

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

CANDICE HERRERA and

T.H., a minor by and through her father and
guardian VINCENT HERRERA, and all others
similarly situated,

Plaintiffs,

v.

SANTA FE PUBLIC SCHOOLS,

SANTA FE PUBLIC SCHOOLS BOARD OF
EDUCATION,

BARBARA GUDWIN, GLENN WIKLE,
LINDA TRUJILLO, FRANK MONTANO,
STEVEN J. CARRILLO, in their official
capacities as members of the Santa Fe Public
Schools Board of Education,

BOBBIE J. GUTIERREZ, in her official
capacity as Superintendent of Santa Fe Public
Schools,

MELANIE ROMERO, individually and in her
official capacity as Principal of Capital High
School,

ROBERT STEPHENS, in his official capacity
as Principal of Santa Fe High School as a
necessary party for complete relief,

ASI NEW MEXICO, LLC,

JOHN/JANE DOE Nos. 1-8,

Defendants.

Case No. 11-422

COMPLAINT

NATURE OF ACTION

1. This is a civil rights action for declaratory and injunctive relief and damages brought by Plaintiff Candice Herrera and Plaintiff T.H., by and through her father Vincent Herrera, on behalf of themselves and other similarly situated students at Capital High School, for violations of 42 U.S.C. § 1983, the New Mexico Constitution, and New Mexico common law resulting from Defendants' unlawful and invasive searches of Plaintiffs without reasonable suspicion.

2. Plaintiffs bring this action against: (a) Santa Fe Public Schools; the Santa Fe Public Schools Board of Education; Barbara Gudwin, Glenn Wikle, Linda Trujillo, Frank Montano, and Steven J. Carrillo, in their official capacities as members of the Santa Fe Board of Education; Bobbie J. Gutierrez, in her official capacity as Superintendent of Santa Fe Public Schools; Melanie Romero, in her official capacity as Principal of Capital High School, Robert Stephens, in his official capacity as Principal of Santa Fe High School as a necessary party for complete relief (collectively referred to as "Santa Fe Public Schools" Defendants); (b) Melanie Romero, in her individual capacity ("Principal Romero"); and (c) ASI New Mexico, LLC., and John/Jane Doe Nos. 1-8 (collectively referred to as "ASI Defendants").

3. Candice Herrera is a senior and her sister T.H. is a sophomore at Capital High School in Santa Fe, New Mexico. On April 16, 2011, Candice and T.H. attended their school's prom at the Santa Fe Convention Center. Prom is the night high school students never forget. Immortalized time after time in books and Hollywood movies, prom is a defining moment and perhaps the most important social event in high school. For Candice, her sister, and hundreds of other Capital High School students, prom will not be remembered for the glitz and glamor of the

prom dresses and tuxedos, it will not be remembered for the crowning of the prom queen and king, or the celebration of friends and end of four years of schooling.

4. Instead, the signature moment at the 2011 Capital High School Prom was Capital High School staff working with a private security company searching students as they came into prom by feeling their breasts, grabbing their bras, touching their inner thighs, rifling through their purses and bags, and confiscating everyday items like lotion, nail clippers, and lip gloss.

5. Students entering the Capital High School Prom all had their bodies searched. The searches included, for some girls, having a security officer cup and shake their breasts and grab and shake their bras. Girls had their skirts lifted and their legs felt up beyond the middle of the thigh. All of this occurred in public, in full view of other students, including male students, and Capital High School staff and ASI employees.

6. Students carrying bags or purses had the contents searched. Some had all of the contents of their purses dumped, again in full view of everyone entering Prom, on a table. The contents were rifled through and random items were confiscated. Capital High School staff took nail clippers, lotion, prescription medicine, lip gloss and other items from students and put them in a box that all students could search through to retrieve their items when they left Prom.

7. Capital High School Principal Melanie Romero and other Capital High School staff watched and even participated in the searches, doing nothing to intervene.

8. When Candice and T.H.'s father complained about the searches to Santa Fe Public Schools officials and reminded them that the law and Santa Fe Public Schools' own code of conduct states that "[m]ore intrusive searches, such as pat-downs, may be conducted only on the basis of reasonable suspicion of the individual student to be searched," he was told that school officials believed that they could conduct blanket searches of students at events and that

they would continue doing searches at future events, such as the upcoming Santa Fe High School Prom. Capital High School also plans on searching all students walking at graduation for “distracting contraband.”

9. Capital High School Prom was not the first unjustified blanket search of students by Santa Fe Public Schools officials. Searches were conducted at least at the 2010 Capital High School graduation, the 2010 Capital High School Homecoming, and the 2010 Santa Fe High School Prom.

