

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

by and through his next friend, Tammy Williams, G.S.,  
 by and through her next friend, LaTonya Stearns, S.S., by  
 and through her next friend, LaTonya Stearns, S.S., by and  
 through her next friend, Tarra Pritchett, on behalf of  
 themselves and all similarly situated individuals; T.A.D., by  
 and through her next friend, Barbara Dettoway, individually,  
 and B.J., by and through his next friend, Kenée Howard,

Plaintiffs,

v.

BIRMINGHAM BOARD OF EDUCATION; CRAIG

WITHERSPOON, in his individual and official capacity as  
 Superintendent of the Birmingham City School District, A.C.  
 ROOPER, in his individual and official capacity as Chief of the  
 Birmingham Police Department; OFFICER J. NEVITT, in his  
 individual and official capacity; OFFICER A. CLARK, in his  
 individual and official capacity; OFFICER R. TARRANT, in his  
 individual and official capacity; ASSISTANT PRINCIPAL  
 ANTHONY MOSS, in his individual and official capacity;  
 OFFICER M. BENSON, in his individual and  
 official capacity,

Defendants.

CLASS ACTION

CASE NO. CV-

**COMPLAINT**

1. This is a civil rights action filed pursuant to 42 U.S.C. § 1983 to protect the

... Defendants, the Birmingham Board of  
 Education, Superintendent Craig Witherspoon, and the Birmingham Police Department, have

... School Resource Officers ("SRO") in each school, arming them with chemical weapons and

authorizing them to use those weapons to enforce basic school discipline. Teachers,

administrators, and law enforcement operate in close concert with one another, with school

personnel frequently calling upon SPOs to get involved in minor incidents of childish

misbehavior that schools would typically handle as internal matters without resorting to law

enforcement. Instead of deescalating these situations, SPO involvement often has the opposite

effect, but sometimes even celebrate when schoolchildren are maced.

On 10/11/01, Plaintiff, D.C. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Plaintiff, D.C. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

physical effects of pepper spray are serious and can be life-threatening. Among the many

physical effects is immediate inflammation and swelling of the throat, a reflexive reaction that

is especially dangerous for children with asthma. Physical injuries are not the only

harm caused by the use of pepper spray in Birmingham high schools. As

recently demonstrated, the use of pepper spray has caused the plaintiffs and countless other

Birmingham students to have been conditioned to fear and distrust school and law enforcement officials

plaintiffs' attachment to school has been undermined, and has appeared as, examinations

which children should experience while attending

schools. Mace is used so frequently and so indiscriminately in Birmingham's public high

schools that each Class Representative and all DCB students faces a real and substantial risk

of future and repeated injury.

Plaintiff, D.C. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355,

class composed of all current and future students who are or will be enrolled in any high school in the Birmingham City School system - all of whom face, and will continue to face, a real and immediate risk of repeated injury due to Defendants' unconstitutional policies and practices. On

protect members of the class, and to compel Defendants to immediately abandon the use of

addition to the class claims, Plaintiffs J.W., R.I., G.S., P.S., T.I.P., T.A.P., and R.I. also bring

individual claims for damages arising from violations of their rights under the Fourth and

Fourteenth Amendments to the United States Constitution, from the Defendants' conspiracy to

deprive Plaintiffs of their civil rights under the Civil Rights Act of 1971 (42 U.S.C. § 1982), and

for the torts of assault and battery, and outrage.

## PARTIES

### *Named Plaintiffs/Class Representatives*

4. Plaintiff J.W. is a 16-year-old boy residing in Birmingham, Alabama. He is currently

enrolled at Birmingham High School, a school operated by the Birmingham City Schools ("BCS"). He brings this action by and through his mother and legal guardian, Tommy Williams.

At the time of the incidents described below in paragraphs 63 through 68, he was enrolled as a

student at Birmingham High School, a school operated by the Birmingham City Schools, and was subject to the attendance law, Ala. Code § 16-26-3.

5. Plaintiff G.S. is an 18-year-old girl residing in Birmingham, Alabama. She is currently

enrolled at Birmingham High School, a school operated by the Birmingham City Schools, and was subject to the attendance law, Ala. Code § 16-26-3.

described below in paragraphs 70 through 87, she was enrolled as an 11th grader at Huffman

High School.

High School, a school operated by BCS. She brings this action by and

below in paragraphs 70 through 87, she was enrolled as a 9th grader at Huffman High School

and was subject to the Alabama compulsory school attendance law, Ala. Code § 16-28-3.

7. Plaintiff T.L.P. is a 16-year-old girl residing in Birmingham, Alabama. She is currently

High School, a school operated by BCS. She brings this action by and

through her mother and legal guardian, Tarra Pritchett. At the time of the incidents described

below in paragraphs 88 through 97, she was enrolled as a 10th grader at Woodlawn High School

and was subject to the Alabama compulsory school attendance law, Ala. Code § 16-28-3.

### Individual Plaintiffs

8. Plaintiff T.A.P. is a 10-year-old girl residing in Birmingham, Alabama. At the time of

and incident described below in paragraphs 108 through 112, she was enrolled at George

Washington Carver High School, a school operated by BCS. Plaintiff T.A.P. seeks damages

only.

9. Plaintiff R.I. is a 16-year-old boy who was enrolled as a 10th grader at P.D. Jackson-Olin

High School, a school operated by BCS, at the time of the incidents described below in

paragraphs 113 through 126. At all relevant times, Plaintiff R.I. was subject to the Alabama

compulsory school attendance law, Ala. Code § 16-28-3. He brings this action by and

his mother and legal guardian, Denise Howard. Plaintiff R.I. seeks damages only.

*Defendants*

10. Defendant Birmingham Board of Education ("BOE") is a nine-member, elected legal body "vested with all the powers necessary or proper for the administration and management of the Birmingham City Schools." Ala. Code § 16-11-9. BOE is responsible for supervising the

Education, Policy Manual 2009. Individual BOE members are required to "be familiar with . . . [the] regulations of [BCS] . . . , to visit schools in the school district for the purpose of assessing the learning climate and accomplishment of educational goals . . . , and to refer complaints to the superintendent." Birmingham Board of Education, Policy Manual 2009.

11. Defendant Craig Witherspoon is the Superintendent and Chief Executive Officer of BCS. He serves at the pleasure of the BOE. As Superintendent, Defendant Witherspoon is responsible for "seeing that the laws relating to the schools and the rules and regulations of the city board of education are carried into effect." Ala. Code § 16-12-5. In addition, Defendant Witherspoon "supervises all schools and all personnel of BCS" and "is responsible for the management of the schools under [BOE] policies." Birmingham Board of Education, Policy Manual 2009.

He may delegate his responsibilities and duties as Superintendent to other school personnel, but such delegation "shall not relieve [Witherspoon] of responsibility for any action taken under

his direction." Id. Defendant Witherspoon is named as a defendant in this case in his individual and official capacities.

12. Defendant Birmingham Police Department ("BPD") is a law enforcement agency created by the Birmingham City Council. BPD is "charged with the preservation of the peace and order of the city; the protection of all persons and property within the city, and the enforcement of all criminal ordinances and criminal laws of the city and the

state<sup>22</sup> General Code of the City of Birmingham Public Safety and Protection Title 9 Ch. 1

12. Defendant Officer J. J. [Name] is assigned to [Division] and discipline all officers and members of the department. He is named as a defendant to this action in his official and individual capacities.

13. Defendant Officer [Name] was a BPD employee assigned to the Special Victims Division Youth Services Unit as an SRO during the 2009-2010 school year. He is named as a defendant to this action in his official and individual capacities.

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

15. Defendant Officer D. Tarrant was a BPD employee assigned to the Special Victims Division Youth Services Unit as an SRO during the 2009-2010 school year. He is named as a defendant to this action in his official and individual capacities.

16. Defendant [Name] is a BPD employee assigned to the Special Victims Division Youth Services Unit as an SRO during the 2009-2010 school year. He is named as a defendant to this action in his individual and official capacities.

17. Defendant Officer M. Benson is a BPD employee assigned to the Special Victims Division Youth Services Unit as a School Resource Officer (SRO). She is named as a defendant to this action in her official and individual capacities.

### JURISDICTION AND VENUE

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

10. This Court has jurisdiction under 28 U.S.C. § 1367 over the Plaintiffs' state law claims.

omissions giving rise to the damage occurred in and around

### CLASS ACTION ALLEGATIONS

21. Plaintiffs I.W., G.S., P.S., and T.I.P. (collectively "Class Representatives") bring this

suit on their own behalf and on behalf of a class consisting of all students who attend high school in the Birmingham City School system.

22. The class is so numerous that joinder of all members is impractical. Fed. R. Civ. P.

23(a)(1). Approximately 8,000 students are currently enrolled in Birmingham City high schools.

The class also includes future members whose names and overall number cannot be determined at this time. Fed. R. Civ. P. 23(a)(1).

23. The common questions of law and fact presented to all class members include but not

limited to: the propriety of the use of force by BPD and BOE employees;

use of chemical weapons. Other common legal issues include the presence of a conspiracy

between BPD and BOE and their collective employees to violate the Plaintiffs' rights, the

reasonableness of using force against children who pose no public safety risk, and the scope of

the BOE's duty to protect students from harm. Common factual issues include the severe health

risks posed by the deployment of force against school children, particularly in a closed

environment and with respect to a population with a higher than average incidence of asthma.

