

Elizabeth A. Kaleva  
Elizabeth A. O’Halloran  
Kevin A. Twidwell  
Kaleva Law Offices  
1911 S. Higgins Ave.  
P.O. Box 9312  
Missoula, MT 59807-9312  
406.542.1300 (Office)  
406.721.1046 (Fax)  
eakaleva@kalevalaw.com  
bohalloran@kalevalaw.com  
ktwidwell@kalevalaw.com  
*Attorneys for Defendant*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

<p>DEIDRE LECHOWSKI-MERCADO, and OWEN MERCADO,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>SEELEY SWAN HIGH SCHOOL, and MISSOULA COUNTY PUBLIC SCHOOL DISTRICT, a department of MISSOULA COUNTY, MT</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Case No. 9:21-cv-00010-DLC</p> <p style="text-align: center;">ANSWER AND DEMAND FOR JURY TRIAL</p>
---	---

Comes now, the Defendant, Missoula County Public School District #1, by and through counsel of record and hereby answers Plaintiff’s Complaint and Demand for Jury Trial on behalf of itself and Seeley Swan High School, a “school”

located and operating within its boundaries (hereinafter collectively referred to as “the District”), as follows:

### **I. Parties**

1. In response to the allegations of Paragraphs 1 and 2 of Plaintiffs’ Complaint, the District admits.
2. In response to the allegations of Paragraph 3 of Plaintiffs’ Complaint, the District admits. The District affirmatively alleges that Seeley Swan High School is not a proper party to this case, as it is a “school,” not a District, and is not a legal entity subject to suit. The District answers on behalf of both identified entities named in the caption.
3. In response to the allegations of Paragraph 3 of Plaintiffs’ Complaint, the allegations are incomplete and incomprehensible, therefore Defendant denies.

### **II. Venue and Jurisdiction**

4. In response to the allegations of Paragraph 5 of Plaintiffs’ Complaint, the District admits.
5. In response to the allegations of Paragraph 6 of Plaintiffs’ Complaint, the District affirmatively alleges that it and the Plaintiffs reside in or are located in the district in which this claim is filed, thus personal jurisdiction lies with this Court. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 6 of Plaintiffs’ Complaint.

6. In response to the allegations of Paragraph 7 of Plaintiffs' Complaint, the District admits that this Court has subject matter jurisdiction over Counts 8 and 10 alleged in Plaintiffs' Complaint as they present questions of federal law. The District admits that supplemental jurisdiction lies with this Court pursuant to 28 U.S.C.A. § 1367 with regard to the remaining counts. The District reserves the right to request certification of unique questions of state law in the event they arise.

7. In response to the allegations of Paragraph 8 of Plaintiffs' Complaint, the District denies.

### **III. Summary of the Lawsuit**

8. In response to the allegations of Paragraphs 9 - 12 of Plaintiffs' Complaint, the District denies.

9. In response to the allegations of Paragraph 13 of Plaintiffs' Complaint, the District admits that § 1983 affords a remedy to individuals whose rights under the United States Constitution have been infringed under color of state law. The District affirmatively alleges that 42 U.S.C. § 1983 speaks for itself. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 13, of Plaintiffs' Complaint.

10. In response to the allegations of Paragraph 14 of Plaintiffs' Complaint, the District admits.

11. In response to the allegations of Paragraphs 15 through 17 of Plaintiffs' Complaint, the District denies.

#### **IV. Background Facts**

12. In response to the allegations of Paragraph 18 of Plaintiffs' Complaint, the District admits that Owen Mercado, an adolescent, attended Seeley Swan High School, a school operated by Missoula County Public School District #1, during the 2018-2019 academic year. To the extent not admitted herein, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

13. In response to the allegations of Paragraph 19 of Plaintiffs' Complaint, the District admits that Owen was a minor during his attendance at SSHS until he turned 18 in April, 2020. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 19 of Plaintiff's Complaint.

14. In response to the allegations of Paragraph 20 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

15. In response to the allegations of Paragraph 21 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

The District affirmatively alleges that the District was not advised that the alleged incident occurred.

16. In response to the allegations of Paragraph 22 of Plaintiffs' Complaint, the District denies.

17. In response to the allegations of Paragraphs 23 and 24 of Plaintiffs' Complaint, as no report of the incident described in Paragraph 21 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 23 and 24 of Plaintiffs' Complaint.

18. In response to the allegations of Paragraph 25 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 21 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 25 of Plaintiffs' Complaint.

19. In response to the allegations of Paragraph 26 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 21 of Plaintiffs' Complaint was made to the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 26 of Plaintiffs' Complaint.

20. In response to the allegations of Paragraph 27 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 21 of Plaintiffs' Complaint was made to the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to

do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 27 of Plaintiffs' Complaint.

21. In response to the allegations of Paragraph 28 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 21 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 28 Plaintiffs' Complaint.

22. In response to the allegations of Paragraph 29 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 21 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation. To the extent not

admitted herein, the District denies the remaining allegations of Paragraph 28 Plaintiffs' Complaint.

23. In response to the allegations of Paragraph 31 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies. The District affirmatively alleges that the District was not advised that the alleged incident occurred.

24. In response to the allegations of Paragraph 32 of Plaintiffs' Complaint, the District denies.

25. In response to the allegations of Paragraphs 33 and 34 of Plaintiffs' Complaint, as no report of the incident described in Paragraph 31 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 33 and 34 of Plaintiffs' Complaint.

26. In response to the allegations of Paragraph 35 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 31 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 35 of Plaintiffs' Complaint.

27. In response to the allegations of Paragraph 36 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 31 of Plaintiffs' Complaint was made to the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 36 of Plaintiffs' Complaint.

28. In response to the allegations of Paragraph 37 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 31 of Plaintiffs' Complaint was made to the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 37 of Plaintiffs' Complaint.

29. In response to the allegations of Paragraph 38 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 31 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 38 Plaintiffs' Complaint.



30. In response to the allegations of Paragraph 39 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 31 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 39 Plaintiffs' Complaint.

31. In response to the allegations of Paragraph 40 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 31 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation when it is aware of conduct which violates the policies. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 40 Plaintiffs' Complaint.

32. In response to the allegations of Paragraphs 41 through 42 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

33. In response to the allegations of Paragraph 43 through 44 of Plaintiffs' Complaint, the District denies.

34. In response to the allegations of Paragraph 45 of Plaintiffs' Complaint, as no report of the incidents described in Paragraphs 41 through 42 of Plaintiffs' Complaint was made to the District or its agents, Coach Haines did not investigate them nor elevate them to administration. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 45 of Plaintiffs' Complaint.

35. In response to the allegations of Paragraph 46 of Plaintiffs' Complaint, the District denies.

36. In response to the allegations of Paragraph 47 through 48 of Plaintiffs' Complaint, as no report of the incidents described in Paragraphs 41 through 42 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate them. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 47 through 48 of Plaintiffs' Complaint.

37. In response to the allegations of Paragraph 49 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 41 through 42 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or

determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 49 of Plaintiffs' Complaint.

38. In response to the allegations of Paragraph 50 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 41 through 42 of Plaintiffs' Complaint was made to the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 50 of Plaintiffs' Complaint.

39. In response to the allegations of Paragraph 51 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 41 through 42 of Plaintiffs' Complaint was made to the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 51 of Plaintiffs' Complaint.

40. In response to the allegations of Paragraph 52 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 41 and 42 of Plaintiffs'

Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 52 Plaintiffs' Complaint.

41. In response to the allegations of Paragraph 53 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 41 and 42 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 53 Plaintiffs' Complaint.

42. In response to the allegations of Paragraph 54 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 41 and 42 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it

routinely enforces its policies prohibiting bullying, harassment and intimidation when it is aware of conduct which violates the policies. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 54 Plaintiffs' Complaint.

