Amanda Wible	:	**COURT OF COMMON PLEAS**
Plaintiff/Appellee	:	
	:	**PHILADELPHIA COUNTY**
	:	
vs.	:	**April Term, 2015**
	:	
	:	**No. 3169**
School District of Philadelphia	:	
Defendant/Appellant	:	**1392 CD 2018**
	:	

OPINION

I. Introduction

This Opinion arises from the appeal filed by Defendant-Appellant School District of Philadelphia from the judgment entered against it in the above-captioned matter. Plaintiff-Appellee Amanda Wible and her mother Juanita Jones-Wible[1] brought suit against the School District for violations of the Pennsylvania Human Relations Act (PHRA). Plaintiff asserted the School District violated the PHRA when it was deliberately indifferent to the sexual harassment and bullying Wible's fellow students imposed on her; harassment and bullying so severe it ultimately drove Wible to leave the School District entirely and suffer severe psychological injuries.

The complaint was filed on April 28, 2015, and the case thereafter followed a tortuous path to trial three years later. During discovery the parties filed nearly 50 motions between them. The School District propounded over 300 interrogatories including subparts. The parties filed

[1] Plaintiff was a minor at the time this suit was initiated but having subsequently attained majority status her mother, who asserted claims on behalf of her daughter, was dismissed from this action.

approximately 20 discovery motions between them. Defendant filed two motions for summary judgment. The first was dismissed as premature and the second was denied. Including exhibits these motions totaled over 1,500 pages.

The case was finally ready for trial on April 4, 2018, with testimony beginning on April 5 and concluding on April 19 after eight trial days. The matter was heard by the Court sitting without a jury. On May 30, 2018, the Court issued its findings of fact and conclusions of law. The Court found in favor of Plaintiff Amanda Wible and against Defendant School District of Philadelphia in the amount of $500,000.00, plus counsel fees and costs.

Defendant filed post-trial motions which consisted of 434 paragraphs. Plaintiff filed her own post-trial motions requesting counsel fees, costs, and delay damages. During argument on the post-trial motions Defendant, for the first time, raised the issue of sovereign immunity under the Tort Claims Act.

The Court denied Defendant's post-trial motions in full. The Court granted Plaintiff's motion for counsel fees and costs but denied the request for delay damages. On August 23, 2018, judgment was entered in favor of Plaintiff and against Defendant in the amount of $1,078,000.00. This sum represented a damages award of $500,000.00 plus an additional $578,000.00 for attorneys' fees and expert witness fees.

The Court heard testimony from Plaintiff, her mother, teachers at the School District, and experts in school bullying, sexual harassment and the mental trauma such conduct inflicts on its victims. As the Court will detail below, this evidence showed that starting from her earliest days in the School District, Amanda Wible was singled out for ridicule, exclusion, and ultimately violence on the basis of her gender presentation. Namely, because Amanda Wible's sexual appearance and behavior did not conform to societal stereotypes of girls.

At the time this matter was before the Court, no other Pennsylvania Court had decided whether or not a school district can be responsible under the PHRA for failing to adequately address student-on-student sexual harassment. But the avowed purposed and plain language of the statute compels the result in this case.

II. Evidence Presented at Trial

At the time of trial Plaintiff Amanda Wible was 19 years old and attending college in Wales. In 2003 Plaintiff enrolled at the Robert B. Pollock School (Pollock) in the School District. This was the first of four schools Plaintiff attended in the district. In each school she experienced similarly severe and persistent taunting, teasing, bullying, and harassment on the basis of her sex. After ninth grade she withdrew from the school district entirely and enrolled in a cyber charter school to escape the harassment.

Plaintiff's mother Juanita Jones-Wible testified at first Plaintiff loved school. She was described in an early report card as "happy-go-lucky." Plaintiff was, by her own description, a "tomboy." She preferred boys' clothes, had short hair, mostly male friends, and played sports. Near the end of the first grade Plaintiff began to be teased by her fellow students and by fifth grade it became "really serious."

Plaintiff was insulted by her classmates, and the nature of the insults reveal a consistent theme – the insults were sexualized and indicative of contempt for Plaintiff's gender presentation. Classmates pronounced Plaintiff's name, "Amanda", as "A-man-duh" with emphasis on "man" and "duh." Plaintiff was referred to as "dyke" and "bitch." When the students had to line up, Plaintiff was told she should stand in the boys' line. Her clothes were

made fun of and she was told she should brush her hair. Plaintiff reported these incidents to teachers but the harassment continued.

It was in fifth grade the harassment of Plaintiff became violent. Plaintiff was pushed and shoved, slapped and punched, in the halls or at recess. One day after school Plaintiff was attacked by a boy in her class. A student named Logan F. threw Plaintiff up against a fence and screamed at her, calling her a "bitch" and shaking her. Plaintiff managed to get away and started running but Logan jumped on her back and smacked her to the ground. Logan began screaming at and shaking Plaintiff again until a crossing guard pulled him away. Plaintiff had scrapes on her elbows and knees and her pants were ripped.

Plaintiff's mother called the school and reported the incident, but the school did not separate the two students. On the contrary a couple of months later Logan was transferred *into* Plaintiff's class. Apart from the attack, Logan was among those who harassed and bullied Plaintiff. He would push her, slide his chair in front of her when she passed out papers so that she could not pass, deliberately bumped her shoulders when she passed in the hallway, called her "stupid" and "bitch" and "A-man-duh." Plaintiff was subsequently transferred out of her class and into another, a result she was not satisfied with because she was separated from the people she knew. The harassment continued in the new classroom. Her hair was pulled, her chair was pulled out from under her, and her things were stolen. Plaintiff found the environment at Pollock "really stressful" and her grades declined as a result.

For the sixth grade Plaintiff transferred to the Alternative Middle Years at James Martin School ("AMY"). Plaintiff said of the four schools she attended in the School District, AMY "was the worst."

Within two weeks of the start of school Plaintiff was being harassed and bullied. The teachers at the school knew about it but they "didn't do anything, ever." The name-calling at AMY usually occurred multiple times a day. The names used were sexualized and often in reference to Plaintiff's gender presentation. Plaintiff was called "tranny", "transgender", "it", "lesbo", "lesbian", "he/she", "shemale", "fag", "faggot," "bitch", "freak", "weirdo", "cunt", "anorexic bitch", "mop", "*puta*", "slut", "whore." Students made fun of Plaintiff's hair and clothes. She was told she should wear makeup.