24. Because the policies, practices, and customs challenged in this action apply with equal

force to the Class Representatives and the other members of the class, the claims of the Class

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

25. The Class Representatives will fairly and adequately protect the interests of the class.

Each possesses a strong personal interest in the subject matter of the lawsuit and the claims

raised therein. They are represented by experienced counsel with expertise in class action

litigation and litigation involving children. Counsel has the local knowledge and resources to

fairly and adequately represent the class.

23(a)(4).

26. The Defendant's policies and practices are not an approved, well-established policy of the class.

27. The Defendant's policies and practices violate the constitutional rights of all

class members. Accordingly, final injunctive and declaratory relief is appropriate to the class as

a whole. Fed. R. Civ. P. 23(b)(2).

### STATEMENT OF FACTS

27. The District of Columbia ("DCS") system includes seven high schools, which

collectively serve approximately 8,000 students.

28. Under the Alabama compulsory school attendance law, Ala. Code § 16-28-3, children

between the ages of seven and seventeen are required to attend school.

29. Defendants DOE and Witherspoon enforce the Alabama compulsory school attendance

law and, for that reason, are represented by the U.S. District Court Family Court Defendant Davenport

accused of insanity, and return them to their respective schools.



20. BPD is a municipal law enforcement agency "authorized with the preservation of the peace

of the City of Birmingham, Title 0, Public Safety and Protection, Ch. 1, Police Department.

21. BPD works closely with the Birmingham Board of Education and the Superintendent.

These officers are known as

School Resource Officers (SROs). The SRO program is part of BPD's Special Victims

Division, Youth Services Unit.

22. The original goal and purpose of the SRO program was to protect the safety of students

attending BCS. But in practice, SROs frequently become involved—both on their own initiative

and at the request of school personnel—in minor incidents in which safety is not an issue. In

most instances, it is the SROs themselves who threaten the safety; they are charged to protect

23. Each BCS high school is assigned at least two SROs who patrol school property during

hours.

24. All BCS high schools have SROs. BPD, BCS, and the Superintendent BCS personnel

and individual SROs that SROs are expected not only to make arrests when they witness students

engaged in illegal behavior, but also to respond when school personnel seek their assistance

enforcing the BCS Code of Conduct. All Defendants to this action are aware of this agreement

25. All BCS high schools have SROs. BPD, BCS, and the Superintendent BCS personnel

schoolchildren in the course of their duties.

25. BCS teachers and other school personnel frequently request that SROs handle

DDP by suggesting that SROs handle in-school discipline. By the same token, SROs have abandoned their primary mission – to protect student safety – in order to become tools of school

acknowledged publicly by Interim BCS Superintendent Barbara Allen, who noted:

"We put SROs (school resource officers) in there to manage the school and serious crimes. They are there if someone commits a felony or major crime," said

just easier for them to place the responsibility elsewhere, and that isn't right."

\*\*\*

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

order." Birmingham News, March 22, 2000

36. Most BCS school arrests are for petty misdemeanors like disorderly conduct or

harassment, which are probably victimless crimes that can be used to criminalize a wide range of

for minor violations and misdemeanors, while less than 2% involved felonies against persons

same conduct. Although BCS educates only 25% of public school children in Jefferson County

It was responsible for more than 65% of all school-based complaints filed against students in

the Jefferson County Family Court in the 2009-10 school year.



breathing ability.

3. Intense burning on sensitive parts of the body.

\*\*\*\*\*

H. It should be kept in mind by all concerned that any actual contact with being adversely affected by its properties. Caution must be taken while handcuffing prisoners, placing them in automobiles, etc. If contact is made with the contacted area until he can wash that area with warm soapy water.

\*\*\*\*\*

### III. AFTER USE PROCEDURE

A. Following the use of chemical spray the officer will ensure that the subject receives adequate decontamination as soon as practical. The officer should supply immediate medical attention if requested by the subject.

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

D. Any time an officer uses chemical spray for subject control, the officer will notify the on-duty supervisor and complete a Use of Force Information and Statement Report.

or neutralize the unlawful physical actions of a subject under arrest.

42 The BPD "Use of Force" and "Chemical Spray Subject Restraint: Non-Deadly Use of Force" policies do not provide BPD personnel with adequate guidance for the appropriate use of Force on adolescents and in school environments. Neither policy addresses any of the following issues:

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

- c. Use of chemical-based weapons in closed environments, such as schools or school vehicles;

suspected of committing any crime;

Procedures for effective decontamination and treatment;

Guidelines and cautions for use of chemical spray on individuals that are at a

Use of pepper spray as a means to disperse a group of observers; and

- h. Protocol for deploying chemical weapons, including a mandated warning prior to

43. All Defendants are aware that SROs routinely use Freeze +P against students in the

course of school discipline and arrests, even when the targeted child poses no risk of injury to

other children, to the officer, to school personnel, or to herself. School leadership at every BCS

high school, including but not limited to Jackson, Olin, Woodlawn, Huffman, and Carver High

schools, including but not limited to Jackson, Olin, Woodlawn, Huffman, and Carver High

schools, including but not limited to Jackson, Olin, Woodlawn, Huffman, and Carver High, uses a chemical weapon must notify the on-duty supervisor and complete a Use of Force

Information and Statement Report. Any use of force must also be noted in the officer's report of

the incident. The use of chemical weapons against students in the Birmingham schools has also

been the subject of a March 2000 article in the Birmingham

News and an August 2008 report by Alabama NBC Channel 13.

44. Many SROs use Freeze +P against BCS students as a first resort, and without issuing a

warning to students.

45. Many SROs use Freeze +P against BCS students who pose no risk of injury to other

students, to school staff, to SROs, or to themselves.

46. Many SROs use Freeze +P against BCS students when they are restrained.

47. Many SROs use Freeze +P against BCS students as a form of punishment.

48. Without regard to others in close proximity to the intended target, SROs often deploy

Freeze +P in closed school spaces without appropriate avenues of ventilation. As a result,

students who are not accused of any wrongdoing are often injured by the pepper spray.

49. SROs use Freeze +P as a way to intimidate and control peaceable groups of students

when the groups do not immediately disperse upon order. In some cases, SROs begin spraying

students immediately without giving them time to disperse.

50. The abusive practices described in paragraphs 44 through 49 are reflected in the officers'

Use of Force Information and Satisfaction Reports, which are reviewed by

level BPD officials to ensure conformity to departmental policy, practice, and custom. BPD

officials also review that such use of force be reported to the on-duty supervisor.

The subject of multiple media attention, including an ABC News 7/10/13 report by ABC News 7/10/13

Channel 13 and a front-page article in the Birmingham News on March 22, 2007, titled "Schools

article in the Birmingham News was entitled "City Schools Rely on Arrests to Keep Order" and

highlighted several incidents involving the use of force on BCS high school students by SROs.

Specifically, the article reported that a 16-year-old BCS high school student was sprayed with

pepper spray and arrested, and that a 17-year-old BCS high school student

was sprayed with mace and arrested for being "loud and boisterous." Chief Koper was quoted

extensively in the article, and there is no question that he read it

51. In his capacity as Chief of Police, Defendant Koper has a legal duty to "direct, control

and discipline all officers and members of the department." General Code of the City of

Birmingham, Public Safety and Protection, Title 9, Ch. 1, Police Department. In order to fulfill

Chief Koper's duty to maintain discipline with the policies, practices, and customs of

11. DDD. 14. DDD. 15. and with state and federal  
and take disciplinary and other remedial action when officers run afoul of these mandates

### Properties and Dangers of the Chemical Weapons used against DCB Officers

52. Freeze +P consists of two chemical agents, Orthochlorobenzalmalonitrile (OC) and

effects of OC combined with the severe pain induced by CS magnify each other. See

14. // Freeze +P is marketed as "the most intense incapacitating  
agent available today." *Id.*

54. Freeze +P temporarily eliminates the  
reflexes. The absence of the gag and blink reflex make the eyes and lungs susceptible to injury.

(a) temporary blindness, (b) temporary loss of vision, (c) temporary loss of hearing, (d) temporary loss of taste, (e) temporary loss of smell, (f) chemical injury to the eye, (g) blurred vision and redness in the eye, (h) watering of the  
eyeballs, (i) unstering and scarring of the eyeball, and (j) corneal abrasion of the eye.

55. Exposure to pepper spray product such as Freeze +P also has severe respiratory effects.

the throat a reflexive reaction that restricts the size of the airway and limits the amount of  
oxygen entering the lungs.

which may increase the risk of stroke or heart attack.

56. Asthmatics exposed to pepper spray are at higher risk for severe and possibly life-threatening asthma attacks. Asthmatics may be hypersensitive to pepper spray because the coughing, wheezing, and shortness of breath.

57. ... effect on about nine percent of all children in the general population.

58. The United States Department of Health and Human Services ("HHS") has reported on American children. According to the Office of Minority Health at HHS:

... African American children are three times more likely to die from asthma ... From 2002 to 2005, the death rate for African

... African American children require more treatment for asthma-related ...

59. African American children comprise approximately 96% of the Birmingham City School System.

60. The standard of care for individuals affected by pepper spray is to immediately ensure access to a flowing air source (removing them from the chemical-filled environment), and to

immediately flush the affected areas of the skin with water, especially the eyes if affected by the

immediately flush the affected areas of the skin with water, especially the eyes if affected by the

remove them.



