

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

N.N.	:	
	:	CIVIL ACTION
	:	NO.
Plaintiff,	:	
	:	
v.	:	
	:	
TUNKHANNOCK AREA SCHOOL DISTRICT,	:	
GREGORY ELLSWORTH, GEORGE	:	
SKUMANICK, JR., JEFF MITCHELL,	:	
DAVID A. IDE, JOHN DOE 1-10,	:	
and COUNTY OF WYOMING,	:	
	:	
Defendants.	:	Electronically Filed

COMPLAINT

INTRODUCTION AND NATURE OF THE ACTION

In today’s age, cellular telephones store large amounts of personal and often very private data, including lists of contacts, text messages, photographs and videos. A search of the device is akin to browsing through someone’s address and appointment book, opening and reading letters sent by U.S. mail, and rummaging through a family photo album or viewing home videos. In this civil rights lawsuit, a former student at Tunkhannock Area High School (“TAHS”), plaintiff N.N., alleges that school officials and Wyoming County law enforcement personnel, including the District Attorney, violated her right to privacy in the Winter of 2009 when they seized and searched the contents of her cell phone without the requisite suspicion and probable cause, and then violated her right to free expression by punishing her for storing nude and semi-nude photographs of herself on the cellular phone.

Specifically, Plaintiff alleges that the Defendants’ actions constituted a violation of N.N.’s rights under: (a) the First Amendment to the United States Constitution; (b) the Fourth Amendment to the United States Constitution; (c) Article 1, Section 8 of the Pennsylvania

Constitution and, additionally, constitute an intrusion into seclusion under Pennsylvania common law. Through this Complaint, N.N. asks this Court for the entry of judgment (a) declaring that Defendants' actions were unconstitutional and unlawful; (b) awarding her monetary damages resulting from the Defendants' unconstitutional and unlawful conduct; (c) awarding her costs and attorneys fees; and (d) directing that all of the images obtained from N.N.'s telephone and currently in governmental records be destroyed.

PARTIES

1. Plaintiff N.N. is an adult, residing in Hughesville, Pennsylvania. At all relevant times herein, N.N. was a minor.

2. Defendant Tunkhannock Area School District (hereinafter "School District") is a school district operating in Pennsylvania under color of state law in Wyoming County, Pennsylvania. Tunkhannock Area School District may be served with process through its Superintendent, Michael J. Healey, at 41 Philadelphia Avenue, Tunkhannock, Pennsylvania 18657.

3. Defendant Gregory Ellsworth is the Principal of Tunkhannock Area High School, part of Tunkhannock Area School District, who at all relevant times herein was acting under color of state law. He is being sued in his official and individual capacities. He may be served with process through Superintendent Michael J. Healey, at 41 Philadelphia Avenue, Tunkhannock, Pennsylvania 18657. (Defendants Ellsworth and School District are hereinafter referred to as the "School Defendants").

4. Defendant George Skumanick, Jr. is the former District Attorney of Wyoming County, Pennsylvania. At all relevant times herein, Skumanick was an elected public official whose actions in this matter were all taken under color of state law.

5. Defendant Jeff Mitchell is the current District Attorney of Wyoming County, Pennsylvania. Mitchell is the successor of Defendant Skumanick. Mitchell is sued only in his official capacity. Mitchell can be served with process in his official capacity at 1 School House Road, Tunkhannock, Pennsylvania 18657.

6. Defendant David Ide is the Chief Detective assigned to the Wyoming County District Attorney's Office, who at all relevant times herein was acting under color of state law. Ide is sued in both his individual and official capacities. Ide can be served with process in his official capacity at 1 School House Road, Tunkhannock, Pennsylvania 18657.

7. Defendant County of Wyoming, Pennsylvania, is a County organized under the laws of the Commonwealth of Pennsylvania. The County's chief prosecutorial officer and law enforcement administrator is the Wyoming County District Attorney. The District Attorney supervises administrative staff and several Assistant District Attorneys in operating the Wyoming County District Attorney's Office ("WCDA").