Plaintiff was the subject of a damaging rumor. A classmate named Nicolette C. told students Plaintiff "played with herself." Plaintiff did not know what this meant at first but knew it was negative and students laughed at her about it. Nicolette once "screamed" this accusation while another girl pushed Plaintiff out of line and said "there she is." Nicolette continued to scream this out-loud in the halls, lunch room, and in class if the teacher was out of the room. This happened almost daily or even multiple times a day.

Plaintiff testified students stole, damaged, or destroyed her property. Books were torn apart in front of her and homework was stolen. Artwork was ruined by being ripped or having water dumped on it. On one occasion a Halloween pumpkin she made for a class project was thrown out a window. Plaintiff's backpack was once spit on and thrown into a gully that smelled of urine. While students did these things they used the kinds of sexualized epithets mentioned above. These kinds of acts occurred weekly to daily. Plaintiff felt very upset by these things because she never did anything to these students harassing her.

As at Pollock, the abuse was also physical. Plaintiff was punched, shoved into railings and walls, and stepped on. Students deliberately pushed Plaintiff as they walked past her, sometimes elbowing her in the head. Plaintiff was once slapped across the face by a girl. One

boy threw items down her shirt and "offered to get them." Plaintiff's head was shoved into her locker, her hair was spit on. Plaintiff testified slapping, shoving, and punching occurred daily to multiple times a day. These blows were sometimes powerful enough to leave bruises or red marks on Plaintiff's body, on her knee, back, face, ribs, and hip. School records showed Plaintiff frequently went to the nurse's office at school. Plaintiff testified she sometimes went because she had been hit in the head "a little too hard", sometimes because she was sick or needed to use an inhaler, and sometimes just because she "didn't want to be in class or school anymore."

In the lunch room food was thrown at Plaintiff or shoved in her hair. Water and milk was dumped on her head, and because Plaintiff was unable to change after these incidents she sometimes had to walk around the rest of the day with milk in her hair and clothes. Several shirts were ruined as a result.

These types of physical incidents occurred at AMY from three to four days a week to daily, and sometimes multiple times a day.

Plaintiff's bus ride to school was 1 ½ hours each way, and the harassment occurred both on the way to school and on the trip home. Plaintiff's bag was stolen and "thrown around the bus." Plaintiff was hit in the back of the head, tripped and pushed. On a couple of occasions she was forcibly dragged out of her seat. Homework and school supplies were stolen. One student stole a spatula that Plaintiff had for a class, shoved it into his underwear and then tried to give it back to Plaintiff. Her backpack and cell phone were thrown out of the window. The harassment on the bus might last a quarter of the trip or the entire ride, depending on the day.

In early November 2010 Plaintiff was attacked by a student named Sam C. Plaintiff was walking to class when Sam, who shared a social studies class with Plaintiff, stormed out of class and started screaming obscenities at Plaintiff ("fuck you, you bitch, I can't believe you said

that") and began hitting her. Sam hit Plaintiff in the face and shoulder and knocked Plaintiff's glasses off her face – which were later found approximately eight feet away under a water fountain. Plaintiff admits she started hitting back when she realized "[Sam] wasn't going to stop, nobody was doing anything about it..." This attack was observed by a school police officer who was down the hall and by the social studies teacher who followed Sam out of the classroom and helped a student who had intervened to separate the girls. As a result of the attack Plaintiff suffered bruising and had red marks and had a "chunk...of hair" ripped out.

After this attack, Plaintiff and Sam C. were both suspended for "fighting." Plaintiff's protests that she was not fighting but had been *attacked* fell on deaf ears. Sam C. harassed and bullied Plaintiff after the incident.

The School District was on notice of these instances of harassment. Plaintiff reported this behavior to officials in the school, including counselor Dennis Dorfman and Principal Sonia Perez. Plaintiff also made reports to teachers, the librarian, and "Non-Teaching Assistants" (NTAs) who monitored the hallways and lunchrooms. Plaintiff testified during sixth grade she reported incidents to Dorfman, her counselor in the "mentally gifted program" and a person the students had been instructed to report things to, "every day." She also made reports to Perez. Perez would see Plaintiff sitting outside Dorfman's office, and when Plaintiff told Perez why she was there Perez would tell her to "ignore them or go back to class." Sometimes she would accuse Plaintiff of lying. In these instances Plaintiff would be prevented from reporting to Dorfman and would have to return later. Plaintiff wrote down the language being used against her to show Perez. Teachers and NTA themselves witnessed some of the harassment described.

Plaintiff specifically told school officials she was being bullied because of her gender. She was told to ignore the bullies. Perez told Plaintiff if Dorfman was not dealing with the

situation then it could not be serious. Despite these many reports to school authorities, Plaintiff's harassment only ended when she left AMY.

The school did make one ineffective attempt to resolve the problem through what was called "peer mediation." One of the peer mediators was Nicolette C., the "main person" who harassed Plaintiff. Plaintiff resisted participating in the mediation for this reason but was pressured to do so by the counselor Caroline Steiger. Plaintiff participated in one session, in which she was alone in the room without the presence of an adult – just herself, Nicolette C., and another student she had a conflict with but whose name Plaintiff could not recall. Nicolette spent most of the session insulting Plaintiff and calling her a "stupid bitch" and telling Plaintiff the other student was in the right. Plaintiff cut the session off halfway through. Plaintiff's expert Dr. Malcom Smith, whose testimony will be addressed below, testified these kinds of programs are known to be ineffective.

Plaintiff also had a counselor-led mediation on one occasion, with Steiger mediating between Plaintiff and Nicolette C. Nicolette told Steiger Plaintiff was too stupid to be mediated with and generally insulted Plaintiff. When Steiger had to leave the room to take a phone call Nicolette continued to insult Plaintiff. Plaintiff asked to cut the mediation short. Neither mediation session reduced the amount of harassment and bullying.

Plaintiff made reports to school officials "almost every day" in sixth grade and maybe three to four times a week in seventh grade. The reason Plaintiff made fewer reports as time went on was because:

> Nobody was doing anything. They… didn't seem to care at all. I made them aware what was happening. I was told to ignore them. I was told they'd do something and they never did. They just didn't seem like they cared at all what was happening.

When asked in court why she kept reporting the incidents anyway, Plaintiff responded: "Bad things happen to kids that get bullied." Plaintiff wanted to make a record of what happened in case "something really bad happened."