43. In response to the allegations of Paragraph 55 of Plaintiffs' Complaint, the District lacks sufficient information to admit or deny, therefore the District denies.

44. In response to the allegations of Paragraph 56 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges that Plaintiffs and members of Plaintiffs' family indicated their appreciation for Ms. Quinn and her instruction of Owen and mentorship of another member of his family by email, in person and in recorded voicemail communications subsequent to the alleged incident described in Paragraph 55 of Plaintiffs' Complaint.

45. In response to the allegations of Paragraph 57 of Plaintiffs' Complaint, the District denies.

46. In response to the allegations of Paragraph 58 through 60 of Plaintiffs' Complaint, as no report of the incidents described in Paragraphs 55 through 57 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate them. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 58 through 60 of Plaintiffs' Complaint.

47. In response to the allegations of Paragraph 61 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 55 through 57 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 61 of Plaintiffs' Complaint.

48. In response to the allegations of Paragraph 62 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 55 through 57 of Plaintiffs' Complaint was made to the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 62 of Plaintiffs' Complaint.

49. In response to the allegations of Paragraph 63 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 55 through 57 of Plaintiffs' Complaint was made to the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 63 of Plaintiffs' Complaint.

50. In response to the allegations of Paragraph 64 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free

Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 55 through 57 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 64 Plaintiffs' Complaint.

51. In response to the allegations of Paragraph 65 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 55 through 57 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 65 Plaintiffs' Complaint.

52. In response to the allegations of Paragraph 66 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District

representative of the incident alleged in Paragraphs 55 through 57 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation when it is aware of conduct which violates the policies. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 66 Plaintiffs' Complaint.

53. In response to the allegations of Paragraph 67 of Plaintiffs' Complaint, as no report of Ms. Quinn's involvement in the allegations described in Paragraphs 55 through 57 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 67 of Plaintiffs' Complaint.

54. In response to the allegations of Paragraph 68 of Plaintiffs' Complaint, the District admits.

55. In response to the allegations of Paragraph 69 of Plaintiffs' Complaint, the District admits that Dr. Pecora was advised of the theft by Owen Mercado. To the extent not admitted, the District denies the remaining allegations of Paragraph 69 of Plaintiffs' Complaint.



56. In response to the allegations of Paragraph 70 of Plaintiffs' Complaint, the District admits that Owen reported that he had seen the shoes in a Facebook post by another student. To the extent not admitted, the District denies the remaining allegations of Paragraph 70 of Plaintiffs' Complaint.

57. In response to the allegations of Paragraph 71 of Plaintiffs' Complaint, the District affirmatively alleges that Dr. Pecora advised Dierdre Lechowski-Mercado that, if Owen saw the shoes in a Facebook post, they should file a report with the police. Dr. Pecora indicated that the school could also file a report. Dr. Pecora assisted Owen Mercado with filing a police report. The District affirmatively alleges that Dr. Pecora inquired as to whether the District had insurance coverage that would cover the loss, which it did not, and advised Dierdre Lechowski to obtain the police report and check with her homeowner's insurance. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 71 of Plaintiffs' Complaint.

58. In response to the allegations of Paragraph 72 of Plaintiffs' Complaint, the District admits that Dierdre Lechowski advised Dr. Pecora that the shoes were recovered.

59. In response to the allegations of Paragraph 73 of Plaintiffs' Complaint, the District admits that the matter was reported to law enforcement and a definitive determination regarding whether the matter was a theft could not be made based on

the information available to the District, nor was a determination of theft communicated by law enforcement to the District. The District affirmatively alleges that Dr. Pecora cooperated with law enforcement and that Dierdre Lechowski indicated that her son later “donated” the shoes to the former Seeley Swan High School student who was found in possession of them. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 73 of Plaintiffs’ Complaint.

60. In response to the allegations of Paragraph 74 of Plaintiffs’ Complaint, the District lacks sufficient knowledge to admit or deny, therefore, the District denies.

61. In response to the allegations of Paragraphs 75 and 76 of Plaintiffs’ Complaint, the District denies.

62. In response to the allegations of Paragraph 77 through 78 of Plaintiffs’ Complaint, as no report of the incidents described in Paragraph 74 of Plaintiffs’ Complaint was made to Coach Haines, the District did not investigate them, nor was remedial action appropriate given the absence of a report or finding that students engaged in the conduct. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 77 through 78 of Plaintiffs’ Complaint.

63. In response to the allegations of Paragraph 79 of Plaintiffs’ Complaint, the District denies.

64. In response to the allegations of Paragraph 80 through 82 of Plaintiffs' Complaint, as no report of the incidents described in Paragraph 74 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 80 through 82 of Plaintiffs' Complaint.

65. In response to the allegations of Paragraph 83 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 74 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 83 of Plaintiffs' Complaint.

66. In response to the allegations of Paragraph 84 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 74 of Plaintiffs' Complaint was made to the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 84 of Plaintiffs' Complaint.

67. In response to the allegations of Paragraph 85 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 74 of Plaintiffs' Complaint was made to the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to

do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 85 of Plaintiffs' Complaint.

68. In response to the allegations of Paragraph 86 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 74 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 86 Plaintiffs' Complaint.

69. In response to the allegations of Paragraph 87 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 74 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 87 Plaintiffs' Complaint.

70. In response to the allegations of Paragraph 88 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 74 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation when it is aware of conduct which violates the policies. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 88 Plaintiffs' Complaint.

71. In response to the allegations of Paragraph 89 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 74 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 83 of Plaintiffs' Complaint. The District affirmatively alleges that Plaintiffs routinely and repeatedly praised Coach Haines after the date of the alleged incident, including Dierdre Lechowski's January 16, 2020 claim that Coach Haines was "such a good man to [her] son."

72. In response to the allegations of Paragraph 90 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

73. In response to the allegations of Paragraph 91 through 93 of Plaintiffs' Complaint, the District denies.

74. In response to the allegations of Paragraph 94 of Plaintiffs' Complaint, the District admits that Dierdre Lechowski met with Principal Palmer when he first arrived at Seeley Lake High School and disclosed that she had not been treated well by members of the Seeley Lake community, as well as the fact that she had at least one lawsuit against others in the community. The District affirmatively alleges that Lechowski-Mercado did not mention directly or indirectly a pattern, practice, or isolated incidents of harassment and discrimination by students against Owen Mercado at the school. The District denies the remaining allegations of Paragraph 94 of Plaintiffs' Complaint.

75. In response to the allegations of Paragraph 95 through 101 of Plaintiffs' Complaint, the District denies.

76. In response to the allegations of Paragraph 102 of Plaintiffs' Complaint, the District lacks sufficient information to admit or deny, therefore the District denies.

77. In response to the allegations of Paragraph 103 of Plaintiffs' Complaint, the District admits that Jared Crum saw the car with what Crum deemed to be an offensive image on it and that Crum texted Owen Mercado to advise him of it.

78. In response to the allegations of Paragraph 104 through 107, the District denies.

79. In response to the allegations of Paragraph 108 of Plaintiffs' Complaint, as no report of the incidents described in Paragraphs 100 through 103 of Plaintiffs' Complaint was made to Principal Palmer, Palmer did not investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 108 of Plaintiffs' Complaint. The District affirmatively alleges that school was not in session on August 12, 2019 and the alleged vandalism did not occur in relation to a school-sponsored event or activity, nor was it observed on school property, thus there is no basis to imply that the District was responsible to address the alleged incident in any way.

80. In response to the allegations of Paragraph 109 of Plaintiffs' Complaint, the District affirmatively alleges that Montana Code Annotated § 45-5-221 speaks for itself.

