No. 24-

IN THE

Supreme Court of the United States

NIAGARA WHEATFIELD
CENTRAL SCHOOL DISTRICT,

Petitioner,

v.

THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Ordinarily, litigants are not permitted to sue in federal court to vindicate the rights of third parties. *Parens patriae* standing, whereby a State may sue on behalf of its residents to remedy harms that they have suffered, is an exception to that rule. And it is a potent one that has become a favorite of state attorneys general looking to unleash their governments' resources against all manner of supposed wrongdoers: corporations, other States, and more.

This Court in *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592 (1982) articulated elements that a State must satisfy in order to wield that powerful tool. The State "must express a quasi-sovereign interest": an "interest[] that the State has in the well-being of its populace." *Id.* at 602, 607. Further, the State must allege an injury to that interest that affects "a sufficiently substantial segment of its population" and that transcends mere harm to those "particular private parties" themselves. *Id.* at 607.

The question presented, which a Judge below observed has generated such "confusion among the Courts of Appeals" as to warrant "clarification or correction by the Supreme Court," is: How widespread must an injury to a State's quasi-sovereign interest be, and how clearly must it transcend harm to particular private parties, to give the State *parens patriae* standing?

PARTIES TO THE PROCEEDING

Petitioner is Niagara Wheatfield Central School District (the "School District"). The School District was the defendant in the United States District Court for the Western District of New York and the appellee in the United States Court of Appeals for the Second Circuit.

Respondent is the State of New York, acting through New York State Attorney General Letitia James. New York was the plaintiff in the District Court and the appellant in the Second Circuit.

STATEMENT OF RELATED PROCEEDINGS

This proceeding arises out of and is directly related to the following proceedings held in this case:

- *New York ex rel. James v. Niagara-Wheatfield Central School District*, Case No. 1:21-cv-00759-JLS-LGF (W.D.N.Y.), in which the District Court entered final judgment on August 29, 2022, and

- *New York ex rel. James v. Niagara-Wheatfield Central School District*, Case No. 22-2178-cv (2d Cir.), in which the Second Circuit issued its panel decision on October 15, 2024 and denied the School District's timely petition for rehearing *en banc* on December 11, 2024.

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PRELIMINARY STATEMENT

As Judge Cabranes recognized in his separate opinion below, Pet. App. 29a-33a, the Second Circuit's decision in this case deepens a conflict among the federal courts of appeals concerning the interpretation and application of the criteria set forth by this Court in *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592 (1982) governing *parens patriae* standing, a tool frequently used by States—usually via their attorneys general—to pursue litigation on behalf of their residents.

Pursuant to *Alfred L. Snapp & Son*, in order to invoke *parens patriae* standing, a State "must express a quasi-sovereign interest," *i.e.*, an "interest[] that the State has in the well-being of its populace," and the State must allege an injury to that interest that affects "a sufficiently substantial segment of its population" and that resonates beyond mere harm to those "particular private parties" so as to make the State "more than a nominal party" to the lawsuit. 458 U.S. at 602, 607. Several circuits read those criteria rigorously and restrict *parens patriae* standing to injuries that undeniably effect the entire State and that clearly transcend harm to private individuals. That cautious approach is consistent with *parens patriae* standing being an exception to the general rule against standing to assert the rights of third parties. The Second Circuit, however, has watered down this Court's criteria significantly, authorizing *parens patriae* lawsuits in which a State alleges, at bottom, only an injury to a relatively discrete segment of private persons. And in the decision below, in which the Second Circuit permitted the State of New York to litigate *parens patriae* against a school district of one of its political subdivisions, that court diluted the *Alfred L. Snapp & Son* criteria even more.

The Second Circuit's decision exacerbates the circuit conflict and puts that court even further out of step with mainstream approaches to *parens patriae* standing. It runs counter to *parens patriae* standing decisions of this Court, as well. And in authorizing *parens patriae* litigation by a State against an arm of one of the State's municipalities, the Second Circuit's decision marks a stark departure from the interstate litigation that *parens patriae* standing was historically used to support.

Moreover, the Second Circuit's decision risks "real consequences" for real litigants on both sides of the "v." Pet. App. 31a (Op. of Cabranes, J.). For defendants: The Second Circuit's decision further enables overreaching state attorneys general to "bring[] headline-grabbing suits ostensibly on behalf of their citizens but without satisfying the 'additional hurdle' of *parens patriae* standing," and thereby to "prejudice[] parties who must now face off not only against their rightful opponent, but also the formidable legal machinery of a State." Pet. App. 31a (Op. of Cabranes, J. (quoting *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 538 (2007) (Roberts, C.J., dissenting))). And for the persons allegedly aggrieved: In light of doctrines of claim- and issue-preclusion, in any given litigation, "[a]llowing [a] State to insert itself [without proper *parens patriae* standing] would usurp 'the autonomy of those who are most directly affected' to 'decide whether and how to challenge the defendant's action.'" Pet. App. 32a (Op. of Cabranes, J. (quoting *Food & Drug Admin. v. Alliance for Hippocratic Med.*, 602 U.S. 367, 379-380 (2024))). The State's attorney general would get to decide those questions, and to force affected individuals to go along in "my way or the highway" fashion.

As Judge Cabranes aptly concluded, the current state of the law governing *parens patriae* standing "warrants clarification or correction by the Supreme Court," and "[g]ranting certiorari would provide an opportunity" for the Court to do just that. Pet. App. 31a, 33a. The School District's petition for a writ of certiorari should be granted.

OPINIONS BELOW

The Second Circuit's panel decision, together with Judge Cabranes's separate opinion, is reported at 119 F.4th 270 and reproduced at Pet. App. 1a-33a. The District Court's decision and order granting the School District's Federal Rule of Civil Procedure 12(c) motion for judgment on the pleadings is not reported in the Federal Supplement, but it is available on Westlaw at 2022 WL 3699632 and reproduced at Pet. App. 34a-41a. The District Court adopted in part a Magistrate Judge's report and recommendation, which is available on Westlaw at 2022 WL 1528651 and reproduced at Pet. App. 42a-81a.

JURISDICTION

The Second Circuit issued its panel decision on October 15, 2024 and denied the School District's timely petition for rehearing *en banc* on December 11, 2024. Pet. App. 1a-33a, 82a-83a. Justice Sotomayor extended the time for the School District to file a petition for writ of certiorari until May 12, 2025. This Court therefore has jurisdiction over the School District's petition pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The Niagara Wheatfield Central School District is a public school district located in western New York that serves approximately 3,400 students via four elementary schools, one middle school, and one high school. Niagara Wheatfield Central School District, *About Us/Home*, https://www.nwcsd.org/domain/9 (last visited May 9, 2025); *see* Pet. App. 31a-32a (Op. of Cabranes, J.). In 2018, T.G., a female student who was then finishing her junior year at the high school, was allegedly raped by E.D., a male student who was also a junior at the high school, at E.D.'s home. 2d Cir. App. 12. The incident received media attention when T.G.'s mother made social media posts claiming that the School District had failed to protect T.G. from E.D. 2d Cir. App. 14. Thereafter, New York State Attorney General Letitia James launched an investigation seeking to identify other students she could call "victims" of the School District's supposed neglect. 2d Cir. App. 44-45. Of the School District's 3,400 students, the Attorney General identified three who, she alleges, were sexually abused, harassed, or bullied by other students between 2017 and 2021.

C.C., a female student, allegedly experienced gender-based bullying in middle school and high school between 2017 and 2019. 2d Cir. App. 15-16. Students called her "gay" and "transgender" because she wore stereotypically male outfits. 2d Cir. App. 15. In 2020, female student A.S., a high schooler, allegedly was subjected to inappropriate sexual comments about her appearance and clothing by fellow students. 2d Cir. App. 16. Additionally, a group of high school students physically assaulted A.S. at a pep rally. 2d Cir. App. 17. L.W., a female student, attended second grade at one of the School District's elementary

schools. 2d Cir. App. 17. In 2017, she allegedly was sexually assaulted, in the housing complex where she lived, by a neighbor who was in fifth grade at the same school. 2d Cir. App. 17.

In 2021, the Attorney General commenced this action by filing a complaint against the School District in the United States District Court for the Western District of New York. 2d Cir. App. 2. In the complaint, as amended, the Attorney General claimed that the School District had violated Title IX of the Education Amendments of 1972, and that the School District was liable for negligent supervision under New York common law. 2d Cir. App. 19-21. As support for these claims, the Attorney General cited the four alleged incidents referenced above regarding T.G., C.C., A.S., and L.W. 2d Cir. App. 12-18. The Attorney General also alleged that the School District failed to properly respond to "at least thirty incidents of sexual assault, harassment, or gender-based bullying in the last few years," but did not supply any details. 2d Cir. App. 19. The Attorney General sought multiple forms of injunctive relief against the School District. 2d Cir. App. 21.

As her basis for standing, the Attorney General asserted that she was entitled to vindicate the students' alleged injuries under the *parens patriae* doctrine. 2d Cir. App. 11. According to the Attorney General, the School District's conduct "caused victims mental, emotional, and physical injury," "deprived them [of] equal access to education," and "impact[ed] the student body and the school community as a whole" by "show[ing] students—particularly young women—that the very people charged with ensuring their safety in school will not protect them in their time of need." 2d Cir. App. 10.

The School District moved under Federal Rule of Civil Procedure 12(c) for judgment on the pleadings, arguing that the allegations set forth in the Attorney General's complaint were insufficient to support *parens patriae* standing. 2d Cir. App. 39-40. The District Court (Sinatra, J.) granted the motion. Pet. App. 34a-41a; *see* Pet. App. 42a-81a. The court cited this Court's decision in *Alfred L. Snapp & Son*, which set forth the elements that a State must establish in order to litigate in a *parens patriae* capacity: The State "must express a quasi-sovereign interest," *i.e.*, an "interest[] that the State has in the well-being of its populace," and the State also must allege an injury to that interest that affects "a sufficiently substantial segment of its population" and that transcends mere harm to those "particular private parties" so as to make the State "more than a nominal party" to the lawsuit. 458 U.S. at 602, 607; *see* Pet. App. 58a. The District Court held that *parens patriae* standing was lacking because the complaint's "examples of factually distinct instances of discrimination" did not constitute an adequate injury. Pet. App. 38a.

On appeal, a panel of the Second Circuit reversed and held that the Attorney General had *parens patriae* standing to pursue the action against the School District. Pet. App. 1a-28a. The panel ordered the case remanded to the District Court for further proceedings.[1] Pet. App. 28a.

Judge Cabranes filed a separate opinion in which he concluded that "New York lacks *parens patriae* standing."

1. The District Court subsequently entered a stay of proceedings pending the disposition of this petition for a writ of certiorari and any appeal on the merits that might arise therefrom. D. Ct. Dkt. No. 71 at 1-5.

Pet. App. 29a-33a. In his view, the case boiled down to the following: "New York alleges deliberate indifference and negligent supervision against Niagara-Wheatfield Central School District—a district of six schools and more than three thousand students—on the basis of four unrelated incidents." Pet. App. 31a-32a. Those allegations, he explained, did not assert an injury to an "interest apart from the interests of particular private parties," and thus were insufficient to permit the New York State Attorney General to litigate those parties' grievances. Pet. App. 32a. Judge Cabranes noted that "[t]he Complaint also mentions that the [School] District saw 'at least thirty incidents of sexual assault, harassment, or gender-based bullying in the last few years,'" but "[w]ithout any supporting details, however, this allegation does not establish a cognizable legal claim against the [School] District, much less *parens patriae* standing for the State." Pet. App. 32a n.10.

Nevertheless, Judge Cabranes styled his separate opinion a "*dubitante*" concurrence (rather than a dissent), stating that he "[could] not be confident in [his] conclusion because the standard [for *parens patriae* standing] is uncertain." Pet. App. 29a, 32a. Judge Cabranes noted that this Court has provided little in the way of concrete guidance to lower courts for determining whether an alleged injury to a quasi-sovereign interest satisfies the criteria necessary for *parens patriae* standing. Pet. App. 29a-30a. The result, Judge Cabranes observed, has been "an invitation to confusion" that "has indeed sown some confusion among the Courts of Appeals" and created a "doctrinal muddle." Pet. App. 30a-31a.

Judge Cabranes closed his opinion by stating that "[the circuits'] confused *parens patriae* case law warrants

clarification or correction by the Supreme Court," and that "[g]ranting certiorari would provide an opportunity" for the Court to do exactly that. Pet. App. 31a, 33a.

REASONS FOR GRANTING THE PETITION

A. The Decision Below Deepens A Circuit Conflict Concerning The Interpretation And Application Of *Parens Patriae* Standing Criteria Articulated By This Court In *Alfred L. Snapp & Son*

"It is * * * a 'fundamental restriction on [federal courts'] authority' that 'in the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.'" *Hollingsworth v. Perry*, 570 U.S. 693, 708 (2013) (quoting *Powers v. Ohio*, 499 U.S. 400, 410 (1991) (alteration marks omitted]); *accord Alliance for Hippocratic Med.*, 602 U.S. at 393 n.5. That restriction tolerates only "certain, limited exceptions." *Hollingsworth*, 570 U.S. at 708 (quoting *Powers*, 499 U.S. at 410). *Parens patriae* standing, whereby States may bring lawsuits on behalf of their residents to remedy harms that the residents have suffered, is one of them. *See* Pet. App. 29a (Op. of Cabranes, J. (observing that "*parens patriae* standing is the exception, not the rule")).

The exception for *parens patriae* lawsuits is particularly potent. Because they are, logistically, relatively easy to commence, because they withhold from defendants many of the procedural protections present in other types of aggregate actions, and because the aggrieved residents are backed by governmental power and resources, "*parens patriae* suits pack a significant

deterrent wallop." Edward Brunet, *Improving Class Action Efficiency by Expanded Use of* Parens Patriae *Suits and Intervention*, 74 Tulane L. Rev. 1919, 1938 (2000); *see also* Myriam Gilles & Gary Friedman, *After Class: Aggregate Litigation in the Wake of* AT&T Mobility v. Concepcion, 79 U. Chi. L. Rev. 623, 660 (2012) (encouraging state attorneys general to "fill the void left by class actions" because "*[p]arens patriae* suits are not subject to Rule 23 or contractual waiver provisions, and so avoid the majority of impediments to contemporary class actions"). State attorneys general are keenly aware of the power of *parens patriae* litigation, and they wield it often. In domains as diverse as consumer protection, civil rights, products liability, antitrust, and more, "[t]he state attorney general has emerged * * * as a 'super plaintiff' in state *parens patriae* litigation." Donald G. Gifford, *Impersonating the Legislature: State Attorneys General and* Parens Patriae *Product Litigation*, 49 Boston Coll. L. Rev. 913, 913 (2008).

This Court has recognized *parens patriae* standing since at least as early as 1900, *see Louisiana v. Texas*, 176 U.S. 1, 19 (1900), but it was not until 1982, in *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592 (1982), that the Court undertook to articulate the elements that a State must satisfy in order to litigate in a *parens patriae* capacity. In that case, the Court announced that a State "must express a quasi-sovereign interest": an "interest[] that the State has in the well-being of its populace." *Id.* at 602, 607. A State's "interest in the health and well-being—both physical and economic—of its residents in general" is one example; a State's "interest in not being discriminatorily denied its rightful status within the federal system" is another. *Id.* at 607. In addition to

expressing a quasi-sovereign interest, the State also must allege an injury to that interest that affects "a sufficiently substantial segment of its population," and that transcends mere harm to those "particular private parties" so as to make the State "more than a nominal party" to the lawsuit. *Id.*

The Court held that the territory of Puerto Rico had satisfied those elements and had *parens patriae* standing, on behalf of its residents, to sue Virginia apple growers for allegedly discriminating against Puerto Ricans in their workforce. The Court found adequate Puerto Rico's allegation that the defendants had violated federal law "by failing to provide employment for qualified Puerto Rican migrant farmworkers, by subjecting those Puerto Rican workers that were employed to working conditions more burdensome than those established for temporary foreign workers, and by improperly terminating employment of Puerto Rican workers," which in turn "deprived the Commonwealth of Puerto Rico of its right to effectively participate in the benefits of the Federal Employment Service System of which it is a part" and thereby "caused irreparable injury to the Commonwealth's efforts to promote opportunities for profitable employment for Puerto Rican laborers and to reduce unemployment in the Commonwealth." *Alfred L. Snapp & Son*, 458 U.S. at 598.

But, the Court in *Alfred L. Snapp & Son* provided little in the way of tangible guidance to lower courts for determining whether any given alleged injury to a quasi-sovereign interest satisfies the elements necessary for *parens patriae* standing. The Court has not offered concrete guidance in that regard in the 40-plus years since, either. The result, Judge Cabranes observed, has

been "an invitation to confusion" that "has indeed sown some confusion among the Courts of Appeals" and created a "doctrinal muddle." Pet. App. 30a-31a.

If anything, Judge Cabranes understated the problem. Left largely to their own devices, the federal courts of appeals have taken diametrically contrasting positions on how widespread an injury to a State's quasi-sovereign interest must be, and how clearly it must transcend mere harm to particular private parties, in order to confer *parens patriae* standing. *See* Ann Woolhandler & Michael G. Collins, *Reining in State Standing*, 94 Notre Dame L. Rev. 2015, 2022 n.41 (2019) ("[I]t may be difficult to say with certainty where *parens patriae* or some alleged sovereign injury stops and individual injury begins."). Decisions that Judge Cabranes highlighted in his separate opinion vividly prove the point. Roughly speaking, the circuits fall into essentially two camps: There are circuits that interpret and apply the *Alfred L. Snapp & Son* criteria with respect for the narrow role of *parens patriae* standing as an exception to the rule against one party litigating another party's grievances, and with due regard for the need to prevent overzealous state attorneys general from turning individual disputes into political causes. And there are circuits that seem to view the *Alfred L. Snapp & Son* criteria as providing few, if any, constraints at all.

The Fifth Circuit handles *parens patriae* standing properly, as evidenced by its recent decision in *Harrison v. Jefferson Parish School Board*, 78 F.4th 765 (5th Cir. 2023); *see* Pet. App. 30a n.6 (Op. of Cabranes, J.). In that case, a fourth-grader, who was attending school virtually from home, displayed a BB gun on camera. *Id.* at 767. On a different day, a sixth-grader at the same school, who

also was attending school remotely, likewise displayed a BB gun on camera. *Id.* Both students were suspended. *Id.* The students' families sued the school board in a Louisiana federal court, alleging that the suspensions violated federal and state law. *Id.* at 768. The State of Louisiana intervened and asserted claims that the school board's actions were *ultra vires*, violated multiple Louisiana statutes, and denied the students due process. *Id.* The State contended that it had *parens patriae* standing to press its claims against the school board, alleging an injury to its "quasi-sovereign interest in preventing its political subdivisions from violating the constitutional rights of 52,000 public schoolchildren." *Id.* at 768, 772.

