Handbook at 43.

[1] Plaintiff does not have a copy of the handbook that was in effect at the time of the acts complained of in this lawsuit. The allegations regarding the handbook that are set forth herein are taken from the 2015-2016 handbook that is available online. Upon information and belief, the policies will be similar, if not identical, to the policies in the 2014-2015 handbook. If necessary, Plaintiff will amend this complaint to comport to the 2014-2015 handbook upon receipt of same after initial disclosures in this case.

11. "Sexual harassment" includes unwelcome touching or other inappropriate physical acts of a sexual nature toward a student in school.

12. The Handbook states that any teacher or school staff who witnesses or receives reports regarding acts of bullying or harassment should promptly notify the school principal or his/her designated staff. Handbook at 44.

13. Any bullying or harassment should be documented on a Bullying/Harassment Complaint Form and that form must be mailed or personally delivered to the principal or his/her designee. Handbook at 44.

14. The principal or his/her designee is required to accept and investigate all reports of harassment or bullying.

15. The principal or his/her designee is required to notify the parent or guardian of a student who commits a verified act of harassment or bullying of the response of the school staff and consequences of the verified act and/or the consequences that may result from further acts of bullying. Handbook at 44.

16. The Handbook mandates that except for good cause shown, the investigation must be completed not more than five business days after the administrator or designated investigator receives notice of the complaint. Handbook at 44.

17. The Handbook mandates that the principal or designated investigator must make a written report to the Chief Academic Officer upon completion of the investigation. The report shall include a determination of whether or not the allegations are factual, whether or not there has been a policy violation, and proposed discipline, if any. Handbook at 44-45.

18. The school administrator investigating the report must make every effort to notify the parents or guardians of the complainant and the individuals against whom the complaint was filed prior to beginning the investigation. Handbook at 45.

19. The Handbook lays out consequences for bullying or harassing behavior. Verified acts of bullying or harassment shall result in disciplinary action and/or corrective action reasonably calculated to end the identified conduct, deter future conduct, and protect the complainant and other similarly situated individuals. In imposing disciplinary measures, the district shall take into account the harm suffered by the victim and other members of the school community and any damage to school property. Handbook at 45.

20. Discipline should comply with the *Code of Student Behavior*. Handbook at 46.

21. The *Code of Student Behavior* categorizes forcible rape as "Sexual Battery," which is a Class D offense punishable by Proposal for Due Process/Expulsion. See Handbook at 36.

PRIOR DELIBERATE INDIFFERENCE/TITLE IX VIOLATIONS COMMITTED BY RAFIQ VAUGHN

22. During the 2013-2014 school year, a teacher named DeAndre Hill was employed at Southlawn Middle School.

23. Upon information and belief, Hill sexually harassed a number of his female students at Southlawn Middle[2], creating a hostile environment under Title IX.

24. Upon information and belief, a number of parents complained about the inappropriate conduct of Mr. Hill to Principal Rafiq Vaughn, who represented that he would "investigate" the complaints.

25. Upon information and belief, Mr. Vaughn did not investigate these incidents or otherwise take any action because Mr. Hill was a former fraternity brother of his.

[2] Mr. Hill would rub certain students' backs in an inappropriate manner or make inappropriate remarks. On one occasion, he asked a student who had worn a dress to school that day to sit on the front row and to open her legs. Upon information and belief, Vaughn was notified of these incidents and took no action.

26. Upon information and belief, parents began checking their children out of school prior to Mr. Hill's class due to the harassment, thus depriving those students of their right to learn under Title IX.

27. Upon information and belief, Mr. Vaughn was aware that these students were leaving school early to avoid Mr. Hill's class, but he took no action against Mr. Hill. On one occasion, he told a concerned parent that there was nothing he could do about the situation.

28. According to a report from Fox 10 News, Mr. Hill was arrested in April 2014 for indecent exposure charges stemming from an incident where he showed a picture of his penis to one of his students at Southlawn Middle. He was thereafter terminated.

29. Mr. Hill was rehired to teach middle school in south Alabama, where he was arrested in 2015 for having sexual contact with a student.

THE GANG RAPE OF K.R.

30. Plaintiff K.R. is a minor. At all relevant times, she was a student at Southlawn Middle School in Montgomery, Alabama.

31. Defendant Maye, at all relevant times, was the assistant principal at Southlawn Middle School.

32. Defendant Vaughn, at all relevant times, was the principal at Southlawn Middle School.

33. On or about October 23, 2014, K.R. was walking off of the Southlawn Middle School campus at the end of the school day when a group of three boys grabbed her and dragged her into an abandoned building on the perimeter of the school property.

34. K.R.'s stepsister, who had been walking with her, alerted Defendant Maye to the conduct.

35. Rather than intervene on K.R.'s behalf, Maye told K.R.'s stepsister to "go on about her business" and did not take any other action.

36. Maye witnessed the three boys grabbing and dragging K.R. The conduct Maye witnessed met the Handbook definition of bullying, harassment, and sexual harassment.

37. Maye did not report the conduct to Principal Vaughn.

38. K.R. was thereafter gang raped by two of the boys while the third boy kept a lookout.

39. Plaintiff Arvilla Stinson was soon notified about the incident. Stinson was already at Southlawn Middle that day, participating in a parent-teacher meeting with some of K.R.'s teachers regarding her classroom performance.

40. Stinson immediately reported to Principal Vaughn's office to discuss the gang rape.

41. Maye and another coach whose name is not currently known were also present at the meeting.

42. During the meeting, Principal Vaughn exhibited little concern for K.R. and instead pleaded with Stinson to refrain from calling the media.

43. Principal Vaughn also told K.R. that she needed to "love her body."

44. Principal Vaughn also made a remark that K.R. had more of an adult body similar to Vaughn's girlfriend's body.

45. Principal Vaughn called local police, who, based on information given by Principal Vaughn, deemed the rape "consensual sex" and took no further action.

46. Stinson thereafter took K.R. to Baptist East Hospital for further treatment.

47. Recognizing that K.R. had clearly been raped, Baptist East personnel called the police and notified Child Protective Services and DHR.

48. After completing all necessary examinations and reports, K.R. fell into a deep depression.

49. K.R. received psychological treatment as the result of the gang rape.

50. K.R. missed approximately 7-8 days of school as the result of the gang rape.

51. During this period, K.R. did not want to leave the house.

52. Neither Principal Vaughn nor anyone else from Southlawn Middle or the Board reached out to K.R. during her absence from school.

53. The Board did not offer counseling to K.R. or take any other steps to assist her in dealing with her grief after the gang rape.

54. Upon information and belief, Principal Vaughn completed no reports concerning the rape, did no investigation regarding the rape, and took no further action regarding K.R.'s gang rape.

55. K.R. was not given notice of Title IX or her right to make a grievance regarding the gang rape.

56. K.R. was not advised of the grievance procedures available to her.

57. Approximately one week into K.R.'s absence from school, Stinson went to Southlawn Middle to give K.R.'s doctor's excuse and to get K.R.'s schoolwork. Stinson spoke with Principal Vaughn regarding K.R.'s distress. Vaughn advised that Stinson should probably not allow K.R. return to Southlawn Middle under the circumstances because all the students were saying that the three boys had "run a train" on K.R.

58. Since Stinson had already moved her family out of the school district earlier in the school year, Stinson was able to transfer K.R. into a different school within the MCBOE system.

59. K.R. thereafter had to deal with the stress of starting a new school in the middle of the school year.

60. Word of the gang rape traveled to her new school through social media. Students have teased K.R. about the incident, causing her to lash out violently.

61. Upon information and belief, neither Principal Vaughn nor any other administrative designee did any sort of report or investigation regarding the gang rape.

62. Upon information and belief, no legal or disciplinary action was taken against the three boys who gang raped K.R.

63. Upon information and belief, the three boys continued to attend Southlawn Middle without repercussion.

64. K.R. continues to take medication and receive treatment for mental health trauma subsequent to being gang raped.

65. K.R.'s grades have dropped and her social life has declined as a result of being gang raped.

66. K.R. is reluctant to leave her house as the result of being gang raped.

67. K.R. has had violent outbursts toward her younger siblings since being gang raped.

68. The actions and inaction of Montgomery Public Schools interfered with K.R.'s ability to attend school and perform her studies and activities and indeed caused her to cease attending Southlawn Middle School due to the threatening, humiliating, abusive, unsafe and hostile environment.

69. MCBOE's failure to act on K.R.'s complaints, despite actual knowledge thereof, was a result of actual intent to discriminate against her on the basis of sex.

70. K.R. left behind her friends and life at Southlawn Middle after attending the school since 6th grade. She therefore missed out on her 8th Grade Graduation, which caused her great sadness and distress. Her new school did not have a graduation ceremony.

71. MCBOE's failure to act to remedy the harassment suffered by K.R. has deprived her of access to educational opportunities at Southlawn Middle in violation of Title IX.

