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12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 JANA ELHIFNY individually,
15 Plaintiff,
16 v.

17 CINDA GIFFORD, in her official and
individual capacity, CYNTHIA EDWARDS,
18 COLLEEN BRAUN, DEBRA
BIERSDORFF, MIKE BRYANT, FRANK
19 ALDRIDGE, STACIE ROCKETT, ANN
DRENDEL-HAAS; MARK WILLIAMS, in
20 their individual capacities; MIKE MIERAS,
in his official capacity as Chief of the Washoe
21 County School District Police Department,
and the WASHOE COUNTY SCHOOL
22 DISTRICT, a political subdivision of the
State of Nevada,
23 Defendants.

Case No. 3:04-CV-00583-LRH-PAL
FIRST AMENDED COMPLAINT
JURY DEMAND

1 **PRELIMINARY STATEMENT**

2 1. Plaintiff Jana Elhifny (“Jana”) is a former Washoe County high
3 school student who brings this lawsuit to enforce Jana’s established constitutional,
4 statutory, contractual, and common law rights to receive a public high school education
5 free from discrimination and harassment. During the Fall of 2003, Jana was repeatedly
6 harassed and discriminated against by her peers as well as employees of Defendant
7 Washoe County School District (the “District”) while enrolled as a student in the
8 District’s North Valleys High School (“NVHS”). Jana was harassed and discriminated
9 against because she is an Egyptian-American female and Muslim who observed,
10 practiced, spoke about, and openly displayed her Islamic faith and Egyptian heritage.
11 Defendants ignored the harassment and discrimination complaints made by Jana and her
12 mother, and failed to take necessary and reasonable actions to provide Jana with a safe
13 and discrimination-free school environment. Defendants also affirmatively discriminated
14 against Jana based on her sex, religion, and national origin and then retaliated against
15 her for complaining about the harassment and discrimination to school officials. As a
16 result of the harassment, discrimination, and retaliation, Jana withdrew from the District’s
17 schools and was deprived of the opportunity to receive an education and a high school
18 diploma from the District.

19 2. Unfortunately, this is not the first time that the District has been
20 accused of depriving students of a public education by failing to meet its legal obligations
21 to respond to peer harassment and prevent its employees from discriminating against
22 students. In *Henkle v. Gregory, et al.*, Case No. CV-N-00-0050-HDM-RAM, a lawsuit
23 filed in this Court, Derek R. Henkle¹ (“Henkle”) sued the District and some of its
24 employees for civil rights violations after enduring physical and verbal harassment and
25 discrimination from students and teachers because he was an openly gay male student.
26 Henkle and the District settled that case and entered into a binding settlement agreement

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28 ¹ Henkle has since received his college degree in communications from American
University in Washington, D.C. in the spring of 2007.

1 (the “Henkle Settlement Agreement”). Under the Henkle Settlement Agreement, the
2 District was required, among other things, to institute a series of remedial measures to
3 prevent both peer and employee discrimination and harassment of students, including
4 discrimination and harassment based on national origin, religion, gender, or free speech.

5 3. In Jana’s case, the District has failed to honor its obligations under
6 the Henkle Settlement Agreement and continues to be rife with incidents of both peer and
7 employee discrimination and harassment against students.

8 4. To remedy the harassment and discrimination, Jana alleges claims
9 under federal and state laws, including: (1) the First Amendment to the United States
10 Constitution; (2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq.
11 (“Title VI”); (3) Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et
12 seq. (“Title IX”); and (4) state law causes of action for negligence, negligent supervision
13 and training, intentional infliction of emotional distress, and negligent infliction of
14 emotional distress.

15 5. In addition to monetary damages, Jana seeks broad and systemic
16 injunctive relief to remedy the harassment and discrimination in the District. In particular,
17 Jana believes that a Court order conditioning the District’s continued receipt of federal
18 funds under Title VI and Title IX upon the implementation of a judicially-supervised
19 consent decree is absolutely necessary to protect the rights of students who, like Jana, face
20 harassment and discrimination based on their religion, speech, national origin, gender, or
21 other protected traits.

22 **PARTIES**

23 6. Jana was a student attending public school in the District, County of
24 Washoe, State of Nevada from August 2003 until December 2003. Jana is a Muslim,
25 Egyptian-American female. Jana is a citizen of the United States, and currently resides in
26 Egypt.

27 7. Defendant Cinda Gifford was the Principal of NVHS and was at all
28 relevant times working in the course and scope of her employment with and as an agent of

1 the District, a public school district organized and operated under the laws of the State of
2 Nevada. Defendant Gifford performed, participated in, aided and/or abetted in some
3 manner the acts averred herein, proximately caused the damages averred below, and is
4 liable to Jana for the damages and other relief sought herein. Defendant Gifford was
5 responsible for the training and supervision of Defendants Williams, Biersdorff, Rockett,
6 Edwards, and Aldridge. On information and belief, Defendant Gifford is a citizen of
7 Nevada.

