

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VICKY HICKS individually and on behalf of S.H., a minor,

Plaintiff,

v.

No.

**WINGATE ELEMENTARY SCHOOL,
CHRISTINE EDSITTY-BEACH, Middle School
Director of Wingate Elementary School,
SADIE MARTINEZ, Counselor at Wingate Elementary
School, in their individual capacities.**

Defendants.

JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES TO REMEDY FEDERAL
CIVIL RIGHTS VIOLATIONS AND FEDERAL STATUTES**

Vicky Hicks, as the parent and legal guardian of S.H., a minor and an eighth grade student at the Wingate Elementary School near Gallup, NM, brings this Complaint individually and on behalf of S.H. for violations of the Fifth and First Amendments of the United States Constitution and Title IX of the Education Amendments of 1972 pursuant to 28 U.S.C. §§ 2201 and 1331 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). After learning that S.H., a student at Wingate Elementary School, was pregnant, the Defendants, school officials, initially told her she could no longer attend the school. After she insisted on her right to attend the school and returned to class a few days later, following intervention by the school Principal, Defendants publically embarrassed and humiliated S.H by forcing her to stand up in front of the entire middle school at an assembly while the Middle School Director and counselor publicly announced that she was pregnant.

JURISDICTION AND VENUE

1. This case is brought pursuant to 28 U.S.C. §§ 2201 and 1331, 20 U.S.C. § 1681, and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). This court has jurisdiction pursuant to 28 U.S.C. §§ 1343. Venue is proper in this district as all acts complained of occurred in New Mexico.

PARTIES

2. Plaintiff Vicky Hicks is the parent and legal guardian of S.H., a minor. Vicky Hicks is a resident of the State of New Mexico.

3. S.H. is now and was at all relevant times an eighth grade student at Wingate Elementary School. S.H. is also a resident of New Mexico.

4. Defendant Wingate Elementary School is a public, coeducational elementary school for Native American children from kindergarten through eighth grade that is funded by the Bureau of Indian Affairs, and operated by the Bureau of Indian Education.

5. Defendant Christine Edsitty-Beach (hereinafter “Edsitty-Beach”) is now and was at all relevant times employed by the Federal Bureau of Indian Affairs and at the relevant times was the Director of the Middle School for Wingate Elementary School.

6. Defendant Sadie Martinez (hereinafter “Martinez”) is now and was at all relevant times employed by the Bureau of Indian Affairs as a Counselor for Wingate Elementary School.

7. Defendants Edsitty-Beach and Martinez were acting within the scope of their employment during the events enumerated in this Complaint.

FACTS

8. Wingate Elementary School is a public, coeducational elementary school for Native American children from kindergarten through eighth grade that is funded by the Bureau of Indian Affairs, and operated by the Bureau of Indian Education.

9. Upon information and belief, Wingate Elementary School receives federal funds, including funding from the federal Department of the Interior, the Department of Education, the Department of Agriculture, and the Department of Health and Human Services.

10. All employees of Wingate Elementary are employees of the Bureau of Indian Affairs.

11. Wingate Elementary is a boarding school with dormitories. Many students at Wingate Elementary School reside in the dormitories, and some students are day students.

12. S.H. is now and was at all relevant times an eighth grade student at Wingate Elementary School.

13. S.H. began the school year living in the dormitories at Wingate Elementary School.

14. On or about October 11, 2011, S.H. discovered she was pregnant at a doctor's appointment she attended with her mother, Vicky Hicks.

15. On or about October 12, 2011, Vicky Hicks attempted to return S.H. to the dormitories following S.H.'s doctor's appointment.

16. Vicky Hicks told Vera Cardy, the manager of the dormitories, that S.H. was pregnant.

17. Vera Cardy told Vicky Hicks that S.H. could no longer stay in the dormitories due to her pregnancy.

18. Vera Cardy would not allow S.H. to return to her room in the dormitories, and Vicky Hicks took S.H. home.

19. On or about October 13, 2011, S.H. and Vicky Hicks attended a meeting at Wingate Elementary School with Defendant Edsitty-Beach, Defendant Martinez and Grace Benally (hereinafter “Benally”), the federal programs director.

20. During this meeting, Vicky Hicks disclosed to Edsitty-Beach, Martinez, and Benally that S.H. was pregnant.

21. Edsitty-Beach, Martinez, and Benally told Vicky Hicks and S.H. that S.H. would no longer be permitted to live in the dormitories or to attend Wingate Elementary because she was pregnant.

22. Their stated reason was that S.H. would set a bad example for the other students because she was pregnant.

23. They told S.H. and Vicky Hicks that S.H. should enroll at Gallup Central High School, an alternative high school in Gallup, New Mexico that is geared toward helping students who are behind in credits, or are returning after dropping out. Gallup Central High School also has a program for pregnant teens.

24. Vicky Hicks pointed out that S.H. was in eighth grade and could not attend a high school such as Gallup Central High School.