COUNT I- 42 U.S.C. § 1983
DELIBERATE INDIFFERENCE AGAINST ALL DEFENDANTS

72. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

73. Defendants violated K.R.'s rights under 42 U.S.C. § 1983 and her Fourteenth Amendment Equal Protection rights by failing to protect her from harassment, intimidation, assault, and rape.

74. **K.R., an African-American female, was raped by three male students. Defendants, acting or purporting to act under color of state law, intentionally and purposefully discriminated against K.R. because of her sex by depriving her of the rights guaranteed her by the Substantive Due Process and Equal Protection rights found in the Fifth and Fourteenth Amendment to the U.S. Constitution, and her rights under 42 U.S.C. § 1983.**

75. Defendants' discriminatory actions violated K.R.'s clearly established legal rights protecting her against sexual discrimination and were performed with malice and/or done with reckless disregard to K.R.'s federally-protected civil rights. Further, Defendants have demonstrated gross negligence and deliberate indifference with respect to ensuring Plaintiff's clearly-established legal rights were protected.

76. Defendants were deliberately indifferent to the sexual assault and rape of K.R.

77. Specifically, Maye saw K.R. being bullied and harassed, but failed to act to protect her in a way that was deliberately indifferent to her rights under § 1983.

78. Principal Vaughn acted with deliberate indifference when he failed to investigate or take any other steps to protect K.R. after she was gang raped.

79. All Defendants violated K.R.'s rights under § 1983 as well as her Fourteenth Amendment rights by failing to protect her from harassment, intimidation, and sexual assault.

80. The Eleventh Circuit has routinely held that the constitutional right to be free from sexual harassment is a right that is protected under §1983. *See, e.g. Hartley v. Parnell,* 193 F.3d 1263, 1269 (11th Cir. 1999).

81. Vaughn's deliberate indifference, as evidenced by his earlier failure to investigate complaints in the DeAndre Hill situation as well as the way he handled the incident that is the basis of this lawsuit, shows a pattern and practice of deliberate indifference.

82. The Defendants' misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff's constitutional rights—specifically, the right to be free of sexual harassment.

83. Defendants have demonstrated gross negligence and deliberate indifference with respect to ensuring that K.R.'s clearly-established legal rights were protected.

84. As a proximate consequence thereof, K.R. has been damaged as she has been caused to suffer physical injury, severe emotional distress, embarrassment, humiliation, anxiety, and concern.

85. Plaintiff seeks all damages available under 42 U.S.C. § 1983, including but not limited to damages, attorney's fees, costs.

COUNT II-42 U.S.C § 1983
MONELL LIABILITY-FAILURE TO TRAIN/SUPERVISE/DELIBERATELY INDIFFERENT CUSTOM AGAINST MONTGOMERY PUBLIC SCHOOLS

86. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

87. Montgomery Public Schools has systemically failed to train and supervise its employees regarding proper compliance with Title IX and § 1983. This includes a failure to properly train regarding how to deal with a sexual harassment complaint and how to properly investigate that complaint in compliance with Title IX.

88. Vaughn's deliberate indifference, as evidenced by his earlier failure to investigate complaints in the DeAndre Hill situation as well as the way he handled the incident that is the basis of this lawsuit, shows a pattern and practice of deliberate indifference. His consistent deliberate indifference amounts to an informal policy or custom of "looking the other way" rather than protecting his students from sexual harassment.

89. Montgomery Public Schools is further subject to Monell liability arising out of a deliberately indifferent custom—the failure to have a Title IX policy that addresses student-on-student sexual harassment.

90. As a direct and proximate result of Montgomery Public Schools' failure to train and supervise, as well as its deliberately indifferent custom, K.R. was caused to suffer physical injury, severe emotional distress, embarrassment, humiliation, anxiety, and concern.

91. Plaintiff seeks all damages available under 42 U.S.C. § 1983, including but not limited to damages, attorney's fees, costs.

COUNT III-TITLE IX (20 U.S.C. § 1681 ET SEQ.)
AGAINST MONTGOMERY PUBLIC SCHOOLS

92. Title IX liability arises when a school district official is an appropriate person with the authority to take corrective measures in response to sufficient, actual notice of student-on-student sexual harassment responds thereto with deliberate indifference and unreasonably in light of the known circumstances.

93. Principal Rafiq Vaughn was on actual notice of K.R.'s gang rape.

94. Principal Vaughn had the authority to initiate corrective action in response to K.R. being gang raped.

95. Rafiq Vaughn acted with deliberate indifference to his actual notice of K.R.'s gang rape inasmuch as Vaughn acted unreasonable in light of the known circumstances.

96. Vaughn is the highest ranking school official at Southlawn Middle who is present every day and he is the first line of responsibility for ensuring that the students in his school are safe.

97. Vaughn, as principal of Southlawn Middle, is high enough on the chain of command to impute liability to Montgomery Public Schools for purposes of Title IX liability.

98. K.R. was deprived of educational opportunities enjoyed by her male colleagues—the right to attend public school on a daily basis without the fear, embarrassment, intimidation, physical and psychological injury associated with sexual assault.

99. Defendants are liable under Title IX for failure to implement policies and procedures to ensure compliance with Title IX; including, but not limited to, a failure to have a specific policy for addressing student-on-student grievances under Title IX framework. See Davis v. Monroe County, 526 U.S. 629, 647 (1999).

100. Defendants are liable under Title IX for failing to make grievance procedures, including where complaints may be filed, known and available to the Plaintiff.

101. Defendants are liable under Title IX for failing to process the complaints of sexual assault and rape alleged by K.R. as mandated by Title IX.

102. Defendants are liable under Title IX for failing to notify K.R. that her complaints of sexual assault and rape were covered under Title IX and that she was afforded protection thereunder.

103. Defendants are liable under Title IX for their failure to properly investigate K.R.'s allegations of sexual assault and gang rape.

104. Defendants are liable under Title IX for their failure to impose disciplinary measures or take remedial action against the individuals who raped K.R.

105. Defendants are liable under Title IX for their failure to reach a timely outcome of the investigation (because there was no investigation) and their subsequent failure to make Plaintiff aware of said outcome.

106. Defendant Vaughn violated Title IX by making statements regarding K.R.'s body and how she should "love her body" after she was gang raped.

107. Due to Defendants' negligent, reckless and/or wanton breach of the duty they owed to K.R. pursuant to 20 U.S.C. § 1681, K.R. never returned to Southlawn Middle School. She has missed days and even weeks of school and countless hours of instructional time dealing with the debilitating aftermath of her sexual harassment, sexual assault, and gang rape due to the actions and inactions of Defendants.

COUNT IV: NEGLIGENCE/WANTONNESS AGAINST TRAMENE MAYE IN HIS INDIVIDUAL AND OFFICIAL CAPACITY

108. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

109. Standing *in loco parentis*, Maye owed a duty to K.R. to act in a reasonably prudent manner when executing his duties as an employee of Southlawn Middle to supervise students who pose a real and immediate danger to their fellow students and to protect students from harassment, intimidation, and sexual assault.

110. Maye does not have immunity from civil liability in his individual capacity. As the Alabama Supreme Court has routinely held:

> "'Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent *shall not* be immune from civil liability in his or her personal capacity
>
> (1) when the Constitution or laws of the United

> States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or
>
> (2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.' "

Ex parte Butts, 775 So.2d at 177–78 (quoting *Ex parte Cranman*, 792 So.2d 392, 405 (Ala.2000)).

111. Maye violated MCBOE policy by failing to report the harassment he witnessed to Principal Vaughn and by failing to complete the required forms for an incident of harassment as set forth in the Handbook.

112. Maye acted negligently by failing to intervene when he saw K.R. being bullied and harassed by her three attackers.

113. As a proximate cause of Maye's negligence/wantonness, K.R. was caused to suffer physical injury, severe emotional distress, embarrassment, humiliation, anxiety, and concern.

114. Plaintiff seeks compensatory damages, punitive damages, costs, and any other relief available under Alabama law.

COUNT V: TORT OF OUTRAGE (INTENTIONAL/RECKLESS INFLICTION OF EMOTIONAL DISTRESS)
AGAINST RAFIQ VAUGHN IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES

115. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

116. As alleged *supra*, Defendants' conduct was intentional and/or reckless, extreme and outrageous and utterly intolerable in a civilized society.

117. Particularly, Vaughn's conduct in telling K.R.--a middle school-aged student at the school where he was the principal--that she should "love her body" and that she had an adult body that was similar to his girlfriend, is disgusting, outrageous, and disturbing.

118. As a direct result of Defendant's conduct, Plaintiff has suffered emotional distress so severe that no reasonable person could be expected to endure it.

