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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

SHANNON MCMINIMEE, Plaintiff, v. YAKIMA SCHOOL DISTRICT NO. 7, and JOHN R. IRION, in his individual capacity, Defendants.	**NO. 18-3073-TOR** SECOND AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

Shannon McMinimee, by and through her attorneys, alleges:

I. PARTIES AND JURISDICTION

1. Defendant, YAKIMA SCHOOL DISTRICT NO. 7 ("YSD" or the "District") is a first-class school district organized under the laws of the State of

Washington and a quasi-municipal government agency located in Yakima County, Washington.

2. Defendant, JOHN R. IRION, ("Mr. Irion") resides in Yakima, Washington and was the District's Superintendent at all times relevant to this lawsuit.

3. Plaintiff, SHANNON MCMINIMEE ("Ms. McMinimee") is a resident of Outlook, Washington, worked in Yakima, Washington, for YSD under the direct supervision of Mr. Irion at all times relevant to this lawsuit.

4. All acts complained of occurred within the Eastern District of Washington.

5. The Federal Court for the Eastern District of Washington has personal jurisdiction over the parties and subject matter jurisdiction for the claims in this complaint pursuant to 28 U.S.C. § 1331, 29 U.S.C. § 2617(a)(2), 29 U.S.C. § 206(d)(1), 42 U.S.C. § 1983, and 28 U.S.C. § 1367(a).

6. Venue is proper in the Eastern District of Washington under 28 U.S.C. § 1391(b) because the acts and omissions complained herein occurred in the District and Defendants conduct business and/or resides there.

7. Ms. McMinimee was not required to exhaust administrative remedies or comply with pre-filing notice of tort claim requirements regarding the Family Medical Leave Act (FMLA), Equal Pay Act (EPA), and RCW 49.52.050 Wage

Rebate Act (WRA) claims she asserts in this lawsuit. On April 26, 2018, Ms. McMinimee served the defendants with an RCW 4.96, et. seq. notice of tort claim (dated April 25, 2018). Sixty days have elapsed since April 26, 2018, without response from Defendants. Thus, the administrative pre-conditions to Ms. McMinimee's tort claims are satisfied.

II. INTRADISTRICT ASSIGNMENT

8. This action arose in Yakima County, Washington. Therefore, Ms. McMinimee respectfully requests that the case be assigned to the Yakima Division of the Eastern District of Washington.

III. FACTS

9. Plaintiff re-alleges the above paragraphs.

10. On or about March 13, 2017 the YSD hired Ms. McMinimee as its Associate Superintendent for Human Resources.

11. Between March 13, 2017 and November 6, 2017, Ms. McMinimee opposed illegal activities by the Defendants, acts that Mr. Irion either directed or sanctioned.

12. The illegal activities that Ms. McMinimee opposed included, without limitation, (a) Defendants' unequal treatment of male and female employees, (b) Defendants' failure to address sex/gender discrimination against Ms. McMinimee and other female employees of YSD, (c) Defendants' discrimination against

employees based on their failure to conform to certain sex/gender stereotypes, (d) Defendants' unequal treatment of white and minority employees and students, (e) Defendants' violation of RCW 41.56.140's prohibition on direct dealing, (f) Defendants' desire to issue teaching contracts to those who did not hold effective teaching certificates in violation of RCW 28A.405.210, (g) Defendants' failure to comply with federal laws regarding the Defendants' treatment of disabled employees, (h) Defendants' failures to comply with federal laws regarding the Defendants' treatment of disabled students, and (i) Defendants' failures to comply with Title IX with respect to responding to student allegations of sexual harassment and sexual violence.

13. Ms. McMinimee also raised concerns about (a) Mr. Irion's different treatment of employees and members of the community based upon religious affiliation; (b) his failing to respond to concerns about the critical understaffing of the Human Resources Department that had been known to the District prior to Ms. McMinimee's hiring; (c) the District's failure to exercise reasonable care in the supervision of students within its custody, including protecting students from reasonably foreseeable harm; (d) violations of the Open Public Meetings Act and the Public Records Act; (e) violations of the Family Educational Records Privacy Act; and (f) failing to enforce School Board Operational Procedures.

14. As it relates to points (a) and (b) in Paragraph 12 above, Ms. McMinimee's complaints included her good faith opposition to Mr. Irion's pay policy commonly referred to as the "Jack Factors."

15. Briefly stated, the Jack Factors were the means by which Mr. Irion determined the salary schedule placement (and, in turn, pay) of managerial level District employees, including the below-described "Superintendent's Group" and the District's administrators. The Jack Factors included placing internal hires one step higher on the salary schedule than they would otherwise be placed based on experience and moving individuals up on the salary schedule to ensure that they were being paid more than any subordinate that they would have.

16. During the August 2017 timeframe, Ms. McMinimee expressed concern to Mr. Irion that the above referenced Jack Factors discriminatorily affected female administrators (as well as non-white administrators). This conversation took place in Mr. Irion's office and after Ms. McMinimee had expressed her concerns about the Jack Factors to others. Mr. Irion dismissed Ms. McMinimee's concerns identifying that the internal employee whose salary schedule placement was at issue at the moment was a female and that she would be making more than her subordinate.

17. Following the above-referenced conversation Ms. McMinimee made modifications to the Jack Factors to try to ameliorate the negative impacts of the Jack Factors to female administrators.

18. With regards to points (a), (b) and (c) of paragraph 12 above, female employees almost immediately began raising concerns related to sex/gender equity and sex/gender discrimination to Ms. McMinimee once she started working for the YSD. Human Resources staff shared (with Ms. McMinimee) that the YSD had many long-standing problems in this area and that Mr. Irion was both aware of these concerns and failed to act on them or at times was the perpetrator of the acts of discrimination or harassment based on sex/gender. Ms. McMinimee was advised that Mr. Irion would protect certain male administrators and that promising female administrators had left the YSD as a result. Ms. McMinimee learned that some male administrators had been found to have violated the YSD's policies and procedures related to sex/gender discrimination and harassment multiple times but had never received discipline more severe than written corrective action.

19. From March of 2017 to November of 2017, Ms. McMinimee raised the concerns that were brought to her attention to Mr. Irion and Deputy Superintendent Cecelia Mahre, who serves as the YSD's Civil Rights Compliance Coordinator. Mr. Irion did not act on Ms. McMinimee's concerns regarding workplace sex/gender discrimination.

20. Upon her hire, Ms. McMinimee was immediately tasked by Mr. Irion with finding a way to discipline a female teacher for using her District email account to send sexually explicit messages during work hours, even though YSD had already disciplined that teacher for the same offense. When Ms. McMinimee shared with Mr. Irion that the employee could not be disciplined twice for the same misconduct, Mr. Irion tasked her with finding a way for the teacher to have her teaching licensure negatively impacted or baring that, ensuring that the teacher's husband learned the full extent of her misconduct.

21. Ms. McMinimee was told by Mr. Irion that the female teacher had engaged in a sexual relationship at school with a former YSD Assistant Principal. Based upon information and belief, while the teacher was subject to a two-day suspension for her conduct, the Assistant Principal was never disciplined and had been given a positive recommendation when he sought to obtain work in a different district.

22. Ms. McMinimee repeatedly advised Mr. Irion that YSD's actions would likely subject it to a quid pro quo sexual harassment claim by the female teacher, a concern that Mr. Irion dismissed outright.

23. Ultimately, Ms. McMinimee opposed Mr. Irion's gender/sex discrimination by returning the female teacher to the classroom for the 2017-2018 school year and not taking any additional disciplinary action against her nor moving

forward with Mr. Irion's desire to negatively impact her teaching licensure or ensure that her husband learned the full extent of her misconduct.