8 8. Defendant Mark Williams was the Vice Principal of NVHS and was
9 at all relevant times working in the course and scope of his employment with and as an
10 agent of the District. Defendant Williams performed, participated in, aided and/or abetted
11 in some manner the acts averred herein, proximately caused the damages averred below,
12 and is liable to Jana for the damages and other relief sought herein. On information and
13 belief, Defendant Williams is a citizen of Nevada.

14 9. Defendant Cynthia Edwards was a Counselor at NVHS, and was at
15 all relevant times working in the course and scope of her employment with and as an
16 agent of the District. Defendant Edwards performed, participated in, aided and/or abetted
17 in some manner the acts averred herein, proximately caused the damages averred below,
18 and is liable to Jana for the damages and other relief sought herein. On information and
19 belief, Defendant Edwards is a citizen of Nevada.

20 10. Defendant Debra Biersdorff was an Assistant Principal of NVHS,
21 and was at all relevant times working in the course and scope of her employment with and
22 as an agent of the District. Defendant Biersdorff performed, participated in, aided and/or
23 abetted in some manner the acts averred herein, proximately caused the damages averred
24 below, and is liable to Jana for the damages and other relief sought herein. On
25 information and belief, Defendant Biersdorff is a citizen of Nevada.

26 11. Defendant Frank Aldridge was a teacher at NVHS, and was at all
27 relevant times working in the course and scope of his employment with and as an agent of
28 the District. Defendant Aldridge performed, participated in, aided and/or abetted in some

1 manner the acts averred herein, proximately caused the damages averred below, and is
2 liable to Jana for the damages and other relief sought herein. On information and belief,
3 Defendant Aldridge is a citizen of Nevada.

4 12. Defendant Stacie Rockett was a teacher at NVHS, and was at all
5 relevant times working in the course and scope of her employment with and as an agent of
6 the District. Defendant Rockett performed, participated in, aided and/or abetted in some
7 manner the acts averred herein, proximately caused the damages averred below, and is
8 liable to Jana for the damages and other relief sought herein. On information and belief,
9 Defendant Rockett is a citizen of Nevada.

10 13. Defendant Mike Bryant was the Coordinator of Student Personal
11 Services at NVHS, and was at all relevant times working in the course and scope of his
12 employment with and as an agent of the District. Defendant Bryant performed,
13 participated in, aided and/or abetted in some manner the acts averred herein, proximately
14 caused the damages averred below, and is liable to Jana for the damages and other relief
15 sought herein. Defendant Bryant was responsible for the training and supervision of
16 Defendant Colleen Braun. On information and belief, Defendant Bryant is a citizen of
17 Nevada.

18 14. Defendant Colleen Braun was the Psychologist at the District, and
19 was at all relevant times working in the course and scope of her employment with and as
20 an agent of the District. Defendant Braun performed, participated in, aided and/or abetted
21 in some manner the acts averred herein, proximately caused the damages averred below,
22 and is liable to Jana for the damages and other relief sought herein. On information and
23 belief, Defendant Braun is a citizen of Nevada.

24 15. Defendant Ann Drendel-Haas was the Area Administrator of the
25 District, and was at all relevant times working in the course and scope of her employment
26 with and as an agent of the District. Defendant Drendel-Haas performed, participated in,
27 aided and/or abetted in some manner the acts averred herein, proximately caused the
28 damages averred below, and is liable to Jana for the damages and other relief sought

1 **DEMAND FOR JURY TRIAL**

2 22. Pursuant to Rule 38(b), Federal Rules of Civil Procedure, and Rule
3 38-1, Local Rules, United States District Court, District of Nevada, Jana demands trial by
4 jury for all of the issues pled herein so triable.

5 **STATEMENT OF FACTS**

6 23. Jana was born in the United States in August 1987, and moved to
7 Egypt with her family when she was in the first grade.

8 24. In 2003, Jana’s mother decided that Jana and her family should move
9 back to the United States both because of the continued threat of violence in the Middle
10 East and because of her mother’s belief that Jana could receive a better education in the
11 United States.

12 25. Jana moved to Reno, Nevada with her family in or about April 2003.
13 She enrolled in NVHS, a public high school in the District. While attending school at
14 NVHS, Jana’s classmates routinely subjected her to severe and pervasive verbal and
15 physical harassment on school grounds on the basis of Jana’s race, national origin,
16 religion, and sex. This harassment occurred on a near-daily basis beginning in the Fall of
17 2003 when Jana first enrolled in NVHS and continued until she was forced to leave the
18 District’s schools in December of 2003.