On December 22, 2010, Plaintiff was brutally assaulted in her health classroom. Plaintiff asked for and received permission from the teacher to turn her chair around to speak with another girl about homework. Two eighth grade students entered the room a few minutes later and demanded Plaintiff turn her chair back around. Plaintiff told the students that she had permission to turn her chair around but the students nevertheless "kept screaming" at Plaintiff. Eventually one of the students dragged Plaintiff out of her chair onto the floor. Plaintiff got up and tried to go get the teacher, but a boy dumped the contents of a trash can onto Plaintiff's head. He then placed the bin on her head and "everybody started laughing."

Plaintiff removed the trash can from her head and threw it aside. At this point two girls began hitting Plaintiff and others joined in including the boy who had put the trash can on her head. Perez had told Plaintiff after she had been attacked by Sam C. that if Plaintiff were involved in another "incident" she would be expelled, so Plaintiff did not attempt to fight back. Instead she curled up in a ball on the floor, covered her head with her hands, and stayed that way while students kicked her in the head. During the attack Plaintiff was called "bitch" and "slut" and "*puta*."

Eventually Plaintiff was able to craw away. When she got far enough she got to her feet and pushed through the students and ran from the classroom. Plaintiff ran through the hallways and into the library where she hid inside an alcove, where she suffered her first panic attack. Plaintiff was followed into the library by another student who thought Plaintiff was having an

asthma attack and went into Plaintiff's backpack to retrieve her inhaler. This student along with two others called Plaintiff's mother.

Unlike the attack by Sam C., where Perez had blamed both assailant and victim, in this case Amanda Wible alone was blamed. Several of the girls who had assaulted Plaintiff were escorted to the library by Dorfman and then were later taken outside. From the open window Plaintiff could see Perez hugging one of them and patting another on the shoulder. Perez then entered the library and began "screaming" at Plaintiff and threatening to expel her. Plaintiff was told the attack was her fault because she did not comply with the demands of her fellow students. Plaintiff's explanations were met with more screams.

Unlike Plaintiff, the assailants were allowed to give official statements to school officials, although Plaintiff was not allowed to see these statements. Plaintiff was suspended from school for one day.

After this attack Plaintiff left AMY. She transferred to CCA Baldi Middle School (Baldi) starting in January of her seventh grade year. Plaintiff and her mother met with administrators at the school. Plaintiff's mother made it clear that Plaintiff had transferred to Baldi due to the health room incident and because of bullying and harassment at AMY. Ms. Jones-Wible did not inform the teachers at first, but they began demanding that Plaintiff tell them why she had transferred to Baldi in the middle of the year. At this point Plaintiff's mother wrote the teachers a letter explaining the situation.

None of the teachers subsequently informed Plaintiff they would do anything to protect her from harassment at Baldi. Some told her they did not care what happened to her at her old school.

Harrassment began in Baldi within the first week. Plaintiff was called names just as she had been at AMY, such as "dyke", "cunt", "lesbian", "faggot", "trash can", and "whore." This name-calling took place anywhere from a couple of times a week to a couple of times a day. Plaintiff was told she should wear "women's clothes" or "tighter clothes." Her hair was made fun of and Plaintiff was told to brush her hair or to pull it up. On one occasion a student pushed Plaintiff against a wall, pulled her hair up into a ponytail, and said "maybe now you'll look more like a girl." A chunk of hair was pulled out in the process. These comments about Plaintiff's appearance occurred daily.

A false rumor circulated at Baldi that Plaintiff and a female friend were dating. As a consequence Plaintiff and the girl – Plaintiff's only friend in the class - stopped speaking to one another. They hoped that by staying apart the harassment would cease, but it did not. Students would push the two together and try to make them hold hands or kiss. Boys in the class urged them to "give them a show." Plaintiff and her friend were isolated from other female students, who stopped speaking to them.

As a result of this rumor Plaintiff's classmates told her they did not want to change in the locker room with Plaintiff and her friend. Therefore Plaintiff and her friend were forced to change in the bathroom. If Plaintiff and her friend tried to come out from the bathroom the other girls would yell at them. The two had to wait in the bathroom until the others told them they were finished changing. Sometimes the classmates did not tell them they were finished and the two were left waiting.

As at her previous schools, Plaintiff was subjected to physical harassment at Baldi. She was shoved and punched. When students tried to push Plaintiff and her friend together they would sometimes bang their heads. Plaintiff had objects thrown at her including books, pencils,

and trash. Students threw paper balls and pencil shavings at Plaintiff that would then get stuck in her hair and no one would tell her. One boy stabbed Plaintiff repeatedly with a pencil, calling her "bitch" or "faggot" while doing so. This usually happened once or twice a day. Plaintiff believes several teachers observed this behavior. One teacher told a student to stop throwing things at Plaintiff, but she simply did so when the teacher was not looking.

Plaintiff said she reported these incidents to the principal, the vice principal, and "all the teachers I had..." One email produced in Court from sent from the vice principal to the teachers at the school said: "[Nina P.] is antagonizing Amanda." Plaintiff testified this was indeed one of her tormenters. Nevertheless the bullying and harassment persisted until Plaintiff graduated and left the school.

The motivation for this behavior was clear. At the end of seventh grade a class trip to a movie theater was planned, and students lobbied the teacher to have Plaintiff excluded from the trip because they did not wish to be seen in public with her. They said she did not represent the school well because of her appearance and attire.

In September of 2011 Plaintiff began attending George Washington High School (GW). Harassment began within the first week. Many of the students from Baldi went with Plaintiff to GW. Plaintiff stated other students called Plaintiff names because Nina P. did. Plaintiff continued to be called "dyke", "lesbo", "whore", and "cunt." Nina also stole Plaintiff's musical instrument and sheet music.

As before Plaintiff received comments about her clothes and body. She was told she had broad shoulders like a "linebacker" and that she should wear makeup and pull her hair up. Students made comments about Plaintiff's breasts.

One boy in Plaintiff's class frequently made sexist remarks to her, saying women should not be allowed to vote or have jobs. Plaintiff was subjected to further physical attacks, such as having a basketball bounced off her head twice. Name calling accompanied the physical harassment.

On May 10, 2013, a student in plaintiff's gym class deliberately kicked a basketball at her and hit her in the head. Plaintiff was sitting out of gym class due to a prior concussion and pursuant to a doctor's note. Plaintiff was "hot" with pain after the blow and her glasses were bent. Her prior concussion was aggravated by the incident. Plaintiff then required several more months of therapy and was unable to participate in school until July.

The harassment of Plaintiff continued all the way until the end of ninth grade, in June of 2013. In that month Plaintiff and the other students attended the 12th grade graduation ceremonies. There she was called insulting names and had food and paper and chewed gum thrown at her.

