

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

DASIA F. BANKS,

Plaintiff,

v.

Case No. 3:20-cv-36

BARABOO SCHOOL DISTRICT,

Defendant.

COMPLAINT

NOW COMES THE PLAINTIFF, Dasia F. Banks, by her attorneys, Gingras, Thomsen & Wachs LLP by Paul A. Kinne and Mark L. Thomsen, and Bogost Law LLC, by Amy Bogost hereby states the following as her Complaint in the above-referenced matter.

HISTORICAL CONTEXT

1. “Wisconsin...entered the Union in 1848. It was a young state and the last of the full states to be carved out of the old Northwest Territory, the territory which by the Ordinance of 1787 was to permit neither ‘slavery nor involuntary servitude.’”

2. “At 4:30 A.M. on April 12, 1861, a mortar burst over Fort Sumter. This was the signal, and in a matter of minutes the massed Confederate batteries were

loosed at the symbolic fort.... That conflict would determine, in the words of a homespun Western lawyer, whether the ‘house divided’ would stand or fall.”¹

3. “In Baraboo in Sauk County, the organization of a three months’ company had begun at a meeting on Saturday evening, April 19th. A few nights later, a second meeting was called for the Sauk County Court House where speeches were made by the leading citizens and the proprietor of the *Baraboo Republic* was so moved that he volunteered to furnish one recruit armed with a Sharps rifle—the recruit, of course, to be one of the employees of the newspaper.”

4. “As the organizing continued, a captain and first lieutenant were elected by the members of the company and the name Sauk County Riflemen was adopted. Drawn in four-horse wagons and accompanied by Rawley’s town band, the Riflemen departed for Reedsburg, where ten more volunteers signed up. Merrimac and Delton were the next communities visited and again recruiting was fruitful.”

5. “By May 4th the organization of the Sauk County company was virtually completed. The men drilled in Baraboo before the ‘throng,’ speeches were made, and the women of Baraboo presented each man with a ‘tasteful and beautiful rosette in the national colors.’ The soldiers gave three cheers for the ladies, and the company was dismissed, to reassemble a few days later for drill in Reedsburg, where the newly elected captain, Mexican War veteran A. G. Malloy, was presented with a sword by the citizenry.”

¹ Paragraphs 1-10 are quoted from Alan T., *Nolan’s The Iron Brigade, A Military History*, Fort Indiana University Press edition, 1994.

6. “The men then moved on to Delton for a citizens’ picnic and then to Prairie du Sac. From there the heroes were conveyed to Sauk City by twenty-four teams of horses belonging to the citizens.”

7. “When the company returned to Baraboo, 108 men had enrolled, including four of the six sons of a Virginia-born citizen of Excelsior. As the Sauk County men waited in Baraboo for orders to report to Madison, living as guests in the homes of the citizens, word was received that no further three months’ companies were needed. The entire company enlisted at once for three years.”

8. “The mustering officer arrived in Baraboo on June 10th and enrolled the men in impressive ceremonies at which the citizens presented the company with a silk United States flag. At last the day of departure for Camp Randall arrived, an event that attracted the largest crowd in the history of Baraboo. Two thousand people gathered to watch the Baraboo Fire Company escort the soldiers to the train, to hear the choir of the Reverend Thomson, to hear an original poem, and to see the Sauk County Bible Society present each soldier with a pocket Testament.”

9. “The Sauk County Riflemen arrived in Madison in mid-June, their uniforms consisting only of gray caps trimmed with green. At Camp Randall the men were issued an all-gray short-jacketed uniform paid for by the state, with a headpiece described by one of the men as ‘a plug hat with a huge pompon on the front at the top.’ Assigned to the Sixth Wisconsin Volunteers, then in the process of organization, the Riflemen became Company A of that regiment.”

10. Sauk County patriots fought fiercely to defeat the Confederacy and Wisconsin soldiers paid a heavy price. This price is described by Alan Nolan in his Chapter *The Battle at Brawner Farm*: “With the decision to march to Manassas made, Gibbon’s command looked to their casualties in preparation for the march. In the darkness, the surviving Wisconsin and Indiana soldiers scoured the battlefield for fallen men in blue, often looking into the dead faces of friends, not only of the days of the brigade but also from childhood in Madison, Oshkosh, Baraboo, or Indianapolis. Like all recent battlefields, this one was a horror. Most of the dead and wounded of both sides lay precisely as they had fallen, in rows seventy-five yards apart with their heels in line. Other dead and maimed men had staggered or dragged themselves backward after they were hit, so that the rectangular wood was strewn with bodies and rang with the groans and cries of the wounded. Gibbon’s men left their dead unburied, time not permitting this amenity, and collected the wounded together in several stations in the wood where the surgeons went to work.”