19 26. All of the acts alleged herein occurred during school hours on NVHS
20 grounds and on the school bus.

21 27. Jana continually was tormented and bullied by her classmates, who
22 referred to her using terms such as “bitch,” “nasty whore,” “stupid,” “gay,” “crazy,”
23 “baldie,” and “slut.” Jana was routinely told to “go back to your country” and that she
24 was a “terrorist.”

25 28. Students threatened to assault, injure, or kill Jana on several
26 occasions. In particular, students threatened to kill Jana on September 11, 2003. She was
27 also told “you are not one of us,” “you don’t belong here” and “leave or we will kill you.”

28 29. Jana was physically assaulted by students while on NVHS property.

1 A student spat on Jana, and other students threw food at Jana, staining her clothing. She
2 was also shoved and bumped in the school halls.

3 30. As Jana walked in the halls of NVHS, other students would point and
4 laugh at her and say “look at that thing on her head,” referring to Jana’s hijab, a traditional
5 hair covering worn by Muslim women. Jana’s fellow students said that Jana wore the
6 hijab because she was “bald,” “doesn’t have any hair,” and “because she has cancer.”

7 31. Jana filed reports with the Washoe County School District Police
8 Department on several occasions describing these incidents. Defendant Williams was
9 present in the office when Jana filed each of these reports, and attempted to deter Jana
10 from filing the reports. Eventually, Defendant Williams personally handled the intake of
11 the reports.

12 32. On one occasion, Jana informed a District employee about the
13 harassment and discrimination she had to endure. Instead of taking any remedial steps,
14 the District employee told Jana that “you should expect” what was happening.

15 33. Jana also attempted to get help from NVHS principal, Defendant
16 Gifford. Defendant Gifford refused to address Jana’s claims of harassment and told Jana,
17 “It’s not my job to help you.”

18 34. In several instances, Defendants suggested that Jana refrain from
19 wearing her hijab to alleviate the harassment.

20 35. Jana’s friend and classmate, Stephanie Hart (“Stephanie”),
21 accompanied Jana while she made one of the above-described reports. While exiting the
22 office, Stephanie heard a uniformed officer refer to Jana, an Egyptian-American female,
23 as a “damn Afghani.”

24 36. Stephanie also attempted to get help for her and Jana from NVHS
25 principal, Defendant Gifford. Defendant Gifford was aware of the harassment,
26 intimidation, and discrimination, but deliberately and purposefully failed to take steps to
27 end the harassment and attempted to discourage Stephanie from reporting the harassment
28 by telling her to “mind [her] own business” and “act like a good American” after

1 Stephanie told Defendant Gifford that she wanted to speak with her about Jana.

2 37. Defendants were aware of the verbal and physical harassment and
3 abuse suffered by Jana, and had the authority to institute corrective and preventative
4 measures, but Defendants repeatedly and intentionally failed to take reasonable measures
5 to stop it. Rather than appropriately addressing the harmful behavior of other students,
6 Defendants acted as if Jana were the problem.

7 38. Defendants' discriminatory conduct, their intentional, reckless, and
8 negligent failure to take action to remedy the harassment and abuse suffered by Jana, and
9 their failure to provide Jana with a safe education in a suitable environment caused Jana to
10 suffer severe emotional distress and psychological damage, including, but not limited to,
11 an inability to concentrate on her studies, depression, debilitating fear, despair, anger,
12 humiliation, anxiety, and contemplation of suicide.

13 39. Jana also suffered bodily injury, including, but not limited to,
14 physical injury, disruption of sleep, insomnia, loss of appetite, sudden weight loss, and
15 sudden weight gain.

16 40. Defendants' direct actions in providing inappropriate educational
17 placements for Jana further harmed her.

18 41. As a result of Defendants' actions, Jana sought psychological
19 counseling. Jana's counselors determined that she was suffering from severe stress and
20 depression. Furthermore, Jana lost substantial amounts of school time as a result of
21 Defendants' actions and she ultimately left school.

22 42. As a result of Defendants' actions and indifference, Jana was
23 deprived of a high school diploma. The lack of a high school diploma has seriously and
24 adversely impacted Jana's academic, economic, and professional future.

25 43. Absent Defendants' actions alleged herein, Jana would have received
26 a high school diploma from NVHS and the District.

27 44. As a direct, legal, and proximate result of Defendants' violations of
28 Jana's legal rights, Jana has been damaged in an amount well in excess of seventy-five

1 thousand dollars.

