

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**THE ESTATE OF ASHER ORRIN §
MICHAEL BROWN, BY AND THROUGH §
AMY (BROWN) TRUONG, §
INDIVIDUALLY AND UPON BEHALF §
OF HIS HEIRS §**

Plaintiffs,

v.

CIVIL ACTION NO.: 4:11-cv-01491

**DR. JOHN OGLETREE, PRESIDENT OF §
THE SCHOOL BOARD OF THE §
CY-FAIR INDEPENDENT SCHOOL §
DISTRICT, IN HIS OFFICIAL CAPACITY §
DR. DAVID G. ANTHONY, PHD, §
SUPERINTENDENT OF THE §
CY-FAIR INDEPENDENT SCHOOL §
DISTRICT, INDIVIDUALLY AND IN HIS §
OFFICIAL CAPACITY; MS. IFY §
OGWUMIKE, PRINCIPAL OF THE §
HAMILTON MIDDLE SCHOOL AND §
ALAN DURHAM, ASSISTANT §
PRINCIPAL OF THE HAMILTON §
MIDDLE SCHOOL, BOTH INDIVIDUALLY §**

Defendants,

FIRST ORIGINAL COMPLAINT

NOW COMES Amy (Brown) Truong, Individually and in her representative capacity in “The Estate Of Asher Orrin Michael Brown, Deceased, collectively termed Plaintiffs herein, by and through their attorneys, Martin J. Cirkiel from the law firm of Cirkiel & Associates, P.C., and Mike Zimmerman from the Zimmerman Law Firm, brings this their *First Original Complaint* alleging that Dr. John Ogletree, President of the Cy-Fair Independent School District (hereinafter collectively referred to as “the School Board”), in his Official Capacity; Dr. David G. Anthony,

PhD, Superintendent of the Cy-Fair Independent School District (hereinafter referred to as the “Superintendent”); in his Official Capacity and Individually; Ms. Ify Ogwumike, Principal of the Hamilton Middle School; and Mr. Alan Durham, Assistant Principal at the Hamilton Middle School, both Individually and all hereinafter collectively referred to as the “School District Defendants,” jointly and severally violated the various rights of Asher Orin Michael Brown, as more specifically pled herein. Plaintiffs reserve the right to replead if new claims and issues arise upon further development of the facts, and as permitted by law. In support thereof, Plaintiffs would respectfully show the following:

I. INTRODUCTION AND BRIEF REVIEW OF THE CASE

1. The Cy-Fair Independent School District in general and the Hamilton Middle School in particular have a recent and unfortunate practice of letting students who are being abused by a teacher, or who are being bullied by a student, to go unpunished, even after receiving multiple complaints by the student themselves, their classmates, their parents and even other staff members.
2. With this history as a backdrop it is no surprise that even when receiving complaints from Asher Brown, his family and even other students that he was being bullied, harassed, physically assaulted and called names every day, Hamilton Middle School staff, some who even observed some of the incidents, did nothing.
3. The district ostensibly had a policy in place to deal with known incidents of bullying and harassment, but clearly school district personnel had an actual practice and custom of looking the other way to these incidents of bullying, harassment, depression and threats of suicide, not only by Asher but with other students, as well.

4. The School District Defendants have consistently and publically stated that there was no evidence that Asher was bullied, no evidence of any complaints and no evidence of any person coming to the school to speak with school officials, on his behalf. If so, then the School District Defendants have attempted to cover up their acts and omissions. Specifically, school staff destroyed or have hidden the “Visitor Log-In Sheets” and videos, showing David Truong entering the school district to speak with staff about his concerns and the written and oral complaints made by Asher and other students and videos of Asher being bullied in the school bus and on other parts of the school grounds.
5. It is because of the various acts and omissions of the various School District Defendants noted above, that Plaintiffs seek damages and compensation, Individually and on behalf of the heirs of the Estate of Asher Orrin Michael Brown for these civil rights violations and injuries, all more fully discussed below. Plaintiffs bring this action pursuant to 42 U.S.C. §1983 of the Civil Rights Acts of 1964 for violations of the 1st and 14th Amendments to the United States Constitution and Title IX of the Education Amendments of 1972 (Title IX), 86 Stat. 373, as amended, 20 U.S.C. § 1681 *et seq.* They also bring forth state claims pursuant to Tex. Civ. Prac. & Rem. Code, 71.001 *et. seq.*, for a “Wrongful Death” proceeding and at Tex. Civ. Prac. & Rem. Code, 71.021 *et. seq.* for a “Survival Claim.”

II. JURISDICTION

6. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C.A. §§ 1331 and 1343 because the matters in controversy arise under the laws and rules of the United States as noted above.
7. Finally, this Court has jurisdiction pursuant to Section 1983 and 1988 of the Civil Rights Act, Title and 42 U.S.C §2000d *et seq.*, so as to award attorneys fees and costs to Plaintiffs.

III. VENUE

8. Under 28 U.S.C. § 1391, venue is proper before this Court because the events and omissions giving rise to the Plaintiffs claims occurred in the Southern District of Texas and in the Houston Division.

IV. PARTIES

9. Asher Orrin Michael Brown, when alive, was a citizen of the State of Texas, and was, at all pertinent times, a pupil in the Cy-Fair Independent School District.
10. His parents, and natural heirs in this proceeding are Amy (Brown) Truong who lives at 11727 Cypresswood, Houston, Tex as 77070. She too is a citizen of the State of Texas and a residents of Harris County and brings forward this complaint individually, and as heir and representatives of the Estate of Asher Orrin Michael Brown. Asher is also survived by his natural father, Jason Brown, and brothers Killian and Christian Perry.
11. Defendant John Ogletree is sued in his Official Capacity as President of the School Board at the Cy-Fair Independent School District, which is a school board organized under the laws of the State of Texas and at all times was responsible for the implementation of relevant federal and state law, the care, management and control of all public school business within its jurisdiction as to students like Asher Brown, the training of teachers at the School as to safety of students; and to both train and supervise staff to prevent bullying and harassment based upon religious preference, gender and disability, and for the course of study of students within the district. Plaintiffs reasonably believe he may be served by and through his counsel, Ms. Marney Collins Sims, Office Of The General Counsel, Cy Fair Independent School District, Post Office 692003, Houston, Texas 77269-2003.

