

STATE OF NORTH CAROLINA

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF NEW HANOVER 2019 JUL 30 P 1:33 FILE NO: 19 CVS 2745

JOHN DOES 1 to 5, inclusive, and JOHN DOE 6, by and through his *Guardian ad litem*, C.J., all individually and on behalf of all others similarly situated;

Plaintiffs,

v.

THE NEW HANOVER COUNTY BOARD OF EDUCATION; MICHAEL EARL KELLY; JAMES RICKIE "RICK" HOLLIDAY; TIMOTHY SCOTT MARKLEY; and MIKE ROES 1 to 10, inclusive;

Defendants.

FIRST AMENDED COMPLAINT

Filed Pursuant to N.C. Rules of Civil Procedure, Rule 15(a)

Jury Trial Demanded

Class Action

COME NOW the Plaintiffs, by and through counsel, and for their claims against the Defendants, and each of them, state and allege, upon information and belief, the following facts:

INTRODUCTION

Despite New Hanover County Schools officials having ample notice that high school science teacher MICHAEL EARL KELLY ("KELLY") was acting in a sexually inappropriate manner, KELLY sexually abused students in our local high schools for over two decades. On June 25, 2019, KELLY pleaded guilty to dozens of sexual assaults and crimes he perpetrated on young boys who were his students. During this hearing, the community was shocked to learn that the New Hanover County Schools system – managed by its administrators and controlled by the New Hanover County Board of Education – had been made well aware of and was well acquainted with KELLY'S deviant sexual habits.

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY
BY: *Jeanne M. Heckart*
Deputy Clerk of Superior Court

The New Hanover County Schools' administration failed to comply with its legal obligations to report KELLY'S behavior to law enforcement, failed to perform adequate investigations, and failed to take action to remove this pedophile from our schools. Instead, the administration ignored multiple complaints brought by students, parents and even staff and ignored evidence that they had been provided with or otherwise had access to – doing nothing to prevent KELLY from preying on future victims.¹

Astoundingly, as they had done previously when confronted with band director Richard Priode's sexual abuse allegations, administrators within the New Hanover County Schools did nothing to stop KELLY. Instead, they made the situation worse – by assigning KELLY to a smaller high school where he had more private access to a more vulnerable student body. KELLY repeatedly was given awards, enhancing his stature, and in the small Isaac Bear environment, he was bequeathed extraordinary prestige and authority.

Of course, KELLY took advantage of his position and exploited groups of young boys, year after year. These current and former students are suffering severely. Many have debilitating

¹ The following is an exchange between Assistant District Attorney Connie Jordan and Judge Nobles at KELLY'S sentencing hearing:

MS. JORDAN: I will point out to the court that it is also really concerning and so upsetting and disturbing that even the defendant [KELLY] admitted that he had been accused of exposing himself right when he started at Isaac Bear, that the school had done an investigation. I could not find any indication that anything had been reported to law enforcement, and they had cleared the defendant of that accusation. And clearly that accusation was correct, which then let the defendant continue offending on students for another more than [sic] decade with his time at Isaac Bear.

I would also, your Honor, hand –

THE COURT: So you are condemning the school?

MS. JORDAN: I think – I think based on what the defendant has said, it's hard to get around the fact –

THE COURT: I don't have any problem with that.

Transcript, at page 81, lines 4-18.

psychological injuries, such as depression, along with suicidal thoughts and tendencies. Many self-mutilate, and nearly all report severe relationship issues, anxiety, and trouble in school or work.

The New Hanover County Board of Education has failed to rectify this tragedy, and school officials have issued public statements denying they were notified about KELLY'S destructive sexual behavior. The denials are directly contradicted by parents and students involved in those interactions. After more information has emerged and the school board's story began to unravel, one school official has "resigned," and an SBI criminal investigation has commenced.

The Plaintiffs in this action have been forced to file this lawsuit to pursue justice for themselves and other students who were assaulted and abused by a sexual predator who was coddled by those whose duty it was to protect our most precious resource – our children.

THE PARTIES PLAINTIFF

1. At all times relevant hereto, Plaintiff JOHN DOE 1 is, and was, a resident and citizen of New Hanover County, North Carolina.

2. Between 2014 and 2017, Plaintiff JOHN DOE 1 was a minor student at Isaac Bear Early College High School ("IBECHS"), where Defendant KELLY served as his homeroom teacher and science teacher.

3. At all times relevant hereto, Plaintiff JOHN DOE 2 is, and was, a resident and citizen of New Hanover County, North Carolina.

4. Plaintiff JOHN DOE 2 was a minor at the time of his attendance at IBECHS from 2006 to 2010 and also had Defendant KELLY assigned as his science teacher.

5. At all times relevant hereto to the factual allegations occurring at IBECHS, Plaintiff JOHN DOE 3 was a resident and citizen of New Hanover County, North Carolina.

6. At the present time, Plaintiff JOHN DOE 3 is a resident of Wake County, North Carolina.

7. Like the others, Plaintiff JOHN DOE 3 was a minor during the time of his IBECHS attendance from 2006 to 2010 and had Defendant KELLY as his science teacher.

8. At all times relevant hereto, Plaintiff JOHN DOE 4 is, and was, a resident and citizen of New Hanover County, North Carolina.

9. Between 2014 and 2018, Plaintiff JOHN DOE 4 was a minor student at Isaac Bear IBECHS, where Defendant KELLY served as his science teacher.

10. At all times relevant hereto, Plaintiff JOHN DOE 5 is, and was, a resident and citizen of New Hanover County, North Carolina.

11. Between 2010 and 2014, Plaintiff JOHN DOE 5 was a minor student at IBECHS, where Defendant KELLY served as his homeroom teacher and as his science teacher.

12. At all times relevant hereto, Plaintiff JOHN DOE 6 is, and was, a resident and citizen of New Hanover County, North Carolina.

13. Beginning in 2015, Plaintiff JOHN DOE 6 was a minor student at IBECHS, where KELLY was his teacher.

14. Plaintiff JOHN DOE 6 appears in this action by and through his natural mother and *Guardian ad litem*, C.J., who is likewise a resident and citizen of New Hanover County, North Carolina.

15. Due to the sensitivity of the allegations involved herein and due to the intense media and public interest associated with this litigation, all six Plaintiffs have chosen to use a pseudonym

to protect their identities from disclosure in the media and among the public.² Simply put, disclosure of the Plaintiffs' true names would only cause additional trauma and would have a chilling effect on the participation of the putative class in this proceeding.

THE PARTIES DEFENDANT

16. Defendant THE NEW HANOVER COUNTY BOARD OF EDUCATION ("NHCBOE") is the official county agency responsible for managing the County's 45 elementary, middle and high schools, known collectively as the New Hanover County Schools.

17. At all times relevant hereto as further alleged herein, Defendant NHCBOE was the employer for Defendant KELLY, Defendant JAMES RICKIE "RICK" HOLLIDAY ("HOLLIDAY"), and Defendant TIMOTHY SCOTT MARKLEY ("MARKLEY").