8. Defendants John Doe 1 through 10 are all other government officials, and/or private individuals or entities acting under color of state law, who currently possess copies of the photographs removed from N.N.'s telephone. Defendants John Doe 1 through 10 are being sued in their official capacity only. (Defendants Ide, Skumanick, Mitchell, and John Does 1 through 10 are hereinafter referred to as the "Law Enforcement Defendants").

JURISDICTION AND VENUE

9. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiff's causes of action under the Constitution of the United States and 42 U.S.C. § 1983. This Court has supplemental jurisdiction over Plaintiff's cause of action under the Constitution

of the Commonwealth of Pennsylvania and Pennsylvania common law pursuant to 28 U.S.C. § 1367.

10. This Court has personal jurisdiction over Tunkhannock Area School District, which is located in the Middle District of Pennsylvania.

11. This Court has personal jurisdiction over Defendants Skumanick, Ellsworth, Mitchell, Ide, and John Does 1 through 10, all of whom reside within the Middle District of Pennsylvania.

12. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. §1391(a) in that all Defendants are subject to personal jurisdiction within the Middle District of Pennsylvania, and the events that give rise to this action occurred within the Middle District of Pennsylvania.

FACTUAL BACKGROUND

13. Tunkhannock Area High School (“TAHS”), located in Tunkhannock, Wyoming County Pennsylvania, is a public high school and part of the Tunkhannock Area School District.

14. N.N., a 19 year old female, is a June 2009 graduate of TAHS.

A. N.N.’S SUSPENSION

15. On or about January 23, 2009, while a 17-year-old minor student at TAHS, N.N. attempted to place a call from her cell phone while on school property.

16. While the phone was ringing, but before the recipient of the call answered, N.N.’s cell phone was confiscated by a teacher, Mellissa Sherman (“Sherman”), who had seen N.N. using the cell phone.

17. As set forth in the TAHS 2008-2009 School Handbook, cell phones are to be turned off and stored in lockers at all times during the school day.

18. The penalties for misuse of cell phones are set forth in the TAHS 2008-2009 School Handbook: (i) first offense = ninety-minute Saturday Detention assigned, cell phone is confiscated and returned at the end of the day; (ii) second offense = three-hour Saturday Detention assigned and cell phone confiscated and retrieved by parent; (iii) third offense = one day out-of-school detention assigned and student banned from possessing cell phone on school property.

19. Later that day, N.N. was paged over the public announcement system and asked to go to Principal Ellsworth's office.

20. N.N. was in the middle of a math examination when she was paged, and did not want to be distracted or suffer a bad grade on her math test. Therefore, N.N. decided to wait until she completed the examination before reporting to the principal's office.

21. N.N. reported to Principal Ellsworth's office at the end of her examination.

22. When N.N. arrived at the principal's office, she found Ellsworth sitting at a table with School Nurse Cecelia McCann ("McCann"). Ellsworth told N.N. that McCann was present because he felt that a woman should be in the room.

23. During the meeting, Ellsworth told N.N. that her cell phone would not be returned to her because it had been handed over to law enforcement authorities.

24. Ellsworth further explained that the reason why the cell phone had been handed over to law enforcement authorities was because Ellsworth had gone through its contents and found "explicit" photographs stored within the telephone's memory (those images that were the

subject of the school's and the District Attorney's investigations are referred to herein as the "Photographs").

25. N.N. was outraged by the school authorities' intrusion into her privacy, and expressed her outrage at Ellsworth.

26. Ellsworth then handed N.N. a suspension slip and N.N. was given a three-day out-of-school suspension.

27. N.N. served the three-day suspension.

B. THE SEARCH OF N.N.'S TELEPHONE

28. The Photographs stored in N.N.'s cell phone are not immediately visible. Assuming that school officials were familiar with the menu structure on N.N.'s cell phone, they would have had to take a minimum of three steps in order to view any of the Photographs stored on N.N.'s phone from the cell phone's main menu screen. If they were not familiar with the menu structure on N.N.'s phone, school officials would have taken several additional steps before locating the Photographs.