24. Shortly after her hire, Ms. McMinimee raised a concern to Executive Director Clinton Endicott in front of his supervisor (Ms. Mahre) that he (Endicott) at times used gender loaded language when describing the same or similar actions by female and male administrators. Ms. McMinimee shared with Mr. Endicott a prior case that she had knowledge of and warned him of the need to take care in his language choices. Ms. McMinimee was then immediately subjected to an investigation alleging that she had engaged in gender discrimination against Mr. Endicott. While Mr. Endicott's allegations against Ms. McMinimee were determined to be unfounded, Mr. Irion and Ms. Mahre took no action to address Mr. Endicott's underlying conduct, which Ms. McMinimee could no longer address without looking as if she was retaliating against Mr. Endicott.

25. Shortly after her hire, Ms. McMinimee was tasked with investigating allegations of harassment by a female Assistant Principal against a male Principal. Ms. McMinimee was advised that the male Principal had been on administrative leave for several months for other allegations of misconduct, including harassment and allegations of having an inappropriate relationship with a subordinate.

26. The complaining Assistant Principal was so despondent with how the YSD had handled the prior matter and how the Principal's supervisor was handling

her concerns that she took leave from the end of the YSD's Spring Break to the end of the school year, and ultimately resigned her position. Ms. McMinimee was not able to sustain the Assistant Principal's allegations (in part because she refused to be interviewed) but learned that multiple female employees, including the prior female Assistant Principal, had reported concerns related to how they were treated and that those went unaddressed. Ms. McMinimee contemporaneously shared this with Mr. Irion and Ms. Mahre, expressing concern for how the prior investigation had been handled. Based upon information and belief, that Principal has now been promoted, even though he received an in-part critical performance evaluation for the 2016-2017 school year.

27. Ms. McMinimee ultimately raised concerns to Ms. Mahre (the Civil Rights Compliance Coordinator) about how Mr. Irion was allowing her to be treated by the Yakima Education Association ("YEA") President, who is a full-time YSD employee. Ms. McMinimee believed that the treatment she was being subjected to by the YEA President was because of her sex/gender. Ms. Mahre advised Ms. McMinimee that she was appropriately documenting her concerns about how she was being treated by the YEA President and that she should continue to have Mr. Irion address her concerns. Her concerns were never addressed.

28. With regards to points (a), (b), (c), and (d) of paragraph 12 above, female employees who were minorities and employees who were minorities almost

immediately began raising equity and discrimination concerns to Ms. McMinimee once she started working for the YSD. Human Resources staff shared with Ms. McMinimee that the YSD had many long-standing problems in this area and that Mr. Irion was both aware of these concerns and failed to act on them or at times was the perpetrator of the acts of discrimination or harassment. Ms. McMinimee was advised that Mr. Irion would protect certain male administrators and that promising female employees who were minorities and employees who were minorities had left the YSD as a result.

29. Mr. Irion and Mr. Endicott repeatedly focused on the appearance of a specific female Principal (who is also Native American) and the way she dressed, which was not consistent with stereotypes about sex/gender. Ms. McMinimee repeatedly advised Mr. Irion that the focus on this Principal's appearance and the way she dressed needed to stop, particularly as the Principal was dressing no differently than male administrators. Ms. McMinimee even pointed out to Mr. Irion and Ms. Mahre at a meeting where all administrators were in attendance that the female Principal whose appearance and dress was of concern looked no different than male administrators. Ms. Mahre acknowledged that this focus on appearance and dress was problematic, Mr. Irion did not. Notably, this female Principal was one of the individuals that Mr. Endicott had used gender loaded language to describe. Based upon information and belief, this female Principal was ultimately

demoted and replaced by a white man, even though she received a positive performance evaluation and her professional coach believed that any concerns about her performance had been fully addressed.

30. Shortly after her hire, Ms. McMinimee was tasked with helping address performance concerns related to (at the time of filing) the YSD's only African American administrator, who is a woman over the age of sixty who is an Assistant Principal. Ms. McMinimee was repeatedly advised that the primary concern regarding this employee was that she was often late to work. Yet, there was nothing in this employee's file to reflect that she had ever been subject to discipline for tardiness.

31. Mr. Irion then caused the Assistant Principal to be transferred to a lower paying, less prestigious position - - - an act that Ms. McMinimee opposed.

32. Ms. McMinimee learned that the tardiness was the result of the Assistant Principal engaging in care activities for an elderly parent. Ms. McMinimee informed Mr. Irion of this fact but Mr. Irion did not change his position that the Assistant Principal was not performing to expectations.

33. The Assistant Principal subsequently filed an Equal Employment Opportunity Commission Complaint against the YSD, alleging age, race, and gender discrimination as well as retaliation.

34. With regards to points (d), (g), (h), and (i) of paragraph 12 above, Ms. McMinimee repeatedly raised concerns about how minority employees and students, as well as students with disabilities were being treated by the YSD. This included failing to accommodate employees with disabilities in a manner that is consistent with the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504") and failing to provide free, appropriate educations to students with disabilities (particularly minority students with disabilities) under Section 504 and the Individuals with Disabilities Education Act, as amended ("IDEA").

35. Mr. Irion specifically questioned Ms. McMinimee in October and November of 2017 as to why she would engage in the ADA interactive process with an employee seeking accommodations (an employee who had previously named Mr. Irion as a discriminatory actor in a prior lawsuit against the YSD). He also criticized Ms. McMinimee for bringing in an ADA accommodations expert rather than just implementing accommodation based upon the requests of the YEA President, who has no background in the ADA or vocational rehabilitation.

36. Ms. McMinimee was also tasked with addressing concerns that a long-time administrator had been engaging in unsafe conduct. Multiple YSD administrators, including Mr. Irion, shared with Ms. McMinimee that they believed this administrator to be suffering from health conditions that were causing the

unsafe conduct. Ms. McMinimee was told that these beliefs dated back several years and had not been addressed by anyone, including Mr. Irion. At no point had any YSD administrator spoken with the administrator about their concerns or offered to engage in the ADA interactive process with him, despite their shared belief that he was suffering from a disability. Ms. McMinimee was required to place this administrator on administrative leave for failing to conduct evaluations of staff in violation of Washington law and to negotiate his departure from the YSD. That administrator was allowed to use his own accrued leave for the entirety of the 2017-2018 school year, without being required to submit physician's verification of illness.

37. Mr. Irion also refused to address allegations of discrimination against students based on race and disability. For example, he denied Latino students of non-English speaking families services and outside assessments believed to be necessary by school staff because families did not know how to specifically ask for them. When Ms. McMinimee proposed a solution to this issue to Mr. Irion, he simply transferred the student to a new school where she continued to receive instruction from the teacher who had previously identified her as not making any educational progress and needing more intensive services.

38. Mr. Irion also minimized serious allegations of verbal, emotional, and physical abuse by the Davis High School football coaching staff, where the

reporting students were predominately students of color. Even though the serious allegations of misconduct were substantiated, and it was determined that the head coach and one assistant coach had been untruthful during the course of the investigation, Mr. Irion determined - based primarily on outdated experience as a football coach - to not to take any significant disciplinary action against the coaches. Mr. Irion also failed to act on the investigation results for months, while allowing Ms. McMinmee to be repeatedly criticized publicly for his delay in resolving the matter. Additionally, Mr. Irion prevented Ms. McMinimee from conducting an investigation of allegations of retaliation by one of the complainants.

39. Ms. McMinimee was also chastised by Mr. Irion for her efforts to improve how the YSD was responding to student allegations of sexual harassment and sexual violence. Ms. McMinimee holds the highest level of certification as a Title IX Investigator from the Association of Title IX Administrators and has more training and experience in addressing allegations of sexual harassment and sexual violence than Ms. Mahre, who is the YSD's Title IX Officer. While Ms. Mahre welcomed Ms. McMinimee's assistance and expertise in this area, Mr. Irion directed Ms. McMinimee to "stay in her lane" and cease her efforts to assist in improving the YSD's compliance in this area.

