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10 FILED IN THE
11 U.S. DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON

13 MAY 23 2002

14 JAMES R. LARSEN, CLERK
15 DEPUTY
16 SPOKANE, WASHINGTON

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF WASHINGTON

19 [REDACTED] AND [REDACTED]
20 father and mother,
21 individually and as guardians of their
22 minor child, [REDACTED]

23 Plaintiffs,

24 v.
25 ROYAL SCHOOL DISTRICT NO. 160,
a political subdivision; STEVEN G.
DIAZ, individually; and PRESTON
"KENT" ANDERSEN, individually, and
the marital community composed thereof,

26 Defendants.

27 CS-02-0185-FVS

28 COMPLAINT

29 **COPY**

30 COME NOW the plaintiffs, by and through their attorney of record, Lukins &
31 Annis, P.S., and allege the following:

32 I. PARTIES

33 1.1 Plaintiff [REDACTED] a minor, is a resident of Grant County,
34 Washington.

35 COMPLAINT: 1

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1.2 Plaintiffs [REDACTED] and [REDACTED] are husband and wife and the natural parents of plaintiff [REDACTED]. The [REDACTED] are residents of Grant County.

1.3 Defendant Royal School District No. 160 ("Royal") is a political subdivision organized under the laws of the state of Washington. At all material times relevant hereto, defendant Royal School District operated Royal Middle School in Grant County, Washington.

1.4 Defendant Steven G. Diaz ("Diaz"), a former teacher in the Royal School District, is believed to be a resident of Whitman County, Washington.

1.5 Defendant Preston Kent Andersen ("Andersen"), who is the principal of Royal Middle School ("RMS") and the athletic director of Royal School District, was acting at all times material hereto in both his official and individual capacities. All acts or omissions of Andersen were performed for the benefit of the marital community of Kent and Jane Doe Andersen. Defendant Andersen resides in Grant County, Washington.

II. JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1333, (2), (3) and (4) and 20 U.S.C. § 1681, *et seq.* This Court has pendent jurisdiction over the state law claims.

2.2 All jurisdiction prerequisites to filing suit have been met

2.3 This Court has personal jurisdiction over all parties hereto.

2.4 Venue is proper in this Court under 28 U.S.C. § 1391(b).

COMPLAINT: 2

XII. EIGHTH CAUSE OF ACTION: LOSS OF CONSORTIUM

12.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
allege:

12.2 Plaintiffs [REDACTED] are the natural parents and guardians of Leslie.

12.3 As a proximate cause of the aforementioned acts and omissions, plaintiffs [REDACTED] have suffered a loss of consortium with their daughter, [REDACTED] in an amount to be determined at the time of trial.

XIII. JURY DEMAND

A jury trial is requested.

XIV. PRAYER FOR RELIEF

WHEREFORE, plaintiffs seek the following relief:

1. An injunction against defendant Royal School District ordering it to adopt, in accordance with state and federal regulations, policies and procedures that will prevent such harassment in the future:

2. An award of compensatory damages for past, present, and future medical and health care-related expenses:

3. An award of compensatory damages for past, present, and future pain, suffering, and other general and non-pecuniary damages;

4. An award of damages for past, present, and future loss of enjoyment of life:

5. Punitive damages as allowed under 20 U.S.C. § 1681, *et seq.*:

COMPLAINT: 15

1 11.2 Defendants had a duty to refrain from intentionally or negligently
2 inflicting emotional distress upon [REDACTED]

3 11.3 Royal and Andersen breached this duty by intimidating [REDACTED] with
4 duplicitous threats, interrogating her by a male insurance official, helping to serve
5 subpoenas on behalf of Diaz, failing to provide counseling, failing to adopt
6 appropriate regulations and guidelines to safeguard the rights of students, and failing
7 to offer professional assistance to a thirteen-year-old student who was the subject of
8 sexual abuse by a school teacher on school grounds.

9
10 11.4 Diaz breached this duty by inflicting sexual abuse on [REDACTED] a thirteen-
11 year-old student of his.

12
13 11.5 Defendants knew or in the exercise of reasonable care should have
14 known that their acts would cause severe emotional distress to [REDACTED]

15 11.6 [REDACTED] has suffered severe emotional distress as a proximate cause of
16 defendants' breach.