29. The following are the exact steps that school officials would need to have taken to find the Photographs: (i) click on Media, (ii) click on Pictures, (iii) click on My Pictures, (iv) scroll through My Pictures to locate the Photographs.

30. The Photographs appeared exclusively on N.N.'s cell phone.

31. The Photographs were taken by the cell phone's built-in camera and were saved directly onto the cell phone.

32. The Photographs were never printed by N.N..

33. The Photographs were never uploaded to the internet.

34. The Photographs were never sent via email.

35. N.N. did not take any of the Photographs while on school property.

36. N.N. did not share the Photographs with other students.

37. None of the Photographs was visible on the screen of the cell phone.

38. At all relevant times, N.N. intended that the Photographs be seen only by herself and, perhaps, her long-time boyfriend.

C. N.N.'S MEETING WITH LAW ENFORCEMENT

39. After the one meeting with Ellsworth, N.N. dealt only with the WCDA, including Defendant Ide and then-District Attorney Skumanick, regarding the contents of her cell phone.

40. On Monday, January 26, N.N. and her mother reported to the WCDA in an attempt to obtain the cell phone. There, they met with Defendant Ide.

41. At the time, Ide explained that N.N. could not retrieve her phone because it had been sent to a crime lab in Delaware.

42. Ide then asked N.N. to write and sign a statement and dictated the contents of that statement (the "Statement").

43. N.N. was not given a copy of the Statement.

44. Ide stated that he had reviewed N.N.'s photographs prior to this meeting.

45. Indeed, when N.N.'s mother stepped away, Ide told N.N. that it was a shame that she had not waited until after her eighteenth birthday in April 2009, because, instead of getting into trouble, she could have submitted the photographs directly to Playboy magazine.

46. Ide concluded the conversation by suggesting that N.N. contact him, stating "I'll get you your phone back, [N.N.]" while winking at N.N.

D. N.N.'S MEETING WITH THE DISTRICT ATTORNEY

47. Shortly after her meeting with Detective Ide at the WCDA, and prior to February 12, 2009, N.N. and other students who had been subject to similar unwarranted searches at TAHS received a letter from then-Wyoming County District Attorney, Defendant Skumanick.

48. Skumanick's letter threatened to bring felony child pornography charges against N.N. if she failed to complete a re-education course on sexual violence and victimization offered by the WCDA and the Victim's Resource Center, a non-profit organization based in Wilkes-Barre, Pennsylvania.

49. On February 12, 2009, Defendant Skumanick held an "informational" meeting with TAHS students whose telephones had been searched and seized by the school, and their parents, at the Wyoming County Courthouse.

50. At this meeting, Defendant Skumanick advised the parents that their children had engaged in criminal conduct and offered them the "evidence" to prove it – a stack of printed photographs from the students' confiscated cellular phones which he drew from his coat pocket.

51. Defendant Skumanick allowed the parents at the meeting to view the pictures that prompted the threat of criminal charges and that he deemed to be child pornography.

52. Defendant Skumanick did not create a separate file for each of the students. Instead, he kept the Photographs as a single stack of cards, and repeatedly flipped through them when searching for a particular student's images.

53. Defendant Skumanick printed at least 15 photographs of N.N. that were found on her cell phone, and which he claimed served as a basis to prosecute N.N. for child pornography.

54. At the meeting, Defendant Skumanick explained that he intended to charge all students who had taken "explicit" photographs of themselves or possessed photographs of others

with child pornography unless the offending students agreed to complete the aforementioned re-education course on sexual violence and, ironically, victimization.

55. Faced with the daunting prospect of having to defend herself in court, N.N. reluctantly agreed to complete the re-education course described above.

56. N.N.'s cell phone was returned to her a few days before she attended the re-education course, at which point she discovered that all images on the cell phone, including family photos and the Photographs, had been deleted.