25. Vicky Hicks also told Edsitty-Beach, Martinez, and Benally that she believed that S.H. should remain at Wingate Elementary.

26. Edsitty-Beach, Martinez, and Benally told Vicky Hicks that S.H. could no longer be a student at Wingate Elementary.

27. Vicky Hicks asked if S.H. could at least receive homebound instruction from Wingate Elementary School.

28. Edsitty Beach, Martinez, and Benally refused to permit homebound instruction either.

29. On or about October 14, 2011, Vicky Hicks spoke with the principal of Wingate Elementary School, Timothy Nelson (hereinafter "Nelson").

30. Nelson told Vicky Hicks that S.H. could have a teacher come to her home and be a "homebound" student.

31. Vicky Hicks then contacted the American Civil Liberties Union of New Mexico (hereinafter "ACLU of NM"). Alexandra Freedman Smith (hereinafter "Smith") from ACLU of NM sent Nelson a letter on October 17, 2011 asking that S.H. be permitted to return to school and enjoy the privileges to which all students at Wingate Elementary were entitled including living in the dormitories. (See Ex. A, attached).

32. On October 17, 2011, Nelson sent a letter to Smith agreeing to permit S.H. to return to the school and the dormitories immediately.

33. Ultimately, S.H. and Vicky Hicks decided that S.H. would no longer reside in the dormitories and would attend Wingate Elementary as a day student.

34. On October 19, 2011 S.H. returned to school. She had missed four school days.

35. S.H. had missed homework assignments, classroom exercises, and classroom instructions as a result of this absence from school.

36. She was able to make up the school work she had missed, but it was difficult and time consuming. She had to complete her missed work at the same time she completed her regularly assigned work once she returned.

37. On or about October 27, 2011, there was an assembly for the middle school students.

38. The assembly was one that had been given in past years, so those students who had previously attended this assembly were not required to attend.

39. Those students who were not required to attend could go to a classroom to work on homework during the assembly.

40. S.H. had previously attended the assembly, so she went to the classroom to work on homework.

41. During the scheduled assembly, Defendant Edsitty-Beach sent a student to retrieve all of the students who were working on homework in the classroom, including S.H., and take them to the assembly.

42. Defendants Edsitty-Beach and Martinez were conducting the assembly.

43. The entire middle school was in attendance.

44. When S.H. walked into the assembly and was standing in front of the entire middle school, Defendant Edsitty-Beach announced that S.H. was pregnant.

45. Defendant Martinez then repeated that S.H. was pregnant.

46. Immediately following this announcement, all of the teachers and students at the assembly looked at S.H.

47. S.H. was shocked and humiliated.

48. S.H. had not previously told any students in the school (other than her sister) about her pregnancy.

49. S.H.'s pregnancy was not obvious at the time the announcement was made.

50. Immediately upon sitting down in the assembly following the announcement, boys sitting behind S.H. began kicking her chair and harassing her.

51. Following the assembly, students began commenting and questioning S.H. about her pregnancy.

52. Upon information and belief, Defendants made this announcement in order to publically embarrass and humiliate S.H. and cause her to leave Wingate Elementary School.

53. Upon information and belief, Defendants made this announcement in retaliation for S.H.'s having asserted her rights to continue to attend school during her pregnancy.

54. As a result of the announcement of her pregnancy, S.H. suffered and continues to suffer humiliation and emotional distress.

55. In announcing S.H.'s pregnancy at the assembly, Defendants acted in malicious, reckless, wanton, willful, and knowing indifference to S.H.'s constitutional and statutory rights.

CLAIMS

COUNT I

VIOLATION OF THE RIGHT TO PRIVACY FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION (Defendants Edsitty-Beach and Martinez)

56. Plaintiff realleges the allegations set forth in paragraphs 1-55.

57. Defendants Edsitty-Beach and Martinez violated the Fifth Amendment of the United States Constitution, which protects against unauthorized disclosure of highly personal information by government officials, when they disclosed S.H.'s pregnancy to the entire middle school during an assembly.

58. S.H. had a legitimate expectation of privacy in this information.

59. This disclosure revealed matters of a personal sexual nature as well as private medical information pertaining to S.H.

COUNT II

**VIOLATION OF THE RIGHT TO EQUAL PROTECTION OF THE LAW
GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO
THE UNITED STATES CONSTITUTION
(Defendants Edsitty-Beach and Martinez)**

60. Plaintiff realleges the allegations set forth in paragraphs 1-59.

61. Defendants Edsitty-Beach and Martinez violated S.H.'s right to equal protection of the laws, guaranteed by the Due Process Clause of the Fifth Amendment, when they announced S.H.'s pregnancy to the entire middle school at an assembly.

62. By announcing S.H.'s pregnancy to the entire middle school assembly, the Defendants discriminated against S.H. on the basis of pregnancy, which is a *per se* sex-based classification.

