

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

RICHARD ROE, a minor student,
by and through his parents and next friends,
RICHARD ROE, SR., and **JANE ROE**,

Plaintiffs,

v.

No. 1:16-CV-00497

HAMILTON COUNTY DEPARTMENT OF EDUCATION,
d/b/a **HAMILTON COUNTY SCHOOLS,**
JAMES JARVIS, Individually,
JESSE NAYADLEY, Individually,
ANDRE MONTGOMERY, Individually, and
MARSHA DRAKE, Individually,

Defendants.

**ANSWER OF DEFENDANT’S JAMES JARVIS, JESSE NAYADLEY AND ANDRE
MONTGOMERY TO PLAINTIFF’S COMPLAINT**

Come the Defendants, James Jarvis, in his individual capacity only, Jesse Nayadley, in his individual capacity only, and Andre Montgomery, in his individual capacity only, by and through undersigned counsel, hereby answers as follows the Complaint filed against them in this cause:

1. Answering the allegations contained in Paragraph 1 of Plaintiff’s Complaint, these Defendants admit Plaintiffs have sought to file an Complaint to redress the alleged violation of Title IX and the alleged violation of the minor Plaintiff’s federal constitutional rights, and state law. These Defendants deny any liability to the Plaintiffs. Accordingly, the allegations contained in Paragraph 1 of Plaintiff’s Complaint are denied.

2. These Defendants are without sufficient knowledge or information to admit or

deny the allegations contained in Paragraph 2 of Plaintiff's Complaint. Accordingly, the allegations are placed at issue.

3. The allegations contained in Paragraph 3 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted and none is given.

4. Answering the allegations contained in Paragraph 4 of Plaintiff's Complaint, these Defendants submit Defendants Jesse Nayadley and James Jarvis are residents of Hamilton County, Tennessee. The remaining allegations contained in Paragraph 4 of Plaintiff's Complaint are denied.

5. Answering the allegations contained in Paragraph 5 of Plaintiff's Complaint, these Defendants admit that Mr. Montgomery was the head coach of the Ooltewah High School boys basketball team at the time relevant to the incident alleged in Plaintiff's Complaint. It is admitted that Mr. Montgomery was an employee of Hamilton County Board of Education. All allegations inconsistent with the foregoing are denied.

6. Answering the allegations contained in contained in Paragraph 6 of Plaintiff's Complaint, it is admitted that Mr. Nayadley was the Athletic Director and Assistant Principal of Ooltewah High School at the time relevant to the incident alleged in Plaintiff's Complaint. It is admitted that Mr. Nayadley was an employee of the Hamilton County Board of Education. All allegations inconsistent with the foregoing are denied.

7. Answering the allegations contained in contained in Paragraph 7 of Plaintiff's Complaint, it is admitted that Mr. Jarvis was the Principal of Ooltewah High School at the time relevant to the incident alleged in Plaintiff's Complaint. It is admitted that Mr. Jarvis was an employee of the Hamilton County Board of Education. All allegations inconsistent

with the foregoing are denied.

8. The allegations contained in contained in Paragraph 8 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted and none is given.

9. Answering the allegations contained in contained in Paragraph 9 of Plaintiff's Complaint, jurisdiction over Plaintiff's federal claims are not disputed. Yet, these Defendants deny any liability to the Plaintiffs under either federal or state law. It is admitted that this Court has discretionary supplemental jurisdiction over certain state law claims pursuant to 28 U.S.C. §1367. These Defendants respectfully request that the Court exercise its discretion and refuse to exercise supplemental jurisdiction over Plaintiff's state law claims in accordance with 28 U.S.C. §1367. All allegations inconsistent with the foregoing are denied.

10. Answering the allegations contained in Paragraph 10 of Plaintiff's Complaint, Venue is not disputed. All allegations inconsistent with the foregoing are denied.

11. The allegations contained in contained in Paragraph 11 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted and none is given. To the extent an answer is required, these Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 11 of Plaintiff's Complaint. Accordingly, the allegations are placed at issue.

12. The allegations contained in contained in Paragraph 12 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted and none is given. To the extent an answer is required, these Defendants aver that the

allegations contained in Paragraph 12 of Plaintiff's Complaint are not statements of fact but rather generic opinions of law articulated by counsel for Plaintiffs and therefore no answer is warranted and none is given. These Defendants deny any liability to the Plaintiffs.