The Fifth Circuit held that Louisiana did not have *parens patriae* standing. The State's asserted injury was "wholly derivative" of the injuries incurred by the affected students, the court held. *Harrison*, 78 F.4th at 773. "Louisiana is not asserting a separate injury such as being denied its full participation in the federal system, nor does it allege injury to its citizens' health or economic well-being in a way that also implicates its own interests." *Id.*

The Fifth Circuit rejected Louisiana's reliance on *Alfred L. Snapp & Son*. "In *Snapp*, Puerto Rico sued Virginia apple growers for discriminating against its workers by discriminatorily hiring, treating harshly, and firing workers from Puerto Rico." *Harrison*, 78 F.4th at 773. "The [Supreme] Court held that Puerto Rico had *parens patriae* standing in part because it had an 'interest in securing residents from the harmful effects of discrimination.'" *Id.* (quoting *Alfred L. Snapp & Son*, 458 U.S. at 609). But, "the discrimination in *Snapp* implicated

Puerto Rico's interest in 'full and equal participation' in the federal system." *Id.* (quoting *Alfred L. Snapp & Son*, 458 U.S. at 609). "Otherwise, Puerto Rico would have simply been asserting the interests of the citizens and thus its interest would not have satisfied the requirement that the state assert 'interests apart from the interests of particular private parties,'" the Fifth Circuit concluded. *Id.* (quoting *Alfred L. Snapp & Son*, 458 U.S. at 607 (alteration marks omitted)).

The Fifth Circuit applied that same rigorous approach to *parens patriae* standing—an approach befitting an exception to the general rule against standing to litigate third-party grievances—in *Louisiana ex rel. Louisiana Department of Wildlife and Fisheries v. National Oceanic and Atmospheric Administration*, 70 F.4th 872 (5th Cir. 2023). Louisiana sued the National Oceanic and Atmospheric Administration in a Louisiana federal court to challenge a federal rule impacting the shrimping industry. *Id.* at 876. Louisiana attempted to invoke *parens patriae* standing, contending that the rule would have a "significant adverse economic impact * * * on Louisiana's shrimping industry, a significant component of the State's economy." *Id.* at 881.

The Fifth Circuit held that Louisiana was not entitled to *parens patriae* standing on that basis. The case came to the court in a summary-judgment posture, and although "Louisiana pointed to its complaint to substantiate its assertion that the Final Rule will affect a sufficiently substantial segment of Louisiana residents," "complaint allegations are insufficient at summary judgment because 'pleadings are not summary judgment evidence,'" the Fifth Circuit explained. *Louisiana Dep't of Wildlife &*

Fisheries, 70 F.4th at 881 (quoting *Wallace v. Texas Tech. Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996)). "Moreover, while the Final Rule's EIS"—its environmental impact statement—"noted that the rule would adversely affect the shrimping industry across the Gulf of Mexico, Louisiana failed to provide evidence particularly substantiating the rule's impact on *its* shrimping industry or, ergo, 'a sufficiently substantial segment of its population.'" *Id.* (quoting *Alfred L. Snapp & Son*, 458 U.S. at 607).

The Sixth Circuit, too, takes pains to ensure that *parens patriae* standing is restricted to injuries that undeniably effect the entire State and that clearly transcend harm to private individuals, forcing state attorneys general to use their *parens patriae* power with circumspection. An illustrative case is *Chapman v. Tristar Products, Inc.*, 940 F.3d 299 (6th Cir. 2019); *see* Pet. App. 30a n.6 (Op. of Cabranes, J.).

In *Chapman*, a nationwide collection of plaintiffs sued a manufacturer of pressure cookers in Ohio federal court alleging that the devices were defective. 940 F.3d at 302. After the first day of trial, the plaintiffs and the manufacturer agreed to settle the case and for the district court to certify a settlement class. *Id.* The terms of the agreement: Class members could receive a coupon for purchase of a different product made by the manufacturer, and a warranty extension on that product, provided that they watched a safety video. *Id.* at 303. The coupons and warranty extensions were collectively valued at approximately $1 million, but the district court approved an award of attorney fees of approximately $2 million. *Id.* The State of Arizona sought to intervene in the litigation for purposes of objecting to the settlement on the ground

that it impermissibly favored the lawyers over the class members. *Id.* Arizona asserted *parens patriae* standing on behalf of the members of the class who were Arizona citizens. *Id.* at 305.

The Sixth Circuit held that *parens patriae* standing was lacking. "In determining whether a sufficiently high proportion of the citizenry of a state face harm to their health and well-being to justify standing under *parens patriae*, the best indication is whether the State would, if it could, address the issue 'through its sovereign law-making powers.'" *Chapman*, 940 F.3d at 305 (quoting *Alfred L. Snapp & Son*, 458 U.S. at 607). In that regard, Arizona had pointed to its statutory prohibition on unfair and deceptive practices. *Id.* The Sixth Circuit observed, however, that in the district court Arizona disclaimed any objections to the settlement on those bases. *Id.* at 306. "Therefore, the only objections that Arizona can make are indistinguishable from the objections which individual Arizonans might raise." *Id.* "[S]uch claims would make Arizona 'merely a nominal party.'" *Id.*

"Here, the only injury alleged is injury to an identifiable group of Arizonans (class members in the instant litigation)," the Sixth Circuit added. *Chapman*, 940 F.3d at 306. "[A]nd Arizona has not fleshed out the indirect effects of this alleged injury on *Arizona as a whole*." *Id.* (emphasis added).

Like the Fifth Circuit and the Sixth Circuit, the Ninth Circuit, too, approaches *parens patriae* standing with due caution for its potential for abuse at the hands of overzealous chief state legal officers. The Ninth Circuit insists on allegations of a state-wide injury

clearly transcending harm to individual private parties as a prerequisite to *parens patriae* standing. Take, for example, that court's decision in *Missouri ex rel. Koster v. Harris*, 847 F.3d 646 (9th Cir. 2017), *cert. denied sub nom.*, *Missouri ex rel. Hawley v. Becerra*, 581 U.S. 1006 (2017); *see* Pet. App. 30a-31a n.7 (Op. of Cabranes, J.).

In *Koster*, the State of California adopted a law prohibiting persons from selling shelled eggs within the State that the sellers knew or should have known were produced by hens that had been restrictively confined in violation of California animal-health standards. *Koster*, 847 F.3d at 650. The State of Missouri, along with multiple other States, sued California in a California federal court seeking a declaratory judgment that the law governing egg sales was preempted by federal statutes or, alternatively, was unconstitutional. *Id.* The plaintiff States purported to ground their lawsuit on *parens patriae* standing, setting forth allegations that the law would substantially harm their egg farmers:

> "Missouri farmers produced nearly two billion eggs in 2012 and generated approximately $171 million in revenue for the state"; "Nebraska is one of the top ten largest egg producers in the United States"; "Alabama is one of the top fifteen largest egg producers in the United States"; "Kentucky farmers produced approximately 1.037 billion eggs in 2012 and generated approximately $116 million in revenue for the state"; "Oklahoma farmers produced more than 700 million eggs in 2012 and generated approximately $90 million in revenue for the state"; and "Iowa is the number

> one state in egg production, Iowa farmers produce over 14.4 billion eggs per year," and "the cost to Iowa farmers to retrofit existing housing or build new housing that complies with [California animal-health standards] would be substantial."
>
> The laws "force Plaintiffs' farmers either to forgo California's markets altogether or accept significantly increased production costs just to comply." That is, "Plaintiffs' egg farmers must choose either to bring their entire operations into compliance * * * or else simply leave the California marketplace." "The necessary capital improvements [would] cost Plaintiffs' farmers hundreds of millions of dollars," and, without access to the California market, "supply would outpace demand by half a billion eggs, causing the price of eggs—as well as egg farmers' margins—to fall throughout the Midwest and potentially force some Missouri producers out of business. The same goes for egg producers in Nebraska, Alabama, Oklahoma, Kentucky, and Iowa."

Id. at 651-652 (alteration marks omitted).

The Ninth Circuit held that *parens patriae* standing was lacking. The court observed that "the complaint alleges the importance of the California market *to egg farmers* in the Plaintiff States and the difficult choice that *egg farmers* face in deciding whether to comply with the Shell Egg Laws." *Koster*, 847 F.3d at 652. However, "[t]he complaint contains no specific allegations about the

statewide magnitude of these difficulties or the extent to which they affect more than just an 'identifiable group of individual' egg farmers." *Id.* (quoting *Alfred L. Snapp & Son*, 458 U.S. at 607). In particular, "the Shell Egg Laws are not alleged to threaten the health *of the entire population*" of the plaintiff States. *Id.* at 653 (emphasis added).

The Ninth Circuit cited *Alfred L. Snapp & Son* in support of its insistence on true state-wide injury. "In *Snapp*, Puerto Rico, acting as *parens patriae*, sued on behalf of its workers who allegedly suffered discrimination under a federal hiring program." *Koster*, 847 F.3d at 655. "The [Supreme] Court rejected 'too narrow a view of the interests at stake.'" *Id.* (quoting *Alfred L. Snapp & Son*, 458 U.S. at 609). "Although only 787 jobs were at issue, the nature of the discrimination affected all Puerto Ricans, so Puerto Rico could pursue relief for all residents under a *parens patriae* theory," the Ninth Circuit reasoned. *Id.*; *see also Washington v. Food & Drug Admin.*, 108 F.4th 1163, 1178 (9th Cir. 2024) (holding that the State of Idaho lacked *parens patriae* standing to challenge the federal government's elimination of a constraint on distribution of a particular drug because Idaho's alleged injury "concern[ed] the well-being of individual citizens—not a distinct interest *of the state as a whole*" (emphasis added)).

The Eighth Circuit, which has addressed *parens patriae* standing in the context of litigation by Native American tribes, sounded a similar theme in *United States v. Santee Sioux Tribe of Nebraska*, 254 F.3d 728 (8th Cir. 2001). That court explained that "[t]he doctrine of *parens patriae* allows a sovereign to bring an action on behalf of the interest of all its citizens." *Id.* at 734 (citing *Texas*, 176

U.S. at 19-20). Correspondingly, however, "this doctrine is reserved for actions which are asserted on behalf of *all* of the sovereign's citizens." *Id.* Accordingly, "[t]he *parens patriae* doctrine cannot be used to confer standing on [a] Tribe to assert the rights of a dozen or so members of the Tribe." *Id.*

In stark contrast, the Second Circuit "distort[s] * * * *parens patriae* injury analysis" in a way that only a headline-seeking state attorney general could love. Pet. App. 31a n.8 (Op. of Cabranes, J. (discussing *New York ex rel. Abrams v. 11 Cornwell Co.*, 695 F.2d 34 (2d Cir. 1982), *vacated in part on other grounds*, 718 F.2d 22 (2d Cir. 1983))). The problem with the Second Circuit is not a new one. Unlike the Sixth Circuit, the Second Circuit has never demanded that an injury to a State's quasi-sovereign interest affect the State "as a whole" in order to support *parens patriae* standing. *Chapman*, 940 F.3d at 306; *see New York ex rel. James v. Griepp*, 991 F.3d 81, 131-132 (2d Cir. 2021); *11 Cornwell*, 695 F.2d at 39-40. Nor has the Second Circuit ever demanded that an injury impact a State's "entire population," as the Ninth Circuit does. *Koster*, 847 F.3d at 652; *see Griepp*, 991 F.3d at 131-132; *11 Cornwell*, 695 F.2d at 39-40. The Second Circuit likewise has refrained from embracing the Eighth Circuit's position that a qualifying injury requires harm to "*all* of the sovereign's citizens." *Santee Sioux Tribe of Nebraska*, 254 F.3d at 734.

Indeed, over time, the Second Circuit appears to have been guided, at least in part, by a decision of the Third Circuit pre-dating *Alfred L. Snapp & Son* that itself permitted a State to sue as *parens patriae* to remediate localized injuries—a position that Judge

Garth rightly called out in his separate opinion in that case. *Pennsylvania v. Porter*, 659 F.2d 306, 329-330 (3d Cir. 1981) (*en banc*) (Garth, J., concurring in part and dissenting in part) (faulting the majority for ignoring the "unalterable requirements for *parens patriae* standing," including the requirement that the State allege "across-the-board burdens"); *see 11 Cornwell*, 695 F.2d at 38 (citing *Porter*, 659 F.2d at 314).[2] And in the decision below, the Second Circuit "[r]elax[ed] *parens patriae* standing requirements" to such a degree as to render them unrecognizable. Pet. App. 31a (Op. of Cabranes, J.).

Namely, in the decision below, the Second Circuit found New York entitled to *parens patriae* standing even though the Attorney General merely "alleges deliberate indifference and negligent supervision against Niagara Wheatfield Central School District * * * on the basis of four unrelated incidents across different schools, years, and grades." Pet. App. 31a-32a (Op. of Cabranes, J.). Even spotting the Attorney General her inadequately pleaded additional allegation that the School District failed to properly respond to "at least thirty incidents of sexual assault, harassment, or gender-based bullying in the last few years," Pet. App. 32a n.10 (Op. of Cabranes, J.), still *parens patriae* standing would have been rejected had the case been put to the Fifth Circuit, the Sixth Circuit, the Eighth Circuit, or the Ninth Circuit. Even with that further allegation, the most that the Attorney General's complaint plausibly can be read to allege is that the School District's conduct "impacts * * * the school community as a

2. The Fifth Circuit has suggested that *Porter* was wrongly decided. See *Harrison*, 78 F.4th at 773-774 ("*Porter* is not on all fours with *Snapp*.").

whole." 2d Cir. App. 10. That community comprises just six schools within a single western New York county abutting the Canadian border. *See* Niagara Wheatfield Central School District, *About Us/Home*, https://www.nwcsd.org/domain/9. An impact on that community, though no doubt serious and concerning to the community's members, plainly is not an impact on New York "as a whole." *Chapman*, 940 F.3d at 306. It is not an impact on New York's "entire population." *Koster*, 847 F.3d at 652; *see also Santee Sioux Tribe of Nebraska*, 254 F.3d at 734. New York's asserted injury is "wholly derivative" of the injuries incurred by the affected students. *See Harrison*, 78 F.4th at 773.

Moreover, recall the Sixth Circuit's observation that "[i]n determining whether a sufficiently high proportion of the citizenry of a state face harm to their health and well-being to justify standing under *parens patriae*, the best indication is whether the State would, if it could, address the issue 'through its sovereign law-making powers.'" *Chapman*, 940 F.3d at 305 (quoting *Alfred L. Snapp & Son*, 458 U.S. at 607). New York's sovereign law-making powers extend to the operation of county school districts. *See generally* New York State Educ. Law, tit. II. Yet, the Attorney General does not claim in her complaint, and did not contend in her briefing to the Second Circuit, that the State attempted to combat the School District's alleged wrongdoing by legislating on the issue or by invoking any existing state legislation addressing the issue.

Judge Cabranes's conclusion about this case was right-on: Under any reasonable interpretation of the criteria set forth in *Alfred L. Snapp & Son*, the New York State Attorney General has not alleged an injury to an "interest

apart from the interests of particular private parties." Pet. App. 32a (Op. of Cabranes, J.). The Second Circuit's decision below is directly at odds with the measured approaches of the Fifth Circuit, the Sixth Circuit, the Eighth Circuit, and the Ninth Circuit discussed above.

B. The Decision Below Conflicts With This Court's *Parens Patriae* Decisions

The Second Circuit's decision also deviates materially from this Court's *parens patriae* jurisprudence and marks a dramatic departure from the traditional role of *parens patriae* standing that this Court has recognized.

Start with the *Texas* case, decided by this Court in 1900 and widely regarded as the Court's first modern *parens patriae* decision. *See, e.g.*, F. Andrew Hessick, *Quasi-Sovereign Standing*, 94 Notre Dame L. Rev. 1927, 1937 (2019). In that case, Louisiana sued Texas to enjoin a Texas law that prohibited the importation of goods from Louisiana. 176 U.S. at 11. The Court found that Louisiana had standing to sue because the State "present[ed] herself in the attitude of *parens patriae*." *Id.* at 19. The Court explained: "[T]he bill before us * * * is not a special and peculiar injury such as would sustain an action by a private person." *Id.* Rather, "the matters complained of"—"that the State of Texas [was] intentionally absolutely interdicting interstate commerce as respect[ed] the State of Louisiana by means of unnecessary and unreasonable quarantine regulations"—"affect[ed] *her citizens at large*." *Id.* (emphasis added). In that regard, Louisiana was acting "[as] trustee, guardian, or representative of all her citizens." *Id.*

The very next year, this Court reiterated that same approach in *Missouri v. Illinois*, 180 U.S. 208 (1901). There, the State of Missouri sued the State of Illinois to stop Illinois from discharging sewage into the Mississippi River, a key source of drinking water for Missourians. *Id.* at 215-216. The Court held that Missouri could maintain the lawsuit on a *parens patriae* basis. The Court's rationale: "The health and comfort of the large communities inhabiting those parts of the state situated on the Mississippi River are not alone concerned, but contagious and typhoidal diseases introduced in the river communities may spread themselves *throughout the territory of the state*." *Id.* at 241 (emphasis added). "Moreover, substantial impairment of the health and prosperity of the towns and cities of the state situated on the Mississippi River, including its commercial metropolis, would injuriously affect *the entire state*." *Id.* (emphasis added). As the Ninth Circuit put it in discussing the *Missouri* decision: "Missouri alleged that a public health hazard affected *its entire population*." *Koster*, 847 F.3d at 653 (emphasis added).

As did the State of Kansas in the ensuing case of *Kansas v. Colorado*, 206 U.S. 46 (1907). That case concerned the respective claims of Kansas and Colorado to the water of the Arkansas River, a watercourse that flows through both Colorado and Kansas, among other states. Kansas alleged that Colorado was unlawfully diverting water from the river for the purpose of aiding Colorado's irrigation efforts, and thereby preventing Kansas from enjoying all of the Arkansas River water to which it was entitled. *Id.* at 85. Consequently, Kansas alleged, "a large portion of its territory [was] threatened with disaster," namely an adverse impact to a "large tract

of land bordering on the Arkansas River." *Id.* at 99. As to that tract of land, "[i]ts prosperity affects *the general welfare of the state*." *Id.* (emphasis added). This Court held that Kansas could litigate the action *parens patriae*: "The controversy rises * * * above a mere question of local private right and involves a matter of state interest." *Id.*

The Court continued to maintain that stringent standard for *parens patriae* standing throughout the decades, as evidenced by *Maryland v. Louisiana*, 451 U.S. 725 (1981). Louisiana imposed a tax on natural gas piped into the State from federally-controlled offshore drilling areas. *Id.* at 731. The State of Maryland, along with a number of other States and several pipeline companies, sued Louisiana on the ground that the tax was unconstitutional. *Id.* at 737. The Court concluded that Maryland and its fellow plaintiff States had *parens patriae* standing. The Court explained that a State may litigate *parens patriae* on behalf of its residents "where the injury alleged affects the general population of [the] State in a substantial way." *Id.* The Court held that the plaintiff States had alleged such an injury, because, among other things, "a great many citizens in each of the plaintiff States are themselves consumers of natural gas and are faced with increased costs aggregating millions of dollars per year." *Id.* at 739.