81. In response to the allegations of Paragraph 110 of Plaintiffs' Complaint, the District admits that no action was taken against the perpetrators of the alleged vandalism, and affirmatively alleges that it bore no responsibility to investigate or otherwise punish conduct of unknown individuals which did not occur while school was in session or in conjunction with a school-sponsored activity, whether

on school grounds or not. The District denies the remaining allegations of Paragraph 110 of Plaintiff's complaint.

82. In response to the allegations of Paragraph 111 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges that Principal Palmer investigated a November 7, 2019 incident involving Owen's car and reported by Dierdre-Lechowski-Mercado. The District affirmatively alleges that Principal Palmer reviewed camera footage to determine whether the individuals responsible could be identified, but the car was parked out of view of the camera in relation to the November 7, 2019 report. The District further affirmatively alleges that Principal Palmer contacted Dierdre Lechowski-Mercado about the footage and offered to ask around to determine who was responsible, but Dierdre Lechowski-Mercado responded "It's ok. We have much to be thankful for today, and Owen wants to let it go....But I really appreciate you trying." The District denies the remaining allegations of Paragraph 111 of Plaintiffs' Complaint.

83. In response to the allegations of Paragraph 112 of Plaintiffs' Complaint, the District denies.

84. In response to the allegations of Paragraphs 113 through 116 of Plaintiffs' Complaint, as no report of the incidents described in Paragraph 100 through 103 of Plaintiffs' Complaint was made to the District or its agents nor did the alleged incident occur in the context of a school sponsored activity or on school grounds



while school was in session, the District did not investigate, nor do the facts alleged trigger an obligation to investigate even if true. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 113 through 116 of Plaintiffs' Complaint.

85. In response to the allegations of Paragraph 117 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 100 through 103 of Plaintiffs' Complaint was made to the District or its agents, nor did the alleged incident occur in the context of a school sponsored activity or on school grounds while school was in session, the District did not consider or determine jurisdictional questions regarding the alleged incident, nor do the facts alleged trigger an obligation to consider or determine jurisdictional questions even if true. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 117 of Plaintiffs' Complaint.

86. In response to the allegations of Paragraph 118 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 100 through 103 of Plaintiffs' Complaint was made to the District or its agents, nor did the alleged incident occur in the context of a school sponsored activity or on school grounds while school was in session, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 118 of Plaintiffs' Complaint.

87. In response to the allegations of Paragraph 119 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 100 through 103 of Plaintiffs' Complaint was made to the District or its agents, nor did the alleged incident occur in the context of a school sponsored activity or on school grounds while school was in session, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 119 of Plaintiffs' Complaint.

88. In response to the allegations of Paragraph 120 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 100 through 103 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 120 Plaintiffs' Complaint.

89. In response to the allegations of Paragraph 121 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the

Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 100 through 103 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 12 Plaintiffs' Complaint.

90. In response to the allegations of Paragraph 122 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 100 through 103 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation when it is aware of conduct which violates the policies. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 122 Plaintiffs' Complaint.

91. In response to the allegations of Paragraph 123 of Plaintiffs' Complaint, as no report of the incidents described in Paragraph 100 through 103 of Plaintiffs'

Complaint was made to the District or its agents, the District did not investigate Jared Crum, nor do the facts alleged trigger an obligation to investigate even if true. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 123 of Plaintiffs' Complaint.

92. In response to the allegations of Paragraph 124 of Plaintiffs' Complaint, the District denies.

93. In response to the allegations of Paragraph 125 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

94. In response to the allegations of Paragraph 126 of Plaintiffs' Complaint, the District denies.

95. In response to the allegations of Paragraph 127 through 129 of Plaintiffs' Complaint, as no report of the incident described in Paragraph 125 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate them. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 127 through 129 of Plaintiffs' Complaint.

96. In response to the allegations of Paragraph 130 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 125 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not

admitted herein, the District denies the remaining allegations of Paragraph 130 of Plaintiffs' Complaint.

97. In response to the allegations of Paragraph 131 of Plaintiffs' Complaint, the District affirmatively alleges that Mont. Code Ann. § 45-5-220 speaks for itself.

98. In response to the allegations of Paragraph 132 of Plaintiffs' Complaint, the District denies.

99. In response to the allegations of Paragraph 133 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 125 of Plaintiffs' Complaint was made to the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 133 of Plaintiffs' Complaint.

100. In response to the allegations of Paragraph 134 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 125 of Plaintiffs' Complaint was made to the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 134 of Plaintiffs' Complaint.

101. In response to the allegations of Paragraph 135 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free

Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 125 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 135 Plaintiffs' Complaint.

102. In response to the allegations of Paragraph 136 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 125 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 136 Plaintiffs' Complaint.

103. In response to the allegations of Paragraph 137 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District

representative of the incident alleged in Paragraph 125 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation when it is aware of conduct which violates the policies. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 137 Plaintiffs' Complaint.

104. In response to the allegations of Paragraphs 138 through 141 of Plaintiffs' Complaint, the District denies.

105. In response to the allegations of Paragraphs 142 through 144 of Plaintiffs' Complaint, as no report of the incidents described in Paragraph 139 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate them. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 142 through 144 of Plaintiffs' Complaint.

106. In response to the allegations of Paragraph 145 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 139 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 145 of Plaintiffs' Complaint.

107. In response to the allegations of Paragraph 146 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 139 of Plaintiffs' Complaint was made to the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 146 of Plaintiffs' Complaint.

108. In response to the allegations of Paragraph 147 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 139 of Plaintiffs' Complaint was made to the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 147 of Plaintiffs' Complaint.

109. In response to the allegations of Paragraph 148 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 139 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 148 of Plaintiffs' Complaint.



110. In response to the allegations of Paragraph 149 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 139 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 149 Plaintiffs' Complaint.

111. In response to the allegations of Paragraph 150 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraph 139 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation when it is aware of conduct which violates the policies. To the extent not admitted herein,

the District denies the remaining allegations of Paragraph 150 Plaintiffs' Complaint.

112. In response to the allegations of Paragraph 151 of Plaintiffs' Complaint, the District denies.

113. In response to the allegations of Paragraph 152 of Plaintiffs' Complaint, as no report of the conduct described in Paragraph 139 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 152 of Plaintiffs' Complaint.

114. In response to the allegations of Paragraph 153 through 155 of Plaintiffs' Complaint, the District denies.

115. In response to the allegations of Paragraph 156 through 158 of Plaintiffs' Complaint, as no report of the incidents described in Paragraphs 153 through 154 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 156 through 158 of Plaintiffs' Complaint.

116. In response to the allegations of Paragraph 159 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 153 through 154 of Plaintiffs' Complaint was made to the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To

the extent not admitted herein, the District denies the remaining allegations of Paragraph 159 of Plaintiffs' Complaint.

117. In response to the allegations of Paragraph 160 through 161 of Plaintiffs' Complaint, the District affirmatively alleges that Montana Code Annotated § 45-5-220 speaks for itself.

118. In response to the allegations of Paragraph 162 of Plaintiffs' Complaint, the District denies.

119. In response to the allegations of Paragraph 163 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraphs 153 through 154 of Plaintiffs' Complaint was made to the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 163 of Plaintiffs' Complaint.

120. In response to the allegations of Paragraph 164 of Plaintiffs' Complaint, as no report of the alleged incident described in Paragraph 153 through 154 of Plaintiffs' Complaint was made to the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 164 of Plaintiffs' Complaint.

121. In response to the allegations of Paragraph 165 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address

bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 153 through 154 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 165 Plaintiffs' Complaint.

122. In response to the allegations of Paragraph 166 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 153 through 154 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 166 Plaintiffs' Complaint.