119. Plaintiff seeks compensatory damages, punitive damages, costs, and any other relief available under Alabama law.

PRAYER FOR RELIEF

Wherefore, K.R. requests that this Court provide the following relief:

a. Declare the Defendants' conduct to be in violation of K.R.'s rights and Alabama law;

b. Enter appropriate declaratory and injunctive relief;

c. Award K.R. compensatory damages in an amount that will fully compensate her for the physical injuries, mental distress, anguish, pain, humiliation, embarrassment, suffering, and concern that she has suffered as a direct and proximate result of the statutory and common law violations set forth herein;

d. Enter a judgment against all Defendants for such punitive damages as will properly punish them for the constitutional, statutory, and common law violations perpetrated upon Plaintiff as alleged herein, in an amount that will serve as a deterrent to Defendants and others from engaging in similar conduct in the future;

e. Award K.R. with prejudgment and post-judgment interest at the highest rates allowed by law;

f. Award K.R. with costs, expert witness fees, and reasonable attorney's fees;

g. Assume continuing and indefinite jurisdiction to insure compliance with the terms of the Orders requested herein;

h. Award Plaintiff K.R. such other and further relief, including equitable, that this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL STRUCK BY JURY.

Respectfully submitted, this the 27th day of September, 2016.

/s/Abbey Clarkson
Abbey Clarkson (MAS038)

/s/Andrew R. Salser
Andrew R. Salser (SAL027)

/s/Cameron L. Hogan
Cameron L. Hogan (HOG010)

OF COUNSEL:

LLOYD & HOGAN
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BIRMINGHAM, AL 35243
(205) 969-6235

CERTIFICATE OF SERVICE

I hereby certify that this Amended Complaint has been served on all interested parties by e-filing same on September 27, 2016.

/s/Abbey Clarkson

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARVILLA STINSON, as next friend of K.R., a minor,	)	
Plaintiff,	)	
v.	)	CASE NO. 2:15-CV-924-WKW
MONTGOMERY PUBLIC SCHOOLS BOARD OF EDUCATION,	)	
Defendants.	)	

ORDER

It is ORDERED that the above-styled action is REFERRED to the Magistrate Judge pursuant to 28 U.S.C. § 636 for further proceedings and determination or recommendation as may be appropriate.

DONE this 14th day of January, 2016.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARVILLA STINSON, as next friend of K.R., a minor,

Plaintiff,

-vs-

MONTGOMERY PUBLIC SCHOOLS BOARD OF EDUCATION, *et al.*,

Defendants.

Case No. 2:15-cv-924-SRW

MOTION TO DISMISS ON BEHALF OF DEFENDANT MONTGOMERY COUNTY BOARD OF EDUCATION

COMES NOW Defendant[1] Montgomery County Board of Education ("MCBOE") in the above-styled action, by and through its counsel of record, and moves to dismiss Plaintiff's C*omplaint* pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the grounds set forth below:

I. INTRODUCTION

Plaintiff filed a complaint on December 15, 2015 alleging violations of the Fourteenth Amendment, 42 U.S.C § 1983, and 20 U.S.C. § 1691. (Doc. 1). Plaintiff's claims are due to be dismissed for failure to exhaust her administrative remedies under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. §1400, *et seq*.

[1] There is no such legal entity as the Montgomery Public Schools Board of Education. This motion and response to Plaintiff's Complaint is being tendered throughout on behalf of the Montgomery County Board of Education.

II. STATEMENT OF FACTS

K.R. is a student who attended Southlawn Middle School, one of the schools MCBOE operates. K.R. is identified as a special education student pursuant to the requirements of the Individuals with Disabilities Education Improvement Act. K.R. received special education services via her Individualized Education Program ("IEP"). Plaintiff has never requested a special education due process hearing with the Alabama State Department of Education. An administrative hearing with the Alabama State Department of Education has never been held regarding K.R.

III. LEGAL CONCLUSIONS

Defendant moves this Court to dismiss the above-styled suit pursuant to Rule 12(b)(6), Fed. R. Civ. P. for failure to state a cause of action entitling Plaintiff to relief. In support of this motion, Defendant assigns the following grounds:

A. Defendant is Entitled to Eleventh Amendment Immunity

Defendant is immune from Plaintiff's claims for money damages based on Eleventh Amendment immunity. "The Eleventh Amendment prohibits a federal court from exercising jurisdiction over a lawsuit against a state, except where the state has consented to be sued or waived its immunity, or where Congress has overridden the state's immunity." *Lassiter v. Ala. A & M Univ.,* 3 F.3d 1482, 1484-85 (11th Cir. 1993). Federal courts may not award money damages if a State invokes its immunity. *See Frew ex rel. Frew v. Hawkins,* 540 U.S. 431, 437 (2004).

Defendant is an instrumentality of the State of Alabama, and thus it is entitled to Eleventh Amendment immunity. *Harden v. Adams,* 760 F.2d 1158, 1163-1164 (11th Cir. 1985) (citing *Massler v. Troy State Univ.,* 343 So.2d 1 (Ala. 1977); *Ellison v. Abbot,* 337

So.2d 756 (Ala. 1976)). Furthermore, "[c]ounty boards of education are deemed to be local agencies of the State for purposes of applying the State's sovereign immunity." *Carroll ex rel. Slaught v. Hammett,* 744 So.2d 906, 910 (Ala. 1999).

Alabama has not waived its immunity under the Eleventh Amendment. *See Lancaster v. Monroe County, Ala.,* 116 F.3d 1419, 1429 (11th Cir. 1997). Therefore, Plaintiff is not entitled to recover money damages from Defendant. *See Miller v. Houston Cty. Bd. of Educ.*, 2008 WL 696874, at *14 (M.D. Ala. Mar. 2008) (holding that Houston County board of Education was entitled to Eleventh Amendment immunity from claims for monetary damages because the Board was a local agency of the State for purposes of State sovereign immunity, and the State of Alabama has not waived its Eleventh Amendment immunity); *see also Ex parte Phenix City Bd. of Educ.*, 67 So. 3d 56 (Ala. 2011) (Holding that like county boards of education, city boards of education are local agencies of the State and are entitled to concomitant immunities.). Accordingly, all claims against Defendant for money damages warrant dismissal as a matter of law based on Eleventh Amendment immunity.

B. PLAINTIFF FAILED TO COMPLY WITH MANDATORY PROCEDURAL REQUIREMENTS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT

The Alabama State Department of Education has comprehensive regulations regarding the Individuals with Disabilities Education Improvement Act ("IDEA"). An impartial due process hearing is available when a parent or the public agency disagrees with any matter relating to the identification, evaluation, educational placement of their child, and/or the provision of free appropriate public education to the child. *Ala. Admin. Code* § 290-8-9-.08(9)(c); 34 C.F.R. § 300.507(a)(1). IDEA identifies specific procedures for requesting a

due process hearing. A parent, attorney, or designated person representing the parent, or an official from the public agency may request an impartial due process hearing by sending a signed written request to the State Superintendent of Education. *Ala. Admin. Code* § 290-8-9-.08(9)(c)1.(i). The due process hearing request must include the following information:

> the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution to the problem to the extent known and available to the party at the time.

Ala. Admin. Code § 290-8-9-.08(9)(c)1.(ii); 34 C.F.R. § 300.508(b). A party may not proceed to a due process hearing until the complaining/filing party files a notice that meets the requirements of IDEA. *See Alabama Administrative Code* § 290-8-9-.08(9)(c)1.(ii); 20 U.S.C. § 1415(b)(7)(B); 34 C.F.R. § 300.508(c).

IDEA special education due process hearings are conducted by impartial due process hearing officers appointed by the State Superintendent of Education. *Ala. Admin. Code* § 290-8-9-.08(9)(c)4 and 5. The hearing officer's decision is a final order which entitles a party adversely affected to bring an action in either a federal district court or a state court of competent jurisdiction. *Ala. Admin. Code* § 290-8-9-.08(9)(c)15; 20 U.S.C. §1415(i)(2). The court then conducts a *de novo* review of the hearing officer's findings. *Weiss v. Sch. Bd. of Hillsborough County*, 141 F.3d 990, 991 (11th Cir. 1998)(*citing Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205, 102 S.Ct. 3034, 3051, 73 L.Ed.2d 690 (1982)).

The Eleventh Circuit Court of Appeals has stated that the "philosophy of the [IDEA] is that plaintiffs are required to utilize the elaborate administrative scheme established by the Act before resorting to the courts to challenge the actions of the local school authorities." *W.L.G. v. Houston Co. Bd. of Educ.*, 975 F. Supp. 1317, 1327 (M.D. Ala. 1997)(*citing*

N.B., 84 F.3d 1376, 1378 (11th Cir. 1996)); *see also Ass'n for Retarded Citizens of Alabama v. Teague*, 830 F.3d 158, 160 (11th Cir. 1987). Several reasons have been cited for requiring the exhaustion of administrative remedies:

> (1) to permit the exercise of agency discretion and expertise on issues requiring these characteristics; (2) to allow the full development of technical issues and a factual record prior to court review; (3) to prevent deliberate disregard and circumvention of agency procedures established by Congress; and (4) to avoid unnecessary judicial decisions by giving the agency the first opportunity to correct any error.