E. THE PHOTOGRAPHS

57. N.N.'s body is fully covered in most of the Photographs, although several of them include images of N.N.'s exposed breasts and one indistinctly shows her pubic area. None of the Photographs include images of N.N.'s genitalia.

58. With the exception of one photograph taken with the assistance of a female friend, the Photographs were taken by N.N. alone.

59. N.N. never intended for anyone but her or her long-time boyfriend to see these very private and intimate photographs.

60. Upon information and belief, despite the fact that no prosecution was ever brought against N.N., the Photographs are still part of one or more governmental records.

61. N.N. has suffered great embarrassment arising from the fact that school administrators and county officials, including the defendants herein, have seen the Photographs and other images stored privately on her cell phone.

F. THE RE-EDUCATION COURSE

62. Completion of the re-education course required N.N. to attend five class sessions, each several hours in duration, on various dates through May 6, 2009.

63. N.N. was disturbed by the re-education course, which she found objectionable for multiple reasons, namely: (i) she did not agree with many of the statements made by the two course instructors and the philosophy that they espoused; and (ii) she did not feel that she belonged in a class for victims of sexual violence and abuse.

64. Rather, N.N. felt victimized and distressed by the defendants' harassment and intrusion into her privacy.

65. N.N. was required to miss several hours of work to complete the re-education course imposed on her by the WCDA. As a result, she lost approximately \$71.50 in wages.

66. N.N. was charged a course fee of approximately \$100 to enroll in the re-education course.

67. N.N. was required to complete homework to prepare for the re-education classes and such preparation took away from the time that she had to prepare for her high school classes.

68. N.N. was compelled to write papers concerning topics she found objectionable during the re-education course in order to complete her punishment.

69. N.N. was never charged with any crimes related to her taking of or possessing the Photographs on her cell phone.

70. N.N.'s conduct in taking and posing for the photographs is not a crime under Pennsylvania law, and could not be a crime since the images are expression protected by the First Amendment.

**FIRST CAUSE OF ACTION
VIOLATION OF THE FOURTH AMENDMENT OF THE
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983
(Unreasonable Search and Seizure – School Defendants)**

71. Plaintiff incorporates by reference the allegations of the foregoing paragraphs as though set forth at length herein.

72. Defendant Ellsworth is a “person” within the meaning of 42 U.S.C. § 1983.

73. Defendant Tunkhannock Area School District is a municipal entity subject to liability for civil rights violations under 42 U.S.C. § 1983. The School District is liable for damages in this case because it had a custom, pattern and/or practice of engaging in the misconduct alleged herein by N.N., and/or because final policymakers adopted or ratified the misconduct at issue.

74. On January 23, 2009, teacher Sherman confiscated N.N.’s cell phone because N.N. was making a phone call during school hours in violation of school rules.

75. Sherman provided N.N.’s telephone to Ellsworth.

76. Nothing about N.N.’s conduct in making a phone call would lead a reasonable person to believe that she was using her phone as a camera.

77. Furthermore, nothing about N.N.’s conduct in making a phone call suggested that her cell phone would contain any type of contraband.

78. N.N. has a reasonable expectation of privacy in the images stored on her cell phone.

79. Nevertheless, despite a complete lack of reasonable suspicion, upon information and belief, Defendant Ellsworth, acting under the color of state law in his capacity as a public school official and contrary to the published school policies, unreasonably and unlawfully searched the images stored on N.N.’s cell phone.

80. In so doing, Defendants Ellsworth and the Tunkhannock Area School District violated N.N.'s rights under the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983.

**SECOND CAUSE OF ACTION
VIOLATION OF THE FIRST AMENDMENT OF THE
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983
(School Defendants)**

81. Plaintiff incorporates by reference the allegations of the foregoing paragraphs as though set forth at length herein.

82. N.N.'s expressive conduct in taking, storing and possibly sharing the Photographs with her boyfriend constitutes speech protected by the First Amendment.

83. N.N.'s actions in taking the Photographs and storing them in her phone constitute expressive conduct protected by the First Amendment.