11. On September 22, 1862 Republican President Abraham Lincoln proclaimed, among others, that “all persons held as slaves within any State....Shall be then, thence forward, and forever free....”

12. In 1896 Citizens of Sauk County erected a memorial, now a Historical Marker, “to the memory of Sauk County soldiers in the War for the Union.”



13. This lawsuit is about how we forgot who won the Civil War, disregard and disrespect for the lives of Union soldiers, and what happens when the Confederacy and its racist institutional practices are allowed to grow and prosper in Wisconsin.

NATURE OF PROCEEDINGS

14. This cause of action arises from Defendant's deliberate indifference and failure to respond to multiple acts of racial harassment and discrimination directed at Dasia F. Banks (Banks) by both students and staff at the Baraboo School District (BSD), as well as its failure to respond to reported student-on-student sexual assaults on school premises that made Banks more vulnerable to sexual assault. Prior to, and after February, 2018, BSD was aware that BSD student CS, had sexually harassed and assaulted female students, including Banks at BSD, but it took no action against CS. Over the course of the 2017 – 2018 school year, CS

repeatedly sexually assaulted Banks in class. This action alleges violations of Title IX as well as Title VI of the Civil Rights Act of 1964.

PARTIES

15. Banks is a 17 year old African American female residing in the Western District of Wisconsin.

16. Baraboo School District is a public school district organized and operated under the laws of the State of Wisconsin. It is located in Baraboo, Sauk County, Wisconsin, area, and it receives federal financial assistance and funding as those terms are used under Title IX and Title VI.

JURISDICTION AND VENUE

17. This court has jurisdiction over this matter pursuant to 28 U.S.C. sec. 1331 for the Title VI and Title IX claims.

18. These claims may be venued in the Western District of Wisconsin pursuant to 28 U.S.C. § 1391, insofar as all of the parties live and/or conduct business in the Western District of Wisconsin, and the circumstances giving rise to this claim occurred in this district.

FACTUAL ALLEGATIONS

19. Banks's experiences of racial harassment at BSD go back to the 2008-09 school year. While Banks was in First Grade, her classmates teased Banks about her coarse hair and the color of her skin. When Banks's mother, Megan Ray, reported the inappropriate conduct to the school, school officials accused Banks of being a bully. (Ray is also African American). Exasperated, Ray moved Banks and

her brother to Georgia, where Banks excelled and her teacher, Mr. Bogel, described her as a leader and a “joy to have in class”.

20. However, personal circumstances required Ray to move her family back to the Baraboo area for the 2011-12 school year. Students at BSD resumed teasing Banks about her hair and skin color. Ray met with BSD school counselor Laurie Kowalke numerous times throughout the school year. Kowalke would inform Ray that Banks was actually the problem. Kowalke told Ray that Banks was a bully. Kowalke informed Ray that she (Kowalke) was going to convene a meeting with all the girls having problems getting along so they could resolve the conflict. Ray explained that Banks was not the problem, but Kowalke did not listen.

21. Ray met with Glen Bildsten (principal), Amy Ginther (teacher) and Kendra Meiske (teacher) and explained that Banks was not the source of the problem, the other students were. If Banks was doing anything, she was defending herself; however, no one listened to Ray’s explanation. At the meeting, Bildsten informed Ray that if Banks felt she was the victim of bullying, she should hold out her hand, palm outward, and say, “Stop! No bullying!” At the end of the year, Ray asked that Banks be transferred to a different school for fourth grade.

22. That same year, Banks’s older brother was a senior at Baraboo High School (BHS). Students were flying confederate flags from their vehicles due to a student’s death. When Ray complained, Principal Bill Loss told her that the boys flying the flags were ignorant of the meaning and expressed it was the “the good ole boys” so the district could do nothing about it because those students enjoyed

freedom of speech. An article in the *Baraboo News Republic* stated the boys removed the flags, which was untrue. Ray also questioned the curriculum, asking why African American and Native American history received such little attention. Ray pointed out that if the curriculum contained more history rather than the same African Americans (such as Martin Luther King Jr., Harriet Tubman, and Rosa Parks) these students would have realized the meaning of the Confederate flag.

23. Among the people with whom Ray spoke was Lauri Mueller, who is now Superintendent of the Baraboo School District. Mueller explained that nothing could be done immediately because classes were already using the textbooks for the year, and Mueller also left it to the teachers' discretion about how much African American history should be taught.

24. For the 2012-13 school year, Banks attended the Gordon Wilson Elementary School in Baraboo. Before school started that year, Ray spoke to Principal Molly Fitzgerald about Banks's experiences up to that point at Baraboo schools. Fitzgerald promised Ray that she would not tolerate bullying at Wilson Elementary, especially racial harassment. Things improved that year for Banks.

25. In the 2014-15 school year, however, things took a turn for the worse. A student named HC called Banks a "nigger" on school grounds.

