E-FILED 2020 MAR 13 3:10 PM SCOTT - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

DOMINIQUE SCOTT, Individually, and as parent and next friend of D.C., a minor,	)	
Plaintiffs,	)	Case No. _____
v.	)	
	)	PETITION AT LAW
BETTENDORF COMMUNITY SCHOOL DISTRICT, BETTENDORF SCHOOL BOARD, and MARK KUNTZ,	)	
Defendants.	)	

COMES NOW, the plaintiffs, Dominique Scott, individually, and as parent and next friend of D.C., (hereinafter collectively referred to as "Plaintiffs"), by and through their attorney, Ciara L. Vesey, and for their cause of action state:

PARTIES, JURISDICTION, AND VENUE

1. That Dominique Scott was at all times relevant to this action, a resident of Scott County, Iowa.
2. That the minor child, D.C., is the child of Dominique Scott, and was at all times relevant to this action, a resident of Scott County, Iowa.
3. That upon information and belief, Defendant Mark Kuntz was at all times relevant to this action, a resident of Scott County, Iowa.
4. That upon information and belief, Defendant Mark Kuntz was at all times relevant to this action, an employee of the Bettendorf Community School District working at Bettendorf Middle School.

5. That Bettendorf Middle School is an educational institution serving children grades 6 through 8 in Bettendorf, Iowa.
6. That the Bettendorf School Board is a local school board and governing body pursuant to Iowa Code Chapter 670.1(1).
7. That Bettendorf Community School District is a school district and municipality pursuant to Iowa Code Chapter 670.1(2).
8. All acts set forth in this Petition occurred in Bettendorf, Scott County, Iowa.
9. That counsel for Plaintiffs certifies that this action meets the applicable jurisdictional requirements for amount in controversy.
10. Based upon on the foregoing, Scott County, Iowa is the proper venue and jurisdiction for this action.

COMMON ALLEGATIONS

11. That at all times material to this action, D.C. was a sixth grader at Bettendorf Middle School.
12. That on September 5, 2019, D.C. was a student attending health class at Bettendorf Middle School, where Defendant Mark Kuntz was the teacher.
13. At the same date and location, D.C. was having a verbal argument with other minor students in the health class, when she was asked to leave the classroom by Defendant Mark Kuntz.
14. That at no time during the health class on September 5, 2019, did D.C. physically or verbally threaten to harm another student, nor was she witnessed to have done the same.

15. At the same date and location, D.C. was attempting to leave the classroom when Defendant Mark Kuntz physically restrained D.C.'s arms and pushed her outside of the classroom door.
16. That at the same date and location, D.C. asked Defendant Mark Kuntz not to physically contact her prior to leaving the classroom.
17. At the same date and location, several students in the classroom witnessed Defendant Mark Kuntz visibly upset and/or angry at D.C.
18. That on the same date, several students in the classroom witnessed Defendant Mark Kuntz physically restrain D.C.'s arms behind her back and physically push her out of the classroom.
19. At the same date and location, Defendant Mark Kuntz pushed D.C. out of the classroom door and into the hallway.
20. At the same date and location, after exiting the classroom, Defendant Mark Kuntz continued to push D.C. into a locker with her arms behind her back, and then continued to take her down to the floor and place his weight on D.C.'s back and legs.
21. At the same date and location, D.C. sustained injuries as a result of Defendant Mark Kuntz' physically restraining her arms, taking her to the ground, and placing his weight on her physical person.
22. That upon information and belief, Defendant Mark Kuntz was placed on administrative leave by Bettendorf Middle School and the Bettendorf School Board, after the incident that occurred on September 5, 2019 between him and D.C.

23. That upon information and belief, Defendant Mark Kuntz had a previous incident in 2018 where he made offensive physical contact with another Bettendorf Middle School 6th grade student who sustained physical injuries from said offensive contact.

24. That upon information and belief, the administrative leave was rescinded by the Bettendorf School Board, and Defendant Mark Kuntz was reinstated to his position as an employee at Bettendorf Middle School.