10. Candice Herrera, T.H., and other students attending the 2011 Capital High School Prom were embarrassed and humiliated by the offensive and degrading searches of their bodies and possessions by Santa Fe Public Schools staff and the ASI security guards working in concert with, and at the direction of, Santa Fe Public Schools staff.

11. Through their actions, Defendants violated Plaintiffs’ right to be free from unreasonable searches and seizures in violation of Section 1983 and the New Mexico Constitution, engaged in unlawful battery and intentional infliction of emotional distress, and committed a *prima facie* tort under New Mexico common law.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3), and 28 U.S.C. § 1367.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial portion of the events or omissions giving rise to the claims occurred in New Mexico and because at all relevant times Santa Fe Public Schools and the Santa Fe Public Schools Board are local governmental entities located in the State of New Mexico, and ASI New Mexico, LLC was incorporated in New Mexico and was doing business in New Mexico.

PARTIES

14. Candice Herrera is eighteen years old and is a student in the twelfth grade at Capital High School in Santa Fe, New Mexico. Candice is a member of the National Honor Society, is in the top ten percent of students in her class, and has never been subject to disciplinary action at school. She will be attending the University of New Mexico after graduation, having been selected to join the University's combined B.A./M.D. program.

15. T.H. is sixteen years old and is a tenth grade student at Capital High School in Santa Fe, New Mexico. T.H. maintains a 4.0 grade point average, is ranked first in her class, and has never been subject to disciplinary action at school. As a minor, T.H. brings this action through her father, Vincent Herrera.

16. Defendant Santa Fe Public Schools is a government entity located at 610 Alta Vista Street, Santa Fe, New Mexico, that operates and maintains the school district and all public schools in Santa Fe, New Mexico, including Capital High School located at 4851 Paseo del Sol, Santa Fe, New Mexico, and Santa Fe High School, located at 2100 Yucca Road, Santa Fe, New Mexico.

17. Defendant Santa Fe Public Schools Board of Education is a local governmental entity empowered pursuant to New Mexico law to adopt and develop policies, practices, and procedures in connection with the operation and administration of schools within the school district.

18. Defendants Barbara Gudwin, Glenn Wikle, Linda Trujillo, Frank Montano, and Steven J. Carrillo are members of the Santa Fe Public Schools Board of Education. As members of the Board of Education, Defendants Gudwin, Wikle, Trujillo, Montano, and Carrillo possess

policy-making authority with respect to the adoption and administration of policies, customs, practices, and training related to the operation of Santa Fe Public Schools.

19. Defendant Bobbie J. Gutierrez is the Superintendent of Santa Fe Public Schools and a government official with policy-making and supervisory authority over Santa Fe Public Schools, including Capital High School and Santa Fe High School. Defendant Gutierrez is empowered pursuant to New Mexico law, including N.M.S.A. § 22-5-14, to supervise the operation of the school district and administer rules and policies within the school district. Defendant Gutierrez possesses policy-making authority with respect to the adoption and administration of policies, customs, practices, and training related to the operation of Santa Fe Public Schools.

20. Defendant Melanie Romero is the Principal of Capital High School in Santa Fe, New Mexico, and has been Principal at all relevant times described herein. Defendant Romero is a government official with policy-making and supervisory authority over the operation of Capital High School and conduct of Capital High School employees and agents at Capital High School events.

21. Upon information and belief, Defendant Romero possesses final policy-making authority with respect to whether and in what circumstances Capital High School students are subject to search at Capital High School functions and events. Defendant Romero is being sued in her individual and official capacities.

22. Defendant Robert Stephens is Principal of Santa Fe High School in Santa Fe, New Mexico. Defendant Stephens is a government official with policy-making and supervisory authority over the operation of Santa Fe High School and conduct of Santa Fe High School employees and agents at Santa Fe High School events.

23. Upon information and belief, Principal Stevens possesses final policy-making authority with regard to whether and in what circumstances Santa Fe High School students are subject to search at Santa Fe High School functions and events. Defendant Stephens has been included in this action because he is a necessary party for complete relief.

24. Defendant ASI New Mexico, LLC (“ASI”) is a limited liability company organized under the laws of New Mexico. ASI provides security services to public schools, private companies, and state and governmental entities.

25. ASI has been engaged to provide security at Capital High School. ASI security guards conduct regular patrols at Capital High School and check students’ IDs as they enter the school. Santa Fe Public Schools has engaged ASI to work in concert with Santa Fe Public Schools employees to provide security at certain Santa Fe Public Schools events.

26. Upon information and belief, at all relevant times Santa Fe Public Schools maintained authority to control and supervise ASI’s conduct at Santa Fe Public Schools events and to dictate the method and circumstances in which students and students’ belongings would be searched by ASI employees and agents.