And then there is *Alfred L. Snapp & Son* itself. There, the Court found adequate to support *parens patriae* standing Puerto Rico's allegation that the defendants had violated federal law "by failing to provide employment for qualified Puerto Rican migrant farmworkers, by subjecting those Puerto Rican workers that were employed to working conditions more burdensome than those established for temporary foreign workers, and

by improperly terminating employment of Puerto Rican workers," which in turn "deprived the Commonwealth of Puerto Rico of its right to effectively participate in the benefits of the Federal Employment Service System of which it is a part" and thereby "caused irreparable injury to the Commonwealth's efforts "to promote opportunities for profitable employment for Puerto Rican laborers and to reduce unemployment in the Commonwealth." 458 U.S. at 598. "Although only 787 jobs were at issue, the nature of the discrimination affected *all Puerto Ricans*, so Puerto Rico could pursue relief for all residents under a *parens patriae* theory." *Koster*, 847 F.3d at 655 (emphasis added).

The common thread: This Court will allow a State to litigate on behalf of its residents as *parens patriae* only when the State alleges an injury "that concern[s] the state *as a whole*." *Massachusetts*, 549 U.S. at n.17 (quoting Richard Fallon et al., *Hart & Wechsler's The Federal Courts and the Federal System* 289 (5th ed. 2003) (emphasis added)). The Second Circuit sharply departed from this Court's teachings when giving the New York State Attorney General the green light to litigate, *parens patriae*, on the basis of unrelated incidents involving individual students within a single western New York school district—incidents that, even in their totality, are not alleged to have caused harm beyond that school district's "school community." 2d Cir. App. 10. The incidents, as alleged, are serious, and the School District takes them seriously. But they are not a matter for the extraordinary mechanism of *parens patriae* litigation by the State of New York.

The Second Circuit's decision also represents a dramatic deviation from *parens patriae* standing's

historical roots. It is no accident that the overwhelming majority, if not the entirety, of this Court's *parens patriae* cases involve interstate conflicts, like the State-versus-State decisions discussed above as well as cases like *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907), in which a State sued to redress harm done to its residents by a corporation located in another State. *See also Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 450-451 (1945) (permitting Georgia to litigate *parens patriae* against out-of-state railroad corporations that had conspired to fix freight rates in a manner that discriminated against Georgia shippers). As originally conceived, *parens patriae* standing in federal court was a means for States to resolve legal disputes among each other in our constitutional system.

Before 1789, although state courts did hear claims against other States and out-of-state litigants, decisions issued in those cases were not always honored. Hessick, *Quasi-Sovereign Standing*, *supra*, at 1943. When one State disapproved of the decision of a court of another State, the disapproving State would routinely ignore the decision. *Id.* In light of this problem, States often resolved disputes extrajudicially—and sometimes violently. *Id.* For example, one land dispute between Connecticut and Pennsylvania in the 1770s literally led to armed conflict. *Id.* This Court has described the availability of *parens patriae* standing for States to sue in federal court as an antidote: "an alternative" to the resolution of interstate disputes via "diplomacy and war." *Pennsylvania Railroad Co.*, 324 U.S. at 450.

On top of its other flaws, the Second Circuit's embrace of *parens patriae* standing as a means for a State to

litigate against its own political subdivisions is completely unmoored from the doctrine's historical roots.

C. The Jurisprudential Conflicts Are Urgently In Need Of This Court's Authoritative Resolution

The jurisprudential conflicts discussed above are not mere academic debates. As Judge Cabranes explained in his separate opinion below, "[r]elaxing *parens patriae* standing requirements allows States to bring headline-grabbing suits ostensibly on behalf of their citizens but without satisfying the 'additional hurdle' of *parens patriae* standing," which in turn causes "real consequences." Pet. App. 31a (Op. of Cabranes, J. (quoting *Massachusetts*, 549 U.S. at 538 (Roberts, C.J., dissenting))).

There are real consequences to defendants. After all, when States engage in that behavior, they "prejudice[] parties who must now face off not only against their rightful opponent, but also the formidable legal machinery of a State." Pet. App. 31a (Op. of Cabranes, J.).

There are real consequences to persons allegedly aggrieved by defendants' behavior, as well. In light of principles of *res judicata* and related preclusion doctrines, "[a]llowing [a] State to insert itself [into a lawsuit purportedly on a *parens patriae* basis] would usurp 'the autonomy of those who are most directly affected' to 'decide whether and how to challenge the defendant's action.'" Pet. App. 32a (Op. of Cabranes, J. (quoting *Alliance for Hippocratic Med.*, 602 U.S. at 379-380)). The State's attorney general conducts the action, and there is no structural mechanism that entitles the affected persons to a say in how the attorney general does so.

See generally Gabrielle J. Hanna, *The Helicopter State: Misuse of* Parens Patriae *Unconstitutionally Precludes Individual and Class Claims*, 92 Wash. L. Rev. 1955, 1975-1977 (2017).

These issues, and others related to *parens patriae* lawsuits, recur regularly. Aggressive state attorneys general have made sure of it. "Since *Snapp*, states have asserted *parens patriae* standing in a wide array of cases * * * under state and federal law." Jason Mazzone & Stephen Rushin, *State Attorneys General as Agents of Police Reform*, 69 Duke L.J. 999, 1039 (2020); *see also id.* at 1042-1043 & nn. 235-239 (surveying some of the many *parens patriae* lawsuits initiated by the State of New York specifically). Indeed, from the perspective of state attorneys general, "the absence of well-defined limits to *parens patriae*" prescribed by this Court "has created *opportunity*." *Id.* at 1039 (emphasis added).

Given the lack of clear guardrails, the potential for abuse (or even simply inadvertent misuse) of what should be a narrow exception to the general rule against third-party standing is palpable. The same New York State Attorney General who initiated this action against the School District has been judicially chastised for abusing her power to initiate representative actions to launch "predatory lawsuits that seek to impose punishment while searching for a crime" and to make "use of the judicial system to punish select purported offenders for what she believes to be a righteous cause." *New York ex rel. James v. PepsiCo, Inc.*, 222 N.Y.S.3d 907, 917 (N.Y. Sup. Ct. 2024).

The problem—which extends far beyond the State of New York, but in which that State does seem to play an

outsized role—should not be allowed to fester any longer. The School District's petition should be granted so that this Court can authoritatively reexamine *parens patriae* standing and disabuse opportunistic attorneys general of the notion that the doctrine gives them carte blanche to bring the full weight of their States to bear upon matters that are, at bottom, individual disputes.

CONCLUSION

The School District's petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 12, 2025

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DECIDED OCTOBER 15, 2024

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Argued October 27, 2023
Decided October 15, 2024

Docket No. 22-2178-cv

PEOPLE OF THE STATE OF NEW YORK,
BY LETITIA JAMES, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiff-Appellant,

v.

NIAGARA-WHEATFIELD CENTRAL
SCHOOL DISTRICT,

Defendant-Appellee.

Before: CABRANES, SACK, and MERRIAM, *Circuit Judges.*

On this appeal, we address the issue of what a state bringing suit in federal court must show to establish its standing in *parens patriae*. The State of New York, through its Attorney General, sued the Niagara-Wheatfield Central School District for its officials' alleged failure to address repeated complaints of student-on-

student sexual assault, sexual harassment, and gender-based violence and bullying. The United States District Court for the Western District of New York (Sinatra, Jr., *Judge*) dismissed this case on the pleadings, concluding that the state lacked *parens patriae* standing to bring the suit. The court reasoned that because the incidents alleged were factually distinct from one another, the State of New York had not shown that the School District's failure to act in those instances constituted a broader "policy or practice" of discriminating against student victims of gender-based violence and harassment. Absent such a policy or practice, the court concluded, the State of New York could not, as a matter of law, make the showing required for *parens patriae* standing that the School District's conduct affected a "substantial segment" of its population.

We conclude that showing an injurious policy or practice enforced against a target population is not necessary to satisfy the substantial-segment prong of the *parens patriae* standard. We further conclude that the State of New York has met its burden of pleading *parens patriae* standing at this stage of the litigation, and therefore

REVERSE the judgment of the district court and REMAND for further proceedings consistent with this opinion.

Judge Cabranes concurs *dubitante* in a separate opinion.

Appendix A

SACK, *Circuit Judge*:

This appeal requires us to identify what a state bringing a lawsuit in a federal court must show to establish so-called "*parens patriae*" standing. When a state sues *in parens patriae*, "literally[,] [as] 'parent of the country'", it "traditionally [takes on] the role of . . . sovereign and guardian of persons under a legal disability to act for themselves." *West Virginia v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1089 (2d Cir. 1971). The "doctrine has its antecedent in the common law concept of the 'royal prerogative,'" which similarly recognized "the king's inherent power to act as the guardian" for those without the legal capacity to vindicate their rights. *Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 215 (2d Cir. 2013) (citing *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257, 92 S. Ct. 885, 31 L. Ed. 2d 184 (1972)). In modern *parens patriae* suits, a state "must articulate a 'quasi-sovereign interest' distinct 'from the interests of particular private parties,' such as an 'interest in the health and well-being—both physical and economic—of its residents in general.'" *Id.* (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607, 102 S. Ct. 3260, 73 L. Ed. 2d 995 (1982)).

Here, the State of New York, through its Office of the Attorney General ("OAG"), brought suit against the Niagara-Wheatfield Central School District (the "School District"). The OAG alleged in its amended complaint (the "Complaint") that School District officials had failed to address repeated complaints of student-on-student sexual assault, sexual harassment, and gender-based violence and bullying.

Appendix A

The United States District Court for the Western District of New York (Sinatra, Jr., *Judge*) dismissed the Complaint, concluding that it failed to plausibly plead that the state had *parens patriae* standing. The court reasoned that, because the OAG had based its claim on factually distinct incidents, it had not successfully asserted that the School District engaged in a broader policy or practice of failing to protect student victims of gender-based violence and harassment. Absent such a policy or practice, it decided, the OAG could not make the showing required for *parens patriae* standing that the School District's conduct affected a "substantial segment" of New York State's population.

We conclude that showing an injurious policy or practice enforced against a target population is not necessary to satisfy the substantial-segment prong of the *parens patriae* standard. We further conclude that the OAG has met its burden of plausibly alleging *parens patriae* standing at this stage of the litigation, and therefore reverse the judgment of the district court and remand for further proceedings consistent with this opinion.

BACKGROUND

I. Factual Allegations

The OAG's allegations in this litigation fall into three categories: First are detailed assertions of how four of the School District's students were subjected to sexual assault, sexual harassment, or gender-based violence

and bullying by other students; how the four student victims and their parents repeatedly notified the School District and requested remedial action; and how the School District consistently failed to respond adequately. Second is the allegation that the School District knew of, but ignored, at least thirty similar incidents. And third are allegations that the School District's lapses affected not only the student victims, but the School District's community as a whole. "In reviewing [the School District]'s motion for judgment on the pleadings, we draw all facts—which we assume to be true unless contradicted by more specific allegations or documentary evidence—from the Complaint. . . ." *Kirkendall v. Halliburton, Inc.*, 707 F.3d 173, 175 n.1 (2d Cir. 2013) (internal quotation marks and citation omitted). It bears emphasis that what follows—which many might well find disturbing—are allegations only. But at this stage of the proceedings, a court is concerned with whether allegations are plausible, not whether those allegations have been established as facts.

A. The School District's Alleged Failure to Respond to Four Individual Students' Complaints of Sexual Assault, Sexual Harassment, and Gender-Based Violence and Bullying

T.G.'s rape and subsequent bullying. In May 2018, the OAG alleges, T.G., a female rising senior at Niagara Wheatfield Senior High School (the "High School"), was raped by E.D., a male rising senior at the High School, in E.D.'s home. T.G. reported the incident to the police, after which E.D. was arrested and charged. Soon thereafter,

T.G. obtained a restraining order prohibiting E.D. from coming near T.G. outside of the High School.

In an attempt to ensure T.G.'s safety during the upcoming 2018-19 school year, T.G.'s mother met with the High School's then-Principal Michael Mann before the school year began. T.G.'s mother showed Mann the restraining order, as well as text messages from E.D. to T.G. in which E.D. apologized for what he had done to her. Mann promised the mother that T.G. and E.D. would not have contact with one another during the school year, but declined to offer a concrete safety plan or to punish E.D., because the criminal charges had not, at least at that time, been resolved against him.

The Complaint further alleges that in the fall of that year, E.D. "went out of his way" to "frequently stand outside [of T.G.'s] classroom," "wait for her to walk out," and "glare at her." Am. Compl. ¶ 22. Encounters of this kind happened multiple times every week even though T.G.'s and E.D.'s lockers were not near one another. During the second week of the school year, T.G. notified the school counselor of those incidents. The school took no action. T.G. suffered a panic attack thereafter.

At an "open house," the High School's Assistant Principal, Jeff White, approached T.G.'s family and stated, in front of other students and parents, that in White's view, "TG had faked the panic attack for attention." *Id.* ¶ 24. T.G., a school cheerleader, began to absent herself from cheerleading practice. T.G.'s cheerleading coach refused to excuse her absences, allegedly stating that "girls get assaulted all the time." *Id.* ¶ 25.

In December 2018, other students began to harass T.G. about the rape she had reported. One classmate sent T.G. a picture of E.D. over Snapchat, with the caption "your boyfriend." *Id.* ¶ 26. T.G. showed the message to Principal Mann, who took no action. Other classmates sent T.G. text messages insinuating that she had enjoyed the sexual assault by E.D. T.G. showed the messages to the assistant principal, who took no action. When classmates told T.G. to "watch her back," T.G.'s mother informed the School District's superintendent, but received no response. *Id.* ¶ 28. None of the students involved in the alleged offending behavior was disciplined, and the school continued to permit E.D. to attend class in a room across from T.G.'s classroom. In January 2019, E.D. continued to stare repeatedly at T.G. in the hallway. T.G. began to miss classes because of these events.

On May 23, 2019, E.D. pleaded guilty to the assault on T.G., which was charged as rape in the third degree. T.G.'s mother informed the school about the conviction, but was told by Principal Mann that, on the advice of counsel, E.D. would be permitted to attend prom, graduation, and all other end-of-year school functions.

Later in May, T.G.'s mother posted on a social media platform an account of how the School District had failed to address her requests to shield her daughter from E.D. By the following morning, T.G.'s mother had received "a hundred messages from other parents in the District, expressing concern that a rapist was in school with their children all year long." *Id.* ¶ 36. On May 31, 2019, students at the High School organized and attended a walkout in

protest over the High School's handling of the incident. Principal Mann discouraged the walkout. Staff at the High School blocked doorways in an attempt to prevent more students from walking out; several students were suspended because of their participation in the event. A video recording shows Principal Mann telling student protestors that the walkout was not "civil," even though no violence or unrest had occurred. *Id.* ¶ 39. A female student responded asking whether "[a]llowing all of us girls to be in danger is civil?" *Id.* The walkout garnered national media attention. E.D. was later expelled.

C.C.'s gender-based bullying. C.C., a female student, was bullied because of the clothing she wore while a student at Edward Town Middle School and the High School. Throughout middle school, C.C.'s peers called her "gay" and "transgender" because she wore stereotypically male outfits. Am. Compl. ¶ 43. C.C. notified her school counselor, Dr. Peters, who initially permitted her to work in his office but eventually told her to return to the classroom. The bullying continued.

As a High School student, C.C. began to wear more stereotypically feminine clothing in an attempt to avoid further harassment. However, C.C.'s peers then called her "fat," "ugly," a "slut," and in one case told her to kill herself. *Id.* ¶¶ 45-46. Throughout the ninth grade, C.C. and her family repeatedly informed Dr. Peters of this harassment, but neither he nor any administrator in the School District took action to prevent its further occurrence.

Appendix A

In December 2019, after the onset of anxiety and depression, and having seen a counselor and a psychiatrist, C.C. stopped attending the High School. When C.C. requested a transfer to a neighboring high school, the School District refused. Instead, it called Child Protective Services, New York State's agency tasked with protecting the well-being of children, because C.C. was missing classes. As a result of her harassment and bullying, unmitigated by any protective action by the School District, C.C. dropped out of the High School. At the time the Complaint was filed in federal district court in August 2021, C.C. had not received a high school diploma.

A.S.'s gender-based harassment and physical assault. A.S., a female student, attended the High School in the spring of 2020. Around that time, a male football player at the High School created a TikTok video displaying other football players' messages mocking A.S. The video included comments by one boy that A.S.'s sweatpants made it look like she had male genitalia, and by another boy that he would not have sex with A.S. The video was shared among the school's student body.

Shortly thereafter, female friends of the football players began harassing A.S. A school pep rally turned into a violent physical assault of A.S. Members of the sophomore class engaged in derogatory chanting about A.S. and five sophomore girls displayed a poster about A.S. reading "We don't want you." Am. Compl. ¶ 54. The five girls then assaulted A.S., hitting her in the head eleven times. A.S.'s mother went to the principal's office and described the incident to Acting Principal Jeff White.

The High School did not take any action. Instead, White suggested to A.S.'s mother that A.S. should not attend the following day's school dance.

A.S.'s mother repeatedly followed up with both the High School and the School District's superintendent seeking protective steps for her daughter. She received no response, and nothing was done. Because A.S. had become afraid of attending the High School, she eventually transferred to a private school.

L.W.'s sexual assault and subsequent sexual harassment and bullying. L.W., a female student, attended second grade at Errick Road Elementary School (the "Elementary School") in 2017. That year, L.W. was sexually assaulted in her housing complex by a neighbor, a fifth grader at the Elementary School. L.W.'s mother reported the sexual assault to local law enforcement officials, Elementary School principal Nora O'Bryan, and School District Superintendent Daniel Ljiljanich. A court placed the assailant on probation and ordered the assailant's family to move out of L.W.'s housing complex. However, the School District took no action against the assailant, or to shield L.W. from the assailant at school. Instead, Superintendent Ljiljanich informed L.W.'s mother that, if she wished L.W. to be safe from her assailant, *she* would have to move to another area so L.W. could attend a different school.