63. By announcing S.H.'s pregnancy to the entire middle school assembly, the Defendants violated her right to equal protection because their actions were based on overbroad generalizations and archaic stereotypes about how pregnant girls and young mothers will or should behave—namely, that that they are not capable of completing their education, that they will not choose to do so, that they should be shamed, made an example of, and/or confined within the home for the duration of their pregnancy, and/or that their proper place was at home caring for their child rather than at school completing their education.

64. By announcing S.H.'s pregnancy to the entire middle school assembly, the Defendants violated her right to equal protection because their actions were based on overbroad generalizations and archaic stereotypes about how young women should behave—namely, that young women should not engage in premarital sex, and that if they do, they should be shamed, made an example of, and punished for their behavior.

65. By announcing S.H.'s pregnancy to the entire middle school assembly, the Defendants' treated S.H. differently than any similarly situated male student had been so treated.

COUNT III
VIOLATION OF TITLE IX
20 U.S.C. § 1681(a)
(Defendant Wingate Elementary School)

66. Plaintiff realleges the allegations set forth in paragraphs 1-65.

67. Defendant Wingate Elementary School violated Title IX when Defendants Edsitty Beach and Martinez announced S.H.'s pregnancy to the entire middle school at an assembly.

68. Title IX states that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681(a).

69. Federal regulations promulgated pursuant to Title IX by numerous federal agencies, including the Department of Education and the Department of the Interior, prohibit discrimination on the basis of pregnancy and status as a parent. Recipients of federal funding “shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student’s pregnancy, childbirth . . . or recovery therefrom,” nor shall they “apply any rule concerning a student’s actual or potential parental, family, or marital status that treats students differently on the basis of sex.” 34 C.F.R. § 106.40 (Education Department regulation); 43 C.F.R. § 41.445 (Department of Interior regulation).

70. The announcement of S.H.'s pregnancy to the entire middle school assembly violated Title IX by singling her out for public humiliation and embarrassment on the basis of her sex and her pregnancy.

71. By announcing S.H.'s pregnancy to the entire middle school assembly, the Defendants discriminated against S.H. on the basis of pregnancy, which is *per se* sex

discrimination under Title IX, as interpreted by the Department of Education and the Department of the Interior in 34 C.F.R. § 106.40 and 43 C.F.R. § 41.445.

72. By announcing S.H.'s pregnancy to the entire middle school assembly, the Defendants treated S.H. differently than any similarly situated male student had been so treated, in violation of Title IX, as interpreted by the Department of Education and the Department of the Interior in 34 C.F.R. § 106.40 and 43 C.F.R. § 41.445.

**COUNT IV
VIOLATION OF TITLE IX
20 U.S.C. § 1681(a)
(Defendant Wingate Elementary School)**

73. Plaintiff realleges the allegations set forth in paragraphs 1-72.

74. By announcing S.H.'s pregnancy to the entire middle school assembly, Defendants' violated Title IX by unlawfully retaliating against S.H. and Plaintiff Vicky Hicks for having asserted S.H.'s right under Title IX to remain a student at Wingate Elementary School during her pregnancy and following the birth of her child.

75. The purpose and effect of this announcement was to humiliate, embarrass, and punish Plaintiff and S.H. as well as to try to make S.H. leave Wingate Elementary School.

**COUNT V
VIOLATION OF FIRST AMENDMENT
OF THE UNITED STATES CONSTITUTION
(Defendants Edsitty-Beach and Martinez)**

75. Plaintiff realleges the allegations set forth in paragraphs 1-75.

76. By announcing S.H.'s pregnancy to the entire middle school assembly, Defendants Edsitty Beach and Martinez violated the First Amendment of the United States Constitution by unlawfully retaliating against S.H. and Plaintiff Vicky Hicks for having asserted

S.H.'s right to remain a student at Wingate Elementary during her pregnancy and following the birth of her child.

77. The purpose and effect of this announcement was to humiliate, embarrass, and punish Plaintiff and S.H. as well as to try to make S.H. leave Wingate Elementary School.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE Plaintiff Vicky Hicks, on behalf of S.H., respectfully requests that the Court enter judgment in her favor including:

1. A declaratory judgment that Defendants' conduct violated the Constitution and Title IX;
2. Injunctive relief requiring Defendants Edsitty-Beach and Martinez to attend training regarding gender discrimination including pregnancy discrimination, and requiring Defendant Wingate Elementary School to provide training to its employees regarding gender discrimination including pregnancy discrimination;
3. Compensatory damages against the Defendants in an amount sufficient to remedy the harm their unlawful conduct caused including, but not limited to, the emotional distress and the reputational harm suffered by S.H. or in the alternative, nominal damages;
4. Punitive damages against the Defendants for Plaintiff's federal constitutional and statutory claims for the Defendants' malicious, reckless, wanton, willful, and knowing indifference to S.H.'s constitutional and statutory rights in an amount sufficient to deter the Defendants and other school officials from violating the

- rights of others;
5. Attorneys' fees;
 6. All costs associated with the lawsuit; and
 7. Any other relief the Court deems proper.

Respectfully Submitted,

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* Certification pursuant to Local Rule 83.3
Pending

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