123. In response to the allegations of Paragraph 167 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre

Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of the incident alleged in Paragraphs 153 through 154 of Plaintiffs' Complaint, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation when it is aware of conduct which violates the policies. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 167 Plaintiffs' Complaint.

124. In response to the allegations of Paragraph 168 of Plaintiffs' Complaint, as no report of the incidents described in Paragraphs 153 through 154 of Plaintiffs' Complaint was made to the District or its agents, the District did not investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 168 of Plaintiffs' Complaint.

125. In response to the allegations of Paragraphs 169 through 171 of Plaintiffs' Complaint, the District admits that on November 7, 2019 Dierdre Lechowski reported the following to Principal Palmer by email:

Owen's car was vandalized while he was at Open Gym tonight. The thugs poured soda and chocolate milk all over the car and the liquids froze, as well as drew a large penis and wrote the word Faggot.

To the extent not admitted herein, the District denies the remaining allegations of Paragraph 169 through 171 of Plaintiffs' Complaint.

126. In response to the allegations of Paragraphs 172 through 182 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges that Principal Palmer reviewed camera footage to determine whether the individuals responsible could be identified, but the car was parked out of view of the camera and the individuals responsible or witnesses could not be identified in the footage. The District further affirmatively alleges that Principal Palmer contacted Dierdre Lechowski-Mercado to update her about his review of the footage and indicated he would ask around to determine who was responsible, but Dierdre Lechowski-Mercado responded "It's ok. We have much to be thankful for today, and Owen wants to let it go....But I really appreciate you trying." To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 172 through 182 of Plaintiffs' Complaint.

127. In response to the allegations of Paragraphs 183 through 185 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

128. In response to the allegations of Paragraphs 186 through 190 of Plaintiffs' Complaint, the District affirmatively alleges that Montana Code Annotated §§ 45-5-625, 45-8-201 and 45-8-213 speak for themselves.

129. In response to the allegations of Paragraph 191 of Plaintiffs' Complaint, the District admits that, on February 15, 2020, Plaintiff Dierdre Lechowski emailed a

copy of the picture to Principal Palmer alleging that Owen received it from SJ on Snapchat and that she had submitted her evidence to “the proper authorities.” To the extent not admitted herein, the District denies the remaining allegations of Paragraph 191 of Plaintiffs’ Complaint.

130. In response to the allegations of Paragraphs 192 through 196 of Plaintiffs’ Complaint, the District denies.

131. In response to the allegations of Paragraphs 197 through 198 of Plaintiffs’ Complaint, the District affirmatively alleges that Plaintiff Dierdre Lechowski-Mercado indicated that she had submitted the evidence to the proper authorities already, thus, even if referral was appropriate, a report had already been filed. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 197 through 198 of Plaintiffs’ Complaint.

132. In response to the allegations of Paragraph 199 of Plaintiffs’ Complaint, the District denies.

133. In response to the allegations of Paragraph 200 of Plaintiffs’ Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 148 of Plaintiffs’ Complaint.

134. In response to the allegations of Paragraphs 201 through 202 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains disciplinary policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that it was unable to determine that the student identified by Plaintiff Dierdre Lechowski-Mercado engaged in the conduct alleged. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 201 through 202 of Plaintiffs' Complaint.

135. In response to the allegations of Paragraph 203 of Plaintiffs' Complaint, the District denies.

136. In response to the allegations of Paragraph 204 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges that the District investigated reported incidents, as noted in the preceding paragraphs and had no duty to investigate allegations that were neither reported to nor observed by District employees.

137. In response to the allegations of Paragraphs 205 of Plaintiffs' Complaint, the District affirmatively alleges that Montana Code Annotated § 45-5-220 speaks for itself.

138. In response to the allegations of Paragraph 206 and 207 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges that the District



investigated reported incidents, as noted in the preceding paragraphs and had no duty to investigate allegations that were neither reported to nor observed by District employees.

139. In response to the allegations of Paragraph 208 of Plaintiffs' Complaint, the District denies.

140. In response to the allegations of Paragraphs 209 through 213 of Plaintiffs' Complaint, the District denies.

141. In response to the allegations of Paragraph 214, the District admits that Coach Crum stated that he observed Plaintiff Owen Mercado physically restraining a smaller student. The District affirmatively denies that Coach Crum knew of or discovered the alleged "attack on Owen." To the extent not admitted herein, the District denies the remaining allegations of Paragraph 214 of Plaintiffs' Complaint.

142. In response to the allegations of Paragraph 215 of Plaintiffs' Complaint, the District admits that Coach Crum did not investigate the incident. The District affirmatively alleges that Coach Crum reported the incident to Principal Palmer who then investigated CH's allegation that Plaintiff Owen Mercado assaulted him in the locker room. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 215 of Plaintiffs' Complaint.

143. In response to the allegations of Paragraph 216 through 218 the District denies.

144. In response to the allegations of Paragraph 219, the District admits that, initially, Principal Palmer determined that there was insufficient evidence to support a finding of sexual assault against Owen Mercado. The District affirmatively alleges that Principal Palmer determined there was inappropriate behavior on Owen Mercado's part resulting in Owen Mercado's prohibition from contacting CM. To the extent not admitted herein, the District denies the remaining allegation of Paragraph 219 of Plaintiff's Complaint.

145. In response to the allegations of Paragraphs 220 through 221, the District denies.

146. In response to the allegations of Paragraph 222, the District admits. The District affirmatively alleges that Owen Mercado was also suspended from participation in athletics for 20 days.

147. In response to the allegations of Paragraph 223, the District denies.

148. In response to the allegations of Paragraph 224, the District admits that in response to new allegations and disclosure of criminal charges against Plaintiff Owen Mercado, Principal Palmer informed Plaintiff Dierdre Lechowski that he would be suspended pending further investigation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 224 of Plaintiff's complaint.

149. In response to the allegations of Paragraph 225, the District denies. The District affirmatively alleges that it attempted to develop a plan for Owen Mercado's return to SSHS, but then worked with the Mercados to find alternative school arrangements for Owen when Plaintiffs refused to permit Owen to return to SSHS. The District further alleges that the proposed arrangements were not acceptable to Dierdre Lechowski-Mercado. Ultimately, the District, with Deirdre Lechowski-Mercado's agreement, provided Owen with a homebound tutor through the remainder of the school year, even after March 12, 2020 when SSHS was closed to student attendance due to the COVID-19 pandemic. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 225 of Plaintiffs' Complaint.

150. In response to the allegations of Paragraphs 226 through 241 of Plaintiffs' Complaint, the District denies.

151. In response to the allegations of Paragraph 242 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies. The District affirmatively denies that the ADA recognizes specific disabilities.

152. In response to the allegations of Paragraph 243 through 245 of Plaintiffs' Complaint, the District denies.

153. In response to the allegations of Paragraph 246 of Plaintiffs' Complaint, the District affirmatively alleges that the District investigated the incidents of which it

was notified, as addressed above, but it did not investigate allegations of discrimination which were not raised by either Plaintiff while Plaintiff attended SSHS. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 246 of Plaintiffs' Complaint.

154. In response to the allegations of Paragraph 248, the District admits that Plaintiffs reported the alleged incidents described in Paragraphs 74, 100 through 103, 169 through 170, and 184 of Plaintiffs' Complaint. The District denies the remaining allegations of Paragraph 248 of Plaintiffs' Complaint.

155. In response to the allegations of Paragraphs 249 through 254 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges that it received no disability-related requests for a reasonable accommodation from Plaintiff through Plaintiff Dierdre Lechowski-Mercado despite the fact that she was routinely in touch with Plaintiff Owen Mercado's teachers regarding his performance in their classes, assignments, and their interactions with her son by email.