According to the allegations, L.W.'s assailant continued to attend L.W.'s school and would eat lunch in a space near L.W. every day. When passing L.W., the

assailant would touch L.W.'s arm and tell her that she was "damaged goods" and that "no one [would] ever love [her]." Am. Compl. ¶ 64. On another occasion, the assailant followed L.W. into a school bathroom. Superintendent Ljiljanich did not return L.W.'s mother's repeated calls, and Principal O'Bryan did nothing to protect L.W., despite L.W.'s mother's expressed concerns.

L.W.'s assailant eventually moved out of the School District. Even then, however, other students at the Elementary School now allegedly called L.W. "damaged goods," based on what the assailant had said about L.W. *Id.* ¶ 67. They also told L.W. that she had enjoyed what her assailant had done to her. The sexual assault and the continued bullying thereafter caused L.W. to develop physical manifestations of stress and required her to seek personal counseling for two years.

B. The School District's Failure to Respond to Known Similar Incidents

The OAG further alleges in its Complaint that the School District was notified of "at least thirty incidents of sexual assault, harassment, or gender-based bullying in the last few years." Am. Compl. ¶ 69; *see also id.* ¶ 5 (similar).[1] The School District has taken no action in response to any of them, be it by "creat[ing] a single written

1. It is not clear from the face of the Complaint whether these thirty or more incidents include the four detailed incidents recounted above. *See* Am. Compl. ¶ 69 ("The District has been notified of at least thirty incidents of sexual assault, harassment, or gender-based bullying in the last few years.").

safety plan," "document[ing] any follow-up to ensure the safety of any of these students," taking other "basic steps to prevent or respond to future sexual assaults," or "tak[ing] any steps to develop preventative policies or reform its practices." *Id.* ¶¶ 69-70, 72; *see also id.* ¶¶ 4-5 (similar). Moreover, the School District ignored repeated offers by the Rape Crisis Program of the Young Women's Christian Association for the Niagara Frontier ("YWCA") to provide educational programming on domestic and dating violence—programming the organization provides to every other school district in Niagara County. In sum, according to the allegations, the School District refused to act in the face of known and frequent complaints of sexual assault, harassment, or gender-based bullying—whether through general policies aimed at prevention, individually tailored remedial actions, or any other means.

C. Broader Effects on the Student Body and School Community

The School District's consistent refusal to act allegedly led to several broader effects, impacting many more than the four student victims. First, the Complaint alleges that the four student victims' harassment and bullying was perpetrated by whole *groups* of students, not merely individuals. *See* Am. Compl. ¶¶ 26-28, 30 (describing T.G.'s harassment by multiple students because of E.D. having reportedly raped her), *id.* ¶¶ 43-46 (describing C.C. repeatedly being bullied, evidently by more than one student), *id.* ¶¶ 52-55 (describing A.S. being mocked by members of the football team and her being bullied and assaulted by the players' friends), *id.* ¶ 67 (describing L.W.

being bullied by "other students . . . based on what [L.W.'s] assailant told them about [her]"). Thus, the incidents affecting these four victims are alleged to have *directly* involved dozens of students.

Second, the Complaint alleges that the School District's failure to address these behaviors "indicates to all students" that the School District will not protect *them* from sexual assault, harassment, or gender-based bullying. *Id.* ¶ 72. According to the Complaint, this "indifference . . . impacts the student body and the school community as a whole" by signaling to all of its members that School District personnel will not act to ensure student safety. *Id.* ¶ 5. This manifested in the School District's repeated refusal to accept educational programming on domestic and dating violence designed to benefit the entire School District community, *id.* ¶ 71, and in the occurrence of at least "thirty documented incidents of sex discrimination, sexual harassment, sexual assault, and gender-based bullying at [the School District]," *id.* ¶ 5. In T.G.'s case, parents and students explicitly voiced their concern that the School District's inaction was leaving them unprotected. *See id.* ¶ 36 (alleging that T.G.'s mother had received "a hundred messages from other parents in the District, expressing concern that a rapist was in school with their children all year long"); *id.* ¶ 39 (alleging that a High School student confronted Principal Mann for "[a]llowing all of us girls to be in danger"). These failures by the School District are alleged to give students and their parents "a reasonable basis to believe [the students] are, in fact, in danger." *Id.* ¶ 72.

II. Procedural Background

On June 23, 2021, the OAG filed the original complaint in the United States District Court for the Western District of New York. On August 24, 2021, before any responsive pleadings had been filed, the OAG filed the (presently operative) Complaint, bringing a Title IX claim and a state law claim for negligent supervision against the School District. The School District answered, and on March 10, 2022, moved for a judgment of dismissal on the pleadings pursuant to Federal Rule of Civil Procedure 12(c).[2]

On May 11, 2022, United States Magistrate Judge for the Western District of New York Leslie G. Foschio issued a Report and Recommendation ("R&R"), recommending that the district court dismiss the OAG's Title IX claims for lack of *parens patriae* standing and decline to exercise supplemental jurisdiction over the state-law claim of negligent supervision. However, if the district court were to determine, contrary to the recommendation, that the OAG had established standing *in parens patriae* to bring its Title IX claim, the R&R recommended that the court hold that the OAG had plausibly pleaded a Title IX claim, exercise supplemental jurisdiction over the negligent-supervision claim, and permit both to proceed to discovery.

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2. Federal Rule of Civil Procedure 12(c) provides: "After the pleadings are closed—but early enough not to delay a trial—a party may move for judgment on the pleadings."

On August 26, 2022, the district judge, over the OAG's objection, adopted the R&R's reasoning that the OAG lacked *parens patriae* standing. The district judge agreed with the R&R that the OAG had alleged four factually distinct incidents that did not reveal a generalized discriminatory "policy or practice" of failing to protect victims of gender-based assault, harassment, and bullying in the School District. Without such a policy or practice, the district court continued, the OAG could not make the required showing for *parens patriae* standing that the School District's conduct had affected a substantial segment of the state's population. The district court dismissed the Title IX claim on that basis, declined to exercise supplemental jurisdiction over the state-law claim of negligent supervision, denied the OAG's request for leave to replead (raised for the first time in objection to the R&R) as untimely and futile, and dismissed the case with prejudice.

On September 26, 2022, the OAG timely appealed to this Court, arguing that the district court had committed three reversible errors. First, the substantial-segment prong of the *parens patriae* standing test does not require a showing that the defendant engaged in an injurious policy or practice. Second, and in any event, the OAG had shown a consistent practice by the School District of repeatedly refusing to protect students subjected to gender-based assault, harassment, and bullying. Third, the district court abused its discretion in denying the OAG's request for leave to amend its Complaint. For the reasons that follow, we agree with the OAG on the first issue, reverse on that basis, and therefore do not reach the second and third issues.

Appendix A

STANDARD OF REVIEW

We review a district court's determination of standing *de novo*. *Maddox v. Bank of N.Y. Mellon Tr. Co.*, 19 F.4th 58, 62 (2d Cir. 2021). Where, as here, "standing is challenged on the basis of the pleadings, we accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Bohnak v. Marsh & McLennan Cos.*, 79 F.4th 276, 283 (2d Cir. 2023). Nonetheless, at the pleading stage, "the plaintiff must 'clearly . . . allege facts demonstrating' each element" of standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (quoting *Warth v. Seldin*, 422 U.S. 490, 518, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). A denial of leave to amend the complaint is reviewed "for abuse of discretion, unless the denial was based on an interpretation of law, such as futility, in which case we review the legal conclusion *de novo*." *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114, 119 (2d Cir. 2012).

DISCUSSION

I. *Parens Patriae* Standing

A. Legal Framework

"[T]he doctrine of standing . . . requires federal courts to satisfy themselves that the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant [its] invocation of federal-court jurisdiction." *Coal. for Competitive Elec., Dynergy Inc. v. Zibelman*, 906 F.3d 41, 58 (2d Cir. 2018) (quoting *Summers v. Earth*

Island Inst., 555 U.S. 488, 493, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009)); *see also Off. Comm. of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 156 (2d Cir. 2003) ("[B]ecause standing is jurisdictional under Article III, it is a threshold issue." (alterations adopted and citation omitted)).

A state seeking to protect "a 'quasi-sovereign interest' distinct 'from the interests of particular private parties,' such as an 'interest in the health and well-being . . . of its residents in general,'" may file suit in federal court *in parens patriae*. *Purdue Pharma*, 704 F.3d at 215 (quoting *Snapp*, 458 U.S. at 607); *see also Connecticut v. Cahill*, 217 F.3d 93, 97 (2d Cir. 2000). A state suing *in parens patriae* must establish "(1) [an] injury to a sufficiently substantial segment of the state's population; (2) a quasi-sovereign interest; and (3) an inability for individual plaintiffs to obtain complete relief." *New York v. Griepp*, 991 F.3d 81, 131 (2d Cir.), *vacated on other grounds on rehearing*, 11 F.4th 174 (2d Cir. 2021).

We conclude, and the School District does not dispute, that the OAG has adequately alleged that it is seeking to vindicate a quasi-sovereign interest—"the health and welfare," *Snapp*, 458 U.S. at 607, of students exposed to gender-based violence and harassment whether as victims, perpetrators, or bystanders, and their families—and that the individuals on whose behalf it is bringing suit cannot obtain complete relief.[3] *See* Appellant's Br. at 15 *and*

3. Students, of course, pass through individual schools in just a few years, making it particularly likely that without State intervention, the School District community would be unable to obtain meaningful relief.

Appellee's Br. at 10-15 (asserting failure to allege harm to a substantial segment of the state's population as the only basis for the defendant's assertion that *parens patriae* standing is lacking). The only issue for us to decide with respect to standing, then, is whether the OAG's allegations would, if proved, establish that the School District's conduct affected a sufficiently substantial segment of New York State's population. For the reasons set forth below, we conclude that they would.

B. Analysis

1. The substantial-segment standard as established by 11 Cornwell Co.

To satisfy a court that a sufficiently substantial segment of the state's population was injured, a state must establish (1) an "injury to an identifiable group of individual[s]," and (2) "indirect effects of the injury" ranging beyond that identifiable group. *Snapp*, 458 U.S. at 607; *see also People by Abrams v. 11 Cornwell Co.*, 695 F.2d 34, 38-39 (2d Cir. 1982) (materially same), *vacated in part on other grounds on rehearing*, 718 F.2d 22 (2d Cir. 1983). There are no "definitive limits on the proportion of the population of the State that must be adversely affected by the challenged behavior." *Snapp*, 458 U.S. at 607; *see also New York v. Peter & John's Pump House, Inc.*, 914 F. Supp. 809, 812 (N.D.N.Y. 1996) ("There is no numerical talisman to establish *parens patriae* standing." (Pooler, *District Judge*)).

The district court, in adopting the R&R, added its own gloss to the substantial-segment standard. Based on its review of *11 Cornwell Co.* and district court caselaw in this Circuit, the court concluded that a state suing *in parens patriae* must establish a "discriminatory conduct, policy, or practice" that is "as a matter of routine, . . . enforced against a member of the [targeted population]." Joint App'x at 123; *see also id.* at 66 (R&R articulating the standard). According to the adopted R&R, the OAG attempted to allege that the School District had a policy or practice of ignoring student "complain[t]s about gender-based harassment and sexual assault." *Id.* at 67. But the inference that the School District had such a policy or practice was implausible, the R&R continued, because the OAG sought to base that inference on the victimization of four students whose cases were factually distinct from one another with no indication of broader trends or effects. Because "more must be alleged than injury to an identifiable group of individual [students]," *id.* at 67 (quoting *Snapp*, 458 U.S. at 607), the R&R recommended dismissal for lack of *parens patriae* standing. The district judge adopted the recommendation and its underlying reasoning. *See id.* 135-36.

We disagree. The controlling authority in this Circuit—*11 Cornwell Co.*—nowhere states or even suggests that a defendant's challenged conduct must amount to a policy or practice enforced against a target population to satisfy the substantial-segment prong of the *parens patriae* test. In that case, a state agency had intended to purchase a piece of real estate and transform it into an assisted-living facility for eight to

ten mentally disabled adults. To thwart the project, a group of neighbors conspired to purchase the property and refuse to sell it to the state. *See* 695 F.2d at 37-38. The state sued *in parens patriae*; the defendants moved to dismiss. The district court denied the motion, holding that the "representation of mentally disabled persons is the paradigm case for *parens patriae* standing." *New York v. 11 Cornwell Co.*, 508 F. Supp. 273, 277 (E.D.N.Y. 1981). On appeal, we concluded that the state had pleaded sufficient facts to establish *parens patriae* standing. The state had pleaded—and we treated as true for the purpose of reviewing an appeal from a motion to dismiss—that a substantial segment of the population had been affected by the *single* discriminatory act of refusing to sell the property at issue to the state. *See* 695 F.2d at 38-39. That alleged act alone affected at least five different populations, either directly or indirectly. First, refusing to sell the property to the state prevented "eight to ten moderately [disabled] adults plus two 24-hour 'houseparents'" from living at the intended home. *Id.* at 39. Second, "any number of [disabled] persons" would have been prevented from "receiv[ing] rehabilitation" in the future. *Id.* Third, the alleged discriminatory act would have burdened the state with "the cost of keeping more people in institutions." *Id.* Fourth, all disabled individuals then living in state institutions would have been forced "to live in more crowded surroundings." *Id.* Finally, "[b]oth [the disabled] persons and community residents"—including the alleged discriminators—would have been "deprived of being able to live in integrated communities." *Id.*; *see also Snapp*, 458 U.S. at 609 (recognizing "the political, social, and moral damage of discrimination" on a substantial

segment of the state even though the *tangible* effects of a discriminatory act are limited). None of these variegated effects—economic and social, direct and indirect—on different populations flowed from an alleged policy, practice, or any routine or repeated conduct. A single act sufficed to establish *parens patriae* standing.

Under the law of this Circuit, then, a state seeking to bring suit *in parens patriae* need not plead, nor later prove, a policy or practice, or any repeat conduct routinely aimed at a single target population. A single challenged act by the defendant may satisfy the substantial-segment prong, so long as that action meets *Snapp*'s requirements of showing sufficient "injury to an identifiable group of individual[s]" and "indirect effects of the injury" beyond that group. *Snapp*, 458 U.S. at 607.[4] These indirect

4. Of course, establishing a discriminatory policy or practice *may* be one way to satisfy the substantial-segment prong of *parens patriae* standing. Today, we conclude only that establishing such a policy is not required. The district court cases discussed in the R&R and the district judge's adoption of the R&R do not suggest otherwise. Two of the cited cases never mention a policy or practice and concluded that the substantial-segment prong was satisfied based on no more than several isolated acts. *See Support Ministries for Persons with AIDS, Inc. v. Vill. of Waterford*, 799 F. Supp. 272, 275-77 (N.D.N.Y. 1992) (holding that a zoning appeals board's single denial of a permit to create a residence for homeless persons with AIDS immediately affected fifteen would-be residents, "similar [persons with AIDS] in months and years to come, as well as the members of the community itself, including the very neighbors who rallied against the Support Ministries' project," and the state's economy); *New York v. Mid Hudson Med. Grp.*, 877 F. Supp. 143, 145, 148 (S.D.N.Y. 1995) (concluding that a hospital's denial of interpretive services to a single deaf

effects can vary and need not all fall on the same group. In determining whether those effects "give the State standing to sue as *parens patriae*," courts may consider "whether the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers," *Snapp*, 458 U.S. at 607, and whether the injury "carr[ies] a universal sting," *id.* at 609.

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patient affected substantial segment of the population because "[t]he effects of Mid Hudson [Hospital]'s alleged discrimination" extended to all of "its seven to ten deaf patients" and indeed "threaten[ed] all hearing impaired citizens and perhaps disabled citizens throughout New York"). In two other cases, the plaintiffs alleged a policy or practice. *See New York v. Peter & John's Pump House, Inc.*, 914 F. Supp. 809, 811 (N.D.N.Y. 1996) (alleging "a practice and policy of refusing admission [to a night club] to African Americans because of their race or color"); *New York v. Utica City Sch. Dist.*, 177 F. Supp. 3d 739, 744 (N.D.N.Y. 2016) (alleging a "policy and practice" of "mandatory 'English as a second language' . . . program for immigrant students aged 17-20" seeking to enroll at Proctor High School, "regardless of whether or not the student expressed a wish to attend 'regular' high school"). But neither district court decision suggested that such a pleading was *necessary* to survive a motion to dismiss. Finally, we are unpersuaded by *People by Abrams v. Holiday Inns*, 656 F. Supp. 675 (W.D.N.Y. 1984), in which the plaintiffs alleged only a past practice of laying off older workers to replace them with younger ones, and the district court dismissed the case because the pleadings did not give rise to a plausible inference that the practice would continue to be applied to older workers in the future. *See id.* at 676-77. *Holiday Inns* provided no reasoning to support its conclusion.

And of course, we take no position on what is required by the other prongs of *parens patriae* standing—asserting a quasi-sovereign interest and an inability for individual plaintiffs to obtain complete relief.

2. The OAG's allegations satisfy the substantial-segment prong of parens patriae standing.

We further conclude that the New York Attorney General has pleaded sufficient facts to satisfy the substantial-segment prong of *parens patriae* standing here. As with the alleged discriminatory act in *11 Cornwell Co.*, the School District's conduct as alleged here would have had direct and indirect harmful effects on different groups which, in combination, constitute a substantial segment of New York's population.

First among those groups are the four students allegedly subjected to their peers' sexual assault and harassment, gender-based violence, and bullying—"an identifiable group of individual[s]" injured by the School District's alleged inaction. *Snapp*, 458 U.S. at 607. The School District's failure to respond to the students' complaints may very well have left them with the knowledge that they would not be protected by the School District, which led to such tangible effects as a panic attack (T.G., Am. Compl. ¶ 23), years of counseling (L.W., Am. Compl. ¶ 68), missing school or practice (T.G., Am. Compl. ¶¶ 29, 31; C.C., Am. Compl. ¶ 50), transferring to a private school (A.S., Am. Compl. ¶ 59), and dropping out of school altogether (C.C., Am. Compl. ¶ 51). *Cf. 11 Cornwell Co.*, 695 F.2d at 39 (discussing the direct effect felt by the eight to ten disabled individuals and their caretakers from the residents' alleged discriminatory act).