18. At all times relevant hereto, Defendant KELLY was a resident and citizen of New Hanover County, North Carolina.

19. Defendant KELLY is currently incarcerated in the North Carolina Department of Public Safety's Central Prison in Wake County, North Carolina, where he is serving a sentence of up to 31 years for crimes he committed as described herein.

20. At all times relevant hereto, Defendant HOLLIDAY is and was a citizen and resident of New Hanover County, North Carolina.

21. Defendant HOLLIDAY is sued in his official capacity.

22. Prior to July 1, 2019, and for the last 37 years, Defendant HOLLIDAY held a number of positions with the Defendant NHCBOE, including most recently as the Deputy Superintendent of Schools.

² Prior to filing this action, Plaintiffs provided notice to attorneys for New Hanover County Board of Education of the use of such pseudonyms and expressed their willingness to provide the identities of the clients described in this Complaint subject to a Stipulated Protective Order in order to prevent disclosure of these identifies to anyone outside of this litigation.

- a. On or about July 1, 1982, Defendant HOLLIDAY began his career with New Hanover County Schools as a high school teacher and coach at Laney High School.
- b. In July of 1988, Defendant HOLLIDAY was promoted to Assistant Principal at Laney High School, where he would have been at the time of KELLY’S hire.
- c. In 1996, Defendant HOLLIDAY became the principal of Williston Middle School, but then returned as Principal of Laney High School in July of 1998, where he supervised Defendant KELLY.
- d. In July of 2004, HOLLIDAY assumed the title of Executive Director of Institutional Services for New Hanover County Schools.
- e. In 2007, HOLLIDAY became the Assistant Superintendent of Student Support Services.
- f. From September 2013 until his resignation on July 1, 2019, HOLLIDAY served as Deputy Superintendent.

23. In his position as Deputy Superintendent, HOLLIDAY was part of the “administration” of New Hanover County Schools, along with Defendant MARKLEY.³

24. At all times relevant hereto, Defendant MARKLEY is, and was, a resident of New Hanover County, North Carolina.

25. Defendant MARKLEY is currently the Superintendent of the New Hanover County Schools, a position he has held since 2010, and he reports directly to Defendant NHCBOE.

26. Defendant MARKLEY is sued in his official capacity.

³ See New Hanover County Schools, About Us, Administration webpage, available at: <https://www.nhcs.net/about-us/administration>. (Last Visited July 19, 2019.)

27. In this position, Defendant MARKLEY oversees executive level functions of the entire school system which includes the responsibility to supervise Defendant HOLLIDAY as Deputy Superintendent. In fact, at all times while Defendant KELLY was a teacher at IBECHS, Defendant HOLLIDAY reported directly to Defendant MARKLEY.

28. At all times relevant hereto, Defendant MARKLEY was obligated to follow the rules, policies and procedures of New Hanover County Schools, as well as pertinent state and federal regulations. Among many things, those regulations require that officials within the school district report certain acts occurring on school grounds. As the supervisor of Deputy Superintendent HOLLIDAY, MARKLEY was ultimately responsible for ensuring that HOLLIDAY performed his job consistent with state and federal law.

29. The true names and capacities, whether individual, corporate, associate, partnership, or otherwise, of Defendants sued herein as MIKE ROES 1 through 10, inclusive, are unknown to Plaintiffs, who therefore sue said Defendants by their fictitious names. Plaintiffs allege that Defendants ROES 1 through 10 are in some manner responsible for their injuries and losses and are named in accordance with the provisions of N.C. Gen. Stat. § 1-166. Plaintiffs will amend their complaint to show the true names and capacities of such fictitiously named Defendants as they are ascertained.

30. Plaintiffs further allege that the Defendants KELLY, HOLLIDAY, MARKLEY and ROES 1-10, and each of them, were the agents, contractors, and/or employees of NHCBOE, and the acts and omissions herein alleged were done by them, through such capacity and within the scope of their authority, and that such conduct was ratified by Defendant NHCBOE's agents, and that each of them is jointly and severally liable to the Plaintiffs. As such, each Defendant

named in this Complaint is legally responsible for the acts of the others causing permanent harm and irreparable injury to the Plaintiffs and others within the New Hanover County Schools system.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

31. Pursuant to N.C. Gen. Stat. § 1-75.4, jurisdiction is proper over each Defendant as all are residents of the State of North Carolina and the acts and omissions alleged herein occurred in the state.

32. Pursuant to N.C. Gen. Stat. §§ 1-77(2) and 1-82, venue is proper in this Court as Plaintiffs are residents of New Hanover County, or else having consented to venue here, as all or nearly all of the wrongful acts giving rise to this Complaint occurred here.

33. Plaintiffs have satisfied, met or performed all conditions precedent to the filing of this action, including filing this action within the time frame allowed by any applicable limitation periods.

34. Defendant NHCBOE has waived any claim of governmental or sovereign immunity by purchasing insurance to cover these claims, as have the public official Defendants, e.g., MARKLEY and HOLLIDAY.

TOLLING OF THE STATUTE OF LIMITATIONS

35. At all times relevant hereto, Defendant KELLY'S sexual assaults of the Plaintiffs occurred while they were minor children. The statute of limitations is tolled until the minor children attain the age of majority.

36. As to all Defendants other than KELLY, the statute of limitations is tolled due to the Defendants' fraudulent concealment and the continuing violations doctrine.

37. At all times relevant hereto, NHCBOE, by and through its authorized agents, servants, and/or employees, officers, and directors turned a blind eye to KELLY'S sexual abuse

of minor students and repeatedly made the decision not to document any of the complaints, not to intervene, not to properly investigate, and not to act in any other appropriate manner in response to the complaints.

38. NHCBOE, by and through its authorized agents, servants, and/or employees, officers, and directors had a duty to protect its minor students and to provide a safe educational environment for the students. Therefore, NHCBOE had a duty to disclose KELLY'S predatory behavior toward his students to parents and students of IBECHS.

39. NHCBOE, by and through its authorized agents, servants, and/or employees, officers, and directors, concealed and failed to disclose KELLY'S sexual abuse of minor students, thereby allowing the abuse to continue and be perpetrated on new students every year.

40. NHCBOE held KELLY out as an upstanding teacher, role model, and father-figure for students, even naming him Teacher of the Year in 2016.

41. NHCBOE knew that by concealing its knowledge of KELLY'S sexual abuse, it was misrepresenting the safety of IBECHS to students, including Plaintiffs and the putative Class and their parents.

42. NHCBOE actively concealed from students and their parents the information it had regarding KELLY and calculated and intended that its concealment would deceive minor students and their parents, including Plaintiffs and the putative Class, about the safety of IBECHS.

43. At all times relevant hereto, Plaintiffs and the putative Class did not know that the representations made by NHCBOE were false and were unaware of NHCBOE'S material omissions.

44. Plaintiffs and the putative Class justifiably relied on NHCBOE'S concealment and were in fact deceived by NHCBOE'S concealment to their detriment.

45. If Plaintiffs and the putative Class had been told what NHCBOE knew about KELLY, Plaintiffs and the putative Class would not have been permitted to have any contact with KELLY.