17
18 11.7 Defendants' acts and omissions were so deplorable as to be considered
19 outrageous.

20
21 11.8 Defendants' acts were done intentionally or with reckless disregard to
[REDACTED] emotional wellbeing.

22 11.9 Defendants breached this duty negligently, as well as intentionally.

23 11.10 As a proximate cause of defendants' acts and omissions, [REDACTED] was
24 damaged in an amount to be determined at trial.

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COMPLAINT: 14

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1 9.3 Royal and Andersen negligently breached this duty by failing to properly
2 supervise their employee, Diaz.

3 9.4 Royal and Andersen knew or in the exercise of reasonable care should
4 have known that Diaz was engaging in illegal sexual conduct with [REDACTED]
5

6 9.5 As a proximate result of Royal and Andersen's acts and omissions,
7 plaintiffs were damaged in amounts to be proven at trial.

8 **X. SEVENTH CAUSE OF ACTION: NEGLIGENCE**

9 10.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
10 allege:

11 10.2 Royal and Andersen had a duty to provide [REDACTED] with a safe school
12 environment free from sexual exploitation by a teacher and to comply with the laws
13 and regulations of the state of Washington including, but not limited to,
14 RCW 28A.230.080, RCW 28A.300.160, RCW 28A.600.010, RCW 28A.600.020,
15 RCW 28A.640.010, RCW 28A.640.020, RCW 26.44.030, and RCW 26.044.040, and
16 the regulations promulgated pursuant to these statutes and to RCW 28A.150.290.
17

18 10.3 Royal and Andersen were negligent in breaching this duty.

19 10.4 As a proximate cause of Royal's and Andersen's negligence acts and
20 omissions, plaintiffs were damaged in an amount to be proved at the time of trial.
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22 **XI. SEVENTH CAUSE OF ACTION: INTENTIONAL AND NEGLIGENT
23 **INFILCTION OF EMOTIONAL DISTRESS****

24 11.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
25 allege:
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COMPLAINT: 13

1 7.7 Royal and Andersen retaliated against [REDACTED] for her oppositional activity
2 by threatening her, failing to ensure her anonymity, and taking affirmative steps to
3 support the position of Diaz rather than protect [REDACTED], the student victim.

4 7.8 As a result of Royal and Andersen's willful violations of RCW 49.60,
5 [REDACTED] has been damaged in an amount to be proven at the time of trial.

6 **VIII. FIFTH CAUSE OF ACTION: NEGLIGENT HIRING**

7 8.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
8 allege:

9 8.2 Royal and Andersen owed a duty to its students and their parents to
10 properly investigate potential teachers before making hiring decisions.

11 8.3 Royal and Andersen negligently breached this duty by hiring Diaz as a
12 teacher for RMS and as a coach for RHS.

13 8.4 Royal and Andersen knew or in the exercise of ordinary care should have
14 known that Diaz posed a threat of becoming inappropriately involved with female
15 students during a particularly vulnerable time in their physical and emotional
16 development.

17 8.5 As a proximate cause of defendants' negligence, plaintiffs were damaged
18 in amounts to be proven at trial.

19 **IX. SIXTH CAUSE OF ACTION: NEGLIGENT SUPERVISION**

20 9.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
21 allege:

22 9.2 Royal and Andersen had a duty to properly supervise their employees.

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COMPLAINT: 12

1 6.7 Royal and Andersen's acts and omissions were taken both in their official
2 capacities and individually.

3 6.8 As a direct and proximate cause of the acts and omissions of Royal and
4 Andersen, [REDACTED] has been damaged in amounts to be determined at trial.
5

6 6.9 Royal's and Andersen's acts and omissions were wanton, willful, or done
7 with reckless disregard for [REDACTED] rights, and therefore subject Royal and Andersen
8 to an award of punitive damages.

9 **VII. FOURTH CAUSE OF ACTION: VIOLATIONS OF THE WASHINGTON**
10 **LAW AGAINST DISCRIMINATION RCW 49.60**

11 7.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
12 allege:

13 7.2 Royal and Andersen violated RCW 49.60, *et seq.*, by denying [REDACTED]
14 equal access to public services because of her sex and gender.

15 7.3 Royal and Andersen maintained a sexually hostile educational
16 environment.