40. With regards to points (e) and (f) of paragraph 12 above, Ms. McMinimee repeatedly raised concerns regarding Mr. Irion's violation of RCW

41.56.140's prohibition on direct dealing and his desire to issue teaching contracts to those who did not hold effective teaching certificates in violation of RCW 28A.405.210. This included direct dealing that Mr. Irion had engaged in during the last weeks of October 2017 regarding a substitute administrative assistant for himself. Ms. McMinimee had scheduled a meeting to discuss this with Mr. Irion on November 7, 2017.

41. Throughout August, September, and October of 2017, Ms. McMinimee repeatedly raised objections to Mr. Irion's desire to issue teaching contracts to those who did not hold effective teaching certificates in violation of RCW 28A.405.210. Ms. McMinimee was advised by Human Resources staff that Mr. Irion had issued teaching contracts to those who did not hold effective teaching certificates in violation of RCW 28A.405.210 in the prior school year, despite being advised that doing so was illegal.

42. Defendants have been knowingly and/or with reckless disregard broadcasting and publishing false and unprivileged non-opinion statements about Ms. McMinimee made at School Board meetings to third parties. This has caused Ms. McMinimee reputational and other damages. These statements were made in violation of the District's own Operational Procedures over Ms. McMinimee's repeated objections. These include the statements of the President of the YEA made at regular business meetings from approximately July of 2017 to present. Ms.

McMinimee objected to this to Mr. Irion, and her counsel did the same to Mr. Rorick on February 27, 2018, pointing out that the YSD was violating its own Operational Procedure 1430, which states in part:

> The board recognizes its responsibility to conduct the business of the district in an orderly and efficient manner and will, therefore, require reasonable controls to regulate public presentations to the board. …
> The president may interrupt or terminate an individual's statement when it is too lengthy, personally directed, abusive, obscene or irrelevant. The board shall not hear oral complaints from the public regarding school personnel. Members of the public will refrain from discussing the performance of an employee or from making derogatory comments about individuals and refrain from discussing the interpretation or application of the district's labor agreements, including grievances. A member of the public wishing to make such a complaint shall do so in writing to the superintendent or the president of the board, who shall take appropriate action.

43. On or about October 30, 2017, Mr. Irion held a meeting with Ms. McMinimee that he identified to her as "investigatory" in nature only after the start of the meeting.

44. One of the concerns that Mr. Irion raised during this meeting was that during School Board Executive Sessions, Ms. McMinimee would correct him or would field questions from the School Board directly. According to Mr. Irion, this made him look bad. Ms. McMinimee only spoke up in such meetings when Mr. Irion provided the School Board with inaccurate or incomplete information on personnel matters. Ms. McMinimee felt it was her duty to ensure that she was

providing truthful and accurate information to the School Board regarding employment matters, and that this duty was paramount.

45. On November 6, 2017, Defendants placed Ms. McMinimee on paid administrative leave. The reasons Mr. Irion gave for placing Ms. McMinimee on administrative leave were that she refused to provide a legal opinion/legal advice related to Mr. Irion's desire to issue contracts those who did not hold effective teaching certificates in violation of RCW 28A.405.210 and her above identified candor with the School Board.

46. The first justification was a made-up reason for placing her on administrative leave for the simple reason that Ms. McMinimee was (1) not employed by YSD as its legal counsel and (2) had already provided Mr. Irion the requested information and advice from two different attorneys hired by the YSD. The second of the reasons was on its face retaliatory – Ms. McMinimee was being punished by the Superintendent for her candor with the School Board.

47. Defendants' involuntary placement of Ms. McMinimee on administrative leave (and subsequent attempts to fire her) was in retaliation for Ms. McMinimee's good faith reasonable belief that she was opposing the above-referenced illegal activity.

48. On the day she was placed on administrative leave, Ms. McMinimee was told that she would not be allowed to leave the Yakima Valley the week of

November 6, 2017 to care for her for her significant other, who had suffered a debilitating injury on November 4, 2017. This was despite Ms. McMinimee advising her staff and Mr. Irion that she was planning on taking leave for the duration of the week to care for her significant other prior to being placed on administrative leave. Ms. McMinimee was told that she could not access her own accrued leave to care for her significant other because she would need to be available for an interview so that she could "fully and fairly" share her side of the story that week. Yet, Ms. McMinimee was never interviewed.

49. Ms. McMinimee had contacted Ms. Mahre so that she could pick up certain personal items, including medications, from her office the week of Thanksgiving 2017. After reaching a mutually agreed to plan for the same, Ms. Mahre ceased communicating with Ms. McMinimee and she was unable to retrieve any personal belongings.

50. Subsequently, Ms. McMinimee asked for the opportunity to have flowers that had been sent to her office for her 40th birthday be picked up only to learn that they had been refused or destroyed by the YSD. The Defendants even failed to put sufficient postage on mailings to Ms. McMinimee, delaying her receipt of communications.

51. The Defendants also denied Ms. McMinimee the ability to access specific professional development benefits afforded to her under the Collective

Bargaining Agreement applicable to her as a member of the YSD's Management Team, even though Ms. Mahre had advised Ms. McMinimee on November 7, 2017 that she should be able to do so.

52. The Defendants also outright refused to explain to Ms. McMinimee how it was that the YSD had been making contributions for Ms. McMinimee to the wrong retirement system since her hiring, what the YSD's plan was to correct it, or how Ms. McMinimee could address the issue.

53. Defendants' involuntary placement of Ms. McMinimee on paid administrative leave caused Ms. McMinimee to experience serious health problems which, in turn, forced her to use her rights under FMLA.

54. At some point in late 2017 or early 2018 the YSD, knowing that it had no grounds to justifiably fire Ms. McMinimee, began looking for an excuse to fire her. To that end, the Defendants conspired with the President of the YEA to contact at least one of Ms. McMinimee's former employers in an attempt to "dig up dirt" on Ms. McMinimee.

55. Ms. McMinimee heard nothing related to the supposed investigation from the District from November 6, 2017 until she was contacted by its counsel, Michael Rorick, on December 1, 2017. Ms. McMinimee then retained counsel, who engaged in regular discussions with Mr. Rorick. Mr. Rorick shared with Ms. McMinimee's counsel that the District did not have any real basis to terminate Ms.

McMinimee but did not wish to continue to employ her, and thus proposed that the District "buy her out" of her employment. Ms. McMinimee was initially amenable to that proposal because of the negative impacts of the District's actions on her health and her professional reputation.

56. The District was made aware, through Mr. Rorick, that Ms. McMinimee was suffering from medical conditions because of the actions of the District. This information was communicated from December of 2017 through March of 2018. Ms. McMinimee's health deteriorated substantially, to the point where her father (with whom she lives to provide him support and care because of his own health concerns) believed that he would have to have her hospitalized.

57. On March 15, 2018, Ms. McMinimee's then-attorney (Sarah Evans) informed YSD's attorney (Michael Rorick) that Ms. McMinimee needed medical workplace leave and, as part of that notification, transmitted (to Mr. Rorick) a physician's note dated March 14, 2018.

58. As of March 15, 2018, Defendants knew or had reason to know that Ms. McMinimee's medical leave might be for FMLA reasons. 29 C.F.R. § 825.300(b)(1).

59. Federal regulations required that Defendants inform Ms. McMinimee as to whether she was eligible for FMLA within five business days of March 15,

2018, which, in this instance, was March 22, 2018. *Id.* Federal regulations refer to such a notification as a "FMLA Eligibility Notice." *See id.*

60. Defendants did not give Ms. McMinimee an FMLA Eligibility Notice within five business days of March 15, 2018. This was the first time the District violated the FMLA.

