

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

J.W., by and through his next friend, Tammy Williams; G.S., by and through her next friend, LaTonya Stearnes; P.S., by and through her next friend, LaTonya Stearnes; T.L.P., by and through her next friend, Tarra Pritchett; B.D., by and through her next friend, Angela Davis; K.B., by and through her next friend, Maddie West, on behalf of themselves and all similarly situated individuals; T.A.P., by and through her next friend, Barbara Pettaway, individually; and B.J., by and through his next friend, Renee Howard,

Plaintiffs,

v.

A.C. ROPER, in his individual and official capacity as Chief of the Birmingham Police Department; OFFICER J. NEVITT, in his individual capacity; OFFICER A. CLARK, in his individual capacity; OFFICER D. HENDERSON, in his individual capacity; OFFICER S. SMITH in his individual capacity; ASSISTANT PRINCIPAL ANTHONY MOSS, in his individual capacity; OFFICER R. TARRANT, in his individual capacity; OFFICER M. BENSON, in her individual capacity; BIRMINHAM BOARD OF EDUCATION,

Defendants.

CLASS ACTION

CASE NO. CV-10-B-3314-S

**THIRD AMENDED COMPLAINT**

1. This is a civil rights action filed pursuant to 42 U.S.C. § 1983 to challenge the written and unwritten policies, practices, and customs of the Birmingham

Police Department (“BPD”) regarding the use of mace against children in the Birmingham City Schools (“BCS”) and to protect the Fourth and Fourteenth Amendment rights of these children. Plaintiffs are BCS students who have been brutalized with chemical weapons and other excessive force while attempting to obtain an education. Defendants Birmingham Board of Education<sup>1</sup> and Chief A.C. Roper, acting as Chief of Police for BPD, have created a police state within the City’s public high schools, stationing police officers known as School Resource Officers (“SRO”) in each school, arming them with chemical weapons, and authorizing them to use those weapons to enforce basic school discipline. Further, Defendant Roper has not provided SROs with any training on the use of chemical agents in school settings or on children.

2. Teachers, school administrators, and law enforcement operate in close concert with one another, with school personnel frequently calling upon SROs to forcefully intervene in minor incidents of childish misbehavior that schools would typically handle as internal matters without resorting to law enforcement. Instead of de-escalating these situations, SRO involvement often has the opposite effect.

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<sup>1</sup> The Court dismissed all claims against the Birmingham Board of Education in its July 20, 2011 Order partially granting the Motion to Dismiss of Defendants Birmingham Board of Education (Docs. 48, 49). Plaintiffs reiterate their request for Declaratory and Injunctive Relief to Protect Plaintiffs’ Substantive Due Process Rights to Personal Security under the Fourteenth Amendment in the Third Amended Complaint to preserve Plaintiffs’ right to address this issue on appeal.

Officers are quick to resort to pepper spray (a/k/a mace or Freeze +P).<sup>2</sup> School personnel not only watch but sometimes even celebrate when schoolchildren are maced.

3. As a result of the Defendants' conduct, all of which is authorized by BPD policy, practices, and customs, the Plaintiffs have suffered severe physical and psychological harm. The physical effects of pepper spray are serious and can be life-threatening. Among the many physical effects is immediate inflammation and swelling of the throat, a reflexive reaction that restricts the size of the airway and limits the amount of oxygen entering the lungs, creating an especially dangerous situation for children with asthma. Physical injuries are not the only negative consequences that result from the use of pepper spray in Birmingham high schools. As a result of BPD's unconstitutional policy, practices, and customs, the Plaintiffs and countless other BCS students have been conditioned to fear and distrust school and law enforcement officials. Plaintiffs' attachment to school has been undermined (one has even dropped out) and all have been robbed of the sense of security and safety that children should experience while attending schools. Mace is used so frequently and so indiscriminately in Birmingham's public high schools

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<sup>2</sup> Mace is the trademarked name for a line of defense products that include pepper spray. Although the original Mace product differs in chemical composition from pepper spray, the two terms are frequently used interchangeably to refer to chemical weapons that contain pepper spray. Following popular practice, this complaint will also use both terms to refer to Freeze +P chemical spray.

that each Class Representative – and all BCS students – faces a real and substantial risk of future and repeated injury.

4. Accordingly, Plaintiffs J.W., G.S., P.S., T.L.P, B.D., and K.B. bring this action on behalf of a class composed of all current and future students who are or will be enrolled in any high school in the Birmingham City School system – all of whom face, and will continue to face, a real and immediate risk of repeated injury due to Defendants’ unconstitutional policy, practices, and customs. On behalf of the class, Plaintiffs seek declaratory and injunctive relief to vindicate their rights, to protect members of the class, and to compel Defendants to immediately abandon the use of chemical and other weapons against schoolchildren and revise their unconstitutional policies. In addition to the class claims, Plaintiffs J.W., G.S., P.S., T.L.P., B.D., K.B., T.A.P., and B.J. also bring individual claims for damages arising from violations of their rights under the Fourth and Fourteenth Amendments to the United States Constitution, and for the torts of assault and battery and outrage.

## **PARTIES**

### ***Named Plaintiffs/Class Representatives***

5. Plaintiff J.W. is a 16-year-old boy residing in Birmingham, Alabama. He is currently enrolled at Woodlawn High School, a school operated by the Birmingham City Schools (“BCS”). He brings this action by and through his

mother and legal guardian, Tammy Williams. At the time of the incidents described below in paragraphs 84 through 90, he was enrolled as a 9th grader at Woodlawn High School and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

6. Plaintiff G.S. is an 18-year-old girl residing in Birmingham, Alabama. She is currently enrolled at Huffman High School, a school operated by BCS. At the time of the incident described below in paragraphs 91 through 108, she was enrolled as an 11th grader at Huffman High School and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

7. Plaintiff P.S. is a 16-year-old girl residing in Birmingham, Alabama. She is currently enrolled at Huffman High School, a school operated by BCS. She brings this action by and through her mother and legal guardian, LaTonya Stearnes. At the time of the incident described below in paragraphs 91 through 108, she was enrolled as a 9th grader at Huffman High School and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

8. Plaintiff T.L.P. is a 16-year-old girl residing in Birmingham, Alabama. She is currently enrolled at Woodlawn High School, a school operated by BCS. She brings this action by and through her mother and legal guardian, Tarra Pritchett. At the time of the incident described below in paragraphs 109 through 118, she

was enrolled as a 10th grader at Woodlawn High School and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3

9. Plaintiff B.D. is a 17-year-old girl residing in Birmingham, Alabama. She is currently enrolled at Woodlawn High school, a school operated by BCS. She brings this action by and through her mother and legal guardian, Angela Davis. At the time of the incidents described below in paragraphs 119 through 140, she was enrolled as a 12th grader at Woodlawn High School and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3

10. Plaintiff K.B. is a 17-year-old girl residing in Birmingham, Alabama. She is currently enrolled at Riggins Alternative High School, a school operated by BCS. She brings this action by and through her aunt and legal guardian, Maddie West. At the time of the incidents described below in paragraphs 141 through 152, she was enrolled as a 10th grader at Woodlawn High School and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

***Individual Plaintiffs***

11. Plaintiff T.A.P. is a 19-year-old girl residing in Birmingham, Alabama. At the time of the incident described below in paragraphs 153 through 167, she was enrolled at George Washington Carver High School, a school operated by BCS, and was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3. Plaintiff T.A.P. seeks damages only.

12. Plaintiff B.J. is a 16-year-old boy who was enrolled as a 10th grader at P.D. Jackson-Olin High School, a school operated by BCS, at the time of the incident described below in paragraphs 168 through 181. At all relevant times, Plaintiff B.J. was subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3. He brings this action by and through his mother and legal guardian, Renee Howard. Plaintiff B.J. seeks damages only.

*Defendants*

13. Defendant A.C. Roper is the Chief of the Birmingham Police Department (“BPD”), a law enforcement agency created by the Birmingham City Council. BPD is “charged with the preservation of the peace and order of the city, the protection of all persons and property within the city, and the enforcement of all criminal ordinances and criminal laws of the city and the state.” General Code of the City of Birmingham, Public Safety and Protection, Title 9, Ch. 1: Police Department. Under law, Defendant Roper is required to “direct, control and discipline all officers and members of the department.” *Id.* He is named as a defendant to this action in his official and individual capacities.

14. Defendant Officer J. Nevitt was a BPD employee assigned to the Special Victims Division, Youth Services Unit, as an SRO during the 2009-2010 school year. He is named as a defendant to this action in his individual capacity.

15. Defendant Officer A. Clark was a BPD employee assigned to the Special Victims Division, Youth Services Unit, as an SRO during the 2009-2010 school year. He is named as a defendant to this action in his individual capacity.

16. Defendant Officer R. Tarrant was a BPD employee assigned to the Special Victims Division, Youth Services Unit, as an SRO during the 2009-2010 school year. He is named as a defendant to this action in his individual capacity.

17. Defendant Officer D. Henderson was a BPD employee assigned to the Special Victims Division, Youth Services Unit, as an SRO during the 2010-11 school year. He is named as a defendant to this action in his individual capacity.

18. Defendant Officer S. Smith was a BPD employee assigned to the Special Victims Division, Youth Services Unit, as an SRO during the 2010-11 school year. He is named as a defendant to this action in his individual capacity.

19. Defendant Anthony Moss is a BCS employee working at Carver High School. He is named as a defendant to this action in his individual capacity.

20. Defendant Officer M. Benson is a BPD employee assigned to the Special Victims Division, Youth Services Unit, as an SRO during the 2010-11 school year. She is named as a defendant to this action in her individual capacity.

21. Defendant Birmingham Board of Education (“BOE”) is a nine-member, elected legal body “vested with all the powers necessary or proper for the administration and management of [the Birmingham City Schools].” Ala. Code §



16-11-9. BOE is responsible for supervising the schools in the district by establishing and enacting guiding policies. Birmingham Board of Education, Policy Manual 2009. Individual BOE members are required to “be familiar with . . . [the] regulations of [BCS] . . . , to visit schools in the school district for the purpose of assessing the learning climate and accomplishment of educational goals . . . [, and] to refer complaints to the superintendent.” Birmingham Board of Education, Policy Manual 2009.

### **JURISDICTION AND VENUE**

22. The federal claims in this action arise under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28 U.S.C. § 1331 and § 1343(a).

23. This Court has jurisdiction under 28 U.S.C. § 1367 over the Plaintiffs’ state law claims, as they are so related to the federal claims in this action that they form a part of the same case or controversy under the Constitution and the laws of the United States.

24. Venue is proper under 28 U.S.C. § 1391(b)(2) because a “substantial part of the events or omissions giving rise to the claim[s] occurred” in this district.

### CLASS ACTION ALLEGATIONS

25. Plaintiffs J.W., G.S., P.S., T.L.P., B.D., and K.B. (collectively “Class Representatives”) bring this suit on their own behalf and on behalf of a class consisting of all current and future BCS high school students.
26. The class is so numerous that joinder of all members is impractical. Fed. R. Civ. P. 23(a)(1). Approximately 8,000 students are currently enrolled in Birmingham City high schools. The class also includes future members whose names and overall number cannot be determined at this time. Fed. R. Civ. P. 23(a)(1).
27. There are questions of law and fact common to all class members, including, but not limited to, the Plaintiffs’ challenge to the constitutionality of BPD’s policies, practices, and customs concerning the use of chemical weapons. Other common legal issues include the reasonableness of using mace against children who pose no public safety risk. Common factual issues include the severe health risks posed by the deployment of mace against schoolchildren, particularly in a closed environment and with respect to a population with a higher than average incidence of asthma. Fed. R. Civ. P. 23(a)(2).
28. Because the policies, practices, and customs challenged in this action apply with equal force to the Class Representatives and the other members of the class,

the claims of the Class Representatives are typical of the class in general. Fed. R. Civ. P. 23(a)(3).

29. The Class Representatives will fairly and adequately protect the interests of the class. Each possesses a strong personal interest in the subject matter of the lawsuit and the claims raised therein. They are represented by experienced counsel with expertise in class action litigation and litigation involving children. Counsel has the legal knowledge and resources to fairly and adequately represent the interests of all class members in this action. Fed. R. Civ. P. 23(a)(4).

30. The Defendants have acted and refused to act on grounds generally applicable to the class in that the Defendants' policies and practices of violating students' constitutional rights affect all class members. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole. Fed. R. Civ. P. 23(b)(2).

### **STATEMENT OF FACTS**

31. The Birmingham City School ("BCS") system includes seven high schools, which collectively serve approximately 8,000 students.

32. Under the Alabama compulsory school attendance law, Ala. Code § 16-28-3, children between the ages of seven and seventeen are required to attend school.

33. The Birmingham Board of Education enforces the Alabama compulsory school attendance law through BCS attendance officers. BCS attendance officers

identify students accused of truancy and refer them to be prosecuted in the Jefferson County Family Court. Defendant Roper authorizes officers of the Birmingham Police Department (“BPD”) to locate and pick up students accused of truancy, and to return them to their respective schools.

34. BPD is a municipal law enforcement agency “charged with the preservation of the peace and order of [Birmingham], the protection of all persons and property of the city, and the enforcement of all criminal ordinances and all criminal laws of the city and state.” General Code of the City of Birmingham, Title 9: Public Safety and Protection, Ch. 1: Police Department.

35. Prior to January 1996, BPD maintained a periodic presence in BCS schools. Charles J. Dean, “Police Patrols in Schools Growing,” Birmingham News, January 10, 1996. However, in January 1996, BPD permanently stationed officers in all but one BCS high schools and several middle schools. *Id.* On January 9, 1996 BOE provided BPD with retroactive approval to patrol BCS schools. *Id.*

36. Officers who are stationed in BCS schools are known as School Resource Officers (“SROs”). The SRO Program is part of BPD’s Special Victims Division, Youth Services Unit. SROs frequently become involved – both on their own initiative and at the request of school personnel – in minor incidents in which safety is not an issue.

37. Each BCS high school is assigned at least two SROs who patrol school property during school hours. SROs are required to report to their assigned school site every day and commence routine job functions, including patrolling school grounds and engaging in school discipline. SROs patrol school grounds and engage in school discipline with the permission of BCS Superintendent Craig Witherspoon and Defendant BOE.

38. As set forth below, all Defendants and school personnel are aware that SROs utilize police practices, such as use of Freeze +P (a pepper spray product) and physical force, while engaging in school discipline.