46. Plaintiffs and the putative Class were prejudiced by their reliance on these material misrepresentations and omissions and were prevented from discovering their sexual abuse and from bringing this lawsuit.

47. As part of Defendants' wrongful concealment of KELLY'S past sexual abuse of minor students and propensity to abuse his minor students, NHCBOE took a variety of actions with the intent and effect of making KELLY'S conduct harder to detect and ensuring that additional students, including Plaintiffs and the putative Class, with whom KELLY came into contact would be sexually abused, including, but not limited to:

- a. Allowing KELLY to remain in a position of authority and trust with unfettered access to minor students after Defendants knew or should have known that he engaged in sexual misconduct.
- b. Holding KELLY out to Plaintiffs, to the putative Class and to the public at large as a trustworthy person worthy of respect and praise who was able to have unsupervised access to minor students, including by naming KELLY Teacher of the Year at IBECHS in 2016.
- c. Allowing KELLY to have contact with students after school hours and both on and off the school's campus.
- d. Actively concealing from students, their parents, law enforcement, and the public at large KELLY'S previous reports of sexual misconduct and abuse and his propensity to sexually abuse his minor students.

- e. Failing to properly investigate or gather additional facts about KELLY, such as prior complaints and investigations relating to KELLY'S sexual misconduct.
- f. Failing to put in place safety measures that would have avoided acts of sexual misconduct, such as by prohibiting KELLY from any contact with minor students after school hours or off campus or prohibiting KELLY from using the boys' restroom with his students.
- g. Failing to train teachers, staff, agents, and employees to recognize and report sexual abuse of students and/or creating an environment wherein employees do not report sexual abuse allegations against teachers for fear of retaliation or other consequences.

48. At the time the sexual misconduct occurred, KELLY concealed the existence of harm to Plaintiffs and the putative Class by making material misrepresentations to Plaintiffs and the putative Class, including, but not limited to:

- a. Misrepresenting to minor students that his acts and conduct were normal, acceptable, fun behavior for students and him to engage in, such as by making a game out of exposing genitals to others and earning points for doing so and using popular social media applications, such as Snapchat, to send pictures and videos of each other's genitals.
- b. Misrepresenting that his actions were for the purpose of mentoring with and bonding with his minor students.

49. These material misrepresentations were false because KELLY sexually abused his minor students for his own sexual gratification.

50. When KELLY made these misrepresentations, he planned, knew, and intended that they would deceive.

51. Plaintiffs and the putative Class reasonably relied on KELLY'S misrepresentations to their detriment. If they had known that KELLY was a sexual predator and not a trustworthy role model, they would never have allowed the conduct to continue and/or would have reported it.

52. Plaintiffs and the Class were in fact deceived.

53. Plaintiffs and the putative Class were prejudiced by their reliance on these material misrepresentations and were prevented from discovering their sexual abuse and from bringing this lawsuit.

54. KELLY carried out this predatory behavior as an employee, agent, and/or representative of the NHCBOE and in the course and scope of his employment. Defendant NHCBOE is therefore vicariously liable for KELLY'S actions under the doctrine of *respondeat superior*.

55. Defendants' misrepresentations and omissions constitute fraudulent concealment.

56. The statute of limitations for each of Plaintiffs' and the putative Class' cause of action was equitably tolled, and Defendants are equitably estopped from asserting the statute of limitations as a defense.

57. Further, KELLY'S sexual abuse of students continued throughout his 26 years of employment with NHCBOE, and the statute of limitations was tolled based on the continuing violations doctrine.

KELLY'S SEXUALLY INAPPROPRIATE CONDUCT

58. In 1992, Defendant KELLY was hired by the New Hanover County Board of Education to teach science classes at E.A. Laney High School ("Laney High School").

59. Defendant remained at Laney High School until 2006, when he was transferred to IBECHS located near the campus of the University of North Carolina at Wilmington.

60. IBECHS is a partnership between the New Hanover County Schools and the University of North Carolina at Wilmington. During their four years at the school, students typically take their first two years of required high school courses and then transition to the college during their last two years to earn upwards of 60 college credits prior to high school graduation.

61. KELLY was an IBECHS teacher until February 2018, when he was arrested on charges following the inadvertent discovery of pornographic images and video on a 14-year-old student's cell phone.

62. On June 25, 2018, some 16 months after his arrest, Defendant KELLY pleaded guilty before the Honorable John Nobles to 59 criminal charges, including: 27 "indecent liberties with a child" charges; 17 "indecent liberties with a student" charges; 10 "solicitation to commit felony" charges; 2 "third-degree sexual exploitation of a minor" charges; 1 "solicitation to commit a felony" charge; 1 "statutory sex offense with a child" charge; and 1 first-degree sexual exploitation of a minor charge.

63. Defendant KELLY was sentenced to as many as 31 years for the commission of the crimes, all involving victims who had been among KELLY'S students over some 15 years.

64. Over his 26-year career at Laney High School and IBECHS, Defendant KELLY came into direct contact with literally thousands of young men and women in both his homeroom and teaching assignments.

65. It is presently unknown just how many of these may have been victimized by KELLY over the years, but it is known that Defendant KELLY recruited and groomed young male students to participate in a wide variety of inappropriate sexual activities. These included, upon

information and belief, among other things: KELLY performing oral sex on a young child while the act was videotaped; KELLY displaying, viewing and enjoying pornographic images and videos on his school computer while in his office and/or his phone and mobile devices; teaching students how to get around “filters” installed on student laptops so that students could view adult content on their own; playing a game that involved exposing his genitals as well as other private areas of his body to students; using an text/chat application that would permit students and KELLY to share images of their genitals and other pornographic images privately; engaging in other physical sexual contact with students, sometimes in public areas; touching his students’ genitals; placing his genitals on various parts of his students’ bodies; performing and/or receiving oral sex on or by his students; masturbating in front of his students; issuing invitations to meet him at his house and other locations for sexual encounters, among other things.

66. KELLY’S acts occurred both on and off school grounds in the presence of the male students. KELLY’S acts also occurred during normal school hours and after hours as KELLY was successful in convincing some students to spend time with him outside of class and school. Upon information and belief, these off-campus incidents occurred at locations such as the Burger King near Laney High School, in the School of Education building at UNCW, in hotel rooms at science fairs and at other locations.

67. At all times relevant hereto, each Plaintiff was a minor under North Carolina law and incapable of giving consent to such inappropriate conduct.

68. Defendant KELLY used his position as the students’ teacher to prey upon his students’ innocence and that of likely dozens of other male students over the years he taught in the New Hanover County Schools system.

**KNOWLEDGE OF KELLY’S SEXUALLY INAPPROPRIATE
CONDUCT BY HOLLIDAY AND OTHERS**

69. KELLY’S sentencing revealed New Hanover County Schools administration’s knowledge and complicity in permitting KELLY’S behavior and left our community in shock.

70. Plaintiffs are informed and believe, and thereon allege that for nearly as long as he was employed, administrators within the New Hanover County Schools who report to the NHCBOE, including, but not limited to, Defendant HOLLIDAY, were aware of complaints and concerns regarding KELLY’S inappropriate interactions with students.