156. In response to the allegations of Paragraph 255 and 256 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges that the IDEA is not applicable, nor was it provided any information indicating that Plaintiff Owen Mercado was eligible for special education services or accommodations under Section 504.

157. In response to the allegations of Paragraph 254 of Plaintiffs' Complaint, the District denies that Principal Palmer was notified of eight incidents of discrimination and harassment. The District further denies that a request for a reasonable accommodation was made to any representative of the District. With regard to the remaining allegations of Paragraph 254, the District lacks sufficient information to admit or deny, therefore the District denies.

158. In response to the allegations of Paragraph 255 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges the IDEA and 34 CFR § 300.101 are not applicable to the allegations in this litigation.

159. In response to the allegations of Paragraphs 256 through 264 of Plaintiffs' Complaint, the District denies.

160. In response to the allegations of Paragraph 265 of Plaintiffs' Complaint, the District affirmatively alleges that ongoing harassment and discrimination did not occur with reference to Plaintiff Owen Mercado, thus no response was required. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 265 of Plaintiffs' Complaint.

161. In response to the allegations of Paragraph 266 through 270 of Plaintiffs' Complaint, the District denies. The District affirmatively alleges that Plaintiffs are not entitled to pursue claims under the IDEA because it is not applicable and,

alternatively, that Plaintiffs have failed to exhaust administrative remedies under the IDEA.

162. In response to the allegations of Paragraph 271 of Plaintiffs' Complaint, the District affirmatively alleges that in response to Plaintiff Dierdre Lechowski's February 13, 2020 statement that Owen Mercado "will never return to SSHS" during Owen Mercado's out-of-school suspension, the District attempted to find alternate means of providing educational services to him, including enrollment in Willard School and The Learning Lab. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 271 of Plaintiffs' Complaint.

163. In response to the allegations of Paragraph 272 through 273 of Plaintiffs' Complaint, the District denies.

164. In response to the allegations of Paragraph 274 of Plaintiffs' Complaint, 20 U.S.C. § 1415 speaks for itself. The District affirmatively alleges that the IDEA does not apply to Plaintiff Owen Mercado's circumstances and there was no change in placement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 274 of Plaintiffs' Complaint.

165. In response to the allegations of Paragraphs 275 through 278 of Plaintiffs' Complaint, the District denies.

166. In response to the allegations of Paragraph 279 of Plaintiffs' Complaint, the District affirmatively alleges that, in response to a meeting request from Principal

Palmer to discuss Owen Mercado's suspension and return to school, Plaintiff Dierdre Lechowski-Mercado indicated that Plaintiff Owen Mercado would never return to SSHS and that he would instead be attending school in Missoula, Montana. The District then attempted to assist Plaintiff Owen Mercado in locating available educational services with the cooperation and agreement of Dierdre Lechowski Mercado. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 279 of Plaintiffs' Complaint.

167. In response to the allegations of Paragraphs 280 through 286 of Plaintiffs' Complaint, the District denies.

168. In response to the allegations of Paragraph 287 of Plaintiffs' Complaint, the District admits the first sentence. The District lacks sufficient knowledge to admit or deny the graphic representations of the meaning of components of the page, therefore denies. The District affirmatively alleges that the Instagram page is not sponsored or sanctioned by the District.

169. In response to the allegations of Paragraphs 288 through 292 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

170. In response to the allegations of Paragraphs 293 through 294 of Plaintiffs' Complaint, the District denies.

171. In response to the allegations of Paragraph 295 through 297 of Plaintiffs' Complaint, the District lacks sufficient knowledge to admit or deny, therefore the District denies.

172. In response to the allegations of Paragraph 298 of Plaintiffs' Complaint, the District denies.

173. In response to the allegations of Paragraphs 299 through 303 of Plaintiffs' Complaint, the District denies.

**V.**  
**Claims and Causes of Action**

**Count I**  
**Negligence:**

**Seely {sic} Swan High School and Missoula County Public School District:  
Breach in Failing to Provide an Educational Institution Free from Racial  
Discrimination and an Educational Opportunity Free from Racial  
Discrimination**

174. In response to the allegations of Paragraph 304 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 303 as if fully incorporated herein.

175. In response to the allegations of Paragraph 305 of Plaintiffs' Complaint, the allegation sets forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the remaining allegations of Paragraph 305 of Plaintiffs' Complaint.



176. In response to the allegations of Paragraphs 306 through 308 of Plaintiffs' Complaint, the District denies.

177. In response to the allegations of Paragraph 309 through 311 of Plaintiffs' Complaint, the District investigated incidents reported to it as addressed in the preceding paragraphs. As no report or actual knowledge of racial bigotry, discrimination and harassment was received by the District or its agents, the District was not obligated to investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 309 through 311 of Plaintiffs' Complaint.

178. In response to the allegations of Paragraph 312 of Plaintiffs' Complaint, as no report or actual knowledge of racial bigotry, discrimination and harassment was received by the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 312 of Plaintiffs' Complaint.

179. In response to the allegations of Paragraph 313 of Plaintiffs' Complaint, as no report or actual knowledge of racial bigotry, discrimination and harassment was received by the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 313 of Plaintiffs' Complaint.

180. In response to the allegations of Paragraph 314 of Plaintiffs' Complaint, as no report or actual knowledge of racial bigotry, discrimination and harassment was received by the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 314 of Plaintiffs' Complaint.

181. In response to the allegations of Paragraph 315 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of racial bigotry, discrimination and harassment, nor did they invoke the procedures available to them under District policies relative to the allegations. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 315 Plaintiffs' Complaint.

182. In response to the allegations of Paragraph 316 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District

representative of racial bigotry, discrimination and harassment, nor did they invoke the procedures available to them under District policies relative to the allegation.

The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 316 Plaintiffs' Complaint.

183. In response to the allegations of Paragraphs 317 through 321, the District denies.

**Count 2  
Negligence:**

**Seely {sic} Swan High School and Missoula County Public School District:  
Breach in Failing to Provide an Educational Institution Free from Racial  
Discrimination and an Educational Opportunity Free from Discrimination  
Based on Color**

184. In response to the allegations of Paragraph 322 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 321 as if fully incorporated herein.

185. In response to the allegations of Paragraph 323 of Plaintiffs' Complaint, the allegation sets forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the remaining allegations of Paragraph 323 of Plaintiffs' Complaint.

186. In response to the allegations of Paragraphs 324 through 326 of Plaintiffs' Complaint, the District denies.

187. In response to the allegations of Paragraph 327 through 329 of Plaintiffs' Complaint, the District investigated incidents reported to it as addressed in the preceding paragraphs. As no report or actual knowledge of racially motivated harassment was received by the District or its agents, the District was not obligated to investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 327 through 329 of Plaintiffs' Complaint.

188. In response to the allegations of Paragraph 330 of Plaintiffs' Complaint, as no report or actual knowledge of a discriminatory act was received by the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 330 of Plaintiffs' Complaint.

189. In response to the allegations of Paragraph 331 of Plaintiffs' Complaint, as no report or actual knowledge of "racial/skin color discrimination conduct" was received by the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 331 of Plaintiffs' Complaint.

190. In response to the allegations of Paragraph 332 of Plaintiffs' Complaint, as no report or actual knowledge of discriminatory conduct was received by the District or its agents, the District did not provide notice to any person regarding the alleged incident, nor was the District under an obligation to do so. To the extent

not admitted herein, the District denies the remaining allegations of Paragraph 332 of Plaintiffs' Complaint.

191. In response to the allegations of Paragraph 333 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of such conduct, nor did they invoke the procedures available to them under District policies relative to the allegations. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 333 and 334 Plaintiffs' Complaint.