39. On January 25, 2011, BOE member Edward Maddox insisted during a school board meeting that the use of pepper spray by SROs against students in disciplinary measures is sometimes necessary. He stated that he had served as a teacher in Birmingham schools, and it was sometimes necessary to spray students with mace. Maddox also said that when SROs use mace, innocent children who are in close proximity are sometimes affected – sometimes when simply eating their lunch in the cafeteria.

40. As described in the factual allegations below, a long-standing agreement exists among BPD, BOE, the Superintendent, BCS personnel, and individual SROs that SROs are expected not only to make arrests when they witness students engaged in illegal behavior, but also to respond when school personnel seek their

assistance in enforcing the BCS Code of Conduct. All Defendants to this action are aware of this agreement. Moreover, all Defendants are further aware that SROs often use abusive and unnecessary force against schoolchildren in the course of their duties, and Defendants Roper and BOE authorize the use of such force.

41. BCS teachers and other school personnel frequently request that SROs handle misbehavior traditionally managed by the school, such as the uttering of expletives or refusals to comply with classroom directives. In effect, SROs have become tools of school personnel who have abdicated their disciplinary authority and responsibilities. This phenomenon was acknowledged publicly by Interim BCS Superintendent Barbara Allen, who noted:

“We put SROs (school resource officers) in there to manage the school and serious crimes. They are there if someone commits a felony or major crime,” said interim Birmingham school Superintendent Barbara Allen. “But sometimes we have principals who call them to break up a fight. They are busy, and I think it's just easier for them to place the responsibility elsewhere, and that isn't right.”

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“Other school systems aren't arresting kids for small things; they handle it from within,” Allen said. “We call the police.”

She said SROs too often are called upon to handle small fights, disruptive behavior and dress-code violations, such as sagging pants.

Marie Leech & Carol Robinson, “Birmingham city schools rely on arrests to keep order,” *Birmingham News*, March 22, 2009.

42. Most BCS school arrests are for petty misdemeanors like disorderly conduct or harassment, which are broadly defined offenses that can be used to criminalize a wide range of ordinary teenage behavior. During the 2009-10 school year, 86% of arrests in BCS schools were for minor violations and misdemeanors, while less than 2% involved felonies against persons.

43. As a result of the presence of SROs in BCS schools, Birmingham students are significantly more likely to be arrested than students in neighboring districts who engage in the same conduct. Although BCS educates only 25% of public school children in Jefferson County, BCS was responsible for more than 65% of all school-based complaints filed against students in the Jefferson County Family Court in the 2009-10 school year.

44. On several occasions, Defendant Roper has publicly expressed concerns regarding the criminalization of teenage behavior in the Birmingham City School system. For example, Defendant Roper gave the following comments to the Birmingham News in March 2009:

Roper acknowledges that most of the arrests are for minor violations that should not have involved police.

“They have over-relied on our officers, and our officers have responded,” Roper said. “I think the school system should handle minor violations and the SROs should be present and respond when it rises to a criminal level.”

“Too many of these kids have been criminalized, and that's not the goal,” he said. “The current system is dysfunctional, and that's putting it mildly.”

Marie Leech & Carol Robinson, “Birmingham city schools rely on arrests to keep order,” *Birmingham News*, March 22, 2009.

45. Defendants BOE and Roper purported to respond to excessive law enforcement intervention in the schools with the implementation of the School Offense Protocol – an agreement that governs BCS arrests and referrals to the Jefferson County Family Court. The School Offense Protocol does not contain any provisions that govern the use of chemical agents by SROs against BCS students.

***Properties and Dangers of the Chemical Weapons used against BCS Students***

46. Defendant Roper authorizes and requires BPD officers to carry Freeze +P – a pepper spray product. Freeze +P consist of two chemical agents, Orthochlorobenzalmalonitrile (CS) and Oleoresin Capsicum (OC). The product manufacturer claims that “[t]he strong respiratory effects of OC combined with the severe pain induced by CS magnify each other.” *See*

<http://www.aerko.com/Freeze+P.htm>. Freeze +P is marketed as “the most intense, incapacitating agent available today.” *Id.*

47. Exposure to pepper spray products like Freeze +P can temporarily eliminate the protective reflexes in the eyes and throat by poisoning the nerve endings that stimulate these reflexes. The absence of the gag and blink reflexes make the eyes



and lungs susceptible to injury. The chemical ingredients in Freeze +P are known to cause severe and painful effects, including: (a) temporary and permanent damage to the cornea, (b) conjunctiva of the eye, (c) temporary loss of vision, (d) persistent and debilitating pain and swelling around the eyes, (e) blisters under the eye, (f) chemical injury to the eye, (g) blurred vision and redness in the eye, (h) blistering of the eyelids, (i) blistering and scarring of the eyeball, and (j) corneal abrasion of the eye.

48. Exposure to a pepper spray product such as Freeze +P also has severe respiratory effects. Among the many physical reactions to Freeze +P is an immediate inflammation and swelling in the throat, a reflexive reaction that restricts the size of the airway and limits the amount of oxygen entering the lungs. Pepper spray also causes the affected individual to cough violently, gasp for air, and experience a gagging sensation. Pepper spray exposure also presents the risk of apnea, cyanosis, and respiratory arrest. Inhaling pepper spray may cause acute hypertension, which may increase the risk of stroke or heart attack.

49. Asthmatics exposed to pepper spray are at higher risk for severe and possibly life-threatening asthma attacks. Asthmatics may be hypersensitive to pepper spray because the chemical combination can induce bronchoconstriction – a constriction of the airways causing coughing, wheezing, and shortness of breath.

50. Asthma is fairly common among children, affecting about nine percent of all children in the general population.

51. The United States Department of Health and Human Services (“HHS”) has reported an especially high prevalence of asthma among African Americans, particularly among African-American children. According to the Office of Minority Health at HHS:

- a. In 2006, African Americans were three times more likely to die from asthma-related causes than whites. From 2003 to 2005, the death rate for African-American children was seven times the rate of white children.
- b. Generally, African-American children require more treatment for asthma-related incidents than white children: African American children have 260% more emergency room visits and 250% more hospitalizations.
- c. African-American children also have a 500% higher death rate due to asthma-related complications compared to white children.

52. African American children comprise approximately 96% of the Birmingham City School system.

53. Applicable safety standards for use of chemical agents, such as mace or pepper spray, warn that directing the chemical directly into the eyes and face increases the risk of injury to the eyes and that the stream from chemical agents should be directed towards the clothing on the chest.

54. The standard of care for individuals affected by pepper spray is to immediately ensure access to a flowing air source (removing them from the

chemical-filled environment), and to immediately flush the affected areas of the skin with water, especially the eyes if affected by the chemical. In addition, the injured person's clothing should be immediately removed to prevent continued exposure and contamination. Individuals wearing contact lenses should immediately remove them.

55. The Freeze +P Material Safety Data Sheet is the official document that sets forth the usage guidelines for the product. The Emergency and First Aid Procedure contained in this document sets forth appropriate decontamination and first aid procedures for individuals exposed to Freeze +P. Individuals exposed to Freeze +P should "flush [their] eyes with large quantities of water to speed recovery" and face "wind or forced air source such as fans or air conditioning outlet." Aerko International, Freeze +P, Material Safety Data Sheet, Prepared June 17, 1991. Individuals sprayed with Freeze +P should "remove contaminated clothing" and "wash affected area[s] with soap and water to avoid transfer to more sensitive areas." *Id.* The Material Safety Data Sheet further provides that "persons with preexisting skin disorders may be more susceptible to the affects [sic] of [Freeze +P]."

56. BPD policy on the use of chemical weapons provides some limited guidance on decontamination procedures:

- A. Following the use of chemical spray the officer will ensure that the subject receives adequate decontamination as soon as

practical. The officer should supply immediate medical attention if requested by the subject.

- B. Birmingham Fire and Rescue will be called and will determine whether or not the subject needs further medical attention or hospital treatment.

BPD Rules and Regulations, Chemical Spray Subject Restraint: Non-Deadly Use of Force, No. 113-5, February 10, 2006.

***BPD Written Policy on Use of Force and Chemical Restraints***

57. BPD's Use of Force policy, Procedure No. 113-3, was last updated on February 18, 2008. Under that policy, officers may carry and use Freeze +P chemical spray during the course of their duties.

58. BPD's policy on Chemical Spray Subject Restraint: Non-Deadly Use of Force, Procedure No. 113-5, was last updated on February 10, 2006.

59. BPD's policy on Chemical Spray Subject Restraint provides, in pertinent part:

- C. The chemical spray may be used in an arrest situation where the weapon's use offers the possibility of lessening the likelihood of physical injury to the arresting officer, citizens on the scene and/or the suspect
- D. The use of chemical spray is intended solely as a control device to enable the officer to carry out his or her duties in the safest, most efficient and most professional manner with the least chance of injury to either the officer or the suspect.
  - 1. At no time will an officer unnecessarily brandish, or use chemical spray as an intimidation device unless the officer is attempting to prevent further escalation of force.

2. Chemical spray is not[,] under any circumstances, to be used as punishment or as a coercive tool once an individual is under control and in custody.
  3. The chemical spray is not to be used by officers unless they have a reasonable belief that a crime has been committed and that the intended target committed the crime.
- E. Any time chemical spray is used for controlling an offender[,] the application of the chemical spray will end when the subject discontinues resistance or aggression.
- F. The chemical spray is best employed in one to two second bursts. The spray must be directed to the facial area of the assailant, with the bridge of the nose being the best target area. This weapon is primarily an inflammatory agent, producing the following results.
1. Involuntary closing of the eyes.
  2. Swelling of the mucous membranes, which results in shallow breathing ability.
  3. Intense burning on sensitive parts of the body.

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- H. It should be kept in mind by all concerned that any actual contact with chemical spray to the face or sensitive skin areas will result in the officer being adversely affected by its properties. Caution must be taken while handcuffing prisoners, placing them in automobiles, etc. If contact is made with the actual substance, the officer shall refrain from touching his face with the contacted area until he can wash that area with warm soapy water.

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### III. AFTER USE PROCEDURES

- A. Following the use of chemical spray the officer will ensure that the subject receives adequate decontamination as soon as practical. The officer should supply immediate medical attention if requested by the subject.
- B. Birmingham Fire and Rescue will be called and will determine whether or not the subject needs further medical attention or hospital treatment.
- C. Any time an officer uses chemical spray for subject control, the officer will notify the on-duty supervisor and complete a **Use of Force Information and Statement Report**.

60. The BPD's Use of Force policy defines control as "[t]he force an officer uses to influence or neutralize the unlawful, physical actions of a subject under arrest."

61. The expansive language contained in paragraph "C" of BPD's policy on Chemical Spray Subject Restraint: Non-Deadly Use of Force permits and encourages BPD officers, including SROs, to recklessly deploy chemical weapons against individuals, including children, in inappropriate situations and allows officers to respond disproportionately to student misbehavior. In effect, it authorizes and directs BPD officers, including SROs, to deploy chemical agents in an unreasonable and unconstitutional manner.

62. As described below in paragraphs 84 through 181, the unfettered use of chemical weapons against BCS students, as permitted by written BPD policy, has resulted in the overuse of mace in BCS and in violations of the Fourth and Fourteenth Amendment rights of the named Plaintiffs and other BCS students.

63. Paragraph “F” of BPD’s policy on Chemical Spray Subject Restraint: Non-Deadly Use of Force unreasonably and unconstitutionally instructs BPD officers, including SROs, to administer chemical spray directly into the face of individuals, including children. As provided above, applicable deployment standards for chemical sprays warn against administering pepper spray directly into the face.

64. As described below in paragraphs 84 through 181, BPD’s policy regarding pepper spray deployment has resulted in injuries to the named Plaintiffs and other affected BCS students, and violates their Fourth and Fourteenth Amendment rights.

65. As described in plaintiff-specific facts sections below, the Defendant Officers’ conduct was consistent with BPD policy, practices, and/or customs. In his capacity as Chief of Police, and as the official responsible for the training and supervision of BPD officers and their use of force, Defendant Roper is aware of BPD policy, customs, and practices concerning the use of Freeze +P on BCS students.

***BPD Practices and Customs on Physical Force and Chemical Restraints***

66. As described below, BPD, through Defendant Roper, has adopted and encouraged widespread and persistent unconstitutional practices and customs that permit and encourage SROs to use chemical weapons against BCS students in inappropriate situations and in an abusive and excessive manner:

- a. SROs use Freeze +P against BCS students as a first resort, and without issuing a warning to students.
- b. SROs use Freeze +P against BCS students who pose no risk of injury to other students, to school staff, to SROs, or to themselves.
- c. SROs use Freeze +P against BCS students when they are restrained.
- d. SROs use Freeze +P against BCS students as a form of punishment.
- e. Without regard to others in close proximity to the intended target, SROs deploy Freeze +P in closed school spaces without appropriate avenues of ventilation – injuring students not accused of any wrongdoing.
- f. SROs use Freeze +P as a way to intimidate and control peaceable groups of students when the groups do not immediately disperse upon order. In some cases, SROs begin spraying students immediately without giving them time to disperse.

67. As provided in the plaintiff-specific facts sections below, these practices and customs have resulted in injury to the named Plaintiffs and other BCS students and violated their Fourth and Fourteenth Amendment rights under the U.S.

Constitution.

68. All Defendants are aware that SROs routinely use Freeze +P against students in the course of school discipline and arrests, even when the targeted child poses



no risk of injury to other children, to the officer, to school personnel, or to herself. School leadership at every BCS high school – including, but not limited to, Jackson-Olin, Woodlawn, Huffman, and Carver High Schools – are aware that SROs use Freeze +P on students. *See* paragraphs 84 through 90, 91 through 108, 109 through 118, 119 through 140, 141 through 152, 153 through 167, and 168 through 181.

69. Under BPD policy, any officer who uses a chemical weapon must notify the on-duty supervisor and complete a Use of Force Information and Statement Report. These reports are subject to regular review by high-level BPD officials to ensure conformity with departmental policy, practice, and custom. Any use of force must also be noted in the officer's report of the incident. Accordingly, Defendant Roper is aware of the abusive practices described above given that they are reflected in the officers' Use of Force Information and Statement Reports and officer reports.