Doe v. Walker Co. Bd. of Educ., 1997 U.S. Dist. LEXIS 22205, *12 (N.D. Ga. 1997) (*citing N.B.*, 84 F.3d at 1378-79).

Plaintiff's Complaint states "K.R. was a special education student with an Individualized Education Plan (I.E.P.) who was required to take multiple medications on a daily basis." (Doc. 1, ¶31). Plaintiff's Complaint further alleges "K.R., at all relevant times, has been diagnosed with intellectual disability, ADHD, bipolar disorder, schizophrenia, depression, and anxiety." (Doc. 1, ¶32). Plaintiff contends K.R. was deprived access to educational opportunities as a result of the alleged constitutional violations identified in her Complaint. (Doc. 1, ¶74).

Plaintiff's Complaint demonstrates a disagreement with the provision of a free appropriate public education under IDEA. *See Ala. Admin. Code* § 290-8-9-.08(9)(c). Accordingly, Plaintiff is required to exhaust her administrative remedies pursuant to the procedural framework set forth in the *Alabama Administrative Code*, *supra*. Plaintiff has not requested a special education due process hearing. A due process hearing conducted by a hearing officer appointed by the Alabama State Department of Education has never been held. A hearing officer has not issued a final order which entitles Plaintiff to bring an action in either

a federal district court or a state court of competent jurisdiction. *Ala. Admin. Code* § 290-8-9-.08(9)(c)15; 20 U.S.C. § 1415(i)(2).

Regardless of the manner in which Plaintiff characterizes the claims in her Complaint, she is still required to exhaust her administrative remedies pursuant to IDEA. "When parents choose to file suit under another law that protects the rights of handicapped children--and the suit could have been filed under the [IDEA]--they are first required to exhaust the [IDEA]'s remedies to the same extent as if the suit had been filed originally under the [IDEA]'s provisions." *N.B. v. Alachua Co. School Bd.*, 84 F.3d 1376, 1379 (11th Cir. 1996). The Eleventh Circuit Court of Appeals has further held in *K.A. ex. rel. F.A. v. Fulton Cnty Sch. Dist.*, 2013 WL 6698072, *10 (11th Cir. 2013):

> We join the First, Third, Fourth, Ninth and Tenth Circuits, and hold that section 1983 actions for denial of rights conferred by the IDEA are barred because the IDEA' comprehensive enforcement scheme provides the sole remedy for statutory violations. Were there some right at issue conferred by the Constitution or other federal laws and not by the IDEA, we would be presented with a different question. The claims in this case though are entirely based on rights arguably conferred by the IDEA.

See also Babicz v. School Bd. of Broward Co., 135 F.3d 1420, 1422 (11th Cir. 1998)(requiring exhaustion pursuant to IDEA and affirming district court's dismissal of complaint for lack of subject matter jurisdiction).

The Eleventh Circuit has determined that "the exhaustion requirement may not be circumvented by casting an IDEA claim as a Section 1983 action predicated on IDEA." *Doe v. Walker Co. Bd. of Educ.*, 1997 WL 866983 *5 (N.D. Ga. 1997)(*citing Alford v. School Bd. of Collier Co.*, 1996 WL 289038 (M.D. Fla. 1996)); *see also Jennifer B. v. Chilton Cnty. Bd. of Educ,* 891 F. Supp. 2d 1313, 1322 (M.D. Ala. 2012)("It is well

established in the Eleventh Circuit that a plaintiff may not circumvent the procedures provided by the IDEA merely by raising claims under another statute or seeking relief in federal court that the administrative agencies cannot grant."). Accordingly, any allegations related to the Fourteenth Amendment, Section 1983 and Title IX are due to be categorized as claims under the IDEA. As such, the IDEA requires that the administrative procedures provided in the IDEA be exhausted before suit is brought.

Plaintiff cannot argue that the exhaustion requirement does not apply in cases where a plaintiff is seeking a remedy under the IDEA which is beyond the authority of the hearing officer to grant, such as money damages. *N.B. v. Alachua Co. School Bd.*, 84 F.3d 1376, 1379 (11th Cir. 1996). The Eleventh Circuit rejected outright the premise that such a request renders the administrative process "futile" or "inadequate." *Id.* The Court held that such a determination would contradict the exhaustion requirement's purpose to prevent "deliberate disregard and circumvention of agency procedures established by Congress." *Id.* Thus, the *N.B.* holding precludes district courts from entertaining any matters not fully explored through the IDEA's administrative procedures.

Requiring Plaintiff to exhaust her administrative remedies prior to filing suit prevents the unnecessary expense, both of time and money, of this Court and the parties involved. Plaintiff in this case has not navigated all available avenues under IDEA. Because Plaintiff has failed to exhaust her administrative remedies, this Honorable Court is without jurisdiction to hear this action.

IV. CONCLUSION

WHEREFORE, These Premises Considered, Defendant MCBOE respectfully requests that Plaintiff's Complaint be DISMISSED.

RESPECTFULLY SUBMITTED this the 7th day of January, 2016.

MONTGOMERY COUNTY BOARD OF EDUCATION, *Defendant*,

By: /s/ James R. Seale

James R. Seale (3617-E-68J)
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OF COUNSEL:
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Montgomery County Board of Education
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334.223.6710

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date electronically filed the *Motion to Dismiss on Behalf of Defendant Montgomery County Board of Education* with Clerk of the Court for the United States District Court, for the Middle District of Alabama which will automatically notify:

Abbey Clarkson, Esquire
Andrew R. Salser, Esquire
Cameron L. Hogan, Esquire
Lloyd & Hogan
2871 Acton Road, Suite 201
Vestavia, Alabama 35243
abbey@lloydhoganlaw.com
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this the 7th day of January, 2016.

/s/ James R. Seale

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARVILLA STINSON, as next friend of K.R., a Minor,	)	
Plaintiff,	)	
v.	)	**Civil Action No.: 2:15-cv-924**
MONTGOMERY PUBLIC SCHOOLS BOARD OF EDUCATION, TRAMENE MAYE in his individual and official capacities; RAFIQ VAUGHN in his individual and official capacities, and FICTITIOUS DEFENDANT COACH, whose identity is not currently known and who will be named later,	)	
Defendants.	)	

MOTION TO DISMISS

COME NOW, the defendants, Assistant Principal Tramene Maye, and Principal Rafiq Vaughn (hereinafter "School Officials"), and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, move this Court to dismiss this action in its entirety. This Motion is accompanied by the arguments and authorities contained in defendants' Brief filed herewith. Defendants assert the following grounds for this Motion separately and severally:

1. The defendants are entitled to Eleventh Amendment immunity for the federal claims brought against them in their official capacities. The defendants are entitled to Absolute Immunity for the state law claims brought against them in their official capacities.

2. The defendants are entitled to qualified immunity for the federal claims brought against them in their individual capacities. The defendants are entitled to state-agent immunity for the state law claims brought against them in their individual capacities.

3. The Complaint fails to state a claim against the defendants upon which relief can be granted.

/s/ Emily C. Marks
EMILY C. MARKS
Attorney for defendants Assistant Principal Tramene Maye and Principal Rafiq Vaughn

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the following counsel of record via CM/ECF electronic transmission and/or by placing same in the U.S. Mail, postage prepaid this the 7th day of January, 2016.

Abbey Clarkson
Andrew Salser
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James R. Seale
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/s/ Emily C. Marks
OF COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ARVILLA STINSON, as next friend of K.R., a minor	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**CIVIL ACTION NO: 2:15-cv-924**
	§	
MONTGOMERY PUBLIC SCHOOLS BOARD OF EDUCATION, TRAMENE MAYE in his individual and official capacities, RAFIQ VAUGHN in his individual and official capacities, and FICTITIOUS DEFENDANT COACH, whose identity is not currently known and who will be named later	§	
	§	**JURY TRIAL DEMANDED**
Defendants.	§	

COMPLAINT

JURISDICTION

This is an action at law to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a right, privilege and immunity secured to Plaintiff by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. Plaintiff is also bringing this action pursuant to Title IX (20 U.S.C. § 1681).

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. § 1331, § 1332, and §1343(a)(3); 28 U.S.C. § 1367; and 42 U.S.C. § 1983.

PARTIES

1. Plaintiff Arvilla Stinson is an adult resident of Montgomery County, Alabama. She is the mother and next friend of K.R., a minor who sustained injuries as discussed herein.
2. Defendant Montgomery Public Schools Board of Education ("MPS") is a school district organized and existing under the laws of Alabama with offices located in Montgomery, Alabama.
3. At all material times, Defendant Tramene Maye was an employee of Montgomery Public Schools acting in the scope of his employment. He is sued in his official capacity and his individual capacity.
4. At all material times, Defendant Rafiq Vaughn was an employee of Montgomery Public Schools acting in the scope of his employment as the principal at Southlawn Middle School. He is sued in his individual capacity and his official capacity.

MPS POLICIES

5. The Montgomery Public Schools' Student Handbook[1] ("Handbook") contains grievance procedures for discrimination, including Title IX, ADA, Title VI, and Section 504. Handbook at 47.