192. In response to the allegations of Paragraphs 334 and 335 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of such conduct, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying,

harassment and intimidation. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 334 and 335 Plaintiffs' Complaint.

193. In response to the allegations of Paragraphs 336 through 339, the District denies.

**Count 3  
Negligence:**

**Seely {sic} Swan High School and Missoula County Public School District:  
Breach in Failing to Provide an Educational Institution Free from Racial  
Discrimination and an Educational Opportunity Free from Discrimination  
Based on National Origin**

194. In response to the allegations of Paragraph 340 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 339 as if fully incorporated herein.

195. In response to the allegations of Paragraph 341 of Plaintiffs' Complaint, the allegation sets forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the remaining allegations of Paragraph 341 of Plaintiffs' Complaint.

196. In response to the allegations of Paragraphs 342 through 344 of Plaintiffs' Complaint, the District denies.

197. In response to the allegations of Paragraph 345 through 347 of Plaintiffs' Complaint, the District investigated incidents reported to it as addressed in the preceding paragraphs. As no report or actual knowledge of racially motivated

harassment was received by the District or its agents, the District was not obligated to investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 345 through 347 of Plaintiffs' Complaint.

198. In response to the allegations of Paragraph 348 of Plaintiffs' Complaint, as no report or actual knowledge of a discriminatory act was received by the District or its agents, the District did not consider or determine jurisdictional questions regarding the alleged incident. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 348 of Plaintiffs' Complaint.

199. In response to the allegations of Paragraph 349 of Plaintiffs' Complaint, as no report or actual knowledge of "racial/national origin discrimination conduct" was received by the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 349 of Plaintiffs' Complaint.

200. In response to the allegations of Paragraph 350 of Plaintiffs' Complaint, as no report or actual knowledge of discrimination was received by the District or its agents, the District did not provide notice to any person regarding the alleged incidents, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 350 of Plaintiffs' Complaint.

201. In response to the allegations of Paragraph 351 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of discriminatory conduct based on color, nor did they invoke the procedures available to them under District policies relative to the allegations. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 351 Plaintiffs' Complaint.

202. In response to the allegations of Paragraph 352 through 353 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of racial bigotry, discrimination and harassment, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 352 through 353 Plaintiffs' Complaint.



203. In response to the allegations of Paragraphs 354 through 357 of Plaintiffs' Complaint, the District denies.

**Count 4  
Negligence:**

**Seely {sic} Swan High School and Missoula County Public School District:  
Breach in Failing to Provide an Educational Institution Free from Racial  
Discrimination and an Educational Opportunity Free from Discrimination  
Based on Gender**

204. In response to the allegations of Paragraph 358 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 357 as if fully incorporated herein.

205. In response to the allegations of Paragraph 359 of Plaintiffs' Complaint, the allegation sets forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the remaining allegations of Paragraph 359 of Plaintiffs' Complaint.

206. In response to the allegations of Paragraphs 360 through 362 of Plaintiffs' Complaint, the District denies.

207. In response to the allegations of Paragraph 363 through 365 of Plaintiffs' Complaint, the District investigated incidents reported to it as addressed in the preceding paragraphs. To the extent no report or actual knowledge of sex discrimination or harassment was received by the District or its agents, the District was not obligated to investigate. To the extent not admitted herein, the District

denies the remaining allegations of Paragraphs 363 through 365 of Plaintiffs' Complaint.

208. In response to the allegations of Paragraph 366 of Plaintiffs' Complaint, as no determination that a discriminatory act on the basis of sex occurred, the District did not consider or determine jurisdictional questions regarding sex discrimination against Plaintiff Owen Mercado. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 366 of Plaintiffs' Complaint.

209. In response to the allegations of Paragraph 367 of Plaintiffs' Complaint, as no determination of sex discrimination or harassment by other students against Plaintiff Owen Mercado was made by the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 367 of Plaintiffs' Complaint.

210. In response to the allegations of Paragraph 368 of Plaintiffs' Complaint, as no report or actual knowledge of potentially criminal conduct based on gender discrimination was received by the District or its agents, the District did not provide notice to any person regarding the alleged incidents, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 368 of Plaintiffs' Complaint.

211. In response to the allegations of Paragraph 369 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address

bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of discriminatory conduct based on sex, nor did they invoke the procedures available to them under District policies relative to the allegations. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 369 Plaintiffs' Complaint.

212. In response to the allegations of Paragraph 370 through 371 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that allegations of conduct which may constitute sex discrimination were not substantiated. Neither Plaintiff Dierdre Lechowski-Mercado nor Plaintiff Owen Mercado notified any District representative of sex discrimination and harassment as responses to the preceding paragraphs demonstrate, nor did they invoke the procedures available to them under District policies relative to the allegation. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 370 through 371 Plaintiffs' Complaint.

213. In response to the allegations of Paragraphs 372 through 375 of Plaintiffs' Complaint, the District denies.

**Count 5  
Negligence:**

**Seely {sic} Swan High School and Missoula County Public School District  
In Failing to Supervise Students**

214. In response to the allegations of Paragraph 376 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 375 as if fully incorporated herein.

215. In response to the allegations of Paragraphs 377 through 379 of Plaintiffs' Complaint, the allegation sets forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the remaining allegations of Paragraphs 377 through 379 of Plaintiffs' Complaint.

216. In response to the allegations of Paragraphs 380 through 382 of Plaintiffs' Complaint, the District denies.

217. In response to the allegations of Paragraph 383 through 385 of Plaintiffs' Complaint, the District investigated incidents reported to it as addressed in the preceding paragraphs. To the extent no report or actual knowledge of discrimination or harassment was received by the District or its agents, the District was not obligated to investigate. To the extent not admitted herein, the District

denies the remaining allegations of Paragraphs 383 through 385 of Plaintiffs' Complaint.

218. In response to the allegations of Paragraph 386 of Plaintiffs' Complaint, as no determination that a discriminatory, harassing, or criminal act occurred, the District did not consider or determine jurisdictional questions regarding discrimination or harassment against Plaintiff Owen Mercado. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 386 of Plaintiffs' Complaint.

219. In response to the allegations of Paragraph 387 of Plaintiffs' Complaint, as no determination of discrimination or harassment by other students against Plaintiff Owen Mercado was made by the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 387 of Plaintiffs' Complaint.

220. In response to the allegations of Paragraph 388 of Plaintiffs' Complaint, as no report or actual knowledge of potentially criminal conduct based on discrimination or harassment was received by the District or its agents, the District did not provide notice to any person regarding the alleged incidents, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 368 of Plaintiffs' Complaint.

221. In response to the allegations of Paragraph 389 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 389 Plaintiffs' Complaint.

222. In response to the allegations of Paragraph 390 through 391 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation if warranted. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 390 through 391 Plaintiffs' Complaint.

223. In response to the allegations of Paragraphs 392 through 395 of Plaintiffs' Complaint, the District denies.

**Count 6  
Negligence:**

**Seely {sic} Swan High School and Missoula County Public School District  
In Failing to Supervise Staff**

224. In response to the allegations of Paragraph 396 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 395 as if fully incorporated herein.

225. In response to the allegations of Paragraph 397 through 402 of Plaintiffs' Complaint, the allegations set forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the remaining allegations of Paragraphs 397 through 402 of Plaintiffs' Complaint.

226. In response to the allegations of Paragraphs 403 through 405 of Plaintiffs' Complaint, the District denies.

227. In response to the allegations of Paragraph 406 through 408 of Plaintiffs' Complaint, as no report or actual knowledge of discrimination or harassment on the part of staff was received by the District or its agents, the District was not obligated to investigate. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 406 through 408 of Plaintiffs' Complaint.