70. The use of chemical weapons against students in the Birmingham schools is so widespread and persistent that the use of pepper spray has been the subject of multiple media accounts, including an August 2008 report by Alabama NBC Channel 13 and a front-page article in the Birmingham News on March 22, 2009. A 2009 article in the Birmingham News entitled "City Schools Rely on Arrests to Keep Order" highlighted several incidents involving the inappropriate use of mace on BCS high school students by SROs. Specifically, the article reported that a 16-

year-old BCS high school student was sprayed with mace and handcuffed for yelling a curse word, and that a 17-year-old BCS high school student was sprayed with mace and arrested for being “loud and boisterous.” Defendant Roper was quoted extensively in the article, and almost certainly read it. Despite his awareness that SROs routinely use Freeze +P against schoolchildren who pose no threat to officers, to BCS staff, to other children, or to themselves, Defendant Roper has failed to take action to prohibit – or even limit – the use of Freeze +P on schoolchildren.

71. In each of the incidents involving pepper spray described below, the Defendant Officers’ conduct was consistent with abusive BPD practices and/or customs for the use of chemical weapons in BCS. In his capacity as Chief of Police, Defendant Roper is aware of BPD policy, customs, and practices concerning the use of Freeze +P on BCS students.

72. Due to the media coverage described above, as well as numerous complaints from parents, reports from BCS staff, direct observation, and a variety of other sources, BOE and the BCS Superintendent are also well aware of the policy, practices, and customs described above.

73. In addition, the Southern Poverty Law Center (“SPLC”) submitted a Request for Access to Information to the Family Court of Jefferson County, Alabama on July 27, 2010. The Request sought copies of all police reports submitted to the

Jefferson County Family Court that reflected the use of chemical spray against BCS students. The Request included a significant amount of medical evidence documenting the dangers of chemical spray.

74. Upon information and belief, an electronic copy of SPLC's Request, including the supporting documentation, was provided to Superintendent Witherspoon and Defendants BOE and Roper, and the Birmingham City Attorney's Office within a week.

75. On or about September 16, 2010, BOE and Superintendent Witherspoon were served with a copy of an Order by the Honorable Scott Vowell, Presiding Judge of the Jefferson County Circuit Court. That Order provided, in pertinent part, the following:

1. A copy of this Order shall be served by the Clerk of the Family Court [by] mailing a copy to the Birmingham Board of Education and the Birmingham Superintendent of Education. Any objection to this Order must be filed with this Court (at the Chambers of the undersigned) within fourteen (14) days from the date of this Order or any such objection will be waived.
2. If no objection is received within 14 days from the date of this Order, the Family Court of Jefferson County will produce for inspection and copying all police reports that:
  - a. were submitted to the Family Court in connection with complaints filed against students in the Birmingham City School System arising from incidents or behavior that occurred in or at school during the 2008-2009 and 2009-2010 school years; and which

- b. document the use of chemical restraints, including Freeze +P or other mace- [or] pepper-spray products.

76. Neither BOE nor Superintendent Witherspoon raised any objections to the September 16 order. Accordingly, the Circuit Court entered a second order on October 7, 2010, directing the Family Court to produce the documents described in the Order dated September 16.

77. Despite the Circuit Court's orders and the obvious concerns raised by SPLC's Request for Access to Information, neither BOE nor Superintendent Witherspoon took any action to prohibit – or even investigate – the use of chemical weapons against Birmingham schoolchildren.

***Duty of Defendant Roper to Train and Supervise BPD Officers***

78. Defendant Roper has failed to adequately train BPD officers on the use of chemical weapons and, specifically, on the use of chemical weapons against children in school settings. The BPD "Use of Force" and "Chemical Spray Subject Restraint: Non-Deadly Use of Force" policies do not provide BPD personnel with adequate guidance for the appropriate use of Freeze +P on adolescents and in school environments, nor do they refer to any training protocol. Neither policy addresses any of the following issues:

- a. The appropriate distance to stand from a subject when administering the spray;
- b. Appropriate use of Freeze +P, and other chemical weapons, on adolescents;

- c. Use of chemical-based weapons in closed environments, such as schools or school vehicles;
- d. Appropriate use of Freeze +P when in close proximity to third parties who are not suspected of committing any crime;
- e. Procedures for effective decontamination and treatment;
- f. Guidelines and cautions for use of chemical spray on individuals that are at a higher risk of injury from exposure to pepper spray, such as asthmatics;
- g. Use of pepper spray as a means to disperse a group of observers; and
- h. Protocol for deploying chemical weapons, including a mandated warning prior to using the chemical.

79. In his capacity as Chief of Police, Defendant Roper has a legal duty to “direct, control and discipline all officers and members of the department.”

General Code of the City of Birmingham, Public Safety and Protection, Title 9, Ch.

1: Police Department. In order to fulfill this duty, Chief Roper must: maintain familiarity with the activities, practices, and customs of officers in all BPD units; ensure their compliance with BPD policy and with state and federal law; and take disciplinary and other remedial action when officers run afoul of these mandates.

80. Every BPD officer who uses Freeze +P is required to notify a supervisor and submit a Use of Force Information and Statement Report. These reports are subject to regular review by BPD officials. From reviewing these reports to ensure that all officers are complying with BPD policy, and state and federal law,

Defendant Roper is fully aware of the use of chemical restraints on BCS students and the manner in which these weapons are deployed in the BCS schools.

81. Despite this knowledge, Defendant Roper has not made any effort to amend BPD policy, practices, and customs to provide specific guidance to officers on the use of force on children. Further, Defendant Roper has not made any effort to provide specialized training to officers to educate them about the specific risks of using Freeze +P (and other pepper spray products) on children, in closed environments, and/or within populations with a higher than average incidence of asthma.

82. Instead, Defendant Roper has continued to condone and approve the abusive and brutal practices and customs that SROs employ when using pepper spray against BCS students in the course of administering school discipline and conducting school arrests, even where custom and practice is inconsistent with written policy. Specifically, Defendant Roper authorizes the use of pepper spray on students who are completely restrained, who pose no threat to themselves or others, and who are merely in the wrong place at the wrong time.

83. Given the inherent dangers of chemical weapons, the high incidence of asthma amongst African-American children, and the reckless and abusive manner in which many SROs deploy chemical weapons, Defendant Roper's failure to provide SROs with specialized training and his failure to amend BPD policy,

practices, and customs, amounts to deliberate indifference to the health and safety of BCS school children. Defendant Roper's deliberate indifference has resulted in violations of the Fourth and Fourteenth Amendment rights under the U.S. Constitution of the named Plaintiffs and other unnamed BCS students.

*Use of Chemical Weapons against Plaintiffs*

*Plaintiff J.W.*

84. In April 2010, J.W. left his third-block class at Woodlawn High School and was walking down the hallway when he saw a physical altercation begin. A group of students began to gather near the scene. J.W. was towards the back of the group. He was approximately ten feet away from the altercation.

85. Defendant Nevitt and an unknown SRO responded to the incident. The unknown SRO approached the students involved in the altercation and sprayed them in the face with Freeze +P.

86. Defendant Nevitt walked up to the group of observers and yelled at them to disperse. Without further warning, and without giving the students any opportunity to move away, Defendant Nevitt immediately started spraying the observers with Freeze +P. Defendant Nevitt sprayed them for approximately ten seconds, waving the canister back and forth across the group at eye level.

87. While Defendant Nevitt sprayed the group, the students began screaming and coughing as they ran in different directions to get away from the chemical spray that was filling the hallway.

88. Although J.W. was about ten feet away when Defendant Nevitt started blasting Freeze +P, some of the chemical spray landed on J.W.'s face. Upon contact, J.W.'s eyes and nose started stinging and burning immediately. The burning feeling spread across his entire face. J.W. also started coughing uncontrollably as some of the chemical entered his throat.

89. Although Defendant Nevitt had directly sprayed the group of observers standing in the hallway, he did not ask if they were alright or take any other actions to determine whether any of the children were injured or required help. Neither J.W. nor any of the students in the group received medical attention for their injuries. Neither Defendant Nevitt nor any school official took any steps to commence decontamination procedures for J.W. or the other students affected by the Freeze +P.

90. As a direct and proximate result of Defendant Nevitt's actions, which were authorized by Superintendent Witherspoon and Defendants BOE and Roper, Plaintiff J.W. suffered emotional, psychological, and physical injury. Plaintiff J.W. is afraid that he will be maced again in the future, and that he will again be



powerless to protect himself from the Defendants' unconstitutional policies, practices, and customs.

*Plaintiff G.S. & Plaintiff P.S.*

91. At all relevant times, Plaintiff G.S. was five feet, five inches tall.

92. At all relevant times, Plaintiff P.S. was five feet, four inches tall.

93. G.S. and P.S. are sisters. At all relevant times, both girls attended Huffman High School.

94. Defendant Clark is a male School Resource Officer. He is approximately five feet, ten inches tall, has a stocky build, and weighs approximately 220 pounds.

95. On December 8, 2009, G.S. was jogging across the lawn outside Huffman High School when Defendant Clark grabbed her from behind by the waist. He did not identify himself as a law enforcement officer or say anything before grabbing her. Unaware of Defendant Clark's identity and alarmed at being attacked by an unknown assailant, G.S. struggled to free herself. When she broke from his grasp, she turned around and pushed him in the chest to distance herself from him. G.S. did not realize who Defendant Clark was until after she had pushed him.

96. Without saying a word, Defendant Clark immediately pulled out his Freeze +P, raised it to G.S.'s face, and sprayed her directly in the face and eyes. The pepper spray entered her eyes, nose, and mouth, causing her to ingest the product.

97. G.S.'s face and eyes began to burn and she felt like she could not breathe. She began to cry uncontrollably from the pain.

98. G.S.'s sister, Plaintiff P.S., had been approaching G.S. when Defendant Clark sprayed G.S. for the first time. When P.S. was about five feet away from G.S., an unknown SRO grabbed P.S. from behind to stop her from reaching G.S. As the SRO grabbed P.S. and held her, Defendant Clark sprayed a second blast of Freeze +P directly into G.S.'s face without warning, causing G.S. to crumble to the ground.

99. Defendant Clark did not consider whether other students were close enough to be affected by the chemical before he administered the second blast. As a result of Defendant Clark's recklessness, the second blast of Freeze +P also hit Plaintiff P.S. in the face. P.S. immediately felt a burning sensation in her eyes and face, and had trouble breathing.

100. Defendant Clark left G.S. and P.S. in the school yard. He did not assess their physical well-being or attempt to determine their need for medical attention.

101. G.S. eventually made her way to the school's main office. Once in the office, an unknown school official contacted 911 at G.S.'s request. Emergency Medical Service (EMS) personnel arrived at the school and questioned G.S. for 45 minutes, but did not provide her with any medical treatment. G.S. had a hard time

focusing on the questions EMS personnel asked because she was crying hysterically and asking repeatedly for her mother.

102. LaTonya Stearnes, the mother of G.S. and P.S., arrived at the school shortly after G.S. went to the office. P.S. had informed her mother that Defendant Clark had used pepper spray on both girls.

103. As Ms. Stearnes began to enter the school, she encountered Defendant Clark and asked to see G.S. Defendant Clark would not permit Ms. Stearnes to enter the school and refused to allow her to see G.S. Defendant Clark refused to give Ms. Stearnes any information about G.S.'s physical state and threatened to arrest her if she continued to ask about her daughter's well-being.

104. Eventually, a Huffman faculty member escorted Ms. Stearnes into the school's office where she sat for 45 minutes before finally being allowed to see G.S. While she was forced to wait, Ms. Stearnes heard G.S. screaming "I can't breathe!" from the next room.

105. Neither school personnel nor Defendant Clark advised or allowed G.S. or P.S. to rinse their eyes, wash their faces, or change out of their contaminated clothing.

106. Nearly an hour after the incident on the school lawn, Defendant Clark took G.S. to Cooper Green Hospital, but it was too late to provide any effective treatment or pain relief. Hospital personnel informed G.S. that they could not

provide her with any medical treatment and requested that she sign a form. Upon information and belief, the form was a medical release waiver.

107. G.S. was then taken to the Jefferson County Family Court. She was released to her mother's custody later that day. No formal charges were filed against her. At her release, she still wore the same contaminated clothing from earlier in the day because no one had provided her with a change of clothes.

108. As a direct and proximate result of Defendant Clark's actions, G.S. suffered emotional, psychological, and physical injury. Due to the pepper spray, the skin on G.S.'s face is still discolored. She also experienced painful burning in her face and eyes for over 24 hours, had difficulty breathing for an hour, and suffered throat irritation. G.S.'s hair and skin also smelled like pepper spray for more than 24 hours, causing her further discomfort and pain. G.S. did not want to return to school for several days following the assault for fear that she would be pepper-sprayed again. Both G.S. and P.S. are reasonably afraid that an SRO will spray them again.

***Plaintiff T.L.P.***

109. At all relevant times, T.L.P. was five feet, two inches tall, 120 pounds, and petite in stature.

110. Defendant Nevitt is an approximately six-foot-tall male, weighs approximately 200 pounds, and has a muscular build.

111. BCS employee Johnson is an adult male with a muscular build standing approximately five feet, ten inches tall and weighing about 200 pounds.

112. BCS employee Howard is an adult male with a muscular build standing approximately six feet tall and weighing more than 200 pounds.

113. On or around November 29, 2009, a female student initiated a verbal altercation with T.L.P. The situation eventually escalated into a physical altercation. Upon seeing the two girls, BCS employees Johnson and Howard intervened and separated them. Johnson picked T.L.P. up from behind, holding her arms securely against her body, and hoisted her in the air. Johnson held T.L.P. in such a way that posed no threat to herself or others.

114. After the girls had been separated and T.L.P. had been restrained, Defendant Nevitt arrived at the scene. Without any warning or provocation, Defendant Nevitt directed a blast of Freeze +P in T.L.P.'s direction, even though she was still being restrained by Johnson. The pepper spray entered T.L.P.'s mouth, and she began to cough severely.

115. While attempting to spray T.L.P., Defendant Nevitt also sprayed Johnson in the face with pepper spray. Johnson released T.L.P. while excitedly yelling, "It got me in the eyes!"

116. Although T.L.P. was injured by the pepper spray, as evidenced by her violent coughing fit, Defendant Nevitt did not commence any decontamination

procedure to rinse T.L.P.'s eyes or face or rid her of her contaminated clothing. Instead, he arrested her and took her to the Jefferson County Family Court where she was placed in a holding cell at the G. Ross Bell Youth Detention Center ("YDC") to wait for her mother. Because no one provided her with a change of clothes, T.L.P. continued to wear the contaminated clothing while she waited at YDC. The allegations in the police report were never pursued as formal charges.