61. On March 26, 2018, Ms. McMinimee: (a) sent an email to the YSD employees who handle leave and FMLA issues, Monette Dennis and Gina Tookes, (b) informed Ms. Tookes and Ms. Davis that she intended to take leave under the FMLA, (c) informed Ms. Tookes and Ms. Davis that she was eligible for leave under the FMLA, and (d) informed Ms. Tookes and Ms. Davis of the serious health condition giving rise to her FMLA request.

62. Ms. McMinimee's March 26, 2018, email further stated:

> I am asking that you please confirm what work calendar date (using the work calendar applicable to the Management Team/Superintendent's Group) you project will be my last day of having accrued leave available and then what work calendar date you project that I will exhaust FMLA.

63. Federal regulations required that YSD give Ms. McMinimee an FMLA Eligibility Notice within five business days of March 26, 2018, which, in this instance, was April 2, 2018. 29 C.F.R. §825.300(b)(1).

64. Defendants did not give Ms. McMinimee an FMLA Eligibility Notice by April 2, 2018, i.e. within five business days of March 26, 2018. This was the second time the District violated the FMLA.

65. On April 3, 2018, YSD employee Kelli York (Ms. McMinimee's direct subordinate and not an individual who typically handles FMLA issues) informed Ms. McMinimee that (a) Ms. McMinimee was eligible for FMLA (b) Ms. McMinimee had been designated a "key employee" under the FMLA, and (c) that Ms. McMinimee had "seven days" to complete and return, to YSD, the District's FMLA medical certification form. Ms. York's April 3, 2018, email contained a nine page .pdf attachment labeled "MCMINIMEE 180403.pdf" that included a boilerplate single page document titled "FAMILY AND MEDICAL LEAVE", a single page document titled "APPLICATION FOR FMLA LEAVE", a four page "Certification of Health Care Provider for Employee's Serious Health Condition," and a three page "Assistant Superintendent for Human Resources" job description.

66. The District's April 3, 2018, email to Ms. McMinimee violated the FMLA because 29 C.F.R. § 825.305(b) gives Ms. McMinimee at least 15 calendar days (as opposed to "seven days") to complete and return the FMLA serious health condition certification form. This was the third time the District violated the FMLA.

67. Federal regulation also required that the Defendants provide Ms. McMinimee a written FMLA "Rights and Responsibilities" notice at the same time it gave Ms. McMinimee her FMLA Eligibility Notice. 29 C.F.R. § 825.300(c)(1).

68. The FMLA Rights and Responsibilities Notice must, *inter alia,* (a) inform the employee whether "the leave may be designated and counted against the employee's annual FMLA leave entitlement if qualifying" (b) inform the employee of "[t]he employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave," and (c) inform the employee as to "arrangements for making [premium payments to maintain health benefits]." 29 C.F.R. § 825.300(c)(i)(iii)&(iv).

69. The Defendants' April 3, 2018, email and attachment violated the FMLA by failing to inform Ms. McMinimee of the above-referenced FMLA rights. This was the fourth, fifth, and sixth time the Defendants violated the FMLA.

70. On April 4, 2018, Ms. McMinimee informed YSD that it had violated the FMLA for the above-referenced reasons and that those FMLA violations created illegal barriers that prevented Ms. McMinimee from exercising her FMLA rights.

71. Defendants subjected Ms. McMinimee to an entirely different process for accessing her own accrued leave than any other employee.

72. Ms. McMinimee's April 4, 2018 email also informed YSD that its withholding of certain contractually allowed wages violated Washington's WPA. *See infra.*

73. Although the Defendants knew that Ms. McMinimee was on medical leave and had received notes from Ms. McMinimee's physician confirming the need for said medical leave, on April 12, 2018 the District acting on the newly acquired information it received from the YEA via Ms. McMinimee's former employer, sent Ms. McMinimee a "Loudermill" notice on April 12, 2018, demanding that she appear at a hearing at 5:30 PM the following Tuesday.

74. This was the first notice that the District had provided to Ms. McMinimee regarding the allegations against her. This was when Ms. McMinimee learned that she was also was being threatened with termination for a mistake made by another employee in the Human Resources Department during the summer of 2017.[1]

[1] As an aside, the employee who made the mistake was overburdened. The concern of overburden was repeatedly raised, by Ms. McMinimee, and her efforts to elevate the workload concerns – which were substantiated by an outside review conducted prior to Ms. McMinimee's arrival - were ignored and rebuffed by others within the District's leadership. In fact, Ms. McMinimee had a meeting scheduled for the very day that she was placed on administrative leave to change the workload of the employee at issue because the employee had reported to Ms. McMinimee that she had made multiple mistakes because of being overburdened.

75. The allegations against Ms. McMinimee consist of conduct (even if proven to be true - - it isn't) that is far less egregious than conduct that other YSD employees have committed and have been allowed to remain in the workforce. Until April 12, 2018, the District provided no evidence to support its allegations against Ms. McMinimee, despite her counsel asking for over a month and Mr. Rorick, the District's agent, most recently saying he would to provide at least some the prior week (but not actually doing so). It was only after Ms. McMinimee's then-counsel withdrew because of illness and unavailability that the District cancelled the then-scheduled "Loudermill" hearing.

76. Because the YSD was failing to provide Ms. McMinimee with information required by the FMLA and was threatening to terminate her without giving her the information necessary to defend herself, Ms. McMinimee was forced to file a number of Public Records Act Requests with the District starting on April 13, 2017.

77. On April 16, 2018, the YSD received Ms. McMinimee's completed "Certification of Health Care Provider for Employee's Serious Health Condition" form.

78. On April 17, 2018, the YSD received Ms. McMinimee's semi-completed "APPLICATION FOR FMLA LEAVE" form. The form was "semi-completed" because YSD had not informed Ms. McMinimee if she would be

required or allowed to access her accrued leave, what forms of her accrued leave would be available for her to use, and when that leave would be exhausted, which in turn, rendered her unable to ascertain the begin and end dates of her FMLA leave.

79. On April 17, 2018, Ms. McMinimee further informed YSD that:

> I am unable to calculate when I will exhaust my accrued leave and thus begin accessing FMLA leave consistent with the District's requirement. I have asked multiple time that the District to please confirm what work calendar date (using the work calendar applicable to the Management Team/Superintendent's Group) will be my last day of having accrued leave available if March 26, 2018 is recorded as my first use of leave and then what work calendar date the District projects that I will exhaust FMLA if I am required to take the full twelve weeks of FMLA leave available to me, but those requests have gone unanswered. That is perplexing, as I have watched this same information be provided to other employees and do not understand why I am being treated differently than other employees.

80. Federal regulations required that YSD give Ms. McMinimee an FMLA Designation Notice within five business days of April 16, 2018, which, in this instance, was April 23, 2018. 29 C.F.R. §825.300(d)(1).

81. Federal regulations further required that the FMLA Designation Notice "notify the employee of the amount of leave counted against the employee's FMLA leave entitlement [and] [i]f the amount of leave needed is known at the time the employer designates the leave as FMLA-qualifying, the employer must notify the employee of the number of hours, days, or weeks that will be counted against

the employee's FMLA leave entitlement in the designation notice." 29 C.F.R. § 825.300(d)(6).

82. On April 17, 2018, YSD informed Ms. McMinimee of her sick leave, vacation, and personal leave balances that existed as of March 27, 2018, but YSD did not, as required by the FMLA, tell Ms. McMinimee as to whether the sick leave, vacation leave, and personal leave balances would be counted against Ms. McMinimee's 12-week FMLA entitlement. This is the District's seventh violation of the FMLA.

83. As of the date of this complaint the District has yet to tell Ms. McMinimee when her FMLA will begin and when it will end. This, in turn, has caused (and continues to cause) Ms. McMinimee uncertainty as to when the leave will begin and end which, in turn, has caused Ms. McMinimee damages in an amount to be proven at trial.