13. The allegations contained in contained in Paragraph 13 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted and none is given. Yet, these Defendants aver that Paragraph 13 of Plaintiff's Complaint does not state allegations of fact but rather generic opinions of law articulated by counsel for Plaintiffs and therefore no answer is warranted and none is given. To the extent an answer is warranted, these Defendants deny Plaintiff's attempt to imply wrongdoing and further deny liability to the Plaintiffs.

14. Answering the allegations contained in contained in Paragraph 14 of Plaintiff's Complaint, it is admitted that the 2015-2016 Ooltewah varsity boys' basketball was composed, in part, of four freshmen at the time of the incident which is the subject of Plaintiff's Complaint. All allegations inconsistent with the foregoing, including footnote, are denied

15. The allegations contained in Paragraph 15 of Plaintiff's Complaint are denied.

16. The allegations contained in Paragraph 16 of Plaintiff's Complaint are denied.

17. The allegations contained in Paragraph 17 of Plaintiff's Complaint are denied.

18. The allegations contained in Paragraph 18 of Plaintiff's Complaint are denied

19. The allegations contained in Paragraph 19 of Plaintiff's Complaint are denied.

20. The allegations contained in Paragraph 20 of Plaintiff's Complaint are denied.

21. The allegations contained in Paragraph 21 of Plaintiff's Complaint are denied.

22. Answering the allegations contained in contained in Paragraph 22 of Plaintiff's Complaint, these Defendants deny any systematic hazing and abuse on the Ooltewah boys' basketball team. The remaining allegations contained in Paragraph 22 of Plaintiff's Complaint do not relate to these Defendants and therefore no answer is warranted. To the extent an answer is warranted, these Defendants lack sufficient knowledge or information to either admit or deny any allegation by Plaintiffs related to the girls basketball team and accordingly the allegations are denied. These Defendants deny the implications of wrongdoing by Plaintiffs and deny liability to the Plaintiffs.

23. The allegations contained in Paragraph 23 of Plaintiff's Complaint are denied.

24. Answering the allegations contained in Paragraph 24 of Plaintiff's Complaint, it is admitted that the cabin for the Smokey Mountains Christmas Classic basketball tournament in Gatlinburg, Tennessee was rented with Board of Education and/or Ooltewah High School and/or basketball booster club funds. Any and all advertisements of "J.J.'s Hideaway" speak for themselves and do not require an answer from these Defendants. To the extent an answer is warranted, these Defendants place the same at issue.

25. Answering the allegations contained in contained in Paragraph 25 of Plaintiff's Complaint, it is admitted that the first game of the tournament was on December 21, 2015. It is admitted that Coach Montgomery, Assistant Coach Karl Williams, and approximately twelve - fourteen basketball players attended. It is admitted that Coach Montgomery's wife was also in attendance. It is admitted that Mr. Nayadley stayed in a separate location. It is admitted that the team travelled to Gatlinburg, Tennessee on Saturday December 19, 2015. All allegations inconsistent with the foregoing are denied.

26. The allegations contained in contained in Paragraph 26 of Plaintiff's Complaint are admitted, upon information and belief, with the exception that the number of basketball players was approximately twelve – fourteen.

27. Answering the allegations contained in Paragraph 27 of Plaintiff's Complaint, it is admitted that groceries were purchased upon the team's arrival. The remaining allegations contained in Paragraph 27 of Plaintiff's Complaint are denied.

28. These Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 28 of Plaintiff's Complaint. Accordingly, the allegations are denied. These Defendants deny any liability to the Plaintiffs. These Defendants deny being placed on any such notice or being notified or aware or becoming aware concerning any of the acts alleged in Paragraph 28 of Plaintiff's Complaint, if they ever occurred. Accordingly, strict proof is required.

29. The allegations contained in Paragraph 29 of Plaintiff's Complaint are admitted.

30. These Defendants are without sufficient knowledge or information to expressly admit or deny the allegations contained in Paragraph 30 of Plaintiff's Complaint. These Defendants deny being placed on notice or being notified or aware or becoming aware of any such incident, if it ever occurred, and strict proof is required thereof.

31. These Defendants are without sufficient knowledge or information to expressly admit or deny the allegations contained in Paragraph 31 of Plaintiff's Complaint. These Defendants deny being placed on notice or being notified or aware or becoming aware of any such incident, if it ever occurred, and strict proof is required thereof.

32. These Defendants are without sufficient knowledge or information to expressly admit or deny the allegations contained in Paragraph 32 of Plaintiff's Complaint. These Defendants deny being placed on notice or being notified or aware or becoming aware of any such incident, if it ever occurred, and strict proof is required thereof.