61. The Freeze +P Material Safety Data Sheet is the official document that sets forth the

to Freeze +P. Individuals exposed to Freeze +P should "flush their eyes with large quantities of water to speed recovery" and face "wind or forced air source such as fans or air conditioning outlet." Aerko International Freeze +P Material Safety Data Sheet, Prepared June 17, 1991.

Individuals sprayed with Freeze +P should remove contaminated clothing and wash affected areas with soap and water to avoid transfer to more sensitive areas. The Material Safety Data Sheet further provides that "persons with preexisting skin disorders may be more susceptible to the effects of [Freeze +P]."

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

- A. Following the use of chemical spray the officer will ensure that the subject receives adequate decontamination as soon as practical. The officer should supply immediate medical attention if requested by the subject.
- B. Birmingham Fire and Rescue will be called and will determine whether or not the subject needs further medical attention or hospital treatment.

113-5, February 10, 2006.

### *Use of Chemical Weapons against Plaintiffs*

#### *Plaintiff I W*

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

64. Defendant Nevitt and an unknown SDO responded to the incident. The unknown SDO

approached the students involved in the altercation and sprayed them in the faces with Freeze +P.

65. Defendant Nevitt walked up to the group of observers and yelled at them to disperse.

Without further warning, and without giving the students any opportunity to move away,

sprayed them for approximately ten seconds, waving the canister back and forth across the group

at eye level.

66. While Defendant Nevitt sprayed the group, the students began screaming and coughing

as they ran in different directions to get away from the chemical spray that was filling the

hallway.

67. Although J.W. was about ten feet away when Defendant Nevitt started blasting Freeze

+P, some of the chemical canister landed on J.W.'s face. Upon contact, J.W.'s eyes and nose

started stinging and burning immediately. The burning feeling spread throughout his entire face.

68. Although Defendant Nevitt had directly sprayed the group of observers standing in the

hallway, he did not ask if they were alright or take any other actions to determine whether any of

the children were injured or required help. Neither J.W. nor any of the students in the group

received medical attention for their injuries. Neither Defendant Nevitt nor any school official

took any steps to commence decontamination procedures for J.W. or the other students affected

by the Freeze +P.

69. As a direct and proximate result of Defendant Nevitt's actions, which were authorized by

Defendant DOE, Witherspoon and Pappas, Plaintiff J.W. suffered emotional, psychological, and

physical injuries. Plaintiff J.W. will be forced to seek medical attention for the injuries and that he will

and customs

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

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

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

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

inches tall, has a stocky build, and weighs approximately 220 pounds.

74. On December 8, 2009, G.S. was jogging across the lawn outside Huffman High School

when Defendant Clark rushed her from behind by the wrist. He did not identify himself as a

law enforcement officer or say anything before grabbing her. Unaware of Defendant Clark's

identity and alarmed at being attacked by an unknown assailant, G.S. struggled to free herself

herself from him. G.S. did not realize who Defendant Clark was until after she had pushed him.

75. Without saying a word, Defendant Clark immediately pulled out his Freeze +D reagent it

to G.S.'s face and sprayed her directly in the face and eyes. The pepper spray entered her eyes,

nose, and mouth, causing her to ingest the product.

76. G.S.'s face and eyes began to burn and she felt like she could not breathe. She began to

77. G.S.'s sister, Plaintiff P.S., had been approaching G.S. when Defendant Clark sprayed

G.S. for the first time. When P.S. was about five feet away from G.S., an unknown SKO

causing G.S. to crumble to the ground

78. Defendant Clark did not consider whether other students were close enough to be affected by the chemical before he administered the second blast. As a result of Defendant

Clark's recklessness, the second blast of Freeze +P also hit Plaintiff P.S. in the face. P.S.

immediately felt a burning sensation in her eyes and face, and had trouble breathing

79. Defendant Clark left G.S. and P.S. in the school yard. He did not assess their physical

80. G.S. eventually made her way to the school's main office. Once in the office, an

any medical treatment. G.S. had a hard time focusing on the questions EMS personnel asked

because she was crying hysterically and asking repeatedly for her mother.

81. In the afternoon, Ms. Steamer arrived at the school.

shortly after G.S. went to the office. P.S. informed her mother that Defendant Clark had used

pepper spray on both girls.

82. Defendant Clark would not permit Ms. Steamer to enter the school and refused to allow

her to see G.S. Defendant Clark refused to give Ms. Steamer any information about G.S.'s

physical state and threatened to arrest her if she continued to ask about her daughter's well-

being.

83. Eventually, a Huffman faculty member escorted Ms. Stearnes into the school's office.

Ms. Stearnes heard G.S. screaming "I can't breathe!" from the next room.

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

85. Nearly an hour after the incident on the school lawn, Defendant Clark took G.S. to

Central Jefferson Hospital but it was too late to provide any effective treatment or pain relief.

Hospital personnel informed G.S. that they could not provide her with any medical treatment and

requested that she sign a form giving information and consent that there was a medical release

waiver.

86. G.S. was then taken to the Jefferson County Family Court. She was released to her

mother's custody later that day. No formal charges were filed against her. At her release, she

still wore the same contaminated clothing from earlier in the day because no one had provided

her with a change of clothes.

87. As a direct and proximate result of Defendant Clark's actions, G.S. suffered emotional

psychological, and physical injury. Due to the pepper spray, the skin on G.S.'s face is still

burned and she has been in physical pain for more than 24 hours and

like pepper spray for more than 24 hours, causing her further discomfort and pain. G.S. did not

want to return to school for several days following the assault for fear that she would be pepper-

sprayed again. Both G.S. and P.S. are reasonably afraid that an SRO will spray them again.

*Plaintiff T.L.P.*

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

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

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

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

92. On or around November 29, 2009, a female student initiated a verbal altercation with

T.L.P. The situation eventually escalated into a physical altercation. Upon seeing the two girls, BCS employees Johnson and Howard intervened and separated them. Johnson picked T.L.P. up

held T.L.P. in such a way that posed no threat to herself or others.

93. After the girls had been separated and T.L.P. had been restrained, Defendant Novitt arrived at the scene. Without any warning or provocation, Defendant Novitt

froze T.L.P. in T.L.P.'s direction, even though she was still being restrained by Johnson. The pepper spray entered T.L.P.'s mouth, and she began to cough severely.

94. While attempting to spray T.L.P., Defendant Novitt also sprayed Johnson in the face with pepper spray. Johnson released T.L.P. while shouting, "It got me in the eye!"

95. Although T.L.P. was injured by the pepper spray, as evidenced by her violent coughing

face or rid her of her contaminated clothing. Instead, he arrested her and took her to the

Jefferson County Family Court, where she was placed in a holding cell at the Cross Street Court

Detention Center (JDC) to wait for her mother. Because no one provided her with a blanket or

allegations in the police report were never pursued as formal charges.

violent coughing fits.

T.L.P. is particularly concerned by Defendant's illegal policy and

practice in the future. She is particularly concerned because the incident described above is not

the first time that T.L.P. has been blasted with pepper spray at school while restrained. T.L.P.

was previously sprayed with freeze spray on or around November 17, 2008. During this incident,

SRO [Name] stated that T.L.P. suffered

from burning sensations on her face, peeling skin, difficulties breathing, swollen and burning

eyes, and prolonged head pains.

### INDIVIDUAL PLAINTIFFS

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

98. At all relevant times, T.A.P. was 5 feet, 4 inches tall and weighed approximately 145

pounds. T.A.P. attended Carver High School from 2007 to 2009.

99. Defendant Tarrant is a male SRO. He has a muscular build, stands approximately five

feet, six inches in height, and weighs approximately 200 pounds.

100. Defendant Mann is an assistant principal at Carver High School. He has a stocky build

and weighs approximately six feet, two inches in height, and weighs approximately 200 pounds.

appropriate means of discipline." As superintendent Defendant Withernoon has a duty to enforce this policy and ensure that RCS personnel refrain from engaging in corporal punishment as a means of discipline.

101. On or around August 31, 2009, T.A.P. entered a classroom to begin her third-block class. sent her to the school's main office to see Assistant Principal Moss.

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

103. Assuming that he meant she could go home, T.A.P. followed Moss down the school hallway outside of the school. As they reached the door, Moss opened the door and from behind and tripped her. T.A.P. fell on the ground, and Moss stepped on her foot into her back as she lay on the ground.

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

105. When T.A.P. stood up, she noticed Officer Tarrant standing close by. T.A.P. bent to pick



backpack accidentally bumped Tarrant in the chest. T.A.P. then saw Tarrant reach for his belt.

Because she did not know what he was reaching for, T.A.P. panicked and ran

behind and threw her down into some bushes on the lawn.

107 When T.A.P. looked up she saw Moss and Tarrant standing above her. MOSS grabbed her

right arm while Tarrant grabbed her left arm. Several seconds later three other men - all

unknown to T.A.P. - approached and held her legs down. T.A.P. was frightened being restrained

by five men and began to squirm. However, she did not break free from their

hold nor did she utter any threats to any of the men.

108 T.A.P. was in a state of shock and did not know what to do. Tarrant said, "Now

felt intense pain on her face and in her eyes, had difficulty breathing and was blinded. Tarrant

administrative offices.