117. As a direct and proximate result of Defendant Nevitt's actions, T.L.P. suffered emotional, psychological, and physical injuries. From breathing in the pepper spray, T.L.P. was wracked by violent coughing fits.

118. T.L.P. is reasonably afraid that she will be subjected to Defendants' illegal policy and practice in the future. She is particularly concerned because the incident described above is not the first time that T.L.P. has been blasted with pepper spray at school while restrained. T.L.P. was previously sprayed with Freeze +P on or around November 17, 2008. During that incident, she was grabbed by a faculty member from behind and completely restrained when an unknown SRO sprayed her in the face and eyes with Freeze +P. Following that assault, T.L.P. suffered from burning sensations on her face, peeling skin, difficulties breathing, swollen and burning eyes, and prolonged head pains.

*Plaintiff B.D.*

119. At all relevant times, B.D. was 5 feet, 4 inches tall, weight approximately 106 pounds, and was petite in stature.

120. B.D. was diagnosed with a Cardio Pulmonary Tachycardia at 7 years old. Tachycardia is an abnormally rapid beating of the heart at a resting heart rate of over 100 beats per minute. As a result of this condition, when B.D. is frightened, she may experience heart palpitations, shortness of breath, dizziness, fainting, and chest pain similar to that experienced during a heart attack.

121. Defendant Henderson is an adult male with a muscular build standing approximately 6 foot, 4 inch tall male and weighing approximately 210 pounds.

122. On or around February 22, 2011, B.D. had just entered her first-block class when she remembered that she had forgotten to get an excused absence form from the school's main office. B.D. had been absent from school the previous day and school rules require that students provide teachers with an excused absence form when they miss school.

123. B.D. asked her first-block teacher, Ms. Chatters, to be excused to the main office. In response, Ms. Chatters told B.D. not to interrupt her class again. Ms. Chatters went on to say that that B.D. was already failing the class.

124. Embarrassed, B.D. responded that it was not anyone's business what grade she had in Ms. Chatters' class. Ms. Chatters contended that she could say whatever

she wanted. This verbal exchange continued until Ms. Chatters called Principal Shirley Burrell and asked her to come to the classroom. When Ms. Burrell arrived, she began to walk B.D. to the school's main office.

125. As the pair walked down the hall, B.D. told Ms. Burrell that she would prefer to talk to Assistant Principal Gill because she felt more comfortable talking to Assistant Principal Gill.

126. Instead of calling Assistant Principal Gill, Ms. Burrell called Defendant Officer Nevitt on her hand-held radio and asked him to come to the second floor where she stood with B.D. Defendant Nevitt responded that he was busy and sent Defendant Officer Henderson instead.

127. Minutes later, Defendant Henderson arrived where B.D. and Ms. Burrell stood. Upon approaching the pair, Defendant Henderson grabbed B.D. roughly by the arm and began to drag her down the hallway. Defendant Henderson's grasp on B.D.'s thin arm caused her pain, so B.D. tried to pull away from his grasp. Defendant Henderson let go of B.D.'s arm momentarily, then grabbed her again by the arm, this time more forcefully. Because Defendant Henderson's grip was hurting her, B.D. again pulled away. Without any words or prior warning, Defendant Henderson pushed B.D.'s back against a wall. He then stood several inches from her body, pulled out his canister of Freeze +P, and sprayed the



chemical back and forth across her face so that the chemical went into her eyes and face.

128. Immediately, B.D. started to feel an intense burning sensation in her eyes and face. She was suddenly blinded and began to gasp for air because she felt like she could not breathe. She felt her heart start to beat rapidly and she felt dizzy. Startled at how intense the pain was, B.D. began to cry and grasp at her face. As she stood crying and struggling to breathe, she could hear coughing from Defendant Henderson and Ms. Burrell. She also heard Ms. Burrell tell the students and parents who were in the hallway to go into the main office to escape the mace-filled hallway.

129. As B.D. continued to cough and struggled to breathe and see, Defendant Henderson put her hands behind her back, placed her in handcuffs, and began to walk her towards what she later learned was the school's entrance. As she walked, B.D. repeatedly told Defendant Henderson that she could not see. Ignoring her, Defendant Henderson began to walk B.D. down a flight of stairs despite her repeated statement that she could not see where she was walking. As Defendant Henderson forced B.D. down the stairs, she began to trip. As B.D. tripped over her feet, Defendant Henderson continued to pull her down the stairs.

130. When B.D. and Defendant Henderson reached the bottom of the stairs, he told her to sit down on the landing of the stairs outside of the school to wait for EMS personnel to arrive.

131. Several minutes later, one of B.D.'s school friends saw her sitting on the steps crying and immediately called B.D.'s mother and told her that Defendant Henderson had sprayed B.D. with pepper spray.

132. Sometime later, EMS personnel arrived and began to examine B.D. B.D. begged them to make the pain stop. B.D. told EMS personnel about her heart condition and that she generally has difficulty breathing. EMS personnel told B.D. that there was nothing they could do for her and that she would have to wait for the pain to subside by itself.

133. After EMS personnel left the school, Defendant Henderson took B.D. to a school office where she sat for approximately 15 minutes while her face and eyes burned and she continued to have difficulty breathing. Defendant Henderson did not arrange for her to exchange her clothing or commence any other decontamination procedures despite having sprayed her with Freeze +P.

134. When B.D.'s mother, Angela Davis, arrived at the school, she saw Defendant Henderson dragging B.D. out of the school by the arm and towards a police cruiser. Ms. Davis approached Defendant Henderson and asked what

happened. Defendant Henderson's only response was that Ms. Davis should go see Ms. Burrell.

135. Ms. Davis found Ms. Burrell in the school's main office and asked her what happened. Ms. Burrell said that B.D. "had gotten out of control" and she had to call a SRO to deal with the situation. Ms. Burrell further claimed that B.D. continued to act out of control when Defendant Henderson arrived and that Defendant Henderson sprayed her with mace because she was acting "threatening." When Ms. Davis asked Ms. Burrell to describe B.D.'s threatening behavior, Ms. Burrell said that B.D. had tried to tell her how to run her school. Ms. Burrell also told Ms. Davis that once school personnel call a SRO to the scene, school personnel no longer have control over the situation.

136. Meanwhile, Defendant Henderson placed B.D. in the backseat of a police cruiser and took her to the Jefferson County Family Court. When they arrived at the Court, court intake personnel refused to accept B.D. because Defendant Henderson had not taken her to the hospital for treatment. Defendant Henderson then placed B.D. back into the backseat of the cruiser and took her to Cooper Green Hospital. At the hospital, a staff member told B.D. that they could not provide her with any medical treatment for mace exposure and gave her a form to sign that she did not understand and could not read because she was still partially

blinded by the mace. She later learned that the form was a hospital medical release waiver.

137. After hospital staff released B.D., Defendant Henderson took her back to the Jefferson County Family Court where she sat in a holding cell to wait for her mother to pick her up. The allegations in the police report were never pursued as formal charges.

138. Because no one provided her with a change of clothes, B.D. was still wearing the same contaminated clothing when her mother arrived at the Family Court to pick her up.

139. As a result of the incident, Woodlawn school officials brought discipline proceedings against B.D. Approximately one week after the macing incident, BOE officials conducted a due process hearing to determine whether B.D. should be suspended or expelled from BCS. Ms. Davis, B.D., Woodlawn Assistant Principal Lyons, and a BOE hearing officer attended the hearing. During that meeting, Ms. Davis asked Mr. Lyons to specify the perceived threat B.D. allegedly posed on the day Defendant Henderson sprayed B.D. with mace. Mr. Lyons stated that after viewing the surveillance tape of the incident, he thought that Ms. Burrell might have felt threatened at the time. He further stated that he wouldn't have felt threatened had he been in Ms. Burrell's position. Mr. Lyons also said BCS policy is to use mace against students if a school official perceives a threat from a student.

140. As a direct and proximate result of Defendant Henderson's actions, B.D. suffered physical, emotional, and psychological injuries. For at least an hour and a half after the incident, B.D. experienced shortness of breath and other symptoms related to her exacerbated heart condition. B.D. is scared to return to school because of the SRO presence at school. She fears that she may be maced again and worries that Defendant Henderson or other SROs will hurt her again in the future, possibly with a billy club.

***Plaintiff K.B.***

141. At all relevant times, K.B. was 5 feet, 5 inches tall, weighed approximately 130 pounds, and was 4 months pregnant. Because K.B. is naturally small in stature, her pregnancy was evident.

142. Defendant Smith is an approximately six-foot-tall male with a muscular build weighing approximately 200 pounds.

143. On or around the afternoon of February 21, 2011, K.B. was walking to class with her cousin, also a student at Woodlawn High School, when a male student approached the pair and starting telling jokes about them. The student repeatedly called K.B. a "ho," which is shorthand slang for "whore," and made several sexually-based comments about her.

144. K.B. began to cry and walked away from the taunting student. Even though she had walked away, the student followed her and continued to taunt her with

sexual references. As the student continued the verbal assault, K.B. began to cry harder and yelled at him to leave her alone. After a few minutes, K.B. and the student began to walk in different directions without any prompting from school officials or SROs. As she walked away, K.B. was still visibly upset.

145. As K.B. continued to cry, she proceeded to walk to her next class. As she walked, a SRO arrived at the scene and approached her. K.B. later learned that the SRO was Defendant Smith. Defendant Smith grasped K.B. by the arm and began to guide her away from the direction of her next class and towards the school's main office, telling her to calm down. When she continued to cry, he stopped her, turned her so that she was facing him and said, in a stern voice, that she really needed to calm down. K.B. then looked up at Defendant Smith through her tears and told him that she was ok.

146. All of sudden, K.B. felt an intense burning sensation on her face and in her eyes. She later learned that Defendant Smith had taken out his canister of Freeze +P and sprayed her in the face and eyes as she stood in front of him crying. The pain from the mace caused her to cry even harder and she felt as if she couldn't breathe.

147. After Defendant Smith sprayed mace into K.B.'s face, he put her hands behind her back, placed her in handcuffs, and began to walk her towards the

school's gym. As Defendant Smith walked K.B. to the gym, she leaned over and vomited.

148. Several minutes later, EMS personnel arrived and examined K.B. as she stood in handcuffs. EMS personnel told K.B. to keep water out of her eyes and then left the school.

149. Defendant Smith did not commence any decontamination procedures for K.B. or arrange for her to remove her contaminated clothing.

150. After EMS personnel left the scene, Defendant Smith put K.B. in a police cruiser and took her to Cooper Green Hospital where hospital staff gave K.B. a form to sign that she could not understand and could not read because she was still partially blinded by the mace. She later learned that it was a hospital medical release waiver.

151. After hospital staff released K.B., Defendant Smith took her to the Jefferson County Family Court where she sat in a cell until her mother picked her up. The Family Court did not pursue formal charges against K.B.

152. As a direct and proximate result of Defendant Smith's actions, K.B. suffered physical, emotional, and psychological injuries. K.B. experienced temporary blindness, an intense burning of the eyes and face, nausea and painful vomiting, and difficulty breathing. K.B. fears returning to school again because she may be

sprayed with mace again. She fears her unborn child will suffer injury if she is sprayed with mace again.

***Individual Plaintiffs***

***Plaintiff T.A.P.***

153. At all relevant times, T.A.P. was 5 feet, 4 inches tall and weighed approximately 145 pounds. T.A.P. attended Carver High School from 2007 to 2009.

154. Defendant Tarrant is a male SRO. He has a muscular build, stands approximately five feet, six inches in height, and weighs approximately 200 pounds.

155. Defendant Moss is an assistant principal at Carver High School. He has a stocky build, stands approximately six feet, two inches in height, and weighs approximately 280 pounds. Pursuant to BCS policy, BOE “does not allow the use of corporal punishment as an appropriate means of discipline.” As superintendent, Defendant Witherspoon has a duty to enforce this policy and ensure that BCS personnel refrain from engaging in corporal punishment as a means of discipline.

156. On or around August 31, 2009, T.A.P. entered a classroom to begin her third-block class. As T.A.P. walked in, a substitute teacher approached her, accused her of smoking cigarettes, and sent her to the school’s main office to see Assistant Principal Moss.



157. Outside of the main office, Assistant Principal Moss accused T.A.P. of smelling like cigarette smoke. T.A.P. explained that she had smoked a cigarette before school started and off of school grounds. Moss disregarded T.A.P.'s explanation and ordered her to call her mother to arrange to leave school. In an attempt to comply, T.A.P. took out her cell phone and began to dial her mother. Even though he had told T.A.P. to call her mother, Moss attempted to take the cell phone away from her. When T.A.P. refused to give him the cell phone, he became visibly angry and told her that she could leave.

158. Assuming that he meant she could go home, T.A.P. followed Moss down the school hallway and outside of the school. As they reached the door, Moss opened the door and motioned for T.A.P. to exit ahead of him. As T.A.P. walked out of the door, Moss grabbed her from behind and tripped her. T.A.P. fell onto the concrete, stomach-first. Moss then dug his foot into her back as she lay on the ground.

159. T.A.P. heard a student call out "Damn, you didn't have to do it like that." After hearing the student, Moss removed his foot from T.A.P.'s back.

160. When T.A.P. stood up, she noticed Officer Tarrant standing close by. T.A.P. bent to pick up her backpack from the ground and slung it over her shoulder. As she slung the backpack, the backpack accidentally bumped Tarrant in the chest.

T.A.P. then saw Tarrant reach for his belt. Because she did not know what he was reaching for, T.A.P. panicked and ran.

161. Tarrant caught T.A.P. after she ran approximately seven feet. He grabbed her from behind and threw her down into some bushes on the lawn.

162. When T.A.P. looked up, she saw Moss and Tarrant standing above her. Moss grabbed her right arm, while Tarrant grabbed her left arm. Several seconds later, three other men – all unknown to T.A.P. – approached and held her legs down. T.A.P. was frightened being restrained by five men, and began to squirm under their grasp. However, she did not break free from their hold nor did she utter any threats to any of the men.

163. As T.A.P. was pinned to the ground, restrained by five grown men, Tarrant said: “You wanna act hard? Let’s see how you act when you get this.” Tarrant then removed his canister of Freeze +P from his belt and sprayed a blast into T.A.P.’s face and eyes without warning. T.A.P. felt intense pain on her face and in her eyes, had difficulty breathing, and was blinded. Tarrant then flipped T.A.P. onto her stomach, handcuffed her, and took her to one of the school’s administrative offices.

