

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

█ n/k/a █	:	CIVIL ACTION
Plaintiff	:	Docket No.: 1:15-CV-1634
	:	
v.	:	Honorable Christopher C. Conner
	:	Chief Judge
DOVER AREA SCHOOL DISTRICT,	:	
LINCOLN INTERMEDIATE UNIT 12,	:	
and MATTHEW PUTERBAUGH,	:	
Defendants.	:	JURY TRIAL DEMANDED

PRETRIAL MEMORANDUM OF DEFENDANT,
DOVER AREA SCHOOL DISTRICT

DATE OF CONFERENCE: JUNE 28, 2018, Jury Room No. 2, 9th Floor, 10:00 a.m.

A. Brief Statement of Jurisdiction

On **August 24, 2015**, Plaintiff brought this action against Defendant, Dover Area School District, among others, alleging theories of liability under Title IX, 20 U.S.C. §1681(a) and the 14th Amendment through 42 U.S.C. §1983 under a state-created danger theory and a Monell claim, giving rise to federal question jurisdiction.

B. Summary Statement of facts and contentions as to liability

1. Statement of Facts known by the District 2003-2005 as to Plaintiff

As a child, Plaintiff attended public school at the Dover Area School District from Kindergarten until she finished 10th grade in June of 2005 and formally withdrew on **August 17, 2005**. Between grades 4 and 8, she received private flute lessons at home as well as on District property, from Defendant, Matthew Puterbaugh, who was also the Dover Area School District intermediate school music teacher and the High School Band Director. In 8th grade, Matthew Puterbaugh also became her music teacher at the intermediate school. Sometime during 9th grade, she stopped receiving private flute lessons on District property after she reported to two 8th grade teachers, Maria Kann and Barbara Eshenour, intimating that she had inappropriate contact with Puterbaugh at her home, which they both interpreted to mean sexual contact. The teachers reported her story to the guidance counselor, Hanna Pass (Humphreys) who attempted to speak with Plaintiff about the contact with her music instructor. Plaintiff refused to speak with Ms. Pass and recanted her story; nevertheless, Pass reported the story to the building principal, Ken Walter. An investigation was undertaken by the school solicitor at the request of Walter. Although Plaintiff had recanted her story about having inappropriate or sexual contact with Matthew Puterbaugh at her home, and notwithstanding that Puterbaugh denied inappropriate contact with Plaintiff, he was directed by the school solicitor and

Ken Walter to keep away from Plaintiff and not to provide private music instruction at the school.

Plaintiff continued to play flute for the high school band between 9th and 10th grades. Later, in **November of 2004**, she approached her emotional support teacher, Grace Wesley, about no longer wanting to take private flute lessons which she continued to do at her home and at the home of Matthew Puterbaugh. Wesley encouraged her to speak with someone at the District, but Plaintiff refused. The next day, Wesley took Plaintiff to see the high school guidance counselor, Lisa DeSanto (St. Clair). DeSanto spoke with Plaintiff alone, who told DeSanto that she was in a relationship with her band instructor where they had contact at his home and at her home. DeSanto advised Plaintiff that she would have to report what she was told and Plaintiff threatened that she would lie if that were to occur. Nevertheless, DeSanto reported to her Assistant Principal, Shane Miller, that Plaintiff described a dating relationship with a member of the music department in another building. Miller spoke with Plaintiff, but Plaintiff denied her story and told Miller she had made up the whole thing. After the discussion with Miller, DeSanto contacted Plaintiff's mother, [REDACTED], to inquire about Plaintiff's statements. [REDACTED] refuted her daughter's story and told DeSanto that her daughter lied. DeSanto also contacted Plaintiff's therapist, Dana Burgess, who suggested psychological testing. At that time, Burgess knew that during the previous school year, 2003, Plaintiff had reported

to the school district that scratches observed on her face were the result of abuse by her mother. The District contacted Children & Youth Services and Plaintiff's mother, [REDACTED], was not allowed to have unsupervised contact with her daughter.

Burgess knew that CYS was eventually convinced that Plaintiff had lied about the face scratches being caused by her mother and the matter was dropped.

Thereafter, Plaintiff completed a high school project under Puterbaugh's supervision, against the District administration's directives and in outright defiance of its admonishment of both to keep away from each other and to stay apart. Plaintiff received an "F" for her Community Services project. Additionally, in the spring semester of 2005, Plaintiff's behaviors were deteriorating so rapidly and her truancy becoming an issue at school that she and her mother were required to meet with the Superintendent of Schools about a permanent solution. Plaintiff formally withdrew from the District in August of 2005.

Statement of Facts known by the District 2000-2005 as to Matthew Puterbaugh

In **November of 2000**, four female students at Dover's Intermediate School had complained about the manner in which they were treated by their music teacher, Matthew Puterbaugh. They complained about his harsh language, a harsh physical approach (kicking one student in the butt), a too familiar physical approach (rubbing their legs, backs and putting his head against theirs), and blocking their departure from him. These actions, they complained, made them feel uncomfortable. Plaintiff,

a 6th grade student at the District, was not a member of the group of female students who complained at this time. She had been receiving private flute lessons from Matthew Puterbaugh since 1998-1999.

An investigation involving meetings with all four students was undertaken by the District Solicitor, Stock & Leader, P.C., and a preliminary hearing scheduled with Matthew Puterbaugh on November 17, 2000, in connection with the Board Policy #417.1, relating to Investigation and Disclosure, at which time his attendance was compelled, together with a union representative, if desired. Resistance to the hearing was made by the teacher's union representative, but after a follow up letter was sent by the school solicitor, Steven J. Russell, Esq., it was ultimately agreed to have Matthew Puterbaugh attend the meeting.