33. The allegations contained in contained in Paragraph 33 of Plaintiff's Complaint are denied.

34. Answering the allegations contained in Paragraph 34 of Plaintiff's Complaint, the same does not constitute factual allegations but rather commentary by counsel for Plaintiff. Accordingly, no answer is warranted. Specifically, the comparison to female athletes is nonsensical, and is an attempt utilized by Plaintiffs to imply wrongdoing by these Defendants, which is denied. To the extent an answer is warranted, the allegations are denied. Moreover, these Defendants specifically deny any rackings occurred as described in the Complaint or in the chronology as described in the Complaint.

35. The allegations contained in contained in Paragraph 35 of Plaintiff's Complaint are denied.

36. The allegations contained in contained in Paragraph 36 of Plaintiff's Complaint are admitted.

37. Answering the allegations contained in contained in Paragraph 37 of Plaintiff's Complaint, it is admitted that an individual was attacked by three other individuals with one utilizing a pool stick and the same is the subject of Doe v. Hamilton County Board of Education, et al., No. 1:16-cv-373. These Defendants submit that three individuals in the incident partially described in Paragraph 37 were immediately suspended from the

team and sent back to Chattanooga, Tennessee, were prosecuted and convicted in the juvenile court for Sevier County, Tennessee. All allegations inconsistent with the foregoing are denied.

38. Answering the allegations contained in contained in Paragraph 38 of Plaintiff's Complaint, it is admitted that an individual on the Ooltewah High School boys basketball team was attacked by three other individuals with one utilizing a pool stick and the same is the subject of Doe v. Hamilton County Board of Education, et al., No. 1:16-cv-373, and resulted in three individuals being immediately suspended from the team and sent back to Chattanooga, Tennessee, were prosecuted and convicted in the juvenile court for Sevier County, Tennessee. These Defendants are without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 38 of Plaintiff's Complaint. Accordingly, the allegations are denied.

39. The allegations contained in contained in Paragraph 39 of Plaintiff's Complaint are denied.

40. Answering the allegations contained in Paragraph 40 of Plaintiff's Complaint, it is admitted that Coaches Montgomery and Williams took the individual whose case is the subject matter of Doe v. Hamilton County Board of Education, et al., No. 1:16-cv-373, immediately to the hospital. At that time, these Defendants deny any knowledge concerning any incident with a pool stick concerning the individual taken to LeConte Medical Center or anyone else. It is admitted that the City of Gatlinburg, Tennessee Police Department was immediately notified and Detective Rodney Burns was assigned to the case. All allegations inconsistent with the foregoing are denied.

41. These Defendants without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 41 of Plaintiff's Complaint. Accordingly, the allegations are placed at issue, but it is averred Paragraph 41 of Plaintiff's Complaint, and Plaintiffs implications arising there from, erroneously state the law.

42. Answering the allegations contained in contained in Paragraph 42 of Plaintiff's Complaint, it is admitted that Coach Montgomery, the player, and Detective Burns returned to J.J.'s Hideaway. It is admitted that the player alerted Coach Montgomery that he continued to experience pain and he was immediately transported back to LeConte Medical Center. It is admitted that further testing by Leconte Medical Center demonstrated a need for surgery. Accordingly, the player was transported by ambulance, together with Coach Montgomery, to University of Tennessee Medical Center All allegations inconsistent with the foregoing are denied.

43. These Defendants without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 43 of Plaintiff's Complaint. Accordingly, the allegations are placed at issue.

44. Answering the allegations contained in contained in Paragraph 44 of Plaintiff's Complaint, it is admitted that Mr. Jarvis was alerted to the incident the following morning. The remaining allegations contained in Paragraph 44 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. Yet, the allegations are placed at issue.

45. Answering the allegations contained in contained in Paragraph 45 of Plaintiff's Complaint, it is admitted only that the varsity boys basketball team played one

game after the incident which was the subject matter of Doe v. Hamilton County Board of Education, et al., No. 1:16-cv-373, in the tournament in Gatlinburg, Tennessee. All allegations inconsistent with the foregoing are denied.

46. Answering the allegations contained in contained in Paragraph 46 of Plaintiff's Complaint, these Defendants admit only that the varsity boys basketball team played one additional game after the incident which is the subject matter of Doe v. Hamilton County Board of Education, et al., No. 1:16-cv-373, in the tournament in Gatlinburg, Tennessee. All allegations inconsistent with the foregoing are denied.