COUNT I – ASSAULT AND BATTERY – Mark Kuntz

25. Plaintiffs re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 24 of this petition.

26. Plaintiffs allege that on September 5, 2019, Defendant Mark Kuntz, without consent or legal privilege, did commit an assault and battery upon D.C. in one or more of the following particulars:

    a. Committing an act that was intended to result in physical contact which was insulting or offensive while coupled with the apparent ability to execute the act;

    b. Committing an act that was intended to place D.C. in fear of immediate physical contact which would be painful, injurious, insulting, or offensive while coupled with the apparent ability to execute the act;

    c. Committing an act that was done with the intent to cause physical pain or injury or insulting or offensive bodily contact that did result in physical pain and injury and insulting or offensive bodily contact; putting D.C. in

reasonable and serious apprehension of a harmful and offensive contact against her person; and

d. Committing an act that did result in contact which a reasonable person would deem insulting or offensive.

27. That the aforementioned assault and battery were a proximate cause of the Plaintiffs' injuries and damages as set forth in this petition.

28. That as a result of the intentional torts perpetrated by Defendant Mark Kuntz, Plaintiff D.C. has sustained injuries and damages in the form of:

a. Past and future medical expenses;

b. Past and future physical and mental pain and suffering;

c. Past and future mental anguish and emotional distress;

d. Past and future loss of function of the mind and body;

e. Future loss of earnings; and

f. Loss of earning capacity.

29. That the acts of Defendant Mark Kuntz were willful, wanton, reckless, outrageous and in disregard of the known and obvious risks to D.C. and Plaintiff should be awarded exemplary or punitive damages against Defendant Mark Kuntz.

COUNT II – OUTRAGEOUS CONDUCT AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – Mark Kuntz

30. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 29 of this petition.

31. That Defendant Mark Kuntz' conduct was intentional, reckless and in wanton disregard of Plaintiff's health and well-being and was substantially certain to

cause Plaintiff severe emotional distress under the circumstances then and there existing.

32. That Defendant Mark Kuntz' actions constituted outrageous conduct with a reckless disregard for causing Plaintiff severe emotional distress.
33. The Plaintiffs have suffered from serious physical and mental injuries and effects following Defendant Mark Kuntz' assault and battery against D.C.
34. That Defendant Mark Kuntz' conduct as above described was a proximate cause of the severe emotional distress suffered by the Plaintiffs.
35. As a result of Defendant Mark Kuntz' actions, Plaintiffs have sustained the injuries and damages as are previously and hereinafter set forth.

COUNT III – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS – Mark Kuntz

36. Plaintiffs re-allege incorporate by reference the allegations contained in Paragraphs 1 through 35 of this petition.
37. As a result of Defendant Mark Kuntz' assault and battery and the effects on D.C., the Plaintiffs are suffering from severe emotional distress, the fear and worry that this incident may be repeated by other teachers or adults in the future, and the shock of this invasion of their child's and family's security.
38. The Plaintiffs have suffered from serious physical and mental injuries and effects following Defendant Mark Kuntz' assault and battery.
39. That Defendant Mark Kuntz engaged in behavior toward D.C. that a reasonable person in his position would know or should have known would inflict or cause D.C. emotional distress.

COUNT IV – NEGLIGENCE – Mark Kuntz

40. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 39 of this petition.

41. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was negligent in one or more of the following particulars:

    a. By physically restraining D.C. without consent or legal privilege to do so; and/or

    b. By failing to refrain from offensive, physical contact with D.C. after being asked to do so; and/or

    c. By unlawfully pushing and restraining D.C.'s person without provocation or justification; and/or

    d. By physically assaulting D.C.; and/or

    e. By committing battery against D.C.; and/or

    f. By unlawfully detaining D.C. outside of the classroom; and/or

    g. By failing to exercise reasonable care in providing instruction or discipline to a student, specifically D.C.; and/or

    h. By failing to follow proper procedures in dealing with a student or classroom environment; and/or

    i. By committing physical abuse against a child in violation of local and State law; and/or

    j. By being otherwise negligent.

42. As a direct and proximate result of the foregoing negligent acts and/or omissions, Plaintiffs have sustained the injuries and damages as are previously and hereinafter set forth.

43. That the negligent acts and/or omissions of Defendant Mark Kuntz were willful, wanton, reckless, outrageous and in disregard of the known and obvious risks to D.C. and Plaintiff should be awarded exemplary or punitive damages against Defendant Mark Kuntz.

COUNT V – ASSAULT AND BATTERY – Bettendorf Community School District

44. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 43 of this petition.
45. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was employed as an agent and/or employee of Defendant Bettendorf Community School District.
46. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was acting within the course and scope of his employment with Defendant Bettendorf Community School District.
47. That on September 5, 2019, Defendant Bettendorf Community School District, through its agent and/or employee Mark Kuntz, without consent or legal privilege, intentionally assaulted and physically battered Plaintiff D.C. with the intent to harm Plaintiff as described herein. Such conduct was outrageous and would be deemed highly offensive to a reasonable person.
48. As a result of Defendant Bettendorf Community School District's collective negligent acts and or omissions, and its agent and/or employee Defendant Mark Kuntz' actions, Plaintiffs have sustained the injuries and damages as are previously and hereinafter set forth.