71. In his various positions within New Hanover County Schools, Defendant HOLLIDAY also served as the system’s Title IX Coordinator responsible for complying with the mandates of federal law with respect to handling investigations and complaints of sexual misconduct by individuals, including when such acts are committed by teachers.

72. Plaintiffs are informed and believe and therefore allege as far back as 1993 that Defendant HOLLIDAY was made aware of inappropriate conduct in class by KELLY and refused to take any action.

73. Plaintiffs are informed and believe and thereon allege that in or about 1993, a student in one of KELLY’S chemistry classes at Laney High School verbally objected to KELLY’S use of inappropriate sexual innuendo in front of the class. Apparently, KELLY discussed certain sexual acts with his wife, and the student objected. KELLY sent the student to HOLLIDAY’S office, who was the Assistant Principal at Laney High School at the time.

74. Plaintiffs are informed and believe and therefore allege that the student told HOLLIDAY that KELLY had made inappropriate commentary and explicitly described intimate sexual activity between KELLY and his wife.

75. Plaintiffs are informed and believe and thereon allege that nothing happened as KELLY continued to discuss sexually inappropriate content in his classes.

76. Plaintiffs are informed and believe and thereon allege that later, between 1998 and 2001, another student reported inappropriate behavior by KELLY as well as sexual harassment and physical assault by the then band director, Richard Priode.

77. The student and her family provided written notice of their concerns to HOLLIDAY and then-Deputy Superintendent Norman Shearin and then-Superintendent John Morris, as well as other administrators and board members, among others.

78. Plaintiffs are informed and believe and thereon allege that during the 2003-2004 school year, Laney High School students continued to report increasingly alarming behavior by KELLY to HOLLIDAY. For example, one student reported to HOLLIDAY that KELLY had touched the student and had exposed KELLY'S genitals to him.

79. Plaintiffs are informed and believe and thereon allege that in or about that same year, another student complained to HOLLIDAY, not only of KELLY'S inappropriate sexual discussions in class, but also of his maintaining pornography on his school computer, a fact he knew because he and other students had been invited by KELLY to view the pornography in his office.

80. In addition, the student made known to HOLLIDAY that KELLY would often make comments about his desires to be with his male students to this student and engage in sexually explicit conversations.

81. The student also informed HOLLIDAY that he and KELLY were members of the same athletic club and would meet at the club, where the two would meet in the sauna following a

swim or work out. There, KELLY would sit naked with the student and masturbate in front of the student.

82. Any one of the actions recited above should have prompted an immediate investigation into whether pornography was, in fact, stored on KELLY'S computer, among many other things, and would have prompted interviews with other students. Yet nothing happened.

83. Plaintiffs are informed and believe and thereon allege that again, during the same time frame, a Laney High School student and his family reported inappropriate sexual conduct, inappropriate language, intimidation, and retaliation by KELLY against the student.

- a. First, the mother made numerous verbal complaints to KELLY and HOLLIDAY, among others. She complained about KELLY'S abhorrent sexual behavior ranging from off-color sex jokes and statements in class to showing students pornographic images.
- b. After her verbal complaints were ignored, she then issued a formal written complaint on a New Hanover County Schools Parent/Public Concerns about School Personnel form. In this complaint, the mother requested an investigation and a meeting with the Superintendent.
- c. Once again, there was no response and no action taken by HOLLIDAY or anyone else at New Hanover County Schools or by the NHCBOE against KELLY. Instead, HOLLIDAY failed to maintain a copy of the written complaint and has publicly denied the complaint was lodged. Thankfully, the parent kept a copy of the written complaint form.

84. During all of this time, from his hiring in 1992 until at least 2006, KELLY was allowed to remain in control of his class at Laney High School and to continue having access to students despite alarming complaints by multiple sources as to improper behavior by KELLY.

85. In 2006, KELLY was transferred from his teaching position at Laney High School to IBECHS.

86. Plaintiffs are informed and believe, and thereon allege, that one of the reasons for KELLY'S transfer to IBECHS in 2006 was to hide concerns associated with a growing number of complaints from parents and students regarding KELLY'S misconduct at Laney.

87. IBECHS was a much worse environment for student victims as KELLY had more personal private access to vulnerable male students, with even less oversight than KELLY'S previous position.

88. Shortly after arriving at IBECHS, and consistent with complaints made against KELLY while at Laney High School, Plaintiffs are informed and believe and therefore allege that a student complained to officials within the New Hanover County Schools about KELLY exposing KELLY'S genitals to the student on IBECHS's campus.

89. KELLY claimed during his sentencing that he had been cleared of an investigation of his behavior for that 2006 complaint.

90. Despite these numerous complaints by parents, students and some staff within New Hanover County Schools, administrators acting on behalf of the NHCBOE overlooked the allegations and did not discipline KELLY.

91. For as many years as KELLY was employed, NHCBOE personnel knew (both actually and constructively) about KELLY'S inappropriate behavior. These officials include Defendant HOLLIDAY. Yet, despite such knowledge, despite their legal and moral obligations

to protect students while at school, and despite their ability to carry out an objective investigation into the facts, New Hanover County Schools continued to employ Defendant KELLY and continued allowing him access to a fresh crop of young, unknowing victims each and every year.

92. Through their knowledge of complaints regarding KELLY'S conduct toward students over the years, and by not removing him from a position where he would have access to young men, the individual Defendants and the NHCBOE not only failed our local community, but they have failed parents of the students they serve and most importantly, they have failed the students they were obligated to protect.

93. Through the Defendant's negligence in investigating, retaining, supervising, training and reporting the actions of Defendant KELLY, these Defendants subjected young men to KELLY'S wrongdoing.

94. Had these Defendants acted as reasonably prudent individuals and as reasonably prudent administrators within the NHCBOE, they would have conducted an objective investigation into the allegations against KELLY.

95. Furthermore, given the number of complaints, and given the similarities about the inappropriate conduct, repeated complaints should have caused even greater alarm among administrators.

96. Presumably, such an investigation would have been reported to authorities, who would have taken action like that which was ultimately taken in February 2018 resulting in KELLY'S arrest. If such an investigation by Defendants were undertaken, Defendant KELLY would have been terminated from employment in any school within the district, an act which would have saved multiple students from being victimized at the hands of a sexual predator.

97. Instead, HOLLIDAY and other Defendants permitted KELLY’S wrongful actions to go unchecked.

98. As a result, Plaintiffs have suffered and will continue to suffer a lifetime of mental anguish, emotional distress, shame, humiliation, mental pain and suffering, depression, post-traumatic stress, loss of future earning capacity, self-mutilation, suicide attempts and the destruction of healthy, loving relationships – at the hands of a predator.

99. The acts of HOLLIDAY as described herein were done in the course of scope of his employment by the NHCBOE as an administrator, Deputy Superintendent and Title IX Coordinator, and NHCBOE is vicariously liable for the acts of Mr. Holliday through the doctrine of *respondeat superior*.