84. On April 17, 2018, YSD informed Ms. McMinimee that she would be on approved leave until July 25, 2018, and that the YSD would continue to provide health care insurance to her through October of 2018. Despite this, through counsel, the YSD continued to threaten to take action to terminate Ms. McMinimee, even thought it was unable to provide Ms. McMinimee with any records to allow her to defend herself.

85. Even though Ms. McMinimee objected to the YSD forcing her to choose between her health and defending herself, particularly when the YSD was denying her the tools necessary to defend herself, she offered dates to the YSD where she was available to attend a Loudermill meeting in May of 2018. The YSD never held such a meeting.

86. On June 8, 2018, the YSD provided Ms. McMinimee a "PRR Suspension Notification," stating that it was "suspending all outstanding response deadlines and postponing our production of responsive records." Ms. McMinimee asked the YSD to provide the legal basis for suspending her requests and no such basis was provided.

87. The YSD also asked Ms. McMinimee to prioritize her PRA requests. On July 9, 2018, the YSD advised Ms. McMinimee that it would be producing the documents that she identified as her top priority last, and that she would not receive the same any sooner than October 31, 2018, over six months after she requested them.

88. Ms. McMinimee included requests for text messages in her PRA requests, as she knew certain YSD administrators conducted District business by text. To date, the YSD has only responded to one of Ms. McMinimee's PRA requests, and has failed to provide affidavits consistent with *Nissen v. Pierce County* to address why no text messages were produced.

89. The delayed response by the YSD is willful and without justification despite circumstances making time of the essence, here Ms. McMinimee's need to obtain information that the YSD was required to provide her under the FMLA (but had withheld) and the documents necessary to defend herself against the allegations made against her.

90. The YSD has not engaged in to strict compliance with all the PRA procedural requirements and exceptions, including not timely providing Ms. McMinimee with initial five-day notices, improperly withholding documents, and "suspending" her requests.

91. The YSD has not provided proper training and supervision to the community relations staff member who is the PRA Officer.

92. The YSD has offered no explanation for its noncompliance with the PRA.

93. The YSD's noncompliance has been negligent, reckless, wanton, bad faith, and/or intentional.

94. Claiming that the YSD could "suspend" requests reflects agency dishonesty.

95. The records Ms. McMinimee sought are of great public importance.

96. Ms. McMinimee has suffered actual foreseeable personal economic loss by failing to obtain records necessary for her access of FMLA and to defend herself prior to her summary termination.

97. Ms. McMinimee is considered to be a certificated administrator under Washington Administrative Code 392-121-200(2). The YSD has further explicitly afforded members of the Superintendent's Group "the rights, notices, and hearings provided by RCW 28A.405.310 as if the Employee were Certificated" by contract.

98. RCW 28A.405.310 sets forth, in part, a right to a hearing for "[a]ny employee receiving a notice of probable cause for discharge or adverse effect in contract status pursuant to RCW 28A.405.300."

99. RCW 28A.405.300 states in part:

> In the event it is determined that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his or her contract status, such employee shall be notified in writing of that decision, which notification shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW 28A.405.310 to determine whether or not there is sufficient cause or

> causes for his or her discharge or other adverse action against his or her contract status. In the event any such notice or opportunity for hearing is not timely given, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his or her contract status for the causes stated in the original notice for the duration of his or her contract.

100. RCW 28A.405.210 states in part:

> In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination…which notification shall specify the cause or causes for nonrenewal of contract.

101. Ms. McMinimee never received a notice of probable cause proposing either her discharge or that her contract was to be non-renewed, let alone one that met the procedural requirements set forth in either RCW 28A.405.300 or RCW 28A.405.210.

102. Despite Ms. McMinimee being advised that she would be on paid accrued leave through July 25, 2018 and would be provided insurance by the YSD until October of 2018, and despite her not being afforded an opportunity to defend herself at a Loudermill hearing, and despite her not being afforded the rights owed to her as a Certificated administrator, the YSD informed Ms. McMinimee via email from its counsel to hers that she would be terminated effective June 30, 2018.

103. Ms. McMinimee has yet to receive all of the compensation owed to her by the YSD.

IV. CAUSES OF ACTION

(CAUSE OF ACTION NO. 1 & 2 – VIOLATION OF 29 U.S.C. § 2615(A)(1)-(2) – FAMILY MEDICAL LEAVE ACT – INTERFERENCE & DISCRIMINATION)

104. Plaintiff re-alleges the above paragraphs.

105. In order to prosecute a FMLA interference claim the employee must show that she (1) was eligible for the FMLA's protections, (2) the employer was covered by the FMLA, (3) the employee was entitled to leave under the FMLA, (4) the employee provided sufficient notice of her intent to take leave, and (5) the employer denied her FMLA benefits to which she was entitled.

106. Ms. McMinimee worked for YSD for over 1,250 hours before the start of her FMLA leave.

107. The YSD employed Ms. McMinimee 12 months before the beginning of her FMLA leave.

108. Ms. McMinimee was entitled to leave under the FMLA given her serious health condition as shown by, *inter alia*, the "Certification of Health Care Provider for Employee's Serious Health Condition" (and accompanying physician letter) that Ms. McMinimee gave Defendants on or about April 17, 2018.

109. Ms. McMinimee provided the YSD notice of her intent to take FMLA leave on March 15, 2018 and March 26, 2018.

110. Defendants interfered with Ms. McMinimee's FMLA rights by violating the FMLA on at least seven separate occasions as set forth above. Defendants have further interfered with Ms. McMinimee's FMLA rights by failing to inform her as to when her FMLA leave will begin and when it will end.

111. Defendants' failure to follow the FMLA has forced Ms. McMinimee to file this lawsuit in order to have the Court exercise its equitable powers, as allowed under 29 C.F.R. § 325.300(e), to compel Defendants to inform Ms. McMinimee as to when her FMLA leave will begin and end.

112. Defendants' failure to follow the FMLA's notice provisions has caused her uncertainty as to whether or not she is on FMLA which, in turn, has cost Ms. McMinimee between $600 - $700/day in use of her own accrued leave.

113. Defendants have further interfered with Ms. McMinimee's FMLA rights by, without any basis, designating Ms. McMinimee as a "key employee" even though YSD has no basis to conclude that, as of March 2018, the YSD would suffer "substantial and grievous economic injury" if required to restore Ms. McMinimee to her job upon the conclusion of her FMLA leave. As such, Ms. McMinimee seeks a declaration that she is not a "key employee" for the purposes of the FMLA.

114. Ms. McMinimee also seeks a declaration from the Court that YSD violated the FMLA for the seven reasons listed in the statement of facts section of this complaint.

115. Ms. McMinimee further seeks a declaration that she be allowed to access and utilize her own leave to the same extent the YSD allows its other employees to do the same under the FMLA.

116. In order to prosecute a FMLA discrimination claim the employee must show (1) she availed herself of a protected right under the FMLA; (2) she suffered an adverse employment decision; and (3) there is a causal connection between the two actions.

117. Regarding point (1), Ms. McMinimee availed herself to her right to request FMLA leave on March 15, 2018 and March 26, 2018.

118. Regarding point (2), Defendants subjected Ms. McMinimee to the following adverse employment decisions (a) by (on April 12, 2018) threatening Ms. McMinimee with a *Loudermill* termination hearing (which was scheduled for April 17, 2018) even though (as of April 3, 2018) the Defendants acknowledged that Ms. McMinimee was FMLA eligible and (b) by (on March 28, 2018) depriving Ms. McMinimee of the below-referenced contractually mandated pay increases (more on that below) while allowing Ms. McMinimee's similarly-situated co-workers to receive those benefits on March 30, 2018.