26. As a result of the worsening situation at BSD, Ray and Banks temporarily moved to North Carolina in January 2015, in part to escape the racial harassment at Baraboo. However, family issues required Ray and Banks to move back to Baraboo in October 2015. Again Banks excelled in a diverse environment

and again her North Carolina teachers lauded Banks for being “a great student and leader.”

27. During the 2015-16 school year, matters worsened even more. The term “nigger” was frequently used in the middle school by students. Ray spoke to Principal John Gunnell and Associate Principal David Schwarz on numerous occasions about the ubiquitous use of the word “nigger” at the school, and more generally about the way Banks was mistreated. Ray specifically brought to their attention the issue of race. Ray offered Gunnell ideas about how to educate students about how hateful the term “nigger” was, including the history of its use. Ray suggested bringing in someone from the Boys and Girls Club of Dane County, or at least getting ideas from the organization. Ray even volunteered to do all the work to bring in speakers. She also suggested to Gunnell that he contact Karen DeSanto from the *Sauk County Boys and Girls Club* to speak to students or to see if she could help with educational ideas.

28. In response, the district established a group to discuss issues of race, and a meeting was announced via district-wide email which was very vague. At that meeting, the few families of color in the district shared their concerns about mistreatment of their non-white children. One mother, for example, spoke about how school officials disciplined her children for behavior that was tolerated for white kids, or the punishment her non-white children received was greater. Parents shared their concerns generally, and specifically about the use of the word

“nigger,” and their frustration that nothing was evidently being done about it. Great ideas were discussed and a promise was made to follow-up.

29. There was, at most, only one more meeting of this group.

30. It was during the 2015-2016 school year that Ray became a girls basketball coach for BSD at Baraboo High School (BHS). Ray was also hired as an Alternative Learning Center Teacher at Jack Young Middle School (JYMS). During Ray’s all staff training, she was the only African American staff member; there was no reference to diversity issues.

31. In the first few days of Ray’s employment at BHS, Ray heard the term “nigger” used frequently by students, on a daily basis. Ray brought the use of the term “nigger” to the attention of Schwarz. Ray asked to be involved in discipline decisions directed at minority students, noting that as an African American herself, she could provide perspective to both students and staff.

32. Schwarz never took her up on her offer, so Ray intervened on her own. At one point, three female middle school students wrote the word “nigger” on the side of the school building. Ray spoke with the girls. They were hostile to Ray’s attempt to deal with this situation. One of the females called Ray a “nigger.”

33. Another incident involved a male student walking through the school stating that he hated “niggers.” Ray confronted him about his conduct. By the end of their discussion, Ray felt she had made headway with the male student.

34. Ray continued to keep school officials apprised of the racially discriminatory atmosphere at BSD, to no avail. In December, 2016, Banks and Ray

attended a boys basketball game. In the pre-game warm-ups, the team was playing music which used the term “nigger.” As soon as Ray learned of this, she confronted Bryan Ashbeck (the assistant boys basketball coach) and Jim Langkamp (the athletic director.)

35. The only change the school made was to require the athletic director to approve all pre-game music.

36. Shortly after December 2016, Ray and Banks had gone to a basketball game in Madison. The two boys teams, Middleton and Madison Memorial, had on t-shirts that read “Standing Together to End Racism.” Ray brought the idea of doing something similar with the girls team as well as the boys team, to include surrounding communities such as Portage and Reedsburg. She was backed by the rest of the coaching staff, Michael Behl, Marcie Gratz and Timothy Heilman, who is currently on the Baraboo School Board. Ray met with Jim Langkamp, the athletic director, along with Lori Mueller, and presented a design through an email. The shirts read “Box out Racism”. Both liked the concept; however, they wanted to change “racism” to “bullying.” Mueller also stated that it had to come from the students. Ray explained that none of the girls on the team would know that racism existed in the schools if the message was changed to “bullying.” Mueller said and Langkamp agreed that it would mean more coming from the students.