12. Defendant David G. Anthony, is sued in his Individual and Official Capacity as the Superintendent of the Cy-Fair ISD, a school district organized under the laws of the State of Texas and at all times required to follow the policies and procedures as set forth by the School Board. Anthony is required to assure that District personnel are sufficiently trained and supervised regarding the care, management and control of all public school business within its jurisdiction, including and especially the duty to assure that staff are sufficiently trained and supervised in regard to school safety; bullying and discrimination based upon religious preference, gender and disability and to assure the reasonable safety and supervision of students within the district, and for the course of study. He too may be served by and through his counsel, Ms. Marney Collins Sims, Office Of The General Counsel, Cy Fair Independent School District, Post Office 692003, Houston, Texas 77269-2003.
13. Defendant Ify Ogwumike, is the Principal of the Hamilton Middle School, and was familiar with the acts and omissions that led to the untimely decease of Asher Orrin Michael Brown. Her job duties, among other things, was to help keep the school environment safe and that school board policies regarding bullying, and harassment based upon religious preference, gender and disability were followed. She too may be served by and through his Counsel, the Ms. Marney Collins Sims, Office Of The General Counsel, Cy Fair Independent School District, Post Office 692003, Houston, Texas 77269-2003.
14. Defendant Alan Durham is the Vice-Principal of the Hamilton Middle School, and was familiar with the acts and omissions that led to the untimely decease of Asher Orrin Michael Brown. His job duties, among other things, was to assist the Principal, and to help keep the

school environment safe and that school board policies regarding bullying, and harassment based upon religious preference, gender and disability were followed. He too may be served by and through his Counsel, the Ms. Marney Collins Sims, Office Of The General Counsel, Cy Fair Independent School District, Post Office 692003, Houston, Texas 77269-2003.

V. HISTORICAL, CULTURAL AND FACTUAL BACKGROUND

15. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.
 - A. THE HISTORY OF BULLYING AND HARASSMENT IN THE UNITED STATES
16. The infamous Columbine High School massacre occurred on Tuesday, April 20, 1999. Eric Harris and Dylan Klebold, both known to have serious emotional disturbances and also known by school officials to be victims of bullying and harassment themselves, embarked on a horrid massacre, killing twelve (12) students and one teacher. They also injured twenty-one (21) other students directly, and three people were injured while attempting to escape. Not surprisingly, the pair then committed suicide.
17. Importantly, the issue of bullying and harassment in schools was already a major concern even before *Columbine*. In 1998, Jared High, a special education student at the Pasco School District, also a victim of incessant bullying, committed suicide.
18. In January of 1999, the U.S. Department of Education (“DOE”) produced a document, *Protecting Students From Harassment And Hate Crime*, which essentially provided for schools a *Checklist* of items, that if they followed, would help to develop a culture that make the schools safer for all students and help to prevent bullying and harassment. These

items included but were not limited to the mandate that Board members, administrators and the superintendent should:

1. recognize the urgency of the problem and identify people/agencies that can help develop effective prevention and response strategies,
2. compile a library of useful materials;
3. work on creating an effective anti-harassment program in consultation with parents, students, and community groups;
4. appoint a Compliance Coordinator to train School personnel;
5. assess the school climate to determine the prevalence of harassment that exists and the potential for hate-motivated violence;
6. adopt a written anti-harassment policy and assure the policy is clearly communicated to all members of the school community; and school personnel and students are held accountable for their actions;
7. develop a formal grievance procedure and takes steps to make sure it is working properly;
8. have instructional personnel use or supplement a district's curriculum and pedagogical strategies to foster respect and appreciation for diversity;
9. institute, improve, or expand age appropriate student activities to prevent or reduce prejudice and conflict;
10. institute specific measures to respond immediately and effectively when harassment occurs to stop the harassment and prevent recurrence;
11. flexibly apply response mechanisms to both the victim and the perpetrator, taking

- into account the parties' ages and the context of the behavior;
12. continually monitor the school climate and promptly address problems that could lead to harassment or violence or that indicate that harassment could be occurring;
 13. appoint appropriate school officials to become familiar with pertinent civil and criminal laws at the state, local, and federal levels, so that they are able to recognize possible civil rights violations, hate crimes and other criminal acts;
 14. develop guidelines and procedures for collaboration with law enforcement officials, make appropriate referrals to outside agencies and designate liaison personnel;
 15. assure Crisis Intervention Plans are in place to minimize the possibility of violence or disruption of the educational process;
 16. have District-level personnel and individual school sites form continuing partnerships with parents and the community to prevent hate crimes and harassing behaviors;
 17. provide Staff training and professional development programs to support the district's anti-harassment efforts;
 18. assure that all harassment incidents are carefully documented and incidents are reported to outside authorities as required; and
 19. regularly assesses the effectiveness of its anti-harassment efforts.
19. Over the course of time the *Office Of Civil Rights* within the United States *Department Of Education* issued numerous opinions on the issues of bullying and harassment, further giving school boards direction as to how to deal with this ongoing threat to not only the safety of children but to assure they were received an education that was not hostile. The

OCR noted that a failure to do any of the following various items could create a hostile educational environment for a student:

1. provide school assemblies and instruction on bullying;
 2. address bullying in classroom intervention settings;
 3. conduct a school bullying assessment;
 4. form a bullying prevention coordination team at school;
 5. include language specifically identifying bullying in the school rules;
 6. develop strategies to prevent bullying in hot spots;
 7. post signs in classrooms prohibiting bullying & listing its consequences; and
 8. encourage students to help classmates who are being bullied & to report bullying.
20. In regard to handling incident once reported, the OCR also noted a school district should:
1. train staff on how to investigate a claim of bullying and harassment;
 2. fully investigate allegations of bullying and harassment;
 3. respond to each allegation promptly;
 4. interview the student and the perpetrator;
 5. keep a written record of the investigation;
 6. taken prompt action against the perpetrators;
 7. remove the perpetrator from the class;
 8. take action to prevent future incidents;
 9. offer to transfer the student or to a different class;
 10. offer counseling for the student victim;
 11. offer counseling to the perpetrator;