6. The Handbook mandates an "informal but thorough" investigation of any Title IX violations.

7. The Grievance Procedures in the Handbook only address complaints by parents, guardians, third parties, and/or students against MPS employees. Handbook at 47.

8. There is no policy in the Handbook for addressing Title IX grievances relating to student-on-student harassment.

9. The Handbook does contain a section regarding bullying and harassment among students. See Section VII of Handbook, p. 43.

10. "Harassment" includes, but is not limited to, subjecting another student to physical contact. Handbook at 43.

[1] Plaintiff does not have a copy of the handbook that was in effect at the time of the acts complained of in this lawsuit. The allegations regarding the handbook that are set forth herein are taken from the 2015-2016 handbook that is available online. Upon information and belief, the policies will be similar, if not identical, to the policies in the 2014-2015 handbook. If necessary, Plaintiff will amend this complaint to comport to the 2014-2015 handbook upon receipt of same after initial disclosures in this case.

11. "Disability harassment" includes, but is not limited to, physical acts, gestures, and abusive behavior toward a student that is based on his or her disability and creates a hostile environment by interfering with, or denying the student's benefits, services, or opportunities in the school district. Handbook at 43.

12. "Sexual harassment" includes unwelcome touching or other inappropriate physical acts of a sexual nature toward a student in school.

13. The Handbook states that any teacher or school staff who witnesses or receives reports regarding acts of bullying or harassment should promptly notify the school principal or his/her designated staff. Handbook at 44.

14. Any bullying or harassment should be documented on a Bullying/Harassment Complaint Form and that form must be mailed or personally delivered to the principal or his/her designee. Handbook at 44.

15. The principal or his/her designee is required to accept and investigate all reports of harassment or bullying.

16. The principal or his/her designee is required to notify the parent or guardian of a student who commits a verified act of harassment or bullying of the response of the school staff and consequences of the

verified act and/or the consequences that may result from further acts of bullying. Handbook at 44.

17. The Handbook mandates that except for good cause shown, the investigation must be completed not more than five business days after the administrator or designated investigator receives notice of the complaint. Handbook at 44.

18. The Handbook mandates that the principal or designated investigator must make a written report to the Chief Academic Officer upon completion of the investigation. The report shall include a determination of whether or not the allegations are factual, whether or not there has been a policy violation, and proposed discipline, if any. Handbook at 44-45.

19. The school administrator investigating the report must make every effort to notify the parents or guardians of the complainant and the individuals against whom the complaint was filed prior to beginning the investigation. Handbook at 45.

20. The Handbook lays out consequences for bullying or harassing behavior. Verified acts of bullying or harassment shall result in disciplinary action and/or corrective action reasonably calculated to end the identified conduct, deter future conduct, and protect the complainant and other

similarly situated individuals. In imposing disciplinary measures, the district shall take into account the harm suffered by the victim and other members of the school community and any damage to school property. Handbook at 45.

21. Discipline should comply with the *Code of Student Behavior.* Handbook at 46.

22. The *Code of Student Behavior* categorizes forcible rape as "Sexual Battery," which is a Class D offense punishable by Proposal for Due Process/Expulsion. See Handbook at 36.

PRIOR DELIBERATE INDIFFERENCE/TITLE IX VIOLATIONS COMMITTED BY RAFIQ VAUGHN

23. During the 2013-2014 school year, a teacher named DeAndre Hill was employed at Southlawn Middle School.

24. Upon information and belief, Hill sexually harassed a number of his female students at Southlawn Middle[2], creating a hostile environment under Title IX.

25. Upon information and belief, a number of parents complained about the inappropriate conduct of Mr. Hill to Principal Rafiq Vaughn, who represented that he would "investigate" the complaints.

[2] Mr. Hill would rub certain students' backs in an inappropriate manner or make inappropriate remarks. On one occasion, he asked a student who had worn a dress to school that day to sit on the front row and to open her legs. Upon information and belief, Vaughn was notified of these incidents and took no action.

26. Upon information and belief, Mr. Vaughn did not investigate these incidents or otherwise take any action because Mr. Hill was a former fraternity brother of his.

27. Upon information and belief, parents began checking their children out of school prior to Mr. Hill's class due to the harassment, thus depriving those students of their right to learn under Title IX.

28. Upon information and belief, Mr. Vaughn was aware that these students were leaving school early to avoid Mr. Hill's class, but he took no action against Mr. Hill. On one occasion, he told a concerned parent that there was nothing he could do about the situation.

29. According to a report from Fox 10 News, Mr. Hill was arrested in April 2014 for indecent exposure charges stemming from an incident where he showed a picture of his penis to one of his students at Southlawn Middle. He was thereafter terminated.

30. Mr. Hill was rehired to teach middle school in south Alabama, where he was arrested in 2015 for having sexual contact with a student.

THE GANG RAPE OF K.R.

31. Plaintiff K.R. is a minor. At all relevant times, she was a student at Southlawn Middle School in Montgomery, Alabama. At all relevant times, K.R. was a special education student with an Individualized

Education Plan (I.E.P.) who was required to take multiple medications on a daily basis.

32. K.R., at all relevant times, has been diagnosed with intellectual disability, ADHD, bipolar disorder, schizophrenia, depression, and anxiety.

33. Defendant Maye, at all relevant times, was the assistant principal at Southlawn Middle School.

34. Defendant Vaughn, at all relevant times, was the principal at Southlawn Middle School.

35. On or about October 23, 2014, K.R. was walking off of the Southlawn Middle School campus at the end of the school day when a group of three boys grabbed her and dragged her into an abandoned building on the perimeter of the school property.

36. K.R.'s stepsister, who had been walking with her, alerted Defendant Maye to the conduct.

37. Rather than intervene on K.R.'s behalf, Maye told K.R.'s stepsister to "go on about her business" and did not take any other action.

38. Maye witnessed the three boys grabbing and dragging K.R. The conduct Maye witnessed met the Handbook definition of bullying, harassment, disability harassment, and sexual harassment.

39. Maye did not report the conduct to Principal Vaughn.

40. K.R. was thereafter gang raped by two of the boys while the third boy kept a lookout.

41. Plaintiff Arvilla Stinson was soon notified about the incident. Stinson was already at Southlawn Middle that day, participating in a parent-teacher meeting with some of K.R.'s teachers regarding her special needs and classroom performance.

42. Stinson immediately reported to Principal Vaughn's office to discuss the gang rape.

43. Maye and another coach whose name is not currently known were also present at the meeting.

44. During the meeting, Principal Vaughn exhibited little concern for K.R. and instead pleaded with Stinson to refrain from calling the media.

45. Principal Vaughn also told K.R. that she needed to "love her body."

46. Principal Vaughn also made a remark that K.R. had more of an adult body similar to Vaughn's girlfriend's body.

47. Principal Vaughn called local police, who deemed the rape "consensual sex" and took no further action.

48. Stinson thereafter took K.R. to Baptist East Hospital for further treatment.

49. Recognizing that K.R. had clearly been raped, Baptist East personnel called the police and notified Child Protective Services and DHR.

50. After completing all necessary examinations and reports, K.R., who already struggled with mental illness, fell into a deep depression.

51. K.R. received psychological treatment as the result of the gang rape.

52. K.R. missed approximately 7-8 days of school as the result of the gang rape.

53. During this period, K.R. did not want to leave the house.

54. Neither Principal Vaughn nor anyone else from Southlawn Middle or the Board reached out to K.R. during her absence from school.

55. The Board did not offer counseling to K.R. or take any other steps to assist her in dealing with her grief after the gang rape.

56. Upon information and belief, Principal Vaughn completed no reports concerning the rape, did no investigation regarding the rape, and took no further action regarding K.R.'s gang rape.

57. K.R. was not given notice of Title IX or her right to make a grievance regarding the gang rape.

58. K.R. was not advised of the grievance procedures available to her.

59. Approximately one week into K.R.'s absence from school, Stinson went to Southlawn Middle to give K.R.'s doctor's excuse and to get K.R.'s

schoolwork. Stinson spoke with Principal Vaughn regarding K.R.'s distress. Vaughn advised that Stinson should probably not to allow K.R. return to Southlawn Middle under the circumstances because all the students were saying that the three boys had "run a train" on K.R.

60. Since Stinson had already moved her family out of the school district earlier in the school year, Stinson was able to transfer K.R. into a different school within the MPS system.

61. K.R. thereafter had to deal with the stress of starting a new school in the middle of the school year.

62. Word of the gang rape traveled to her new school through social media. Students have teased K.R. about the incident, causing her to lash out violently.

63. Upon information and belief, neither Principal Vaughn nor any other administrative designee did any sort of report or investigation regarding the gang rape.