109 T.A.P. was taken to the hospital without any medical

110 Tarrant eventually escorted T.A.P. to Cooper Green Hospital, but it was too late to

any other decontamination measures even though Tarrant was obviously in severe pain

111 Tarrant eventually escorted T.A.P. to Cooper Green Hospital, but it was too late to

112 Tarrant eventually escorted T.A.P. to Cooper Green Hospital, but it was too late to

113 Tarrant eventually escorted T.A.P. to Cooper Green Hospital, but it was too late to

wear the contaminated clothing until she was released to her mother, Barbara Pettaway, at 5:00 p.m. that evening.

111. Barbara Pettaway contacted Defendant ROE the next day to complain about Tarrant's

Pettaway that they could not take any action against the school or Tarrant because Ms. Pettaway had washed the shirt that T A P wore on the day of the incident.

suffered emotional, psychological, and physical injuries. T.A.P. experienced swelling in the face and eyes for 24 hours; blindness for more than five hours; severe burning of the eyes and face;

and difficulty breathing. The skin around her eyes was damaged and peeling for a week after she and Gregory breathing. The skin around her eyes was damaged and peeling for a week after she

was sprayed. The actions of Defendant Tarrant and ROE were acts of discrimination in ROE's

decision not to return to school. T.A.P. continues to experience a deep distrust of the school and

law enforcement staff at Carver High School.

### *Plaintiff B.J.*

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

114. On or around September 27, 2010, a substitute teacher, known to B.J. as Mr. Cook,

Mr. Cook, in his fourth block classroom at Jackson, Ohio High School to take his shirt

into his pants. B.J. complied with the order. As B.J. re-entered the classroom, another student

mumbled "Fuck you, Mr. Cook" in the direction of the substitute teacher. Mistaking B-I for the

speaker, the teacher contacted Assistant Principal Gaston, a BLS employee at Jackson, Ohio High

School.

complaints were that B.J.'s shirt had been untucked and that he might have used profanity.

As the blood search

held. At one point, B.J. tripped and fell to the ground, landing on his stomach. While B.J. lay on

the ground, Gaston continued to search his back pockets. After a few minutes, Gaston called

Assistant Principal Gates to the scene. Gates is a...

When Gates arrived, the two assistant principals restrained B.J. against a set of lockers

with his arms spread, with Gates and Gaston each holding an arm.

At some point, Gates called Defendant Officer Benson to the scene. Upon arrival,

Officer Benson did not take any action or even speak. She just stood there and watched Gates

and Gaston restrain B.J. Officer Benson then blasted Freeze +P directly into B.J.'s face and eyes, holding the cannister within inches from B.J.'s face.

B.J.

He immediately experienced a severe burning sensation across his face and in his eyes, and felt as if he could not breathe. B.J. was also immediately blinded.

119. B.J. began to fall to the ground holding his face and gasping for air. The pain was so

intense that he began to cry. As he sank to the ground, Officer Benson used her foot to forcibly

push him fully onto the ground, where she held him in place with her knee planted in his back

attempted to stand.

the office, Gates said. WOOD: That's the first meeting of the year.

121. Off. Benson did not immediately seek medical attention for B.I. nor did she contact

before Officer Benson escorted him to the hospital. Officer Benson did not permit B.I. to wash

his eyes, nor did she take any steps to get him a change of clothes or advise him to get out of

his contaminated clothing.

122. Off. Benson did not take B.I. to Cooper Green Hospital in

Birmingham, it was too late to provide any effective treatment or pain relief. Hospital staff

informed B.I. that they could not provide him with any medical treatment and directed him to

sign a form. B.I. signed the form even though he still could not see due to the pepper spray. No

medical release waiver

123. Off. Benson did not take B.I. to the hospital. B.I. was taken to the hospital by his grandmother

he was placed in a holding cell at 5:00 pm to wait for his grandmother to pick him up. No formal

charges were filed against B.I. and a report of the incident

was filed in the file with a report of the incident. His face felt like it was burning and it began to

swell. B.I.'s eyes were also swollen, and he could not see for several hours. B.I. experienced

nausea, vomiting, and a burning sensation. He vomited twice while in the holding cell, and could

taste the pepper spray in his vomit. Because he was never offered a change of clothes or any

time, B.I. continued to wear the same contaminated clothing while in the cell.

125. B.I.'s grandmother was not informed that B.I. had been injured by pepper spray, arrested

B.I. was released to her custody at 7:00 pm.

As a direct and proximate result of Officer Benson's actions, B.I. suffered emotional

psychological and physical injury. B.I. endured nausea, violent vomiting, blindness for more than five hours, numbness and burning in his face for more than 24 hours, severe head pains for

pain in the back from SRO Benson's assault with her knee.

*Allegation relating to Municipal Liability for Unconstitutional Policy and Practice  
Failure to Train, and Failure to Supervise*

127. In each of the incidents described above, the Defendant Officer's conduct was consistent either with BPD policy or with BPD custom and practice. In his capacity as Chief of Police,

Defendant Roper is aware of BPD policy, custom and practice concerning the use of Freeze +P on BCS students.

128. On several occasions, Defendant Roper has publicly expressed concern with the criminalization of teenage behavior in the Birmingham City School system. For example,

Defendant Roper gave the following comments to the Birmingham News in March 2000:

Roper acknowledges that most of the arrests are for minor violations that should

they have diversified their officers, and our officers have to remain, people

should be present and respond when it rises to a criminal level.

"The current system is dysfunctional and that's putting it mildly."

"The current system is dysfunctional and that's putting it mildly."

Marie Leach & Carol Robinson, "Birmingham city schools rely on arrests to keep order"

Birmingham News, March 22, 2000. Despite these comments, and despite his awareness

that SROs routinely use Freeze +P against schoolchildren who pose no threat to officers,

to BCS staff, to other children, or to themselves, Defendant Roper has failed to take

action to prohibit – or even limit – the use of Freeze +P on schoolchildren.

120. Defendant Roper has not made any effort to amend RPD policy to provide specific guidance to officers in the use of force on children.

121. Defendant Roper has not made any effort to provide specialized training to officers to identify the specific risks of using pepper spray (and other common spray products) on children in these environments, and/or when confronted with a minor with a known or suspected history of asthma.

131. Instead, Defendant Roper has continued to condone and approve the abusive and brutal practices and/or customs that SROs employ when using pepper spray against BCS students in the course of administering school discipline and conducting school arrests, even where custom and

practices are inconsistent with school policy, particularly, even where the use of pepper spray on students who are completely restrained, who pose no threat to themselves or others, and who are merely in the wrong place at the wrong time.

*Allegations Relating to Defendant Board of Education's and Defendant Witherspoon's*

*Liability for Failure to Protect and Complicity to Violate Plaintiff's Civil Rights*

direct observation, and a variety of other sources; Defendant DOE and Defendant Witherspoon are well aware of the policies, practices, and customs described above.

133. On July 27, 2010, the Southern Poverty Law Center ("SPLC") submitted a Request for Access to Information to the Family Court of Jefferson County, Indiana. The Request sought copies of all police reports submitted to the Jefferson County Family Court that reflected the use of chemical spray against RCS students. The Request included a significant amount of medical evidence documenting the dangers of chemical spray.

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

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

1. A copy of this Order shall be served by the Clerk of the Family Court [by] mailing a copy to the Birmingham Board of Education and the Birmingham Court (at the Chambers of the undersigned) within fourteen (14) days from the date of this Order or any such objection will be waived.

2. If no objection is received within 14 days from the date of this Order, the Family Court of Jefferson County will proceed for inspection and copying with police reports that:

- a. were submitted to the Family Court in connection with complaints filed against students in the Birmingham City School System arising from incidents or behavior that occurred in or at school during the 2008-2009 and 2009-2010 school years; and which

document the use of chemical restraints, including, but not limited to, the use of Risperidone, Haldol, and other antipsychotic medications.

136. Neither BOE nor Superintendent Witherspoon raised any objections to the September 16 order. Accordingly, the Circuit Court entered a second order on October 7, 2010, directing the

Family Court to produce the documents described in the Order dated September 16.

137. Despite the Circuit Court's orders and the obvious concerns raised by SPIC's Request

and the use of chemical restraints against Birmingham school children

*Necessity of Injunctive Relief*

138. The named Plaintiff, *[redacted]*, and as individuals in Birmingham's public high schools, *[redacted]*, and each member of the class, faces a real and substantial risk of future *[redacted]* and repeated injury as a result of the Defendants' unlawful policies, customs, and practices.

and repeated injury as a result of the Defendants' unlawful policies, customs, and practices.

There are only three ways for the class members to avoid that real and substantial risk: (a) by

attending school in another school system, something prohibited by zoning requirements; (b) by

cannot afford, or (c) by dropping out of school entirely, which would violate the compulsory

school attendance law and deprive the students of their rights to an "equal and adequate"

education under Alabama law.