12. notify parents of their rights to file grievances;
 13. offer the student a 1:1 aide or “shadow” for protection;
 14. offer social skills training to the student;
 15. offer social skills training to the perpetrator;
 16. offer social skills training to the student’s class;
 17. convene a meeting of the parents, and educators to discuss the issues of bullying and harassment;
 18. use a program to monitor and oversee the resolution of incidents;
 19. hire a temporary paraprofessional to monitor the perpetrator after the incident;
 20. perform a psychological evaluation of the student victim after the incident; and among other things; and
 21. most importantly use any incident of bullying as a “teaching moment” for the perpetrator and even the entire student body.
21. Nevertheless, many school did not take to heart the message of Columbine and the information provided by the Department of Education.
 22. In California in 2000, the Santana High School in California also experienced a school shooting massacre. A student, Charles Williams shot thirteen students, ultimately killing two. He too was a long time victim of bullying at the hands of fellow students. The shooter’s father reported that his son was subjected to taunting and bullying that he reported as more like “torture.”
 23. In New York in 2001, the New York State Legislature heard testimony from Bryan Corley, a 12 year old student from Windham, NY. He testified that for three years he was punched,

kicked, choked, and subjected to verbal attacks because he had a ponytail, wore a rainbow necklace, and had two mothers.

24. In Minnesota in 2003 Jason McLaughlin, a 15 year old student at Rocori High School in Cold Spring, Minnesota, shot and killed two fellow students. He too was a victim of severe bullying. During the investigation his friends spoke of harassment and teasing he suffered mainly revolving around his acne. An expert reported that McLaughlin believed he was doing the morally right thing by shooting his tormentors because the victims represented to him, the bullying he had suffered.
25. Again in Minnesota but in 2005 the fifth deadliest school shooting in United States history occurred when Jeffrey Weise killed his grandfather and grandfather's girlfriend, then drove to school and shot and killed seven other people, five students and two school district employees, wounded five other students and eventually took his own life. He too was a victim of severe and constant bullying, reportedly because of his weight, because dressed in all black, and came from a troubled family.
26. In Missouri in 2006, in a case making national headlines a thirteen year old girl hung herself after being cyberbullied over MySpace.
27. In Ohio in 2007 in what proved to be one of four suicides at one high school, Eric Mohat was continuously bullied until he took his own life at the age of seventeen. Mohat was noted to be a quiet and friendly student who was perceived as gay due to his interest in theatre and music. Most of the bullying took place in one math class and was observed by that teacher. Mohat's parents had previously alerted the school to the bullying their son suffered..

28. Just three weeks after the suicide of her friend Eric Mohat, Meredith Rezak took her own life. Shortly before committing suicide Meredith joined a school club, the Gay-Straight Alliance and told friends and family she thought she might be gay. Eventually she began to realize that she thought indeed she was a lesbian, and shared this with others. She soon became another victim of verbal harassment and bullying at school.
29. This very same High School in Ohio experienced two more student suicides due to be bullying and harassment in 2008.
30. In Kansas in 2007, a 12 year old boy with a cleft palate and a speech impediment, Brandon Myers, was a victim of horrific bullying, hinted to other students and teachers that he was depressed and considering suicide, but no one intervened and he too, committed suicide.
31. In Massachusetts in 2009, Carl Joseph Walker-Hoover's mother discovered his body hanging from their Massachusetts home. All the bullying and taunting is thought to have begun months earlier when Walker-Hoover got into an argument with a female student after his knapsack knocked into a television which then bumped that female student. To make matters worse, Walker-Hoover was at a new school where he had few friends. After this, Walker-Hoover's classmates called him gay on a daily basis, made fun of his clothes and threatened to harm him. Walker-Hoover's mother contacted the school numerous times and made them aware of the bullying. On the day she discovered his body, she was scheduled to meet with the school again to discuss the way her son was being treated at school. Her son was only 11 years old.
32. In May of 2009, a girl at the Cleburne High School, who was known to be depressed committed suicide.

33. In October of 2009, a male student at the nearby Cleburne High School also allegedly a victim of bullying, also committed suicide.
34. Again in Massachusetts and on January 14, 2010, Phoebe Prince committed suicide after being bullied at her Massachusetts school. Prince's aunt had previously notified the school district about the abuse Prince had suffered who failed to intervene.
35. On January 21, 2010 Montana Lance, a 9 year old special education student at the Lewisville Independent School District, also a victim of incessant bullying, hung himself in the nurse's office. When the nurse attempted to open the bathroom door she was not able to, as she did not have a key. This incident was not Montana's first suicidal gesture, and in fact, just a few days before, he told a school counselor that he wanted to kill himself. In addition, about a week before he made the threat, his mother sent a letter to the school principal complaining about the fact Montana had been, and continued to be, a victim of incessant bullying by other children. She also complained before representatives of the school board. Even with this overt and verbalized threat, and with the reports to the school board and his principal about the bullying, and reports to his counselor about his imminent and overt suicidality, not one person intervened in any way to prevent this catastrophe.
36. On March 18, 2010 Ty Fields an 11 year old of the Perkins-Tryon School District in Oklahoma, committed suicide due to incessant bullying, the same day he was suspended from school for trying to fight off a bully. His parents had repeatedly complained to school officials. They were told "boys will be boy," and the bullying went on without school intervention.
37. In New York and on March 24, 2010, Alexis Pilkington, also a victim of severe and

extreme bullying and harassment committed suicide.