That meeting was, in fact, held on December 22, 2000, with Matthew Puterbaugh, and his counsel, J. Paul Helvey, Esquire, a member of the Pennsylvania School Educators Association. Following the meeting and after hearing Matthew Puterbaugh's side of the story, a letter from the Superintendent of Schools, Mr. George W. Severns, Jr., was placed in his personnel file and he was instructed to refrain from any further behaviors that would cause his students to feel uncomfortable.

In the fall of 2004, the beginning of Plaintiff's **9th grade**, a different investigation was conducted by Stock & Leader, P.C., into a different statement

made by Plaintiff about intimate contact with Matthew Puterbaugh. During an investigation, Puterbaugh was told the following: that Plaintiff had approached Maria Kann and Barbara Eshenour, two 8th grade teachers with whom she had classes, and told them that she had had intimate contact on the sofa at home with Matthew Puterbaugh, who was providing private music lessons to her. Although the teachers did not recall specifically being trained to report such matters, they nevertheless reported her statement to the guidance counselor, Hanna Pass (Humphreys), whom they considered to be a good child advocate. The next day, Hanna Pass (Humphreys) called Plaintiff to her office to delve more into the situation, however, Plaintiff refused to speak with her at all. Although having no confirmation of a sexual relationship with Matthew Puterbaugh as reported to her by Kann and Eshenour, Hanna Pass (Humphreys) reported their statements to the building principal, Kenneth Walter. At the request of Ken Walter, Stock & Leader, P.C., the District Solicitor, was assigned to investigate the statement attributed to Plaintiff by her teachers. A representative of Stock & Leader was hired to conduct an investigation. He told Puterbaugh that after reviewing Plaintiff's student file at length and speaking with the teachers, Mr. Walters, and himself, that although Plaintiff had refused to repeat her story and/or recanted her story, Matthew Puterbaugh must stay away from Plaintiff to avoid any future opportunities for contact that could be considered inappropriate.

The District eventually learned again that **on or about November 1, 2004**, another statement was made by Plaintiff, this time to Grace Wesley, an emotional support teacher employed by the Lincoln Intermediate Unit and who was providing emotional support teaching services to the Plaintiff at the Dover Area High School. Plaintiff discussed with Ms. Wesley what sounded to her like a dating relationship that Plaintiff was having with Matthew Puterbaugh. Ms. Wesley encouraged her to make a further report. The next day, Ms. Wesley learned that Plaintiff had told Matthew Puterbaugh the previous evening what she had told school officials and his response was that he "would need to look for a new job." Ms. Wesley described Plaintiff as "contemplating lying about what happened" – saying nothing happened – because she didn't want him to lose his job. On Wednesday, November 3, 2004, at Wesley's insistence, Plaintiff went to talk with the high school guidance counselor, Lisa DeSanto. Plaintiff told DeSanto that she was "torn" about her relationship with Matthew Puterbaugh. Lisa DeSanto told Plaintiff that she would have to report what she told her. DeSanto thereafter called Shane Miller, the Assistant Principal, who personally met and spoke with the Plaintiff. Plaintiff told him that she had made everything up – that she lied about the relationship. Miller wanted her statement in writing, and she provided one to him. Miller gave the statement to his superior, building principal, John Reidel. Plaintiff returned to the classroom of Grace Wesley and she told her that she reported to Mr. Miller that she had lied about the

relationship with Matthew Puterbaugh because she didn't want him to have to leave [his job]. Grace Wesley reported her contact with Plaintiff to her superior, Lynn Spangler, and Spangler reported the contact to the District Superintendent of Schools, Richard Nilsen. Nilsen once again contacted the District Solicitor with another report and request for an investigation.

Meanwhile, DeSanto contacted Plaintiff's mother, [REDACTED] to report her daughter's conduct, i.e., that she reported a story of having an inappropriate sexual relationship with Matthew Puterbaugh to her emotional support teacher, Grace Wesley, and to DeSanto. Mrs. [REDACTED] was adamant that there was no inappropriate or intimate relationship between her daughter and her music instructor, "reminding" Ms. DeSanto that "her daughter lies."

The District's solicitor, Stock & Leader, P.C., continued its investigation of Plaintiff's report to Grace Wesley, and issued a letter **on February 1, 2005**, to Ken Walter, the intermediate school building principal and Matthew Puterbaugh's superior. Attorney Russell reiterated in writing his prior verbal recommendation to Ken Walter, that Matthew Puterbaugh be admonished from further contact with Plaintiff, stating that although she recanted her report, there might have been another opportunity for contact at the (then) upcoming Thanksgiving band trip because Matthew Puterbaugh was the Assistant Marching Band Director and Plaintiff was a member of the marching band.

Plaintiff was required to complete a high school service learning project for the 2004-2005 school year. She sought assistance from Matthew Puterbaugh, who allowed her to complete her project by cataloguing music. **By September 7, 2005,** Kenneth Walter, the Intermediate School Principal to whom Matthew Puterbaugh reported, learned from Richard Nilsen, the new Superintendent of Schools that he had received Plaintiff's paperwork for her senior class project. This information was obviously alarming to the administration who observed that Matthew Puterbaugh had been admonished to stay away from the Plaintiff. **By letter of same date, Kenneth Walter once again reminded Matthew Puterbaugh of the allegations made against him by Plaintiff, which, although recanted, [did not justify his involvement in her project and] ran "counter to the intent of protecting you and [Plaintiff] from rumors, innuendos, gossip and other allegations." Mr. Walter stated emphatically, "in the future, you are not to engage, entertain, or schedule any activity or meetings without administrative approval and to never meet alone with [Plaintiff] at the Intermediate School or anywhere else on school property. Failure to follow this directive could lead to future disciplinary action up to and including dismissal."**

Based upon the myriad denials by Puterbaugh and the strength of his union representation, and recantations of reports made by Plaintiff to the School District and her own admissions that she "lied" to the District, the District administration

never had actual knowledge of an inappropriate relationship between Plaintiff and Matthew Puterbaugh.