228. In response to the allegations of Paragraph 409 of Plaintiffs' Complaint, as no determination that a discriminatory, harassing, or criminal act on the part of SSHS staff occurred, the District did not consider or determine jurisdictional questions regarding discrimination or harassment by staff against Plaintiff Owen Mercado. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 409 of Plaintiffs' Complaint.

229. In response to the allegations of Paragraph 410 of Plaintiffs' Complaint, as no determination of discrimination or harassment by staff against Plaintiff Owen Mercado was made by the District or its agents, the District did not make a referral

to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 410 of Plaintiffs' Complaint.

230. In response to the allegations of Paragraph 411 of Plaintiffs' Complaint, as no report or actual knowledge of potentially criminal conduct based on discrimination or harassment by staff was received by the District or its agents, the District did not provide notice to any person regarding the alleged incidents, nor was the District under an obligation to do so. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 411 of Plaintiffs' Complaint.

231. In response to the allegations of Paragraph 412 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 412 Plaintiffs' Complaint.

232. In response to the allegations of Paragraph 413 through 414 of Plaintiffs' Complaint, the District affirmatively alleges that it maintains policies and procedures to address bullying, harassment and intimidation which are consistent with the Bully-Free Montana Act. The District affirmatively alleges that it routinely enforces its policies prohibiting bullying, harassment and intimidation if



warranted. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 413 through 414 Plaintiffs' Complaint.

233. In response to the allegations of Paragraphs 415 through 419 of Plaintiffs' Complaint, the District denies.

**Count 6 {sic}**  
**Negligence:**

**Seely {sic} Swan High School and Missoula County Public School District  
In Failing to Supervise Administration**

234. In response to the allegations of Paragraph 420 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 419 as if fully incorporated herein.

235. In response to the allegations of Paragraph 421 through 429 of Plaintiffs' Complaint, the allegations set forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the allegations of Paragraphs 421 through 429 of Plaintiffs' Complaint.

236. In response to the allegations of Paragraphs 430 through 433 of Plaintiffs' Complaint, the District denies.

237. In response to the allegations of Paragraph 434 through 436 of Plaintiffs' Complaint, as no report or actual knowledge of discrimination or harassment on the part of staff, including administration, was received by the District or its agents, the District was not obligated to investigate. To the extent not admitted

herein, the District denies the remaining allegations of Paragraphs 434 through 436 of Plaintiffs' Complaint.

238. In response to the allegations of Paragraph 437 of Plaintiffs' Complaint, as no determination that a discriminatory, harassing, or criminal act on the part of SSHS staff, including administration, occurred, the District did not consider or determine jurisdictional questions regarding discrimination or harassment by staff, including administration, against Plaintiff Owen Mercado. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 437 of Plaintiffs' Complaint.

239. In response to the allegations of Paragraph 438 of Plaintiffs' Complaint, no determination of discrimination or harassment by staff, including administration, against Plaintiff Owen Mercado was made by the District or its agents, and referral to law enforcement was not appropriate. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 438 of Plaintiffs' Complaint.

240. In response to the allegations of Paragraphs 439 through 442 of Plaintiffs' Complaint, the District denies.

### **Count 8**

**Violation of Federal Constitutional Rights Under 42 U.S.C. § 1983:  
Seeley Swan High School and Missoula County Public School District**

241. In response to the allegations of Paragraph 443 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 442 as if fully incorporated herein.

242. In response to the allegations of Paragraphs 444 and 445 of Plaintiffs' Complaint, the District affirmatively alleges that the Fourteenth Amendment to the United States Constitution speaks for itself. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 444 and 445 of Plaintiffs' Complaint.

243. In response to the allegations of Paragraph 446 of Plaintiffs' Complaint, the District affirmatively alleges that 42 U.S.C. § 1983 speaks for itself.

244. In response to the allegations of Paragraph 447 of Plaintiffs' Complaint, the District denies.

245. In response to the allegations of Paragraph 448 through 450 of Plaintiffs' Complaint, the allegations set forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the allegations of Paragraphs 448 through 450 of Plaintiffs' Complaint.

246. In response to the allegations of Paragraphs 451 through 452 of Plaintiffs' Complaint, the District denies.

247. In response to the allegations of Paragraphs 453 through 454 of Plaintiffs' Complaint, to the extent no report or actual knowledge of discrimination or

harassment on the part of staff was received by the District or its agents, the District was not obligated to respond or investigate. The District affirmatively alleges that it responded to those incidents described above which were called to its attention. To the extent not admitted herein, the District denies the remaining allegations of Paragraphs 453 and 454 of Plaintiffs' Complaint.

248. In response to the allegations of Paragraph 455 of Plaintiffs' Complaint, as no determination of discrimination or harassment by staff against Plaintiff Owen Mercado was made by the District or its agents, the District did not make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 455 of Plaintiffs' Complaint.

249. In response to the allegations of Paragraphs 456 through 459 of Plaintiffs' Complaint, the District denies.

### **Count 9**

#### **Violation of Montana State Constitutional Rights: Seeley Swan High School and Missoula County Public School District**

250. In response to the allegations of Paragraph 460 of Plaintiffs' Complaint, the District reasserts and realleges its responses to Paragraphs 1 through 459 as if fully incorporated herein.

251. In response to the allegations of Paragraphs 461 and 462 of Plaintiffs' Complaint, the District affirmatively alleges that the provisions of the Montana Constitution speak for themselves. To the extent not admitted herein, the District

denies the remaining allegations of Paragraphs 461 and 462 of Plaintiffs' Complaint.

252. In response to the allegations of Paragraph 463 of Plaintiffs' Complaint, the District denies.

253. In response to the allegations of Paragraph 464 through 466 of Plaintiffs' Complaint, the allegations set forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the allegations of Paragraphs 464 through 466 of Plaintiffs' Complaint.

254. In response to the allegations of Paragraphs 467 through 469 of Plaintiffs' Complaint, the District denies.

255. In response to the allegations of Paragraphs 470 of Plaintiffs' Complaint, to the extent no report or actual knowledge of discrimination or harassment on the part of staff or students was received by the District or its agents, the District was not obligated to respond or investigate. The District affirmatively alleges that it responded to those incidents described above which were called to its attention. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 470 of Plaintiffs' Complaint.

256. In response to the allegations of Paragraph 471 of Plaintiffs' Complaint, as no determination of discrimination or harassment by staff or students against Plaintiff Owen Mercado was made by the District or its agents, the District did not

make a referral to law enforcement. To the extent not admitted herein, the District denies the remaining allegations of Paragraph 471 of Plaintiffs' Complaint.

257. In response to the allegations of Paragraphs 472 through 475 of Plaintiffs' Complaint, the District denies.

### **Count 10**

#### **Discrimination Under the Americans with Disabilities Act: Seeley Swan High School and Missoula County Public School District Failing to Grant Owen Mercado a Reasonable Accommodation**

258. In response to the allegations of Paragraphs 476 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 475 as if fully incorporated herein.

259. In response to the allegations of Paragraph 477 of Plaintiffs' Complaint, the District lacks sufficient information to admit or deny, therefore the District denies.

260. In response to the allegations of Paragraphs 478 through 482 of Plaintiff's Complaint, the District denies. The District affirmatively alleges that the Americans with Disabilities Act is not applicable.

### **Count 11**

#### **Violation of Owen Mercado's Right to be Free from Personal Injury Under MCA §§ 49-1-101 – 102: Seeley Swan High School and Missoula County Public School District**

261. In response to the allegations of Paragraphs 483 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 482 as if fully incorporated herein.

262. In response to the allegations of Paragraphs 484 and 485 of Plaintiffs' Complaint, the District admits. The District affirmatively alleges that Mont. Code Ann. §§ 49-1-101 and 49-1-102 speak for themselves.