164. T.A.P. sat handcuffed in the office for more than 40 minutes without any medical assistance. T.A.P. was crying profusely, and Tarrant told her: “Stop slobbering on my table.” When she asked Officer Tarrant for a wet paper towel to

wipe her eyes, he yelled, “You don’t need a mother-fucking thing!” Tarrant did not provide T.A.P. with a change of clothing or take any other decontamination measures even though T.A.P. was obviously in severe pain.

165. Tarrant eventually escorted T.A.P. to Cooper Green Hospital, but it was too late to provide any effective treatment or pain relief, and T.A.P. was asked to sign a medical release waiver. Tarrant then escorted T.A.P. to the Jefferson County Family Court. T.A.P. continued to wear the contaminated clothing until she was released to her mother, Barbara Pettaway, at around 5:00 p.m. that evening.

166. Barbara Pettaway contacted BOE the next day to complain about Tarrant’s reckless and dangerous use of Freeze +P against T.A.P. A BOE representative told Ms. Pettaway that BOE could not take any action against the school or Tarrant because Ms. Pettaway had washed the shirt that T.A.P. wore on the day of the incident.

167. As a direct and proximate result of the actions of Defendants Tarrant and Moss, T.A.P. suffered emotional, psychological, and physical injuries. T.A.P. experienced swelling in the face and eyes for 24 hours, blindness for more than five hours, severe burning of the eyes and face, and difficulty breathing. The skin around her eyes was damaged and peeling for a week after she was sprayed. The actions of Defendants Tarrant and Moss were major factors in T.A.P.’s decision

not to return to school. T.A.P. continues to experience a deep distrust of the school and law enforcement staff at Carver High School.

*Plaintiff B.J.*

168. At all relevant times, B.J. was five feet, six inches tall and weighed 140 pounds, with a lean build.

169. On or around September 27, 2010, a substitute teacher, known to B.J. as Mr. Cook, ordered B.J. to leave his fourth-block classroom at Jackson-Olin High School to tuck his shirt into his pants. B.J. complied with the order. As B.J. re-entered the classroom, another student mumbled “Fuck you, Mr. Cook” in the direction of the substitute teacher. Mistaking B.J. for the speaker, the teacher contacted Assistant Principal Gaston, a BCS employee at Jackson-Olin High School.

170. Gaston ordered B.J. out of the classroom. Although the substitute teacher’s only complaints were that B.J.’s shirt had been untucked and that he might have used profanity, Gaston immediately began to pat him down and go through his pockets. As the illegal search continued, B.J. repeatedly proclaimed his innocence and struggled to free himself from Gaston’s hold. At one point, B.J. tripped and fell to the ground, landing on his stomach. While B.J. lay on the ground, Gaston continued to search his back pockets. After a few minutes, Gaston called Assistant Principal Gates to the scene. Gates is a six-foot-tall male with an average build.

171. When Gates arrived, the two assistant principals restrained B.J. against a set of lockers with his arms spread, with Gates and Gaston each holding an arm.

172. At some point, Gates called Defendant Officer Benson to the scene. Upon arrival, Officer Benson did not take any action or even speak – she just stood there and watched Gates and Gadson<sup>3</sup> restrain B.J. Officer Benson then blasted Freeze +P directly into B.J.’s face and eyes, holding the canister within inches from B.J.’s face.

173. The blast entered B.J.’s eyes, nose, and mouth, causing him to ingest the pepper spray. He immediately experienced a severe burning sensation across his face and in his eyes, and felt as if he could not breathe. B.J. was also immediately blinded.

174. B.J. began to fall to the ground holding his face and gasping for air. The pain was so intense that he began to cry. As he sank to the ground, Officer Benson used her foot to forcibly shove him fully onto the ground, where she held him in place with her knee planted in his back. Officer Benson threatened to administer a second blast of pepper spray into B.J.’s face if he attempted to stand.

175. Officer Benson handcuffed B.J. and took him to the school’s main office. As B.J. sat in the office, Gates said: “Woo! That’s the first macing of the year!”

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<sup>3</sup> Previous versions of the Plaintiffs’ Complaint misspells Assistant Principal Gadson’s last name, identifying him as “Gaston.”

176. Officer Benson did not immediately seek medical attention for B.J., nor did she contact Birmingham Fire and Rescue. B.J. sat handcuffed in the school office for more than 20 minutes before Officer Benson escorted him to the hospital. Officer Benson did not permit B.J. to wash out his eyes, nor did she take any steps to get him a change of clothes or advise him to get out of his contaminated clothing.

177. When Officer Benson eventually transported B.J. to Cooper Green Hospital in Birmingham, it was too late to provide any effective treatment or pain relief. Hospital staff informed B.J. that they could not provide him with any medical treatment and directed him to sign a form. B.J. signed the form even though he still could not see due to the pepper spray. No one explained the contents of the form to B.J. Upon information and belief, the form was a medical release waiver.

178. Officer Benson then transported B.J. to the G. Ross Bell Youth Detention Facility, where he was placed in a holding cell at around 5:00 pm to wait for his grandmother to pick him up. No formal charges were filed against B.J. as a result of this incident.

179. While in the holding cell, B.J. continued to experience negative effects from being sprayed directly in the face with pepper spray. His face felt like it was burning and began to swell. B.J.'s eyes were also swollen, and he could not see for several hours. B.J. experienced severe stomach pains and violent nausea. He

vomited twice while in the holding cell, and could taste the pepper spray in his vomit. Because he was never offered a change of clothes at any time, B.J. continued to wear the same contaminated clothing while in the cell.

180. B.J.'s grandmother was not informed that B.J. had been injured by pepper spray, arrested, transported to Cooper Green Hospital, and taken to a detention facility until later that evening. B.J. was released to her custody at around 7:00 p.m.

181. As a direct and proximate result of Officer Benson's actions, B.J. suffered emotional, psychological, and physical injury. B.J. endured nausea, violent vomiting, blindness for more than five hours, numbness and burning in his face for more than 24 hours, severe head pains for more than a day, swelling of the face for more than two days, an aggravation of allergies, and pain in the back from SRO Benson's assault with her knee.

***Necessity of Injunctive Relief***

182. Because mace is used so frequently and so indiscriminately in Birmingham's public high schools, each plaintiff – and each member of the class – faces a real and substantial risk of future and repeated injury as a result of the Defendants' unlawful policies, customs, and practices. There are only three ways for the class members to avoid that real and substantial risk: (a) by attending school in another school system, an option prohibited by zoning requirements; (b) by foregoing their right to a free public education and enrolling in private school, an option Plaintiffs

cannot afford; or (c) by dropping out of school entirely, which would violate the compulsory school attendance law and deprive the students of their rights to an “equal and adequate” education under Alabama law.

183. As described above, the Defendants have acted and continue to act in violation of the law. The Class Representatives and the class they seek to represent do not have an adequate remedy at law. As a result of the policies, practices, acts, and omissions of the Defendants, the Class Representatives and the class of children they seek to represent have suffered and continue to suffer imminent, serious and irreparable injuries.

### **CAUSES OF ACTION**

184. The named Plaintiffs and the proposed class incorporate by reference all of the above factual allegations to support the following claims:

#### ***CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF***

##### **COUNT I**

#### **Declaratory and Injunctive Relief to Protect Plaintiffs’ Fourth and Fourteenth Amendment Rights to be Free from Excessive Force**

*Defendant Roper in his individual capacity*

185. Defendant Roper is responsible for supervising BPD and ensuring that the agency operates in compliance with federal and state law. In his official capacity, he is responsible for the “Chemical Spray Subject to Restraint: Non-Deadly Use of Force” policy, which is unconstitutional both on its face and as applied to the Plaintiffs and the class they represent.



186. On its face, the Chemical Spray policy allows the use of chemical weapons against children under circumstances that are patently unreasonable under *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). The deployment of chemical weapons against schoolchildren in a closed environment is exceptionally dangerous, yet BPD policy and practice allows and encourages this extreme application of force in situations where such force is not remotely justified by the targets' conduct, by the risk they pose, or by any other factors. As such, the Defendant's policy cannot pass muster under the second prong of the *T.L.O.* reasonableness inquiry, which asks whether the level of force used was "reasonably related in scope to the circumstances justifying interference in the first place." *T.L.O.*, 469 U.S. at 341.

187. Indeed, because the Defendant's custom and practice allows the use of chemical weapons against children who are not accused of any wrong-doing and children who are being physically restrained, Defendant Roper cannot even satisfy the first prong of the *T.L.O.* reasonableness inquiry, which asks whether any force was justified. *Id.* at 341.

188. By promulgating an unconstitutional policy as applied in the Birmingham schools and by condoning unconstitutional customs and practices with respect to the use of chemical weapons in the Birmingham schools, Defendant Roper has violated and continues to violate the Fourth and Fourteenth Amendment rights of the Class Representatives and the class they seek to represent.

189. By failing to train, supervise, and monitor the use of Freeze +P by SROs in the Birmingham schools, Defendant Roper has been deliberately indifferent to repeated and ongoing violations of the Fourth and Fourteenth Amendment rights of the Class Representatives and the class they seek to represent.

190. Accordingly, the Class Representatives and the proposed class are entitled to a permanent injunction to remedy the constitutional violations described above and to ensure that the constitutional rights of Class Representatives and the plaintiff class are protected.

## COUNT II

### **Declaratory and Injunctive Relief to Protect Plaintiffs' Substantive Due Process Rights to Personal Security under the Fourteenth Amendment**

*Defendant Birmingham Board of Education in its official capacity*

191. BOE has created a custodial environment within the BCS high schools by taking the affirmative act of authorizing the placement of BPD law enforcement officers on campus to enforce Alabama's compulsory school attendance law.

Factors evidencing the presence of a custodial environment include, but are not limited to, the following:

- a. BOE has requested and/or agreed to the placement of BPD law enforcement officers in each BCS high school.
- b. Each BCS school is assigned at least two officers who patrol school property during school hours.
- c. Alabama's compulsory school attendance law requires that all students between the ages of seven and seventeen attend school.
- d. Defendants Roper and BOE, and their employees, play a significant role in ensuring that students remain on campus during school hours

as required by the compulsory school attendance statute. School officials routinely file complaints against students for truancy while BPD officers not only file complaints, but also physically locate and transport truant students back to school.

- e. BOE has delegated authority to BPD officers to handle school discipline matters that are traditionally handled by school officials.

192. As a result of the custodial environment in BCS, BOE has a constitutional duty under the Fourteenth Amendment to protect BCS high school students from being injured by third parties while the students are on school property for the purpose of obtaining an education. BOE has breached this constitutional duty by authorizing, approving, and failing to take any action to prevent the reckless and malicious use of Freeze +P on schoolchildren, including children who are not suspected of any delinquent activity, children who are physically restrained, and children who do not pose a serious threat of injury to anyone.

193. BOE is liable pursuant to 42 U.S.C. § 1983 for violating the constitutional due process rights of the Class Representatives and other members of the class under the Fourteenth Amendment to the U.S. Constitution.

194. The Class Representatives and the proposed class are entitled to a permanent injunction prohibiting the Defendant from engaging in the unlawful conduct described above.

***INDIVIDUAL CLAIMS UNDER FEDERAL LAW***

**COUNT III**

**Damages for Fourth and Fourteenth Amendment Violations  
arising from the use of Excessive Force against Plaintiff J.W.**

*Defendant Roper in his individual capacity*

195. By sanctioning, enforcing, and implementing a policy, practice and/or custom that unreasonably and unconstitutionally subjects BCS students, including Plaintiff J.W., to excessive force in violation of the Fourth and Fourteenth Amendments of the United States Constitution, Defendant Roper has violated J.W.'s clearly established constitutional rights and, accordingly, is liable pursuant to 42 U.S.C. § 1983.

196. Because Defendant Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff J.W.

197. Plaintiff J.W. seeks compensatory and punitive damages from this Defendant.

**COUNT IV**

**Damages for Fourth and Fourteenth Amendment Violations  
arising from the use of Excessive Force against Plaintiff J.W.**

*Defendant Nevitt in his individual capacity*

198. By deploying a chemical weapon against Plaintiff J.W. as a means of intimidation, Defendant Nevitt violated J.W.'s clearly established constitutional

rights under the Fourth and Fourteenth Amendments and, accordingly, is liable pursuant to 42 U.S.C. § 1983. Defendant Nevitt's conduct fails even the threshold inquiry for Fourth Amendment violations: whether the defendant's action was justified at its inception. In the incident giving rise to this claim, Plaintiff J.W. had committed no crime and posed no threat whatsoever to anyone's safety. Even if the deployment of Freeze +P against Plaintiff J.W. was deemed justified at its inception, which it was not, the use of a chemical weapon against Plaintiff J.W. was unconstitutional in that it was not reasonably related in scope to the circumstances justifying the interference.

199. Because Defendant Nevitt acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff J.W.

200. Plaintiff J.W. seeks compensatory and punitive damages against Defendant Nevitt.

#### **COUNT V**

#### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff G.S.**

*Defendant Roper in his individual capacity*

201. By sanctioning, enforcing, and implementing a policy, practice and/or custom that unreasonably and unconstitutionally subjects BCS students, including Plaintiff G.S., to excessive force in violation of the Fourth and Fourteenth

Amendments of the United States Constitution, Defendant Roper has violated G.S.'s clearly established constitutional rights and, accordingly, is liable pursuant to 42 U.S.C. § 1983.

202. Because Defendant Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff G.S.

203. Plaintiff G.S. seeks compensatory and punitive damages from this Defendant.

#### **COUNT VI**

#### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff G.S.**

*Defendant Clark in his individual capacity*

204. By repeatedly attacking Plaintiff G.S. with a chemical weapon without justification or warning, Defendant Clark violated the Plaintiff's clearly established constitutional rights under the Fourth and Fourteenth Amendments and, accordingly, is liable pursuant to 42 U.S.C. § 1983. Both deployments of Freeze +P against Plaintiff G.S. constituted unjustified and excessively intrusive seizures. Defendant Clark grabbed Plaintiff G.S. from behind, failed to identify himself as a law enforcement officer, then deployed chemical spray in her face – without a warning – when she reasonably defended herself against his attack. Defendant Clark then unleashed another round of chemical spray against Plaintiff G.S.,

despite the fact that she had already been completely incapacitated and was, in fact, struggling to breathe. His actions were not reasonably related in scope to the circumstances justifying interference in the first place, and were calculated to injure, punish, humiliate, and intimidate Plaintiff G.S. Accordingly, Defendant Clark's actions constitute an excessively intrusive seizure in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

205. Because Defendant Clark acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff G.S.

206. Plaintiff G.S. seeks compensatory and punitive damages against Defendant Clark.

## **COUNT VII**

### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff P.S.**

*Defendant Roper in his individual capacity*

207. By sanctioning, enforcing, and implementing a policy, practice and/or custom that unreasonably and unconstitutionally subjects BCS students, including Plaintiff P.S., to excessive force in violation of the Fourth and Fourteenth Amendments of the United States Constitution, Defendant Roper has violated P.S.'s clearly established constitutional rights and, accordingly, is liable pursuant to 42 U.S.C. § 1983.