84. None of N.N.'s conduct pertaining to the Photographs took place on school property.

85. N.N. possessed the Photographs while on school property only inasmuch as the Photographs were electronically stored in the cell phone that she kept with her, or in her locker, at all times.

86. Defendant Ellsworth's punishment of N.N. by issuing a three-day suspension violated N.N.'s First Amendment rights.

87. Because Defendant Ellsworth was either following school district policies and practices or he was a final decision-maker for the District, Defendant Tunkhannock Area School District is liable for the harm caused N.N. on a theory of municipal liability.

88. N.N. suffered harm in violation of her rights under the First Amendment to the Constitution and 42 U.S.C. § 1983.

**THIRD CAUSE OF ACTION
VIOLATION OF ARTICLE I, SECTION 8 OF
THE PENNSYLVANIA CONSTITUTION
(Unreasonable Search and Seizure – School Defendants)**

89. Plaintiff incorporates by reference the allegations of the foregoing paragraphs as though set forth at length herein.

90. Article I, Section 8 of the Pennsylvania Constitution guarantees the right of people to be free from unreasonable search and seizure.

91. On January 23, 2009, teacher Sherman confiscated N.N.'s cell phone because N.N. was making a phone call during school hours in violation of school rules.

92. Sherman provided N.N.'s telephone to Ellsworth.

93. Nothing about N.N.'s conduct in making a phone call would lead a reasonable person to believe that she was using her phone as a camera.

94. Furthermore, nothing about N.N.'s conduct in making a phone call suggested that her cell phone would contain any type of images.

95. N.N. had a reasonable expectation of privacy in the images stored on her cell phone.

96. Nevertheless, despite a complete lack of reasonable suspicion, upon information and belief, Defendant Ellsworth, in his capacity as a public school official and contrary to the published school policies, unreasonably and unlawfully searched the images stored on N.N.'s cell phone.

97. In so doing, Defendant Ellsworth violated N.N.'s rights under Article I, Section 8 of the Pennsylvania Constitution.

**FOURTH CAUSE OF ACTION
INVASION OF PRIVACY BY
INTRUSION UPON SECLUSION
(School Defendants)**

98. Plaintiff incorporates by reference the allegations of the foregoing paragraphs as though set forth at length herein.

99. On January 23, 2009, Defendant Ellsworth intentionally opened N.N.'s cell phone, and accessed and reviewed the photographs stored therein.

100. The photographs on N.N.'s cell phone were of her private concern.

101. The intrusion of Ellsworth – a male, adult authority figure – into N.N.'s private cell phone images was particularly humiliating and offensive to N.N., a teenage girl.

102. Ellsworth intentionally shared N.N.'s photographs with other adult authority figures within and outside Wyoming County.

103. N.N. was forced to endure multiple unrelated adults' unjustifiable intrusion into her private information and viewing personal and revealing photographs of herself as a result of Defendant Ellsworth's actions.

**FIFTH CAUSE OF ACTION
VIOLATION OF THE FOURTH AMENDMENT OF THE
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983
(Unreasonable Search and Seizure and Illegal Retention of the Photographs –
Defendants Skumanick, Ide, John Does 1 through 10 and Mitchell – Equitable Relief)**

104. Plaintiff incorporates by reference the allegations of the foregoing paragraphs as though set forth at length herein.

105. The Defendants John Does 1 through 10, Ide and Mitchell are "persons" within the meaning of 42 U.S.C. § 1983.

106. On or about January 23, 2009, Defendant Ide unlawfully seized possession of N.N.'s phone and performed an illegal search thereof.

107. Upon information and belief, Defendant Ide downloaded the Photographs from N.N.'s phone to one or more computers and sent the Photographs to one or more email addresses, including those of John Doe 1 through 10.