139. As described above, the Defendants have acted and continue to act in violation of the

law. The Class Representatives believe that they and the class do not have an adequate

means to protect themselves from the policies, practices, acts, and omissions of the Defendants, the

Class Representatives and the class of children they seek to represent have suffered and continue

to suffer imminent, serious and irreparable injuries

**CAUSES OF ACTION**

140. The named Plaintiff and the proposed class incorporate by reference *[redacted]*

factual allegations to support the following claims:



COUNT I

Defendant Roper in his official capacity

141. Defendant Roper is responsible for supervising RPD and ensuring that the agency

is in compliance with state laws. In his official capacity, he is responsible for the "Chemical Spray Subject to Restraint Not Deadly Use of Force" policy, which is a policy that is not only unconstitutional but also in violation of the First Amendment. The policy is a violation of the First Amendment because it allows for the use of chemical weapons against children who are not accused of any wrongdoing and children who are being physically restrained. The policy is also in violation of the First Amendment because it allows for the use of chemical weapons against children who are being physically restrained. The policy is a violation of the First Amendment because it allows for the use of chemical weapons against children who are not accused of any wrongdoing and children who are being physically restrained.

142. On its face, the Chemical Spray policy allows the use of a chemical weapons against

children who are not accused of any wrongdoing and children who are being physically restrained. The policy is a violation of the First Amendment because it allows for the use of chemical weapons against children who are not accused of any wrongdoing and children who are being physically restrained. The policy is also in violation of the First Amendment because it allows for the use of chemical weapons against children who are being physically restrained. The policy is a violation of the First Amendment because it allows for the use of chemical weapons against children who are not accused of any wrongdoing and children who are being physically restrained. The policy is also in violation of the First Amendment because it allows for the use of chemical weapons against children who are being physically restrained.

interference in the first place." *T.L.O.*, 469 U.S. at 341

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

144. By promulgating an unconstitutional policy and by condoning unconstitutional customs and practices with respect to the use of chemical weapons in the Birmingham schools, Defendant

Roper has violated and continues to violate the Fourth and Fourteenth Amendment rights of the Plaintiff class.

145. Defendant Roper, Defendant BOE, and Defendant Witherspoon have violated and continue to violate the Fourth and Fourteenth Amendment rights of the Plaintiff class by SDOs in the Plaintiff class. Defendant Roper, Defendant BOE, and Defendant Witherspoon have violated and continue to violate the Fourth and Fourteenth Amendment rights of the Class Representatives and the class they seek to represent.

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

## COUNT II

### Declaratory and Injunctive Relief to Protect Plaintiffs' Substantive Due Process

Plaintiffs' Substantive Due Process Rights under the Fourteenth Amendment.

*in his official capacity*

147. Defendants BOE and Witherspoon have created a custodial environment within the BCS high schools for all students subject to the compulsory school attendance law. Factors evidencing the presence of a custodial environment include, but are not limited to the following:

a. Defendants BOE and Witherspoon have requested and/or agreed to the placement

of SDOs in each BCS high school

to handle school discipline matters that are traditionally handled by school officials.

b. Alabama's compulsory school attendance law requires that all students between

the ages of seven and seventeen attend school.

d. Defendants Roper, BOE, Witherspoon, and their employees play a significant role

in enforcing the compulsory school attendance statute; school officials routinely

file complaints against students for truancy, while DDD officers not only file

complaints, but also physically transport truant students back to school

148. As a result of that custodial environment, Defendants BOE and Witherspoon have a

obtaining an education. Defendants BOE and Witherspoon have breached this constitutional

duties by authorizing, approving, and failing to take any action to prevent the reckless and

malicious use of Freeze +P on schoolchildren, including children who are not suspected of any delinquent activity, children who are physically restrained, and children who do not pose a serious threat of injury to anyone.

149. D.C. 14/ BOE 1/1/11. Defendant is in violation of 42 U.S.C. § 1982 for violating

the constitutional rights of the Class Representatives and other members of the class

under the Fourteenth Amendment to the U.S. Constitution.

150. The Class Representatives and the proposed class are entitled to a permanent injunction.

### COUNT III

Declaratory and Injunctive Relief for Conspiracy to Violate Plaintiff's Fourth Amendment

Rights to be Free from Unlawful Seizures

in their official capacities

151. As a result of Defendant's violation and continued violation of the Fourth and

Fourteenth Amendment rights of the Class Representatives and the other members of the class by

promulgating and enforcing policies, practices, and systems that have deprived the plaintiffs of

their constitutional rights to be free from excessive force and unlawful seizures.

152 Defendants Rorer, ROE, and Withernoon willfully and maliciously conspired among

themselves to deprive the Class Representatives and the other members of the Class of their

rights under the Fourth and Fourteenth Amendments to the U.S. Constitution. As provided

by Defendant ROE, Defendant Withernoon, in his official capacity, invited BDD

represented in this action by Defendant Rorer, into BCS to administer school discipline and

this agreement. Defendants Rorer and Withernoon have effectively authorized and committed

§ 1983 for conspiring to violate the Fourth and Fourteenth Amendment rights of the Class.

154 The Class Representatives and the proposed class are entitled to a permanent injunction

### COUNT IV

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

*Defendant Rorer and Defendant Nevitt, in their official and individual capacities  
Defendants Rorer and Nevitt, who are not parties to this lawsuit, are not responsible for the actions of*

155. By deploying a chemical weapon against Plaintiff J.W. as a means of pure intimidation,

Defendant Nevitt violated J.W.'s clearly established constitutional rights under the Fourth and

Amendment violations, whether the defendant's action was justified at its inception or not

incident giving rise to this claim, Plaintiff J.W. had committed no crime and posed no threat

Number refer to any case or cases. Do not include the copy of the case or cases. Do not include the case or cases.

deemed justified at its inception, which it was not, the use of a chemical weapon against Plaintiff

was unconstitutional in that it was not reasonably related in scope to the circumstances

justifying the interference.

enforcing, and implementing a policy, custom, and practice of subjecting DCIS students,

including Plaintiff LW, to excessive force and illegal seizures, in violation of the Fourth and

Fourteenth Amendments of the United States Constitution. Because Defendants Navitt and

Defendant D. acted in clear violation of a well established law of which a reasonable person would have

been aware, they are not entitled to qualified immunity. Defendants Navitt and D. acted

recklessly, maliciously, and with a deliberate disregard for the rights of Plaintiff LW.

### COUNT V

#### Damages for Fourth and Fourteenth Amendment Violations

arising from the use of Excessive Force against Plaintiff LW

Defendant D. and Defendant C. in their official and individual capacities

150 Defendant D. used Plaintiff LW with a chemical weapon without justification or

Defendant C. violated Plaintiff LW's established constitutional rights under

Defendant D. used Plaintiff LW with a chemical weapon against Plaintiff LW

spray in her face - without a warning - which she reasonably perceived as an attack.

Defendant C. used Plaintiff LW with a chemical weapon against Plaintiff LW despite

the fact that she had already been completely incapacitated and was, in fact, struggling to

breathe. His actions were not reasonably related in scope to the circumstances justifying

interference in the first place, and were calculated to injure, punish, humiliate, and intimidate

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

150. As described herein, Defendants Rorer and Clark are both liable pursuant to 42 U.S.C.

§ 1983 for interfering with and implementing a policy, practice, and custom of the City of Chicago, which is a violation of the rights of Plaintiff G.S. under the

Constitution and the Fourteenth Amendment of the United States Constitution.

Constitution. Because Defendants Nevitt and Rorer acted in clear violation of well-established

immunity. The actions of these Defendants were intentional, malicious, and reckless, and

showed a callous disregard for the rights of the Plaintiff.

160. Plaintiff G.S. seeks compensatory damages against these Defendants.

### COUNT VI

#### causing from the use of Excessive Force against Plaintiff P.S.

Defendant Clark, with reckless disregard for the safety of Plaintiff P.S.

and without any reason to believe she had committed a delinquent act, Defendant Clark violated

the Plaintiff's clearly established constitutional rights under the Fourth and Fourteenth

Amendments. Defendant Clark's conduct fails even the threshold inquiry for Fourth

Amendment violations: whether the defendant's action was justified at its inception. In the

incident giving rise to this claim, Plaintiff P.S. had committed no crime and posed no threat

whatsoever to anyone's safety. In fact, Plaintiff P.S. was being physically restrained by an adult

when Defendant Clark deployed a second burst of Freeze 19 against Plaintiff G.S., also hitting

Plaintiff P.S. in the face. The deployment of Freeze +P against Plaintiff P.S. was also unconstitutional in that it was not reasonably related in scope to the circumstances justifying the interference.

162. Defendants Roper and Clark are liable pursuant to 42 U.S.C. § 1983 for sanctioning, enforcing, and implementing a policy, custom, and practice of subjecting BCS students,

including Plaintiff P.S., to excessive force and illegal seizures, in violation of the Fourth and Fourteenth Amendments of the United States Constitution. Because Defendants Clark and Roper acted in clear violation of well-established law, of which a reasonable person would have been aware, they are not entitled to qualified immunity. Defendants Clark and Roper acted recklessly, maliciously, and with a callous disregard or indifference to the rights of Plaintiff P.S.

163. Plaintiff P.S. seeks compensatory damages from these Defendants.

## COUNT VII

**arising from the use of Excessive Force against Plaintiff T.L.P.**

*Defendant Roper and Defendant Nevitt, in their official and individual capacities*

164. By deploying a chemical weapon against Plaintiff T.L.P. without justification or warning,

Defendant Nevitt violated T.L.P.'s clearly established constitutional rights under the Fourth and

Fourteenth Amendments. The deployment of Freeze +P against Plaintiff T.L.P. was unjustified,

given that T.L.P. was restrained by an adult man at the time and posed no threat to the safety of

others. This seizure was calculated to punish, humiliate, and intimidate T.L.P. Defendant

Nevitt's actions were not reasonably related in scope to the circumstances justifying interference

with Plaintiff T.L.P.'s rights under the Fourth and Fourteenth Amendments of the United States Constitution.