64. Upon information and belief, no legal or disciplinary action was taken against the three boys who gang raped K.R.

65. Upon information and belief, the three boys continued to attend Southlawn Middle without repercussion.

66. K.R. continues to take medication and receive treatment for mental health trauma subsequent to being gang raped.

67. K.R.'s grades have dropped and her social life has declined as a result of being gang raped.

68. K.R. is reluctant to leave her house as the result of being gang raped.

69. K.R. has had violent outbursts toward her younger siblings since being gang raped.

70. According to her I.E.P. for the 2015-2016 school year, K.R. stays mad for long periods of time, is nervous, screams, acts without thinking, is easily distracted, and needs a lot of supervision.

71. The actions and inaction of Montgomery Public Schools interfered with K.R.'s ability to attend school and perform her studies and activities and indeed caused her to cease attending Southlawn Middle School due to the threatening, humiliating, abusive, unsafe and hostile environment.

72. MPS's failure to act on K.R.'s complaints, despite actual knowledge thereof, was a result of actual intent to discriminate against her on the basis of sex.

73. K.R. left behind her friends and life at Southlawn Middle after attending the school since 6th grade. She therefore missed out on her 8th

Grade Graduation, which caused her great sadness and distress. Her new school did not have a graduation ceremony.

74. MPS's failure to act to remedy the harassment suffered by K.R. has deprived her of access to educational opportunities at Southlawn Middle in violation of Title IX.

COUNT I- 42 U.S.C. § 1983
DELIBERATE INDIFFERENCE AGAINST ALL DEFENDANTS

75. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

76. Defendants were deliberately indifferent to the sexual assault and rape of K.R.

77. Maye saw K.R. being bullied and harassed, but failed to act to protect her in a way that was deliberately indifferent to her rights under § 1983.

78. Principal Vaughn acted with deliberate indifference when he failed to investigate or take any other steps to protect K.R. after she was gang raped.

79. All Defendants violated K.R.'s rights under § 1983 as well as her Fourteenth Amendment rights by failing to protect her from harassment, intimidation, and sexual assault.

80. Vaughn's deliberate indifference, as evidenced by his earlier failure to investigate complaints in the DeAndre Hill situation as well as the way

he handled the incident that is the basis of this lawsuit, shows a pattern and practice of deliberate indifference.

81. The Defendants' misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff's constitutional rights.

82. Defendants have demonstrated gross negligence and deliberate indifference with respect to ensuring that K.R.'s clearly-established legal rights were protected.

83. As a proximate consequence thereof, K.R. has been damaged as she has been caused to suffer physical injury, severe emotional distress, embarrassment, humiliation, anxiety, and concern.

84. Plaintiff seeks all damages available under 42 U.S.C. § 1983, including but not limited to damages, attorney's fees, costs.

COUNT II-42 U.S.C § 1983
MONELL LIABILITY-FAILURE TO TRAIN/SUPERVISE/DELIBERATELY INDIFFERENT CUSTOM AGAINST MONTGOMERY PUBLIC SCHOOLS

85. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

86. Montgomery Public Schools has systemically failed to train and supervise its employees regarding proper compliance with Title IX and § 1983. This includes a failure to properly train regarding how to deal with

a sexual harassment complaint and how to properly investigate that complaint in compliance with Title IX.

87. Vaughn's deliberate indifference, as evidenced by his earlier failure to investigate complaints in the DeAndre Hill situation as well as the way he handled the incident that is the basis of this lawsuit, shows a pattern and practice of deliberate indifference. His consistent deliberate indifference amounts to an informal policy or custom of "looking the other way" rather than protecting his students from sexual harassment.

88. Montgomery Public Schools is further subject to Monell liability arising out of a deliberately indifferent custom—the failure to have a Title IX policy that addresses student-on-student sexual harassment.

89. As a direct and proximate result of Montgomery Public Schools' failure to train and supervise, as well as its deliberately indifferent custom, K.R. was caused to suffer physical injury, severe emotional distress, embarrassment, humiliation, anxiety, and concern.

90. Plaintiff seeks all damages available under 42 U.S.C. § 1983, including but not limited to damages, attorney's fees, costs.

COUNT III-TITLE IX (20 U.S.C. § 1681 ET SEQ.)
AGAINST MONTGOMERY PUBLIC SCHOOLS

91. Title IX liability arises when a school district official is an appropriate person with the authority to take corrective measures in response to

sufficient, actual notice of student-on-student sexual harassment responds thereto with deliberate indifference and unreasonably in light of the known circumstances.

92. Principal Rafiq Vaughn was on actual notice of K.R.'s gang rape.

93. Principal Vaughn had the authority to initiate corrective action in response to K.R. being gang raped.

94. Rafiq Vaughn acted with deliberate indifference to his actual notice of K.R.'s gang rape inasmuch as Vaughn acted unreasonable in light of the known circumstances.

95. Vaughn is the highest ranking school official at Southlawn Middle who is present every day and he is the first line of responsibility for ensuring that the students in his school are safe.

96. Vaughn, as principal of Southlawn Middle, is high enough on the chain of command to impute liability to Montgomery Public Schools for purposes of Title IX liability.

97. K.R. was deprived of educational opportunities enjoyed by her male colleagues—the right to attend public school on a daily basis without the fear, embarrassment, intimidation, physical and psychological injury associated with sexual assault.

98. Defendants are liable under Title IX for failure to implement policies and procedures to ensure compliance with Title IX; including, but not limited to, a failure to have a specific policy for addressing student-on-student grievances under Title IX framework. See Davis v. Monroe County, 526 U.S. 629, 647 (1999).

99. Defendants are liable under Title IX for failing to make grievance procedures, including where complaints may be filed, known and available to the Plaintiff.

100. Defendants are liable under Title IX for failing to process the complaints of sexual assault and rape alleged by K.R. as mandated by Title IX.

101. Defendants are liable under Title IX for failing to notify K.R. that her complaints of sexual assault and rape were covered under Title IX and that she was afforded protection thereunder.

102. Defendants are liable under Title IX for their failure to properly investigate K.R.'s allegations of sexual assault and gang rape.

103. Defendants are liable under Title IX for their failure to impose disciplinary measures or take remedial action against the individuals who raped K.R.

104. Defendants are liable under Title IX for their failure to reach a timely outcome of the investigation (because there was no investigation) and their subsequent failure to make Plaintiff aware of said outcome.

105. Defendant Vaughn violated Title IX by making statements regarding K.R.'s body and how she should "love her body" after she was gang raped.

106. Due to Defendants' negligent, reckless and/or wanton breach of the duty they owed to K.R. pursuant to 20 U.S.C. § 1681, K.R. never returned to Southlawn Middle School. She has missed days and even weeks of school and countless hours of instructional time dealing with the debilitating aftermath of her sexual harassment, sexual assault, and gang rape due to the actions and inactions of Defendants.

COUNT IV: NEGLIGENCE/WANTONNESS AGAINST TRAMENE MAYE IN HIS INDIVIDUAL AND OFFICIAL CAPACITY

107. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

108. Standing *in loco parentis*, Maye owed a duty to K.R. to act in a reasonably prudent manner when executing his duties as an employee of Southlawn Middle to supervise students who pose a real and immediate

danger to their fellow students and to protect students from harassment, intimidation, and sexual assault.

109. Maye does not have immunity from civil liability in his individual capacity. As the Alabama Supreme Court has routinely held:

> "'Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent *shall not* be immune from civil liability in his or her personal capacity
>
> (1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or
>
> (2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.' "

Ex parte Butts, 775 So.2d at 177–78 (quoting *Ex parte Cranman*, 792 So.2d 392, 405 (Ala.2000)).

110. Maye violated MPS policy by failing to report the harassment he witnessed to Principal Vaughn and by failing to complete the required forms for an incident of harassment as set forth in the Handbook.

111. Maye acted negligently by failing to intervene when he saw K.R. being bullied and harassed by her three attackers.

112. As a proximate cause of Maye's negligence/wantonness, K.R. was caused to suffer physical injury, severe emotional distress, embarrassment, humiliation, anxiety, and concern.

113. Plaintiff seeks compensatory damages, punitive damages, costs, and any other relief available under Alabama law.

COUNT V: TORT OF OUTRAGE (INTENTIONAL/RECKLESS INFLICTION OF EMOTIONAL DISTRESS)
AGAINST RAFIQ VAUGHN IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES

114. Each of the paragraphs of this Complaint is incorporated as if fully restated herein.

115. As alleged *supra*, Defendants' conduct was intentional and/or reckless, extreme and outrageous and utterly intolerable in a civilized society.

116. Particularly, Vaughn's conduct in telling K.R.--a middle school-aged student at the school where he was the principal--that she should "love her body" and that she had an adult body that was similar to his girlfriend, is disgusting, outrageous, and disturbing.

117. As a direct result of Defendant's conduct, Plaintiff has suffered emotional distress so severe that no reasonable person could be expected to endure it.

118. Plaintiff seeks compensatory damages, punitive damages, costs, and any other relief available under Alabama law.

PRAYER FOR RELIEF

Wherefore, K.R. requests that this Court provide the following relief:

a. Declare the Defendants' conduct to be in violation of K.R.'s rights and Alabama law;

b. Enter appropriate declaratory and injunctive relief;

c. Award K.R. compensatory damages in an amount that will fully compensate her for the physical injuries, mental distress, anguish, pain, humiliation, embarrassment, suffering, and concern that she has suffered as a direct and proximate result of the statutory and common law violations set forth herein;

d. Enter a judgment against all Defendants for such punitive damages as will properly punish them for the constitutional, statutory, and common law violations perpetrated upon Plaintiff as alleged herein, in an amount that will serve as a deterrent to Defendants and others from engaging in similar conduct in the future;

e. Award K.R. with prejudgment and post-judgment interest at the highest rates allowed by law;

f. Award K.R. with costs, expert witness fees, and reasonable attorney's fees;

g. Assume continuing and indefinite jurisdiction to insure compliance with the terms of the Orders requested herein;

h. Award Plaintiff K.R. such other and further relief, including equitable, that this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL STRUCK BY JURY.

Respectfully submitted, this the 15th day of December, 2015.

Abbey Clarkson

Abbey Clarkson (MAS038)

Andrew R. Salser (SAL027)

Cameron L. Hogan (HOG010)

OF COUNSEL:

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Tramene Maye
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APPEAL,CLOSED

U.S. District Court
Alabama Middle District (Montgomery)
CIVIL DOCKET FOR CASE #: 2:15−cv−00924−WKW−SRW

Stinson v. Montgomery County Board of Education et al
Assigned to: Honorable Judge William Keith Watkins
Referred to: Honorable Judge Susan Russ Walker
Case in other court: 19−10815−K
Cause: 42:1983 Civil Rights Act

Date Filed: 12/15/2015
Date Terminated: 02/05/2019
Jury Demand: Plaintiff
Nature of Suit: 448 Civil Rights: Education
Jurisdiction: Federal Question

Plaintiff

Arvilla Stinson
as next friend of K.R., a minor

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V.

Defendant

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TERMINATED: 09/27/2016

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Defendant

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in his individual and official capacities

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Emily Coody Marks
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ATTORNEY TO BE NOTICED

Defendant

Montgomery County Board of Education

represented by **James Robert Seale**
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LEAD ATTORNEY
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Vernetta Rochelle Perkins
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/15/2015	1	COMPLAINT against Tramene Maye, Montgomery Public Schools Board of Education, Rafiq Vaughn (Filing fee $ 400.00 receipt number 4602039428.), filed by Arvilla Stinson. (Attachments: # 1 Filing Fee Receipt)(kh,) (Entered: 12/16/2015)
12/15/2015		DEMAND for Trial by Jury by Arvilla Stinson. (no pdf document attached to this entry − see docket entry 1 for pdf)(kh,). (Entered: 12/16/2015)
12/16/2015		NOTICE of Assignment to Magistrate Judge mailed to counsel for Arvilla Stinson (no pdf document attached to this entry) Modified on 1/6/2016 to correct docket text (kh,). (Entered: 12/16/2015)

12/16/2015	2	Summons Issued as to Tramene Maye, Montgomery Public Schools Board of Education, Rafiq Vaughn; mailed CMRRR with copy of 1 complaint. (kh,) (Entered: 12/16/2015)
12/18/2015	3	Return Receipt Card showing service of Summons and 1 Complaint signed by Ella McCall for Montgomery Public Schools Board of Education served on 12/17/2015, answer due 1/7/2016. (kh,) (Entered: 12/21/2015)
12/21/2015	4	Return Receipt Card showing service of Summons and 1 Complaint signed by Rafiq Vaughn for Rafiq Vaughn served on 12/17/2015, answer due 1/7/2016. (kh,) (Entered: 12/21/2015)
12/23/2015	5	Notice of Deficiency requiring filing of Corporate Disclosure/Conflict Statement sent to Arvilla Stinson Corporate Disclosures due by 1/4/2016. (Attachments: # 1 Corporate/Conflict Attachment)(kh,) (Entered: 12/23/2015)
01/04/2016	6	Corporate/Conflict Disclosure Statement by Arvilla Stinson re 5 Notice of Deficiency requiring filing of Corporate Disclosure/Conflict Statement. (Clarkson, Abigail) (Entered: 01/04/2016)
01/07/2016	7	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Montgomery Public Schools Board of Education. (Seale, James) (Entered: 01/07/2016)
01/07/2016	8	Corporate/Conflict Disclosure Statement by Montgomery Public Schools Board of Education. (Seale, James) (Entered: 01/07/2016)
01/07/2016	9	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Rafiq Vaughn, Tramene Maye. (Marks, Emily) Modified on 1/7/2016 to remove the erroneous ex parte selection by filer (kh,). Modified on 9/16/2016 to terminated the erroneous "ex parte" event entry as the pleading is not ex parte (wcl,). (Entered: 01/07/2016)
01/07/2016	10	BRIEF/MEMORANDUM in Support re 9 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 01/07/2016)
01/07/2016	11	Corporate/Conflict Disclosure Statement by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 01/07/2016)
01/07/2016		***Attorney Vernetta Rochelle Perkins for Montgomery Public Schools Board of Education added pursuant to the 7 motion. (kh,) (Entered: 01/07/2016)
01/08/2016	12	ORDERED that plaintiff is DIRECTED to respond to the motion on or before January 22, 2016, and that defendants may file reply briefs on or before February 1, 2016. Additionally, the undersigned Magistrate Judge cannot rule on the motions without written consents from all parties. Accordingly, it is ORDERED that the parties are DIRECTED to execute and file, on or before February 1, 2016, as further set out in order. Signed by Honorable Judge Susan Russ Walker on 1/8/2016. (kh,) (Entered: 01/08/2016)
01/08/2016	13	Return Receipt Card showing service of Summons and 1 Complaint signed by M.W for Tramene Maye served on 1/6/2016, answer due 1/27/2016. (kh,) (Entered: 01/11/2016)
01/11/2016		NOTICE of Assignment to Magistrate Judge mailed to counsel for Tramene Maye, Montgomery Public Schools Board of Education, Rafiq Vaughn (no pdf document attached to this entry)(kh,) (Entered: 01/11/2016)
01/14/2016	14	Case Reassigned to Chief Judge William Keith Watkins; Honorable Judge Susan Russ Walker no longer assigned to the case as presiding judge. (kh,) (Entered: 01/14/2016)
01/14/2016	15	(VACATED PURSUANT TO THE COURT'S TEXT ORDER [DOC. 46]) ORDERED that the above−styled action is REFERRED to the Magistrate Judge pursuant to 28 U.S.C. § 636 for further proceedings and determination or recommendation as may be appropriate. Signed by Chief Judge William Keith Watkins on 1/14/2016. (kh,) Modified on 8/13/2018 (alm,). (Entered: 01/14/2016)
01/22/2016	16	RESPONSE in Opposition re 7 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Arvilla Stinson. (Attachments: # 1 Exhibit A)(Clarkson, Abigail) (Entered: 01/22/2016)

01/22/2016	17	RESPONSE in Opposition re 9 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Arvilla Stinson. (Clarkson, Abigail) (Entered: 01/22/2016)
01/22/2016		MOTION for Leave to Amend 1 Complaint by Arvilla Stinson. (No pdf attached to this entry − See doc 17 for pdf) (wcl,) (Entered: 09/16/2016)
02/01/2016	18	REPLY to Response to Motion re 7 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Montgomery Public Schools Board of Education. (Seale, James) (Entered: 02/01/2016)
02/01/2016	19	REPLY BRIEF re 17 Response in Opposition to Motion, 10 BRIEF/MEMORANDUM in Support filed by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 02/01/2016)
09/16/2016	20	ORDERED that plf's motion for leave to amend contained within her response to the individual dfts' motion to dismiss (Doc. 17 at 7) is GRANTED; Plf shall file an amended complaint within 14 days of this order, as further set out in order; further ORDERED that the pending motions to dismiss (Docs. 7 and 9) are hereby DENIED as MOOT; Dfts are given leave to file renewed motions to dismiss after the filing of plf's amended complaint. Signed by Honorable Judge Susan Russ Walker on 9/16/2016. (wcl,) (Entered: 09/16/2016)
09/27/2016	21	AMENDED COMPLAINT with JURY DEMAND against Montgomery County Board of Education, Tramene Maye, Rafiq Vaughn, filed by Arvilla Stinson.(Clarkson, Abigail) Modified on 9/28/2016 to clarify the docket text (wcl,). (Entered: 09/27/2016)
10/11/2016	22	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 10/11/2016)
10/11/2016	23	BRIEF/MEMORANDUM in Support re 22 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 10/11/2016)
10/11/2016	24	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Montgomery County Board of Education. (Seale, James) (Main Document 24 replaced on 10/13/2016) (wcl,). Modified on 10/13/2016 to attach a corrected PDF document of the Motion, which reflected an incorrect AL State Bar Number for the e−filing attorney (wcl,). (Entered: 10/11/2016)
10/11/2016	25	BRIEF/MEMORANDUM in Support re 24 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Montgomery County Board of Education. (Seale, James) (Main Document 25 replaced on 10/13/2016) (wcl,). Modified on 10/13/2016 to attach a corrected PDF document of the Brief, which was missing pages 2 through 12 due to a technical error (wcl,). (Entered: 10/11/2016)
10/12/2016	26	TEXT ORDER: Plf shall respond to dfts' 22 and 24 motions to dismiss on or before Tuesday, 11/1/2016; Dfts may file their respective reply briefs on or before Tuesday, 11/8/2016. The motion will then be taken under submission without oral argument. Signed by Honorable Judge Susan Russ Walker on 10/12/2016. (No pdf attached to this entry)(wcl,) (Entered: 10/12/2016)
10/13/2016	27	NOTICE of Correction re 24 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM and 25 BRIEF/MEMORANDUM in Support, to attach corrected PDF documents of the Motion, which reflected an incorrect AL State Bar Number for the e−filing attorney, and of the Brief, which was missing pages 2 through 12 due to a technical error. (Attachments: # 1 Correct Main PDF Document to Docket Entry 24 , # 2 Correct Main PDF Document to Docket Entry 25)(wcl,) (Entered: 10/13/2016)
11/01/2016	28	RESPONSE to Motion re 22 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Arvilla Stinson. (Clarkson, Abigail) (Entered: 11/01/2016)
11/01/2016	29	RESPONSE to Motion re 24 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Arvilla Stinson. (Clarkson, Abigail) (Entered: 11/01/2016)
11/01/2016		MOTION for leave to Amend 21 Amended Complaint by Arvilla Stinson. (NO PDF document attached to this notice−See Docket entry 28). (djy,) Modified on 8/30/2017 to clarify text to reflect for leave (qc/djy,). (Entered: 08/30/2017)

11/01/2016		MOTION for leave to Amend 21 Amended Complaint by Arvilla Stinson. (NO PDF document attached to this notice−See Docket entry 29). (djy,) (Entered: 08/30/2017)
11/08/2016	30	REPLY to Response to Motion re 22 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 11/08/2016)
11/08/2016	31	REPLY in Support of 24 Renewed Motion to Dismiss the Plaintiff's Amended Complaint filed by Montgomery Public Schools Board of Education. (Seale, James) Modified on 11/10/2016 to reflect actual title; wrong event code used when originally filed. (dmn,) (Entered: 11/08/2016)
08/30/2017	32	**ORDER directing that plf's 28 & 29 MOTIONS for leave to Amend contained within her responses to the defs' motions to dismiss are GRANTED; plf shall file a second amended complaint within 10 days of this order, as further set out in order; further ORDERING that the pending 22 & 24 MOTIONS TO DISMISS are hereby DENIED as MOOT; defs have leave to file renewed motions to dismiss after the filing of plf's second amended complaint. Signed by Honorable Judge Susan Russ Walker on 8/30/17. (djy,)** (Entered: 08/30/2017)
09/11/2017	33	SECOND AMENDED COMPLAINT with JURY DEMAND against All Defendants, filed by Arvilla Stinson.(Clarkson, Abigail) Modified on 9/13/2017 to clarify the docket text (wcl,). (Entered: 09/11/2017)
09/25/2017	34	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 09/25/2017)
09/25/2017	35	BRIEF/MEMORANDUM in Support re 34 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 09/25/2017)
09/25/2017	36	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Montgomery County Board of Education. (Seale, James) (Entered: 09/25/2017)
09/25/2017	37	BRIEF/MEMORANDUM in Support re 36 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Montgomery County Board of Education. (Seale, James) (Entered: 09/25/2017)
09/26/2017	38	**TEXT ORDER: this matter is before the court on the dfts' 34 & 36 motions to dismiss; It is hereby ordered that plf shall respond to the motions to dismiss on or before 10/17/2017; Dfts may file a reply on or before 10/24/2017. Signed by Honorable Judge Susan Russ Walker on 9/26/2017. (No pdf attached to this entry) (wcl,)** (Entered: 09/26/2017)
10/13/2017	39	NOTICE of Appearance by John Warren Marsh on behalf of Tramene Maye, Rafiq Vaughn (Marsh, John) (Entered: 10/13/2017)
10/16/2017	40	RESPONSE in Opposition re 36 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Arvilla Stinson. (Clarkson, Abigail) (Entered: 10/16/2017)
10/16/2017	41	RESPONSE in Opposition re 34 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Arvilla Stinson. (Clarkson, Abigail) (Entered: 10/16/2017)
10/23/2017	42	REPLY to Response to Motion re 34 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 10/23/2017)
10/24/2017	43	REPLY BRIEF re 36 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Montgomery County Board of Education. (Seale, James) (Entered: 10/24/2017)
08/03/2018	44	MOTION to Withdraw as Attorney by Tramene Maye, Rafiq Vaughn. (Marks, Emily) (Entered: 08/03/2018)
08/06/2018	45	**TEXT ORDER granting 44 Motion to Withdraw as Attorney. Signed by Honorable Judge Susan Russ Walker on 8/6/2018. (No pdf attached to this entry) (wcl,)** (Entered: 08/06/2018)

08/06/2018		***PURSUANT TO THE COURT'S TEXT ORDER (DOC # 45) − Attorney Emily Coody Marks terminated. (No pdf attached to this entry) (wcl,) (Entered: 08/06/2018)
08/13/2018	46	**TEXT ORDER vacating the 15 Order Referring Case. Signed by Chief Judge William Keith Watkins on 8/13/2018. (No pdf attached to this entry)(alm,)** (Entered: 08/13/2018)
09/24/2018		Motions No Longer Referred to US Magistrate Judge Susan Russ Walker: 34 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 36 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM. (No pdf attached to this entry) (wcl,) (Entered: 09/24/2018)
12/05/2018	47	MOTION for Status Conference by Arvilla Stinson. (Clarkson, Abigail) Modified on 12/6/2018 (wcl,). (Entered: 12/05/2018)
12/05/2018		Motions No Longer Referred to Mag Judge Walker, referral order vacated: 47 MOTION for Status Conference (djy,) (Entered: 01/10/2019)
02/05/2019	48	**MEMORANDUM OPINION AND ORDER: it is ORDERED that: 1) The Board's 36 Motion to Dismiss Count One is GRANTED with prejudice; 2) Stinson's common−law claims are DISMISSED for lack of jurisdiction without prejudice; 3) Vaughn and Maye's 34 Motion to Dismiss is DENIED as moot; 4) The 47 motion for a status conference is DENIED; 5) This case is DISMISSED. Signed by Honorable Judge William Keith Watkins on 2/5/2019. (kr,)** (Entered: 02/05/2019)
02/05/2019	49	**FINAL JUDGMENT: it is the ORDER, JUDGMENT, and DECREE of the court that this case is DISMISSED with prejudice as to Count One of the Second Amended Complaint and DISMISSED without prejudice as to Counts Two and Three of the Second Amended Complaint; The Clerk of the Court is DIRECTED to enter this document on the civil docket as a Final Judgment pursuant to Rule 58 of the FRCP. Signed by Honorable Judge William Keith Watkins on 2/5/2019. (Attachments: # 1 Civil Appeals Checklist)(kr,)** (Entered: 02/05/2019)
03/04/2019	50	NOTICE OF APPEAL as to 48 Memorandum Opinion and Order, and 49 Final Judgment entered 2/5/2019, by Arvilla Stinson (Clarkson, Abigail) Modified on 3/4/2019 to clean up text. (dmn,) (Entered: 03/04/2019)
03/04/2019	51	Appeal Instructions sent to Attorney Abigail Clarkson counsl for Arvilla Stinson re 50 Notice of Appeal. A copy of the Transcript Information Form must be mailed to each court reporter from whom you are requesting a transcript. (Attachments: # 1 Transcript Information Form)(dmn,) (Entered: 03/04/2019)
03/05/2019	52	Transmission of 50 Notice of Appeal, 49 Final Judgment, 48 Memorandum Opinion and Order, and Docket Sheet to US Court of Appeals. (Attachments: # 1 Docket Sheet and Appeal Record)(dmn,) (Entered: 03/05/2019)
03/06/2019	53	USCA Appeal Fees received $ 505 receipt number 4602052605 re 50 Notice of Appeal filed by Arvilla Stinson. (dmn,) (Entered: 03/06/2019)
03/08/2019	54	USCA Case Number 19−10815−K for 50 Notice of Appeal filed by Arvilla Stinson. (dmn,) (Entered: 03/08/2019)
03/18/2019	55	TRANSCRIPT INFORMATION FORM by Arvilla Stinson with the following notation, "No hearing." (Clarkson, Abigail) (Main Document 55 replaced on 3/20/2019) (dmn,). Modified on 3/20/2019 to replace pdf with properly formatted pdf and to include additional text. (dmn,) (Entered: 03/18/2019)