C. COMPREHENSIVE STATEMENT OF UNDISPUTED FACTS – See attached.

D. BRIEF DESCRIPTION OF DAMAGES

To be provided by Plaintiff. Defendant, Dover Area School District, denies responsibility for any and all damages claimed by Plaintiff. In addition, it reserves the right to contest any and all damages which Plaintiff alleges that she has sustained, and also raise as a defense Plaintiff's mitigation of damages, if any; or failure to mitigate, as may be the case at trial.

E. NAME AND ADDRESS OF WITNESSES, EXPERTS

As of cross examination:

1. Plaintiff, [REDACTED], Dover, PA;
2. [REDACTED] Plaintiff's mother, Dover, PA;
3. [REDACTED] Plaintiff's father, Dover, PA;
4. [REDACTED], Plaintiff's brother, Dover, PA;
5. Plaintiff's expert witness, Dr. Shari Kim, Dover, PA;
6. Matthew Puterbaugh, New Hampshire;
7. Dana Burgess, MCSW, Lancaster, PA

As of Direct Examination:

8. Mr. Kenneth Walter, former Intermediate School Building principal, Dover Area School District;
9. Ms. Hannah Humphreys, (formerly Hannah Pass)
10. Mrs. Barbara Eshenour, Dover, PA
11. Mrs. Maria Kann, Dover, PA
12. Matthew Puterbaugh, New Hampshire
13. Lisa DeSanto, Dover, PA
14. Shane Miller, Dover, PA
15. Grace Wesley, Dover, PA
16. Julie Kessel, M.D., forensic psychiatrist, St. Petersburg, Florida
17. Stephen Russell, Esquire, former solicitor, Dover Area School District, Dover, PA

F. Summary of Testimony of Expert Witness, Julie Kessel, M.D.

On June 13, 2018, Dr. Julie Kessel met with Plaintiff for the purpose of conducting a forensic evaluation in the presence of counsel, and concluded with a follow up phone call with Plaintiff, in the presence of counsel, on Friday, June 15, 2018. Prior to the meeting, Dr. Kessel had been given, and read, Plaintiff's Second Amended Complaint, her prior psychological records, her answers to interrogatories,

the answers to interrogatories of Matthew Puterbaugh, Plaintiff's student records, the 2014 Northern York Police Department report, Affidavit of Probable Cause and Search Warrant that provided a history of Plaintiff's recollection of events relating to Matthew Puterbaugh; deposition transcripts of the Plaintiff, members of her family, former teachers and administrators at Dover.

Dr. Kessel will testify as to the history provided including the psychological records reviewed, answers to interrogatories, the deposition testimony, and the information obtained during her evaluations of June 13 and June 15, 2018 and how those facts are relevant to the formulation of her opinion which she will render, to a reasonable degree of medical certainty, whether Plaintiff had a diagnosis at the time of the events giving rise to her theories of liability; whether that diagnosis changed over time and exists at present; and whether or not the diagnosis as it existed at that time was causally related to anything the Dover Area School District did, or didn't do, with respect to the performance of investigations on its own behalf and that of the Plaintiff.

G. SPECIAL COMMENT ABOUT PLEADINGS AND DISCOVERY, INCLUDING DEPOSITIONS AND THE EXCHANGE OF MEDICAL REPORTS

Dr. Kessel's final report is about to be published given the timing of her evaluation and follow up.

H. SUMMARY OF LEGAL ISSUES INVOLVED AND LEGAL AUTHORITIES RELIED

UPON. 42 U.S.C. §1983 – State Created Danger theory (allegations that intermediate school guidance counselor talked Plaintiff out of reporting the sexual relationship with Matthew Puterbaugh; however, a guidance counselor is not an "appropriate person" required to report to outside authorities. The building principal, is an appropriate person, and in this case, Ken Walter, the intermediate school principal and Puterbaugh's direct report, did receive plaintiff's report and did report it to the superintendent of schools who caused an investigation to occur. Although Plaintiff recanted her story and Puterbaugh denied it, they were admonished never to be alone together and were physically separated from each other); Monell claim (failure to train, failure to investigate – Plaintiff claims that the 8th grade teachers, Eshenour and Kahn, testified that they were never trained in child abuse reporting – however, both teachers reported the abuse and directly as a result of the report, an investigation was undertaken by the District solicitor who was told by Plaintiff that she recanted her story and by Puterbaugh that her story was false; moreover, the second report in November of 2004 was also investigated by Stock & Leader, the District solicitor and the Plaintiff's mother and her private therapist were also consulted by the District in follow-up); Title IX – sexual harassment/discrimination on the basis of sex, requiring a showing of actual notice of the sexual abuse by virtue of Plaintiff's reporting and then recanting of such reports; and deliberate indifference to

the reporting and/or recanting of such reports. The 2000 reports by the four female students about Puterbaugh's physical and verbal behaviors were not similar in context or content and gave no notice to the District that Puterbaugh was a sex offender. The reports by Plaintiff in 2004 were both recanted, but notwithstanding, investigations occurred. Because both reports were recanted and Puterbaugh denied their truth, there was no report to Children & Youth, but both Plaintiff and Puterbaugh were admonished to stay away from each other at risk of further consequences.

- I. STIPULATIONS DESIRED: Authenticity of Exhibits; Joint Exhibit Numbers to avoid duplication and confusion; stipulated facts (attached.)
- J. ESTIMATED NUMBER OF TRIAL DAYS: 5-6
- K. ANY OTHER MATTER PERTINENT TO THE CASE TO BE TRIED

Defendant, Dover Area School District, requests a review and revision of a Court Order dated April 17, 2018 (DOC 127) relating to the trial testimony of [REDACTED] [REDACTED] mother, [REDACTED], regarding a telephone call from the High School guidance counselor, Lisa DeSanto. One of Plaintiff's theories of liability is that the District failed to train its administration to detect and investigate reports of child sexual abuse. In response to that contention, Defendant will introduce the testimony of Lisa (DeSanto) St. Clair, the first person within the District's high school building to hear the report of an inappropriate relationship between Plaintiff and Matthew

Puterbaugh. More specifically, Ms. DeSanto will testify that in the midst of an investigation into [REDACTED] November 2004 report of sexual abuse by Matthew Puterbaugh, she contacted her mother, [REDACTED] by telephone. [REDACTED] denied the existence of alleged sexual abuse by Matthew Puterbaugh and told Ms. DeSanto that her daughter lied. Moreover, [REDACTED] has already admitted that she lied to the District. This evidence is relevant to prove that the District was investigating Plaintiff's report and was in the process of making a report and inquiry outside the District, directly to Plaintiff's parent, as contemplated by the District's policies and teacher's handbook guidelines on reports of child abuse. Also, it has relevance to whether Plaintiff can prove the elements of her claims, including, but not limited to, under Title IX, whether Dover had actual notice and/or was deliberately indifferent, with regard to Plaintiff's state-created danger theory, whether Dover acted in a manner that would shock the conscience, and, under Plaintiff's Monell claim, whether Dover was deliberately indifferent and/or had unconstitutional policies. It also has relevance for the reasons described in Dover's motion in limine pertaining thereto. While Defendant understands the Court's concern regarding the effect on the jury regarding Mrs. [REDACTED]'s beliefs about her daughter's reports of sexual abuse, it was Mrs. [REDACTED]'s admonishment and insistence about her daughter's untruthfulness that was a factor that slowed and/or curtailed the investigation. However, the

investigation did continue and ended with a stern warning to Matthew Puterbaugh about staying away from Plaintiff.

Defendant, Dover Area School District, believes that this information is critical to its defense against Plaintiff's claim that the administration and staff were not trained regarding reports of child abuse. Moreover, a limiting instruction can be given to the jury to cure the Court's concern of prejudice against the Plaintiff.

L. PRE-NUMBERED SCHEDULE OF EXHIBITS

See attached.

M. SPECIAL VERDICT QUESTIONS

See attached.

N. STATEMENT BY DEFENSE COUNSEL THAT A PERSON OR COMMITTEE WITH SETTLEMENT AUTHORITY HAS BEEN NOTIFIED OF THE REQUIREMENTS AND POSSIBLE SANCTIONS UNDER LOCAL RULE 16.2

I, Sharon M. O'Donnell, Esquire, hereby certify that the appropriate persons with authority to settle this case have been notified of the requirements of L.R. 16.2. and will be available by telephone to participate in any discussions as may become necessary during the pretrial conference.

O. CERTIFICATE UNDER LOCAL RULE 30.10 TO RESOLVE DEPOSITION

OBJECTIONS - See attached.

P. Trial by jury; findings of fact and conclusions of law n/a.

Respectfully submitted,

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN
Attorneys for Defendant, Dover Area School
District

By: /s/Sharon M. O'Donnell
Sharon M. O'Donnell, Esquire
Pennsylvania I.D.No.: 79457
100 Corporate Center Drive, Suite 201
Camp Hill, PA 17011
Ph: (717) 651-3503
Fax: (717) 651-3707
smodonnell@mdwcg.com

Date: 6/21/18

CERTIFICATE OF SERVICE

I, Sharon M. O'Donnell, Esquire, of Marshall Dennehey Warner Coleman & Goggin,
do hereby certify that on this 21st day of June, 2018, I served a copy of the foregoing
document, via email and U.S. mail, as follows:

Farley G. Holt, Esquire
Holt & Ogden, LLP
34 North Queen Street
York, PA 17401

Joseph P. Green, Jr., Esquire
138 West Gay Street
West Chester, PA 19380

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: /s/Sharon M. O'Donnell

Sharon M. O'Donnell, Esquire
PA I.D. No. 79457
100 Corporate Center Dr., Suite 201
Camp Hill, PA 17011
Phone (717) 651-3503
Fax (717) 651-3707
smodonnell@mdwccg.com
Attorneys for Defendant Dover Area School
District

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

██████ n/k/a ██████	:	CIVIL ACTION
Plaintiff	:	Docket No.: 1:15-CV-1634
	:	
v.	:	Honorable Christopher C. Conner
	:	Chief Judge
DOVER AREA SCHOOL DISTRICT,	:	
LINCOLN INTERMEDIATE UNIT 12,	:	
and MATTHEW PUTERBAUGH,	:	
Defendants.	:	JURY TRIAL DEMANDED

PROPOSED UNDISPUTED FACTS

1. Plaintiff is ██████ a/k/a ██████
2. Plaintiff is currently 29 years old and a resident of Dover, PA.
3. Plaintiff is a former student of Dover Area School District.
4. Dover, as a provider of educational program and services receiving federal funds, at all times relevant hereto, was required to provide the benefits of those services and programs without discrimination on the basis of sex.
5. Plaintiff was not a student that complained about Puterbaugh's behaviors, although she was a student at the District in the year 2000.
6. An investigation into the students' complaints was conducted at the request of the building principal and superintendent of schools by the York law firm of Stock & Leader, P.C., the District's solicitor.

7. Following interviews with all four students and a hearing against Matthew Puterbaugh on December 22, 2000, during which he was represented by his teacher's union attorney, J. Paul Helvey, Esquire, and allowed to tell his side of the story.
8. Plaintiff's relevant years of attendance at Dover Area School District are 7th grade: 2001-2002, 8th grade: 2002-2003, 9th grade: 2003-2004, and 10th grade: 2004-2005. She withdrew from school prior to 11th grade in the 2005-2006 school year.
9. Matthew Puterbaugh was a music teacher at the elementary and intermediate school buildings and an assistant marching band director at the high school from 1989 through 2014.
10. Plaintiff had Matthew Puterbaugh as a music teacher at the intermediate school.
11. Plaintiff's behaviors in school came under scrutiny in 2002:
 - (a) when her English teacher noted that she was failing English because her mind was on her boyfriend and not on her studies. She passed Language Arts with a 70.
 - (b) She tore up a detention slip and ran away from the assistant principal, Brandon Hufnagel;
 - (c) Left class to get a drink in another part of the building for over 15 minutes (next violation will result in an alternative education placement);

(d) Uncooperative with a substitute teacher;

(e) Grabbed another student and was ready to assault her (next instance will result in police contact and out of school suspension).

12. While in 8th grade, Plaintiff missed 2 days of school through November of 2002, and missed a total of 12 days of school through April of 2003.
13. Plaintiff's 8th grade teachers, Maria Kahn and Barbara Eshenour reported to the intermediate school guidance counsel, Hanna (Humphreys) Pass that Plaintiff had reported to them after classes ended one afternoon that she had an intimate experience on the sofa in her living room with Matthew Puterbaugh.
14. Matthew Puterbaugh states in answers to interrogatories that he watched a movie on the sofa with her at her home when her mother was not there. This occurred in the summer between 8th and 9th grade.
15. Both teachers assumed that Plaintiff's experience with Matthew Puterbaugh was sexual in nature and reported it that way to Ms. Pass.
16. Although neither teacher recalled being trained to report sexual abuse, the teacher's handbook required teachers to report such information to, inter alia, a guidance counselor.
17. Ms. Pass called Plaintiff into her office the next day to obtain Plaintiff's statement but Plaintiff did not share that information with Ms. Pass.

18. Ms. Pass reported the information from the 8th grade teachers to her building principal, Kenneth Walter.
19. An investigation was conducted at the request of Mr. Walter by the School District Solicitor, Stock & Leader, P.C.
20. Plaintiff recanted the information she shared with her 8th teachers about a sexual or intimate contact occurring between herself and Matthew Puterbaugh.
21. No report was made to Children & Youth Services because Plaintiff later recanted her report about what occurred at her home with Matthew Puterbaugh.
22. Plaintiff began receiving learning support through the District, delivered by instructors from the Lincoln Intermediate Unit in Mathematics during her 9th grade year, 2003-2004.
23. At the conclusion of 9th grade, Plaintiff's GPA was 81.74 and her class rank was 144/276.
24. Plaintiff's behaviors again came under scrutiny in 2003 when she:
 - (a) Argued with another student about why [REDACTED] was in ISS, caused a huge class disruption and was using foul language (asshole). While in the office of assistant principal, Brandon Hufnagle, she was cutting herself with a sharp piece of plastic. She said she was doing it to "make it all end." Parents contacted; 2 days of in-school suspension; 1 day of out of school suspension;

[REDACTED]

(b) Was absent, unexcused, 1/29/03, 1/30/03, 2/21/03; letter to Parents.

25. On or about November 1, 2004, Plaintiff reported to Grace Wesley, the LIU emotional support teacher, that she wanted to stop taking private music lessons from her instructor, Matthew Puterbaugh. She reported to Wesley that she and her instructor had gone to the movies and to dinner. She discussed with Wesley the fact that they seemed like they were dating.
26. Plaintiff went home that evening without reporting it.
27. Plaintiff spoke with Matt Puterbaugh that evening and told him that she had reported to the LIU emotional support teacher information about their relationship.
28. Plaintiff told Wesley the next day, November 2, 2004, that if she had to report to anyone at the District, she would lie.
29. Wesley walked Plaintiff over to the office of the high school guidance counselor, Lisa DeSanto.
30. DeSanto spoke with Plaintiff about her relationship with Matthew Puterbaugh.
31. DeSanto reported Plaintiff's statements to her assistant principal, Shane Miller.
32. On or about November 4, 2004, Wesley reported the statements to her supervisor, Lynn Spangler, who reported the same to the Dover Area School District Superintendent of Schools, Richard Nilsen.

33. Richard Nilsen contacted the District Solicitor, Stock & Leader, P.C., to conduct an investigation.
34. In March of 2005, Lisa DeSanto reached out to Plaintiff's private therapist, Dana Burgess, to discuss Plaintiff's statements about Matthew Puterbaugh.
35. DeSanto told Dana Burgess the District was handling the matter from its end.
36. Dana Burgess did not make a report to Children & Youth Services.
37. At that time, Dana Burgess knew that Children & Youth Services were contacted by the District the previous year, in 2003, when Plaintiff accused her mother of scratching her face and abusing her.
38. Dana Burgess was aware that Plaintiff recanted her report about the abuse from her mother and the matter was dropped by Children & Youth Services.
39. DeSanto also contacted Plaintiff's mother, pursuant to the District's policy and Teacher's manual, about the statements made by her daughter concerning her music instructor, Matthew Puterbaugh.
40. Plaintiff's mother did not believe it and told DeSanto that Matthew Puterbaugh was a good friend of the family and that her daughter lies.
41. Plaintiff began receiving emotional support for Science, English and Math through the District, delivered by instructors from the Lincoln Intermediate Unit in 10th grade, 2004-2005. Her GPA was 79.6 and her class rank was 158/259.

42. In 2004-2005, Plaintiff's negative behaviors at school decreased from the prior year, but continued when she:

- (a) Had confrontations with fellow students in the hall without seeking assistance beforehand;
- (b) Being in an authorized area during lunch period;
- (c) Cut science class on 11/11 and was written up by Mrs. Wesley; she cut 3rd period science and 4th period health on 11/12/04 and was written up;
- (d) On all occasions when she cut classes she was with friends not in emotional support, went to lunch at Jim & Nina's and didn't return to school;
- (e) Having emotional issues being dealt with by guidance counselor and HS administration;
- (f) Getting loud in the hall, confrontation with peers;
- (g) Harassment, cutting classes, having electronic accessories out and in use in class; cutting staff detention;
- (h) Verbal taunting, going into and hanging out in unauthorized areas; leaving school property;
- (i) Rude and disrespectful to fellow students that she doesn't like;
- (j) Not abiding by "no fly by policy";
- (k) Running and hiding from teachers;

(l) Leaving class before the bell rang and not abiding by policies put in place to keep ██████ out of halls when busy (which is where ██████ behavioral issues arise with peers).

43. In 2004-2005, Plaintiff was placed on a Positive Behavior Support Plan by the Lincoln Intermediate Unit to (a) increase her appropriate social skills; (b) decrease inappropriate attention getting behaviors; (c) attend required classes as scheduled; (d) ask for help before a situation gets out of hand.
44. Her emotional support plan required her to make suggestions for consequences and rewards; try to help other students when they are having emotional problems by offering advice.
45. In August of 2005, Plaintiff withdrew from the District.
46. In September of 2005, the District concluded its investigation and warned Matthew Puterbaugh to stay away from the Plaintiff.
47. In 2014, Plaintiff reported to an investigating police officer that she lied to the school administrators about her relationship with Matthew Puterbaugh on both occasions.
48. In 2014, Plaintiff testified under oath at the preliminary hearing against Matthew Puterbaugh that she didn't remember who the first persons to whom she reported the relationship, but admitted she lied to "the school."

49. On May 23, 2014, an Affidavit of Probable Cause was signed by the Magisterial Judge detailing the alleged sexual relationship between Defendant Puterbaugh

and [REDACTED]

50. On June 30, 2015, the Defendant, Puterbaugh, pled guilty and was sentenced on the charges of Statutory Sexual Assault and Involuntary Deviate Sexual Intercourse for which Puterbaugh received a 5 - 10-year sentence.

51. The Plaintiff was the victim of the charges for which Puterbaugh plead guilty.

52. On June 30, 2015, the Defendant, Puterbaugh, pled guilty and signed the Guilty Plea Colloquy on the charge of Statutory Sexual Assault and Involuntary Deviate Sexual Intercourse.

53. Puterbaugh was determined by the court to be a Sexually Violent Predator.

54. On June 30, 2015, the Defendant, Puterbaugh, signed the Sexual Offender Registry required by Megan's Law.

55. At all times relevant to this case, HB 1001, 1994 Act 151, as approved on December 16, 1994, was in effect.

DEFENDANT, DOVER SCHOOL DISTRICT'S LIST OF EXHIBITS

CASE CAPTION: [REDACTED] n/k/a [REDACTED] v. Dover Area School District, et. al **CASE NUMBER:** 1:15-cv-1634

MIDDLE DISTRICT OF PENNSYLVANIA **JUDGE:** HON. CHRISTOPHER C. CONNER

PTF	DFT	DESCRIPTION OF OBJECT OR ITEM	IDENTIFIED	EVIDENCE	RULING	WITNESS ON STAND
	1	Plaintiff's Answers to Dover Area School District's 1 st Set of Interrogatories				
	2	Plaintiff's Answers to Dover Area School District's 1 st set of Request for Production of Documents				
	3	Defendant, Puterbaugh's, Responses To Plaintiff's 1 st Request For Production of Documents				
	4	Defendant Matthew Puterbaugh's Answers to Plaintiff's 1 st Set of Interrogatories				
	5	Defendant, Lincoln Intermediate Unit 12's Objections and Answers to Plaintiff's 1 st Set of Interrogatories				
	6	Defendant, Lincoln Intermediate Unit 12's Answers to Plaintiff's 1 st Set of Request of Production of Documents				
	7	01/09/89 Dover Area School District's No 248 Title: Harassment				
	8	July 1989 Temporary Professional Employee's Contract with Dover Area S.D.				
	9	09/28/89 Observation Data				
	10	10/30/89 Dover Area S.D. Observation Data				
	11	11/02/89 Observation Data				

12	01/04/90 Dover Area S.D. Observation Report				
13	01/10/90 Observation Data				
14	01/19/90 Dover Area S.D. Temporary Professional Employee Rating Form 1989-1990				
15	03/16/90 Dover Area S.D. Observation Report				
16	03/16/90 Observation Data				
17	05/15/90 Dover Area S.D. Observation Report				
18	05/30/90 Dover Area S.D. Temporary Professional Employee Rating Form 1990-1991				
19	10/19/90 Observation Data				
20	10/23/90 Dover Area S.D. Observation Report				
21	12/21/90 Dover Area S.D. Observation Report				
22	01/16/91 Observation Data				
23	02/20/91 Dover Area S.D. Temporary Professional Employee Rating Form 1990-1991				
24	03/13/91 Dover Area S.D. Observation Report				
25	03/13/91 Observation Data				
26	05/18/91 Dover Area S.D. Observation Report				
27	06/03/91 Dover Area S.D. Temporary Professional Employee Rating Form 1990-1991				
28	06/05/91 Dover Area S.D. Temporary Professional Employee Rating Form 1990-1991				

29	06/20/91 Letter from Julia Peeling to Dover Area S.D. Superintendent re: feel very fortunate to have my child under the instruction of Mr. Puterbaugh				
30	Handwritten note from Pat Dovey to Mr. Puterbaugh re: Dr. C will need to meet with you before the board meeting				
31	10/15/91 Dover Area S.D. Observation Report				
32	12/09/91 Dover Area S.D. Observation Report				
33	12/09/91 Observation Data				
34	05/13/92 Dover Area S.D. Temporary Professional Employee Rating Form 1991-1992				
35	10/27/92 Observation Data				
36	03/05/93 Observation Data				
37	06/28/93 Dover Area S.D. Temporary Professional Employee Rating Form 1992-1993				
38	01/14/94 Request for Approval of Professional Inservice Activity to attend PA Music Educators Assoc. Conference				
39	02/08/94 Letter from Dover Area School District to Mr. Puterbaugh re: PA Music Educator's Assoc. conference				
40	06/17/94 Dover Area S.D. Temporary Professional Employee Rating Form 1993-1994				
41	08/16/94 Memo re: Puterbaugh appointed Assistant Band Director				
42	06/02/95 Dover Area S.D. Observation Report				

43	06/06/95 Dover Area S.D. Temporary Professional Employee Rating Form 1994-1995				
44	01/95 – Matthew Puterbaugh's Professional Certificate				
45	08/31/95 Memo re: Puterbaugh appointed Assistant Band Director				
46	03/08/96 Memo from Puterbaugh to School Board re: request for consideration as Percussion Instructor				
47	03/20/96 Memo re: Matthew Puterbaugh recommendation as the Percussion Instructor				
48	04/02/96 Letter from Dover Area School District to Mr. Puterbaugh re: your appt. as percussion instructor was approved				
49	06/14/96 Dover Area S.D. Temporary Professional Employee Rating Form 1995-1996				
50	05/06/97 Dover Area S.D. Temporary Professional Employee Rating Form 1996-1997				
51	4/08/97 Letter from Dover Area School District to Mr. Puterbaugh re: resignation as H.S. Marching Band percussion instructor				
52	09/24/97 Letter from Dover Area High School to Mr. Puterbaugh re: appointed Assistant Director of the Band				
53	06/08/98 Dover Area S.D. Professional Employee Rating Form 1997-1998				
54	06/14/99 Dover Area S.D. Professional Employee Rating Form 1998-1999				

55	01/10/00 Dover Area School District's Revised No. 417.1 Investigation and Disclosure				
56	08/28/00 Agreement between The Board of School Directors of the Dover Area School District and Dover Area Education Association				
57	06/09/00 Dover Area S.D. Professional Employee Rating Form 1999-2000				
58	11/01/00 Handwritten note regarding [REDACTED]				
59	11/02/00 Handwritten notes regarding [REDACTED] and other females				
60	11/02/00 Dover Area School District Harassment Complaint Form from [REDACTED]				
61	11/02/00 Handwritten notes from Mrs. [REDACTED]				
62	11/14/00 Dover Area School District Letter to Mr. Puterbaugh				
63	Dover Area School District 417.1 Investigation and Disclosure				
64	12/04/00 Stock & Leader Letter to Matthew Puterbaugh				
65	12/07/00 Letter from J. Paul Helvy to Attorney Russell				
66	12/26/00 Stock & Leader Letter to Dover Area School District re: Puterbaugh				
67	01/02/01 Letter from Dover Area School District to Mr. Puterbaugh				
68	01/25/01 Letter from Dover Area School District to Mr. Puterbaugh re: participation and performance with Dallas Brass				

69	06/07/01 Dover Area S.D. Temporary Professional Employee Rating Form 2000-2001				
70	06/10/02 Dover Area S.D. Temporary Professional Employee Rating Form 2001-2003				
71	10/09/01 Letter from Dover Area School District to Mr. Puterbaugh re: appt as Interim Tech Liaison				
72	05/06/03 Lincoln Intermediate Unit No. 12 Policy Manual Section: 200 Pupils / Title: Unlawful Harassment				
73	05/06/03 Lincoln Intermediate Unit No. 12 Policy Manual Section: 200 Pupils / Title: Unlawful Harassment				
74	06/03/03 Lincoln Intermediate Unit No. 12 Policy Manual Section: 200 Pupils / Title: Student Rights/Responsibilities				
75	06/03/03 Lincoln Intermediate Unit No. 12 Policy Manual Section: 400 Professional Employees / Title: Unlawful Harassment				
76	06/03/03 Lincoln Intermediate Unit No. 12 Policy Manual Section: 400 Professional Employees / Title: Responsibility for Student Welfare				
77	06/13/03 Dover Area S.D. Temporary Professional Employee Rating Form 2002-2003				
78	08/05/03 Lincoln Intermediate Unit No. 12 Policy Manual Section: 800 Operations / Title: Child/Student Abuse				
79	08/05/03 Lincoln Intermediate Unit No. 12 912. Section: Community / Title: Fair Share Plan				

80	09/02/03 Lincoln Intermediate Unit 12 Student Tracking pertaining to [REDACTED]				
81	06/02/04 Dover Area S.D. Instructional II Supervision Form Teacher Observation/Performance				
82	06/15/04 Dover Area S.D. Instructional II Professional Employee Rating Form 2003-2004				
83	11/03/04 Lincoln Intermediate Unit No. 12 fax				
84	02/01/05 Stock & Leader Letter to Dr. Nilsen and Joel Reidel				
85	06/09/05 Dover Area S.D. Instructional II Professional Employee Rating Form 2004-2005				
86	09/07/05 Kenneth Walter letter re: [REDACTED] completed H.S. service learning project				
87	12/19/05 Dover Area S.D. Instructional II Supervision Form Teacher Observation/Performance				
88	06/08/06 Dover Area S.D. Instructional II Professional Employee Rating Form 2005-2006				
89	06/09/07 Dover Area S.D. Instructional II Professional Employee Rating Form 2006-2007				
90	10/07/08 Lincoln Intermediate Unit No. 12 Policy Manual Section: 200 Pupils / Title: Bullying and Cyberbullying				
91	02/03/09 Letter from Dover Area School District to Mr. Puterbaugh re: approval to attend Creating 2009 PMEAC Conference				
92	York County District Attorney's Office records				

93	06/05/09 Dover Area S.D. Instructional II Professional Employee Rating Form 2008-2009					
94	02/16/10 Dover Area S.D. Instructional II Supervision Form Teacher Observation/Performance					
95	02/18/10 Puterbaugh Band Observation Date					
96	06/11/10 Dover Area S.D. Instructional II Professional Employee Rating Form 2009-2010					
97	06/08/11 Dover Area S.D. Instructional II Professional Employee Rating Form 2010-2011					
98	06/07/12 Dover Area S.D. Instructional II Professional Employee Rating Form 2011-2012					
99	04/12/13 Northern York County Regional PD Incident Report					
100	04/12/13 Dover Area S.D. Instructional II Supervision Form Teacher Observation/Performance					
101	04/12/13 Observation Report regarding Mr. Puterbaugh					
102	06/10/13 Dover Area S.D. Instructional II Professional Employee Rating Form 2012-2013					
103	08/13/13 Certificate of PA Family Support Alliance training on Child Abuse produced by Lincoln Intermediate					
104	03/19/14					
105	03/26/14 Letter to Dover Area S.D. from [REDACTED]					
106	03/27/14 Northern York County Regional PD Incident Report					

107	04/01/14 Donald Wilson Statement				
108	05/06/14 Letter from Attorney ██████ to Jason Conway re: my client was sexually abused by Puterbaugh				
109	08/12/14 Letter from Dover Area S.D. to Mr. Puterbaugh re: termination				
110	09/23/14 Dover Area S.D. letter to ██████ re: misconduct complaint				
111	07/14/14 York County District Attorney's Office Incident Report				
112	05/06/14 Letter to Jason Conway from Attorney ██████ re: represent ██████				
113	05/09/14 Letter to Attorney ██████ from Attorney Pratt re: in receipt of your litigation hold letter				
114	02/09/16 Letter from Stock & Leader enclosing investigative file of Stephen S. Russell				
115	Plaintiff's WellSpan Behavioral Health Records				
116	Media Documents produced by Plaintiff's Counsel				
117	Medical/Behavioral Health Records from Ellis Berkowitz, LCSW				
118	Puterbaugh Criminal Records produced by Plaintiff's Counsel				
119	Shari Kim, Ph.D.'s Psychological Evaluation				
120	Shari Kim, Ph.D.'s Curriculum Vitae				
121	Julie Kessel, M.D.'s Medical Report				
122	Julie Kessel, M.D.'s Curriculum Vitae				
123	█████s Dover Area Intermediate School Records				

Title IX - DOVER AREA SCHOOL DISTRICT

Has Plaintiff [REDACTED] proven that [REDACTED] was subjected to sexual harassment that was so severe, pervasive, and objectively offensive that it could be said to have deprived her of access to educational opportunities or benefits?

Yes ____ No ____

If you answered "Yes" to Question No. , proceed to Question No. . If you answered "No" to Question No. , then sign and return this form to the court officer.

Has Plaintiff [REDACTED] proven that Dover Area School District had actual knowledge of the sexual harassment?

Yes ____ No ____

If you answered "Yes" to Question No. , proceed to Question No. . If you answered "No" to Question No. , then sign and return this form to the court officer.

Has Plaintiff [REDACTED] proven that Dover Area School District was deliberately indifferent to the harassment?

Yes ____ No ____

If you answered "Yes" to Question No. , proceed to Question No. . If you answered "No" to Question No. , then sign and return this form to the court officer.

Has Plaintiff [REDACTED] proven by a preponderance of the evidence that she suffered damages as a result of the deliberate indifference of Dover Area School District?

Yes ____ No ____

If you answered "Yes" to Question No. , proceed to Question No. . If you answered "No" to Question No. , then sign and return this form to the court officer.

14th Amendment – Substantive Due Process; 42 U.S.C. §1983

Has Plaintiff [REDACTED] proven that Dover Area School District had a policy, custom or practice that resulted in a failure to train its administrators and professional staff about the appropriate measures for investigating and reporting child sexual abuse?

Yes ____ No ____

If you answered "Yes" to Question No. , proceed to Question No. . If you answered "No" to Question No. , then sign and return this form to the court officer.

Has Plaintiff [REDACTED] proven by a preponderance of the evidence that she suffered damages as a result of the Dover Area School District's failure to train its administrators and professional staff about the appropriate measures for investigating and reporting child sexual abuse?

Yes ____ No ____

If you answered "Yes" to Question No. , proceed to Question No. . If you answered "No" to Question No. , then sign and return this form to the court officer.

What is a fair and reasonable amount to compensate [REDACTED] for the damages suffered solely as a violation of her rights by Dover Area School District?

\$ _____

DATE: _____

FOREPERSON: _____