166. By the foregoing actions and inactions, Defendants Roper and Nevitt are liable pursuant to

42 U.S.C. § 1983 for sanctioning, enforcing, and implementing a policy, practice, and custom of

unreasonably and unconstitutionally subjecting RCS students, including Plaintiff T.L.P. to

excessive force in violation of the Fourth and Fourteenth Amendments of the United States

Constitution. Because Defendants Nevitt and Roper acted in clear violation of well-established

law, of which a reasonable person would have been aware, they acted in violation of

the law. The actions of these Defendants were intentional, malicious, and reckless, and

showed a callous disregard for the rights of Plaintiff T.L.P.

166. Plaintiff T.L.P. seeks compensatory damages from these Defendants.

**COUNT VIII**

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

*Defendants Roper, Defendant Moss, and Defendant Tarrant,  
in their official and individual capacities*

167. By the use of excessive force against Plaintiff T.A.P. without justification, Defendant

injection since that T.A.P. was pinned to the ground by five adult men and posed no threat to

injection and her transmission and in doing so, depriving the chemical in her face. His actions were

not reasonably related to the circumstances justifying the interference, and were calculated to

injure, punish, humiliate, and intimidate T.A.P. Accordingly, Defendant Tarrant's actions

constitute an excessively intrusive search in violation of the Fourth and Fourteenth Amendments

of the United States Constitution.



168. By the forgoing actions and inactions, Defendants Roper and Tarrant are liable pursuant

process in force in violation of the Fourth and Fourteenth Amendments of the United States

Constitution. Because Defendants Tarrant and Roper acted in clear violation of well-established

law of which a reasonable person would have been aware, they are not entitled to qualified

immunity. The actions of these Defendants were intentional, malicious, reckless, and showed a

conscious disregard for the rights of Plaintiff T.A.D.

169. Plaintiff T.A.D. seeks compensatory damages from these Defendants

### COUNT IX

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

Defendant Benson, in their official and individual capacities, deprived Plaintiff B.J. of his or her constitutional rights in violation of the Fourth and Fourteenth Amendments.

170. By deploying a chemical weapon against Plaintiff B.J. without justification or warning,

Defendant Benson violated Plaintiff B.J.'s established constitutional rights under the Fourth and

Fourteenth Amendments. The deployment of the chemical weapon against Plaintiff B.J. was both

unjustified and unreasonable in that that B.J. was already being physically restrained by two

adult men and posed no threat to the safety of others or the school environment. This seizure

was calculated to punish, humiliate, and intimidate B.J. Even after he had been blinded and

incapacitated by the chemical sprayed into his nose and mouth, Defendant Benson continued to

use excessive force by forcing B.J. to the ground and holding him down while he was

struggling to breathe. Defendant Benson's actions were not reasonably related in scope to the

purpose of the search and seizure. Defendant Benson's actions were calculated to punish,

humiliate, and intimidate B.J.

171. By the foregoing actions and inactions, Defendants Roper and ...  
to 42 U.S.C. § 1983 for sanctioning, enforcing, and implementing a policy, practice and custom

of unnecessarily and unconstitutionally subjecting BCS students, including Plaintiff B.J. to

EXCESSIVE FORCE IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES

Constitution. Because Defendants Nevitt and Roper acted in clear violation of well-established

law of which a reasonable person would have been aware, they are not entitled to qualified

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

172. Plaintiff B.J. ...

COUNT A

Plaintiff J.W. ...  
in his official and individual capacity

173. Plaintiff J.W. ...

clearly established rights under the Fourteenth Amendment. Defendants BOE and Witherspoon

have created a custodial environment within the BCS system for all students subject to the

compulsory school attendance law. That custodial environment imposes a constitutional duty on

Defendant BOE and Witherspoon to ensure J.W.'s safety and well-being while he attends BCS

Defendants BOE and Witherspoon breached that duty by authorizing and approving the use of

chemical weapons against BCS students, and by failing to take action to protect Plaintiff J.W.

and other students against the use of chemical weapons. Accordingly, Defendants BOE and  
Witherspoon have violated Plaintiff J.W.'s rights in violation of the Fourteenth Amendment to  
the U.S. Constitution.

§ 1982 under the Fourteenth Amendment of the United States Constitution for failing to protect

I W from Defendant Roner's unlawful and illegal policies, practices, and customs. Because

Fourteenth Amendment and acted in clear violation of well-established law, of which a

reasonable person would have been aware, they are not entitled to qualified immunity.

175 Plaintiff seeks compensatory and punitive damages from these Defendants.

COUNT XI

*in his official and individual capacity*

176 Defendant Roner, Defendant DOE, and Defendant Witherspoon have violated Plaintiff G.S.'s

Defendants Roner and Witherspoon have violated Plaintiff G.S.'s

177 Plaintiff seeks compensatory and punitive damages from these Defendants.

have created a custodial environment within the BCS system for all students subject to the

compulsory school attendance law. That custodial environment imposes a constitutional duty on

178 Defendant Roner, Defendant DOE, and Defendant Witherspoon have violated Plaintiff G.S.'s

Defendants DOE and Witherspoon breached that duty by authorizing and approving the use of  
chemical weapons against BCS students, and by failing to take action to protect Plaintiff G.S.

and other students against the use of chemical weapons. Accordingly, Defendants DOE and

Witherspoon have violated Plaintiff G.S.'s rights in violation of the Fourteenth Amendment to  
the U.S. Constitution.

179 Plaintiff seeks compensatory and punitive damages from these Defendants.

§ 1982 under the Fourteenth Amendment of the United States Constitution for failing to protect

reasonable person would have been aware, they are not entitled to qualified immunity

**Damages for Fourteenth Amendment Violations: Failure to Protect Plaintiff P.S.**

*in his official and individual capacity*

170 By failing to protect Plaintiff P.S. from the illegal and unreasonable actions of  
171 By failing to protect Plaintiff P.S. from the illegal and unreasonable actions of

Defendant BOE and Witherspoon, Defendants BOE and Witherspoon have violated Plaintiff P.S.'s  
clearly established rights under the Fourteenth Amendment. Defendants BOE and Witherspoon  
have created a custodial environment within the BCS system for all students subject to the  
compulsory school attendance law. That custodial environment imposes a constitutional duty on

Defendant BOE and Witherspoon, Plaintiff P.S. is a student of the BCS system while she attends BCS

Defendant BOE and Witherspoon have violated Plaintiff P.S.'s rights by creating the use of

Defendant BOE and Witherspoon have violated Plaintiff P.S.'s rights to protect Plaintiff P.S. and

other students against the use of chemical weapons. Accordingly, Defendants BOE and

Witherspoon have violated Plaintiff P.S.'s rights in violation of the Fourteenth Amendment to

the U.S. Constitution.

180 By the foregoing actions and inactions, these Defendants are liable pursuant to 42 U.S.C. §

1983 under the Fourteenth Amendment of the United States Constitution for failing to protect

191 Defendant BOE and Witherspoon have violated Plaintiff P.S.'s rights in violation of the Fourteenth Amendment to

Defendants BOE and Witherspoon breached their duty to protect P.S. as required by the

181. Plaintiff P.S. seeks compensatory and punitive damages from these Defendants.

### COUNT XIII

*Defendant Dwight B. Roper, Director of Corrections and Vocational Rehabilitation  
in his official and individual capacity*

Defendants Roper and Benson, Defendants BOE and Witherspoon have violated Plaintiff

T.I.P.'s clearly established rights under the Fourteenth Amendment. Defendants BOE and

subject to the compulsory school attendance law, that custodial environment imposed a

constitutional duty on Defendants BOE and Witherspoon to ensure T.I.P.'s safety and well-

being while she attends BCS. Defendants BOE and Witherspoon breached that duty by

allowing the presence of chemical weapons against BCS students, and by failing to

take action to protect Plaintiff T.I.P. and other students against the use of chemical weapons.

Accordingly, Defendants BOE and Witherspoon have violated Plaintiff T.I.P.'s rights in

violation of the Fourteenth Amendment to the U.S. Constitution.

182. Due to the foregoing actions and inactions, these Defendants are liable pursuant to 42 U.S.C. § 8

1983 under the Fourteenth Amendment of the United States Constitution for failing to protect

T.I.P. from Defendant Roper's unlawful, illegal, policies, practices and systems. Because

Defendants BOE and Witherspoon breached their duty to protect T.I.P. as required by the

Fourteenth Amendment and acted in clear violation of well established law, of which a

reasonable person would have been aware, they are not entitled to qualified immunity.