47. The allegations contained in contained in Paragraph 47 of Plaintiff's Complaint are denied.

48. The allegations contained in contained in Paragraph 48 of Plaintiff's Complaint are denied. These Defendants deny any liability to the Plaintiffs.

49. Answering the allegations contained in contained in Paragraph 49 of Plaintiff's Complaint, these Defendants admit upon information and belief that Hamilton County Board of Education retained Courtney Bullard to prepare a report. All allegations inconsistent with the foregoing are denied.

50. Answering the allegations contained in contained in Paragraph 46 of Plaintiff's Complaint, it is admitted that Ms. Bullard's report is dated August 4, 2016 and says what it says. These Defendants aver that the allegations contained in Paragraph 50 do not contain allegations of fact, but rather cite only to a portion of a purported opinion of Ms. Bullard. Accordingly, no answer is warranted, these Defendants submit the same is of no legal significance based upon the causes of action alleged in the Complaint and places

the same at issue.

51. These Defendants deny the allegations contained in contained in Paragraph 51 of Plaintiff's Complaint.

52. Answering the allegations contained in contained in Paragraph 52 of Plaintiff's Complaint, these Defendants submit that any report prepared by District Attorney Neal Pinkston speaks for itself. Moreover, any and all allegations against Mr. Smith are not directed at these Defendants and no answer is warranted. All allegations inconsistent with the foregoing are denied. These Defendants deny any liability to the Plaintiffs.

53. These Defendants deny the allegations contained in contained in Paragraph 53 of Plaintiff's Complaint.

54. These Defendants deny the allegations contained in contained in Paragraph 54 of Plaintiff's Complaint.

55. These Defendants deny the allegations contained in contained in Paragraph 55 of Plaintiff's Complaint.

56. These Defendants deny the allegations contained in contained in Paragraph 56 of Plaintiff's Complaint.

57. The allegations contained in Paragraph 57 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. To the extent warranted, the allegations are denied.

58. The allegations contained in contained in Paragraph 58 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. To the extent warranted, the allegations are denied.

59. The allegations contained in contained in Paragraph 59 of Plaintiff's Complaint are denied.

60. The allegations contained in contained in Paragraph 60 of Plaintiff's Complaint are denied.

61. The allegations contained in contained in Paragraph 61 of Plaintiff's Complaint are denied.

62. The allegations contained in contained in Paragraph 62 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. To the extent warranted, the allegations are placed at issue and to the extent imply wrongdoing by these Defendants, are denied.

63. The allegations contained in contained in Paragraph 63 of Plaintiff's Complaint are denied.

64. The allegations contained in contained in Paragraph 64 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. Yet, these Defendants do admit that Courtney Bullard was retained to investigate and provide a report and did so. These Defendants deny that Ms. Bullard's report is either accurate in all respects as it relates to them or can subject them to liability under state or federal law. Moreover, the citation of Ms. Bullard's report does not reflect factual allegations but rather generic citations with attendant commentary by counsel for the Plaintiffs, therefore, no answer is warranted. All allegations inconsistent with the foregoing are denied.

65. Answering the allegations contained in contained in Paragraph 65 of

Plaintiff's Complaint, these Defendants believe, upon information and belief, that Ms. Bullard was retained by the Hamilton County Board of Education. All allegations inconsistent with the foregoing are denied.

66. The allegations contained in contained in Paragraph 66 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. To the extent warranted, or to the extent Paragraph 66 of Plaintiff's Complaint is intended to imply wrongdoing by these Defendants, the allegations are denied.

67. The allegations contained in contained in Paragraph 67 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. To the extent warranted or to the extent Paragraph 67 is intended to imply wrongdoing by these Defendants, the allegations are denied.

68. The allegations contained in contained in Paragraph 68 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. The allegations of Paragraph 68 seek merely to cite to a legal pleading filed by the Hamilton County Board of Education in another case, and accordingly, is totally improper to include in the instant action. To the extent warranted or to the extent Paragraph 68 is intended to imply wrongdoing by these Defendants, the allegations are denied.

69. The allegations contained in contained in Paragraph 69 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. The allegations of Paragraph 69 seek merely to cite to a legal pleading filed by the Hamilton County Board of Education in another case, and accordingly, is totally improper to include in the instant action. To the extent the allegations of Paragraph 68 are directed at

these Defendants the allegations are denied.

70. The allegations contained in contained in Paragraph 70 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. To the extent warranted or to the extent Paragraph 70 is intended to imply wrongdoing by these Defendants, the allegations are denied.