Second, and also directly affected, are dozens of other students whose similar complaints were also ignored by the School District. The School District protests that this allegation is conclusory, but we are not persuaded. We are not here deciding the merits, *i.e.* whether the OAG has plausibly alleged a Title IX or negligent-supervision claim. Rather, we are determining whether the OAG has met its pleading burden to plausibly allege the basis for the substantial-segment prong of *parens patriae* standing. In this context, "[t]he Attorney General's use of a small group of 'aggrieved persons' as exemplars for a larger class is neither new nor objectionable." *New York v. Mid Hudson Med. Grp.*, 877 F. Supp. 143, 147 (S.D.N.Y. 1995).

As alleged by the OAG, the indirect effects of the alleged injury, too, were widely felt. First, they were felt by the parents of the four students who were left with the understanding that the School District would not protect their children and therefore were required to contend with the psychological and financial burdens of dealing with the effects the School District's inaction had on their children. Second, and as alleged, there are victims of "future harassment," Am. Compl. ¶ 3, and "future sexual assaults," *id.* ¶ 70. This prospective group, too, will not be protected by the School District if it continues to act as the Complaint alleges it has historically done. *Cf. 11 Cornwell Co.*, 695 F.2d at 39 (observing that defendants' discriminatory act prevented "any number of [disabled] persons" from "receiv[ing] rehabilitation" in the future). The Complaint alleges a repeated failure by several School District officials—including a counselor, an acting principal, several principals, and the superintendent,

see, *e.g.*, Am. Compl. ¶¶ 23, 28, 44, 56-59, 61-63, 66—to respond to student and parent requests to remedy the victimization some students suffered at the hands of other students. And the School District ignored the repeated offer of free educational programming on domestic and dating violence by the YWCA's Rape Crisis Program, programming allegedly received by every other school district in Niagara County. These alleged failures support the plausible inference that the School District's inaction is likely to continue and affect additional future victims.

Third, the School District's failures indirectly affect both its entire student body and the students' parents in several ways. One such alleged effect was that the School District's inaction permitted the harassing behavior to spread from a handful of perpetrators to a significant number. In T.G.'s case, her rape by E.D. was followed by other students sending her a picture of E.D. with the caption "your boyfriend," Am. Compl. ¶ 26, sending T.G. text messages suggesting she had enjoyed what E.D. had done to her, and telling T.G. to "watch her back," *id.* ¶ 28. In A.S.'s case, five High School sophomore girls displayed a poster telling A.S. "We don't want you" at a school-wide pep rally. *Id.* ¶ 54. A video recording collecting remarks that were insulting to A.S. was distributed among the High School students. And in both C.C.'s and L.W.'s cases, their gender-based harassment was perpetrated by groups of students. In short, for each of the four students, the OAG's allegations show how the School District's failure to act allowed more and more students to turn into harassers.

The broader alleged effects on the students in the School District—and, indeed, their parents—do not stop there. *11 Cornwell Co.* and *Snapp* explicitly recognized the harmful effects wrought on a community by the alleged discriminatory acts of a small subset of its members. *See 11 Cornwell Co.*, 695 F.2d at 39 ("Both [the disabled] persons and community residents"—including the alleged discriminators—would be "deprived of being able to live in integrated communities."); *Snapp*, 458 U.S. at 609 (concluding that, despite limited economic impact, "[d]eliberate efforts to stigmatize the labor force as inferior carry a universal sting" (internal quotation marks omitted)). Here, the Complaint explicitly alleges how, after the School District's inaction in response to T.G.'s requests to be kept separate from E.D. became more widely known, T.G.'s mother received over one hundred messages on social media from concerned parents, and how the students of the High School staged a related walkout. One student at the walkout allegedly confronted the principal with the rhetorical question whether "[a]llowing all of us girls to be in danger is civil?" Am. Compl. ¶ 39. Because of this allegedly widely-known incident, students had to contend with the fear that, if something comparable happened to them, the School District would also leave them unprotected. In sum, the effects on the student and parent community flowing from the School District's alleged inaction are at least as palpable and pervasive as the alleged conspiracy to deny housing to the disabled addressed by this Court in *11 Cornwell Co.*

We therefore conclude that the OAG has pleaded sufficient facts to support the inference that a substantial

segment of the state's population has been affected by the School District's challenged conduct. Because the parties agree that the OAG has made the other two showings required for *parens patriae* standing—pleading a quasi-sovereign interest and an inability by individual plaintiffs to obtain complete relief, *see Griepp*, 991 F.3d at 131—we reverse the district court's judgment dismissing this case for lack of *parens patriae* standing.

II. Merits

The School District argues that, even if we conclude that the district court erred in holding that the OAG lacked *parens patriae* standing, we should nonetheless affirm on the alternative basis that the Complaint fails to state a plausible Title IX claim.

We decline that invitation. While "[w]e may affirm on any ground with support in the record, including grounds upon which the district court did not rely," *Jusino v. Fed'n of Cath. Tchrs., Inc.*, 54 F.4th 95, 100 (2d Cir. 2022) (internal quotation marks and citation omitted), *cert. denied*, 143 S. Ct. 1056, 215 L. Ed. 2d 280 (2023), "this Court's usual practice [is] to allow the district court to address arguments in the first instance," *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 97 (2d Cir. 2015) (citation omitted); *see also Dardana Ltd. v. Yuganskneftegaz*, 317 F.3d 202, 208 (2d Cir. 2003) (same); *Farricielli v. Holbrook*, 215 F.3d 241, 246 (2d Cir. 2000) (same). Indeed, we have previously declined to reach the merits of a motion to dismiss for failure to state a claim where, as here, the appellee advanced the argument as

an alternative ground for affirming dismissal. *See*, *e.g.*, *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 71 (2d Cir. 2012) (remanding to consider merits of motion to dismiss in first instance); *Henriquez v. Starwood Hotel Resorts Worldwide Inc.*, 549 F. App'x 37, 38 (2d Cir. 2014) (summary order) (same). Moreover, the district court here has the benefit of an R&R providing a recommendation on how to resolve this question. We therefore see no reason to deviate from our preferred practice.

III. Leave to Amend the Complaint

Because we have determined that the district court should assess the merits of the OAG's allegations in the first instance, the issue of whether the court abused its discretion in denying leave to amend is moot. Of course, the issue may arise again should the district court dismiss the Complaint on the merits, without permitting further leave to amend, and we may decide it in the event that this case reaches us again on appeal.

CONCLUSION

We have considered the parties' remaining arguments on appeal and conclude that they are without merit. For the foregoing reasons, we REVERSE the district court's judgment dismissing the case for lack of *parens patriae* standing and REMAND for further proceedings consistent with this opinion.

Appendix A

JOSÉ A. CABRANES, Circuit Judge, concurring *dubitante*:

States ordinarily cannot prosecute lawsuits on behalf of their citizens. And for good reason: Article III's requirement that plaintiffs have a "personal stake in the case"[1] prevents States from picking and choosing certain parties behind whom to throw their weight in court. Under the doctrine of *parens patriae*, however, a State may under certain circumstances assert a "quasi-sovereign" interest on behalf of a "sufficiently substantial segment of its population."[2] But this doesn't change the fact that "[i]nterests of private parties are obviously not in themselves sovereign interests, and they do not become such simply by virtue of the State's aiding in their achievement."[3] In other words, *parens patriae* standing is the exception, not the rule.

The last Supreme Court case to directly address *parens patriae* requirements—*Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*—dates to 1982. It is common ground that a State must assert a "quasi-sovereign interest" for *parens patriae* standing. But what such an interest may be, and how it is to be evaluated, is controversial. The *Snapp* Court declined to provide a

1. U.S. CONST. art. III, § 2; *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (quotation marks omitted).

2. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607, 102 S. Ct. 3260, 73 L. Ed. 2d 995 (1982).

3. *Id.* at 602.

definition, instead opting for the concept to be elucidated on a case-by-case basis.[4]

This I-know-it-when-I-see-it approach[5] is an invitation to confusion, and it should be no surprise that it has indeed sown some confusion among the Courts of Appeals. Some consider a quasi-sovereign interest sufficient to confer *parens patriae* standing, and treat the other factors noted by the *Snapp* Court as considerations informing whether such an interest exists.[6] Others require a quasi-sovereign interest in addition to the other factors, which they regard as independent prongs of a multi-factor test.[7] Still others,

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4. *See id.* at 601-02 ("[A] 'quasi-sovereign' interest . . . is a judicial construct that does not lend itself to a simple or exact definition. . . . The vagueness of this concept can only be filled in by turning to individual cases.").

5. Famously enunciated by Justice Potter Stewart in an obscenity case of 1964. *See Jacobellis v. Ohio*, 378 U.S. 184, 197, 84 S. Ct. 1676, 12 L. Ed. 2d 793 (1964) (Stewart, *J.*, concurring).

6. *Broselow v. Fisher*, 319 F.3d 605, 609 (3d Cir. 2003); *AU Optronics Corp. v. South Carolina*, 699 F.3d 385, 388 n.5 (4th Cir. 2012); *Harrison v. Jefferson Par. Sch. Bd.*, 78 F.4th 765, 772 (5th Cir. 2023); *Chapman v. Tristar Prods., Inc.*, 940 F.3d 299, 305 (6th Cir. 2019); *Lynch v. Nat'l Prescription Adm'rs, Inc.*, 787 F.3d 868, 873 (8th Cir. 2015); *State ex rel. Sullivan v. Lujan*, 969 F.2d 877, 883 (10th Cir. 1992).

7. *See Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 847 (9th Cir. 2011) (three *parens patriae* requirements: "the sovereign [must] allege[] injury to a sufficiently substantial segment of its population, articulate[] an interest apart from the interests of particular private parties, and express[] a quasi-sovereign interest"); *see also Missouri ex rel. Koster v. Harris*, 847 F.3d

including our own, have introduced considerations not set forth in *Snapp*.[8] Granting certiorari would provide an opportunity to clarify the contours of this important but perplexing area of the law.

The doctrinal muddle has real consequences. Relaxing *parens patriae* standing requirements allows States to bring headline-grabbing suits ostensibly on behalf of their citizens but without satisfying the "additional hurdle" of *parens patriae* standing.[9] This prejudices parties who must now face off not only against their rightful opponent, but also the formidable legal machinery of a State. And it encourages States to sue rather than act through their other powers. This case is illustrative. New York alleges deliberate indifference and negligent supervision against Niagara-Wheatfield Central School District—a district of

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646, 651 n.1 (9th Cir. 2017) ("It is unclear whether 'substantial segment of the population' and 'interest apart from the interest of particular private parties' are separate elements of standing.").

8. *See People by Abrams v. 11 Cornwell Co.*, 695 F.2d 34, 40 (2d Cir. 1982) ("*Parens patriae* standing also requires a finding that individuals could not obtain complete relief through a private suit."), *vacated in part on other grounds*, 718 F.2d 22 (2d Cir. 1983); *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 652 (9th Cir. 2017) (same). This is arguably not the only problem with *11 Cornwell*, which in relevant part relies on little beyond a controversial law review article to distort our *parens patriae* injury analysis. *See 11 Cornwell*, 695 F.2d at 39 (citing Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 Harv. L. Rev. 1, 33-34 (1959)).

9. *Massachusetts v. EPA*, 549 U.S. 497, 538, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007) (Roberts, *C.J.*, dissenting).

six schools and more than three thousand students—on the basis of four unrelated incidents across different schools, years, and grades.[10] This is a quintessential instance of a State having no "interest apart from the interests of particular private parties" and thus no quasi-sovereign interest.[11] Allowing the State to insert itself would usurp "the autonomy of those who are most directly affected," to "decide whether and how to challenge the defendant's action."[12] I agree with the experienced Magistrate Judge (Leslie G. Foschio, *Magistrate Judge*) and District Judge (John L. Sinatra, *Judge*) that New York lacks *parens patriae* standing. But I cannot be confident in this conclusion because the standard is uncertain. So I concur

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10. JA11-18. The Complaint also mentions that the District saw "at least thirty incidents of sexual assault, harassment, or gender-based bullying in the last few years." JA19. Without any supporting details, however, this allegation does not establish a cognizable legal claim against the District, much less *parens patriae* standing for the State. Relatedly, it is unclear whether the State has alleged a plausible Title IX claim for deliberate indifference in light of the incidents' dissimilarities and the high standard for deliberate indifference set forth in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 119 S. Ct. 1661, 143 L. Ed. 2d 839 (1999). Neither my colleagues nor I take a position on this question, however, leaving the District Court to consider the merits on remand.

11. *Snapp*, 458 U.S. at 602; *accord Harrison v. Jefferson Par. Sch. Bd.*, 78 F.4th 765, 773 (5th Cir. 2023) (rejecting *parens patriae* standing for Louisiana, whose asserted interest in a discrimination suit against a school district was "wholly derivative of the interests of [the district's] students").

12. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379-80, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024) (quotation marks omitted).

dubitante, because I believe that our confused *parens patriae* case law warrants clarification or correction by the Supreme Court.

APPENDIX B — DECISION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK, FILED AUGUST 26, 2022

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

21-CV-759 (JLS) (LGF)

PEOPLE OF THE STATE OF NEW YORK,
BY LETITIA JAMES, NEW YORK STATE
ATTORNEY GENERAL,

Plaintiff,

v.

NIAGARA-WHEATFIELD CENTRAL
SCHOOL DISTRICT,

Defendant.

August 26, 2022, Decided
August 26, 2022, Filed

DECISION AND ORDER

Plaintiff New York State Attorney General Letitia James brought this action on behalf of the People of the State of New York, under the *parens patriae* doctrine, alleging Title IX and negligent supervision claims against Defendant Niagara Wheatfield Central School District

based on alleged instances of discrimination against female students at Defendant's schools that Defendant failed to address. Dkt. 1. With consent, Plaintiff filed an amended complaint—now the operative pleading. Dkt. 10; Dkt. 11. Defendant answered the amended complaint. Dkt. 14. The Court then referred this case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 15.

Defendant moved for judgment on the pleadings. Dkt. 34. Plaintiff opposed, and Defendant replied. Dkt. 39; Dkt. 40.

Judge Foschio issued a comprehensive Report and Recommendation (R&R) on May 11, 2022, presenting options and recommending:

- First, that this Court grant Defendant's motion as to Plaintiffs Title IX claim for failure to establish *parens patriae* standing, and decline to exercise supplemental jurisdiction over Plaintiffs state-law negligent supervision claim (Dkt. 41, at 12-21, 30); or

- Alternatively, if this Court disagrees with the *parens patriae* recommendation, that it grant Defendant's motion as to Plaintiffs Title IX claim for lack of standing to seek injunctive and relief based on the allegations in the amended complaint, and that it decline to exercise supplemental jurisdiction over Plaintiffs state-law negligent supervision claim (*id.* at 21-22, 30); or

- If this Court disagrees with both recommendations regarding standing, that it deny Defendant's motion as to Plaintiffs Title IX claim because the amended complaint plausibly states such a claim, and that it grant Defendant's motion on Plaintiffs negligent supervision claim for lack of standing to seek injunctive relief (*id.* at 23-30); or

- If this Court disagrees with all recommendations regarding lack of standing on Plaintiffs Title IX and negligent supervision claims, that it deny Defendant's motion as to both claims because the amended complaint plausibly alleges each claim (*id.* at 23-35).

I. The R&R and the Parties' Objections

Plaintiff objected to the R&R, arguing that the magistrate judge incorrectly concluded Plaintiff failed to establish *parens patriae* standing and incorrectly concluded that she lacks standing to seek injunctive relief. *See* Dkt. 42. She also requests leave to amend, if this Court were to accept the recommendation to grant Defendant's motion. *See id.* at 21-22. Defendant responded in opposition. Dkt. 48. Plaintiff replied in further support of her objections. Dkt. 51.

Defendant also objected to the R&R. Dkt. 44. First, Defendant argues that, if this Court were to exercise supplemental jurisdiction over Plaintiffs state-law negligent supervision claim, it should dismiss that claim, too, for lack of *parens patriae* standing. *See id.*

Defendant also objects to the R&R's conclusion that the amended complaint pleads plausible Title IX and negligent supervision claims. *See id.* Plaintiff responded, and Defendant replied. Dkt. 49; Dkt. 50.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party object. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140,149-50, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

This Court carefully reviewed the R&R and the relevant record. Based on its *de* novo review, the Court accepts and adopts Judge Foschio's recommendation to grant Defendant's motion as to Plaintiffs Title IX claim because Plaintiff did not establish *parens patriae* standing to pursue that claim. Plaintiff has not identified authority to support *parens patriae* standing in a context like this one—where a plaintiff relies on distinct examples of alleged discrimination and a policy or practice of failing to respond to such instances of discrimination to establish the requisite injury to a substantial segment of the population. Nor did Judge Foschio's thorough survey of the relevant case law reveal such authority.

Appendix B

The number of exemplars in the amended complaint alone—here, four detailed examples plus a reference to thirty additional instances—is not necessarily fatal to Plaintiff establishing *parens patriae* standing. Rather, Plaintiff did not establish *parens patriae* standing because she relies on examples of factually distinct instances of discrimination and a general policy or practice of Defendant's alleged failure to respond adequately to such discrimination, unlike the cases in which such standing exists. *Cf. New York by Abrams v. 11 Cornwell Co.*, 695 F.2d 34, 37-40 (2d Cir. 1982) (conspiring to sell property as single-family residence to prevent property from becoming community residence for mentally-challenged individuals), *vacated on other grounds*, 718 F.2d 22 (2d Cir. 1983); *New York by Schneiderman v. Utica City Sch. Dist.*, 177 F. Supp. 3d 739, 743-44, 748 (N.D.N.Y. 2016) (systematic diversion of immigrant students aged 17 to 20 to alternative education program instead of district's high school); *New York v. Peter & John's Pump House, Inc.*, 914 F. Supp. 809, 811-12 (N.D.N.Y. 1996) (policy and practice of requiring African American patrons to present proof of age and to meet a dress code, resulting in denying those patrons admission to club); *New York by Vacco v. Mid Hudson Med. Grp., P.C.*, 877 F. Supp. 143, 145, 147 (S.D.N.Y. 1995) (failure to provide interpretive services to hearing-impaired patients, resulting in reliance on note-writing and lip-reading to communicate with doctors); *Support Ministries for Persons With AIDS, Inc. v. Vill. of Waterford*, 799 F. Supp. 272, 274-75. 277-78 (N.D.N.Y. 1992) (refusal to grant variance to entity seeking to establish group home for persons with AIDS experiencing homelessness).

In other words, Plaintiff lacks standing because the exemplars do not establish that Defendant's policy or practice affects a substantial segment of the population. *See* Dkt. 41, at 16 ("Plaintiff fails to establish that the alleged sexual harassment and discrimination of the four student victims within the [district] sufficiently establishes injury to a substantial segment of New York's population.").