184. Plaintiff T.A.P. is entitled to reasonable attorneys' fees and costs, and punitive damages from these Defendants.

#### COUNT XIV

#### Damages for Fourteenth Amendment Violations: Failure to Protect Plaintiff T.A.P.

Defendant Birmingham Board of Education and Defendant Witherspoon

in his official and individual capacities

185. By failing to protect Plaintiff T.A.P. from the illegal and unreasonable actions of

Defendants Boman and Boman, Defendants BOE and Witherspoon, have violated Plaintiff

T.A.P.'s clearly established rights under the Fourteenth Amendment. Defendants BOE and

Witherspoon have created a custodial environment within the BCS system for all students

subject to the compulsory school attendance law. That custodial environment imposes on

constitutional duty on Defendants BOE and Witherspoon to ensure T.A.P.'s safety and well-

being while she attends BCS. Defendants BOE and Witherspoon breached that duty by

take action to protect Plaintiff T.A.P. and other students against the use of chemical weapons

Accordingly, Defendants BOE and Witherspoon have violated Plaintiff T.A.P.'s rights in

186. By the forgoing actions and inactions, these Defendants are liable pursuant to 42 U.S.C. §

1983 under the Fourteenth Amendment of the United States Constitution for failing to protect

T.A.P. from Defendant Boman's unlawful and illegal policies, practices, and customs. Because

Defendants BOE and Witherspoon breached their duty to protect T.A.P. as required by the

Fourteenth Amendment and acted in clear violation of well-established law, of which a

qualified immunity

COUNT XV

Defendant Birmingham Board of Education and Defendant Witherspoon, in his official and individual capacity

Defendant Birmingham Board of Education and Defendant Witherspoon, in his official and individual capacity

199 Defendant Birmingham Board of Education and Defendant Witherspoon, in his official and individual capacity

Defendants Birmingham Board of Education and Defendant Witherspoon, in his official and individual capacity

Defendants Birmingham Board of Education and Defendant Witherspoon, in his official and individual capacity

Defendants Birmingham Board of Education and Defendant Witherspoon, in his official and individual capacity

Defendants Birmingham Board of Education and Defendant Witherspoon, in his official and individual capacity

chemical weapons against BCS students, and by failing to take action to protect Plaintiff B.J. and

the students against the use of chemical weapons. Accordingly, Defendants Birmingham Board of Education and

the U.S. Constitution.

1983 under the Fourteenth Amendment of the United States Constitution for failing to protect

100 Plaintiff B.J. seeks compensatory and punitive damages from these Defendants

COUNT XVI

under the Fourth and Fourteenth Amendments

191. Defendants Roper, BOE, and Witherspoon have engaged in a conspiracy to violate

Plaintiff J.W.'s civil rights under the Fourth and Fourteenth Amendments of the U.S.

Constitution. As set forth above, Defendants Roper and Nevitt have violated J.W.'s Fourth and

Fourteenth Amendment rights by subjecting him to unreasonable and excessive force, and an

unlawful seizure in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution.

that has been done to deprive J.W. of his rights under the Fourth and Fourteenth Amendments to the

official capacity, invited BPD, represented in this action by Defendant Roper, into BCS to

customs, and practices. Pursuant to this agreement, Defendants BOE and Witherspoon

effectively authorized Defendant Nevitt's illegal development of chemical process against J.W.

193. By the foregoing actions and inactions, Defendants Roper, BOE, and Witherspoon are

in violation of 42 U.S.C. § 1983 for conspiring to violate Plaintiff J.W.'s rights under the

Roper, BOE, and Witherspoon conspired to subject J.W. to unlawful seizures and excessive

force in violation of well established law of which a reasonable person would

194. J.W. seeks compensatory damages from these Defendants.



COUNT XVII

~~Damages for Conspiracy to Violate the Civil Rights of Plaintiff G.S.~~

~~under the Fourth and Fourteenth Amendments~~

~~in their official and individual capacities.~~

Plaintiff G.S.'s civil rights under the Fourth and Fourteenth Amendments of the U.S.

~~Constitution. As set forth above, Defendants Roper and Clark have violated Plaintiff G.S.'s~~

~~Fourth and Fourteenth Amendment rights by subjecting her to unreasonable and excessive force,~~

~~and an unlawful seizure in violation of the Fourth and Fourteenth Amendments of the U.S.~~

~~themselves to deprive Plaintiff G.S. of her rights under the Fourth and Fourteenth Amendments~~

~~to the U.S. Constitution. As provided above, Defendant BOE and Defendant Witherspoon, in his~~

~~official capacity, invited RPD, represented in this action by Defendant Roper, into BOS to~~

~~administer school discipline and conduct school arrests pursuant to unconstitutional policies~~

~~and that, in violation of this agreement, Defendants BOE and Witherspoon~~

G.S.

liable pursuant to 42 U.S.C. § 1983 for conspiring to violate Plaintiff G.S.'s rights under the

~~Federal and State Constitutions, the United States Constitution, and the~~

Roper, BOE, and Witherspoon conspired to subject G.S. to unlawful seizures and excessive

~~force, and acted in clear violation of well established law, of which a reasonable person would~~

have been aware, they are not entitled to qualified immunity.

Plaintiff P.S. seeks compensatory damages from these Defendants

COUNT XVIII

under the Fourth and Fourteenth Amendments

Defendant Board of Education, and Defendant Witherspoon in their official and individual capacities

rights by subjecting her to unreasonable and excessive force, and an unlawful seizure in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution.

of the Fourth and Fourteenth Amendments of the U.S. Constitution.

rights to privacy, P.S. claims that under the Fourth and Fourteenth Amendments to the

U.S. Constitution, Defendant BOE, Defendant BOE, and Defendant Witherspoon

official capacity invited BPD, represented in this action by Defendant Roper, into BCS to

customs, and practices. Pursuant to this agreement, Defendants BOE and Witherspoon

effectively authorized Defendant Clark's illegal deployment of chemical spray against P.S.

201. By the foregoing actions and inactions, Defendants Roper, BOE, and Witherspoon are

U.S. Constitution, 42 U.S.C. § 1983 for conspiring to violate Plaintiff P.S.'s rights under the

Defendant BOE, Defendant Witherspoon, Defendant Roper, Defendant Clark, and Defendant

have been aware, they are not entitled to qualified immunity

202 P.S. seeks compensatory damages from these Defendants.

COUNT XIX

Damages for Conspiracy to Violate the Civil Rights of Plaintiff T.I.P.

Defendant Roper, Defendant Birmingham Board of Education, and Defendant Witherspoon.

T.I.P.'s civil rights under the Fourth and Fourteenth Amendments of the U.S. Constitution. As

Amendment rights by subjecting her to unreasonable and excessive force, and an unlawful

seizure in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution.

204. Defendants Roper, BOE, and Witherspoon willfully and maliciously conspired among

themselves to deprive T.I.P. of her rights under the Fourth and Fourteenth Amendments to the

U.S. Constitution. As provided above, Defendant Roper and Defendant Witherspoon in his

official capacity, invited BPD, represented in this action by Defendant Roper, into BCS to

administer school discipline and conduct school arrests pursuant to unconstitutional policies.

Conspiracy and Racketeering in Violation of the Civil Rights of Plaintiff T.I.P.

Conspiracy and Racketeering in Violation of the Civil Rights of Plaintiff T.I.P.

205. Defendants Roper, BOE, and Witherspoon are

liable pursuant to 42 U.S.C. § 1983 for conspiring to violate Plaintiff T.I.P.'s rights under the

Fourth and Fourteenth Amendments of the United States Constitution. Because Defendants

Roper, BOE, and Witherspoon conspired to deprive T.I.P. of unlawful seizures and excessive

force, and to discriminate on the basis of race, which is a violation of well established law, of which a reasonable person would

have had no excuse, there are not entitled to qualified immunity.

206. Defendants Roper, BOE, and Witherspoon are liable for the costs of this action.

COUNT XX

~~Damages for Conspiracy to Violate the Civil Rights of Plaintiff T.A.P.~~

~~Defendant Board of Education and Defendant Witherspoon~~

*in their official and individual capacities*

207. Defendants Roper, BOE, and Witherspoon have engaged in a conspiracy to violate Plaintiff T.A.P.'s civil rights under the Fourth and Fourteenth Amendments of the U.S.

~~Constitution and an unlawful seizure in violation of the Fourth and Fourteenth Amendments of the U.S.~~

~~Constitution.~~

and an unlawful seizure in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution.

208. Defendants Roper, BOE, and Witherspoon willfully and maliciously conspired among

~~themselves to deprive Plaintiff T.A.P. of his rights under the Fourth and Fourteenth Amendments of the~~

~~U.S. Constitution by conspiring with Defendant BOE and Defendant Witherspoon in his~~

~~official capacity, invited Dr. D, represented in this action by Defendant Roper, into BOE to~~

~~effectively authorize Defendant Tarrant's illegal deployment of chemical spray against T.A.P.~~

effectively authorized Defendant Tarrant's illegal deployment of chemical spray against T.A.P.

209. By the foregoing actions and inactions, Defendants Roper, BOE, and Witherspoon are

liable pursuant to 42 U.S.C. § 1983 for conspiring to violate Plaintiff T.A.P.'s rights under the

Roper, BOE, and Witherspoon conspired to subject T.A.P. to unlawful seizures and excessive

force, and acted in clear violation of well established law, of which a reasonable person would

have been aware, they are not entitled to qualified immunity.

210. T.A.P. seeks compensatory damages from these Defendants.

COUNT XXI

Damages for Conspiracy to Violate the Civil Rights of Plaintiff B.J.  
under the Fourth and Fourteenth Amendments

Defendant Roper, Defendant Birmingham Board of Education, and Defendant Witherspoon

211. Defendants Roper, BOE, and Witherspoon have engaged in a conspiracy to violate

Plaintiff B.J.'s civil rights under the Fourth and Fourteenth Amendments of the U.S.