108. Defendant Ide is believed to have printed copies of the Photographs.

109. Defendant Ide is believed to continue to possess one or more copies of the Photographs.

110. On January 26, 2009, Defendant Ide told N.N. that he sent her phone to a crime lab in Delaware.

111. Based upon his statements on January 26, 2009, N.N. believes that Defendant Ide may have sent hard copies or electronic copies of the Photographs to other state officials or private individuals, including Defendants John Doe 1 through 10, both within and outside of the WCDA's Office, all of whom acted under the color law or who willfully participated in a joint conspiracy with state officials to deprive N.N. of a constitutional right.

112. Defendant Skumanick unlawfully seized possession of N.N.'s phone and performed an illegal search thereof.

113. Defendant Skumanick downloaded the Photographs from N.N.'s phone to one or more computers and/or sent the Photographs to one or more email addresses.

114. Defendant Skumanick printed copies of the Photographs and possessed the Photographs at the February 12, 2009, meeting with N.N., other TAHS students, and the students' parents.

115. Defendant Skumanick is believed to have sent hard copies or electronic copies of the Photographs to other state officials acting under the color law, John Does 1 through 10.

116. Defendant Mitchell is believed to possess one or more copies of the Photographs that Defendant Skumanick printed out and saved to computers within the WCDA's Office.

117. Defendants John Doe 1 through 10 are believed to currently possess copies of the Photographs.

118. The WCDA has never charged, and has agreed to not charge, N.N. with any criminal charges related to the Photographs.

119. There is no legitimate purpose for Defendant Ide's continued possession of the illegally obtained Photographs of N.N. as a minor.

120. There is no legitimate purpose for Defendant Mitchell's continued possession of the illegally obtained Photographs of N.N. as a minor.

121. There is no legitimate purpose for anyone, including John Doe 1 through 10, to continue in possession of the Photographs of N.N. as a minor.

122. Additionally, Defendant John Does 1 through 10's, Defendant Ide's, and Defendant Mitchell's possession of the Photographs was and is a result of, and was and is in furtherance of the School Defendants' unconstitutional search and seizure of N.N.'s property.

123. N.N. suffered and continues to suffer harm in violation of her rights under the laws and Constitution of the United States, in particular the Fourth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

Plaintiff seeks only prospective equitable relief from Defendants Skumanick, Ide, John Does 1 through 10 and Mitchell under this Cause of Action.

**SIXTH CAUSE OF ACTION
VIOLATION OF THE FIRST AND FOURTH AMENDMENTS OF THE
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983
(Unreasonable Search and Seizure and Illegal Retention of the Photographs
Defendant County of Wyoming– Damages)**

124. Plaintiff incorporates by reference the allegations of the foregoing paragraphs as though set forth at length herein.

125. Defendant Skumanick was a final policymaker for the WCDA, thereby rendering the County of Wyoming liable under 42 U.S.C. § 1983 for his constitutional torts.

126. Prior to and at all times relevant to this suit, Defendant Skumanick developed, established and maintained widespread practices, policies and customs at the WCDA's Office exhibiting deliberate indifference to the constitutional rights of persons in the County of Wyoming, which caused the violation of Plaintiff's rights.

127. It was the widespread practice, administrative policy and/or custom of Defendant Skumanick, as head of the WCDA's Office, to advise, instruct and train prosecutors and police officers to improperly investigate and respond to the School Defendants' reports of allegedly indecent images stored on the camera phones of minor students at TAHS.

128. The widespread practice is evidenced by the number of TAHS students prosecuted or threatened with criminal prosecution for possessing allegedly indecent images on their cell phones and is further demonstrated by the number of students who have brought suit against the WCDA's Office.

129. Defendant Skumanick, as head of the WCDA's Office, had the duty to properly advise, instruct and train police departments, administrators and officers, including Defendant Ide, to require or provide appropriate in-service training or re-training, supervision, discipline

and other procedures of officers who searched, seized, or took possession of photographs confiscated from minor, TAHS students' phones.

130. On information and belief, the police departments, administrators and officers in Wyoming County, including Defendant Ide, generally and in reference to reports of allegedly indecent photographs on minor students' phones and, in particular in the case of N.N., contacted Defendant Skumanick and the WCDA's Office seeking advice and instruction on how to investigate reports of allegedly indecent photographs contained on minor, TAHS students' cell phones.