The Court also accepts Judge Foschio's recommendation that it decline to exercise supplemental jurisdiction over Plaintiffs state-law negligent supervision claim. Because the Court lacks subject-matter jurisdiction over the Title IX claim in the amended complaint, it declines to exercise supplemental jurisdiction over Plaintiffs remaining state-law claim. *See* 28 U.S.C. § 1367(c)(3) ("[A] district court[] may decline to exercise supplemental jurisdiction over a claim . . . if . . . [it] has dismissed all claims over which it has original jurisdiction . . . .").

The Court does not address Judge Foschio's alternative recommendations in light of the conclusions above regarding *parens patriae* standing and supplemental jurisdiction.

II. Leave to Amend

Plaintiff seeks leave to amend, suggesting that she would add allegations about current students who have contacted her about Defendant's conduct regarding instances of discrimination. *See* Dkt. 42, at 7 n.2, 21-22; Dkt. 51, at 10 n.2. Defendant opposes Plaintiffs request. *See* Dkt. 48, at 15-16.

The Court denies leave to amend. Plaintiff already amended the complaint once, with Defendant's consent. *See* Dkt. 10. Moreover, other than a generic reference to additional instances of discrimination, Plaintiff does not identify how she would amend, or how any additional exemplars would address the deficiency discussed above. *See TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014) ("A plaintiff need not be given leave to amend if it fails to specify either to the district court or to the court of appeals how amendment would cure the pleading deficiencies in its complaint.'); *see also Bldg. Trades Pension Fund of W. Pennsylvania v. Insperity, Inc.*, No. 20 CIV. 5635 (NRB), 2022 U.S. Dist. LEXIS 45960, 2022 WL 784017, at *16 n.10 (S.D.N.Y. Mar. 15, 2022) ("Plaintiff requests, in a single sentence at the end of its brief, that it be given the opportunity to replead if the motion to dismiss is granted. However, plaintiff does not explain how it would amend its complaint, and as such, its request is insufficient.").

In light of the Court's conclusions above and in the R&R regarding *parens patriae* standing, Plaintiffs general reference to proposed amendment is insufficient and does not justify leave to amend. *See Noto v. 22nd Century Grp.*, 35 F.4th 95, 107-08 (2d Cir. 2022) (denial of leave to amend appropriate where plaintiffs stated only that they "could cure any deficiencies with additional testimony about defendants' editing, review, and approval of the promotional articles, but [did] not allege what specific facts they would include to demonstrate the level of control needed for Rule 10b-5(b) liability") (internal quotation marks omitted).

Appendix B

CONCLUSION

For the reasons stated above and in the R&R, the Court:

- Accepts and adopts, in part, the R&R (Dkt. 41);
- Grants Defendant's motion for judgment on the pleadings (Dkt. 34), without prejudice;
- Declines to exercise supplemental jurisdiction over Plaintiff's state-law negligent supervision claim; and
- Denies Plaintiff leave to file a second amended complaint.

The Clerk of Court shall close this case.

SO ORDERED.

Dated: August 26, 2022
Buffalo, New York

/s/ John L. Sinatra, Jr.
JOHN L. SINATRA, JR.
UNITED STATES
DISTRICT JUDGE

APPENDIX C — REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK, DATED MAY 11, 2022

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

21-CV-00759JLS(F)

PEOPLE OF THE STATE OF NEW YORK BY LETITIA JAMES, NEW YORK STATE ATTORNEY GENERAL,

Plaintiff,

v.

NIAGARA-WHEATFIELD CENTRAL SCHOOL DISTRICT,

Defendant.

REPORT AND RECOMMENDATION

JURISDICTION

This case was referred to the undersigned by Honorable John L. Sinatra, Jr. on October 6, 2021, for all pretrial matters including preparation of a report and recommendation on dispositive motions. The matter is presently before the court on Defendant's motion for judgment on the pleadings (Dkt. 34), filed March 10, 2022.

Appendix C

BACKGROUND

On June 23, 2021, Plaintiff Letitia A. James, as Attorney General of the State of New York, commenced this action on behalf of the People of the State of New York as *parens patriae* ("Plaintiff") seeking declaratory and injunctive relief to remedy alleged violations by Defendant Niagara-Wheatfield Central School District ("Defendant") of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.* ("Title IX"), and negligent supervision under New York common law. By letter dated August 24, 2021, the Plaintiff and Defendant advised that Defendant consented to Plaintiff's request to file an amended complaint pursuant to Fed.R.Civ.P. 15(a)(2) (Dkt. 10). Accordingly, on August 24, 201, Plaintiff filed an amended complaint (Dkt. 11) ("Amended Complaint"). On October 1, 2021, Defendant filed an answer (Dkt. 14).

On March 10, 2022, Defendant filed the instant motion for judgment on the pleadings (Dkt. 34) ("Defendant's Motion"), attaching the Declaration of Brian C. Mahoney[, Esq.] (Dkt. 34-1) ("Mahoney Declaration"), with exhibit A (Dkt. 34-2) ("Defendant's Exh. A"), and Defendant's Memorandum of Law in Support of Its Motion for Judgment on the Pleadings (Dkt. 34-3) ("Defendant's Memorandum"). On April 7, 2022, Plaintiff filed Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Judgment on the Pleadings. (Dkt. 39) ("Plaintiff's Response"). On April 21, 2022, Defendant filed Defendant's Reply Memorandum of Law in Further Support of Its Motion for Judgment on the Pleadings (Dkt. 40) ("Defendant's Reply"). Oral argument was deemed unnecessary.

Appendix C

Based on the following, Defendant's motion should be GRANTED and the Clerk of Court directed to close the file. Alternatively, Defendant's Motion should be DENIED.

FACTS[1]

This action, brought by the People of the State of New York by Letitia James, as New York State Attorney General as *parens patriae* ("Plaintiff"), is predicated on alleged assault and sexual harassment experienced by four students ("the student victims") while attending public schools within Defendant Niagara-Wheatfield Central School District ("Defendant" or NWCSD" or "the school district"). According to Plaintiff, Defendant ignored the student victims' complaints of rape, assault, sexual harassment and gender-based bullying, and failed to take any meaningful action against the perpetrators of such conduct, which interfered with the students' right to a public education guaranteed under federal law and caused the students to suffer mental, emotional, and physical injury. The four student victims, identified only by their initials, include "T.G.," "C.C.," "A.S.," and "L.W."

T.G.

Plaintiff alleges that in May 2018, T.G. was raped by a male student, "E.D.," while in E.D.'s home. T.G. reported the incident to the police and E.D. was arrested. Prior to the start of the 2018-2019 school year, which was the senior

1. Taken from the pleadings filed in this action.

year of high school for both T.G. and E.D., T.G. obtained a restraining order preventing E.D. from coming near her outside of school. T.G.'s mother informed Michael Mann ("Principal Mann"), then the principal of the high school ("the high school"), attended by both T.G. and E.D., of the restraining order. Although T.G. had no classes with E.D., T.G. maintains E.D. repeatedly went out of his way to encounter T.G., frequently standing outside T.G.'s classroom, waiting for T.G. to leave to room after which E.D. would glare at her. T.G. notified the school counselor of these repeated interactions, but no corrective action was taken. E.D. was permitted to continue playing sports but T.G., a cheerleader, was not permitted to cheer at certain games after she spoke with the Assistant District Attorney who was prosecuting the criminal rape case against E.D. Through the social media application Snapchat as well as texts, T.G. received harassing messages and was bullied about the criminal case being pursued against E.D., and despite showing the messages to Principal Mann, no disciplinary action was taken against the students who sent the messages. T.G. began skipping certain classes to avoid E.D. On May 23, 2019, E.D. pleaded guilty to third-degree rape with sentencing scheduled for July 2019. T.G.'s mother informed the high school about E.D.'s guilty plea, but Principal Mann informed T.G.'s mother that despite the plea, E.D. would be permitted to attend both prom and graduation. Later that month, T.G.'s mother posted to social media about Defendant's failure to protect T.G. from her rapist during the school year, with many parents noting their support in response to the post. To express their anger with the high school's handling of the incident, students at the high school organized and attended a

walkout ("the walkout") on May 31, 2019. Principal Mann responded to the walkout by blocking the high school's doorways to prevent participation by more students. Several of the students who participated in the walkout received suspensions. After the walkout gained national attention, Defendant expelled E.D. at the conclusion of the school year.

C.C.

Plaintiff describes C.C. as a "tomboy" who, commencing in seventh grade, while attending Defendant's middle school ("the middle school"), dressed in stereotypically male clothing, including hoodies. Amended Complaint ¶¶ 42-43. Throughout her years attending the middle School, C.C. was bullied and called "transgendered" and "gay" by fellow students. *Id*. Initially, C.C. went to the office of Dr. Peters, the middle school counselor, where C.C. cried about the harassment, with Dr. Peters allowing C.C. to do her school work in his office. After a while, Dr. Peters stopped helping C.C. and told her to go back to her class. Upon entering the high school in ninth grade, C.C. began to dress in more feminine clothing because of the harassment, but the bullying did not stop and the bullies instead made comments that C.C. was "fat" and "ugly," *id*. ¶ 45, with the bullies on one occasion calling C.C. a "slut" and telling C.C. to kill herself. *Id*. ¶ 46. Because of the harassment, C.C. started missing school. Despite C.C. and her family's repeated complaints about the bullying and harassment, Defendant took no action to create a safety plan or otherwise protect C.C. from the bullying. C.C. attended counseling with a counselor and a psychiatrist

to deal with the anxiety and depression caused by the harassment, but in December 2019, C.C. stopped attending the high school, and sought to transfer to a neighboring school in Niagara Falls, New York, but Defendant refused to allow C.C. to transfer. C.C. then dropped out of school and never graduated or received her high school diploma.

A.S.

As alleged in the Amended Complaint, while attending the high school, A.S. was bullied and harassed by members of the high school's football team and friends of the football players including, *inter alia*, creating and distributing a TikTok video mocking A.S. At a high school pep rally for the football team, the high school's sophomore class performed a chant mocking A.S. and five sophomore girls displayed a poster about A.S. stating, "We don't want you." Amended Complaint ¶ 54. At the pep rally's conclusion, the five girls physically assaulted A.S., delivering eleven blows to her head. Immediately following the assault, A.S.'s mother informed Jeff White ("Mr. White"), who was then the high school's acting principal, about what transpired at the pep rally with regard to A.S. Mr. White observed there was a winter dance scheduled to be held at the high school the next day, and that "it would be in A.S.'s best interest" if she did not attend, but allowed the students who physically assaulted A.S. at the pep rally to attend. *Id.* ¶ 56. Several days passed and, despite A.S.'s mother repeatedly contacting the high school and NWCSD's superintendent, no action was taken against the five girls who assaulted A.S. Because A.S. was too afraid of returning to the high school, her family enrolled

her in a private school, requiring them to pay the private school's tuition.

L.W.

In 2017, L.W., then attending second grade at Errick Road Elementary School ("the elementary school"), was sexually assaulted in the housing complex by a neighbor ("the assailant") who was then attending fifth grade at the same elementary school. L.W.'s mother reported the assault to law enforcement authorities after which a court[2] placed the assailant on probation, ordered the assailant's family to move from L.W.'s housing complex, and required L.W. receive therapy. L.W.'s mother informed the elementary school's principal, Nora O'Bryan ("Principal O'Bryan"), and NWCSD superintendent Daniel Ljiljanich ("Superintendent Ljiljanich") about the assault and court proceedings, requesting the elementary school keep L.W. apart and safe from the assailant. Superintendent Ljiljanich responded that because the assailant was entitled to an education, NWCSD would not take any action, advising that L.W. and her mother should move to protect L.W. from the assailant. The assailant continued to harass L.W. at the elementary school where they had lunch at the same time every day, touching L.W.'s arm when she walked by and telling L.W. that she was "damaged goods" and that "no one will ever love you." Amended Complaint ¶ 64. On one occasion, the assailant followed L.W. into a bathroom at the elementary school and a teacher saw L.W. run out of the bathroom. L.W.'s mother again attempted

2. The court is not further identified.

to contact Superintendent Ljiljanich who did not return her calls, and also raised her concerns to Principal O'Bryan who took no action to protect L.W. The assailant eventually moved out of the school district,[3] after which other students bullied L.W. based on false statements the assailant made about L.W. As a result of the assault and continuing sexual harassment, L.W. developed physical manifestations of stress and attended counseling for more than two years.

Over the past few years, Defendant has been notified of more than thirty additional incidents of sexual assault, harassment, or gender-based bullying, yet has not created any written safety plan or documented any steps taken to ensure the safety of any of the students. NWCSD never responded to an offer from the Rape Crisis Program at the YWCA for the Niagara Frontier to provide educational programming on domestic and dating violence and confidential advocacy for rape and sexual assault victims. Plaintiff maintains the Rape Crisis Program is presented at every other school district in Niagara County except NWCSD.

DISCUSSION

1. Judgment on the Pleadings

Defendant moves pursuant to Fed.R.Civ.P. 12(c) ("Rule 12___"), for judgment on the pleadings. "'The standard for

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3. The record does not specify when the assailant moved out of the school district.

granting a Rule 12(c) motion for judgment on the pleadings is identical to that for granting a Rule 12(b)(6) motion for failure to state a claim.'" *Lively v. WAFRA Inv. Advisory Grp., Inc.*, 6 F.4th 293, 301 (2d Cir. 2021) (quoting *Lynch v. City of New York*, 952 F.3d 67, 75 (2d Cir. 2020)). "'To survive a Rule 12(c) motion, [the plaintiff's] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Hayden v. Paterson*, 594 F.3d 150, 160 (2d Cir. 2010) (bracketed material in original)[4]). "'The assessment of whether a complaint's factual allegations plausibly give rise to an entitlement to relief . . . calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of illegal conduct.'" *Id.* (quoting *Lynch*, 952 F.3d at 75 (internal quotation marks omitted)). In making this assessment, all reasonable inferences must be drawn in the plaintiff's favor. *Id.* (citing *Johnson v. Rowley*, 569 F.3d 40, 43 (2d Cir. 2009)). Like a motion under Rule 12(b)(6), a motion under Rule 12(c) may be filed before discovery is complete. *See* Fed. R. Civ. P. 12(c) (permitting motion "[a]fter the pleadings are closed—but early enough not to delay trial"). Nevertheless, "[u]ntil both parties have an opportunity to test their evidence at summary judgment or trial, we must accept the non-movant's pleading as true and decline to weigh competing allegations asserted by the moving party." *Lively*, 6 F.4th at 301.

"'[J]udgment on the pleadings is not appropriate if there are issues of fact which if proved would defeat

4. Unless otherwise indicated, bracketed material has been added.

recovery, even if the trial court is convinced that the party opposing the motion is unlikely to prevail at trial.'" *Lively*, 6 F.4th at 301 (quoting *Dist. No. 1, Pac. Coast Dist., Marine Eng'rs Beneficial Ass'n v. Liberty Mar. Corp.*, 933 F.3d 751, 761 (D.C. Cir. 2019) (internal quotation marks omitted)); *see also Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012) (explaining that dismissal under Rule 12(c) is appropriate for self-defeating complaints—*i.e.*, complaints "whose allegations show that there is an airtight defense"). Accordingly, "where a 'question [of fact] is in dispute, it [is] improper for the district court to answer it on a motion for dismissal on the pleadings.'" *Id.*, at 302 (quoting *Sheppard v. Beerman*, 18 F.3d 147, 151 (2d Cir. 1994); and citing 5C Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1367 (3d ed. 2021) ("[J]udgment on the pleadings only has utility when all material allegations of fact are admitted or not controverted in the pleadings and only questions of law remain to be decided by the district court.")). A court thus "may consider undisputed allegations of fact on a Rule 12(c) motion under the same standard as Rule 12(b)(6), but it may not use a motion for judgment on the pleadings to weigh disputed factual allegations." *Id.*

In considering a Rule 12(b)(6) motion, the Supreme Court requires application of "a 'plausibility standard,' which is guided by '[t]wo working principles.'" *Harris v. Mills*, 572 F.3d 66, 71-72 (2d Cir. 2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "First, although 'a court must accept as true all of the allegations contained in a complaint,' that 'tenet' is inapplicable to legal

conclusions,' and '[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" *Id.* at 72 (quoting *Iqbal*, 556 U.S. at 678). "'Second, only a complaint that states a plausible claim for relief survives a motion to dismiss,' and '[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Id.* (quoting *Iqbal*, 556 U.S. at 679). To survive a motion for judgment on the pleadings, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "A claim will have 'facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Sykes v. Bank of America*, 723 F.3d 399, 403 (2d Cir. 2013) (quoting *Ashcroft*, 556 U.S. at 678); *see Twombly*, 550 U.S. at 570 (the complaint must plead "enough facts to state a claim to relief that is plausible on its face"). The factual allegations of the complaint "must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true."*Twombly*, 550 U.S. at 570.

"In ruling on a 12(b)(6) motion, and thus on a 12(c) motion, a court may consider the complaint as well as 'any written instrument attached to [the complaint] as an exhibit or any statements or documents incorporated in it by reference.'" *Kalyanaram v. American Ass'n of University Professors at New York Institute of Technology, Inc.*, 742 F.3d 42, 44 n. 1 (2d Cir. 2014) (quoting

Yak v. Bank Brussels Lambert, 252 F.3d 127, 130 (2d Cir. 2001)) (bracketed material in original). On a motion for judgment on the pleadings, "'a court may consider . . . matters of which judicial notice may be taken, [and] documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit.'" *Id.* (quoting *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002) (internal quotation marks omitted; bracketed material and ellipses in original)).

2. Title IX

"Title IX of the Education Amendments of 1972 ("Title IX") was enacted to 'avoid the use of federal resources to support discriminatory practices' and 'to provide individual citizens effective protection against those practices.'" *New York v. United States Dep't of Educ.*, 477 F. Supp. 3d 279, 288 (S.D.N.Y. 2020) (quoting *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979)). With certain exceptions not relevant here, Title IX provides

> [n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
>
> 20 U.S.C. § 1681(a).

Title IX defines "program or activity" in relevant part as "all of the operations" of a school or covered entity, "any part of which is extended Federal financial assistance." 20

U.S.C. § 1687. Sexual harassment, including student-on-student sexual harassment, is a "form of discrimination prohibited by Title IX" for which a school district receiving federal funding can be liable under Title IX. *A.S. v. City School District of Albany*, ___ F.Supp.3d ___; 2022 WL 356697, at ** 18-19 (N.D.N.Y. Feb. 7, 2022) (quoting *Posso v. Niagara Univ.*, 518 F.Supp.3d 688, 696 (W.D.N.Y. 2021) (citing *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 649-50 (1999))).