2 **Allegations Relevant To The Federal Constitutional And Statutory Claims**

3 45. Defendant District and/or Defendant Gifford, in her official capacity
4 as Principal of NVHS, are responsible for ensuring that all North Valleys students who are
5 entitled to receive a District diploma obtain one.

6 46. Defendants had the authority to take corrective and preventative
7 action to stop the harassment, assaults, intimidation, and discrimination suffered by Jana.

8 47. Defendants failed to take steps to address or prevent the harm to Jana,
9 including, but not limited to, fully investigating her complaints of harassment; disciplining
10 students who harassed her; educating faculty and students about District policies and
11 procedures; and training faculty and students so as to prevent discrimination or
12 harassment in the future.

13 48. Defendants failed to take the steps necessary to prevent future
14 incidents of harm to Jana that were reasonably foreseeable given the past incidents of
15 harassment, assault, intimidation, and discrimination.

16 49. The acts and omissions of Defendants not only failed to remedy, but
17 also fostered and promoted, the harassment of Jana by other students and District
18 employees.

19 50. Defendant District received funds and financial assistance from the
20 United States government when Jana was a student in the District.

21 51. The acts and omissions alleged above by Defendants were committed
22 with deliberate indifference towards the well-being and rights of Jana.

23 52. The acts and omissions alleged above by Defendants were committed
24 intentionally and purposefully because of Jana's national origin, religion, religious
25 expression, and sex.

26 53. The acts and omissions alleged above by Defendants were committed
27 intentionally and purposefully because of the content and viewpoint of Jana's expression
28 about her national origin, religion, religious expression, and sex.

1 damages in an amount to be determined according to proof at trial.

2 73. Furthermore, Jana requests that the Court condition the District's
3 future receipt of federal funds upon entry of a judicially-supervised consent decree
4 ensuring that the District complies with its obligations under Title VI.

5 **FIFTH CLAIM FOR RELIEF**

6 Title VI of the Civil Rights Act of 1964, National Origin Based Discrimination
7 42 U.S.C. Section 2000d

8 **[Brought by Jana against Defendant Washoe County School District]**

9 74. Jana incorporates by reference and realleges paragraphs 1 to 73 of
10 this complaint.

11 75. The above-described conduct harassed Jana on the basis of national
12 origin. Such harassment was pervasive, severe, and objectively offensive, created a
13 hostile climate based on national origin, and deprived Jana of access to the educational
14 opportunities and benefits of the District, including a high school education and diploma.
15 Defendant had actual notice of the harassment.

16 76. Defendant acted unreasonably and with intentional indifference to the
17 harassment of Jana and the creation of a hostile climate based on national origin in
18 violation of Title VI.

19 77. Jana requests that the Court issue a mandatory injunction ordering
20 Defendant District to provide Jana with a high school education and an opportunity to
21 receive her high school diploma from the District, and that the Court award compensatory
22 damages in an amount to be determined according to proof at trial.

23 78. Furthermore, Jana requests that the Court condition the District's
24 future receipt of federal funds upon entry of a judicially-supervised consent decree
25 ensuring that the District complies with its obligations under Title VI.

26 **SIXTH CLAIM FOR RELIEF**

27 State Common Law Claim for Negligence

28 **[Brought by Jana Against All Defendants]**

REQUEST FOR RELIEF

WHEREFORE, Jana respectfully requests that the Court:

- (1) Issue an injunction suspending the Defendant District’s federal funding until such time that a consent decree is entered under which the Court can supervise the Defendant District’s compliance with Title IX and Title VI;
- (2) Issue a mandatory injunction conditioning the District’s receipt of federal funds upon the entry of a judicially-supervised consent decree that is supervised and administered by a court-appointed trustee, requiring the District to comply with federal and state anti-discrimination laws, including Titles VI and IX, the Henkle Settlement Agreement, and its own Policy;
- (3) Issue a mandatory injunction ordering Defendant District and Defendant Gifford in her official capacity to provide Jana with a high school education and an opportunity to receive a high school diploma from the District;
- (4) Award compensatory damages in an amount to be determined according to proof by Jana against Defendant District and all other Defendants in their official and individual capacities;
- (6) Award punitive damages against the individual Defendants in their individual capacities in such other amount as the jury may determine is sufficient to punish them for and deter others from committing the constitutional and statutory violations alleged herein;
- (7) Award Jana her costs, expenses, and reasonable attorneys’ fees pursuant to federal and state laws; and

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(8) Grant such other and further relief as the Court may deem just and proper.

Dated: July 11, 2007

Respectfully submitted,

PETER OBSTLER
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O'MELVENY & MYERS LLP

By /s/ Peter Obstler
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