119. Defendants' acts have caused Plaintiff damages in an amount to be proven at trial.

(CAUSE OF ACTION NO. 3 – VIOLATION OF WASHINGTON'S WAGE REBATE ACT –RCW 49.52.050)

120. An employee prosecuting a RCW 49.52.050(2) Wage Rebate Act (WRA) claim must show that (a) the employer (or employer's agent) (b) willfully and intentionally deprived the employee of (c) "any part of his or her wages" and/or paid the "employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract."

121. On March 13, 2017, Ms. McMinimee and Mr. Irion (on behalf of the YSD) entered into a Letter of Intent for her hiring as the Associate Superintendent for Human Resources.

122. Several days after Ms. McMinimee's hiring, Mr. Irion contacted Ms. McMinimee by telephone and told her that he did not want to upset Associate Superintendent Scott Izutsu for "political reasons" and it would be better if Ms. McMinimee were called "Assistant Superintendent for Human Resources."

123. Ms. McMinimee believed that this "Associate-to-Assistant" job title change was a change that was being made only for appearance sake and would have no other impact on her compensation. Indeed, Ms. McMinimee was never asked to

sign a revised Letter of Intent reflecting that this would be a contractual change, nor was she ever issued a contract that identified her as an Assistant Superintendent.

124. Ms. McMinimee was a member of the YSD "Superintendent Group" meaning, for the purpose of this claim, that she was entitled to retroactive pay increases for the portion of the 2016-2017 work year that she was employed by the YSD and all of the 2017-2018 work year to date.

125. The "Superintendent Group" includes, Ms. McMinimee, Ms. Mahre, Associate Superintendent Scott Izutsu, and Assistant Superintendent Alicia Jacob.

126. Mr. Irion advised Ms. McMinimee at her hiring that he was planning to seek a retroactive pay raise for the Superintendent's Group for the 2016-2017 school year, as well as a pay raise for the Superintendent's Group for the 2017-2018 school year.

127. On June 30, 2017, Mr. Irion made a request that the School Board approve the retroactive pay raise for the Superintendent's Group for the 2016-2017 school year, as well as a pay raise for the Superintendent's Group for the 2017-2018 school year.

128. During the months of July, August, and September 2017, Mr. Irion advised Ms. McMinimee individually and the Superintendent's Group collectively that the retroactive pay raise for the Superintendent's Group for the 2016-2017 school year, as well as a pay raise for the Superintendent's Group for the 2017-2018

school year, would be forthcoming but would be delayed until later in the school year because of certain appearance concerns voiced by the School Board. Mr. Irion also shared that the members of the Superintendents Group would get their individual employment contracts for the year when the raises were approved.

129. On March 28, 2018, YSD employee Jennifer Baird (Mr. Irion's Executive Assistant) informed the YSD's agent, Michael Rorick:

From: Baird, Jennifer
Sent: Wednesday, March 28, 2018 11:04 AM
To: 'Michael Rorick'
Subject: S.M. pay info

Mike,

Please find attached pay information for Shannon McMinimee. The other superintendents will have their raises and retro pay on the March 30 check. Shannon's is being held. Thank you.

Jennifer L. Baird
Administrative Assistant to the Superintendent
Central Services Building Principal
Yakima School District – Central Services
104 N. Fourth Avenue
Yakima, WA 98902
Phone 509.573.7001
Fax 509.573.7181

130. The "Shannon" referenced in the March 28, 2018, email refers to Shannon McMinimee.

131. On April 4, 2018, Ms. McMinimee informed YSD employees Kelli York and Monette Dennis:

> To the extent the District withholds (or has already withheld) payment of the retroactive pay increases to me, the District is wrongfully withholding wages in violation of Washington law, incurring civil liability for my attorney's fees and costs, as well as double damages. The District is also risking individual criminal and civil liability for Dr. Irion, the members of the School Board, and any other employee who has participated in a decision to intentionally withhold wages from

> [me]. *See* RCW 49.52.050 and RCW 49.52.070. Please consider the District on notice with respect to this issue should the retroactive pay increases be unlawfully withheld from me.

132. No employee or agent of the Defendants substantively responded to the above-referenced allegation in Ms. McMinimee's April 4, 2018, email.

133. Although on notice that its failure to pay Ms. McMinimee her contractually allowed pay increase, YSD did not provide Ms. McMinimee all of her pay increase yet paid the other members of the Superintendent's Group their retroactive pay increases.

134. Ms. McMinimee filed this action on May 10, 2018, which in turn, accused Defendants of violating the Wage Rebate Act.

135. On or about June 15, 2018, the YSD, through its attorney, issued a $3,228.12 check for "retro pay for April 2017-May 2018" yet that amount does not fully compensate Ms. McMinimee for Defendants' violations of the Wage Rebate Act as it, *inter alia*, does not contain double damages, interest, or attorneys' fees.

136. The Defendants' acts and omissions have caused Ms. McMinimee to be damaged in an amount to be proven at trial.

137. Given Defendants' willful and intentional withholding of Ms. McMinimee's wages Ms. McMinimee is entitled to double damages, attorneys' fees, and prejudgment interest.

(CAUSE OF ACTION NO. 4 – EQUAL PAY ACT - RETALIATION)

138. In order to state a claim for retaliation under the Equal Pay Act a plaintiff must establish (1) engagement in protected activity, (2) a materially adverse action which would dissuade a reasonable worker from making or supporting a charge of discrimination, and (3) causality.

139. Ms. McMinimee engaged in protected activity in August and September of 2017 by opposing the Jack Factors and then by making modifications to the Jack Factors.

140. Defendants subjected Ms. McMinimee to an adverse employment action by, *inter alia*, placing her on administrative leave to buy time in which Defendants could come up with a reason to fire Ms. McMinimee. By placing Ms. McMinimee on administrative leave (and barring her from her District office as well her ability to access any electronic files and her saved emails), the District barred her from having access to documents and records that she would need to defend herself against Defendants' pretextual allegations.

141. The proximity in time between Ms. McMinimee's oppositional activity and the adverse action, coupled with Mr. Irion's treatment of Ms. McMinimee during the August 2017 meeting and October 30, 2017, interaction is sufficient to establish causation.

142. Defendants' actions have damaged Ms. McMinimee in an amount to be proven at trial.

(CAUSE OF ACTION NO. 5 – VIOLATION OF EQUAL PAY ACT)

143. To prevail on an Equal Pay Act claim a plaintiff must show that her employer has paid male and female employees different wages for substantially equal work.

144. Defendants paid Ms. McMinimee a pro-rated salary based on the 2016-2017 school year annual salary of $127,658.00 as an Assistant Superintendent, Step 6.

145. Defendants paid Mr. Izutsu a base salary of $130,286 for the 2016-2017 school year as an Associate Superintendent, Step 6, plus stipends and other forms of compensation. Mr. Izutsu has received a retroactive pay increase for the 2016-2017 school year, whereas that was withheld from Ms. McMinimee.

146. The above-referenced pay disparities also applied (and apply) to the 2017-2018 school year. Additionally, and as set forth above, Mr. Izutsu has received a pay increase for the 2017-2018 school year, whereas the same was withheld from Ms. McMinimee.

147. Ms. McMinimee and Mr. Izutsu conducted substantially equal work as both individuals (a) reported to the District's Superintendent, (b) worked as part of the Superintendent Group throughout the calendar year, (c) were subject to the

terms and condition of the District's Management Team Handbook, (d) were subject to the same provisions regarding benefits as set out in the applicable Collective Bargaining Agreement, (e) maintained offices at the District's Central Services building, (f) led various bargaining teams, (g) ostensibly worked similar hours, (h) played key roles in the District's budgeting and staffing, (i) were authorized to sign warrants and contracts the District's behalf, and (j) were required to attend the same Board Meetings, Management Team Meetings, and Cabinet Meetings.

148. The District did not utilize (i) a seniority system; (ii) a merit system; or (iii) a system which measured earnings by quantity or quality of production in establishing the pay rates of Ms. McMinimee and Mr. Izutsu.