17 7.4 Royal and Andersen knew or in the exercise of reasonable care should
18 have known of this sexually hostile educational environment.

20 7.5 Royal and Andersen failed to take any actions to protect plaintiff from
21 this sexually hostile educational environment.

22 7.6 [REDACTED] opposed this sexually hostile educational environment by reporting
23 it to her parents, who reported it to Royal.

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COMPLAINT: 11

1 5.2 Royal and Andersen are directly liable to [REDACTED] under Title IX, 20 U.S.C.
2 § 1681, *et seq.*, and RCW 28A.640.010, *et seq.*, by subjecting [REDACTED] to discrimination
3 and sexual harassment.

4 5.3 Royal and Andersen had actual knowledge of Diaz's actions.

5 5.4 Royal and Andersen showed deliberate indifference to [REDACTED]; in light of
6 their actual knowledge.

7 5.5 As a direct and proximate cause of this deliberate indifference, [REDACTED] has
8 been damaged in an amount to be proven at trial.

9
10 **VI. THIRD CAUSE OF ACTION: VIOLATIONS OF PLAINTIFFS' EQUAL**
11 **PROTECTION RIGHTS UNDER 42 U.S.C. § 1983**

12 6.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
13 allege:

14 6.2 [REDACTED] has a right to equal access public education under the Fourteenth
15 Amendment to the United States Constitution.

16 6.3 [REDACTED] right to equal access to public education cannot be breached
17 because of her sex or gender.

18 6.4 Royal and Andersen had a special relationship with [REDACTED] that included
19 their responsibility to take affirmative action to ensure her equal access to public
20 education.

21 6.5 Royal and Andersen were deliberately indifferent to [REDACTED] rights to
22 equal access to public education.

23 6.6 Royal and Andersen, "under the cloak of state authority," violated
24 [REDACTED] equal protection rights due to her sex and gender.

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26 COMPLAINT: 10

1 3.27 As a proximate cause of defendants' actions or inactions, [REDACTED] has
2 suffered serious damages including, but not limited to, mental anguish, anxiety,
3 humiliation, embarrassment, stigmatization, and loss of self-esteem, all of which are
4 ongoing and will likely continue into the future. As a proximate cause of the
5 defendants' actions or inactions, plaintiffs have incurred special damages for
6 psychological treatment that is ongoing and will continue into the future. As a
7 proximate cause of the defendants' actions or inactions, [REDACTED]
8 have suffered a loss of consortium with their daughter.

10 **IV. FIRST CAUSE OF ACTION: BATTERY**

11 4.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
12 allege:

13 4.2 Diaz intentionally and willfully committed several batteries upon [REDACTED]
14 by engaging her in non-consensual sexual activities.

16 4.3 At the times of the above alleged batteries, [REDACTED] was thirteen years old
17 and not competent to give consent.

18 4.4 As a direct and proximate cause of the batteries committed against [REDACTED]
19 she has been damaged in amounts to be determined at trial.

20 **V. SECOND CAUSE OF ACTION: DISCRIMINATION ON THE BASIS OF**
21 **SEX IN VIOLATION OF TITLE IX, 20 U.S.C. § 1681 AND RCW 28A.640.010**
22 **ET SEQ.**

23 5.1 Plaintiffs, as above named, reallege the preceding paragraphs and further
24 allege:

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26 COMPLAINT: 9

1 carrier, and that insurance carrier conducted the investigation for Royal. It
2 interviewed [REDACTED] for two days in a row. The only people in the room with this
3 thirteen-year-old girl were the male investigator and Andersen. [REDACTED] was
4 intimidated and told that if she lied, she would be sent to jail and her parents would
5 lose their farm.

7 3.23 Diaz was charged with various crimes, including rape of a child in the
8 second degree and sexual misconduct with a minor in the first degree.

9 3.24 Shortly before the criminal trial, Diaz pled guilty to fourth degree assault
10 (with sexual motivation). He was ordered to surrender his teaching certificate and was
11 ordered not to be in direct contact with minor females at any time unless there is
12 immediate and continuous supervision by a responsible adult who is aware of the
13 sentencing restrictions and provisions.