THE BOARD’S COMMITMENT TO PROVIDE STUDENTS WITH A SAFE AND POSITIVE LEARNING ENVIRONMENT

100. The responsibility that local county boards of education have in protecting our students is immense.

101. Defendant NHCBOE acknowledges this burden. In its mission statement published on the New Hanover County Schools’ website, the Board of Education states:

The mission of New Hanover County Schools, in collaboration with parents and the community, is to strive to provide children with an opportunity for a superior education in a *safe and positive learning environment* where they are prepared with the skills to succeed.

This language is also contained in the system’s Policy Manual, as Policy No. 1100. (*Emphasis added.*)

102. The same policy describes the goals of our local schools which are, among other things:

- a. To provide and maintain a safe, respectful, and secure learning environment for its students; and
- b. To recruit and retain highly qualified employees that implement and support district goals to ensure academic excellence for all students.

103. Yet, despite these overarching policies and goals, KELLY, HOLLIDAY and the other Defendants failed to protect Plaintiffs and others similarly situated to them from the actions of someone who was known to be of concern to male students.

KELLY'S SEXUAL ABUSE OF MALE STUDENTS

KELLY'S ABUSE OF JOHN DOE 1

104. JOHN DOE 1 was a minor student enrolled at IBECHS from 2014 through 2017.

105. On multiple occasions within this time period, KELLY inappropriately exposed his genitals to JOHN DOE 1 while on campus at IBECHS, including once during the early morning in a common area before classes began.

106. JOHN DOE 1 remembers that, unlike other teachers, KELLY would routinely use the boys' restroom with and at the same time as his male students instead of using the men's faculty restroom.

107. On at least one occasion in approximately 2015 or 2016, KELLY engaged in unwanted and inappropriate physical contact by placing or rubbing his genitals against JOHN DOE 1'S back in the boys' restroom at IBECHS while JOHN DOE 1 was standing at an urinal.

108. KELLY would also engage in appropriate sexual discussions with JOHN DOE 1 and his other male classmates during their homeroom period prior to the time that any girls would arrive class.

109. On multiple occasions between approximately 2014 and 2017, KELLY exposed JOHN DOE 1 to pornographic images and video in the classroom and via electronic communications.

110. Among these images were images of KELLY'S own penis as well as those of others, some including former students of KELLY who KELLY had convinced to share such images.

111. KELLY would also occasionally position himself near JOHN DOE 1'S face so that KELLY could elevate his crotch to mouth level so that when JOHN DOE 1 would turn around while seated, he would find KELLY in his personal space.

KELLY'S ABUSE OF JOHN DOE 2

112. JOHN DOE 2 was a minor student enrolled in IBECHS' inaugural class from 2006 through 2010.

113. Like other Plaintiffs, KELLY engaged in inappropriate discussions about sex with JOHN DOE 2 on multiple occasions.

114. In addition, on numerous occasions, beginning in 2006 and continuing through 2010, KELLY inappropriately exposed his genitals to JOHN DOE 2 and also showed him pornographic images and video of KELLY'S own penis as well as those of others.

115. Plaintiff JOHN DOE 2 recounts that this was a frequent occurrence, possibly occurring some 100 times during the four years he as an IBECHS student, which also includes the two years he studied at UNCW.

116. Furthermore, as a benefit to their enrollment at IBECHS, students were provided with a loaner laptop at the beginning of the year/term. At the end of the term, students would return the laptop to the school.

117. According to JOHN DOE 2, the school had installed filters on the laptops to prevent students from accessing pornography and other age-inappropriate material.

118. As part of his recruitment of students into this web, KELLY would show some students how to get around the porn filters.

119. Toward the end of the year, but prior to the time that students were to return the laptops to the school, KELLY would request that the students give the laptops to him for him to borrow.

120. JOHN DOE 2 remembers that KELLY asked for his computer, to return it a couple of weeks later with the computer having been “scrubbed” of its browsing history, cache files and other content-related data.

KELLY’S ABUSE OF JOHN DOE 3

121. JOHN DOE 3 was also minor student enrolled in IBECHS’ inaugural class from 2006 through 2010.

122. On multiple occasions within this time period, KELLY inappropriately exposed his genitals, while sometimes erect, to JOHN DOE 3 and also showed him pornographic images and video of KELLY’S own penis as well as those of others.

123. KELLY’S actions occurred both on the campus of IBECHS and on the campus of UNCW, where KELLY’S chemistry classes would meet for labs.

124. On one occasion, JOHN DOE 3 was helping KELLY clean up the lab when KELLY disappeared down the hall to a common area within the UNCW building where the chemistry class had met. When JOHN DOE 3 went to look for him, JOHN DOE 3 discovered KELLY leaning with his face against a wall, his pants pulled down, with his buttocks up facing the student and with his hands pulling apart his buttocks to reveal his anus.

125. On other occasions within this time period, KELLY engaged in unwanted and inappropriate physical contact by grabbing the genitals of JOHN DOE 3.

126. Such actions continued from 2006 through 2010.

KELLY'S ABUSE OF JOHN DOE 4

127. JOHN DOE 4 was a minor student enrolled in IBECHS from 2014 through 2018.

128. Throughout his enrollment at IBECHS, KELLY often engaged in sexually provocative and explicit conversations with JOHN DOE 4 which, among other things, included vivid descriptions of Defendant KELLY'S sexual practices with his wife as well as discussion of the size of his penis and that of JOHN DOE 4.

129. On numerous occasions, KELLY texted JOHN DOE 4 and made reference to Plaintiff's uncircumcised penis and other body parts, among other inappropriate topics.

130. During this time, KELLY showed JOHN DOE 4 numerous images of his own covered, but erect penis and other similar pornographic images which may have included images of other students, past and present.

131. Such actions continued from 2014 through KELLY'S arrest in 2018.

KELLY'S ABUSE OF JOHN DOE 5

132. JOHN DOE 5 was a minor student enrolled in IBECHS from 2010 through 2014.

133. KELLY served as JOHN DOE 5'S homeroom and science teacher for the 9th and 10th grades.

134. On one occasion in 2012, JOHN DOE 5 was helping KELLY pick up KELLY'S classroom at the end of the school day while buses were loading. KELLY engaged in a sexually explicit conversation with JOHN DOE 5, which resulted in KELLY requesting that the student pull up a pornographic video KELLY wanted to see.

135. KELLY took the student over to his desk inside the classroom and attempted to access the internet porn site that housed the video.

136. JOHN DOE 5 recalls that the school's filter flagged the site for inappropriate content, and a proxy window appeared blocking access to the site on KELLY'S computer.

137. KELLY then entered his credentials to override the filter and watched the video with the young boy while other students were being loaded onto busses outside KELLY'S classroom.

KELLY'S ABUSE OF JOHN DOE 6

138. JOHN DOE 6 was, and remains, a minor student within the New Hanover County Schools, who began his enrollment at IBECHS in or about 2015.

139. During the 2016-2017 school year, KELLY propositioned JOHN DOE 6 into allowing KELLY to perform a sex act on him while being filmed.