149. Nor did the District utilize a differential based on any other factor other than sex as Ms. McMinimee and Mr. Izutsu have similar licensing (both are licensed attorneys), education, and administrative experience.

150. In fact, although Ms McMinimee is not required to prove discriminatory intent to prevail on her EPA claim, evidence of Defendants' deceptive (and discriminatory) intent exists given the statement that Mr. Irion made to Ms. McMinimee shortly after her March 13, 2017, hire date when Mr. Irion told Ms. McMinimee that he would be changing her job title from Associate Superintendent to Assistant Superintendent for "political reasons" associated with

not offending Mr. Izutsu. In making that statement, Mr. Irion hid from Ms. McMinimee that he was relegating her to a lower pay scale.

151. Defendants' actions toward Ms. McMinimee were knowing and willful and caused Ms. McMinimee damages in an amount to be proven at trial.

(CAUSE OF ACTION NO. 6 – VIOLATION OF RCW 49.60.210 – RETALIATION)

152. The Washington Law Against Discrimination, RCW 49.60.210, makes it illegal for an employer to discriminate against an employee who opposes, *inter alia,* workplace race discrimination, gender discrimination, religious discrimination, disability discrimination, and age discrimination.

153. Ms. McMinimee opposed Defendants' race, gender, religious, disability, and age discrimination as set out in the above-referenced paragraphs of this complaint.

154. The Defendants retaliated against Ms. McMinimee by placing her on administrative leave and then terminating her employment.

155. The Defendants' actions have caused Ms. McMinimee damages in an amount to be proven at trial.

(CAUSE OF ACTION NO. 7 – VIOLATION OF 42 U.S.C. § 1983 – 1ST AMENDMENT RETALIATION)

156. Under 42 U.S.C. § 1983, a public employee may state cause of action for discharge or other discipline resulting from the exercise of rights guaranteed under the First Amendment.

157. A public employee who alleges retaliatory discharge from government employment must show: (1) the conduct that triggered the discharge was protected under the First Amendment, and (2) the protected conduct was a substantial or motivating factor in the adverse employment decision.

158. Where the alleged retaliation is based on expressive conduct constituting speech, a court must first determine whether the speech can be characterized as addressing a matter of public concern.

159. Matters of public concern include, without limitation, an employee's speech (and petitioning) activities that seek to improve a school's means by which students are protected from sexual assault and sexual harassment and how students with disabilities are served.

160. Ms. McMiminee engaged in protected speech, which is a matter of public concern regarding the events of sexual assault/harassment students were facing within YSD, the YSD's inadequate compliance with Title IX, and matters of compliance with federal laws associated with serving students with disabilities.

161. At no time did Ms. McMinimee's speech regarding Title IX and serving students with disabilities impair Ms. McMimimee's superiors' ability to

control or discipline Ms. McMinimee nor did it interfere with Ms. McMinimee's job duties. In fact, per Mr. Irion (a "person" within the meaning of 42 U.S.C. § 1983) it was not within Ms. McMinimee's job duties to express any opinion whatsoever on Title IX matters.

162. Defendants' acts have caused Ms. McMinimee damages in an amount to be proven at trial.

(CAUSE OF ACTION NO. 8 – VIOLATION OF 42 U.S.C. § 1983 – 14TH AMENDMENT - DUE PROCESS)

163. "A procedural due process claim has two distinct elements: (1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections." *Roybal v. Toppenish Sch. Dist.*, 871 F.3d 927, 931 (9th Cir. 2017).

164. Ms. McMinimee has a Constitutionally protected property interest in her Assistant Superintendent position because, *inter alia*, a non-renewal of Ms McMinimee's Assistant Superintendent position must be supported by probable cause. RCW 28A.405.210 & 220.

165. Under federal law, "adequate due process" protections include oral or written charges being levied against the employee, an explanation of the employer's evidence, and an opportunity for the employee to present his or her side of the story.

166. On April 12, 2018, Defendants informed Ms. McMinimee of the evidence to be used against her, an explanation thereof, and further informed Ms. McMinimee that a hearing had been scheduled for April 17, 2018.

167. Through counsel, Ms. McMinimee reminded Defendants that she was on FMLA, and, that she had been denied documents that the Defendants believed supported the allegations against her, as well as access to documents that she believed were necessary to defend herself, and asked that the hearing be rescheduled because, *inter alia,* Ms. McMinimee's then-attorney had recently withdrawn because of illness and scheduling matters.

168. The YSD's counsel contacted then Ms. McMinimee's new counsel and offered to postpone the April 17, 2018 hearing to allow for her new counsel to be present.

169. On April 12, 2018, Defendants, through counsel, stated that the "District and is committed to providing her a full and fair opportunity to be heard in response to the allegations against her."

170. On April 25, 2018, Defendants, thorough counsel, informed Ms. McMinimee's attorney that the District "intends to reschedule" Ms. McMinimee's *Loudermill* hearing and proposed certain hearing dates.

171. On April 25, 2018 and April 26, 2018, Ms. McMinimee, through counsel, told YSD's counsel that the two dates the District proposed would not work

because of Ms. McMinimee's previously scheduled medical appointments and told Defendants that Ms. McMinimee would be available for such a hearing on May 22, 2018, or May 25, 2018 - - days on which the YSD's School Board was scheduled to meet, which the Defendants' counsel had previously identified were the days the YSD wanted to conduct a hearing

172. Defendants failed to provide Ms. McMinimee adequate due process by (a) not allowing Ms. McMinimee the opportunity to present her side of the story on May 22, 2018, (b) did not allowing Ms. McMinimee to present her side of the story on May 25, 2018, and (c) not informing Ms. McMinimee of any other date by which Ms. McMinimee could have the opportunity to tell her side of the story even though the District, through counsel, told Ms. McMinimee that it would let Ms. McMinimee know if other dates were available.

173. Instead, on June 22, 2018, Defendants, through counsel, told Ms. McMinimee's counsel "that Ms. McMinimee will not be offered future employment with the District after her year-long contract expires on June 30th, 2018. She is not entitled to take additional leave after June 30th because she will no longer be an employee of the District."

174. Defendants have also failed to provide Ms. McMinimee the statutory notice and due process that she is owed as a Certificated administrator under RCW 28A.405.300 and RCW 28A.405.210, including no adverse change in her contract

status pending appeal of a proper determination of probable cause for termination and nonrenewal.

175. The Defendants' denial of Ms. McMinimee's due process rights have caused Ms. McMinimee damages in an amount to be proven at trial.

(CAUSE OF ACTION NO. 9 – WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY)

176. An employee states a cause of action in tort for wrongful discharge if the discharge contravenes a clear violation of public policy.

177. In assessing whether a clear mandate of public policy is violated, courts inquire as to whether the employer's conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme

178. Washington has laws that bar direct dealing (RCW 41.56.140) and bar school districts from issuing teaching contracts to those who do not hold effective teaching certificates (RCW 28A.405.210).

179. Ms. McMinimee repeatedly told Mr. Irion that the District (and Irion) were violating both policies to which Defendants retaliated by discharging Ms. McMinimee for enforcing said public policies.

180. Defendants' termination of Ms. McMinimee's employment jeopardized the above-referenced public policies for which Defendants lack any justification.

181. Defendants' actions have caused Ms. McMinimee damages in an amount to be proven at trial.

(CAUSE OF ACTION NO. 10 – VIOLATION OF WASHINGTON'S PUBLIC RECORD ACT)

182. Washington's Public Record Act (PRA) "provides a cause of action for two types of violations: (1) when an agency wrongfully denies an opportunity to inspect or copy a public record, or (2) when an agency has not made a reasonable estimate of the time required to respond to the request." *Andrews v. Washington State Patrol*, 183 Wn. App. 644, 651 (2014).