15 3.25 The aforementioned acts and conduct by Diaz constituted sexual
16 harassment and discrimination about which Royal knew or should have known.
17 Royal's and Andersen's intentional indifference to the sexual acts of Diaz and to the
18 rights of [REDACTED] amounted to tacit approval and involvement by these defendants, who
19 were acting in their official capacities as agents and/or employees of Royal.

21 3.26 At all times material hereto, there existed a special relationship between
22 Royal and [REDACTED] whereby Royal had an affirmative duty, under federal and state law,
23 to take corrective actions to protect [REDACTED] from harm, including reasonable steps to
24 protect [REDACTED] from sex discrimination, sexual harassment, and sexual abuse, and to
25 ensure equal access to education.

26 COMPLAINT: 8

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1 believed Diaz and [REDACTED] who denied being alone together. Andersen arbitrarily
2 decided the reporting students were lying and performed no further investigation.
3 During the following weeks, one of the reporting student's mothers telephoned
4 Andersen and stressed that her daughter was telling the truth and Andersen needed to
5 look further into the issue. Andersen ignored the mother's requests.
6

7 3.19 On March 30, 2001, Diaz forced [REDACTED] to have oral sex with him,
8 disregarding her wishes to stop. This incident made [REDACTED] very distraught and caused
9 her to question whether Diaz really loved her or was just using her.

10 3.20 In early April 2001, [REDACTED] confided in a middle school friend through an
11 e-mail that graphically described the sexual relationship with Diaz. It also described
12 [REDACTED] confusion over whether Diaz loved her or was taking advantage of her.
13 [REDACTED] confidante, who was troubled by the exploitative relationship between Diaz
14 and [REDACTED] gave a copy of the e-mail to her mother, who handed it over to Andersen.
15

16 3.21 During all times material hereto, Royal negligently and with intentional
17 indifference to the health and welfare of its students failed to maintain approved
18 sexual harassment policies and complaint procedures, in violation of both state and
19 federal laws.
20

21 3.22 After receiving the e-mail describing the sexual relationship between
22 Diaz and [REDACTED], Andersen failed to contact law enforcement officials, failed to
23 comply with appropriate federal and state guidelines for the handling of a sexual
24 abuse incident in a school, and failed to refer [REDACTED] to a qualified individual capable
25 of providing assistance to [REDACTED]. Instead, Andersen contacted Royal's insurance
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COMPLAINT: 7

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1 been "infatuated" with Diaz. Additionally, Andersen disregarded the concerns
2 expressed by parents and community members regarding rumors of Diaz's
3 inappropriate behavior with high school girls.

4 3.14 Despite the fact that Diaz had told defendant Andersen of his desire not
5 to have [REDACTED] in his class, [REDACTED] remained in his class and Diaz began to spend more
6 time alone with [REDACTED] after school and continued to groom her for his own sexual
7 purposes.

8 3.15 Diaz and [REDACTED] had inappropriate sexual relations on four separate
9 occasions, including oral sex, from February 12, 2001, through March 30, 2001, on
10 school grounds, in Diaz's classroom, with the door locked.

11 3.16 Diaz manipulated [REDACTED] into believing that he loved her and cared about
12 her. He took advantage of her romantic feelings so that she would keep the relation-
13 ship between them secret.

14 3.17 On or about February 23, 2001, two different students went to two
15 different teachers at RMS and informed the teachers of their concerns regarding an
16 inappropriate relationship between Diaz and [REDACTED]. Both teachers reported to
17 Andersen what the students had told them.

18 3.18 Andersen failed to notify proper authorities, failed to notify [REDACTED]
19 parents, failed to have the matter investigated by qualified individuals, and failed to
20 interview persons with knowledge about the relationship. Instead, Andersen, who
21 failed to appreciate the dynamics of an illicit teacher/student relationship and the
22 importance of secrecy to the preservation of this exploitative relationship, simply
23

24 26 COMPLAINT: 6

1 have known how important it is to hire middle school teachers with character and
2 integrity to serve as role models for their students during a critical time in their
3 physical, emotional, and sexual development.

4 3.11 During her eighth grade year (2000-2001) school year, [REDACTED] was
5 thirteen years old. She was an excellent student, [REDACTED]
6 [REDACTED] and had no record of behavioral problems in class. She was assigned
7 to Diaz's class.