140. KELLY wore a toboggan to hide his face from the camera and kept the camera used to videotape the encounter.

141. Upon information and belief, KELLY is believed to have later shown the video to others without JOHN DOE 6'S consent or knowledge.

CLASS ALLEGATIONS

142. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Rule 23 of the North Carolina Rules of Civil Procedure as representatives of a Class defined as follows:

All students enrolled at IBECHS at any time between July 23, 2009 and February 7, 2018: a) with whom or on whom KELLY performed a sexual act; b) to whom KELLY showed or sent pornographic images (including videos and pictures) in person or via electronic means; c) to whom KELLY exposed his genitals in person or via electronic means; d) in the presence of whom KELLY masturbated; e) whom KELLY forced, caused, or

encouraged to engage in masturbation in KELLY'S or another's presence or to make and/or send images (including videos and pictures) of such masturbation to others; f) whom KELLY forced, caused, or encouraged to expose their genitals to him or others in person or via electronic means; g) whom KELLY videotaped or forced, caused, or encouraged to videotape any sexual activity; h) whom KELLY touched in a sexual manner, including, but not limited to, touching students with his genitals and touching the students' genitals or buttocks; and i) whom KELLY otherwise sexually harassed by engaging in a pattern of inappropriate verbal or physical behavior, or repeatedly exposed to offensive sexual materials, comments, or things, or repeatedly subjected to sexual conduct, innuendo and advances.

143. Defendants are excluded from the Class as well as any entity in which Defendants have a controlling interest, along with Defendants' legal representatives, officers, directors, assignees and successors. Also excluded from the Class is any judge to whom this action is assigned, together with any relative of such judge, and the spouse and children of any such persons, and the members of the judge's staff and their children.

144. The Class consists of dozens of persons, who are fearful, reluctant and hesitate to participate as a named plaintiff, making joinder impracticable. The exact size of the Class and the identities of the individual members are ascertainable through notice to all students that attended IBECHS during the relevant time period.

145. The claims of Plaintiffs are typical of the Class. The claims of Plaintiffs and the Class are based on the same legal theories and arise from the same unlawful pattern of sexual abuse of minor students by the same teacher.

146. Plaintiffs will fairly and adequately protect and represent the interests of the Class. The interests of the Plaintiffs are not antagonistic to the Class.

147. The common claims of Plaintiffs and the Class predominate over any questions that may affect only individual class members. Class treatment of common issues will materially advance the litigation.

148. Common questions of fact and law affecting members of the Class include, but are not limited to, the following:

- a. Whether KELLY engaged in assault and battery, invasion of privacy, and intentional or negligent infliction of emotional distress;
- b. Whether KELLY'S assault and battery, invasion of privacy, intentional or negligent infliction of emotional distress was committed within the scope of his employment with the NHCBOE within New Hanover County Schools;
- c. Whether Defendant NHCBOE, or anyone within the New Hanover County Schools, including MARKLEY and HOLLIDAY, had knowledge of KELLY'S assault and battery, invasion of privacy, intentional or negligent infliction of emotional distress, predatory behavior, and sexual abuse of minor students;
- d. Whether Defendant NHCBOE, or anyone within the New Hanover County Schools, including MARKLEY and HOLLIDAY, facilitated KELLY'S pattern of predatory behavior and sexual abuse of minor students, assault and battery, and invasion of privacy;
- e. Whether anyone's conduct within the New Hanover County Schools was designed to suppress complaints or reports of KELLY'S conduct;
- f. Whether the NHCBOE or anyone within the New Hanover County Schools acted negligently in employing, retaining, supervising, investigating, or

reporting KELLY;

- g. Whether the NHCBOE or anyone within the New Hanover County Schools acted negligently in supervising HOLLIDAY;
- h. Whether NHCBOE or anyone within the New Hanover County Schools negligently trained its employees, agents, and/or representatives in how to recognize, report, and prevent sexual abuse of students by teachers;
- i. Whether NHCBOE or anyone within the New Hanover County Schools breached their fiduciary duties to Plaintiffs and the Class;
- j. Whether HOLLIDAY was negligent *per se* in failing to report known instances of sexual abuse, thereby causing the harm complained of herein;
- k. Whether NHCBOE or anyone within the New Hanover County Schools, including MARKLEY and HOLLIDAY, ratified KELLY'S conduct; and
- l. Whether NHCBOE is responsible for any of other Defendants' conduct under the doctrine of *respondeat superior*.

149. Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

150. Class action treatment is a superior method for the fair and efficient adjudication of the controversy in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons with a method for obtaining redress for claims that might not be practicable for

them to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

151. Class action treatment will also allow for the establishment of a common fund for the Plaintiffs and the Class and will allow Class members who are too fearful, reluctant or who hesitate to participate as named plaintiffs, to receive compensation from a common fund.

FIRST CAUSE OF ACTION
(Negligent and Grossly Negligent
Employment, Investigation, Supervision, Retention, and Reporting)
Against All Defendants Except KELLY

152. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

153. At all times relevant hereto, Defendant NHCBOE employed Defendants KELLY, HOLLIDAY and MARKLEY.

154. Defendant NHCBOE had duties, by and through its authorized agents, servants, and/or employees, officers and/or directors, including among them Defendants HOLLIDAY and MARKLEY, to refrain from conduct exhibiting a reckless or intentional disregard for the safety of others, including Plaintiffs and the putative Class, and to exhibit the highest level of care for the students' education, safety, and wellbeing, including a duty to supervise KELLY and to be aware of his activities with minor students.

155. Defendant NHCBOE, by and through its authorized agents, servants, employees, officers and/or directors, including among them Defendants HOLLIDAY and MARKLEY, breached their duties in that, among other things, such that they:

- a. Knew or reasonably should have known that KELLY was incompetent, unfit, and a high-risk child predator who posed a particular risk of sexually abusing minor students;

b. Knew or reasonably should have known of multiple reports of KELLY'S previous incidences of sexual misconduct with minor students occurring on and off school campus;

c. Knew or reasonably should have known that by retaining and transferring KELLY to IBECHS rather than terminating him, Defendants were putting the education, safety, and mental health of the minor children at IBECHS whose care and education Defendants are entrusted with at risk;

d. Ignored the information they did have regarding multiple reports of KELLY'S sexually predatory behavior against minor students;

e. Failed to undertake a reasonable investigation to uncover additional information that was reasonably available to them;

f. Allowed KELLY to continue his position as a teacher within the New Hanover County Schools with authority over minor students and with complete autonomy even though they knew or should have known that KELLY was a dangerous child predator that was sexually assaulting his minor students, including Plaintiffs and the putative Class;

g. Failed to restrict KELLY'S access to students in any manner;

h. Allowed KELLY to meet with students after hours, which facilitated his sexual assaults of minor students, including Plaintiffs;

i. Failed to terminate KELLY after receiving multiple complaints concerning KELLY sexually assaulting minor students;

j. Failed to report the information they possessed to the proper authorities;

k. Failed to warn the minor students under their care, including Plaintiffs and the putative Class, or their parents that KELLY was a dangerous child predator that enjoyed

unfettered access to the minor students;

l. Perpetuated an image of KELLY as an upstanding citizen and teacher that was worthy of the utmost level of respect and praise, such as by naming him Teacher of the Year at IBECHS, which in turn allowed KELLY even more unfettered access to students; and

m. Other items that demonstrate a negligent, deliberate, or reckless disregard for Plaintiffs' safety and education as will be shown at trial;

156. Defendants' negligence in employing, investigating, supervising, retaining, and reporting KELLY to authorities was a substantial factor in causing harm to Plaintiffs and the putative Class.