263. In response to the allegations of Paragraph 486 of Plaintiffs' Complaint, the District denies.

264. In response to the allegations of Paragraphs 487 through 489 of Plaintiffs' Complaint, the allegations set forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the allegations of Paragraphs 487 through 489 of Plaintiffs' Complaint.

265. In response to the allegations of Paragraphs 490 through 498 of Plaintiffs' Complaint, the District denies.

### **Count 12**

#### **Violation of Owen Mercado's Right to be Free from Discrimination in Education under MCA § 49-1-102: Seeley Swan High School and Missoula County Public School District**

266. In response to the allegations of Paragraphs 499 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 498 as if fully incorporated herein.

267. In response to the allegations of Paragraph 500 of Plaintiffs' Complaint, the District admits.

268. In response to the allegations of Paragraph 501 of Plaintiffs' Complaint, the District denies.

269. In response to the allegations of Paragraphs 502 through 504 of Plaintiffs' Complaint, the allegations set forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the allegations of Paragraphs 502 through 504 of Plaintiffs' Complaint.

270. In response to the allegations of Paragraphs 505 through 513 of Plaintiffs' Complaint, the District denies.

### **Count 13**

#### **Violation of Owen Mercado's Right to be Free from Discrimination in Education under MCA § 49-2-307: Seeley Swan High School and Missoula County Public School District**

271. In response to the allegations of Paragraphs 514 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 513 as if fully incorporated herein.

272. In response to the allegations of Paragraph 515 of Plaintiffs' Complaint, the District affirmatively alleges that Mont. Code Ann. § 49-2-307 provides:

It is an unlawful discriminatory practice for an educational institution: (1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion,



sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds...

To the extent not admitted herein, the District denies the remaining allegations of Paragraph 515 of Plaintiffs' Complaint.

273. In response to the allegations of Paragraph 516 of Plaintiffs' Complaint, the District denies.

274. In response to the allegations of Paragraphs 517 through 519 of Plaintiffs' Complaint, the allegations set forth Plaintiffs' legal conclusions to which no response is required. To the extent a response is required, the District denies the allegations of Paragraphs 517 through 519 of Plaintiffs' Complaint.

275. In response to the allegations of Paragraphs 520 through 528 of Plaintiffs' Complaint, the District denies.

#### **Count 14**

#### **Violation of Owen Mercado's Right to be Free from Retaliation for Reporting Discrimination in Education under MCA § 49-2-201: Seeley Swan High School and Missoula County Public School District**

276. In response to the allegations of Paragraphs 529 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 528 as if fully incorporated herein.

277. In response to the allegations of Paragraph 530 of Plaintiffs' Complaint, the District affirmatively alleges that Mont. Code Ann. § 49-2-301 provides:

It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a Complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

To the extent not admitted herein, the District denies the remaining allegations of Paragraph 530 of Plaintiffs' Complaint.

278. In response to the allegations of Paragraph 531 through 541 of Plaintiffs' Complaint, the District denies.

#### **Count 15**

##### **Negligent Infliction of Emotional Distress: Seeley Swan High School and Missoula County Public School District**

279. In response to the allegations of Paragraphs 542 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 541 as if fully incorporated herein.

280. In response to the allegations of Paragraph 543 through 546 of Plaintiffs' Complaint, the District denies.

#### **Count 16**

##### **Intentional Infliction of Emotional Distress: Seeley Swan High School and Missoula county Public School District**

281. In response to the allegations of Paragraphs 547 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 546 as if fully incorporated herein.

282. In response to the allegations of Paragraphs 548 through Paragraph 551 of Plaintiffs' Complaint, the District denies.

### **VI. Damages**

283. In response to the allegations of Paragraphs 552 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 551 as if fully incorporated herein.

284. In response to the allegations of Paragraphs 553 and 554 of Plaintiffs' Complaint, the District denies.

### **VII. Attorney's Fees and Costs**

285. In response to the allegations of Paragraphs 555 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 554 as if fully incorporated herein.

286. In response to the allegations of Paragraph 556 of Plaintiffs' Complaint, the District admits. The District affirmatively alleges that 42 U.S.C.A. § 1988(b) speaks for itself.

287. In response to the allegations of Paragraph 567 through 560 of Plaintiffs' Complaint, the District admits that Plaintiffs seek fees under the cited authorities, but the District denies that Plaintiffs are entitled to recovery of attorney's fees.

### **VIII. Exemplary Damages**

288. In response to the allegations of Paragraphs 561 of Plaintiffs' Complaint, the District restates and realleges its responses to Paragraphs 1 through 560 as if fully incorporated herein.

289. In response to the allegations of Paragraphs 560 through 568 of Plaintiffs' Complaint, the District denies.

### **Affirmative Defenses**

#### **First Defense**

1. Plaintiffs' Complaint fails to state claims upon which relief may be granted.

#### **Second Defense**

2. Defendants had policies designed to prevent and correct discrimination and conducted a prompt and thorough investigation of instances of alleged harassment, intimidation or bullying to the extent they were made known to the District. Many of the allegations in the Complaint were not reported to Defendants prior to the filing of this lawsuit. As such, Defendants did not have adequate and actual notice of those allegations.

#### **Third Defense**

3. Defendants did not act with deliberate indifference in response to Plaintiffs' allegations.

#### **Fourth Defense**

4. Defendants did not deprive Owen Mercado of access to the educational benefits or opportunities provided by the District.

**Fifth Defense**

5. Neither of the Plaintiffs was deprived any Constitutional right.

**Sixth Defense**

6. The District is not liable for punitive damages pursuant to Mont. Code Ann. § 2-9-105.

**Seventh Defense**

7. Damages awarded for Plaintiffs' claims, if any, may not exceed the damages limitation stated in Mont. Code Ann. § 2-9-108.

**Eighth Defense**

8. The Plaintiffs have failed to mitigate their damages.

**Ninth Defense**

9. Plaintiffs' claims are barred in whole or in part due to Plaintiffs' failure to exhaust administrative remedies.

**Tenth Defense**

10. The claims of one or both Plaintiffs are barred in whole or in part due to Plaintiffs' failure to timely file under the applicable statute of limitations.

**Eleventh Defense**

11. Plaintiffs' claimed damages, if any, were not caused by the conduct of the Defendants and were caused, in whole or in part, by the intervening, superseding negligent and/or intentional conduct of another person.

**Twelfth Defense**

12. Plaintiff Deirdre Lechowski-Mercado does not have standing to assert some or all claims stated in the Complaint.

**Thirteenth Defense**

13. Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, and unclean hands.

**Fourteenth Defense**

14. There is no District policy, practice or custom which resulted in a deprivation of Plaintiffs' constitutional rights.

**General Denial**

15. To the extent not admitted or alleged herein, the District denies all allegations or contentions that the District acted unlawfully or contrary to its duties and obligations under state and federal law and its own policies.

**Reservation of Right to Amend**

16. The District affirmatively states that it has not yet completed discovery in this matter. If additional information becomes known in the course of

discovery, the District reserves the right to amend its pleadings and this Answer accordingly.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants pray as follows:

1. That the Court dismiss Plaintiffs' Complaint.
2. That the Court enter judgment in favor of Defendants.
3. That Defendants recover their attorney fees, costs and disbursements incurred herein;
4. That Defendants be granted such other and further relief as the Court deems just and equitable.

### **Demand for Jury Trial**

Comes now, the Defendant Missoula County Public School District No. 1, by and through counsel, and hereby demands a trial by jury.

Respectfully submitted this 12<sup>th</sup> day of February, 2021.

By: /s/ Elizabeth A. O'Halloran  
Elizabeth A. O'Halloran  
KALEVA LAW OFFICES  
*Attorneys for Defendants*