183. Here the District violated the PRA by wrongfully denying Ms. McMinimee the opportunity to inspect or copy the public records that she requested when it, on June 8, 2018, told Ms. McMinimee that it was "suspending" its responses to Ms. McMinimee's public record requests.

184. The PRA contains no authority that allows an agency to "suspend" a person's public record request.

185. The YSD also violated the PRA when it failed to submit reasonably detailed, nonconclusory affidavits attesting to the nature and extent of their search for text messages responsive to Ms. McMinimee's requests on the cell phones of its employees, despite her repeatedly advising the YSD of the need to do the same. *Nissen v. Pierce County*, 183 Wn.2d 863 (2015).

186. The YSD further violated the PRA by wrongfully withholding certain documents responsive to Ms. McMinimee's requests, including her Letter of Intent and documents that were referenced as being attached to other contracts produced, requiring Ms. McMinimee to repeatedly seek production of documents that were responsive to her requests. The YSD's actions of asking Ms. McMinimee to prioritize her requests and then delaying the production of the documents she identified as being her highest priority to receive by six months reflects the YSD's failure to act in good faith in responding to Ms. McMinimee's requests.

187. As of July 14, 2018, many of the responsive documents that the YSD said it cannot produce until October 31, 2018, continue to sit on Ms. McMinimee's desk, where she had left them on November 6, 2017.

188. The YSDs violations of the PRA entitle Ms. McMinimee to damages that are allowed under the PRA, including per day per document penalties as well as reasonable attorney's fees and costs.

189. The penalty amount necessary to deter future misconduct by the agency must consider the large size of the YSD and the facts of this case.

(CAUSE OF ACTION NO. 11 – DEFAMATION)

190. Defendants have engaged in defamation by knowingly, or with reckless disregard for the truth, broadcasting and publishing, to third parties, false and unprivileged non-opinion statements about Ms. McMinimee. Notably, the

District allowed such statements to be made in violation of its own Operational Procedure.

191. These false and unprivileged non-opinion statements about Ms. McMinimee were made at School Board meetings that Defendants broadcast online and caused to be broadcast on television. These statements were also recorded in meeting minutes that the Defendants published online.

192. The Defendants actions of broadcasting and publishing of false and unprivileged non-opinion statements about Ms. McMinimee in violation of District Operational Procedure have caused Ms. McMinimee reputational and other damages.

(CAUSE OF ACTION NO. 12 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

193. Defendants engaged in acts with the intent to cause emotional distress to Ms. McMinimee.

194. Without limitation Defendants knew, *inter alia*, their (a) no-notice placement of Ms. McMimimee on administrative leave, (b) scheduling (and then not scheduling) her *Loudermill* hearing while she was on sick leave, (c) subjecting Ms. McMinimee to shifting reasons justifying her termination, and (d) the subsequent termination of her employment would not only destroy Ms. McMinimee's career but cause Ms. McMinimee emotional distress.

195. Defendants' actions have caused Ms. McMinimee damages in an amount to be proven at trial.

(CAUSE OF ACTION NO. 13 – BREACH OF CONTRACT)

196. On or about March 13, 2017, Defendants presented Ms. McMinimee with the above-referenced Letter of Intent.

197. That Letter of Intent provided that, should Ms. McMinimee accept it, then it would be subject to the Collective Bargaining Agreement between the District and its Management Team.

198. The CBA required the District to pay Ms. McMinimee's professional dues, professional development, and travel allowances and further provided, in relevant part:

2.13 DISCIPLINE WITH CAUSE

No YPA/YDA member shall be disciplined without just and sufficient cause. Such discipline shall be in private. In addition, the district agrees to follow, when appropriate, a policy of progressive discipline which may begin with a verbal warning, progress to a written reprimand, then to suspension with loss of pay and, when required by the circumstances, include discharge or non-renewal. Some charges of a serious nature may require omitting some of these steps. Any disciplinary action taken against a YPA/YDA member shall be appropriate to the behavior which precipitates said action.

A YPA/YDA member shall be entitled to have present at least one (1) representative of their choice from the YPA/YDA during any disciplinary action which would result in an adverse effect on the employee's employment status.

Any complaint made against a YPA/YDA member by any parent, student or other person that is not called to the attention of the YPA/YDA member within five (5) working days may not be used as the basis for any disciplinary action against the YPA/YDA member.

Any YPA/YDA member who is terminated shall be given all accrued benefits to the date of termination.

2.15 EARLY TERMINATION OF CONTRACT—DISTRICT INITIATED

It is understood that the district agrees to follow the policy of progressive discipline which includes verbal warning, reprimand, suspension with pay, and nonrenewal or discharge as a final and last resort. Some charges of a serious nature may require omitting some of these steps and may result in reassignment or termination. (See Section on Provisional Employee/Probation)

199. The Letter of Intent also conditioned Ms. McMinimee's employment on receiving confidential references, verifying work history, and conducting a criminal background check.

200. Ms. McMinimee provided the names of three references, submitted five letters of recommendation, and provided contact information for every employer that she had worked for since her graduation from law school in 2003 as part of her employment application.

201. Upon information and belief, the Defendants conducted a thorough investigation of Ms. McMinimee's background before hiring her or had all materials necessary and sufficient opportunity for them to do the same.

202. Upon information and belief, Defendants telephonically interviewed Ms. McMinimee's former supervisor, Dr. Art Jarvis, before hiring her.

203. Upon information and belief, Defendants considered a letter of reference that Carla Santorno, another former supervisor, wrote on Ms. McMinimee's behalf before hiring Ms. McMinimee.

204. The Defendants breached the Letter of Intent with Ms. McMinimee by unilaterally changing her title and decreasing her pay after its mutual execution by the YSD (via Mr. Irion) and Ms. McMinimee on March 13, 2017.

205. The Defendants breached its contractual employment agreements with Ms. McMinimee by failing to provide to her (a) the compensation owed to her as an Associate Superintendent (b) payment of professional dues, professional development, and professional travel expenses and (c) the progressive discipline/discipline with cause provisions set out in paragraphs 2.13 and 2.15 of the CBA by, *inter alia*, not affording Ms. McMinimee any progressive discipline before placing her on administrative leave and/or firing her.

206. The Defendants additionally breached its contractual employment agreements with Ms. McMinimee by failing to afford her "the rights, notices, and

hearings provided by RCW 28A.405.310 as if [she] were Certificated" and by failing to establish "sufficient cause as provided under RCW 28A.405.300" for her discharge.

207. The Defendants' breaches have caused Ms. McMinimee damages in an amount to be proven at trial.

V. PRAYER FOR RELIEF

Plaintiff seeks:

A. Compensation for all injury and damages suffered by Ms. McMinimee including, but not limited to, both economic and non-economic damages, in the amount to be proven at trial including back pay, front pay, pre and post judgment interest, lost benefits of employment, adverse tax consequences of any award for economic damages, liquidated damages, punitive damages, and general damages relating to emotional distress and mental anguish damages as provided by law.

B. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to 29 U.S.C. § 2617(a)(3), RCW 49.52.070, 29 U.S.C. § 216(b), and as otherwise provided by law as well as the *private attorney general* theory of recovery of reasonable attorney fees and costs in employment related cases.

C. Penalties as well as reasonable expenses and attorneys' fees consistent with RCW 42.56.550(4).

D. For the Court to use its equitable powers to declare that Defendants' actions have violated the FMLA and WRA and, to the extent necessary, order the Defendants to comply with the FMLA.

E. For such other and further relief as this Court deems just and equitable.

Respectfully submitted this 3rd day of August 2018.

/s Matthew Crotty
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that I filed the above-captioned document with the Court via the Court's CM/ECF system which will cause the attorneys who have appeared in this action to be served with this document.

Dated this 3rd day of August 2018.

/s/ Matthew Crotty
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