38. On March 28, 2010 Jon Thomas Carmichael, a 13 year old middle school student with the Joshua Independent School District, Texas, also a victim of horrible bullying, hung himself. School district. He was bullied in physical education class and in the locker room almost every day, and was also thrown into a dumpster which were observed by staff who did nothing. He was placed upside down in a toilet bowl, had his head flushed several times and just prior to his death was stripped nude, tied up and again placed into a trashcan. The event was videotaped, put on YouTube but was later taken down, at the direction of an unknown staff member, who also failed to report the incident.
39. On May 12, 2010 Jamie Moore of Jenison, Alabama jumped from a bridge near her house and died. She had been a victim of bullying by both boys and girls alike at the school, ostensibly because she was over-weight. She had been locked in a bathroom and was also bullied on a school bus, both known to school officials. Her mother also complained but nothing was done. School Officials also knew that some of the boys in the senior class had a tradition called, the “pig race,” that whoever kissed the biggest, fattest and ugliest girl first, was considered a winner, of this dubious distinction. Just prior to her suicide Jamie was one of the “objects” of the race.
40. On September 9, 2010 Billy Lucas, a 15 year old high school freshman in Greensburg, Indiana hung himself. A friend later reported that a number of students would call him gay and tell him to go kill himself.
41. On September 19, 2010 Seth Walsh of 13 year old middle school student in Tehachapi, California, also picked on for being gay, hung himself.

42. On September 22, 2010 Tyler Clementi, and 18 year old freshman at Rutgers University, jumped to his death from the George Washington Bridge in New Jersey after a video of Tyler having a physical relationship with another male student, was posted on he internet.
43. On September 23, 2010 Asher Brown, a victim of intense and pervasive bullying, committed suicide.¹
44. The Texas Department of Health & Human Services reports that between 2004 and 2008 about 548 teens in Texas committed suicide.
45. The U.S. Center For Disease Control reports that from 1999 to 2006 more than 1,600 teenagers between 10-14, like Asher, committed suicide.

B. THE RESPONSE TO BULLYING IN TEXAS

46. These federal guidelines and directives noted above, over the course of time became integrated into, and became part of, Texas law as well. First, there were increased penalties in the Juvenile Justice system for students who bullied and harassed other students. In addition, the Texas Education Agency (“TEA”) and their various local service centers working under TEA’s purview developed and disseminated a significant amount of support material for school boards as to how to best prevent bullying and harassment in general, and bullying and harassment based upon disability in particular. In addition, school board’s were provided information on how to best respond to bullying and harassment, when it occurred.

¹. Much of the information provided in ¶50 to ¶112 was provided to reporters and posted on the Internet after Asher’s suicide. Plaintiffs will provide the names posted but only the initials of the students are provided in this Original Complaint. Plaintiffs will provide the names upon disclosure and with the appropriate Protective Order.

47. On May 3, 2005, the Texas House of representatives promulgated H.B. 283 which modified and added sections to the Texas Education Code regarding bullying and harassment. It added §25.0341 giving students who were bullied the right to seek a transfer another classroom or campus. It amended Section 37.001 by adding Subsection(a)(7) and (8) requiring a School Board to adopt a “Student Code Of Conduct” which considered, among other things, bullying and harassment, and the duty to have methods (emphasis added) to prevent and intervene in bullying problems. It also amended §37.083(a) by requiring the school district to adopt and implement a “discipline management program to be included in the (school) district improvement plan.” The program must (emphasis added) provide for prevention and education about unwanted verbal aggression and bullying. It took effect no later than September 1, 2005.
48. In addition, school board’s were provided significant information from the Texas Association Of School Boards (“TASB”) on how to best respond to assaults, bullying and harassment, when it occurred. In fact, in September of 2008, TASB disseminated a memorandum entitled *Harassment And Bullying Policies In Public Schools*. It noted the requirement that school’s must have an active policy and practice regarding “student-to-student harassment.” It noted, and among other things that a school district could be liable when there is student-to-student harassment and the district’s “deliberately indifference cause students to undergo harassment or makes them vulnerable to it, and the harassment takes place in a context subject to the school district’s control,” *citing* Davis v. Monroe County Board Of Education. 526 U.S. 629 (1999). In regard to addressing issues of assault, bullying and harassment it referred school districts in Texas to look to the Office of Civil

Rights, *Protecting Students From Harassment And Hate Crimes: A Guide For Schools* (as noted above).

49. In addition TASB also helped the Cy-Fair ISD to develop a number of very specific policies, procedures and practices related to bullying, harassment and sexual assault but not one teacher, coach, counselor or administrator ever used any one of these policies, procedures or practices to help Asher.

B. THE CY-FAIR ISD NON-RESPONSE TO BULLYING AND HARASSMENT

50. Also pursuant to state law, the Cy-Fair ISD completed a “District Improvement Plan” and one for each campus as well, to deal with “Safe Schools.” These plans addressed harassment and bullying.
51. The School Board also developed a policy on “Student Welfare,” addressing among other things, that it would be considered discrimination, if a person is harassed or bullied based upon religious preference, gender or disability. It sets very specific standards for investigations.
52. Many school boards across the country and across our own great state heard this clarion call and made anti-bullying campaigns an integral part of that school district’s practices and customs. Unfortunately, the Cy-Fair Independent School District, Board President and Superintendent failed to train and supervise staff correctly. They failed to put these policies into practice, and only gave these concerns “lip service,” and turned a “blind eye” to the problem. These failures of the School District Defendants to assure students were kept safe and educated in a non-hostile environment not only permitted the bullying of Asher Brown to continue, but created a culture that permitted other students to suffer from bullying and

harassment, as well.

53. In fact the failure of the School District Defendants to supervise and train staff correctly effected staff as well. For instance, in the Spring of 2010 the Houston News Media reported that Wanda Cowand, who had served as a teacher's aide at Fiest Elementary in the Cypress-Fairbanks ISD, started contacting parents of disabled children in a special class known as "life skills," on her own, with these same concerns. Specifically, the district was not doing enough to stop abusive behavior aimed at kids in the program, many of whom could not speak or articulate if they are in pain.
54. After she started sharing her concerns with parents, Adriana Herrera the mother of a 10-year-old "life skills" student discovered that some of the behaviors described by the teacher's aide was captured on Fiest Elementary's security cameras. She continued pushing for the release of that video. Eventually it was released and it shows a teacher dragging her daughter down a carpeted hallway from one classroom to another, pulling her arms behind her and dragging her for more than 12 feet. What was particularly troublesome was that Herrera's daughter, C.H. has a severe vertebra problem that could cause paralysis if certain movements are made with her neck.
55. C.H. also began to display fearful behavior when approached by adults from her own family, due to the abuse she experienced, by staff. Even though other teachers and school district officials knew of this abuse long before Cowand called parents on her own, they failed to punish the aide. When the School District Defendants began their own investigation they also failed to tell any of the parents of these severely disabled children about the inquiry.