Title IX's dual purposes may be enforced through federal administrative agencies that disburse funding and "Congress expressly authorized an administrative enforcement scheme for Title IX. The DOE is authorized to promulgate rules, regulations, and orders, and may use 'any . . . means authorized by law,' including the termination of funding, to effectuate the statute's restrictions." *New York v. United States Dep't of Educ.*, 477 F. Supp. 3d 279, 288 (S.D.N.Y. 2020) (quoting *Davis*, 526 U.S. at 638-39 (citation omitted). Further, although Title IX "does not expressly speak to a remedy in private litigation, the Supreme Court has held that Title IX may also be enforced by a judicially implied private right of action. . . ." *Id.* (citing Cannon, 441 U.S. at 709). In such "cases alleging intentional discrimination, money damages are available as a remedy. . . ." *Id.* (citing *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 76 (1992).

Preliminarily, the court considers Defendant's argument that Plaintiff lacks standing to bring the Title IX claim as *parens patriae.*

Appendix C

A. Standing

Generally, "the doctrine of standing 'requires federal courts to satisfy themselves that the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant [the] invocation of federal-court jurisdiction.'" *New York by Schneiderman v. Utica City School Dist.*, 177 F.Supp.3d 739, 745 (N.D.N.Y. 2916) ("*Utica CSD*") (bracketed material in original) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)). The plaintiff must support each element of standing "'with the manner and degree of evidence required at the successive stages of the litigation.'" *Id*. (quoting *Carver v. City of New York*, 621 F.3d 221, 225 (2d Cir. 2010)). The Constitution's standing requirement, U.S.Const. Art. III, § 2, cl. 1, is a limitation on federal judicial authority to adjudicate only actual "cases" and "controversies," and requires a plaintiff "show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (citing *Lujan v. Defendants of Wildlife*, 504 U.S. 555, 560-61 (1992)). In the absence of any explicit statutory authority to bring an action, the New York State Attorney General has standing to pursue a claim on behalf on New York's citizens only if the requirements for *parens patriae* standing are established. *See Connecticut v. Physicians Health Services of Connecticut, Inc.*, 287 F.3d 110, 121

(2d Cir. 2002) ("'states have frequently been allowed to sue in *parens patriae* to . . . enforce federal statutes that . . . do not specifically provide standing for state attorney generals.'" (quoting *New York ex rel Vacco v. Mid Hudson Med. Group, P.C.*, 877 F.Supp.143, 146 (S.D.N.Y. 1995) ("*Mid Hudson Med. Grp.*")).

In the instant case, New York State Attorney General Letitia James brings this action pursuant to *parens patriae* authority defined as "the common-law principle that a sovereign, as parent of the country, may step in on behalf of its citizens to prevent injury to those who cannot protect themselves." *Utica CSD*, 177 F.Supp.3d 739, 745 (N.D.N.Y. 2916). "[A] state may invoke the doctrine of *parens patriae* if it (1) articulates a 'quasi-sovereign interest' apart from the interests of particular private parties; (2) alleges a concrete injury to a substantial segment of its population; and (3) demonstrates that complete relief from that injury could not be obtained by individuals in a private lawsuit." *Id.* at 748 (*citing People v. Peter & John's Pump House, Inc.*, 914 F.Supp. 809, 811-12 (N.D.N.Y. 1996) ("*Peter & John's Pump House*"). Defendant does not challenge Plaintiff's ability to meet the first and third requirements for *parens patriae* standing, but only the second, *i.e.*, a concrete injury to a substantial segment of its population.[5]

5. The court takes judicial notice that on March 2, 2022, T.G. filed a separate action in this court, 22-CV- 00172-JLS-MJR, asserting essentially the same Title IX and negligent supervision claims, against NWCSD, seeking compensatory damages. *See Bristol v. Nassau County*, 685 Fed.Appx. 26, 28 (2d Cir. 2017) (taking judicial notice of decisions in related state criminal

In particular, Defendant does not deny that the victims of the alleged sexual harassment sustained concrete injuries as a result of the harassment, but argues Plaintiff cannot establish such injury to a substantial segment of the population because Plaintiff does not allege a pattern of Title IX violations but, rather, "a scattering of alleged factually-disparate student-on-student incidents, over a 3-year period, many of which occurred off school grounds and/or when school was not in session." Defendant's Memorandum at 6-9. Defendant further argues that Plaintiff "has cherry-picked four unrelated and isolated cases of alleged student-on-student harassment in an attempt to establish *parens patriae* standing," Defendant's Memorandum at 9, and Plaintiff's "allegations of speculative future harm to a larger segment of the student population do not rise to the level of an alleged injury to a sufficiently substantial segment of the population." *Id*. at 10. In opposition, Plaintiff argues it has met its burden to plead a substantial segment of the population is affected by Defendant's discrimination and negligence based on gender because the four examples provided in the Amended Complaint are not isolated events, but are illustrative of Defendant's overall policy and practice of indifference for which Defendant has failed to take any steps to prevent or respond to future sexual assaults. Plaintiff's Response at 18-24. In further support of judgment on the pleadings, Defendant argues each of the cases on which Plaintiff relies involved a policy or practice of discriminatory conduct specifically targeting

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proceedings as "self-authenticating, publicly available records" satisfying Fed.R.Evid. 201(b)(2) (specifying facts of which judicial notice may be taken).

a discrete segment of the population whereas, in the instant case, Plaintiff has alleged injury to only the four individual student victims which is insufficient to confer *parens patriae* standing. Defendant's Reply at 2-3.

In analyzing the second factor, *i.e.*, requiring a concrete injury to a substantial segment of its population, "[t]here is no numerical talisman to establish *parens patriae* standing. . . ." *Peter & John's Pump House*, 914 F.Supp. at 812. "Although more must be alleged than injury to an identifiable group of individual residents, the indirect effects of the injury must be considered as well in determining whether the State has alleged injury to a sufficiently substantial segment of its population." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982) ("*Snapp*"). "One helpful indication in determining whether an alleged injury to the health and welfare of its citizens suffices to give the State standing to sue as *parens patriae* is whether the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers." *Id. See also People by Abrams v. 11 Cornwell Co.*, 695 F.2d 34, 39-40 (2d Cir. 1982) ("*11 Cornwell Co.*") (stating the plaintiff State of New York "ha[d] alleged injury to a sufficiently substantial segment of the population" to establish *parens patriae* standing because "were this kind of incident to be tolerated and left without redress, countless others would be affected"), *vacated in part on other grounds*, 718 F.2d 22 (2d Cir. 1983). The State must allege injury "to more than an identifiable group of individual residents," as well as "a 'practice and policy' of discrimination,' which necessarily involves a larger group

of patrons." *Peter & John's Pump House*, 914 F.Supp. at 813. In alleging an injury to a substantial segment of the population, the State's "'use of a small group of 'aggrieved persons' as exemplars for a larger class is neither new nor objectionable. . . ." *Id.* (quoting *People by Vacco v. Mid Hudson Medical Grp.*, 877 F.Supp. 143, 147 (S.D.N.Y. 1995) (finding *parens patriae* standing where the state alleged that a hospital discriminated against its seven to ten hearing- impaired patients because the effect of the discrimination "threatens all hearing impaired citizens and perhaps disabled citizens throughout New York."). Further, "[a]lthough more must be alleged than injury to an identifiable group of individual residents, the indirect effects of the injury must be considered as well in determining whether the State has alleged injury to a sufficiently substantial segment of its population." *Snapp*, 458 U.S. at 607. In the instant case, Plaintiff fails to establish that the alleged sexual harassment and discrimination of the four student victims within the NWCSD sufficiently establishes injury to a substantial segment of New York's population.

In particular, the Amended Complaint contains allegations pertaining to only the four student victims who attended schools within the NWCSD between 2017 and 2020, which Plaintiff maintains are illustrative examples of Defendant's widespread failure to address and prevent gender-based harassment and sexual assault of students in violation of Title IX, asserting there are at least 30 additional "'documented incidents of sex discrimination, sexual harassment, sexual assault, or gender-based bullying'" within the NWCSD, yet NWCSD has failed to

create any written safety plan or made any effort, despite rape, physical assault, and harassment of students, to keep students safe and to prevent or respond to future assaults. Plaintiff's Response at 20-22 (quoting Amended Complaint ¶5, and citing *id*. ¶¶ 69-70, 72). Such conclusory and unsupported allegations of conduct in violation of Title IX fail to support a plausible Title IX claim. *See Harris*, 572 F.3d at 72 (providing a court is not required to accept as true allegations that are no more than "legal conclusions" and "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements"). Moreover, the cases Plaintiff references in support of its argument that the alleged Title IX violations significantly affect a substantial percentage of the population for *parens patriae* standing, including *11 Cornwell Co.*, *Utica CSD*, *Peter & John's Pump House*, *Mid Hudson Med. Grp.*, and *Support Ministries for Persons with AIDS, Inc. v. Village of Waterford*, New York, 799 F.Supp. 272 (N.D.N.Y. 1992) ("*Support Ministries*"), are inapposite.

In *11 Cornwell Co.*, the Second Circuit held that a partnership of neighborhood property owners who acquired and then failed to sell to the State a residence which would house up to ten mentally challenged adults affected a sufficiently substantial segment of New York's population to confer *parens patriae* standing upon the State of New York. *11 Cornwell Co.*, 695 F.2d at 39–40. According to the court, the defendant partnership's discriminatory conduct affected not just the ten mentally challenged persons who would initially occupy the residence, but "similar people in years to come. . . ." *Id.*

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Utica CSD concerned a policy and practice pursuant to which district officials routinely forced all immigrant students aged 17-20 who sought to enroll at the school district's only public high school into an alternative program intended to accommodate students who were considered to be "limited English proficiency" ("LEP"), without first determining whether such students' English-speaking ability was in fact limited. *Utica CSD*, 177 F.Supp.3d, 744. The numerosity requirement was found sufficient because the 25% of the city's population that spoke a language other than English at home was considered to be a "relatively large and still growing population of LEP children of immigrant families that reside within the District," and thus affected by the defendant's policy. *Id.* at 748.

In *Peter & John's Pump House*, the State sued a night club alleging the club employed discriminatory policies and practices aimed at preventing admission to African Americans by requiring presentation of proof of age and imposing a dress code on African Americans but not on white patrons. *Peter & John's Pump House*, 914 F.Supp. at 811. Although the complaint provided eight examples of the defendant's alleged discriminatory conduct involving 16 individuals over an eight-month period, the court found the substantial segment requirement for *parens patriae* standing was met because the allegations involved "generalized discrimination against potential nightclub patrons," the alleged discrimination affected a large population, and there was "no accurate method to determine how many African Americans may have been denied access to the Club because of their race." *Id.* at 813.

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At issue in *Mid Hudson Med. Grp.* was whether the defendant hospital's failure to provide interpretive services for its hearing impaired patients affected a substantial segment of New York's population. *Mid Hudson Med. Grp.*, 877 F.Supp. at 147. Because the plaintiff supplied data indicating the deaf population of New York may be as high as 7%, the court extrapolated that the defendant's alleged discriminatory conduct affected a substantial segment of the State. *Id.* at 148.

Finally, in *Support Ministries*, New York challenged as arbitrary and unlawful discrimination a local village ordinance denying zoning approval for a residence for homeless persons afflicted with AIDS. *Support Ministries*, 799 F.Supp. at 275, 278. In finding the State alleged the Defendant's conduct posed a significant risk of harm to a substantial segment of the population, the court considered that although the proposed residence intended to provide housing for only 15 homeless persons with AIDS at one time, it was anticipated that other homeless persons with AIDS would be housed there in the future because the population of homeless people with AIDS was "not insubstantial and is ever increasing." *Id.* at 277. On this basis, the court found the alleged discriminatory conduct affected a substantial segment of the population for purposes of *parens patriae* standing. *Id.* at 278.

It is significant that there is a common thread in the cases on which Plaintiff relies, to wit, that in each referenced case, the alleged discriminatory conduct, policy, or practice would have routinely been enforced against a member of the targeted population. For example,

in *Peter & John's Pump House*, the State alleged that any African American who attempted to gain entry into the defendant nightclub would have been required to present proof of age and comply with a dress code, a policy which was not enforced with regard to white patrons. In contrast, in *People of the State of New York v. Holiday Inns, Inc.*, 656 F.Supp. 675 (W.D.N.Y. 1984) ("*Holiday Inns*"), the State, suing as *parens patriae*, alleged claims against the defendant for age and gender discrimination in violation of federal and state employment laws based on the defendant's practices in hiring and discharging employees. *Holiday Inns*, 656 F.Supp. at 677. The court found the State's "assertions that countless other employees *may* be subjected to defendants' discriminatory practice of discharging older employees and that younger employees and customers of defendants would be deprived of the opportunity to work with or be served by employees of all ages" failed to allege an injury to a substantial segment of New York's population. *Id.* (italics in original). In other words, the asserted injury attributed to the defendant's alleged discriminatory practice against other employees was speculative.

In the instant case, there Amended Complaint does not plausibly allege that Defendant maintains a policy or practice that Defendant necessarily would fail to take any corrective action in response to any student attending a school within the NWCSD who complains about gender-based harassment and sexual assault, or that having a written safety plan would necessarily prevent such conduct by other students within NWCSD. *See Snapp*, 458 U.S. at 607 ("more must be alleged than

injury to an identifiable group of individual residents"). Nor is Plaintiff's conclusory assertion that more than 30 additional incidents of sexual assault and gender-based harassment sufficient to establish concrete injury. *Utica CSD*, 177 F.Supp.3d at 748 (*parens patriae* standing requires "a concrete injury to a substantial segment of its population"). Accordingly, Defendant's Motion should be GRANTED as to Plaintiff's Title IX claim for failure to establish the substantial segment requirement for *parens patriae* standing.

Alternatively, should the District Judge disagree with the determination that Plaintiff has failed to allege Defendant's violation of Title IX resulted in injury to a substantial segment of the population, judgment on the pleadings should nevertheless be granted because Plaintiff cannot allege the requisite injury to establish a valid case or controversy. In particular, Plaintiff seeks only declaratory and injunctive relief. Amended Complaint, Prayer for Relief. "It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (citing cases). Significantly, the plaintiff must have a "personal stake in the outcome." *Id*.

In the instant case, Plaintiff's allegations of past injury alone do not suffice to establish an injury in fact for a plaintiff seeking declaratory or injunctive relief. *See Levin v. Harleston*, 966 F.2d 85, 90 (2d Cir. 1992); *Golden v. Zwickler*, 394 U.S. 103, 109-10 (1969). Abstract

injury is not enough; rather, the plaintiff must show that it "has sustained or is immediately in danger of sustaining some direct injury" as the result of the challenged official conduct and the injury or threat of injury must be both "real and immediate," not "conjectural" or "hypothetical." *Lyons*, 461 U.S. at 101-02. *See Farmland Dairies v. McGuire*, 789 F. Supp. 1243, 1250 (S.D.N.Y. 1992) (a plaintiff must allege a "real and immediate threat that the injury will be continued or repeated"). "To have Article III standing to sue in federal court, plaintiffs must demonstrate, among other things, that they suffered a concrete harm. No concrete harm, no standing." *TransUnion LLC v. Ramirez*, ___ U.S. ___, 141 S. Ct. 2190, 2200 (2021) (citing *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 340 (2016)). "Central to assessing concreteness is whether the asserted harm has a 'close relationship' to a harm traditionally recognized as providing a basis for a lawsuit in American courts—such as physical harm, monetary harm, or various intangible harms including . . . reputational harm." *Id.* (quoting *Robins*, 578 U.S. at 341.

In the instant case, Plaintiff cannot pursue injunctive relief requiring policy changes by NWCSD under Title IX with regard to any student who has graduated or otherwise left the school district because no such victim could benefit from the relief sought. *A.S. v. City Sch. Dist. of Albany*, 2022 WL 356697, at *26 (N.D.N.Y. Feb. 7, 2022) (citing *Cook v. Colgate University*, 992 F.2d 17, 19 (2d Cir. 1993), and *B.C. v. Mount Vernon Sch., Dist.*, 660 Fed.Appx. 93, 96 (2d Cir. 2016)). Because T.G. has graduated from high school, C.C. dropped out of school, and A.S. transferred to a private school, Plaintiff

cannot benefit from any changes to Defendant's policies as to those victims. Further, with regard to L.W. who was in second grade in 2017 and, thus, unlikely to have graduated from high school, not only does the Amended Complaint fail to allege whether L.W. remains a student within NWCSD, but the Amended Complaint also fails to allege L.W. continues to experience any sexual assault or gender-based bullying or harassment. Thus, insofar as the Amended Complaint seeks injunctive relief changing NWCSD's policies or practices, Plaintiff lacks standing to pursue such relief.

Defendant's Motion thus should be granted for lack of standing.

B. Elements of Title IX Claim

Should the District Judge disagree that Plaintiff's Title IX claim should be dismissed for lack of standing based on a failure to establish the *parens patriae* doctrine's injury to a substantial segment of the population requirement, or because the declaratory and injunctive relief sought is not available in the circumstances in which this action is brought, the court alternatively considers whether Defendant should be granted judgment on the pleadings based on the elements of the Title IX claim.[6] Plaintiff

6. Although in *Cannon*, the Court recognized Title IX may be enforced by a judicially implied private right of action, *Cannon*, 441 U.S. at 709, whether such private right of action includes an action brought by a state as *parens patriae* as in the instant case was not addressed. Further, *Cannon* recognized the implied right of action only for monetary damages for intended beneficiaries of federal

contends that the District violated Title IX by acting with deliberate indifference to sexual harassment toward T.G., C.C., A.S. and L.W., which resulted in excluding the four student victims from meaningful participation at schools within NWCSD. As stated, relevant to the instant case, Title IX provides "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The elements for a Title IX student-on-student sexual harassment claim include "that '(1) a federally funded educational institution (2) was deliberately indifferent to and (3) had actual knowledge of (4) sexual harassment that was so severe, pervasive, and objectively offensive that it could be said to have deprived the plaintiff of access to the educational opportunities or benefits.'" *A.S. v. City Sch. Dist. of Albany*, 2022 WL 356697, at *19 (N.D.N.Y. Feb. 7, 2022) (quoting *Roskin-Frazee v. Columbia Univ.*, 2018 WL 6523721, at *4 (S.D.N.Y. Nov. 26, 2018) (citing *Davis*, 526 U.S. at 650)); *Posso*, 518 F.Supp. 3d at 696 (same). *See also AA by BB v. Hammondsport Cent. Sch. Dist.*, 527 F. Supp.3d 501, 510–11 (W.D.N.Y. 2021) (describing

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financial support for education, *id*., in contrast to the instant action where Plaintiff seeks only declaratory and injunctive relief. *See Lopez v. Jet Blue Airways*, 662 F.3d 593, 596 (2d Cir. 2011) (recognizing the Supreme Court "strictly curtail[s] the authority of the courts to recognize implied rights of action" (citing *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001)). In the instant case, the Amended Complaint fails to allege the Attorney General, acting in *parens patriae*, is a beneficiary of federal financial support within the scope of Title IX. *Cannon*, 441 at 709.

the elements for student-on-student harassment claims under Title IX as including "(1) school authorities had actual knowledge of the harassment or the risk thereof; (2) they were deliberately indifferent to it; and (3) the harassment was so 'severe, pervasive, and objectively offensive' that it deprived the student of access to the educational opportunities and benefits provided by the school." (quoting *Carabello v. New York City Dept. of Educ.*, 928 F. Supp.2d 627, 638 (E.D.N.Y. 2013)).