157. As a direct and proximate result of the negligence of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

158. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

159. As a direct and proximate result of the aforementioned deliberate or reckless behavior, Plaintiffs and the putative Class were sexually assaulted by KELLY and each suffered damages in an amount in excess of \$25,000.

SECOND CAUSE OF ACTION
(Negligent Supervision)
Against Defendants NHCBOE and MARKLEY

160. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

161. Defendants NHCBOE and MARKLEY had duties to supervise Defendant HOLLIDAY in the performance of his duties and responsibilities as the Deputy Superintendent and in his role as the Title IX Coordinator for the New Hanover County Schools.

162. These duties included, among other things, the obligation to ensure that Defendant HOLLIDAY was following NHCBOE rules, policies and procedures, as well as state and federal law with respect to investigating and reporting incidences of sexual assault and misconduct occurring inside of New Hanover County Schools.

163. In addition, Defendant MARKLEY had a duty to ensure that Defendant was managing the investigation of complaints in a reasonable manner and ensuring that resolution of those complaints was communicated to both MARKLEY and the NHCBOE.

164. These duties exist for the purpose of protecting students from harm and preventing sexual assaults.

165. Defendants NHCBOE and MARKLEY breached their duties to the Plaintiffs and Class members in that, among other things, they:

- a. Knew or reasonably should have known that HOLLIDAY was incompetent, unfit, and repeatedly failed in his obligations to report KELLY'S sexual misconduct;
- b. Knew or reasonably should have known of multiple reports of KELLY'S previous incidences of sexual misconduct with minor students occurring on and off school campus;

- c. Knew or reasonably should have known that HOLLIDAY was putting the education, safety, and mental health of the minor children at IBECHS whose care and education Defendants are entrusted with at risk when he failed to report incidences of KELLY'S sexual misconduct;
- d. Knew or reasonably should have known that HOLLIDAY ignored multiple reports of KELLY'S sexually predatory behavior against minor students;
- e. Knew or reasonably should have known that HOLLIDAY failed to report the sexual misconduct of KELLY to law enforcement;
- f. Knew or reasonably should have known that HOLLIDAY failed to warn the minor students under his care, including Plaintiffs and the putative Class, or their parents that KELLY was a dangerous child predator that enjoyed unfettered access to the minor students; and
- g. In other ways that demonstrate a negligent disregard for supervisory obligations that are necessary to ensure Plaintiffs' safety and education as will be shown at trial.

166. Defendants' negligence in supervising HOLLIDAY was a substantial factor in Plaintiffs' injuries.

167. As a direct and proximate result of the negligence of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

168. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;

- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

THIRD CAUSE OF ACTION
(Negligent Failure to Train)
Against All Defendants Except KELLY

169. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

170. Defendants owed Plaintiffs and the Class duties to take reasonable measures to provide and maintain a safe, respectful, and secure learning environment for its students, free from the risk of sexual abuse by KELLY, by properly training its employees, agents, and/or representatives, including its Title IX Coordinator, in how to recognize, report, and prevent sexual abuse of students by teachers.

171. Defendants breached these duties in that they did not properly train their employees, agents, and/or representatives, including its Title IX Coordinator, in how to recognize, report, and prevent sexual abuse of students by teachers.

172. As a direct and proximate result of the negligence of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

173. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)
Against All Defendants

174. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

175. Plaintiffs are informed and believe and therefore allege that Defendants, at all relevant times, through their written policies and procedures and their acts and omissions, fostered a special relationship between teachers and students at IBECHS.

176. Defendants, by and through their agents, officers, directors, and school board members, held themselves out to be counselors and authority figures to IBECHS students, including Plaintiffs and the putative Class.

177. In addition, Defendant NHCBOE acting through the New Hanover County Schools stood *in loco parentis* of the students at IBECHS such that the Defendant and its authorized agents, servants, and/or employees, officers and/or directors were to protect students with respect to allegations of sexual misconduct by Defendant KELLY.

178. Plaintiffs and the putative Class justifiably placed great reliance and trust in the New Hanover County Schools, especially in Defendants KELLY and HOLLIDAY.

179. Defendants fostered and encouraged such special relationships between teachers and students within New Hanover County Schools, including the relationship between KELLY, the Plaintiffs and the putative Class.

180. For example, Defendants fostered special relationships between KELLY and his students when:

- a. In 2016, New Hanover County Schools named KELLY Teacher of the Year at

IBECHS.

- b. Defendants allowed KELLY to meet with students after school hours both on and off campus.
- c. Defendants allowed KELLY to take students off school grounds, such as to the campus of UNC-Wilmington.
- d. Defendants allowed Mr. KELLY to provide his personal cellular phone number to students.

181. Plaintiffs and the putative Class reposed a special confidence in Defendants, and Defendants, in equity and good conscious were bound to act with due consideration for the interests of Plaintiff and the putative Class.

182. As a result of the above, a fiduciary relationship was created between Defendants NHCBOE, through the New Hanover County Schools, and Plaintiffs and the putative Class.

183. Defendants breached their fiduciary duty to Plaintiffs and the putative Class by engaging in and/or allowing the sexual abuse as described herein.

184. As a direct and proximate result of the actions of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

185. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

FIFTH CAUSE OF ACTION
(Assault and Battery)
Against Defendant KELLY

186. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

187. KELLY intentionally committed acts of unwanted physical contact and/or caused imminent apprehension of such acts against Plaintiffs and putative Class members, including by placing his genitals on and against the students' bodies, in the boys' restroom and other locations and/or causing an imminent apprehension that such contacts would occur.

188. Further, based upon both their actual and constructive knowledge, Defendants HOLLIDAY, MARKLEY and NHCBOE knew or should have known to a substantial certainty that allowing KELLY to remain in the classroom, where he had continuous access to students without warning students of KELLY'S behavior and without taking precautions, would lead to KELLY physically assaulting and battering his students. KELLY'S offensive actions as alleged herein, were thus foreseeable to Defendant NHCBOE.

189. The contact by KELLY enjoyed on the students was both harmful and offensive, and unlawful, meaning that the students did not consent to the contact.

190. Further, such contact would be offensive to a reasonable person.

191. Additionally, KELLY carried out this predatory behavior as an employee, agent, and/or representative of New Hanover County Schools and in the course and scope of his employment. Defendant NHCBOE is therefore vicariously liable for Defendant's actions under the doctrine of respondeat superior.