131. On information and belief, Defendant Skumanick and the WCDA's Office under his authority advised Defendant Ide to search cell phones provided to him by the School Defendants, known to be seized from minor students in violation of their aforementioned constitutional rights, to question those minor students, threaten those minor students with prosecution, and to obtain written statements from those minor students, all in violation of the laws and Constitution of the United States.

132. Defendant Skumanick, as head of the WCDA's Office, directly and through subordinates, personally and through widespread practice developed and maintained policies and customs exhibiting deliberate indifference to the constitutional rights of persons in Wyoming County, which caused the violation of Plaintiff's rights.

133. Under the specific direction and/or acquiescence and with participation and widespread practice of Defendant Skumanick, it was the administrative policy and/or custom of the Law Enforcement Defendants jointly and/or severally to improperly investigate the School Defendants' reports of allegedly indecent images stored on the camera phones of minor students at TAHS.

134. Under the specific direction and/or acquiescence and with participation and widespread practice of the Defendant Skumanick, it was the administrative policy and/or custom of the Law Enforcement Defendants to fail to require or provide appropriate in-service training or re-training of officers who were known to have improperly investigated the School Defendants' reports of allegedly indecent images on TAHS minor students' cell phones

135. As a result of the above described administrative policies and customs and acts under the procedure set forth by Defendant Skumanick, detectives and other law enforcement officers in Wyoming County, including Defendant Ide, believed that their actions in investigating images on TAHS minor student's cell phones would be tolerated.

136. Under the specific direction and/or acquiescence and acting under the widespread practice of Defendant Skumanick, Defendants John Does 1 through 10 and Defendant Ide, jointly and/or severally, knowingly, recklessly, and with deliberate indifference and callous disregard of Plaintiff's rights, searched her cell phone, retained the cell phone and Photographs, interrogated Plaintiff, threatened Plaintiff with criminal prosecution, and coerced Plaintiff to sign the Statement, in violation of her aforementioned constitutional rights.

137. Defendant Skumanick knew or should have known that Defendant Ide would engage in the described conduct in violation of Plaintiff's rights due to the aforesaid policies and the failure to properly supervise Defendant Ide and had the power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and knowingly, recklessly, or with deliberate indifference and callous disregard of Plaintiff's rights failed or refused to do so.

138. Because Skumanick both directed the unconstitutional investigatory practices and engaged in them, and because he is a “final policymaker,” the County of Wyoming is liable for any harm caused to Plaintiff N.N. by Skumanick’s constitutional torts.

139. N.N. suffered and continues to suffer harm in violation of her rights under the laws and Constitution of the United States, in particular the First and Fourth Amendments to the Constitution and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiff respectfully requests the following:

- (a) a judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring that the actions of the Defendants violated the First and Fourth Amendments to the United States Constitution, and Article I, Section 8 of the Pennsylvania Constitution, and intruded upon N.N.’s seclusion, in violation of Pennsylvania common law;
- (b) an award of damages against the School Defendants for violating the Plaintiffs’ rights under the United States and Pennsylvania Constitutions, and federal and Pennsylvania common law;
- (c) an award of damages against Defendant County of Wyoming for violating the Plaintiff’s rights under the United States Constitution and federal law;
- (d) an award of damages against Defendant County of Wyoming in the amount of lost wages suffered by N.N. and the cost of attending the re-education course;
- (e) an order directing the Law Enforcement Defendants to turn over to the Plaintiff and/or destroy all copies of the Photographs, on whatever medium the Photographs were transformed into, including computer discs, and to delete all copies of the

Photographs saved on computer hard drives or email servers, or otherwise stored electronically;

- (f) an order awarding Plaintiff the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1988; and
- (g) such other relief as the Court deems just and proper.

Dated: May 20, 2010

Respectfully submitted,

/s/

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