56. The aide, Ms. Cowand told investigators with Child Protective Services that what she observed was part of a pattern of abusive practices at the school, where some staff would “pull hair, to pull arms, pull limbs, kick, spit on, do whatever it is they want to do to these children... And it goes on all the time. All the time.” Cowand believed that “staff members taught each other that the effective way of dealing with unruly kids was to pull their arms behind their backs to inflict pain.” She reported that bones could be heard popping when some students were grabbed in this manner. She also said that staff members taught each other where to pinch kids so that bruises would not be discovered by parents.
57. Another parent with a child in this special education class, Carmen Pulger, said she removed her 7-year-old son, D.P. because she realized that the story about students having their arms squeezed and being spit on by staff, were true when he started mirroring the same squeezing and spitting behaviors with her and others.
58. Another parent, who requested anonymity, said she removed her child from Fiest Elementary School with the Cy-Fair ISD, when she learned that her severely disabled son was repeatedly locked in a closet and that parts of his body were squeezed to cause him pain.
59. The spokesperson for the school district, Kelly Durham disputed Cowand's claims that the district did not react correctly when abuse claims were brought forward. She did admit district personnel failed to follow district practice and protocol, by keeping “parents in the dark.” These were not the only problems with the school district failing to respond to parental complaints and keeping things from parents.
60. The culture of bullying and harassment at the Hamilton Middle School goes back for over

a decade. For instance, M.B. was a special education student with a Learning Disability, who also attended the Hamilton Middle School who also experienced excessive bullying over an extensive period of time in the late 1990's. He was constantly threatened with bodily injury on the school bus and even when staff knew about they failed to remove the bully from the bus. He was threatened and bullied when at his locker and while on fields trips. In fact on one trip she heard a student yell out not to talk to M..B. because he was weird. D.B. was a victim of bullying and harassment for over three years even with mother constantly asking school staff to intervene. She remembers at some point being told that the school would only intervene if te parent generated a written complaint. If there is no written complaint, there was no evidence of any verbal complaint, either. Finally, the family retained an attorney who wrote a letter to the school. The family did have to take M.B. off the school bus because the district still couldn't promise he wold be safe, even after the attorney letter.

61. The Hamilton School did display banners that it was a member of the "No Place for Hate" program offered by the Anti-Defamation League for the 2003-2004, 2004-2005, and 2005-2006, school years but none thereafter.
62. In addition, and in May of 2006, Jimmie Leiseth (now "Funk") reports that she repeatedly verbally complained to Cy-Fair ISD Officials about her son being the victim of bullying at her son's middle school (Watkins) and also wrote a number of letters, that he was not safe at school due to the incessant bullying of other students. She reports that her son had his clothing written on, his class pictures ripped and stolen, continued to have property destroyed, was pushed into the girls bathroom, called names, pinned to the floor and done

numerous times well after she gave the school notice of her concerns. Mother reported she finally took him out of Choir for his own safety, because the school officials failed to do recognize the problem and keep her son safe. The family later moved away. They were not the first or last.

63. Jen Weng, a former student with the Cy-Fair ISD, and who now writes for a blog called “racialiscious” stated that a few years ago she was one of the few Asian students in the district and was called “chink,” “gook,” “jap” “snake eyes,” and was frequently given a strange motion called the “ching-chang.”
64. More recently Kris Hoch reports that she made numerous complaints to school district officials, including and especially David Hughes, her school Counselor, that her daughter C.H., also a student at the Hamilton Middle School, was bullied incessantly by both male and female students, and the school failed to do anything. She reports that a number of girls would spit in her food, while in the cafeteria. She was also tripped and pushed into other students, as well as slapped and punched, in the halls, during lunch and even in the classroom. C.H. also received vicious text messages and threatening phone calls. She was called stupid and a lesbian (even though she isn’t) and even though mother complained to school officials innumerable times, it did not stop. C.H. told a teacher, Mrs. Black that she was being bullied and not only did Black not investigate the claims but she chastised C.H. in front of the class, which led to even more bullying. C.H. would come home in tears almost daily. Finally her parents requested a transfer to another school due to the bullying, a request that was known to both Hughes and the School Principle, Ify Ogwumike, but it was denied. Finally, after experiencing another entire semester of the same bullying noted

above, and more complaints by mother, C.H.'s transfer was finally provided. By then she was receiving psychiatric care. In a different middle school she has done well.

65. Eldeen Childers has a son who also attended the Hamilton Middle School. He has Autism and mother reports he frequently comes home from school complaining about how he is treated by other students. Mrs. Childers reports that she complains over and over about this problem. She notes that on one occasion she spoke with her son's teacher, Mrs. Carter, who admitted observing a boy bully her son, but failed to have it investigated (as required by Board policy).
66. G.M, was also a student at this same Middle School, also has a disability and also was a victim of bullying and "gay-baiting" language. G.M. reported that he saw Asher bullied and when he spoke up for him, he was targeted too. His mother, Roxie McDaniel reports she complained to school administrators and staff on numerous occasions, by phone and email, but all to no avail.
67. After Asher's death a blog with FOX26 News a mother called "hairbytristen" reported that her son knew who the bully was and that the bullying against Asher had been going on since the 6th grade.
68. Another parent with the name, "mom2grrreatkidz" wrote that her son was also bullied at a Cy-Fair ISD Elementary School, "on almost a daily basis" and that she wrote "letter after letter" to school officials, and one even to the Superintendent's home, and nothing was done. She too finally moved out of the district.
69. A mother with the name "greatlysaddened" reported that her daughter, also a student at the Hamilton Middle School, was bullied almost every day because of her weight. Daughter

described it more like torture. Importantly, she reports that the bullying was known to school officials but nothing was done.