8 3.12 Shortly after [REDACTED] began her eighth grade year (2000), Andersen
9 received a telephone call from an unidentified parent warning him that [REDACTED] was
10 "infatuated" with Diaz. Andersen informed Diaz that [REDACTED] was "infatuated" with
11 him and instructed Diaz not to be alone with [REDACTED]. However, Andersen failed to
12 investigate the nature of any relationship to determine what else needed to be
13 accomplished to protect RMS's student and its teacher. Andersen failed to inform
14 [REDACTED] parents that another parent had made a specific telephone call to express
15 concern about their daughter's infatuation with Diaz. Anderson also failed to monitor
16 the situation and thus did not discover that, despite Andersen's instructions, Diaz was
17 spending time alone with [REDACTED].

18 3.13 In November 2000, Diaz asked Andersen to remove [REDACTED] from his
19 class. Andersen not only again failed to contact [REDACTED] parents, he conducted no
20 investigation into Diaz's reason for making such a request, especially given the fact
21 that [REDACTED] was an excellent student with no history of behavioral problems in the
22 classroom. Andersen also disregarded the fact that [REDACTED] had been reported to have
23

24 COMPLAINT: 5

1 3.6 Several Royal parents and respected community members personally
2 cautioned Andersen about hiring Diaz as a teacher or as a coach.

3 3.7 Royal parents and community members, parents, and teachers at
4 Highland made Andersen aware of repeated rumors that Diaz had improper contact
5 with high school girls at Highland and also at Selah, where he had coached prior to
6 coaching at Highland. Andersen was also aware that Highland had refused to renew
7 Diaz's employment contract despite his apparent success as a coach.

8 3.8 Royal's investigation and hiring of Diaz as a teacher and as a coach was
9 biased, tainted, and conducted with deliberate indifference to the health and safety of
10 the students at Royal. Andersen failed to contact Highland's principal, who would
11 have told Andersen not to hire Diaz but instead to continue to search for other
12 candidates. Other respected members of the community who had knowledge of
13 rumors regarding Diaz's sordid background also told Andersen to continue to search
14 for other candidates. Andersen disregarded community members' advice to continue
15 searching for an individual whose background was not as questionable or
16 controversial as that of Diaz.

17 3.9 In summer 2000, Royal, relying upon the investigation of Andersen,
18 hired Diaz as a teacher in the middle school, and he began functioning as the head
19 coach of the high school basketball team.

20 3.10 Royal knew or should have known that middle school students are
21 generally vulnerable and impressionable because of their age and because they are
22 influenced by our modern sexualized culture. Royal and Andersen knew or should

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COMPLAINT: 4

III. OPERATIVE FACTS

3.1 Plaintiffs, as named herein, reallege the preceding paragraphs and further
allege:

3.2 During all times material hereto, Royal received federal assistance and state funding. Its acts and omissions, as alleged herein, were under color of statute, regulation, custom, or usage of the state.

3.3 Diaz (DOB 06/03/75) was the high school varsity basketball coach at Highland School District (“Highland”) for the 1999/2000 school year. Despite having had a successful year, culminating in leading the boys’ team to competition in the state championship tournament, Diaz was released from Highland immediately following the tournament. There had been rumors within the Highland community of inappropriate contact between Diaz and high school girls.

3.4 Following Diaz's release from Highland, Andersen, after receiving approval from the Royal School Board, fired the head coach of the boys' basketball team at Royal High School ("RHS").

3.5 During approximately June 2000, Andersen introduced Diaz to the RHS basketball team as its new head coach for the 2000/2001 basketball season, without having been interviewed or evaluated by the school board and approved for hire, which deviated from the customary practice involved in hiring a new coach. As Royal's Athletic Director, Andersen wanted a winning basketball team and was set on Diaz becoming the boys' head basketball coach at RHS.

COMPLAINT: 3

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1 6. An award of attorney fees and costs as allowed under 42 U.S.C. § 1983
2 and RCW 49.60, *et seq.*; and

3 7. For such other and further relief as the Court may deem just and
4 equitable.

5 DATED this 2nd day of April, 2002.

6 LUKINS & ANNIS-, P.S.

7 By 

8 ROBERT J. CROTTY, WSBA #09113
9 TAMI J. WILCOX, WSBA #28367
10 BURKE D. JACKOWICH, WSBA# 31722
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COMPLAINT: 16

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