49. That the acts of Defendant Bettendorf Community School District collectively, and through its agent and/or employee Mark Kuntz were willful, wanton, reckless, outrageous and in disregard of the known and obvious risks to D.C. and Plaintiff should be awarded exemplary or punitive damages against Defendant Bettendorf Community School District.

COUNT VI – OUTRAGEOUS CONDUCT AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – Bettendorf Community School District

50. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 49 of this petition.
51. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was employed as an agent and/or employee of Defendant Bettendorf Community School District.
52. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was acting within the course and scope of his employment with Defendant Bettendorf Community School District.
53. That Defendant Bettendorf Community School District through its agent and/or employee Mark Kuntz, committed conduct that was intentional, reckless and in wanton disregard of Plaintiff's health and well-being and was substantially certain to cause Plaintiff severe emotional distress under the circumstances then and there existing.
54. That Defendant Bettendorf Community School District through its agent and/or employee Mark Kuntz, committed actions that constituted outrageous conduct with a reckless disregard for causing Plaintiff severe emotional distress.

55. The Plaintiffs have suffered from serious physical and mental injuries and effects following the Defendants' collective and individual negligent acts and/or omissions.
56. That the conduct as above described was a proximate cause of the severe emotional distress suffered by the Plaintiffs.
57. As a result of Defendant Bettendorf Community School District's collective negligent acts and/or omissions, and its agent and/or employee Defendant Mark Kuntz' actions, Plaintiffs have sustained the injuries and damages as are previously and hereinafter set forth.

COUNT VII – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS – Bettendorf Community School District

58. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 57 of this petition.
59. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was employed as an agent and/or employee of Defendant Bettendorf Community School District.
60. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was acting within the course and scope of his employment with Defendant Bettendorf Community School District.
61. That as a result of Defendant Bettendorf Community School District's agent and/or employee's assault and battery and the subsequent effects on D.C., the Plaintiffs are suffering from severe emotional distress, the fear and worry that this

incident may be repeated by other teachers or adults in the future with no repercussions, and the shock of this invasion of their child's and family's security.

62. The Plaintiffs have suffered from serious physical and mental injuries and effects following the Defendants' assault and battery.

63. That Defendant Bettendorf Community School District by and through its agent and/or employee engaged in behavior toward D.C. that a reasonable person in their position would know or should have known would inflict or cause emotional distress.

COUNT VIII – NEGLIGENCE – Bettendorf Community School District

64. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 63 of this petition.

65. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was employed as an agent and/or employee of Defendant Bettendorf Community School District.

66. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was acting within the course and scope of his employment with Defendant Bettendorf Community School District.

67. That on September 5, 2019, and at all times relevant to this action, Defendant Bettendorf Community School District by and through its agent and/or employee Mark Kuntz, was negligent in one or more of the following particulars:

    a. By physically restraining D.C. without consent or legal privilege to do so; and/or

b. By failing to refrain from offensive, physical contact with D.C. after being asked to do so; and/or

c. By unlawfully pushing and restraining D.C.'s person without provocation or justification; and/or

d. By physically assaulting D.C.; and/or

e. By committing battery against D.C.; and/or

f. By unlawfully detaining D.C. outside of the classroom; and/or

g. By failing to exercise reasonable care in providing instruction or discipline to a student, specifically D.C.; and/or

h. By failing to follow proper procedures in dealing with a student or classroom environment; and/or

i. By committing physical abuse against a child in violation of local and State law; and/or

j. By being otherwise negligent.

68. As a direct and proximate result of the foregoing negligent acts and/or omissions, Plaintiffs have sustained the injuries and damages as are previously and hereinafter set forth.

69. That the negligent acts and/or omissions of Defendant Bettendorf Community School District were willful, wanton, reckless, outrageous and in disregard of the known and obvious risks to D.C. and Plaintiff should be awarded exemplary or punitive damages against Defendant Bettendorf Community School District.