Acknowledging "the inevitability of student misconduct" and the "practical realities of responding to student behavior," the Supreme Court has explained that this standard will not be met by "simple acts of teasing and name-calling," nor will it be met by a "single instance of one-on-one peer harassment" unless the instance is "serious enough to have the systemic effect of denying the victim equal access to an educational program or activity." *Davis*, 526 U.S. at 652-53. As such, when analyzing whether the conduct alleged meets the "severe, pervasive, and objectively offensive" requirement, the "constellation of surrounding circumstances, expectations, and relationships" must be considered to determine whether the conduct alleged was sufficiently severe, sufficiently frequent or pervasive, or both, to have denied the victim equal access to educational opportunities. *Davis*, 526 U.S. at 630 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 82 (1998)). Additionally, a school has actual knowledge of harassment when a school official with "authority to address the alleged discrimination and to institute corrective measures" has actual knowledge of the discrimination. *Papelino v. Albany Coll. of Pharmacy*

of Union Univ., 633 F.3d 81, 89 (2d Cir. 2011). Further, a school is deliberately indifferent to sexual harassment when its response is "clearly unreasonable in light of the known circumstances." *Davis*, 526 U.S. at 648–49. In the instant case, the parties do not dispute that NWCSD is a federally funded educational institution as required for the first element of a Title IX claim. Accordingly, the court addresses only the remaining three elements as to each of the student victims.

With regard to T.G., the rape by E.D. occurred outside of NWCSD property. Nevertheless, at the start of the school year following the rape, T.G. obtained a restraining order preventing E.D. from coming near her outside of school, and T.G.'s mother informed the then high school principal Mann of the restraining order. Despite being aware of the restraining order, E.D. repeatedly went out of his way in school to encounter T.G. who notified the school counselor of these repeated interactions, but no corrective action was taken. T.G. was also repeatedly subjected to harassment through social media, yet even after showing the messages to Principal Mann, no disciplinary action was taken against E.D. or the students who sent the messages. T.G. eventually began skipping certain classes to avoid E.D. Even after T.G.'s mother informed the high school about E.D.'s guilty plea in May 2019 to third-degree rape Principal Mann informed T.G.'s mother that despite the plea, E.D. would be permitted to attend both prom and graduation. It was not until May 31, 2019, when high school students, to express their anger with the high school's handling of the incident, organized a walkout that garnered national media attention, that

Defendant expelled E.D. at the conclusion of the school year. Defendant's alleged failure to protect T.G. from continued harassment from her attacker, E.D., and other students who sided with E.D., after being made aware of the rape for which E.D. was being criminally prosecuted, that T.G. had obtained a restraining order preventing E.D. from coming near T.G., and the subsequent harassment T.G. endured by other students both in person and over social media, such that T.G. began skipping classes, as well as the decision that T.G., after speaking with the prosecutor handling the criminal action against E.D., should not be permitted to cheer at certain games, can be construed as establishing Defendant was deliberately indifferent to the harassment T.G. endured throughout her senior year. *See AA by BB*, 527 F.Supp.3d at 510-13 (denying defendant school district's motion to dismiss Title IX claim for student-on-student harassment where the defendant school district "received notice of the [initial] harassing conduct, it had a duty under Title IX to take some action to prevent the further harassment" such that the defendant's failure to do so was "clearly unreasonable" in light of the assailant's openly mocking and ridiculing the victim in front of other students and recruiting other students to do likewise). *See also Doe ex rel, A.N. v. East Haven Bd. of Education*, 430 F.Supp.2d 54, 60 (D.Conn. 2006) (plaintiff student prevailed on Title IX claim where victim student was raped by two other students off school property, after which the victim was sexually harassed by classmates at school for three months). Accordingly, Plaintiff meets the criteria for plausibly pleading a Title IX claim with regard to T.G.

Turning to C.C. who, in middle school, dressed in stereotypically male clothing, for which she was bullied and called "transgender" and "gay," and upon entering high school began to wear more feminine clothing following which she was bullied and called "fat," "ugly," and a "slut" and urged to kill herself, both Dr. Peters, the middle school counselor, as well the superintendent were aware of the bullying, yet took no steps to stop the harassment and ever refused to allow C.C. to transfer to a different school to escape the bullying. C.C. attended counseling to deal with the stress caused by the harassment but, in December 2019, after C.C. failed to obtain any relief from the bullying and was not allowed to attend a different school, C.C. dropped out of school and never graduated high school. Courts within the Second Circuit have found the continuous bullying related to a student's sexuality can be sufficiently "severe, pervasive, and objectively offensive," *Davis*, 526 U.S. at 653, to support a Title IX claim. *See*, *e.g.*, *Estate of D.B. v. Thousand Islands Central School District*, 169 F.Supp.3d 320, 332-33 (N.D.N.Y. 2016) (recognizing Tilte IX claim for harassment based on sexual orientation); *Doe ex rel, A.N.*, 430 F.Supp.2d at 60 (affirming jury verdict against defendant school district on Title IX claim where victim student was sexually harassed by classmates for three months after being sexually assaulted by two other students). The allegations with regard to C.C. thus are sufficient to plausibly establish a Title IX claim.

The allegations regarding A.S. include that while attending the high school, A.S. was bullied and harassed by members of the high school's football team and friends

of the football players including creating and distributing through social media a video mocking A.S, performing a chant at a high school pep rally mocking A.S, displaying a poster conveying that A.S. was not wanted and physically assaulting A.S., striking A.S. on the head eleven times. Although A.S. immediately informed Mr. White, the then high school acting principal about the assault, White's response was to advise A.S. not to attend an upcoming school dance which A.S.'s attackers were allowed to attend. A.S.'s mother made additional calls to the high school, as well as to the NWCSD's superintendent, but no disciplinary action was ever taken with regard to the assailants. Because A.S. was too afraid to return to the high school, her family enrolled A.S. in a private school for which they had to pay tuition. Again, Defendant is alleged to have had actual knowledge of the harassment toward A.S., yet refused to take any action to stop the harassing conduct, such that A.S. did not feel safe returning to the high school. Although it is not clear whether Defendant had knowledge of the harassment A.S. encountered prior to the assault, Defendant's subsequent knowledge that A.S. endured an attack by five classmates during which A.S. was struck in the head eleven times is sufficiently severe "to overcome the lack of pervasiveness for purposes of Title IX liability . . . " and placed Defendant on notice that A.S.'s assailants posed a substantial risk of harm to A.S., such that the school environment for A.S. was sufficiently hostile that Defendant's failure to take any corrective action deprived A.S. of educational opportunities. *See AA by BB*, 527 F.Supp.3d at 512 (after receiving notice of the initial harassing conduct, the defendant school district had a duty under Title IX to take action to prevent further

harassment in a manner not clearly unreasonable). The claim is therefore plausibly alleged as to A.S.

The allegations are also sufficient to establish a Title IX claim with regard to L.W. who, in 2017, was in second grade when she was sexually assaulted by a neighbor then attending fifth grade at the same elementary school. Although L.W.'s mother informed Principal O'Bryan, then the elementary school's principal, and NWCSD Superintendent Ljiljanich about the assault and the court proceedings, including that the assailant was on probation, the assailant's family was ordered to move from L.W.'s housing complex, and that L.W. receive therapy, Superintendent Ljiljanich responded that NWCSD would take no action to protect L.W. from the assailant who was entitled to an education, suggesting to L.W.'s mother that she should move to a different school to protect L.W. The assailant then continued to both physically and verbally harass L.W. at the elementary school where they had lunch at the same time every day, even following L.W. into the bathroom. L.W.'s mother's further attempts to contact Superintendent Ljiljanich and Principal O'Bryan were futile. After the assailant eventually moved out of the school district, other students at the elementary school bullied L.W. based on false statements the assailant made about L.W., and the assault and continuing sexual harassment caused L.W. to develop physical manifestations of stress for which L.W. attended counseling for more than two years. These allegations support sufficiently "severe, pervasive, and objectively offensive" conduct to place Defendant on notice that L.W. faced a substantial risk of harm from the environment at the elementary school for

purposes of establishing a Title IX claim. *See AA by BB*, 527 F.Supp.3d at 510-13 (defendant school district's receipt of notice of student-on-student harassment imposes duty to take reasonable action to prevent further harassment); *Doe ex rel, A.N.*, 430 F.Supp.2d at 60 (off-campus rape of plaintiff student followed by on- campus sexual harassment for three months by classmates established Title IX claim). Accordingly, the allegations pertaining to L.W. plausibly establish a Title IX claim for student-on-student harassment.

Accordingly, the record does not support judgment for Defendant based on the pleadings.

3. Negligent Supervision

A. Supplemental Jurisdiction over State Claim

Should the District Judge agree with the recommendation that the Title IX claim be dismissed for lack of standing, the dismissal of all federal claims leaves the decision whether to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c) over the remaining state claims a matter within the court's discretion. *See Valencia ex rel. Franco v. Lee*, 316 F.3d 299, 304-05 (2d Cir. 2003) (reviewing for abuse of discretion federal district court's decision to decline exercising supplemental jurisdiction over state law claims after all federal law claims have been eliminated prior to trial). In discerning whether to exercise supplemental jurisdiction after dismissal of all federal claims, courts must balance judicial economy, convenience, fairness, and comity. *Id.* (citing *Carnegie-*

Mellon University v. Cohill, 484 U.S. 343, 349-50 (1988)). In the instant case, insofar as Plaintiff asserts a state law claim for negligent supervision, the court should refrain from exercising supplemental jurisdiction over the state claim because the federal Title IX claim has been dismissed and the state claim raises, as in this case, complex questions as to the scope of the state claim. *See Shahriar v. Smith & Wollensky Restaurant Group, Inc.*, 659 F.3d 234, 245 (2d Cir. 2011) (citing 28 U.S.C. § 1367(c)). Alternatively, the court addresses whether the Amended Complaint sufficiently establishes a common law negligent supervision claim.[7]

B. Elements of Negligent Supervision Claim

Preliminarily, as discussed, the court initially recommends dismissal of the Title IX claim for lack of jurisdiction, *see* Discussion, *supra*, at 22, and with the dismissal of the Title IX claim before the court on federal subject matter jurisdiction, given the early stage of the instant action, the court should refrain from exercising supplemental jurisdiction over Plaintiff's negligent supervision claim pursuant to New York common law. *See* Discussion, *supra*, at 30. Alternatively, the court addresses whether Defendant is entitled to judgment on the pleadings on the negligent supervision claim in the interest of completeness should the District Judge disagree with the recommendation that the matter be

7. The court notes the same "plausibility" standard applies to its review of Plaintiff's state common law claim. *See Khan v. Yale University*, 27 F.4th 805, 817 (2d Cir. 2022) (reviewing dismissal of state law claim for plausibility pursuant to Rule 12(b)(6)).

dismissed in its entirely for lack of jurisdiction on the Title IX claim.

Under New York law, "[s]chools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision." *Carabello v. New York City Dep't of Educ.*, 928 F. Supp. 2d 627, 646 (E.D.N.Y. 2013). "The attendant duty of care has been described as that of a 'reasonably prudent parent,' and as such, 'school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take place among students daily . . . absent proof of prior conduct that would have put a reasonable person on notice to protect against the injury-causing act.'" *AA by BB*, 527 F. Supp.3d at 507 (quoting *Mirand v. City of New York*, 637 N.E.2d 263, 266 (N.Y. 1994)).

In the instant case, Defendant argues Plaintiff's negligent supervision claim is deficient with regard to each of the four student victims because Plaintiff has failed to allege Defendant had sufficient specific knowledge or notice of the dangerous conduct to which each student was subjected. Defendant's Memorandum at 17-18. Defendant further maintains the injunctive relief Plaintiff seeks is not available on the negligent supervision claim. *Id*. at 21-22. In opposition, Plaintiff argues it has sufficiently alleged Defendant violated its duty to adequately supervise its students because Defendant had specific knowledge and notice of the alleged harmful behavior, Plaintiff's Response at 14-15, as well as that Defendant's negligence in failing to address the harmful behavior proximately

caused the victims' injuries. *Id*. at 15-16. Plaintiff also maintains it may seek injunctive relief to redress its negligent supervision claim. *Id*. at 16-18. In further support of its motion, Defendant repeats the argument that Plaintiff failed to plead sufficient knowledge or notice of the dangerous conduct suffered by the four student victims to support a negligent supervision claim, Defendant's Reply at 8-9, and that while Plaintiff seeks injunctive relief, generally, only monetary damages are available on a negligent supervision claim. *Id*. at 9-10.

Preliminarily, insofar as Plaintiff seeks injunctive relief on its negligent supervision claim, as discussed above in connection with standing to pursue the Title IX claim, Discussion, *supra*, at 20-22, insofar as the Amended Complaint seeks injunctive relief changing NWCSD's policies or practices, such relief is not available where the action complained of has ceased. Accordingly, judgment on the pleadings should be granted in favor of Defendant on Plaintiff's negligent supervision claim. Alternatively, the pleadings establish the elements of a common law negligent supervision claim under New York law.

In particular, "[s]chools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision." *Mirand*, 637 N.E.2d at 266 (citing *Lawes v. Board of Educ.*, 213 N.E.2d 667, 668-69 (N.Y. 1965); *Decker v. Dundee Cent. School Dist.*, 151 N.E.2d 866, 868 (N.Y. 1958)). Nevertheless, schools "are not insurers of safety" and "cannot reasonably be expected to continuously supervise and control all movements and

activities of students; therefore, schools are not to be held liable 'for every thoughtless or careless act by which one pupil may injure another.'" *Id.* (quoting *Lawes*, 213 N.E.2d at 668-69*; Ohman v. Board of Educ.*, 90 N.E.2d 474, 475 (N.Y. 1949)). The duty owed to students is derived from the fact that "a school, in assuming physical custody and control over its students, effectively takes the place of parents and guardians." *Id.* (citing *Pratt v. Robinson*, 349 N.E.2d 849, 852 (N.Y. 1976)). Further, "[i]in determining whether the duty to provide adequate supervision has been breached in the context of injuries caused by the acts of fellow students, it must be established that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated," and actual or constructive notice prior to similar conduct is sufficient. *Id.*, 637 N.E.2d at 267. "Even if a breach of the duty of supervision is established, the inquiry is not ended; the question arises whether such negligence was the proximate cause of the injuries sustained." *Id.*

In the instant case, there are sufficient allegations establishing Defendant breached its duty to supervise the students with regard to each of the four student victims. Specifically, as discussed, Facts, *supra*, at 3-7, in each of the pleaded scenarios, administrative personnel were aware of the alleged harassing and assaultive conduct of students attending schools within NWCSD, but took no action to ensure the safety of the student victims. As a result, each of the student victims suffered injuries including missing classes (T.G., who did not feel safe attending certain classes); dropping out of school (C.C.,

who dropped out of school because she did not feel safe); transferring to a private school (A.S., who transferred to a private school after being physically assaulted and the high school administrators and NWCSD superintendent refused to take any disciplinary action against the assailants), and developing stress and anxiety requiring counseling for two years (L.W., who, after school officials refused to take any action to keep her assailant away from her, was forced to encounter her assailant every day at lunch who continued to harass her). *See Eskenazi-McGibne v. Connetquot Central School District*, 89 N.Y.S.3d 298-99 (2d Dept. 2018) (affirming denial of defendant school district's motion to dismiss for failure to state a claim for, *inter alia*, negligent supervision where plaintiff student alleged mental and emotional injuries resulting from repeated bullying and harassment by a fellow student for which the plaintiff student's parents repeatedly complained to the school district, teachers, and administrative officials); *Wilson v. Vestal Central School District*, 825 N.Y.S.2d 159, 160- 61 (3d Dept. 2006) (affirming trial court's denial of defendant school district's motion for summary judgment on negligent supervision claim where plaintiff was injured when classmate pulled a chair out from under her while seated in the school cafeteria, because there were issues of fact regarding the defendant's knowledge of prior conflicts between the plaintiff and her classmate dating to middle school where the classmate exhibited aggressive an confrontational behavior toward the plaintiff). Accordingly, should the District Judge reach the elements of Plaintiff's negligent supervision claim on Defendant's Motion, then Defendant should be DENIED judgment on the pleadings as to such claim.

Appendix C

CONCLUSION

Based on the foregoing, Defendant's motion (Dkt. 34) should be GRANTED and the Clerk of Court directed to close the file. Alternatively, Defendant's Motion should be DENIED.

Respectfully submitted,

/s/ *Leslie G. Foschio*
LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

DATED: May 11th, 2022
Buffalo, New York

ORDERED that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days of service of this Report and Recommendation in accordance with the above statute, Rules 72(b), 6(a) and 6(d) of the Federal Rules of Civil Procedure and Local Rule 72.3.

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Secretary of Health and Human*

Services, 892 F.2d 15 (2d Cir. 1989); *Wesolek v. Canadair Limited*, 838 F.2d 55 (2d Cir. 1988).

Let the Clerk send a copy of this Report and Recommendation to the attorneys for the Plaintiff and the Defendants.

SO ORDERED.

/s/ *Leslie G. Foschio*
LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

DATED: May 11th, 2022
Buffalo, New York

APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED DECEMBER 11, 2024

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No: 22-2178

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of December, two thousand twenty-four.

PEOPLE OF THE STATE OF NEW YORK
BY LETITIA JAMES, NEW YORK STATE
ATTORNEY GENERAL,

Plaintiff-Appellant,

v.

NIAGARA-WHEATFIELD
CENTRAL SCHOOL DISTRICT,

Defendant-Appellee.

ORDER

Appellee, Niagara-Wheatfield Central School District, filed a petition for panel rehearing, or, in the alternative,

for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe