

STATE OF MINNESOTA
COUNTY OF BELTRAMI

DISTRICT COURT
NINTH JUDICIAL DISTRICT

Case Type: Personal Injury

Case No.: *04-CV-13-3690*

Doe 22, a minor, by her mother and
natural guardian, Mother Doe 22,

Plaintiff,

vs.

COMPLAINT

Bemidji School District, ISD No. 31,

Defendant.

Plaintiff, for her causes of action against Defendant, alleges that:

PARTIES

1. Plaintiff Doe 22 is a minor female resident of the State of Minnesota. In the interest of privacy, the identity of Plaintiff Doe 22 has been disclosed under separate cover to Defendant.

2. Plaintiff Mother Doe 22 is the mother and natural guardian of Plaintiff Doe 22. In the interest of privacy, the identity of Mother Doe has been disclosed under separate cover to Defendant.

3. At all times material, Defendant Bemidji School District, ISD. No. 31, (hereinafter "School District"), was and continues to be a State of Minnesota public school district and non-profit governmental organization authorized to conduct business and conducting business in the State of Minnesota with its principal place of business at 3300 Gillett Dr. NW, Bemidji, MN 56601.

FACTS

4. At all times material, John Wangberg (hereinafter “Wangberg”), now deceased, was a physical education teacher employed by and under the direct supervision, employ and control of Defendant School District.

5. Wangberg was employed by Defendant School District as a physical education teacher at Central Elementary School from 1986 to 2012. Central Elementary School exists within the borders of Defendant School District for its benefit and under its control.

6. Between approximately 2010 and 2011, Plaintiff was a student at Central Elementary School. In 2010, Plaintiff came to know Wangberg as her kindergarten physical education teacher.

7. When Plaintiff Doe 22 was approximately five years old in approximately 2010 and 2011, Wangberg, using his position of trust, authority and control as a teacher, engaged in offensive, harmful and unpermitted sexual contact with Plaintiff Doe 22. The sexual contact and/or acts constituted or would have constituted a criminal offense under Minn. Stat. §609.343 (2013).

8. Plaintiff’s mother reported the sexual abuse of Plaintiff by Wangberg to law enforcement upon discovery in 2012.

9. In 2008, prior to Wangberg’s sexual abuse of Plaintiff, a parent reported Wangberg’s inappropriate with her five year old daughter to the Central Elementary School principal. Defendant took no steps to investigate the conduct, report the abuse to law enforcement or prevent Wangberg from having continued unsupervised access to children.

10. In 2008, prior to Wangberg’s sexual abuse of Plaintiff, another parent reported Wangberg’s inappropriate contact with her five year old daughter to the Central Elementary

School principal. Defendant again took no steps to investigate the conduct, report the abuse to law enforcement or prevent Wangberg from having continued unsupervised access to children.

11. Upon information and belief, in 2009 or 2010, prior to Wangberg's sexual abuse of Plaintiff, a kindergarten teacher received a report from a student that Wangberg held the student upside down over the garbage can in his office and her pants were falling down. The teacher did not take steps to investigate the conduct or report the abuse.

12. In March 2011, the parent of another student reported Wangberg's sexual abuse of her five year old daughter to Defendant School District and law enforcement.

13. In March 2011, law enforcement confiscated Wangberg's computer for forensic examination. Law enforcement discovered images of child erotica on the computer, including photographs of young girls in bikinis.

14. On January 22, 2013, Wangberg was charged with two counts of second degree criminal sexual conduct with a victim under 13 years old and one count of fifth degree criminal sex conduct. On January 30, 2013, Wangberg committed suicide in his home.

15. Prior to Wangberg's sexual abuse of Plaintiff, Defendant learned or should have learned that Wangberg was engaging in inappropriate sexual behavior with young students.

16. Defendant knew or should have known that Wangberg was a child sexual predator and knew or should have known that Wangberg was a danger to children before Wangberg sexually molested Plaintiff.

17. Defendant knew or should have known that there was a risk of child sexual abuse to children participating in educational programs and activities within the School District.

18. Defendant knew or should have known that it did not have sufficient information about whether there was a risk of child sexual abuse to children participating in educational

programs and activities within the School District.

19. Defendant knew or should have known that it had agents who sexually molested children. It knew or should have known that child molesters have a high rate of recidivism. Defendant knew or should have known that there was a specific danger of child sex abuse for children participating in their programs.

20. Defendant negligently or recklessly believed that Wangberg was fit to work with children; that any previous problems he had were fixed or cured; that Wangberg would not sexually molest children and that Wangberg would not injure or hurt children.

21. Defendant placed Wangberg at Central Elementary School. Children, including Plaintiff, and her parents were not told what Defendant knew or should have known – that Wangberg had dangerous and exploitative tendencies and was a danger to them.

22. By establishing and operating a public school, accepting the enrollment of the minor Plaintiff in this school, and holding the school out to be a safe environment for Plaintiff to study and learn, Defendant School District entered into an express and/or implied duty to properly supervise the minor Plaintiff and provide a reasonably safe learning environment. Defendant School District further assumed this duty by holding its school out to the public, including the minor Plaintiff, as a safe and secure environment for the minor Plaintiff.

23. Defendant School District further assumed this duty by holding Wangberg out to the public, including the minor Plaintiff, as a competent and trustworthy coach and teacher, and school mentor of high morals.

24. By holding Wangberg out as safe to work with children, and by undertaking the custody, supervision of and/or care of the minor Plaintiff, Defendant entered into a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendant

undertaking the care and custody of the then vulnerable minor Plaintiff, Defendant held a position of empowerment over Plaintiff.

25. Further, Defendant, by holding itself out as a school, and thereby an institution being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented the then minor Plaintiff from protecting herself.

26. Defendant had a special relationship with Plaintiff.

27. Defendant owed Plaintiff a duty of reasonable care because it had superior knowledge about the risk that Wangberg posed to Plaintiff, the risk of abuse in general and/or the risk that its facilities posed to minor children.

28. Defendant owed Plaintiff a duty of reasonable care because it solicited youth and parents to participate in its programs and promoted its facilities as being safe for children; and held its agents including Wangberg out as being safe to work with children.

29. Defendant had a duty to protect Plaintiff from harm because Defendant's actions created a foreseeable risk of harm to Plaintiff.

30. Defendant breach of its duties include, but is not limited to: failure to have sufficient policies and procedures to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to ensure that the policies and procedures in place to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child molestation, failure to properly train staff and teachers working within its geographical confines, failure to have any outside agency test its safety procedures, failure to protect children in their programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent its

institutions, programs and leaders as safe, and failure to train employees properly to identify signs of child molestation by fellow employees.

31. Defendant failed to use ordinary care in determining whether its facilities were safe and/or whether it had sufficient information to represent its facilities as safe. Defendant's failures include but are not limited to: failure to have sufficient policies and procedures to prevent abuse at its facilities, failure to investigate risks at its facilities, failure to properly train employees at its facilities, failure to investigate the amount and type of information necessary to represent its facilities as safe, and failure to properly train employees to identify signs of child molestation by fellow employees.

32. Defendant breached its duty to Plaintiff by exposing the minor Plaintiff to Wangberg, an unfit agent with dangerous and exploitive propensities.

33. Defendant breached its duty to Plaintiff by failing to warn Plaintiff and her parents of the risk that Wangberg posed and the risk of child sex abuse in schools in general.

34. Defendant further breached its duty to Plaintiff by failing to report Wangberg's sexual misconduct to law enforcement.

35. Defendant breached its duties to Plaintiff by failing to properly supervise Wangberg and by failing to protect Plaintiff from a known danger at its school.

36. Defendant was negligent to Plaintiff and her family during each and every year of her minority.

37. As a direct result of Defendant's negligence, Plaintiff has suffered and will continue to suffer severe emotional distress, shock, embarrassment, loss of self-esteem, disgrace, humiliation and loss of enjoyment of life, was prevented and will continue to be prevented from performing her normal daily activities and obtaining the full enjoyment of life, and has incurred

and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

COUNT I: NEGLIGENCE

38. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges that:

39. Defendant owed Plaintiff a duty of reasonable care.

40. Defendant breached the duty of reasonable care it owed to Plaintiff.

41. Defendant's breach of its duty was the proximate cause of Plaintiff's injuries.

42. As a direct result of Defendant's negligent conduct, Plaintiff has suffered the injuries and damages as described herein.

COUNT II: NEGLIGENT RETENTION

43. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count and further alleges that:

44. Defendant, by and through its agents and employees, became aware or should have become aware of problems indicating that Wangberg was an unfit agent with dangerous and exploitive propensities, yet Defendant failed to take any further action to remedy the problem and failed to investigate or remove Wangberg from working with children.

45. As a direct result of Defendant's negligent conduct, Plaintiff has suffered the injuries and damages as described herein.

COUNT III: NEGLIGENT SUPERVISION

46. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges that:

47. At all times material, Wangberg was employed by Defendant and was under Defendant's direct supervision, employ and control when he committed the wrongful acts alleged herein. Wangberg engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant and/or accomplished the sexual abuse by virtue of his job-created authority. Defendant failed to exercise ordinary care in supervising Wangberg in his position as a physical education teacher at Central Elementary, a school in Defendant School District and it failed to prevent the foreseeable misconduct of its agent, Wangberg, from causing harm to others, including the Plaintiff herein.

48. As a direct result of Defendant's negligent conduct, Plaintiff has suffered the injuries and damages as described herein.

COUNT IV: VICARIOUS LIABILITY

49. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges that:

50. At all times material, Wangberg was employed as a physical education teacher with Defendant, under Defendant's direct supervision and control, when he sexually abused Plaintiff.

51. Wangberg engaged in the wrongful conduct alleged herein in the course and scope of his employment with Defendant. Further, Wangberg was acting at least in part in furtherance of his employment duties with Defendant.

52. It was foreseeable to Defendant that Wangberg would sexually abuse Plaintiff.

53. Therefore, Defendant is liable for the wrongful conduct of Wangberg under the doctrine of respondeat superior.

54. As a direct result of the conduct of Defendant, Plaintiff has suffered the injuries

and damages as described herein.

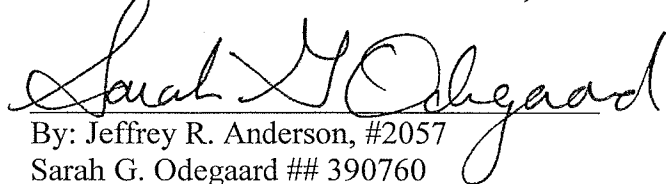
WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$50,000 plus costs, disbursements, reasonable attorney fees, interest, and any other relief the Court deems just and equitable.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: 11/5/13

JEFF ANDERSON & ASSOCIATES, P.A.



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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions, including costs, disbursements, and reasonable attorney fees, may be awarded pursuant to Minn. Stat. §549.211 to the party against whom the allegations in this pleading are asserted.