70. A mother called with the name “paula” reported that she had two children, also students at the Hamilton Middle School. Also, that one was bullied , and she too described more like torture, almost every day because of her weight. She was told by school staff it would be handled but it never was. She noted she had “many problems with the administration,” at this middle school.
71. A man named “joel” reported that he had a relative that attended the Hamilton Middle School and reported that bullying was frequent, pervasive and unaddressed. He also noted that “these kind of actions” were well known to staff before Asher’s death.
72. A mother named “amd74” said that her son was also bullied in the Cy-Fair ISD. Like many other families when she complained she was told that they had no record of anything occurring. When her son, an honor student who had never been in trouble, finally fought back he got removed from the school campus and the bully got away. She noted that Dr. David Anthony was absolutely of no assistance.
73. “cougarmom94” stated her son was also bullied and harassed at the Hamilton Middle School and that David Anthony was of no help to her either. The family eventually called the Sheriff to press charges when a boy assaulted her son for the second time. She noted that many of the kids doing the bullying were on the football team and the Coach, who observed much of it, never stepped up to do anything about it.
74. On a blog with the Houston Press an “anonymous” poster, reported that a girl in Asher’s class “turned in numerous people to the counselor’s office for bullying,” but that nothing

was ever done.

75. A next door neighbor of the Truong's also have a child who was bullied at the Hamilton Middle School. The father of this child reported that he too had attempted to speak with Assistant Principal Alan Durham and was essentially told "they are aware of it and will take care of it..." When the bullying continued he went back to complain to administrators who said they had no record of it.
76. A school teacher, at the Klein Independent School District reports that the Cy Fair ISD has a specific custom and practice to obviate and under-report issues of bullying because it makes it more difficult for the school district to have a higher grade with the Texas Education Agency and receive a "blue-ribbon" or a similar designation. In addition, we understand that reporting of bullying effects grants and even pay raises for teachers.
77. A few days after Asher's suicide Mr. & Mrs. Truong went to the school and met with Mrs. Ify Oqwumike, Principal of the middle school. She specifically told them that "We don't punish our bullies here anymore because I don't want their parents coming up here getting in my face or calling us demanding why their child was punishedwhen they do that, and quite frankly, it makes me feel really awkward and uncomfortable."
78. It is clear that Hamilton Middle School had a culture that condoned bullying and harassment and looked the other way when it occurred. Such a failure evidences conscious indifference to the rights of Asher Orrin Michael Brown, by the Cy-Fair Independent School Board President, its Superintendent and the other individual Defendants. Clearly they failed to effectively train staff and supervise staff.
79. In short, rather than promote a school culture that was sensitive to the issue of bullying and

harassment, and sensitive to and respected the religious preferences of others and was sensitive to the unique and individualized needs of Asher Brown, the School District Defendants actually let fester a culture where bullying and harassment was rampant and when it occurred, not only did not know how to respond but looked the other way on multiple occasions.

80. Though certainly any one of the failures noted herein, when taken in isolation, do not necessarily evidence the school violated the rights of Asher, the failures of the various School District Defendants, jointly and severely, to put into actual practice programs and practices sensitive to bullying and harassment of students absolutely affected the perception of school district officials, personnel and students in this case.

81. It is with all this in background that Plaintiffs now provide their specific “Statement Of Facts” about Asher.

D. STATEMENT OF FACTS ABOUT ASHER ORRIN MICHAEL BROWN

82. Asher Orrin Michael Brown was born on March 1, 1997.

83. Asher had poor social skills, horrible handwriting, was awkward and clumsy, not athletic, had a hard time understanding innuendo or nuance and took things very literal, though he was very intelligent. It was because of these and other symptoms that in 2007 he was assessed to determine whether or not he had Asperger’s Syndrome, a form of Autism.

84. Asher was a victim of incessant bullying by a number of students. He was made fun of because of his size, because he had a lisp, because he was a Buddhist and because ostensibly he was gay.

85. On numerous occasions someone would run up to Asher when he was running track, and a

student would stop short in front of Asher, so that Asher would run into that boy and simulate anal intercourse. Then someone would call out, "Hey faggot, quit trying to f@lk me." Hey guys, Asher is trying too butt f@lk me." On many occasions these incidents were often observed by the Physical Education and coaching staff.

86. Also on numerous occasions Asher would be tying his shoe lace and D.K., D.H., K.C. and another D.K., would come up behind him, simulate anal sex and yell out, "You like this don't you? You f@lking faggot. Is this what Buddha does to you guys, doesn't he? Have you f@lked Buddha today, Boogie boy?," all in reference to being known as a follower of the Buddhist faith. Asher himself filed a complaint to school administrators but there was no record in any of the students' files that any were ever punished. Also G.M. filed a complaint about problems in gym class.
87. Amy did speak to Mr. Hughes specifically about the bullying in physical education class at least one time. She told him about Asher being a Buddhist, being called "Boogie Boy," and all the things noted above.
88. David Truong reports that he went to the school campus on numerous occasions to speak with school district personnel about his concerns that Asher was being bullied. He also left a number of notes with the receptionist (Stacey Costolnick) asking to be contacted by staff, when he was turned away. Mr. Truong never was contacted. Here again, school personnel report in the press there are no such notes.
89. In addition, there are numerous cameras around the school campus. School personnel in the press report that there is no evidence that David Truong ever entered the school and went to administration offices. There are also sign-in sheets that he signed showing his presence at

the school.

90. In addition, Mr. Truong reports he attempted to speak with Asher's Coaches. He reports that on one occasion the receptionist (Stacey Costolnick) told him that a Coach was unavailable. When David pointed to her out that he saw the Coach in the hall, the Coach purposefully walked away from him. When David became exasperated, the receptionist threatened to call security to have him forcefully removed from campus. David again left a note. As usual, there was no response.
91. Mr. Truong also left a message and attempted to speak with the Assistant Principal, Alan Durham. Durham never responded to him either.
92. Durham did receive a call from Mrs. Truong and did call her back on one occasion saying he would investigate her concerns. If he did, he never called her back with the results of his inquiries. Here again, school personnel report in the press there are no such notes.
93. In addition, the mobile phone records of both Amy Truong and David Truong both evidence a vast number of calls to the school district over the past two year prior to Asher's suicide. The records reflect almost no calls from school district personnel in return. There are a few "incoming" calls but all of a very short duration and thus evidence only a cursory, rather than substantive, response. Mrs. Truong reports that many of the calls were from administrative staff stating that someone would call her back, but no one from administrative staff ever did. During the 2009-2010 school year Amy Truong made numerous phone calls to the school and states almost all of them were about bullying.
94. She remembers that she had a very specific conversation with the 7th Grade Counselor, Mr. Hughes about Asher being bullied but nothing was done.

95. During the TAKS testing in 7th grade Asher was getting bullied. He put a jacket over his head and hid under his desk. The incident was never reported or investigated. Nothing happened to the bully.
96. The 8th grade started off the same way, with Asher being bullied in gym class, on the bus and in the cafeteria.
97. On September 10, 2010 Amy sent an email to, and later spoke with the 8th Grade Counselor, Kelly Zeutschell reporting that Asher's brother had been admitted into a hospital for psychiatric treatment and that she was concerned that Asher was effected by his brother's situation and wanted to make sure he didn't fall between the cracks. The Counselor responded that she would speak with all his teachers and make sure to let her know how he was doing. Also, that she would keep a "good eye on him and make sure he's OK." There is nothing in Asher's educational record that this reporting ever occurred. Nor did any one of Asher's teachers ever call Amy. Nor did the Counselor call her.
98. About a week later Amy did get a call from Mr. Bilstein, the 8th Grade Principal that Asher had been in trouble the week before, and then again. Asher was forced to sit at a different table than the other students and forced to wipe table. Apparently he got into a fight with another student after being told that he had sex with another boy, even though he had n't. Apparently, the Counselor never spoke with Bilstein or he with her.
99. Just a few days prior to Asher taking his own life, he was again bullied on the school bus by students R.N. and K.C. Asher was heard to say "if I had a gun, I would kill all these f@ckers..."
100. On the day or so before Asher's death, he was kicked down a flight of stairs and had his

books also kicked and scattered across the ground, with a number of other students watching and leering the offending. But it did not stop there, when Asher attempted to gather himself up he was kicked down another flight of stairs. In response Asher shouted that if the bully didn't apologize then Asher would kill himself.

101. B.Y. filed a written incident report about Asher being kicked down the stairs. His report was not investigated, as otherwise required by school policy. School personnel in the press report that they never received such an incident report.

X. POST-SCRIPT

102. Students reported that they were told that if they spoke about Asher, the bullying and his suicide, they would be punished.

103. The school's press person, Kelly Durham, reported in the press that the school did have a record of Asher was suffering from significant post-traumatic stress disorder due to problems at home. She is married to Alan Durham, Asher's Assistant Principal.

104. The school did finally put up an anti-bullying poster.

105. Asher's friend G.M. became depressed at school and even told one of the other students. A.T. heard about the threat and told the Assistant Principal Bilstein about it. The mother of A.T. called Roxie McDaniel, telling her about her son's statements and about her daughter's concern about him. Bilstein never called her. Shortly thereafter she removed her son from the Hamilton Middle School, like many of the other parents.

106. The main bully W.D. was punished by missing one football game. His parents soon removed him from the district because he was receiving threats from other students.

107. The Harris County District Attorney investigated the case and found that Asher himself had

made at least four written complaints about bullying. Other students had filed complaints about bullying as well.

108. Dr. David Anthony, Superintendent, retired from the school district on Feb. 11, 2011.
109. Amy and David Truong now advocate on behalf of anti-bullying campaigns. They recently spoke before the Texas Legislature about some legislation that is being proposed and will continue to do the same.
110. They would like to see the school district adopt federal standards on bullying and harassment.
111. They would like to see the school district retain a neutral third party to complete a bullying assessment and address those needs accordingly.
112. They would like to see the school adopt an anti-bullying policy called "Asher's Rule."
113. They would like to see the school put up a memorial in Asher's honor where he was kicked down the stairs by the bully.
114. They would like to have a trust fund developed in Asher's name to help in anti-bullying campaigns and for counseling of depressed and suicidal students.
115. On March 16, 2011 a 13 year old in Pittman, Oklahoma, Nicholas Kelo, Jr., who was a victim of bullying for many years, committed suicide.
116. On April 6, 2011, Meagen Allen a fifteen (15) year old student at Leander High School, Texas, killed herself in her school's bathroom after earlier telling her friends she was going to commit suicide. They failed to take her remarks seriously and were shattered later to discover she had gone ahead with her suicide plan. There were comments in the press that she too was a victim of bullying.

VI. STATE ACTION

117. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.
118. The School District Defendants were at all times and in all matters acting under color of state law when they permitted Plaintiff to be subjected to the wrongs and injuries set forth herein.

**VII. CLAIMS PURSUANT TO 42 U.S.C. §1983 AND THE
FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION**

119. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.
120. The School District Defendants, acting under color of law and acting pursuant to customs and policies of the district, deprived Asher Orrin Michael Brown of rights and privileges secured to him by the First and Fourteenth Amendments to the United States Constitution and by other laws of the United States.
121. The acts and omissions of the school district deprived Asher of his rights to life, liberty and bodily integrity guaranteed under the United States Constitution, for which the School District Defendant is liable to Plaintiffs pursuant to 42 U.S.C. §1983 for compensatory monetary damages.

VII. UNCONSTITUTIONAL POLICIES, PROCEDURES , PRACTICES & CUSTOMS

122. Plaintiffs incorporate by reference all the above related paragraphs above with the same force and effect as if herein set forth.
123. Plaintiffs contend that these failures of the School District Defendant to have policies, procedures and practices to protect Asher from a known and inherent dangerous situation, bullying and harassment, violated the First and Fourteenth Amendments of the Constitution

of the United States for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983.

124. Based upon the operative facts, such acts and omissions rise to the level of deliberate indifference and conscious indifference constituting a violation of the First and Fourteenth Amendments of the Constitution of the United States, and for which Plaintiffs seek recovery pursuant to 42 U.S.C. §1983.