71. These Defendants incorporate their responses to the previous allegations and following causes of action as follows.

72. These Defendants incorporate their responses to the factual averments to the preceding allegations of the Complaint.

73. The allegations contained in contained in Paragraph 73 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. These Defendants have no individual liability under Title IX pursuant to established precedent. To the extent warranted or to the extent Paragraph 73 is intended to imply wrongdoing by these Defendants, the allegations are denied.

74. These Defendants incorporate by reference their responses to the foregoing factual allegations of the Complaint.

75. The allegations contained in contained in Paragraph 75 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted. These Defendants have no individual liability under Title IX pursuant to established precedent. To the extent warranted or to the extent Paragraph 75 is intended to imply wrongdoing by these Defendants, the allegations are denied.

76. The allegations contained in contained in Paragraph 76 of Plaintiff's

Complaint are not directed at these Defendants and therefore no answer is warranted. These Defendants have no individual liability under Title IX pursuant to established precedent. To the extent warranted or to the extent Paragraph 76 is intended to imply wrongdoing by these Defendants, the allegations are denied.

77. These Defendants incorporate by reference their responses to the foregoing factual averments as incorporated herein.

78. Answering the allegations contained in contained in Paragraph 78 of Plaintiff's Complaint, the same does not allege factual allegations but rather counsel's opinion as to the law and accordingly no answer is warranted. These Defendants aver that the legal precedent related to these issues speak for themselves. These Defendants deny any liability to the Plaintiffs.

79. Answering the allegations contained in contained in Paragraph 79 of Plaintiff's Complaint, it is admitted that these Defendants acted under color of law. All allegations inconsistent with the foregoing are denied.

80. The allegations contained in contained in Paragraph 80 of Plaintiff's Complaint are denied.

81. The allegations contained in contained in Paragraph 81 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted and none is given. To the extent warranted or to the extent Paragraph 81 is intended to imply wrongdoing by these Defendants, the allegations are denied.

82. The allegations contained in contained in Paragraph 82 of Plaintiff's Complaint are denied.

83. These Defendants incorporate their responses to the factual averments to the preceding allegations of the Complaint. Yet, these Defendants deny that Monell Liability can be applied to them.

84. Answering the allegations contained in contained in Paragraph 84 of Plaintiff's Complaint, these Defendants admit only acting under color of law. The remaining allegations contained in Paragraph 84 of Plaintiff's Complaint are denied.

85. The allegations contained in contained in Paragraph 85 of Plaintiff's Complaint are not directed at these Defendants and therefore no answer is warranted and none is given. To the extent warranted or to the extent Paragraph 85 is intended to imply wrongdoing by these Defendants, the allegations are denied.

86. These Defendants incorporate their responses to the factual averments to the preceding allegations of the Complaint.

87. Answering the allegations contained in contained in Paragraph 87 of Plaintiff's Complaint, these Defendants aver that the allegations contained in Paragraph 87 of Plaintiff's Complaint are not factual allegations but merely the opinions of counsel for Plaintiffs and accordingly no answer is warranted. To the extent warranted or to the extent Paragraph 87 is intended to imply wrongdoing by these Defendants, the allegations are denied.

88. The allegations contained in contained in Paragraph 88 of Plaintiff's Complaint are denied.

89. The allegations contained in contained in Paragraph 89 of Plaintiff's Complaint are admitted.

90. Anything not heretofore expressly admitted or denied are denied as if fully and completely set forth herein.

91. Defendants Montgomery, Nayadley and Jarvis are entitled to qualified immunity under state and federal law.

92. These Defendants rely upon the Doctrine of Modified Comparative Fault as a defense to or in mitigation of any alleged liability of these Defendants which may be appropriately alleged under the doctrine of negligence and/or the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101 et seq.

93. These Defendants rely upon any and all immunities and defenses which exist pursuant to the Tennessee Governmental Tort Liability Act codified at T.C.A. §29-20-101 et seq., as a complete defense or in mitigation of any alleged liability.

94. These Defendants deny any liability to the Plaintiffs.

95. These Defendants deny Plaintiffs are entitled to damages, costs, attorney fees, or any other relief in this cause.

WHEREFORE, these Defendants respectfully request that this action be dismissed, and that they be awarded their attorney fees and costs pursuant to 42 U.S.C. and § 1988.

RESPECTFULLY SUBMITTED this 10th day of February, 2017.

s/ Arthur F. Knight, III
Arthur F. Knight, III, BPR #016178
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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2017, a copy of the foregoing Notice of Appearance was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s/Arthur F. Knight, III

Arthur F. Knight, III