27. Defendants John/Jane Doe Nos. 1-8 are employees and agents of ASI. John/Jane Doe Nos. 1-8 worked jointly with Capital High School personnel in searching students entering the Capital High School Prom on April 16, 2011. John/Jane Doe Nos. 1-8 checked student identification, searched students’ persons through physical touching of their bodies, searched students’ purses and bags, and wanded students in the lobby of the Santa Fe Convention Center.

28. At all relevant times, Defendants John/Jane Doe Nos. 1-8 were acting in the scope of their employment as employees, agents, and/or representatives of Defendant ASI.

FACTUAL BACKGROUND

I. The 2011 Capital High School Prom

29. On April 16, 2011, Capital High School held its annual Prom at the Santa Fe Convention Center.

30. The Capital High School Prom is an annual Capital High School-sponsored event that is held in the spring. The Capital High School Prom has been held at the Santa Fe Convention Center for the past several years.

31. All students present at the Santa Fe Convention Center for the purpose of attending the Capital High School Prom on April 16, 2011, were under the care and supervision of Santa Fe Public Schools.

32. All juniors and seniors at Capital High School were allowed to attend the 2011 Capital High School Prom and students at the freshman or sophomore grade level were permitted to attend the Prom if they were invited by a junior or senior student.

33. Candice Herrera served on the Planning Committee for the 2011 Capital High School Prom. In her role on the Planning Committee, Candice worked with other students and a faculty representative to help plan the Prom. Candice devoted substantial time to helping make the Prom an enjoyable and memorable event for her fellow students, including spending hours decorating the Santa Fe Convention Center for the event.

34. Capital High School Prom tickets were sold for \$50 for two students attending together and \$30 for a single student. Tickets were available for purchase in advance of the Prom or at the door. Candice Herrera received a complimentary ticket to the Prom for her work on the Planning Committee.

35. Santa Fe Public Schools did not advise students that they would be searched prior to entry to the Prom, nor did Santa Fe Public Schools inform students ahead of time that they would not be permitted to enter the Prom without being searched and might have everyday items confiscated.

36. Prior to the Prom, signs were posted in Capital High School informing students about the Prom. Capital High School did not include on those signs any notice to students that entry to the Prom would be conditioned on being searched.

37. During official Capital High School morning announcements, students were reminded to bring their student ID cards and tickets to gain entry to the Prom, but were not forewarned that those attending the Prom would be subjected to search.

II. Students' Arrival at Prom

38. Candice and T.H. arrived at the Prom together, each wearing a floor-length, sleeveless dress.

39. Upon entering the Convention Center, all students attending the Capital High School Prom, including Candice and T.H., were required to hand in their tickets and show their school-issued IDs to Capital High School employees and agents, who were working together in checking IDs and taking tickets.

40. After having their school IDs checked, students were separated into two lines by gender along two parallel sets of tables. The line of male students was approximately five to ten feet away from the line of female students. Candice and T.H. were directed to the line for females.

III. The Search of Candice Herrera

41. When she approached the front of the line, Candice was directed to spread her arms and legs.

42. One of the female ASI guards patted down Candice's arms and searched Candice's legs by patting down the outside of Candice's dress. The guard then placed her hands on Candice's breasts and shook them and grabbed the section of Candice's bra between her breasts and shook it.

43. The ASI guard began lifting Candice's dress. Candice was immediately uncomfortable with her dress being lifted up and instinctively used her arms to prevent the dress from being lifted up further. The ASI guard ordered Candice to move her hands and then lifted Candice's dress up above the middle of Candice's thighs and examined Candice's bare legs. Candice felt exposed with her dress pulled up that high in front of other students and school staff. Candice was then made to take off her shoes for inspection.

44. Principal Romero and other Capital High School personnel were only feet away from Candice when she was being physically searched.

45. While Candice's body was being searched, Candice made eye contact with Principal Romero. Principal Romero made no effort to intervene and stop the search.

46. Candice was extremely uncomfortable during the pat-down body search and felt severely violated and exposed.

47. Candice was also searched with a wand device. The wand was waved in front of and behind her body and traced along her arms and legs.

48. Candice was ordered to present her purse to be searched and was not given the option of declining the search. Candice did not know what items the Capital High School officials and ASI Defendants were looking for.

49. All of the contents of Candice Herrera's purse were dumped onto the table and examined by Capital High School personnel. Principal Romero personally searched the contents of Candice's purse. A container of hand lotion and a manicure kit with a nail file and nail clippers were confiscated by Capital High School staff and removed from Candice's purse. Candice was also forced to remove the battery to her cell phone and the memory card from her digital camera for inspection.

50. The Capital High School staff who searched Candice's bag also confiscated the prescription medication Candice carried in her purse in a prescription bottle with her name on it. Candice had previously suffered bouts of dizziness and required the medication to prevent her from fainting.

51. Upon information and belief, the Capital High School employees who searched Candice's belongings performed the searches at the direction of Santa Fe Public Schools and/or Principal Romero.

52. Candice Herrera's medication was not returned to her after Prom. Instead, as Candice was leaving Prom she was informed by the school nurse that the medication had been discarded.

53. The other items confiscated from Candice were put in a box with other students' possessions and available for students to search through when they left the Prom.

54. The searches of Candice were conducted in public view in the lobby of the Santa Fe Convention Center in the presence of Principal Romero.

IV. The Search of T.H.

55. When T.H. reached the front of the line of female entrants to the Prom, she was ordered to stand with her arms out and legs spread and was searched with a wand device that was traced along her arms, legs, body and back.

56. T.H. was also subjected to a full-body pat-down search. A female ASI guard patted down T.H.'s hips. The guard grabbed the center of T.H.'s bra and shook it and also cupped T.H.'s breasts with her hands and shook her breasts. The guard then proceeded to lift up T.H.'s dress to around her mid-thighs and ran her hands up and down T.H.'s bare legs. T.H. felt very uncomfortable when her dress was lifted because other students were nearby and she feared that they would see her body exposed with the dress raised that high. T.H.'s shoes were then searched.

57. T.H. felt extremely uncomfortable, exposed, and violated during these searches. She felt especially violated when her breasts and bra were touched.

58. T.H. did not bring a bag, cell phone, or other personal items with her to the Prom and therefore did not possess any property to be searched.

59. The searches of T.H. were conducted in public view in the lobby of the Santa Fe Convention Center in the presence of Principal Romero.

V. The Searches of Other Students Attending the 2011 Capital High School Prom

60. Upon information and belief, all students entering the 2011 Capital High School Prom were subjected to a search of their persons and bags or purses by Capital High School staff and/or ASI security guards as a condition of attending the Prom.

61. Other students attending the Capital High School Prom had their breasts felt when they were searched as a condition of entering the Prom. Other students attending the Capital

High School Prom had their bare upper thighs touched when they were searched as a condition of entering Prom.

62. Other students attending the Capital High School Prom were similarly subjected to body and bag searches and had everyday items such as perfume or lip gloss confiscated without prior warning that such items would not be permitted at the Prom.

63. Principal Romero oversaw the searches conducted on students and their belongings. In addition to directing and overseeing the searching process, Principal Romero conducted some searches herself.

VI. The Searches Were Unjustified Conditions of Attending Prom

64. Prior to being searched, Candice and T.H. were not informed as to what the searches would entail or where and how they would be touched. They did not know what items the Capital High School personnel and ASI Defendants were looking for in conducting the searches.

65. T.H. received no explanation regarding the object of the searches conducted at the Prom, and Candice was told by a teacher that the school was searching for alcohol.

66. Candice and T.H. did not consent to being searched.

67. Candice and T.H. understood that they would not be permitted to enter the Prom without being searched. T.H. was told by the Capital High School staff who was checking IDs and taking tickets that all students must go through security in order to be admitted to the Prom. Candice and T.H. felt they were not permitted to object to or bypass the searches.

68. Candice Herrera and T.H. did not know that attending the Prom would subject them to search or that they would be refused entry unless they were searched.

69. Candice Herrera's and T.H.'s parents did not know and were never advised by Santa Fe Public Schools that that their children would be searched prior to admission to the Capital High School Prom.

70. The searches of Candice Herrera and T.H. on April 16, 2011, were performed without reasonable suspicion that Candice Herrera or T.H. were violating the law or Capital High School rules.

71. The scope of the searches performed on Candice Herrera and T.H. on April 16, 2011, was not reasonably related to any important interest of Santa Fe Public Schools. The searches of Candice Herrera and T.H. were more intrusive than necessary or justified in the circumstances.

VII. Vincent Herrera's Attempts to Have Santa Fe Public Schools Change Their Custom and Practice of Searching Students

72. After hearing about the searches from Candice and T.H., Vincent Herrera called Capital High School Principal Romero regarding what happened at Prom and left her a message describing the incident. Principal Romero did not respond to Mr. Herrera until several days later and then responded by leaving a message disputing Mr. Herrera's description of the searches.

73. Principal Romero subsequently called Candice Herrera into her office and scolded Candice for not complaining to her directly. With Candice in her office, Principal Romero called Mr. Herrera. During the conversation, Principal Romero acknowledged that pat-down, wand, and bag searches were conducted on students. When Mr. Herrera expressed that the searches were inappropriate absent reasonable suspicion, Principal Romero stated that the school was free to search students without reasonable suspicion at school functions.

74. While she was in the Principal's office, Candice was told by Principal Romero that if the security personnel assigned to search students at the Prom denied touching Candice's

and T.H.'s breasts, then the school would not take any action regarding the searches performed at the Prom. Principal Romero also directed Candice to write a statement describing the searches at the Prom.

75. Candice was in tears by the end of the meeting because of Principal Romero's response and comments to her father.

76. To Candice Herrera's and Mr. Herrera's knowledge, no action was taken by Principal Romero in response to Candice's written statement.

77. In the days following the Capital High School Prom, Vincent Herrera also spoke to Mark Archuleta, a representative of ASI, and Associate Superintendent Sue Lujan, in an effort to ensure that students, including Candice and T.H., would not be subject to similar unlawful searches at school events in the future.

78. During a phone conversation with Mark Archuleta, Mr. Archuleta told Mr. Herrera that the searches at the Capital High School Prom were conducted in accordance with instructions from Santa Fe Public Schools.

79. After their phone conversation, Mr. Herrera met with Associate Superintendent Sue Lujan and Mark Archuleta to discuss the searches of students at the Capital High School Prom.

80. During the meeting with Associate Superintendent Lujan and Mr. Archuleta, Mr. Herrera was informed that Santa Fe Public Schools employees will once again be working in concert with the ASI Defendants to provide security at the Santa Fe High School Prom on May 21, 2011.

81. When Mr. Herrera asked Associate Superintendent Lujan for confirmation that Candice Herrera and other students attending the Santa Fe High School Prom would not be

subject to search as a condition of entering the Prom, Associate Superintendent Lujan suggested that Santa Fe Public Schools was free to search any student at a Santa Fe Public Schools function without suspicion.

82. Associate Superintendent Lujan stated that she would raise Mr. Herrera's concerns with Superintendent Gutierrez and report back to Mr. Herrera by Thursday, May 5. When Mr. Herrera tried to meet with Associate Superintendent Lujan on May 5, he was informed that Associate Superintendent Lujan had not discussed the issue with the Superintendent.

83. Mr. Herrera saw Associate Superintendent Lujan again on Friday, May 6, while attending an awards ceremony at which Candice Herrera received an award for her academic achievements. Associate Superintendent Lujan indicated to Mr. Herrera that she still had not raised the issue with the Superintendent and would report back to Mr. Herrera on Monday, May 9.

84. Mr. Herrera did not hear from Associate Superintendent Lujan until May 11, 2011, when she called Mr. Herrera and informed him that Santa Fe Public Schools maintains that it has a right to search students at school events without individualized reasonable suspicion and that Santa Fe Public Schools will continue operating under that policy. Associate Superintendent Lujan indicated that students attending the Santa Fe High School Prom on May 21, 2011, would be searched.

VIII. Candice Herrera's Plans to Attend Future Santa Fe Public Schools Events

85. Candice Herrera has a ticket and intends to attend the Santa Fe High School Prom on May 21, 2011, at the Buffalo Thunder Casino. Candice Herrera is fearful that she will be subjected to additional unlawful searches at the Santa Fe High School Prom.

86. Candice Herrera is also scheduled to attend Capital High School Graduation on May 27, 2011. Capital High School has issued a notice that indicates that graduating students will be searched for “distracting contraband” on graduation day. Candice Herrera fears that she will be subjected to another unlawful search without reasonable suspicion at her graduation ceremony.

IX. Santa Fe Public Schools’ Policy, Custom, and Practice of Searching Students

87. The Capital High School employees who searched students, including Candice Herrera and T.H., as they entered the Capital High School Prom were acting under color of law pursuant to a policy, custom, and/or practice of Santa Fe Public Schools when they searched Plaintiffs.

88. Santa Fe Public Schools has adopted a policy, custom, and/or practice of searching students without reasonable suspicion at school events.

89. Associate Superintendent of Santa Fe Public Schools, Sue Lujan, confirmed this policy, custom, and practice when she informed Mr. Herrera on May 11, 2011, that Santa Fe Public Schools maintains that it is free to search students at school events without reasonable suspicion and intends to continue that practice at future events.

90. Deputy Superintendent Mellville Morgan has similarly stated during an official meeting of the Santa Fe Public Schools Board of Education that school personnel are free to search a student’s purse without cause. Defendant Superintendent Gutierrez and Defendant Board member Gudwin were also present at the Board meeting.

91. The practice of searching students at prom was discussed during another official Santa Fe Public Schools Board of Education meeting at which Defendant Superintendent Gutierrez and Defendant Board of Education members Gudwin and Montano were present.

92. At least one member of the Santa Fe Public Schools Board of Education was present and even participated in the process of searching students and their belongings at the Santa Fe High School Prom in 2010.

93. Pursuant to its policy, custom, and/or practice of searching students without reasonable suspicion at school events, students have been subject to search at various school events prior to the 2011 Capital High School Prom.

94. Students entering the Santa Fe High School Prom in May 2010 were subject to search.

95. Graduating seniors participating in the 2010 Capital High School graduation ceremony were subject to pat-down body searches pursuant to Santa Fe Public Schools' policy, custom, and/or practice of searching students without reasonable suspicion.

96. Students, including Candice Herrera and T.H., entering the Capital High School Homecoming dance held at Capital High School in September 2010, were also subjected to pat-down, wand, and bag searches without reasonable suspicion. The searches at Homecoming were again performed by Capital High School staff working in concert with the ASI Defendants.

97. Continuing this Santa Fe Public Schools policy, custom and/or practice of searching students without individualized reasonable suspicion, Associate Superintendent Lujan confirmed that students entering the Santa Fe High School Prom on May 21, 2011, will be subject to search without individualized suspicion by Santa Fe Public Schools employees working jointly with the ASI Defendants.

98. A notice available on the Capital High School website indicates that graduating students participating in the Capital High School graduation ceremony on May 27, 2011, "will be searched for distracting contraband."

99. Santa Fe Public Schools' policy, custom, and/or practice of searching students and their belongings without reasonable suspicion at school events resulted in the unlawful searches of Plaintiffs on April 16, 2011.

100. Santa Fe Public Schools has adopted and maintained this policy, custom, and/or practice of searching students without reasonable suspicion in direct violation of Santa Fe Public Schools' own written Code of Conduct.

101. The Santa Fe Public Schools Code of Conduct indicates that pat-down searches of students cannot be conducted absent reasonable suspicion of the specific student to be searched. The Code of Conduct further states that unless school officials perceive imminent risk of grave bodily harm, every effort must be made to contact a student's parent and allow that parent to be present prior to any search of a student's person.

102. The Santa Fe Public Schools Code of Conduct also states that a student's personal property, such as purse, bag, or cell phone, may only be searched when school officials have individualized reasonable suspicion that the particular student property at issue contains contraband in violation of school rules or state or federal law.

103. The searches of students, including Candice Herrera and T.H., and their personal property on April 16, 2011, occurred in violation of the Santa Fe Public Schools Code of Conduct. The Santa Fe Public Schools employees and agents conducting the searches did not have reasonable suspicion of any wrongdoing by Candice Herrera or T.H. Plaintiffs' parents were not contacted prior to the searches even though Plaintiffs did not pose any imminent risk of danger or grave bodily harm. The school employees and agents who searched the contents of Candice Herrera's purse did not have individualized reasonable suspicion that Candice's purse,

her cell phone, or her camera contained contraband in violation of school rules or state or federal law.

104. Santa Fe Public Schools has adopted a policy, custom, and/or practice of failing to train those providing security at Santa Fe Public Schools events not to conduct searches that violate students' rights under the Fourth Amendment and the New Mexico Constitution.

105. Pursuant to this policy, custom, and/or practice, Santa Fe Public Schools failed to train Capital High School personnel and the ASI Defendants not to search students without reasonable suspicion or consent.

106. Santa Fe Public Schools maintains a policy, custom, and/or practice of failing to train those providing security at Santa Fe Public Schools functions to comply with the provisions in the Santa Fe Public Schools Code of Conduct when searching students or their belongings.

107. The unlawful searches of Plaintiffs occurred as a result of Santa Fe Public Schools' policy, custom, and/or practice of failing to train its employees and agents who provide security at school-sponsored events and functions.

X. Principal Romero's Participation in and Direction of Student Searches

108. Upon information and belief, Principal Romero exercised final policy-making authority for Defendant Santa Fe Public Schools in overseeing and directing the searches performed at the Capital High School Prom.

109. Upon information and belief, Principal Romero at all relevant times possessed the authority to intervene and prevent Plaintiffs from being searched in violation of their rights under the Fourth Amendment and New Mexico Constitution.

110. Principal Romero did not intervene or exercise her authority to stop the searches of Candice Herrera, T.H., or other students attending the Capital High School Prom.

111. Upon information and belief, Principal Romero's exercise of policy-making authority caused Candice Herrera, T.H., and other students at the Capital High School Prom to be unlawfully searched on April 16, 2011.

112. Principal Romero's conduct in directing, supervising, and/or authorizing the searches of students attending the 2011 Capital High School Prom resulted in the violation of Plaintiffs' rights.

XI. ASI Defendants' Searches of Students Were in Concert With and at the Direction of Santa Fe Public Schools

113. The ASI Defendants acted as state actors under color of law in working jointly with Capital High School personnel in searching students at the Capital High School Prom, including Candice Herrera and T.H. The ASI Defendants and Santa Fe Public Schools acted with a shared purpose in searching students at the Capital High School Prom.

114. The ASI Defendants searched Candice Herrera and T.H. on April 16, 2011, pursuant to Santa Fe Public Schools' policy, custom, and/or practice of searching students without reasonable suspicion at Santa Fe Public Schools events and/or Santa Fe Public Schools' policy, custom, and/or practice of failing to train those providing security services at school events to abide by the Santa Fe Public Schools Code of Conduct and respect students' constitutional rights when conducting searches.

115. Upon information and belief, the ASI Defendants' unlawful searches of Candice Herrera, T.H., and other students at the Capital High School Prom occurred as a result of Principal Romero's exercise of policy-making authority.

116. Santa Fe Public Schools knew about the ASI Defendants' searches of Candice Herrera, T.H., and other students on April 16, 2011 and acquiesced in the searches.

117. The ASI Defendants searched Candice Herrera, T.H., and other students at the Capital High School Prom to assist Santa Fe Public Schools rather than to further the ASI Defendants' own goals or purposes.

CLASS ALLEGATIONS

118. Plaintiffs have filed this Complaint as a class action pursuant to Federal R. Civ. P. 23(a), 23(b)(2), and 23(b)(3).

119. Plaintiffs request that this Court certify a class of all similarly situated Capital High School students who attended the Capital High School Prom on April 16, 2011.

120. This action is properly maintained as a class action because:

- a) Joinder of all class members is impracticable because of the size of the class. Capital High School enrollment exceeds 1,000 students and at least 400 students attended the 2011 Capital High School Prom.
- b) The claims alleged on behalf of the class raise questions of law and fact that are common to the class because all class members attended the same event on the same date and were subject to the same types of searches.
- c) The claims of the class representatives are typical of the class because the class representatives, Candice Herrera and T.H., attended the same event on the same day as the other class members and were subject to the same types of searches.
- d) The class representatives and class counsel will fairly and adequately represent the interests of the class. The class representatives have no interests that are antagonistic to the interests of other Plaintiffs and class counsel have years of experience in civil rights and class action litigation.

121. Class-wide declaratory and injunctive relief is appropriate because Defendants have acted or refuse to act on grounds generally applicable to the class as a whole. Defendants applied the same policy, custom, and practice to all class members.

122. There are questions of law or fact common to all of the members of the class that predominate over any questions affecting only individuals and a class action is superior to other methods for a fair and efficient adjudication of the controversy. Common questions of law or fact predominate and the controversy is most fairly and efficiently adjudicated via class action because all class members were subject to the same conduct at the same location on the same date.

INJURIES TO THE NAMED PLAINTIFFS

123. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 122 above.

124. As a direct and proximate result of Defendants' actions, Plaintiffs Candice Herrera and T.H. have suffered, and in the future will continue to suffer humiliation, embarrassment, and mental and emotional distress.

125. Candice Herrera and T.H. felt, and continue to feel, extremely violated and exposed because of the unlawful searches they endured as a result of Defendants' conduct.

126. Defendants' actions would be highly offensive to an ordinary, reasonable person.

127. Defendants' actions have made Plaintiffs Candice Herrera and T.H. fearful of being subjected to unconstitutional searches while attending Santa Fe Public Schools events in the future.

128. Through their actions and omissions, Defendants acted intentionally, maliciously, and with willful, callous, wanton, and reckless disregard for Plaintiffs' constitutionally protected rights.

CLAIMS FOR RELIEF

COUNT I

Violation of 42 U.S.C. § 1983

129. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 128 above.

130. Through the foregoing actions and omissions, Defendants violated 42 U.S.C § 1983 by subjecting Plaintiffs to the deprivation of their right guaranteed by the Fourth Amendment to the United States Constitution to be secure in their persons and effects against unreasonable searches and seizures.

131. At all relevant times, Defendants were acting as state actors under color of law.

132. The acts and omissions of Defendants described in the preceding paragraphs are actionable under the Fourth Amendment through 42 U.S.C § 1983.

COUNT II

Violation of Art. 2 § 10 of the New Mexico Constitution

133. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 132 above.

134. Through the foregoing actions and omissions, Defendants violated Art. 2 § 10 of the New Mexico Constitution by subjecting Plaintiffs to the deprivation of their right to be secure in their persons and effects against unreasonable searches and seizures.

135. The Santa Fe Public Schools Defendants are liable for violation of Plaintiffs' rights under Art. 2 § 10 of the New Mexico Constitution pursuant to N.M.S.A. § 41-4-6.

136. Plaintiffs complied with the notice requirements set forth in N.M.S.A. § 41-4-16.

137. All students present at the Capital High School Prom at the Santa Fe Convention Center on April 16, 2011, were at all relevant times under the care and supervision of Santa Fe Public Schools and Capital High School employees and staff.

138. For the period of time during which the Capital High School Prom was being held on April 16, 2011, Santa Fe Public Schools was operating the Santa Fe Convention Center as a public building and was charged with the safety of the students attending the Prom under Santa Fe Public Schools' care and supervision.

139. Santa Fe Public Schools employees and agents acted negligently in maintaining and operating the Santa Fe Convention Center during the hours of the Capital High School Prom on April 16, 2011, by unreasonably and unlawfully subjecting students' persons and property to search without reasonable suspicion.

140. At all times relevant to the events described above, Defendants and Santa Fe Public Schools employees and agents present at the Capital High School Prom were acting within the scope of their employment as employees, agents, and/or representatives of Santa Fe Public Schools.

141. The negligence of Santa Fe Public Schools employees and agents while acting in the scope of their duties in the operation and maintenance of the Santa Fe Convention Center during the hours of the Capital High School Prom on April 16, 2011, created a dangerous condition for all students attending the Capital High School Prom.

142. The Santa Fe Public Schools Defendants' conduct in operating the Santa Fe Convention Center as a public building during the hours of the Capital High School Prom on April 16, 2011, proximately caused injury to Plaintiffs.

143. On May 11, 2011, Plaintiffs provided the Superintendent of Santa Fe Public Schools a notice of claim pursuant to the New Mexico Tort Claims Act, N.M.S.A. § 41-4-16.

COUNT III

Battery

144. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 143 above.

145. The actions of Defendants described herein constitute unlawful battery.

146. Through their intentional acts and omissions, Defendants caused Plaintiffs to be offensively physically contacted and searched without their consent, which directly and proximately resulted in injury to Plaintiffs.

147. Defendants' intentional acts and omissions caused Plaintiffs to suffer humiliation, embarrassment, and emotional and mental distress.

COUNT IV

Intentional Infliction of Emotional Distress

148. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 147 above.

149. Defendants engaged in extreme and outrageous conduct in subjecting Plaintiffs to unconstitutional searches in violation of Plaintiffs' rights under the Fourth Amendment to the U.S. Constitution and Art. 2 § 10 of the New Mexico Constitution.

150. The conduct of Defendants as described above was intentional and/or was performed with reckless disregard for Plaintiffs' rights.

151. The actions of Defendants as described above caused Plaintiffs to suffer humiliation, embarrassment, and extreme and severe mental and emotional distress. Defendants, by their intentional acts and/or reckless disregard for Plaintiffs' rights, caused Plaintiffs to feel extremely violated, embarrassed, and exposed.

152. Defendants are liable to Plaintiffs for intentional infliction of emotional distress.

COUNT V

Prima Facie Tort

153. Plaintiffs reallege and incorporate by reference all of the allegations set forth in paragraphs 1 through 152 above.

154. Defendants engaged in intentional unlawful conduct in searching Plaintiffs on April 16, 2011.

155. In causing Plaintiffs to be searched, Defendants acted with intent to injure Plaintiffs' legally protected interests.

156. Through their conduct, Defendants violated Plaintiffs' legally protected rights, causing Plaintiffs to suffer humiliation, embarrassment, and mental and emotional distress.

157. The conduct of Defendants toward Plaintiffs was not justified. In causing Plaintiffs to be searched in their persons and property at the Capital High School Prom, Defendants acted without sufficient justification.

PRAYER FOR RELIEF

158. WHEREFORE, Plaintiffs pray that this Court grant them the following relief:
- a) Enter a declaratory judgment finding that the foregoing actions of Defendants violate 42 U.S.C. § 1983 and Art. 2 § 10 of the New Mexico Constitution, and constitute battery, intentional infliction of emotional distress, and a prima facie tort under New Mexico common law;
 - b) Enter a preliminary and permanent injunction prohibiting all Defendants, except Santa Fe Public Schools and Santa Fe Public Schools Board of Education, from engaging in such conduct and directing Defendants, except Santa Fe Public Schools and Santa Fe Public Schools Board of Education, to take all affirmative steps necessary to remedy the effects of the illegal conduct described herein and to prevent similar occurrences in the future;
 - c) Enjoin Defendant Robert Stephens from failing or refusing to comply with any injunction or other relief ordered by the Court regarding searches of students at Santa Fe Public Schools events;
 - d) Award compensatory damages in an amount to be determined by the jury that would fully compensate Plaintiffs for the injuries, humiliation, embarrassment, and mental and emotional distress caused by the conduct of Defendants alleged herein;
 - e) Award punitive damages to Plaintiffs in an amount to be determined by the jury that would punish Defendants for their willful, wanton, and reckless conduct alleged herein and that would effectively deter Defendants from engaging in similar conduct in the future;

- f) Award Plaintiffs their reasonable attorneys' fees and costs incurred in this action;
- g) Order such other relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs request trial by jury as to all issues in this case.

Dated: May 17, 2011

Respectfully submitted by:

/s/ Reed Colfax

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