Fourth Amendment rights by subjecting him to unreasonable and excessive force, and an  
unlawful seizure in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution.

212. Defendants Roper, BOE, and Witherspoon willfully and maliciously conspired among  
themselves to deprive B.J. of his rights under the Fourth and Fourteenth Amendments to the U.S.

capacity, invited BPD, represented in this action by Defendant Roper, into BCS to administer

corporal discipline and control which affects our constitutional rights in a manner which

is in violation of the U.S. Constitution. Defendant Roper, BOE, and Witherspoon are effectively authorized

Defendant Roper's ill and deliberate actions against B.J.

213. By the forgoing actions and inactions, Defendants Roper, BOE, and Witherspoon are  
liable pursuant to 42 U.S.C. § 1983 for conspiring to violate Plaintiff B.J.'s rights under the

Fourth and Fourteenth Amendments of the United States Constitution. Because Defendants

Roper, BOE, and Witherspoon conspired to deprive Plaintiff B.J. of his rights under the

Fourth and Fourteenth Amendments of the United States Constitution, they are liable for damages

thereof, and they are liable for punitive damages.

214. B.J. seeks compensatory damages from these Defendants

COUNT XXII

in Violation of the Fourteenth Amendment

Defendant Moss in his individual capacity

015 Defendant Moss in violation of FDCA and other prohibitions

Defendant Moss's actions were arbitrary, excessive and executed a reasonably foreseeable risk of future bodily injury to Plaintiff T.A.D. Accordingly, Defendant Moss's use of

corporal punishment amounts to arbitrary and egregious conduct in violation of the Fourteenth Amendment to the United States Constitution.

Individual Claims for Damages under Alabama Law

Defendant Barron and Defendant Clark, in their official and individual capacities

law Defendant Clark intentionally and unlawfully twice struck G.S. in the face with a

imminent bodily harm.

219. Defendants Roper and Nevitt acted willfully and maliciously in sanctioning, enforcing, and implementing policies, customs, and practices that subject BCS students, including G.S., to bodily harm in violation of Alabama law. Defendants Clark and Roper acted

discretionary function immunity provided by Alabama law.

219. Plaintiff G.S. seeks compensatory damages from these Defendants.

#### COUNT XXIV

Defendants Roper and Nevitt acted willfully and maliciously in committing the tort of assault and battery against T.L.P. in violation of Alabama law. Defendant

warning while she was restrained by an adult man. Defendant Nevitt's actions were intended to physically harm T.L.P. and caused her to fear imminent bodily harm.

221. Defendants Roper and Nevitt are liable pursuant to Alabama law for sanctioning, enforcing, and implementing policies, customs, and practices that subject BCS students

including T.L.P., to bodily harm in violation of Alabama law. Defendants Nevitt and Roper acted willfully, recklessly, maliciously, and with a callous disregard or indifference to T.L.P.'s

rights. Because Defendants Nevitt and Roper acted willfully and maliciously, they are not entitled to discretionary function immunity provided by Alabama law.

222. Plaintiff T.L.P. seeks compensatory damages from these Defendants.

COUNT XXV

~~Defendants for Assault and Battery on Plaintiff T.A.P. in Violation of Alabama Law~~  
~~Defendant Roper, Defendant Moss, and Defendant Tarrant, in their official and individual~~

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

224. Defendants Roper and Tarrant are liable pursuant to Alabama law for contributing

increasing T.A.P.'s, to bodily harm in violation of Alabama law. Defendants Tarrant and Roper

entitled to discretionary function immunity provided by Alabama law.

COUNT XXVI

~~Defendants for Assault and Battery on Plaintiff B.L. in Violation of Alabama Law~~  
~~Defendant Roper and Defendant Benson, in their official and individual capacities~~

226. By deploying chemical spray against B.L. as a means of intimidation and kicking him to the ground grounding her foot in his back, Defendant Benson committed assault and battery against B.L. in violation of Alabama law. Defendant Benson intentionally and unlawfully

B.L. with a dangerous chemical weapon without warning or cause. Defendant Benson



also kicked B. I. to the ground after deploying the chemical in B. I.'s face. Her actions were intended to physically harm B. I. and caused him to fear imminent bodily harm.

227. Defendants Rorer and Benson are liable pursuant to Alabama law for sanctioning,

enforcing, and implementing policies, customs, and practices that subject BCS students, including Plaintiff B. I., to extreme and intentional emotional distress in violation of Alabama law. Defendants Benson and Rorer acted

discretionary function immunity provided by Alabama law.

228. Plaintiff B. I. seeks compensatory damages from these Defendants.

## COUNT XXVII

Damages for the Tort of Outrage Against Plaintiff C.S. in Violation of Alabama Law

Defendants Rorer and Defendant Clark, in their official and individual capacities,

229. Defendant Clark deployed chemical mace against C.S. as a means of intimidation and

violation of Alabama law.

Without identifying himself as a police officer, Defendant Clark grabbed a young girl from

behind the crowd to blast a painful chemical in her face when she tried to defend herself.

Defendant Clark proceeded to intentionally and recklessly annoy her for a second time

could be expected to endure.

230. Defendants Rorer and Clark are liable pursuant to Alabama law for sanctioning,

enforcing, and implementing policies, customs, and practices that subject BCS students,

including Plaintiff C.S., to extreme and intentional emotional distress in violation of Alabama

law. Defendants Clark and Rorer acted willfully, maliciously, and with a callous disregard or

221. Plaintiff C.S. seeks compensatory damages from these Defendants

COUNT XXVIII

Defendant Roner and Defendant Nevitt, in their official and individual capacities

222. Defendant Nevitt intentionally and recklessly sprayed T.L.P. as a means of intimidation

Defendant Nevitt

Defendant Nevitt intentionally and recklessly sprayed a young child in the face with chemical

while she was being restrained by an adult man. Defendant Nevitt's actions caused T.L.P. physical and emotional distress that no reasonable child could be expected to endure.

233. Defendants Roner and Nevitt are liable pursuant to Alabama law for sanctioning, enforcing, and implementing policies, customs, and practices that subject BCS students, including T.L.P., to extreme and intentional emotional distress in violation of Alabama law

Defendants Nevitt and Roner acted willfully, maliciously, and with a callous disregard or indifference to T.L.P.'s rights. Because Defendants Nevitt and Roner acted willfully and

COUNT XXIX

Defendant Roner, Defendant Moss, and Defendant Tarrant  
in their official and individual capacities

225. Defendant Tarrant intentionally and recklessly sprayed Plaintiff T.A.D. as a means of

intimidation and punishment, Defendant Tarrant engaged in extreme and outrageous conduct in

violation of Alabama law. Defendant Tarrant intentionally and recklessly sprayed a young child in the face with a painful chemical, while she was pinned to the ground and completely

incapacitated by five adult men. Defendant Tarrant's actions caused T.A.P. physical and

enforcing, and implementing policies, customs, and practices that subject BCS students,

including Tarrant T.A.P., to extreme and intentional emotional distress in violation of Alabama

law. Defendants Tarrant and Koper acted willfully, maliciously, and with a callous disregard of

ignorance to the rights of Tarrant T.A.P. Because Defendants Tarrant and Koper acted

willfully and maliciously, they are not entitled to misfeasance damages under Alabama

Alabama law.

237. Plaintiff T.A.P. seeks compensatory damages from these Defendants

Damages for the tort of Intentional Infliction of Emotional Distress in violation of Alabama Law

239. Defendant Renson intentionally spraying chemical spray against B.J. as a means of intimidation and

fear. Defendant Renson engaged in extreme and outrageous conduct in violation of Alabama

a young child in the face with a painful chemical spray while that child was being restrained by

two adult men. Defendant Renson's actions caused B.J. physical and emotional distress that no

reasonable child could be expected to endure.

240. Defendants Renson and Rendon are liable pursuant to Alabama law for enjoining

enforcing, and implementing policies, customs, and practices that subject BCS students,

including B.J., to extreme and intentional emotional distress in violation of Alabama law.

manicously, they are not entitled to discretionary function immunity provided by Alabama law.

240. Plaintiff I seeks compensatory damages from these Defendants

**PRAYER FOR RELIEF**

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

2. Grant the relief requested in paragraphs (a) and (c);
3. Declare that the acts and omissions of all Defendants violate the U.S. Constitution;
4. Declare that the acts and omissions of Defendants Roper, Clark, Nevitt, Tarrant
5. Enter a permanent injunction requiring the Defendants, their agents, employees, and all persons acting in concert with them to cease their unconstitutional and unlawful practices;
6. Award compensatory and punitive damages to the named plaintiffs for the injuries they sustained as a result of the actions of Defendants Roper, Witherspoon, Roper, Clark, Nevitt, Tarrant, Moss, and Benson;
7. Award the Plaintiffs the costs of this lawsuit and reasonable attorneys' fees and award the Defendants the costs of this lawsuit and reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and

Respectfully submitted this 1<sup>st</sup> day of December, 2010.

Ebony Glenn Howard (admission pending)

ASB-1181-R76B

Mary C. Power (admission pending)

ASB-1181-R76B

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