Plaintiff testified teachers were present during some of these incidents. Plaintiff reported them to teachers, NTAs, the school nurse and GW's disciplinarian. Plaintiff testified when she told school officials she was being called names or having things thrown at her she was told to "ignore it." She was told this "almost every time." Despite making reports "nothing" happened and "nobody did anything." Plaintiff said students made it obvious that name calling and physical harassment was directed to her because of her appearance. "The made it obvious that it was because of how I looked and how I dressed and how my gender was presented."

Plaintiff was not told by school officials there was any kind of complaint procedure for bullying and harassment she could utilize. Plaintiff was not informed of any counseling or

mental health services or access to social skills training. Plaintiff was never told the school was conducting any investigations into these incidents.

Plaintiff described her emotional state while she was in the School District: "I felt horrible. Never wanted to go to school. I was always tired. I – I had so many problems while I was in the School District." These feelings persisted even after Plaintiff left the School District.

Plaintiff felt she missed out on many things in her school experiences, such as dances and socials and school trips. When she went on school trips Plaintiff always stayed close to a teacher. Plaintiff believed the harassment she experienced in school negatively impacted her ability to get into college.

Plaintiff described the emotional effects of her years of harassment and bullying. Plaintiff suffers from panic attacks, the first of which occurred as a result of the attack in the health class. Plaintiff suffers from insomnia and has trouble in crowds. While at school Plaintiff cut herself. From 2014 to 2016, Plaintiff sought treatment in the form of therapy at the Center for Families and Relations (CFAR). Plaintiff had suicidal thoughts. Plaintiff developed a condition called amplified musculoskeletal pain syndrome, or AMPS. Plaintiff currently receives treatment and medication as a result of this condition. Plaintiff first felt the symptoms of AMPS in seventh grade.

The Court received testimony from Juanita Jones-Wible, who is Plaintiff's mother. Ms. Jones-Wible testified when Plaintiff was little she loved school and was described by an early report card as "happy-go-lucky." However at some point she began to be bullied and harassed. Ms. Jones-Wible made reports of these problems all the way back when Plaintiff was in elementary school at Pollock. She specifically told school officials Plaintiff was being picked on because she was wearing the boys' version of the uniform. School officials seemed responsive,

saying they would "look into it" and "separate the children." However, the bullying and harassment did not cease and in fact the situation progressed into violence.

Throughout her testimony, Plaintiff's mother detailed the reports she gave to School District of the bullying and harassment her daughter was suffering. She called the school to report the attack by Logan F. the same day it occurred. After Logan was placed into Plaintiff's class, Ms. Jones-Wible noticed that Plaintiff's behavior changed. She was "disheveled", coming home "upset and worried" and her book bag "in chaos." On May 28, 2009, she emailed the school to complain about Plaintiff being transferred out of her class as a result of the incident with Logan.

As a result of Plaintiff's complaints to her mother that she was being bullied, Ms. Jones-Wible sought to transfer Plaintiff to AMY. However Plaintiff continued to report harassment to her, and Ms. Jones-Wible reported this information to Dennis Dorfman and Principal Sonia Perez and to Plaintiff's teachers. Ms. Jones-Wible reported to Dorfman the names being used about Plaintiff, with their strong emphasis on Plaintiff's sex, and the incidents of physical harassment and assault in the classroom, schoolyard, and on the bus. She also reported Plaintiff's property was being stolen. The notice provided to Dorfman included forms, notes, emails, and telephone calls. Dorfman responded that he would look into the matter, speak to the individuals involved, and see what he could do. Ms. Jones-Wible also spoke twice to Perez who sent her to Dorfman because he was "the one in charge of that group of students, of that age group."

In sixth grade Plaintiff often came home complaining of bullying and harassment. Ms. Jones-Wible observed she frequently looked as if she had been crying, and had torn books, food in her hair, shirts "destroyed", and bruises and red marks on her body. Plaintiff reported frequent

headaches and stomachaches. Phone calls from the school nurse reporting headaches or injuries like cuts and scrapes were also frequent.

At the end of sixth grade Ms. Jones-Wible considered private school for Plaintiff, but the tuition was not affordable. Plaintiff remained in the School District in seventh grade and Ms. Jones-Wible continued to report bullying and harassment to school officials. The level of physical assault was escalating.

Following the attack in the health classroom, Ms. Jones-Wible contacted the School District and was given the number of John Frangipani, the superintendent of middle schools. Ms. Jones-Wible explained the assaults and name-calling Plaintiff had suffered. As a result of this conversation, Plaintiff was transferred to Baldi. Ms. Jones-Wible met with the principal of Baldi and "went over [Plaintiff's] complete history" of assaults and insults used against Plaintiff. Ms. Jones-Wible also wrote a letter and had Plaintiff hand a copy to each of her teachers, explaining that Plaintiff had been bullied and assaulted and this was the reason for her transfer to Baldi. No one contacted Ms. Jones-Wible as a result of these letters to discuss ways to keep Plaintiff safe.

Plaintiff reported instances of assault and name-calling at Baldi and Ms. Jones-Wible in turn reported it to Crystal Gary Nelson the vice principal of the school. This occurred within the first two weeks of Plaintiff's attendance at the school. Nevertheless there was no change in Plaintiff's situation as a result. At one point Ms. Jones-Wible and Ms. Gary Nelson got into an email exchange concerning the incident where Plaintiff's classmates were attempting to exclude her from the school trip to the movie theater. Ms. Jones-Wible was told to tell Plaintiff to simply "ignore" her peers when they made inappropriate comments. Ms. Jones-Wible was not satisfied with this because it did nothing to correct the problem of the bullying and harassment. Plaintiff

would continue to complain regularly of harassment but the harassment would not cease until she left Baldi. Plaintiff also made physical complaints. She spoke of stomachaches and headaches and complained about her wrists.

The bullying and harassment of Plaintiff continued at GW. She was subjected to sexist remarks and remarks about her appearance, especially her breasts. There was deliberately hitting in the hallway and the attack in the gym with the basketball. Ms. Jones-Wible made reports to the vice principal of the school because she was told to do so by school security. Plaintiff reported to her mother that nothing changed. Complaints of bullying and harassment continued throughout ninth grade and did not cease until Plaintiff left the school.

Ms. Jones-Wible observed a pattern throughout Plaintiff's school career which continued at GW: it begins with insults, which increase in intensity and then escalates to a physical assault, in this case the attack with the basketball. Ms. Jones-Wible made the decision to pull Plaintiff out of GW because she was "tired of her being at risk. Basically, her life was at risk."