VIII. CLAIMS FOR RELIEF PURSUANT TO TITLE IX

125. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.
126. Plaintiffs contend that these failures of the Defendant School District to have policies, procedures, practices and customs in place to assure Asher Orrin Michael Brown was not a victim of harassment based upon his gender, violated his rights pursuant to Title IX of the Education Amendments of 1972 (Title IX), 86 Stat. 373, as amended, 20 U.S.C. § 1681 *et seq.*, upon which Plaintiffs seek recovery.

IX. CLAIMS FOR RELIEF PURSUANT TO THE REHABILITATION ACT OF 1973

127. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.
128. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 and its implementing regulations require that each state that receives disbursements, including the state's political subdivisions such as local school districts, must ensure all students with disabilities are given appropriate and necessary accommodations, pursuant to federal law and rules. To the degree that a policy or practice hinders honest consideration of a disabled child's unique needs, and fails to accommodate that child's disability, it violates Section 504.

129. Plaintiffs assert that because the Defendant school district has failed to identify Asher as a student with a disability, failed to keep Asher safe from harm, and failed to provide him an environment that was not hostile, such failures as noted above, have, together and separately, contributed to violating his rights under Section 504, federal rules and regulations promulgated pursuant thereto, upon which Plaintiffs seek recovery accordingly.

X. VIOLATIONS OF THE TEXAS FAMILY CODE

130. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.

131. Chapter 261 of the Texas Family Code requires that a person who observes a child being abused or neglected has a duty to report such acts or omissions to the appropriate legal authorities.

132. When members of the Cy-Fair ISD school community observed Asher being bullied by other students and failed to report such bullying, as required by the Texas Family Code, they violated that law thereby.

XI. WRONGFUL DEATH CLAIMS

133. Plaintiffs incorporate by reference all the above related paragraphs, as if fully set forth.

134. This claim for damages resulting from the wrongful death of Asher brought by his surviving mother, pursuant to Tex. Civ. Prac. & Rem. Code, 71.001 et. seq. This claim is based upon the facts and legal theories more fully set out herein.

135. At the time of death, the decedent was otherwise in reasonably good health with a normal life expectancy.

136. The decedent was a loving and dutiful child and provided reasonable services to his parents

and siblings.

137. As a result of the wrongful death of Asher his parents and brother did suffer damages, including termination of the parent-child and familial relationship and severe mental anguish, and will, in reasonable probability, continue to suffer damages in the future as a direct result of the wrongful death of their son, in an amount within the jurisdictional limits of the court.

XII. SURVIVAL CLAIMS

138. Plaintiffs incorporate by reference all the above related paragraphs, as if fully set forth.
139. This claim for damages resulting from the death of Asher is brought by his surviving parents as personal representatives of his estate. This claim is based upon the facts and legal theories more fully set out herein.
140. Any person required to be a named Plaintiff in this lawsuit to collect damages under Section 71.021., Tex. Civ. Prac. & Rem. Code, is a named Plaintiff, or will be added accordingly. Plaintiffs brings this survival action pursuant to Tex Civ. Prac. & Rem. Code, Section 71.021, because of personal injuries suffered by the decedent, which resulted in `Asher's death, based upon the facts and legal theories more fully set out above.
141. Plaintiffs seek damages for the conscious pain and suffering and mental anguish that the decedent suffered prior to death and for the reasonable and necessary medical, funeral and burial expenses which were reasonably incurred because of such wrongful death. Plaintiffs seek damages within the jurisdictional limits of the court.

XIII. RATIFICATION

142. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.

143. The School District Defendants ratified the acts, omissions and customs of school district personnel and staff.
144. As a result the School District Defendants are responsible for the acts and omissions of staff persons who were otherwise responsible for the safety of `Asher.

XIV. PROXIMATE CAUSE

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

XV. THE DEFENDANT DESTROYED EVIDENCE

147. The Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.
148. Representatives of the school district staff have destroyed and withheld evidence including but not limited to incident reports filed by Asher and other students about bullying and harassment, videos of Asher and other being bullied and harassed during school and on the bus, documentation of David Truong signing into the school to meet with school officials, videos of David Truong coming to the school to meet with school officials as well as documentation of telephone and email communications from Amy and David Truong to and from school officials.

XVII. PUNITIVE DAMAGES

149. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and

effect as if herein set forth.

150. The acts and omissions of the Defendant school district over the relevant time period, and after receiving repeated notice of such acts and omissions, and now the destruction of such evidence not only shock the conscience, but satisfies criteria for punitive damages, as contemplated by Section 1983.

XVIII. ATTORNEY FEES

151. Plaintiffs incorporate by reference all the above related paragraphs, as if fully set forth herein
152. It was necessary for Plaintiffs to retain the undersigned attorneys to file this lawsuit. Upon judgment, Plaintiffs are entitled to an award of attorney fees and costs pursuant to under 42 U.S.C. §1988(b), 42 U.S.C. §794a, 42 U.S.C. §12131, Title IX and all pursuant to 42 U.S.C. § 2000d et seq.

XVI. DEMAND FOR JURY TRIAL

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

PRAYER

154. **WHEREFORE, PREMISES CONSIDERED**, Plaintiffs pray for judgment against Defendants, jointly and severally, in the manner and particulars noted above, and in an amount sufficient to fully compensate them for the elements of damages enumerated above, judgment for damages, recovery of attorney's fees and costs for the preparation and trial of this cause of action, and for its appeal if required, pursuant to 42 U.S.C. §1988 and 42 U.S.C. § 2000d et seq.; together with pre- and post-judgment interest, and court costs expended herein.

155. Plaintiffs further request that the Defendant School District:

1. adopts policies, procedures, and practices commensurate with the *Dear Colleague Letter*, dated October 26, 2010, from the United States Department of Education Office for Civil Rights;
2. retain a neutral third party to complete a bullying assessment and have that entity report back to the President of the Cypress-Fairbanks ISD School Board and Superintendent so the District may address any issues noted in the assessment;
3. that the School adopt a policy known as “Asher’s Rule” whereby students will be able to report issues of bullying and harassment confidentially;
4. that the school provide a marker designating “Asher’s Place” in the school library, where books and other materials would be made available to students dealing with bullying harassment, and related emotional concerns,

156. And for such other relief as this Court in equity, deems just and proper and for such other relief as the Court may deem just and proper in law or in equity

Respectfully submitted,

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