192. As a direct and proximate result of the actions of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

193. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

194. These acts and omissions, among others, and the improper conduct by KELLY were accompanied by a reckless, wanton, and conscious disregard and indifference to the rights and safety of others, including Plaintiffs and the putative Class, who were all minors at the time, all of which KELLY knew or should have known were reasonably likely to result in injury, damage or other harm. Thus, as a result of these aggravating factors, Plaintiffs and the Class are entitled to receive an award of punitive damages from KELLY.

SIXTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
Against All Defendants

195. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

196. The sexual acts KELLY perpetrated against student minors as alleged herein constitute extreme and outrageous conduct that goes beyond all bounds of decency.

197. Defendants KELLY and HOLLIDAY intended to cause Plaintiffs and the putative Class severe emotional distress or acted with reckless indifference as to whether their conduct would cause Plaintiffs and the Class severe emotional distress.

198. KELLY carried out this predatory conduct as an employee, agent, and/or representative of the New Hanover County Schools system and in the course and scope of his employment with Defendant NHCBOE. Thus, Defendant NHCBOE is vicariously liable for KELLY'S actions under the doctrine of *respondeat superior*.

199. As a direct and proximate result of the actions of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

200. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

SEVENTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
Against All Defendants

201. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

202. Defendants' conduct negligently inflicted severe emotional distress upon Plaintiffs and the Class.

203. Defendants could reasonably foresee that their actions in sexually abusing students and/or failing to report, document, or prevent sexual abuse of students would cause severe emotional distress to Plaintiffs and the putative Class.

204. KELLY and HOLLIDAY each carried out their conduct as alleged herein as an employee, agent, and/or representative of the New Hanover County Schools and in the course and

scope of their employment with Defendant NHCBOE. Thus, Defendant NHCBOE is vicariously liable for these actions under the doctrine of *respondeat superior*.

205. As a direct and proximate result of the actions of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

206. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

EIGHTH CAUSE OF ACTION

(Invasion of Privacy)

Against All Defendants

207. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

208. Defendant KELLY intentionally preyed on the minds and bodies of minor students with whose care he was entrusted as described herein, thereby physically intruding upon the solitude and seclusion of Plaintiffs and the putative Class in a manner that would be highly offensive to a reasonable person.

209. Defendant KELLY carried out this predatory behavior as an employee, agent, and/or representative of New Hanover County Schools and in the course and scope of his employment with Defendant NHCBOE. Thus, Defendant NHCBOE is vicariously liable for KELLY'S actions under the doctrine of *respondeat superior*.

210. As a direct and proximate result of the actions of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

211. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

NINTH CAUSE OF ACTION
(Ratification)
Against All Defendants Except KELLY

212. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

213. KELLY was an agent and employee of Defendant NHCBOE in New Hanover County Schools between 1992 and 2018.

214. KELLY was acting at all times on behalf of the Defendant NHCBOE as a teacher within New Hanover County Schools.

215. All acts or omissions alleged herein were ratified by HOLLIDAY, MARKLEY and the NHCBOE. As alleged herein, employees, officers and administrators had been informed of or had reason to know that KELLY was or was continuing to sexually abuse minor students and refused to take any action to stop him. Further, HOLLIDAY hid the information he was entrusted with, possessed or that was given to him so that KELLY could continue his employment with New Hanover County Schools.

216. With knowledge of KELLY'S sexual abuse of minor students, no disciplinary action was taken; KELLY was allowed continued unfettered access to children and was even named Teacher of the Year at IBECHS in 2016.

217. As a direct and proximate result of the actions of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

218. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

TENTH CAUSE OF ACTION
[Negligence Per Se – Violation of N.C. Gen. Stat. § 115C-288(g)]
Against All Defendants Except KELLY

219. The allegations contained in all of the foregoing paragraphs are realleged and are incorporated herein by reference as if fully set forth.

220. N.C. Gen. Stat. § 115C-288(g) sets forth the reporting requirements that principals and supervisors have when they gain knowledge that a sexual assault, sexual offense, or indecent liberties with a minor has occurred on school property. According to that statute, the principal and supervisor must report the information to law enforcement and notify the superintendent of such.

221. N.C. Gen. Stat. § 115C-288(g) imposes a duty to report in order to promote the safety of others; therefore, it is a safety statute.

222. At all times between 1988 and 1996, Defendant HOLLIDAY was employed by Defendant NHCBOE as an assistant principal at Laney High School, where Defendant KELLY

was employed. During that time, it is alleged that Defendant HOLLIDAY received at least one report of inappropriate behavior by KELLY which had occurred in the classroom.

223. By the time that HOLLIDAY returned to Laney High School from another assignment following the 1996-1997 and 1997-1998 school years, he served as Principal of Laney High School until 2004. During this time, he received, at a minimum, four separate complaints from students as to inappropriate touching by Defendant KELLY as well as the showing pornographic images and inappropriate sexual contact with students. These reports also contained allegations of conduct falling within the statute above such that HOLLIDAY had a duty as the principal at Laney High School to notify law enforcement.

224. Despite these reports, upon information and belief, Defendant HOLLIDAY did not report such actions to law enforcement, nor did Defendant HOLLIDAY undertake any discipline of Defendant KELLY.

225. Defendant HOLLIDAY thus had actual knowledge of sexual assault, sexual offense, or indecent liberties with a minor occurring on school property and failed to report the same to law enforcement. Therefore, HOLLIDAY was negligent as a matter of law.

226. Defendant HOLLIDAY'S violation of the statute in failing to report KELLY'S sexual abuse and indecent liberties with minors was the proximate cause of allowing KELLY'S predatory behavior to continue and to perpetrate the same sexual abuse upon Plaintiffs and the putative Class.

227. Defendant KELLY carried out this predatory behavior as an employee, agent, and/or representative of the New Hanover County Schools and in the course and scope of his employment with the NHCBOE during normal school hours and using school property. As such,

Defendant NHCBOE is vicariously liable for KELLY'S actions under the doctrine of respondeat superior.

228. As a direct and proximate result of the actions of Defendants, Plaintiffs and the putative Class suffered severe emotional distress and mental anguish, including, but not limited to, suicidal thoughts, depression, and self-mutilation.

229. Plaintiffs and the putative Class are entitled to recover damages in excess of \$25,000 from Defendants as follows, including, but not limited to:

- a. Any and all expenses for the care and treatment incident to Plaintiffs' injuries;
- b. Compensation for the pain, suffering, and mental anguish of Plaintiffs; and
- c. Compensation for future lost earning capacity, among other relief.

WHEREFORE, Plaintiffs pray unto the Court:

1. Certify the Class, name Plaintiffs as representatives of the Class, and appoint their attorneys as Class Counsel;
2. Enter judgment against Defendants in favor of the Class for a sum in excess of Twenty-Five Thousand and no/100 Dollars (\$25,000.00), jointly and severally;
3. For a trial by jury on all issues so triable;
4. Punitive damages as allowed by law;
5. That the costs, including expert witness fees, of this action be taxed against Defendants;
6. Pre-judgment interest and post-judgment interest;
7. For reasonable attorneys' fees as allowed by law; and
8. For such other and further relief as the Court deems just and proper.

This the 30th day of July, 2019.

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