Ms. Jones-Wible spoke of all the things that were taken away from Plaintiff when she was at the School District: everything from guitar lessons to friends to her normal routine and the normal class experience of being in school. Her grades suffered. Ms. Jones-Wible concluded her testimony by expressing this hope for Amanda's future: "That she may have been broken by all of these attacks, but she could still be who she wants to be."

The Court heard testimony from Dr. Malcolm Smith. Dr. Smith was qualified as an expert in "school bullying, unlawful peer-to-peer harassment and youth violence." Dr. Smith is the president of two organizations, Courage to Care and Malcolm Smith Consulting, whose work it is to train teachers throughout the United States to teach middle school students empathy and to reduce bullying and victimization in school. Dr. Smith developed the "Courage to Care"

program with a grant from the federal government, and the program is implemented in 14 different states as well as among Native American tribes in Oklahoma. With Malcolm Smith Consulting, Dr. Smith provides training to school administrators and works with individual school districts and state legislators to craft bullying policy and procedure. Dr. Smith has worked in this field for around 35 years and in this capacity has been in thousands of schools.

Dr. Smith testified the scientific literature in his field has clearly established that a school can develop a "culture and climate... that allows bullying and harassment to go on unabated or unnoticed" and this occurs in "schools where students report bullying and nothing happens." In such schools bullies feel "empowered." When a climate like this is established it will, if left unabated, become physical. Dr. Smith saw a pattern of escalation in each of the schools that Plaintiff attended.

Dr. Smith examined documents related to Plaintiff's case and interviewed her mother, and concluded that there was a "sexualized harmful school environment" and that the School District was "put on notice" that such an environment existed in Plaintiff's case. Dr. Smith was further asked to consider whether the School District was deliberately indifferent to the harassment suffered by Plaintiff. To do this, Dr. Smith examined the policies and procedures around bullying and harassment in place at the defendant School District and how claims of harassment were handled in Plaintiff's case.

Scientific studies produced by, among others, the United States Department of Education show "that schools who don't have clear policies and procedures, schools who don't react to students' complaints, and schools that don't follow their own policies and procedures are dangerous places for students."

Dr. Smith analyzed the written policies in place at Philadelphia School District in place when Plaintiff was at school and found them inadequate under nationally recognized standards. One of the most important elements of a successful anti-bullying policy are "clear policies and procedure." These were lacking in the School District when Plaintiff attended the schools there. A broad statement of policy is of little worth much without a procedure for implementation. Furthermore, there was no evidence that the policies were actually adhered to in Plaintiff's case.

The policies were ineffective in, among other things, failing to have procedures for prevention, investigation, parental notification, behavioral interventions for both perpetrator and victim, disciplinary action, and follow-ups with the victim. The records Dr. Smith reviewed show no "paper trail" reflecting investigations of incidents involving harassment of Plaintiff.

Dr. Smith examined P-16, which is the School District of Philadelphia's official Multiracial-Multicultural Gender Education policy, and which was adopted on August 18, 2004. This document was "not sufficient" in protecting children from harassment or bullying. There is only a small section on procedure and implementation. The policy should have had measures for prevention as well as a timeline for investigations of harassment incidents to take place. Furthermore, even with regards to the policies that were laid out in this otherwise inadequate document Dr. Smith found there was no evidence they were actually adhered to in handling Plaintiff's case.

Dr. Smith examined P-17, the School district's unlawful harassment policy, and P-18, its bullying and cyber bulling policy, both dated 2010. Dr. Smith found major problems: no prevention and no timeline for investigation. Dr. Smith testified by 2010 it was standard practice in about 40% of the states for bullying policies to provide for a timeline of two days in which to investigate a severe bullying or harassment claim and to notify the parents of the victim and

perpetrator that there was an investigation. Then within one to two weeks the school should have a written plan to show how the victim would be protected and the perpetrator disciplined. The policies also lacked a clear definition of who should investigate, who they should report to, and what kind of "paper trail" should be established.

Dr. Smith examined P-20, which were the bullying and harassment procedures put in place in Philadelphia School District in 2013. Dr. Smith found these procedures to be much better than what came before. However, Dr. Smith also opined that such procedures could have been implemented in 2010 or even 2004. The 2013 policy contained *inter alia* sections on prevention, on reporting, on investigation, on parental notification, on behavior interventions, on disciplinary action, and on follow up. These are examples of what was in place in most school districts Dr. Smith has seen by 2008 or 2009. The policy contained other things that Dr. Smith opined are important for a good anti-bullying policy. The policy required schools to conduct developmentally appropriate prevention activities, such as incorporating social and emotional learning activities and conducting classroom lessons on inclusion, sensitivity, empathy and diversity. Such social and emotional learning builds the student's need to be civil in school.

Dr. Smith emphasized strongly the importance of teaching students empathy as a way of preventing harassment in school. He noted that the School District reported that they were utilizing a program called "Second Step" which Dr. Smith was familiar with and contained an element of teaching students empathy. However, Dr. Smith could see no evidence that the program was actually being implemented by the School District.

Dr. Smith opined that peer mediation, which was used by the school in Plaintiff's situation, is totally ineffective in the case of bullying or sexual harassment because of the inherent imbalance of power between the parties.

Dr. Smith testified in his opinion, to a reasonable degree of professional certainty, the school was deliberately indifferent to Plaintiff's claims. Had the school implemented its own procedures, Plaintiff would not have suffered what she did. The Court found Dr. Smith's testimony to be credible and accepted it.

The Court also heard testimony from Dr. Michael Bradley, a licensed clinical psychologist specializing in children, adolescents, and families. In addition to his clinical practice Dr. Bradley is the author of six books all relating to student harassment and bullying. Dr. Bradley also conducts training for school systems and appears on major media outlets such as CNN, Fox News, and NPR. Dr. Bradley also provides expert testimony in family court proceedings. Prior to becoming a psychologist Dr. Bradley worked as a school counselor.

In his clinical practice, Dr. Bradley has treated an estimated 100 to 300 children who have victimized by harassment and bullying. He also has experience treating children who suffer from psychosomatic illnesses. As a member of the International Association of Trauma Professionals, he has received training in treating children who have been victims of harassment and bullying. The Court qualified him as an expert in child and adolescent psychology with a specialization in treating trauma arising from bullying and harassment.

Dr. Bradley performed a psychological evaluation of Plaintiff regarding her reaction to the bullying and harassment she received while at the School District. This evaluation involved interviews and psychometric testing with Plaintiff and review of documents related to her experience in the School District.