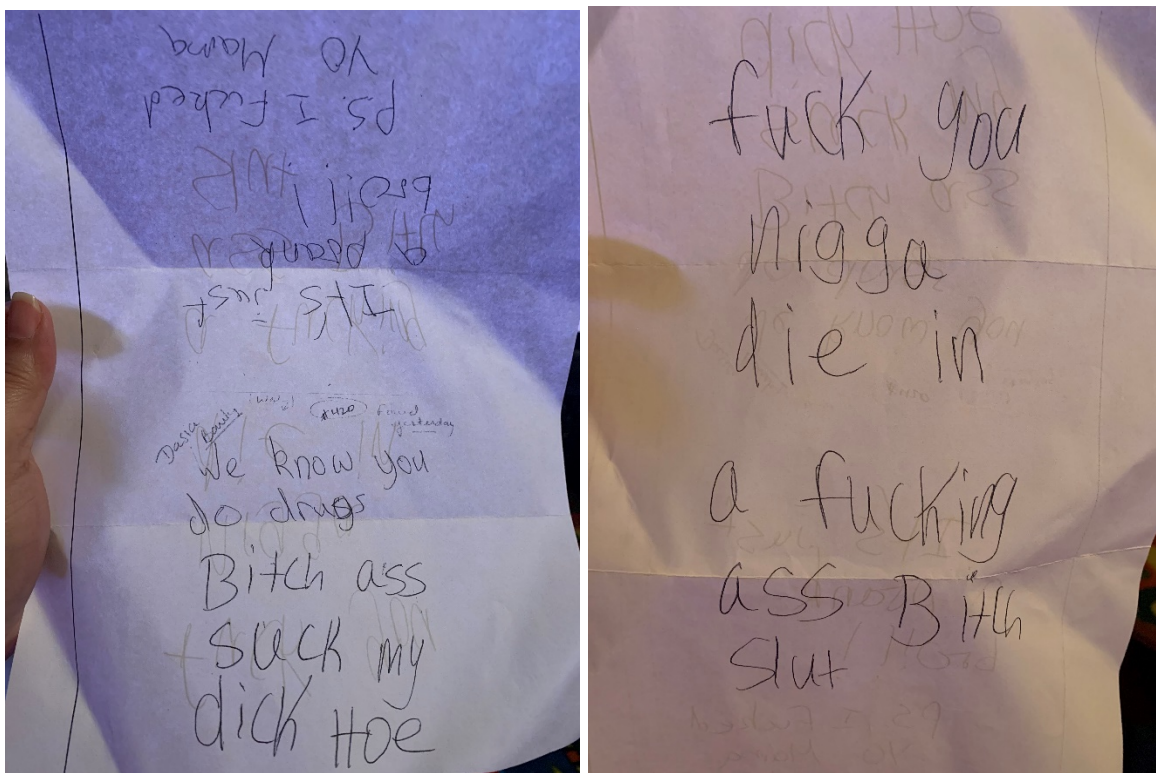
37. Ray’s purpose was to bring awareness and to start having the necessary conversations about race within the school and surrounding communities. Their answer was still negative. Although BSD refused to allow a specific anti-

racism message on the jerseys, a special education teacher was allowed to bring awareness to Autism with t-shirts year after year. Most recently JYMS had t-shirts for National Coming Out Day that teachers wore.



38. At around this time, a female student (JM) reported to Ray that CS, a male student, had sexually assaulted her at a party where alcohol had been provided. Ray passed on the information to Christina Olson, a counselor at BSD, soon after she learned of the accusation. However, no action was taken in response to the information Ray provided.

39. On January 9, 2017, Banks received a letter in her physical education locker threatening her and referring to her as a “nigger” and a “slut.” The police were called about this incident. When Ray reported it to Schwarz, he stated that there was nothing that could be done because there were no cameras in the locker room, and he was not going to look through hours of video to narrow down the suspects.



40. On January 10, 2017, Ray spoke with Mueller (who by this time was superintendent at BSD) about the threatening letter, and pleaded that the school do something about it. Mueller responded, “I am sorry to hear your frustrations and concerns. We are here to do our best to provide a high quality educational experience in a safe environment.” That was the full extent of her response.

41. On January 11, 2017, Ray met with Mueller to discuss her (Ray's) concerns as an employee and parent. Ray told Mueller about Banks's history of harassment at Baraboo, as well as the experiences of Banks's brother. Mueller invited Ray to be part of the *Social Equity* group. Ray accepted the invitation and never received any notices. Furthermore, no one informed Ray about the book they were working out of, contrary to promises made to her.

42. On May 25, 2017, Ray emailed Nick Karls (the BSD Director of Teaching and Learning) regarding the lack of communication for the Equity group and about guidelines for the next year concerning use of the word "nigger" and other racial epithets. Karls told Ray that he would not be able to talk with her due to it being the end of the year. Ray urged Karls to meet because she felt it was important, and that it be discussed prior to next school year. Karls did not respond.

43. The following school year (2017-2018), matters did not improve. On September 21, 2017, a white student named GI wore a t-shirt to school with a Confederate flag emblazoned on it. Ray contacted Mary Mjedle (a teacher at BHS) about the shirt and asked him to cover it and put his sweatshirt on, reporting that it was offensive. Mjedle spoke to the student about the shirt, but that was the extent of the school's reaction.



44. Matters continued to get worse for Banks. On September 28, 2017, a white male student physically assaulted Banks. He shoved her three times in the school hallway, after hours.

45. On September 29, 2017, Banks attempted to speak to Clint Brickl, the Associate Principal at BHS, about the shoving incident, but neither he nor anyone else was available. CS said “I still have that video” of TS pushing Banks. As a result, Banks suffered a panic attack. Ultimately, Ray was forced to contact the school about the incident. School officials told Ray that they would have to check

the video surveillance. The extent of the punishment the offending student received was an in-school suspension.

46. On October 5, 2017, students were compelled to view a video that pertained to bullying. BSD administration employee Brian Visger stated that if bullying was physical, there was a mandatory one to three day out-of-school suspension. When Ray explained to Visger that the male student received only an in-school suspension, Visger told Ray that he could not discuss it.

47. In the same conversation with Visger, Ray complained about “Gangsta Night” at the volleyball game. Ray explained that it did not send a positive message and displayed ignorance about the racial stereotyping involved. Visger claimed that there was nothing the school could do about it because it came from the students. He explained that it was not a school sanctioned activity, in spite of the fact that it took place at a school function.



48. On October 6, 2017, a white male student named PL was “roasting” Banks, and another white male student named TS, exclaimed, “He’s roasting her!” PL responded, “How can I roast her when she is already roasted,” referring to Banks’s skin color. Banks responded, “Well, TS is short.” PL replied, “Well, being short is better than being black.”

49. On that same day, a white female student named MJ called Banks an “ugly black bitch and a stupid ho.” MJ repeated this conduct again on October 10, 2017.

50. Again on October 12, 2017, the same white male student, GI, again wore a shirt bearing a Confederate flag. When Banks confronted him, he claimed that he could wear whatever he wanted.

51. On October 13, 2017, two white female students, AG and MJ, threw objects at Banks, and called her a “black ho” and “stupid bitch.”

52. On October 26, 2017, GI intentionally showed Banks his Confederate belt-buckle. Banks contacted Ray about it, and Ray contacted Visger. Ray explained to Visger that Ray wanted to meet with BHS Principal Glen Bildsten and school Resource Officer Mike Pichler. Instead of a meeting, Bildsten explained to Ray that the matter would be addressed appropriately by administration. As with the conduct that preceded this incident, no meaningful action was taken. Officials at BSD hoped that if they ignored Banks and Ray long enough, they would give up and keep quiet.

53. On November 10, 2017, the onslaught of racial harassment continued. While female student AG shoved Banks in the school hallway, another student encouraged students to glare at Banks, and those students complied. A white female student named MJ was standing outside of the gym as students walked in for an assembly. MJ called Banks a “stupid, ugly ho.”

54. When Banks reported the incident to Visger, he brushed her off, stating, “I will talk to them about it.”

55. On January 23, 2018, GI again wore his Confederate t-shirt to school.

56. At around this same time, Banks described MJ’s behavior to teacher “Mrs. Brozak” and asked Mrs. Brozak why MJ did not like her. Mrs. Brozak told Banks, “Well, you are loud.” Banks received two detentions for “arguing” with Mrs. Brozak and calling Ray after she stated MG harassed her because she is “loud.”

Detention Notice

Student: Dasia Banks Grade: 9

Date Issued: 1/23/18 Begin Serving On: 1/29/18

Number of Detentions: 1 (2) 3 4 5 6 7

Reason For Detention(s): Arguing w/ me in class, cell phone use

(Describe Specific Behavior)

Interrupting class & making a call in her phone during class.

Staff Member Issuing Detention: Brozak

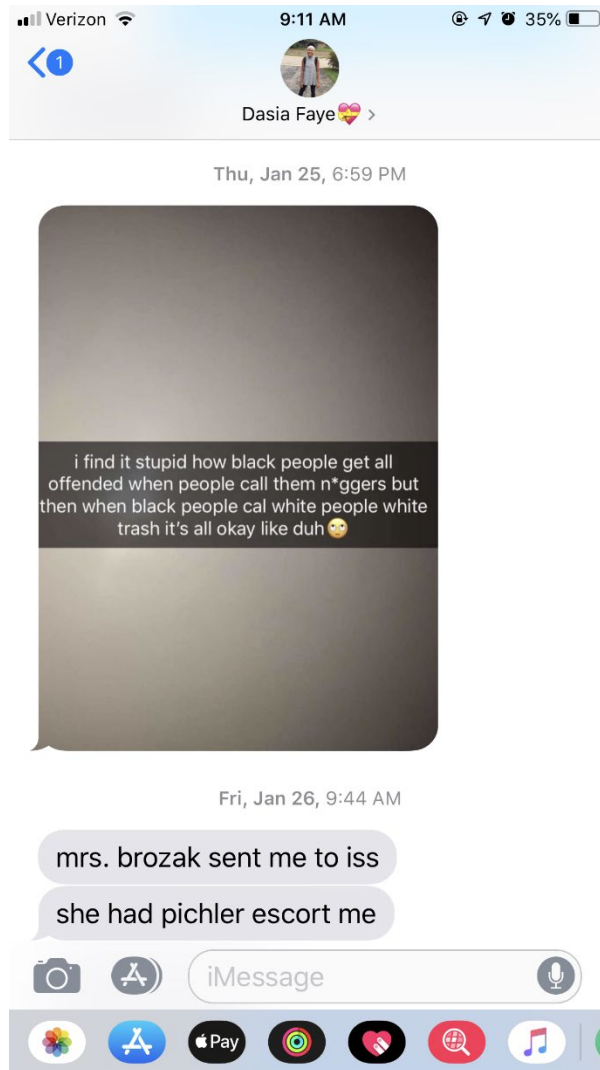
*Failure to serve detentions issued for truancy (i.e. missing a class period(s)) may result in truancy fine.

57. Prior to school starting during open-house, Ray had explained to Mrs. Brozak that Banks was the victim of racial harassment throughout the years in the district. Ray even explained how Banks flourished in a more diverse atmosphere. Mrs. Brozak promised to look out for Banks. Ray emailed Mrs. Visger about this encounter. This is yet another example of a broken promise by BSD officials.

58. On January 24, 2018, a student named LG called Banks a “nigger” via Snapchat.

59. On January 25, 2018, Banks reported to Officer Pichler that LG had called her a “nigger”. Officer Pichler said he would address it, but at the same time explained he could do little because LG had “freedom of speech.”

60. Around this same date, Banks saw a Snapchat post which read, “I find it stupid how black people get all offended when people call them ‘niggers’ but when black people call white people ‘white trash’ it’s all okay like duh.” White female student CG posted this offensive remark.



61. Also around this date, Ray communicated with Visger and Brickl about whether they had kept a record of every time Banks had reported incidents to them about racial harassment. They did not answer the question; instead, Visger stated that he had addressed every concern Banks raised, so there was no need to make a record of the incidents she reported or the resolution in Banks's file.

62. In spite of the persistent racial harassment Banks experienced at BSD, the only student substantially punished for anything was Banks. On January 26, 2018, Brozak sent Banks to the in-school suspension room, with a police escort.

Banks received detention for being “disrespectful” and using her phone to call Ray. Ray sent Visger an email about how wrong that action was.

63. On January 29, 2018, Banks was understandably embarrassed to go to class after the occurrence on January 26.

64. On that same day, Brozak and Brickl pulled Banks out of homeroom, and Bickl explained to Banks that harassment from MJ had to be “continuous” for the school to do anything about it. He stated this in spite of Banks and Ray reporting MJ’s harassment to school officials every time it happened, which was continuous. Ray complained about Bickl’s comment to Mueller, Karls and Bildsten. Again, nothing was done.

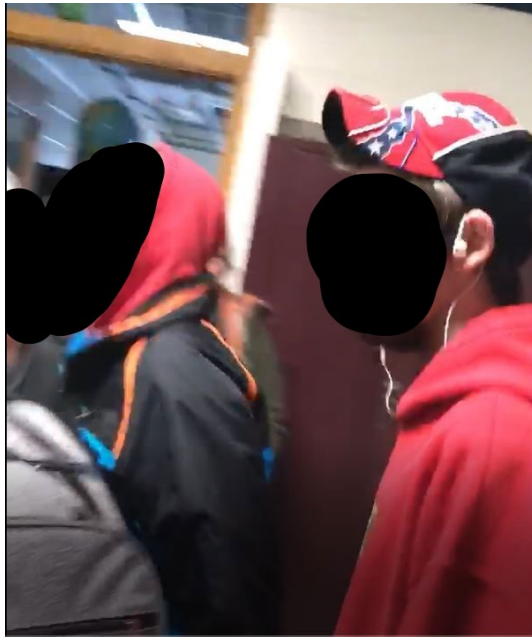
65. Around February 1, 2018, in biology, Banks was seated next to white student LH. LH had harassed Banks in middle school, and he also used the term “nigga” in the hallways. Banks asked teacher Spencer Rohlinger if she could switch seats. LH learned of Banks’s request, and physically bumped into Banks at the counter. When Banks protested, the teacher, Rohlinger, admonished Banks. LH also said “no, can you move me? I don’t want to sit by that dumbass.”

66. At around this same time, in the hallway, in the presence of a group of his friends, white male student CC asked SA, so Banks could hear, “Is it a hate crime if you slap a black girl?” Everyone in the group laughed, and Banks was terrified. Banks reported it to Ray. The following week, Banks did not go to school at all.

67. Ray left her job at the middle school to retrieve Banks from the high school, and returned to the middle school with Banks. However, Middle School Principal John Gunnell would not allow Banks to stay in Ray's office with her. Instead, Gunnell forced Banks to sit in a common area where large numbers of students, staff and teachers could see her, which further humiliated Banks.

68. In other circumstances when middle school staff had to retrieve their children from school, they were allowed to sit in the employee's office for the remainder of the day. Dasia missed a full week of school due to this situation.

69. On February 6, 2018, GI wore a confederate flag hat to school and wore it in the hall. Hats are not allowed to be worn in school.



70. On February 11, 2018, multiple students informed Ray that boys on the baseball and football teams used the term "nigga" and "nigger" in the weight room, and that the football players had used the term "nigger pile" after practices. Banks had strength and conditioning class with the son of the football coach Steve

Turkington. The football coach also taught the class. Banks stated that the son would use the term “nigger” in class “all of the time,” and the coach just ignored it

71. At around this same time, Ray confronted the boys baseball coach, Steve Considine, about the use of the term “nigger” by his team. Considine pressured Ray to let him know who reported this conduct. Ray refused to tell him, but stated that she herself had heard a baseball player state in the presence of the African American assistant baseball coach, “What’s up, nigga?” Ray previously had talked to the assistant coach, who verified that players would use that term, but he did not report the matter because he feared for how it might affect his career.

72. The following day, Considine emailed Ray asking for names of the students who used that term so they could be suspended. Ray said she wanted to wait until the end of the basketball season before she had a meeting with him and Jim Langkamp to report the names, but Ray never heard anything more after that due to her resigning.

73. Around February 12, 2018, white male student CS and Banks were in cooking class together at BHS. Starting around February 12, and thereafter, CS made comments about how he wished to have sexual intercourse with Banks. He asked her if she wanted to come to his house to “smash,” and he asked her if her vagina was purple because Banks was black. Banks expressed her disinterest in CS.

74. At about the same time as the comments began, CS began slapping or rubbing Banks’s buttocks during class. He exposed himself, and he would grind on

Banks with an erection. This occurred about two to three class days per week. Banks repeatedly told him to stop, typically loud enough for others to hear, but CS refused. CS would also grab Banks on the breast, “cupping” her breast with his hand and lifting up. This happened less frequently than him touching Banks on the buttocks. CS would laugh when he would assault Banks.

75. CS treated another girl in the class (AC) in a similar fashion. When CS would grab this girl’s breasts, he would sometimes say, “Honk.” On one occasion, he attempted to reach up this girl’s shirt to grab her breasts.

76. Over the course of the semester, the cooking class teacher, Donna Schmit, noticed flour handprints on Banks’s buttocks and on AC’s buttocks, in a position that would have been impossible for the girls to have done themselves. Schmit never inquired about how those handprints were made although she did make a comment that it was a male handprint due to the size. Schmit said AC could not have done it because the handprint was too big.

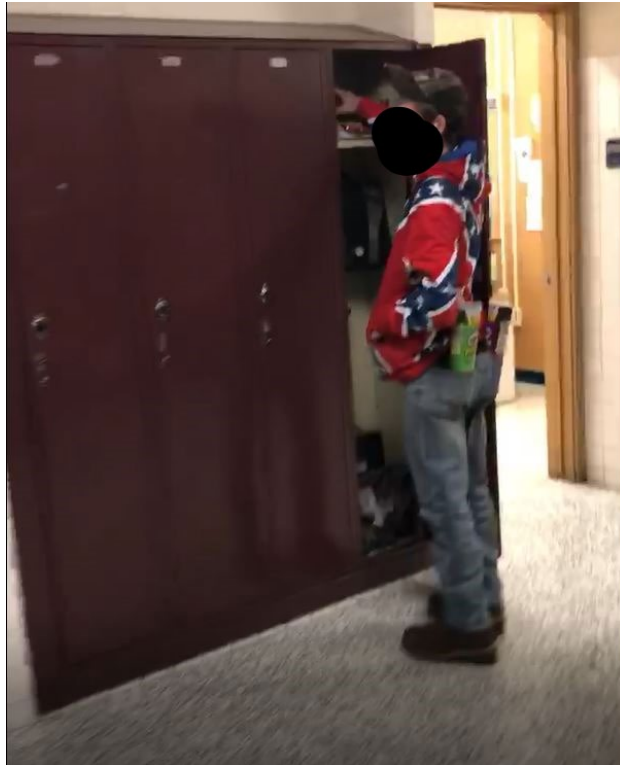
77. The most Schmit did was to make CS sit down for the rest of class, but he was not disciplined or moved out of the cooking group.

78. On February 15 or 16, 2018, Ray resigned her position with BSD. She was exhausted by BSD’s failure to either address or end its racially hostile educational environment.

79. In March, 2018, on multiple occasions, Banks told Ray that she did not want to be in school. Banks reported that people harassed her constantly, even

people she did not know. She talked about the incredible anxiety this instilled in her.

80. On March 22, 2018, GI wore his Confederate flag shirt again. Banks went to the office to report the incident, and office worker Danni Schweda asked, “Oh, is that [a Confederate flag] offensive?”



81. In April, 2018, white male student BS called Banks a “cotton picker.” Banks reacted by pouring a bottle of Propel over his head and walking away. The school’s reaction was simply to call BS’s parents about the situation.

82. Also in April, 2018, white male student DD was speaking with CS, and DD used the word “nigger.” Banks overheard it and told DD to stop using the word. He said, “Make me.” Banks responded by climbing over the table and punching DD.

The school's reaction was simply to send DD out of class, and it may also have issued him an in-school suspension.

83. On May 22, 2018, Ray discovered that CS had been sexually assaulting Banks. Ray found out that AC and Banks were in Enrichment for Biology (Rohlinger's class) and CS happened to be in there even when he was not supposed to be. PL, CS and other students were making fun of AC and Banks, so Banks stood up for AC and herself. CS said a rude remark about AC's weight and Banks replied, "said the one who gropes us all the time." AC and Banks left the classroom to talk to a principal but Rohlinger would not let them. During second block, Banks got called to the office. Visger told her he was told Banks was bullying other students. Banks told him the exact story, and he asked what Banks meant by "grobe." Banks told him CS grabs Banks and AC in places they did not like.

84. On May 23, 2018, CS was charged with fourth degree sexual assault. CS was convicted of fourth degree sexual assault with other conditions (one year probation, and a required assignment of writing an eight-page essay on sexual assault and consent). CS was granted an IEP for ADD.

85. On May 23, 2018, LG posted a picture on Instagram with a caption stating AC and Banks lied about the assault.

86. On May 24 or 25, 2018, Ray and Banks met with Bildsten, Officer Pichler, AC and AC's mother.

87. For the 2018-2019 school year, Ray enrolled Banks in another school.

88. The above conduct has been assigned to dates where possible. But there were other incidents of students issuing racial epithets at Banks. Ray had been called a “nigger” multiple times. On one occasion, when Ray complained to Schwarz, he stated, “Oh, well you should hear what they call me!”

89. Banks and Ray have done their best to document the racial incidents, but incidents not listed above were also made. Officials at BSD never took any meaningful action in response to the reports of racial discrimination. In fact, most of the time, there was no reaction at all.

FIRST CAUSE OF ACTION:
VIOLATION OF TITLE IX

72. The plaintiff realleges and incorporates the foregoing paragraphs as if set forth fully herein.

73. Prior to February, 2018, at least one other BSD female student had made known to BSD that she had been sexually assaulted or harassed by CS. Accordingly, BSD had knowledge and had been put on notice of an increased risk of an assault on Banks.

74. Moreover, Schmit and other teachers or staff had actual notice of the assaults, but took no action to stop them.

75. BSD took no action against CS in spite of its knowledge of the complaints that he sexually assaulted or harassed another female student at BSD. BSD did nothing to warn students or parents of CS’s pattern of predatory sexual assaults. Accordingly, BSD exhibited deliberate indifference to assaults in a way that made Banks more vulnerable to the attack itself.

76. Both Banks and CS were BSD students, and both were subject to BSD's rules and policies. BSD had substantial control over CS.

77. The assaults described in this pleading were so severe and objectively offensive that it deprived Banks of access to the educational opportunities and benefits provided by the school.

78. The conduct in violation of Title IX described in this complaint has caused Banks severe and permanent psychological and emotional harm.

79. The conduct in violation of Title IX described in this complaint has also caused Banks economic harm.

SECOND CAUSE OF ACTION:
VIOLATION OF TITLE VI

80. The plaintiffs reallege and incorporate the preceding paragraphs as if set forth fully herein.

81. Officials at BSD had notice that Banks was subjected to a racially hostile educational environment, but it took no meaningful action to stop the racial harassment.

82. By effectively ignoring the harassment, BSD intentionally allowed the racially hostile educational environment to occur, or it was deliberately indifferent to it.

83. The racial harassment described in this complaint was so severe and objectively offensive that it deprived Banks of access to the educational opportunities and benefits provided by the school.

84. The conduct in violation of Title VI described in this complaint has caused Banks severe and permanent psychological and emotional harm.

85. The conduct in violation of Title VI described in this complaint has also caused Banks economic harm.

WHEREFORE, the plaintiff demands the following relief:

1. Judgment against BSD in an amount sufficient to compensate Banks for all economic and emotional losses.

3. An award of all attorney fees and costs incurred by Banks in litigating this action.

4. Any and all other relief the Court deems just to award, including but not limited to equitable relief.

JURY DEMAND

The plaintiff respectfully requests that this matter be tried before a jury of six (6) competent persons.

Dated this 14th day of January, 2020.

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