COUNT IX – NEGLIGENT SUPERVISION – Bettendorf Community School District

70. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 70 of this petition.
71. That on September 5, 2019, and at all times relevant to this action, minor D.C. was entrusted to the care of Defendant Bettendorf Community School District.
72. That on September 5, 2019, and at all times relevant to this action, while in the care of Defendant Bettendorf Community School District, D.C. sustained child abuse, an assault, and battery.
73. That as a public school entity, Defendant Bettendorf Community School District owes a duty of care to minor students to supervise them, keep them safe from harm and injury, properly train and supervise its employees, and keep minor students free from child abuse from its staff.
74. That Defendant Bettendorf Community School District breached its duties to the Plaintiffs in one or more of the following particulars:
    a. In failing to properly supervise D.C.;
    b. In failing to properly supervise its agents or employees;
    c. In failing to properly train its agents or employees;
    d. In failing to prevent negligent and/or tortious acts committed by its agents or employees; and
    e. In failing to act as a reasonable supervisor of minor children would under the circumstances then and there existing.
75. That the negligence of the Defendant Bettendorf Community School District was a proximate cause of the injuries sustained by D.C., and the resulting damages to the Plaintiffs.

76. As a result of Defendant Bettendorf Community School District's collective negligent acts and/or omissions, and its agent and/or employee Defendant Mark Kuntz' actions, Plaintiffs have sustained the injuries and damages as are previously and hereinafter set forth.

COUNT X – NEGLIGENT HIRING AND RETENTION – Bettendorf School Board

77. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 76 of this petition.

78. That on September 5, 2019, and at all times relevant to this action, Defendant Mark Kuntz was employed as an agent and/or employee of Defendant Bettendorf Community School District.

79. That upon information and belief, Defendant Mark Kuntz was subject to hiring, discipline, retention, and/or promotion by the Defendant Bettendorf School Board.

80. That the Defendant Bettendorf School Board has a duty to refrain from hiring and/or retaining employees who commit child abuse against minor students, and to refrain from hiring and/or retaining employees who harm or present harm or danger to minor students.

81. That the Defendant Bettendorf School Board breached its duty in one or more of the following particulars:

    a. By retaining Mark Kuntz in his employment after he physically assaulted a 6th grade Bettendorf Middle School student in 2018;

b. By offering employment to Mark Kuntz for the 2019-2020 school year after he physically assaulted a 6th grade Bettendorf Middle School student in 2018;

c. By retaining Mark Kuntz in his employment after he physically assaulted and battered D.C.; and/or

d. By retaining Mark Kuntz in his employment after a report of child abuse was deemed to be "founded" by its investigatory agents.

82. That the negligence of the Defendant Bettendorf School Board was a proximate cause of the injuries sustained by D.C., and the resulting damages to the Plaintiffs.

83. As a result of Defendant Bettendorf School Board's collective negligent acts and/or omissions, and its agent and/or employee Defendant Mark Kuntz' actions, Plaintiffs have sustained the injuries and damages as are previously and hereinafter set forth.

COUNT XI – LOSS OF CONSORTIUM – All Defendants

84. Plaintiffs re-allege and incorporate by reference the allegations contained Paragraphs 1 through 83 of this petition.

85. This Count is brought for damages recoverable under Iowa Code § 613.15A.

86. Plaintiff Dominique Scott is the mother of the minor child and Plaintiff D.C.

87. Plaintiff Dominique Scott has been deprived of and hereby makes a claim for expenses and actual loss of services and support, society, companionship, love, affection, and consortium of her child, as a result of the injuries she sustained.

88. The acts, omissions, and negligence of the Defendants herein were a proximate cause of the damages sustained by the Plaintiffs.

JURY DEMAND

Plaintiffs hereby request a jury trial on all the issues raised and set forth in the instant Petition at Law.

DATED this the 11th day of March, 2020.

Respectfully submitted,

/s/ Ciara L. Vesey

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STATE OF IOWA)
) SS:
COUNTY OF SCOTT)

I, DOMINQUE SCOTT, affirm and state that I am the Plaintiff and next friend of D.C., named in the foregoing Petition at Law; that I have read the same, know the contents thereof and that the statements therein contained are true and correct.

Dominique Scott
DOMINIQUE SCOTT
Plaintiff and Next Friend of D.C.

Subscribed and affirmed to before me, on the 11 day of March, 2020.

NOTARIAL SEAL IOWA
KAREN M O'CONNOR
Commission Number 804808
My Commission Expires
6/12/2020

Karen M O'Connor
Notary Public
State of Iowa

(SEAL)