Dr. Bradley has diagnosed Plaintiff as suffering from complex type post-traumatic stress disorder (PTSD). As a secondary diagnosis, Dr. Bradley found anxiety and depression and a "profound sleep disturbance." Plaintiff has had exhaustive medical treatment which has failed to

find an organic explanation for her bodily complaints. Dr. Bradley concluded that the history of bullying and harassment she sustained in school was the cause of her PTSD and secondary diagnoses.

Dr. Bradley noted that there was nothing in Plaintiff's school or medical records prior to fifth grade that is consistent with PTSD, depression, anxiety, or any psychosomatic disorders (physical manifestations of psychological stress). He noted that Plaintiff's sleep disturbance went into the "profound" range in middle school, because she was "anticipating a terrible time at school the next day." Dr. Bradley characterized the health room attack suffered by Plaintiff as a "true trauma experience." The subsequent response of the school is "profoundly damaging" because the victim is blamed, isolating the victim and making her feeling as if she is totally on her own and hopeless.

The scientific literature establishes that even worse than physical assaults are "exclusion, isolation, and ostracizing." These things "do the real psychological damage contributing to PTSD with kids." This is so because at this stage of development "it's all about peers." A child suffering this kind of abuse is being isolated at the exact age where she requires socialization. Dr. Bradley testified as to the impact of rumors on children – it is further isolating, as bystanders do not want to be associated with the child who is the subject of the rumor because they do not want to be targeted themselves. This increases feelings of hopelessness. Dr. Bradley examined an email, P-42, in which Assistant Vice Principal Crystal Gary Nelson told Plaintiff's teachers to separate her from student Nina P. This would not mitigate the problem but would exacerbate it. It teaches the victim that she somehow brings the harassment on herself.

Dr. Bradley testified Plaintiff has likely repressed many of the memories associated with the bullying and harassment she experienced. This is typical of those who have had traumatic

experiences. Because certain memories are too painful to deal with, the victim tries to "build walls" around the memories. This does not work, however, and the pain is manifested in other ways, such as in somatic symptoms. Later in life, certain "triggers" can bring these memories back to the victim in a way that causes additional distress. Dr. Bradley also opined that Plaintiff was being truthful in her discussions with him, based upon psychological tests he performed as well as her own candor in admitting to her own wrongdoing where it occurred (e.g. stealing someone's eraser in elementary school) and in tending to minimize her own experiences.

Dr. Bradley explained the difference between PTSD and complex type PTSD. The former was first observed in returning war veterans and was based upon the experience of a single, terrible event. PTSD concerned re-experiencing the traumatic event, building avoidance behaviors to avoid experiencing the event and having recurrences due to a triggering event. This is called "standard type" PTSD. Complex type PTSD is also found in returning soldiers, including those who had never had a traumatic combat experience, and involves a "chronic state of hypervigilance" as a result of waiting for bad things to happen over the course of a long period of time. This day-to-day anticipation of terrible events does damage to an individual – literally changing his or her brain structure.

Dr. Bradley testified the assaults Plaintiff suffered, as well the daily insults, would contribute to the "negative anticipation" which can lead to cognitive impairment. Dr. Bradley noted Plaintiff, previously identified as a gifted student, started to see a decline in test scores and in overall "executive functioning" – which involves the rational, decision-making part of the brain.

As part of his analysis of Plaintiff Dr. Bradley administered several psychometric tests to Plaintiff. These tests corroborated Dr. Bradley's diagnosis of PTSD complex type, depression, anxiety, and profound sleep disturbance.

In 2012 Plaintiff was diagnosed with a condition known as amplified musculoskeletal pain disorder, or AMPS. This is a psychosomatic condition involving heightened pain responses. Reviewing Plaintiff's medical records, Dr. Bradley found many physical complaints with no apparent organic or physiological cause. Dr. Bradley believes the records show that psychological factors were the likely cause of Plaintiff's AMPS, specifically the bullying and harassment undergone at the School District. This was determined based on a process of elimination – there was no other potential cause. The result is a change in brain structure caused by the harassment now leads Plaintiff's brain to amplify minor pain signals. Dr. Bradley reviewed records from CFAR which were also consistent with AMPS. These symptoms persist.

Dr. Bradley concluded that Plaintiffs psychological distress was the result of harassment and bullying. He opined about several "losses" Plaintiff has suffered. First is the "entire experience of education" which was transformed from pleasant to something Dr. Bradley compared to a "war zone." The second is her damaged relationship with adults. The third is the development of AMPS. The fourth is anxiety and depression, which is ongoing. The fifth is profound sleep disturbance. The sixth is excessive emotional reactivity, which damages relationships. The seventh is treatment costs. He opined future treatment is also necessary, including training in dealing with trauma-based PTSD complex type. This need will likely continue until age 25, the age of the final maturation of the brain.

The Court found the testimony of Dr. Bradley and of Dr. Smith to be credible and accepted it.

The Court must note the School District's expert witnesses were seriously discredited on cross examination and were unhelpful to the fact finder.

III. Discussion

The School District has filed a 1925(b) statement raising the following errors on appeal:

1. The Court erred in denying the School District's motion for post-trial relief directing entry of judgment in favor of the School District on the ground that, pursuant to the Political Subdivisions Tort Claims Act, 42 PA. C.S. §§ 8541-8542, the School District is immune from plaintiff's damages claim under the Pennsylvania Human Relations Act (PHRA).

2. The Court erred in denying the School District's motion for non-suit and motion for post-trial relief directing entry of judgment in favor of the School District on the ground that a school district cannot be liable under the PHRA for alleged harassment of a student by other students.

3. The Court erred in denying the School District's motion for non-suit and motion for post-trial relief directing entry of judgment in favor of the School District on the ground that no acts of harassment occurred within 180 days of plaintiff's filing of a complaint with the Pennsylvania Human Relations Commission (PHRC), as required by 43 P.S. § 959(h), where (a) the Minority Tolling Statute, 42 PA. C.S. § 5533(b), does not apply to claims before an administrative agency, and (b) equitable tolling under the PHRA, 43 P.S. § 962(e), does not include tolling due to minority status.

4. The Court erred in denying the School District's motion for post-trial relief modifying the Court's decision or ordering a new trial on the ground that, to the extent that any acts of harassment occurred within 180 days of plaintiff's filing of a complaint with the PHRC, the Court erred in admitting and considering evidence of acts occurring prior to the 180-day period, because plaintiff's claims arising from the latter acts are not subject to the continuing violation doctrine.

5. The Court erred in denying the School District's motion for non-suit and motion for post-trial relief directing entry of judgment in favor of the School District on the ground that the evidence failed to prove that the School District was deliberately indifferent to any alleged harassment.

6. The Court erred to the extent that any of its rulings set forth above were based on the Court's determination that it was bound by "law of the case" or the coordinate jurisdiction rule to adhere to prior rulings of the Court on the School District's preliminary objections or motion for summary judgment or other pre-trial motions.

7. The Court erred in awarding plaintiff "expert fees" on the ground that the prevailing party in a PHRA case is not entitled to recover "expert fees" incurred in the prosecution of her claim.

8. The Court erred in awarding plaintiff any attorney's fees incurred in the prosecution of plaintiff's petition for fees and costs on the ground that the prevailing party in a PHRA case is not entitled to recover attorneys' fees and/or costs incurred in the prosecution of her petition for fees and costs.

These issues will be addressed below.

The School District was Liable Under the PHRA for Its Deliberate Indifference to the Student on Student Sexual Harassment of Plaintiff

The General Assembly declared in the "Findings and declaration of policy" section, of the Pennsylvania Human Relations Act (PHRA) that "[t]he practice or policy of discrimination against individuals or groups by reason of their...sex...is a matter of concern of the Commonwealth." 43 P.S. § 952(a). It is further stated: "It is hereby declared to be the public policy of this Commonwealth... to assure equal opportunities to all individuals and to safeguard their rights to public accommodation..." 43 P.S. § 952(b).

Section 955 of the PHRA provides in pertinent part that it is an "unlawful discriminatory practice" for:

> (i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe **of any public accommodation**, resort or amusement to:
>
> (1) Refuse, withhold from, or deny to any person because of his race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, **either directly or indirectly**, any of the accommodations, advantages, facilities or privileges of such public accommodation, resort or amusement.
>
> **43 P.S. § 955(i)(1) (emphasis added)**

The statute specifically provides that the phrase "public accommodation" includes "kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this Commonwealth." 43 P.S. § 954(l). ***See also Chestnut Hill College v. Pennsylvania Human Relations Commission***, 158 A.3d 251, 258 n. 5 (Pa. Cmmwlth. 2017) ("Public schools are places of public accommodation subject to the Commission's jurisdiction to protect students from racial discrimination.")

It is therefore unlawful under the PHRA for a public school to deny to a person, either directly or indirectly, any of the accommodations or privileges of the school on the basis of her sex. The Court found that Plaintiff was, as a result of the deliberate indifference of the School District to her harassment at the hands of her fellow students, denied equal access to the "accommodations, advantages, facilities or privileges" of the district's schools on the basis of Plaintiff's sex.

The evidence recited above demonstrates that during Plaintiff's time in the School District she was taunted, teased, bullied and harassed because of her gender presentation. Namely, in dress and behavior she deviated from societal expectations for girls. The School District has taken the position that Plaintiff's gender had nothing to do with the differential treatment she received in school, but the choice of epithets used her tormenters leave no room for doubt.

The evidence also reveals that the severity of the harassment was sufficient to deny Plaintiff the equal accommodation of the district's schools. She was subjected to continuous verbal abuse and physical attacks every day for years. Plaintiff's grades and mental wellness declined as a result.

No appellate court in the Commonwealth has yet has decided whether the PHRA provides a remedy for students denied the privileges of attendance in school when it results from the deliberate indifference of school administrators to student-on-student harassment. ***See Saxe v. State College Area School Dist.***, 240 F.3d 200, 204 n. 4 ("It [the PHRA] has not been construed, however, to create a cause of action for 'hostile environment' harassment of a public school student."). But the plain language and express purpose of the PHRA favor this result.

The PHRA prohibits not only "direct" but also "indirect" discrimination – which is declared to be a matter of concern for the Commonwealth. The deleterious effect of peer harassment is already recognized in the employment context, and it would be grossly inconsistent to find that employee-on-employee harassment may be sufficiently severe to deny the harassed employee equal employment yet find that children, who are more emotionally vulnerable than adults, are immune to such harm.

Courts in other jurisdictions, interpreting statutes very similar to Pennsylvania's PHRA, have come to the same conclusion. ***See Doe ex. Rel. Subia v. Kansas City, Missouri School District***, 372 S.W.3d 43 (Mo. Ct. App. 2012).

Importantly, the Court did not find that the School District was vicariously responsible for the behavior of its students. Under the PHRA the School District is, however, responsible for its own behavior. In this case it was the failure to take any effective measures whatsoever to protect Plaintiff from harassment and bullying because of her gender. The concept of providing order and discipline among students is not alien to schools in the Commonwealth.

Nor did the Court find that the School District responsible under the PHRA for failing to prevent bullying and harassment – rather the School District is responsible for its deliberate indifference to the bullying and harassment of which it had actual notice. Despite its

professions of concern about the problem of bullying and harassment in schools, the School District argues it owed *no duty* Plaintiff to take *any* measures to protect her from student-on-student harassment. This Court finds otherwise.

The School District Has No Immunity to this Suit

As explained above, the PHRA explicitly authorizes suit against a school district for a violation of the Act. Nevertheless on post-trial motions Defendant argued, for the first time, that it was immune to suit under the PHRA. This argument is unavailing. 42 Pa.C.S.A. § 8541 provides:

> Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

Exceptions to immunity are provided for in § 8542, but these are not applicable here. However, the Court found that this statute refers only to common law torts, not to statutorily derived causes of action. In ***Meyer v. Community College of Beaver County*** then Justice and now Chief Justice Saylor remarked in *dicta* that under the Political Subdivision Tort Claims Act "the legislature centered the immunity there conferred on 'injury to a person or property' as a reflection of traditional tort jurisprudence." 2 A.3d 499, 502 (Pa. 2010).

Plaintiff's suit is not a common law tort but a statutorily created cause of action specifically authorized by the PHRA. The PHRA prohibits "any person" who is the manager of a public accommodation to discriminate on the basis of a protected category, including sex. **43 P.S. § 955(i)(1)**. The statute's definition of "person" includes "the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions thereof." **43 P.S. § 954(a)**. The term "political subdivision" means "any county, city, borough, incorporated

town or township of this Commonwealth." **43 P.S. § 954(m)**. As explained above, the PHRA prohibits discrimination in public accommodations and the definition of the term public accommodation includes schools.

Defendant does not dispute that the PHRA itself has been applied to political subdivisions in the capacities as employers. ***See City of Philadelphia v. Pennsylvania Human Relations Com'n***, 684 A.2d 204 (Pa. Cmmwlth. 1996). Defendant argues however that this waiver is "express" because the PHRA's definition of "employer" includes "the Commonwealth or any political subdivision or board, department, commission, **or school district thereof**." **43 P.S. § 954(b) (emphasis added)**. As explained above, however, school districts are also referred to expressly in the statute.

The Evidence Showed the School District Was Deliberately Indifferent

The School District argues the evidence is insufficient to find it was deliberately indifferent to the bullying and harassment suffered by Plaintiff. The evidence at trial showed otherwise.

The credible testimony recited above shows that the Plaintiff and her mother made persistent and detailed reports about the harassment Plaintiff was receiving at her school and did so for years. In some cases this behavior was witnessed by School District staff members as it occurred. There is no question that the School District had actual notice of what was occurring with Plaintiff.

Plaintiff's expert Dr. Smith testified, and the Court found this testimony credible, that the School District's approach to the problem of the ongoing harassment of Plaintiff was clearly unreasonable. It was not simply that the anti-harassment and anti-bullying policies utilized by

the School District were not state of the art. Rather, the School District's policies were either not followed or contained no mechanisms for enforcement that would allow them to be followed. In the case of the Second Step program, the School District's own witnesses admitted they had never even heard of the policy they were supposed to be implementing.

The School District points to several incidents where particular students were disciplined as a result of conduct towards Plaintiff or where teachers indicated they intended to keep an eye out for any bullying of Plaintiff. For example, the student Logan F. was suspended after his attack on Plaintiff.

The evidence showed, however, that the school's primary concern was in preventing fighting or serious acts of violence. Indeed, the School District's own reports indicate that Plaintiff was sometimes viewed as either the instigator of, or an equal participant in, violent encounters with her harassers. But there was no reasonable attempt made to proactively address the harassment Plaintiff received on a daily basis – harassment that Plaintiff's expert Dr. Smith testified made serious violence almost inevitable.

All of Plaintiff's Claims Were Timely Filed

The Court found that Plaintiff was bullied and harassed from 2003, when she enrolled at Pollock, until June, 2013, when she attended graduation ceremonies at George Washington High School. Plaintiff testified to specific instances of bullying and harassment that occurred at graduation and the Court found these acts were motivated by gender discrimination. These acts occurred because of the School District's ongoing deliberate indifference to the discrimination suffered by Plaintiff.

Under the PHRA, the plaintiff was required to file her complaint with the Pennsylvania Human Relations Commission (PHRC) within 180 days of the last act of discrimination. ***See*** 43 P.S. § 959(h). Plaintiff filed her PHRC complaint on October 8, 2013, which was within 180 days of the final act of discrimination. By timely filing her PHRC complaint Plaintiff was entitled under the "continuing violations doctrine" to recover for discriminatory acts outside the limitations period. ***See Girard Finance Company v. Pennsylvania Human Relations Commission***, 52 A.3d 523 (Cmmwlth. 2012). So long as one of "the component acts" of the harassment occurred within 180 days of Plaintiffs' filing their PHRC complaint, the entire time period may be considered by the Court. ***See Barra v. Rose Tree Media Sch. Dist.***, 858 A.2d 206, 213–14 (Pa. Commw. Ct. 2004). Therefore Plaintiff's claims were timely filed and the Court was entitled to consider the discrimination suffered by Plaintiff from 2003 until 2013.[2]

Defendant has argued that no acts of harassment occurred during the applicable 180 day period and that these incidents are discrete and isolated and do not relate to earlier instances of harassment. This is merely another version of Defendant's challenge to the sufficiency of the evidence and, as explained above, these acts were the direct result of Plaintiff's gender and the School District's deliberate indifference to the sexual harassment and bullying of Plaintiff. Defendant also cites non-binding Federal cases for the proposition that the continuing violations doctrine does not apply if Plaintiff became *aware* she was being discriminated against more than 180 days prior to the filing of her PHRC complaint. This is not the law of the Commonwealth.

[2] The Court's decision regarding the statute of limitations was not based upon either the coordinate jurisdiction rule or law of the case.

Plaintiff Was Entitled to Attorney and Expert Fees

Pursuant to 43 P.S. § 962:

> (c.2) If, after a trial held pursuant to subsection (c), the court of common pleas finds that a defendant engaged in or is engaging in any unlawful discriminatory practice as defined in this act, **the court may award attorney fees and costs** to the prevailing plaintiff.

Thus "the award of counsel fees and costs under the PHRA is within the sound discretion of the trial court..." ***Wagner v. Pennsylvania Capitol Police Dept.,*** 132 A.3d 1051 (Pa. Cmmwlth. 2016). The Court in its discretion chose to award expert witness fees because it found were absolutely essential to proving Plaintiff's case.

The fees incurred by Plaintiff were reasonable in light of the scope and novelty of this litigation, and resulted in a thorough presentation of the evidence in a way which was of great benefit to the Court. Defendant School District also pursued an aggressive litigation strategy that necessitated an appropriate response from Plaintiff.

The Court did not, contrary to Defendant's assertion, consider fees incurred in the prosecution of Plaintiff's petition for fees and costs incurred in the prosecution of her fee petition itself. The review of fees and decision concerning amount concluded with the last entries before the preparation of the petition.

IV. Conclusion

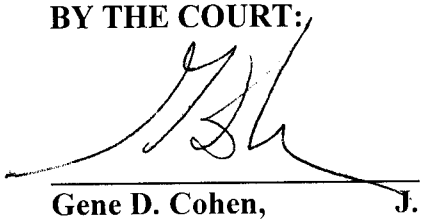
Amanda Wible is only one victim of what Dr. Malcolm Smith characterized as an "epidemic" of bullying in the United States and her case is proof of its potentially devastating consequences for children in the Commonwealth. Not only are educational opportunities lost but the trauma lingers long after the student has left school.

Plaintiff's time in the School District was a gauntlet of sexual harassment and violence that would test the mettle of the strongest and most resilient youth. This harassment was endured

for years until it became unbearable and Plaintiff was forced to withdraw from the School District. In this way Plaintiff was literally denied the use of a public accommodation on the basis of her sex. The PHRA forbids this. The School District is not generally liable for all conduct of its students. But it is liable, in its role as proprietor of a public accommodation, if it is deliberately indifferent to harassment and violence that has occurred and inevitably will continue to occur, and this harassment is so severe that it makes it impossible for one of the students entrusted to the School District's care to enter the building.

The evidence adduced in this case clearly supported the Court's findings of fact and the law supports its conclusions of law.

BY THE COURT:



December 17, 2018

Gene D. Cohen, J.