208. Because Defendant Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff P.S.

209. Plaintiff P.S. seeks compensatory and punitive damages from this Defendant.

### **COUNT VIII**

#### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff P.S.**

*Defendant Clark in his individual capacity*

210. By deploying a chemical weapon with reckless disregard for the safety of Plaintiff P.S., and without any reason to believe she had committed a delinquent act, Defendant Clark violated the Plaintiff's clearly established constitutional rights under the Fourth and Fourteenth Amendments and, accordingly, is liable pursuant to 42 U.S.C. § 1983. Defendant Clark's conduct fails even the threshold inquiry for Fourth Amendment violations: whether the defendant's action was justified at its inception. In the incident giving rise to this claim, Plaintiff P.S. had committed no crime and posed no threat whatsoever to anyone's safety. In fact, Plaintiff P.S. was being physically restrained by an adult when Defendant Clark deployed a second burst of Freeze +P against Plaintiff G.S., also hitting Plaintiff P.S. in the face. The deployment of Freeze +P against Plaintiff P.S. was also unconstitutional



in that it was not reasonably related in scope to the circumstances justifying the interference.

211. Because Defendant Clark acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff P.S.

212. Plaintiff P.S. seeks compensatory and punitive damages against Defendant Clark.

#### **COUNT IX**

#### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff T.L.P.**

*Defendant Roper in his individual capacity*

213. By sanctioning, enforcing, and implementing a policy, practice and/or custom that unreasonably and unconstitutionally subjects BCS students, including Plaintiff T.L.P., to excessive force in violation of the Fourth and Fourteenth Amendments of the United States Constitution, Defendant Roper has violated T.L.P.'s clearly established constitutional rights and, accordingly, is liable pursuant to 42 U.S.C. § 1983.

214. Because Defendant Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff T.L.P.

215. Plaintiff T.L.P. seeks compensatory and punitive damages from this Defendant.

**COUNT X**

**Damages for Fourth and Fourteenth Amendment Violations  
arising from the use of Excessive Force against Plaintiff T.L.P.  
*Defendant Nevitt in his individual capacity***

216. By deploying a chemical weapon against Plaintiff T.L.P. without justification or warning, Defendant Nevitt violated T.L.P.'s clearly established constitutional rights under the Fourth and Fourteenth Amendments and, accordingly, is liable pursuant to 42 U.S.C. § 1983. The deployment of Freeze +P against Plaintiff T.L.P. was unjustified, given that T.L.P. was restrained by an adult man at the time and posed no threat to the safety of others. Defendant Nevitt's actions were not reasonably related in scope to the circumstances justifying interference in the first place, and were calculated to injure, punish, humiliate, and intimidate T.L.P. Accordingly, Defendant Nevitt's actions constitute an excessively intrusive seizure in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

217. Because Defendant Nevitt acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff T.L.P.

218. Plaintiff T.L.P. seeks compensatory and punitive damages against Defendant Nevitt.

### **COUNT XI**

#### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff B.D. *Defendant Roper in his individual capacity***

219. By sanctioning, enforcing, and implementing a policy, practice and/or custom that unreasonably and unconstitutionally subjects BCS students, including Plaintiff B.D., to excessive force in violation of the Fourth and Fourteenth Amendments of the United States Constitution, Defendant Roper has violated B.D.'s clearly established constitutional rights and, accordingly, is liable pursuant to 42 U.S.C. § 1983.

220. Because Defendant Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff B.D.

221. Plaintiff B.D. seeks compensatory and punitive damages from this Defendant.

**COUNT XII**

**Damages for Fourth and Fourteenth Amendment Violations  
arising from the use of Excessive Force against Plaintiff B.D.**

*Defendant Henderson in her individual capacity*

222. By deploying a chemical weapon against Plaintiff B.D. without warning, Defendant Henderson violated B.D.'s clearly established constitutional rights under the Fourth and Fourteenth Amendments and, accordingly, is liable pursuant to 42 U.S.C. § 1983. The deployment of Freeze +P against Plaintiff B.D. was unjustified, given that B.D. posed no threat of injury to anyone at the time Defendant Henderson sprayed her with mace. Defendant Henderson's actions were not reasonably related in scope to the circumstances justifying interference in the first place, and were calculated to injure, punish, humiliate, and intimidate B.D. Accordingly, Defendant Henderson's actions constitute an excessively intrusive seizure in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

223. Because Defendant Henderson acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff B.D.

224. Plaintiff B.D. seeks compensatory and punitive damages against Defendant Henderson.

**COUNT XIII**

**Damages for Fourth and Fourteenth Amendment Violations  
arising from the use of Excessive Force against Plaintiff K.B.**

*Defendant Roper in his official capacity*

225. By sanctioning, enforcing, and implementing a policy, practice and/or custom that unreasonably and unconstitutionally subjects BCS students, including Plaintiff K.B., to excessive force in violation of the Fourth and Fourteenth Amendments of the United States Constitution, Defendant Roper has violated K.B.'s clearly established constitutional rights and, accordingly, is liable pursuant to 42 U.S.C. § 1983.

226. Because Defendant Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff K.B.

227. Plaintiff K.B. seeks compensatory and punitive damages from this Defendant.

**COUNT XIV**

**Damages for Fourth and Fourteenth Amendment Violations  
arising from the use of Excessive Force against Plaintiff K.B.**

*Defendant Smith in his individual capacity*

228. By deploying a chemical weapon against Plaintiff K.B. without warning and when she posed absolutely no risk of harm to anyone, Defendant Smith violated K.B.'s clearly established constitutional rights under the Fourth and Fourteenth

Amendments and, accordingly, is liable pursuant to 42 U.S.C. § 1983. The deployment of Freeze +P against Plaintiff K.B. was unjustified, given that K.B. was not engaged in any wrongful conduct and posed no threat of injury to anyone at the time Defendant Smith sprayed her with mace. Defendant Smith's actions were not reasonably related in scope to the circumstances justifying interference in the first place, and were calculated to injure, punish, humiliate, and intimidate K.B. Accordingly, Defendant Smith's actions constitute an excessively intrusive seizure in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

229. Because Defendant Smith acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff K.B.

230. Plaintiff K.B. seeks compensatory and punitive damages against Defendant Smith.

#### **COUNT XV**

**Damages for Fourth and Fourteenth Amendment Violations  
arising from the use of Excessive Force against Plaintiff T.A.P.  
*Defendant Roper in his individual capacity***

231. By sanctioning, enforcing, and implementing a policy, practice and/or custom that unreasonably and unconstitutionally subjects BCS students, including Plaintiff T.A.P., to excessive force in violation of the Fourth and Fourteenth

Amendments of the United States Constitution, Defendant Roper has violated T.A.P.'s clearly established constitutional rights and, accordingly, is liable pursuant to 42 U.S.C. § 1983.

232. Because Defendant Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff T.A.P.

233. Plaintiff T.A.P. seeks compensatory and punitive damages from this Defendant.

#### **COUNT XVI**

#### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff T.A.P.**

*Defendant Tarrant in his individual capacity*

234. By deploying a chemical weapon against Plaintiff T.A.P. without justification, Defendant Tarrant violated T.A.P.'s clearly established constitutional rights under the Fourth and Fourteenth Amendments and, accordingly, is liable pursuant to 42 U.S.C. § 1983. The deployment of Freeze +P against Plaintiff T.A.P. was unjustified at its inception, given that T.A.P. was pinned to the ground by five adult men and posed no threat to the safety of others. This seizure was calculated to punish, humiliate, and intimidate T.A.P., as evidenced by Defendant Tarrant's taunting words prior to deploying the chemical in her face. His actions were not reasonably related to the circumstances justifying the interference.

Accordingly, Defendant Tarrant's actions constitute an excessively intrusive seizure in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

235. Because Defendant Tarrant acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff T.A.P.

236. Plaintiff T.A.P. seeks compensatory and punitive damages against Defendant Smith.

#### **COUNT XVII**

##### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff T.A.P.**

*Defendant Moss in his individual capacity*

237. Defendant Moss intentionally tripped T.A.P., causing her to fall to the ground, and ground his foot in her back. Defendant Moss also held T.A.P. down on the ground so that Defendant Tarrant could spray her in the face with chemical spray. These actions violated T.A.P.'s clearly established constitutional rights under the Fourth and Fourteenth Amendments. Defendant Moss' actions were unjustified at inception, given that T.A.P. had complied with his directives and posed no threat to the safety of others or to the school environment. This seizure was calculated to punish, humiliate, and intimidate T.A.P. Defendant Moss' actions constitute an excessively intrusive seizure in violation of the Fourth and



Fourteenth Amendments of the United States Constitution. Accordingly, Defendant Moss is liable pursuant to 42 U.S.C. § 1983.

238. Because Defendant Moss acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff T.A.P.

239. Plaintiff T.A.P. seeks compensatory and punitive damages against Defendant Moss.

### **COUNT XVIII**

#### **Damages for Fourth and Fourteenth Amendment Violations arising from the use of Excessive Force against Plaintiff B.J.**

*Defendant Roper in his individual capacity*

240. By sanctioning, enforcing, and implementing a policy, practice and/or custom that unreasonably and unconstitutionally subjects BCS students, including Plaintiff B.J., to excessive force in violation of the Fourth and Fourteenth Amendments of the United States Constitution, Defendant Roper has violated B.J.'s clearly established constitutional rights and, accordingly, is liable pursuant to 42 U.S.C. § 1983.

241. Because Defendant Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff B.J.

242. Plaintiff B.J. seeks compensatory and punitive damages from this Defendant.

**COUNT XIX**

**Damages for Fourth and Fourteenth Amendment Violations  
arising from the use of Excessive Force against Plaintiff B.J.  
*Defendant Benson in her individual capacity***

243. By deploying a chemical weapon against Plaintiff B.J. without justification or warning, Defendant Benson violated B.J.'s clearly established constitutional rights under the Fourth and Fourteenth Amendments and, accordingly, is liable pursuant to 42 U.S.C. § 1983. The deployment of Freeze +P against Plaintiff B.J. was both unjustified and unreasonable in that that B.J. was already being physically restrained by two adult men and posed no threat to the safety of others or the school environment. This seizure was calculated to punish, humiliate, and intimidate B.J. Even after he had been blinded and incapacitated by the chemical sprayed into his nose and mouth, Defendant Benson continued to use excessive force by forcing B.J. to the ground and holding him down with her knee as he struggled to breathe. Defendant Benson's actions were not reasonably related in scope to the circumstances justifying interference in the first place, and were calculated to injure, punish, humiliate, and intimidate B.J.

244. Because Defendant Benson acted in clear violation of well-established law, of which a reasonable person would have been aware, she is not entitled to

qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff B.J.

245. Plaintiff B.J. seeks compensatory and punitive damages against Defendant Benson.

### **COUNT XX**

#### **Excessive Corporal Punishment inflicted upon Plaintiff T.A.P., in Violation of the Fourteenth Amendment *Defendant Moss in his individual capacity***

246. By illegally assaulting Plaintiff T.A.P. in direct violation of BCS policy prohibiting corporal punishment and by holding T.A.P. down as Defendant Tarrant sprayed her in the face with mace, Defendant Moss violated Plaintiff T.A.P.'s right to be free from excessive corporal punishment as provided by the Fourteenth Amendment of the United States Constitution. Defendant Moss unreasonably and unjustifiably assaulted Plaintiff T.A.P., intentionally caused her to fall to the ground, and planted his foot in her back when she posed no threat to anyone. Defendant Moss also aided Defendant Tarrant in subjecting T.A.P. to unreasonable and abusive physical abuse. Defendant Moss' actions were obviously excessive and presented a reasonably foreseeable risk of serious bodily injury to Plaintiff T.A.P. Accordingly, Defendant Moss' use of corporal punishment amounts to arbitrary and egregious conduct in violation of the Fourteenth Amendment to the United States Constitution.

247. Because Defendant Moss acted in clear violation of well-established law, of which a reasonable person would have been aware, he is not entitled to qualified immunity. The actions of this Defendant were intentional, malicious, reckless, and showed a callous disregard for the rights of Plaintiff T.A.P.

248. Plaintiff T.A.P. seeks compensatory damages.

### **COUNT XXI**

#### **Damages for Fourteenth Amendment Violations: Failure to Protect Plaintiff J.W.**

*Defendant Birmingham Board of Education*

249. By failing to protect Plaintiff J.W. from the illegal and unreasonable actions of Defendants Roper and Nevitt, as set forth in the plaintiff-specific facts detailed supra, Defendant BOE has violated the clearly established rights of Plaintiff J.W. under the Fourteenth Amendment. Defendant BOE has created a custodial environmental within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a constitutional duty on Defendant BOE to ensure the safety and well-being of Plaintiff J.W. while he attends BCS. Defendant BOE breached that duty by authorizing and approving the use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff J.W. and other students from the use of chemical weapons. Accordingly, Defendant BOE has violated the rights of Plaintiff J.W. in violation of the Fourteenth Amendment to the U.S. Constitution.

250. By the forgoing actions and inactions, Defendant BOE is liable pursuant to 42 U.S.C. § 1983 under the Fourteenth Amendment of the United States Constitution for failing to protect J.W. from Defendant Roper's unlawful and illegal policies, practices, and customs. Because Defendant BOE breached its duty to protect J.W. as required by the Fourteenth Amendment and acted in clear violation of well-established law, of which a reasonable person would have been aware, it is not entitled to qualified immunity.

251. Plaintiff J.W. seeks compensatory damages from this Defendant.

## **COUNT XXII**

### **Damages for Fourteenth Amendment Violations:**

#### **Failure to Protect Plaintiff G.S.**

*Defendant Birmingham Board of Education*

252. By failing to protect Plaintiff G.S. from the illegal and unreasonable actions of Defendants Roper and Clark, as set forth in the plaintiff-specific facts detailed supra, Defendant BOE has violated the clearly established rights of Plaintiff G.S. under the Fourteenth Amendment. Defendant BOE has created a custodial environment within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a constitutional duty on Defendant BOE to ensure the safety and well-being of Plaintiff G.S. while she attends BCS. Defendant BOE breached that duty by authorizing and approving the use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff G.S. and other students from the use of chemical weapons.

Accordingly, Defendant BOE has violated the rights of Plaintiff G.S. in violation of the Fourteenth Amendment to the U.S. Constitution.

253. By the forgoing actions and inactions, Defendant BOE is liable pursuant to 42 U.S.C. § 1983 under the Fourteenth Amendment of the United States Constitution for failing to protect G.S. from Defendant Roper's unlawful and illegal policies, practices, and customs. Because Defendant BOE breached its duty to protect G.S. as required by the Fourteenth Amendment and acted in clear violation of well-established law, of which a reasonable person would have been aware, it is not entitled to qualified immunity.

254. Plaintiff G.S. seeks compensatory damages from this Defendant.

**COUNT XXIII**  
**Damages for Fourteenth Amendment Violations:**  
**Failure to Protect Plaintiff P.S.**  
*Defendant Birmingham Board of Education*

255. By failing to protect Plaintiff P.S. from the illegal and unreasonable actions of Defendants Roper and Clark, as set forth in the plaintiff-specific facts detailed supra, Defendant BOE has violated the clearly established rights of Plaintiff P.S. under the Fourteenth Amendment. Defendant BOE has created a custodial environmental within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a constitutional duty on Defendant BOE to ensure the safety and well-being of Plaintiff P.S. while she attends BCS. Defendant BOE breached that duty by authorizing and approving the

use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff P.S. and other students from the use of chemical weapons.

Accordingly, Defendant BOE has violated the rights of Plaintiff P.S. in violation of the Fourteenth Amendment to the U.S. Constitution.

256. By the forgoing actions and inactions, Defendant BOE is liable pursuant to 42 U.S.C. § 1983 under the Fourteenth Amendment of the United States Constitution for failing to protect P.S. from Defendant Roper's unlawful and illegal policies, practices, and customs. Because Defendant BOE breached its duty to protect P.S. as required by the Fourteenth Amendment and acted in clear violation of well-established law, of which a reasonable person would have been aware, it is not entitled to qualified immunity.

257. Plaintiff P.S. seeks compensatory damages from this Defendant.

#### **COUNT XXIV**

#### **Damages for Fourteenth Amendment Violations:**

#### **Failure to Protect Plaintiff T.L.P.**

#### *Defendant Birmingham Board of Education*

258. By failing to protect Plaintiff T.L.P. from the illegal and unreasonable actions of Defendants Roper and Nevitt, as set forth in the plaintiff-specific facts detailed supra, Defendant BOE has violated the clearly established rights of Plaintiff T.L.P. under the Fourteenth Amendment. Defendant BOE has created a custodial environment within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a

constitutional duty on Defendant BOE to ensure the safety and well-being of Plaintiff T.L.P. while she attends BCS. Defendant BOE breached that duty by authorizing and approving the use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff T.L.P. and other students from the use of chemical weapons. Accordingly, Defendant BOE has violated the rights of Plaintiff T.L.P. in violation of the Fourteenth Amendment to the U.S. Constitution.

259. By the forgoing actions and inactions, Defendant BOE is liable pursuant to 42 U.S.C. § 1983 under the Fourteenth Amendment of the United States Constitution for failing to protect T.L.P. from Defendant Roper's unlawful and illegal policies, practices, and customs. Because Defendant BOE breached its duty to protect T.L.P. as required by the Fourteenth Amendment and acted in clear violation of well-established law, of which a reasonable person would have been aware, it is not entitled to qualified immunity.

260. Plaintiff T.L.P. seeks compensatory damages from this Defendant.

#### **COUNT XV**

#### **Damages for Fourteenth Amendment Violations:**

#### **Failure to Protect Plaintiff B.D.**

#### *Defendant Birmingham Board of Education*

261. By failing to protect Plaintiff B.D. from the illegal and unreasonable actions of Defendants Roper and Henderson, as set forth in the plaintiff-specific facts detailed supra, Defendant BOE has violated the clearly established rights of Plaintiff B.D. under the Fourteenth Amendment. Defendant BOE has created a



custodial environment within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a constitutional duty on Defendant BOE to ensure the safety and well-being of Plaintiff B.D. while she attends BCS. Defendant BOE breached that duty by authorizing and approving the use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff B.D. and other students from the use of chemical weapons. Accordingly, Defendant BOE has violated the rights of Plaintiff B.D. in violation of the Fourteenth Amendment to the U.S. Constitution.

262. By the forgoing actions and inactions, Defendant BOE is liable pursuant to 42 U.S.C. § 1983 under the Fourteenth Amendment of the United States Constitution for failing to protect B.D. from Defendant Roper's unlawful and illegal policies, practices, and customs. Because Defendant BOE breached its duty to protect B.D. as required by the Fourteenth Amendment and acted in clear violation of well-established law, of which a reasonable person would have been aware, it is not entitled to qualified immunity.

263. Plaintiff B.D. seeks compensatory damages from this Defendant.

**COUNT XXVI**  
**Damages for Fourteenth Amendment Violations:**  
**Failure to Protect Plaintiff K.B.**  
*Defendant Birmingham Board of Education*

264. By failing to protect Plaintiff K.B. from the illegal and unreasonable actions of Defendants Roper and Smith, as set forth in the plaintiff-specific facts detailed

supra, Defendant BOE has violated the clearly established rights of Plaintiff K.B. under the Fourteenth Amendment. Defendant BOE has created a custodial environment within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a constitutional duty on Defendant BOE to ensure the safety and well-being of Plaintiff K.B. while she attends BCS. Defendant BOE breached that duty by authorizing and approving the use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff K.B. and other students from the use of chemical weapons. Accordingly, Defendant BOE has violated the rights of Plaintiff K.B. in violation of the Fourteenth Amendment to the U.S. Constitution.

265. By the forgoing actions and inactions, Defendant BOE is liable pursuant to 42 U.S.C. § 1983 under the Fourteenth Amendment of the United States Constitution for failing to protect K.B. from Defendant Roper's unlawful and illegal policies, practices, and customs. Because Defendant BOE breached its duty to protect K.B. as required by the Fourteenth Amendment and acted in clear violation of well-established law, of which a reasonable person would have been aware, it is not entitled to qualified immunity.

266. Plaintiff K.B. seeks compensatory damages from this Defendant.

**COUNT XXVII**  
**Damages for Fourteenth Amendment Violations:**  
**Failure to Protect Plaintiff T.A.P.**  
*Defendant Birmingham Board of Education*

267. By failing to protect Plaintiff T.A.P. from the illegal and unreasonable actions of Defendants Roper and Tarrant, as set forth in the plaintiff-specific facts detailed supra, Defendant BOE has violated the clearly established rights of Plaintiff T.A.P. under the Fourteenth Amendment. Defendant BOE has created a custodial environment within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a constitutional duty on Defendant BOE to ensure the safety and well-being of Plaintiff T.A.P. while she attends BCS. Defendant BOE breached that duty by authorizing and approving the use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff T.A.P. and other students from the use of chemical weapons. Accordingly, Defendant BOE has violated the rights of Plaintiff T.A.P. in violation of the Fourteenth Amendment to the U.S. Constitution.

268. By the forgoing actions and inactions, Defendant BOE is liable pursuant to 42 U.S.C. § 1983 under the Fourteenth Amendment of the United States Constitution for failing to protect T.A.P. from Defendant Roper's unlawful and illegal policies, practices, and customs. Because Defendant BOE breached its duty to protect T.A.P. as required by the Fourteenth Amendment and acted in clear

violation of well-established law, of which a reasonable person would have been aware, it is not entitled to qualified immunity.

269. Plaintiff T.A.P. seeks compensatory damages from this Defendant.

**COUNT XXVIII**  
**Damages for Fourteenth Amendment Violations:**  
**Failure to Protect Plaintiff B.J.**  
*Defendant Birmingham Board of Education*

270. By failing to protect Plaintiff B.J. from the illegal and unreasonable actions of Defendants Roper and Benson, as set forth in the plaintiff-specific facts detailed supra, Defendant BOE has violated the clearly established rights of Plaintiff B.J. under the Fourteenth Amendment. Defendant BOE has created a custodial environment within the BCS system for all students subject to the compulsory school attendance law. That custodial environment imposes a constitutional duty on Defendant BOE to ensure the safety and well-being of Plaintiff B.J. while he attends BCS. Defendant BOE breached that duty by authorizing and approving the use of chemical weapons against BCS students, and by failing to take action to protect Plaintiff B.J. and other students from the use of chemical weapons. Accordingly, Defendant BOE has violated the rights of Plaintiff B.J. in violation of the Fourteenth Amendment to the U.S. Constitution.

271. By the forgoing actions and inactions, Defendant BOE is liable pursuant to 42 U.S.C. § 1983 under the Fourteenth Amendment of the United States Constitution for failing to protect B.J. from Defendant Roper's unlawful and illegal

policies, practices, and customs. Because Defendant BOE breached its duty to protect B.J. as required by the Fourteenth Amendment and acted in clear violation of well-established law, of which a reasonable person would have been aware, it is not entitled to qualified immunity.

272. Plaintiff B.J. seeks compensatory damages from this Defendant.

***INDIVIDUAL CLAIMS UNDER TO ALABAMA LAW***

**COUNT XXIX**

**Assault and Battery on Plaintiff G.S. in Violation of Alabama Law**  
*Defendant Roper in his individual capacity*

273. Defendant Roper is liable pursuant to Alabama law for sanctioning, enforcing, and implementing a policy, custom, and/or practice that subjects BCS students, including Plaintiff G.S., to bodily harm in violation of Alabama law.

274. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff G.S. Because Defendant Roper acted willfully and maliciously, is not entitled to discretionary function immunity provided by Alabama law.

275. Plaintiff G.S. seeks compensatory damages from this Defendant.

**COUNT XXX**

**Assault and Battery on Plaintiff G.S. in Violation of Alabama Law**  
*Defendant Clark in his individual capacity*

276. By twice deploying chemical spray against Plaintiff G.S. as a means of intimidation, Defendant Clark committed the tort of assault and battery against

G.S., in violation of Alabama law. Defendant Clark intentionally and unlawfully twice sprayed G.S. in the face with a dangerous chemical weapon, without warning, without justification, and without cause. Defendant Clark's actions were intended to physically harm G.S. and caused her to fear imminent bodily harm.

277. Defendant Clark acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff G.S. Because Defendant Clark acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

278. Plaintiff G.S. seeks compensatory damages from this Defendant.

#### **COUNT XXXI**

#### **Assault and Battery on Plaintiff T.L.P. in Violation of Alabama Law** *Defendant Roper in his individual capacity*

279. Defendant Roper is liable pursuant to Alabama law for sanctioning, enforcing, and implementing a policy, custom, and/or practice that subjects BCS students, including Plaintiff T.L.P., to bodily harm in violation of Alabama law.

280. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.L.P. Because Defendant Roper acted willfully and maliciously, is not entitled to discretionary function immunity provided by Alabama law.

281. Plaintiff T.L.P. seeks compensatory damages from this Defendant.

**COUNT XXXII**

**Assault and Battery on Plaintiff T.L.P. in Violation of Alabama Law**  
*Defendant Nevitt in his individual capacity*

282. By deploying chemical spray against T.L.P. as a means of intimidation, Defendant Nevitt committed the tort of assault and battery against T.L.P., in violation of Alabama law. Defendant Nevitt intentionally and unlawfully sprayed T.L.P. with a dangerous chemical weapon, without warning, while she was restrained by an adult man. Defendant Nevitt's actions were intended to physically harm T.L.P. and caused her to fear imminent bodily harm.

283. Defendant Nevitt acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.L.P. Because Defendant Nevitt acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

284. Plaintiff T.L.P. seeks compensatory damages from this Defendant.

**COUNT XXXIII**

**Assault and Battery on Plaintiff B.D. in Violation of Alabama Law**  
*Defendant Roper in his individual capacity*

285. Defendant Roper is liable pursuant to Alabama law for sanctioning, enforcing, and implementing a policy, custom, and/or practice that subjects BCS students, including Plaintiff B.D., to bodily harm in violation of Alabama law.

286. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff B.D. Because Defendant Roper

acted willfully and maliciously, is not entitled to discretionary function immunity provided by Alabama law.

287. Plaintiff B.D. seeks compensatory damages from this Defendant.

**COUNT XXXIV**

**Assault and Battery on Plaintiff B.D. in Violation of Alabama Law**  
*Defendant Henderson in his individual capacity*

288. By deploying chemical spray against Plaintiff B.D. as a means of intimidation, Defendant Henderson committed the tort of assault and battery against B.D., in violation of Alabama law. Defendant Henderson intentionally and unlawfully sprayed B.D. with a dangerous chemical weapon, without warning, when she posed no serious threat of harm to anyone. Defendant Henderson's actions were intended to physically harm Plaintiff B.D. and caused her to fear imminent bodily harm.

289. Defendant Henderson acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff B.D. Because Defendant Henderson acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

290. Plaintiff B.D. seeks compensatory damages from this Defendant.



**COUNT XXXV**

**Assault and Battery on Plaintiff T.A.P. in Violation of Alabama Law**  
*Defendant Roper in his individual capacity*

291. Defendant Roper is liable pursuant to Alabama law for sanctioning, enforcing, and implementing a policy, custom, and/or practice that subjects BCS students, including Plaintiff K.B., to bodily harm in violation of Alabama law.

292. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff K.B. Because Defendant Roper acted willfully and maliciously, is not entitled to discretionary function immunity provided by Alabama law.

293. Plaintiff K.B. seeks compensatory damages from this Defendant.

**COUNT XXXVI**

**Assault and Battery on Plaintiff K.B. in Violation of Alabama Law**  
*Defendant Smith in his individual capacity*

294. By deploying chemical spray against Plaintiff K.B. as a means of intimidation, Defendant Smith committed the tort of assault and battery against K.B., in violation of Alabama law. Defendant Smith intentionally and unlawfully sprayed K.B. with a dangerous chemical weapon, without warning, when she posed no threat of harm to anyone. Defendant Smith's actions were intended to physically harm Plaintiff K.B. and caused her to fear imminent bodily harm.

295. Defendant Smith acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff K.B. Because Defendant Smith

acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

296. Plaintiff K.B. seeks compensatory damages from this Defendant.

#### **COUNT XXXVII**

##### **Assault and Battery on Plaintiff T.A.P. in Violation of Alabama Law** *Defendant Roper in his individual capacity*

297. Defendant Roper is liable pursuant to Alabama law for sanctioning, enforcing, and implementing a policy, custom, and/or practice that subjects BCS students, including Plaintiff T.A.P., to bodily harm in violation of Alabama law.

298. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.A.P. Because Defendant Roper acted willfully and maliciously, is not entitled to discretionary function immunity provided by Alabama law.

299. Plaintiff T.A.P. seeks compensatory damages from this Defendant.

#### **COUNT XXXVIII**

##### **Assault and Battery on Plaintiff T.A.P. in Violation of Alabama Law** *Defendant Tarrant in his individual capacity*

300. By deploying chemical spray against Plaintiff T.A.P. as a means of intimidation, Defendant Tarrant committed the tort of assault and battery against T.A.P., in violation of Alabama law. Defendant Tarrant intentionally and unlawfully sprayed T.A.P. with a dangerous chemical weapon, without warning, and while she was restrained by five grown men. Defendant Tarrant's actions were

intended to physically harm Plaintiff T.A.P. and caused her to fear imminent bodily harm.

301. Defendant Tarrant acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.A.P. Because Defendant Tarrant acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

302. Plaintiff T.A.P. seeks compensatory damages from this Defendant.

### **COUNT XXXIX**

#### **Assault and Battery on Plaintiff T.A.P. in Violation of Alabama Law** *Defendant Moss in his individual capacity*

303. Defendant Moss intentionally tripped T.A.P., causing her to fall to the ground, and ground his foot her in back. Defendant Moss also held T.A.P. to the ground as Defendant Tarrant sprayed her in the face with chemical spray. These actions amount a tort of assault of battery against T.A.P. in violation of Alabama law. Defendant Moss' actions were intended to physically harm Plaintiff T.A.P. and caused her to fear imminent bodily harm.

304. Defendant Moss acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.A.P. Because Defendant Moss acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

305. Plaintiff T.A.P. seeks compensatory damages from this Defendant.

**COUNT XL**

**Assault and Battery on Plaintiff B.J. in Violation of Alabama Law**  
*Defendant Roper in his individual capacity*

306. Defendant Roper is liable pursuant to Alabama law for sanctioning, enforcing, and implementing a policy, custom, and/or practice that subjects BCS students, including Plaintiff B.J., to bodily harm in violation of Alabama law.

307. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff B.J. Because Defendant Roper acted willfully and maliciously, is not entitled to discretionary function immunity provided by Alabama law.

308. Plaintiff B.J. seeks compensatory damages from this Defendant.

**COUNT XLI**

**Assault and Battery on Plaintiff B.J. in Violation of Alabama Law**  
*Defendant Benson in her individual capacity*

309. By deploying chemical spray against B.J. as a means of intimidation and kicking him to the ground and planting her knee in his back, Defendant Benson committed assault and battery against B.J., in violation of Alabama law.

Defendant Benson intentionally and unlawfully sprayed B.J. with a dangerous chemical weapon without warning or cause. Defendant Benson also kicked B.J. to the ground after deploying the chemical in B.J.'s face. Her actions were intended to physically harm B.J. and caused him to fear imminent bodily harm.

310. Defendant Benson acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff B.J. Because Defendant Benson acted willfully and maliciously, she is not entitled to discretionary function immunity provided by Alabama law.

311. Plaintiff B.J. seeks compensatory damages from this Defendant.

### **COUNT XLII**

#### **Claim of Tort of Outrage on Plaintiff G.S. in Violation of Alabama Law** *Defendant Roper in his individual capacity*

312. By sanctioning, approving, and authorizing the illegal and unconstitutional use of chemical weapons by Defendant Clark against Plaintiff G.S., Defendant Roper engaged in extreme and outrageous conduct in violation of Alabama law. As a result of Defendant Roper's policy, practices, and deficient training program with regard to the use of chemical weapons in BCS, Plaintiff G.S. suffered physical and emotional distress that no reasonable child could be expected to endure.

313. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff G.S. Because Defendant Roper acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

314. Plaintiff G.S. seeks compensatory damages from this Defendant.

**COUNT XLIII**

**Claim of Tort of Outrage on Plaintiff G.S. in Violation of Alabama Law**  
*Defendant Clark in his individual capacity*

315. By intentionally deploying chemical spray against G.S. as a means of intimidation and fear and without necessity, Defendant Clark engaged in extreme and outrageous conduct in violation of Alabama law. Without identifying himself as a police officer, Defendant Clark grabbed a young girl from behind, then sprayed a blast of painful chemicals in her face. After Plaintiff G.S. had already been incapacitated from the first blast of chemical spray, Defendant Clark proceeded to intentionally and recklessly spray her for a second time. Defendant Clark's actions caused G.S. physical and emotional distress that no reasonable child could be expected to endure.

316. Defendant Clark acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff G.S. Because Defendant Clark acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

317. Plaintiff G.S. seeks compensatory damages from this Defendant.

**COUNT XLIV**

**Claim of Tort of Outrage on Plaintiff T.L.P. in Violation of Alabama Law**  
*Defendant Roper in his individual capacity*

318. By sanctioning, approving, and authorizing the illegal and unconstitutional use of chemical weapons by Defendant Nevitt against Plaintiff T.L.P. Defendant

Roper engaged in extreme and outrageous conduct in violation of Alabama law.

As a result of Defendant Roper's policy, practices, and deficient training program with regard to the use of chemical weapons in BCS, Plaintiff T.L.P. suffered physical and emotional distress that no reasonable child could be expected to endure.

319. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.L.P. Because Defendant Roper acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

320. Plaintiff T.L.P. seeks compensatory damages from this Defendant.

#### **COUNT XLV**

#### **Claim of Tort of Outrage on Plaintiff T.L.P. in Violation of Alabama Law** *Defendant Nevitt in his individual capacity*

321. By intentionally deploying chemical spray against T.L.P. as a means of intimidation, Defendant Nevitt engaged in extreme and outrageous conduct in violation of Alabama law. Without first delivering a warning or giving Plaintiff T.L.P. an opportunity to avoid his attack, Defendant Nevitt intentionally and recklessly sprayed a young child in the face with chemical spray, while she was being restrained by an adult man. Defendant Nevitt's actions caused T.L.P. physical and emotional distress that no reasonable child could be expected to endure.

322. Defendant Nevitt acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.L.P. Because Defendant Nevitt acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

323. Plaintiff T.L.P. seeks compensatory damages from this Defendant.

**COUNT XLVI**

**Claim of Tort of Outrage on Plaintiff B.D. in Violation of Alabama Law**  
*Defendant Roper in his individual capacity*

324. By sanctioning, approving, and authorizing the illegal and unconstitutional use of chemical weapons by Defendant Henderson against Plaintiff B.D. Defendant Roper engaged in extreme and outrageous conduct in violation of Alabama law. As a result of Defendant Roper's policy, practices, and deficient training program with regard to the use of chemical weapons in BCS, Plaintiff B.D. suffered physical and emotional distress that no reasonable child could be expected to endure.

325. Plaintiff B.D. seeks compensatory damages from this Defendant.

**COUNT XLVII**

**Claim of Tort of Outrage on Plaintiff B.D. in Violation of Alabama Law**  
*Defendant Henderson in his individual capacity*

326. By intentionally deploying chemical spray against B.D. as a means of intimidation, Defendant Henderson engaged in extreme and outrageous conduct in violation of Alabama law. Without first delivering a warning or giving Plaintiff



B.D. an opportunity to avoid his attack, Defendant Henderson intentionally and recklessly sprayed a young child in the face with chemical spray when she posed no threat of harm to anyone. Defendant Henderson's actions caused B.D. physical and emotional distress that no reasonable child could be expected to endure.

327. Defendant Henderson acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff B.D. Because Defendant Nevitt acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

328. Plaintiff B.D. seeks compensatory damages from this Defendant.

#### **COUNT XL VII**

#### **Claim of Tort of Outrage on Plaintiff K.B. in Violation of Alabama Law** *Defendant Roper in his individual capacity*

329. By sanctioning, approving, and authorizing the illegal and unconstitutional use of chemical weapons by Defendant Smith against Plaintiff K.B. Defendant Roper engaged in extreme and outrageous conduct in violation of Alabama law. As a result of Defendant Roper's policy, practices, and deficient training program with regard to the use of chemical weapons in BCS, Plaintiff K.B. suffered physical and emotional distress that no reasonable child could be expected to endure.

330. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff K.B. Because Defendant Roper

acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

331. Plaintiff K.B. seeks compensatory damages from this Defendant.

**COUNT XLIX**

**Claim of Tort of Outrage on Plaintiff K.B. in Violation of Alabama Law**  
*Defendant Smith in his individual capacity*

332. By intentionally deploying chemical spray against K.B. as a means of intimidation, Defendant Smith engaged in extreme and outrageous conduct in violation of Alabama law. Without first delivering a warning or giving Plaintiff K.B. an opportunity to avoid his attack, Defendant Smith intentionally and recklessly sprayed a young child in the face with chemical spray, when she posed no threat of harm to anyone. Defendant Smith's actions caused K.B. physical and emotional distress that no reasonable child could be expected to endure.

333. Defendant Smith acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff K.B. Because Defendant Smith acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

334. Plaintiff K.B. seeks compensatory damages from this Defendant.

**COUNT L**

**Claim of Tort of Outrage on Plaintiff T.A.P. in Violation of Alabama Law**  
*Defendant Roper in his individual capacity*

335. By sanctioning, approving, and authorizing the illegal and unconstitutional use of chemical weapons by Defendant Tarrant against Plaintiff T.A.P. Defendant Roper engaged in extreme and outrageous conduct in violation of Alabama law. As a result of Defendant Roper's policy, practices, and deficient training program with regard to the use of chemical weapons in BCS, Plaintiff T.A.P. suffered physical and emotional distress that no reasonable child could be expected to endure.

336. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.A.P. Because Defendant Roper acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

337. Plaintiff T.A.P. seeks compensatory damages from this Defendant.

**COUNT LI**

**Claim of Tort of Outrage on Plaintiff T.A.P. in Violation of Alabama Law**  
*Defendant Tarrant in his individual capacity*

338. By intentionally deploying chemical spray against Plaintiff T.A.P. as a means of pure intimidation and punishment, Defendant Tarrant engaged in extreme and outrageous conduct in violation of Alabama law. Defendant Tarrant intentionally and recklessly sprayed a young child in the face with a painful

chemical, while she was pinned to the ground and completely incapacitated by five adult men. Defendant Tarrant's actions caused T.A.P. physical and emotional distress that no reasonable child could be expected to endure.

339. Defendant Tarrant acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.A.P. Because Defendant Tarrant acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

340. Plaintiff T.A.P. seeks compensatory damages from this Defendant.

## **COUNT LII**

### **Claim of Tort of Outrage on Plaintiff T.A.P. in Violation of Alabama Law** *Defendant Moss in his individual capacity*

341. Defendant Moss intentionally caused T.A.P. to fall to the ground by tripping her and planted his foot in her back. Defendant Moss also aided Defendant Tarrant in subjecting T.A.P. to abusive and barbaric treatment by spraying her in the face with a chemical weapon. This conduct amounts to extreme and outrageous conduct in violation of Alabama law. Defendant Moss' actions caused T.A.P. physical and emotional distress that no reasonable child could be expected to endure.

342. Defendant Moss acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff T.A.P. Because Defendant Moss

acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

343. Plaintiff T.A.P. seeks compensatory and punitive damages from this Defendant.

### **COUNT LIII**

#### **Claim of Tort of Outrage on Plaintiff B.J. in Violation of Alabama Law** *Defendant Roper in his individual capacity*

344. By sanctioning, approving, and authorizing the illegal and unconstitutional use of chemical weapons by Defendant Benson against Plaintiff B.J. Defendant Roper engaged in extreme and outrageous conduct in violation of Alabama law.

As a result of Defendant Roper's policy, practices, and deficient training program with regard to the use of chemical weapons in BCS, these Plaintiffs suffered physical and emotional distress that no reasonable child could be expected to endure.

345. Defendant Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff B.J. Because Defendant Roper acted willfully and maliciously, he is not entitled to discretionary function immunity provided by Alabama law.

346. Plaintiff B.J. seeks compensatory damages from this Defendant.

**COUNT LIV**

**Claim of Tort of Outrage on Plaintiff B.J. in Violation of Alabama Law**  
*Defendant Benson in her individual capacity*

347. By intentionally deploying chemical spray against B.J. as a means of intimidation and fear, Defendant Benson engaged in extreme and outrageous conduct in violation of Alabama law. Without even delivering a warning, Defendant Benson intentionally and recklessly sprayed a young child in the face with a painful chemical spray, while that child was being restrained by two adult men. Defendant Benson's actions caused B.J. physical and emotional distress that no reasonable child could be expected to endure.

348. Defendant Benson acted willfully, recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff B.J. Because Defendant Benson acted willfully and maliciously, she is not entitled to discretionary function immunity provided by Alabama law.

349. Plaintiff B.J. seeks compensatory damages from this Defendant.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2);

3. Declare that the acts and omissions of all Defendants violate the U.S. Constitution;
4. Declare that the acts and omissions of Defendants Roper, Clark, Nevitt, Henderson, Smith, Tarrant, Moss, and Benson violate state law;
5. Enter a permanent injunction requiring Defendants Roper and the Birmingham Board of Education, their agents, employees and all persons acting in concert with them to cease the unconstitutional and unlawful practices outline above;
6. Award compensatory and punitive damages to the named Plaintiffs for the injuries they sustained as a result of the actions of Defendants Roper, Clark, Nevitt, Smith, Henderson, Tarrant, Moss, and Benson;
7. Award the Plaintiffs the costs of this lawsuit and reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
8. Grant any other relief the Court shall deem just and proper.

Respectfully submitted this 29th day of July, 2011.

/s/ Ebony Glenn Howard  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of July, 2011, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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