

CASE NO. 19-CI-003492
FILED ELECTRONICALLY

JEFFERSON CIRCUIT COURT
DIVISION TWO (2)
JUDGE ANNIE O'CONNELL

J.A., a minor, by and through
S.A., his mother and next friend

PLAINTIFF

v. **FIRST AMENDED COMPLAINT**

BOARD OF EDUCATION OF JEFFERSON
COUNTY, KENTUCKY (aka Jefferson County Public Schools)

AND

DIANE PORTER

AND

DR. CHRIS KOLB

AND

JAMES CRAIG

AND

BENJAMIN GIES

AND

LINDA DUNCAN

AND

CORRIE DHULL

AND

CHRIS BRADY

AND

DR. MARTIN POLLIO

AND

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MICHAEL NEWMAN

AND

BRIAN RAHO

AND

ANTHONY SIEG

AND

VICTORY GENTRY

DEFENDANTS

* * * * *

PARTIES

1. Defendant Board of Education of Jefferson County, Kentucky is a body corporate and politic with the capacity to sue and be sued.

2. Defendants Porter, Kolb, Craig, Gies, Duncan, Shull, and Brady are the duly elected members of the Board of Education of Jefferson County, Kentucky. These defendants are nominal parties only.

3. Defendant Pollio at all times relevant herein was the Superintendent of the Jefferson County Public Schools (JCPS). He is being sued in his official and individual capacities.

4. Defendant Newman was at all times relevant herein principal of Western High School where Plaintiff J.A. attended ninth grade. He is being sued in his official and individual capacities.

5. Defendant Raho was at all times relevant herein the Freshman Academy Principal at Western High School. He is being sued in both his official and individual capacities.

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6. Defendant Sieg was at all times relevant herein the Service Academy Principal at Western High School. He is being sued in both his official and individual capacities.

7. Defendant Gentry was at all time relevant herein J.A.'s classroom teacher. He is being sued in both his official and individual capacities.

8. Plaintiff J.A. was a ninth-grade special education student at Western High School at all times relevant herein. This suit is being brought by and through his mother and next friend S.A.

JURISDICTION AND VENUE

9. The events complained of herein occurred in Louisville, Jefferson County, Kentucky.

10. The damages sought herein are in excess of the jurisdictional minimum of this Court.

11. This Court has jurisdiction over the subject matter and parties hereto, and venue is proper in the Jefferson Circuit Court.

FACTUAL ALLEGATIONS

12. J.A. began 9th grade at Western High School in the 2018-19 academic year.

13. J.A. suffers from cerebral palsy and epilepsy among other debilitating conditions that require special education services and placement in a special needs classroom.

14. Beginning in spring 2018 J.A. was subjected to bullying by a much larger child, G.S., in his eighth-grade special needs classroom.

15. G.S. is a much larger and more mature student than J.A.

16. On or about January 10, 2019, J.A. reported to his mother that another student, G.S., kept “messaging with him” and teasing him.

17. On or about January 24, 2019, G.S. grabbed J.S. by his private parts. S.A. reported this incident to Defendant Gentry.

18. On or about January 29, 2019, J.A. reported to his mother that G.S. continued to bully him, particularly by pinning him down by putting his legs on J.A. S.A. reported this to Defendant Gentry.

19. On or about February 13, 2019, G.S. threw a basketball into J.A.’s face causing his mouth to bleed and serious bruising on and about his lips. S.A. reported this incident to Defendant Gentry.

20. On or about March 18, 2019, G.S. tripped J.A. in the hallway breaking two (2) of J.A.’s teeth when the two were behind Defendant Gentry. This incident was reported to Defendant Raho via voicemail.

21. On or about March 20, 2019, S.A. spoke with Defendant Newman who promised her to look into the situation.

22. On or about March 22, 2019, Defendant Newman informed S.A. that he was going to move J.A. into another classroom.

23. On or about March 26, 2019, J.A. was afraid to ride the school bus, and called his mother stupid for making him take the bus to school.

24. On or about March 26, 2019, G.S. stormed into J.A.’s classroom and stomped his feet at J.A. intimidating J.A.

25. On or about March 27, 2019, J.A. was afraid to ride the school bus, so S.A. had to take him to school.

26. On or about March 27, 2019, G.S. grabbed J.A. by his private parts on the way to the school bus at the end of the day on the stairway by by the office.

27. On or about April 12, 2019, G.S. stormed into J.A.'s classroom and appeared to be swinging his fist at J.A. but changed the path of his blow and struck the table where J.A. was working. S.A. reported this incident to Defendant Raho.

28. On or about May 17, 2019, G.S. so violently attacked J.A. in the gymnasium with a basketball that it injured J.A. to the extent that he suffered a seizure and had to be taken to the emergency room for treatment.

29. On or about May 24, 2019, J.A. was taken to the administrative offices for what was deemed improper behavior. On this occasion, Defendant Raho claimed that J.A. had fallen out of a chair, but J.A. sustained injuries to the front and back of his head.

30. On or about May 31, 2019, J.A. was taken to the administrative offices for "yelling" at his tormentor, G.S. J.A. was physically restrained by Defendants Newman, Sieg, and Raho in the administrative offices. Defendants then called the Shivley Police Department to transport J.A. to Norton Women's and Children's Hospital.

31. J.A. suffered so greatly from this constant torture that he was admitted to Our Lady of Peace.

**COUNT I: FAILURE TO PROVIDE THE OPPORTUNITY TO RECEIVE AN
ADEQUATE PUBLIC EDUCATION**

32. Plaintiff adopts and incorporates by reference all averments above as if fully set forth herein.

33. "Each child, every child, in this Commonwealth must be provided with an equal opportunity to have an adequate education." *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 211 (Ky. 1989).

34. The right to education is a fundamental right in Kentucky. *Id.* at 202.

35. Defendants' allowing an atmosphere to develop and continue after having been notified of the abuse J.A. had suffered making J.A. mortally afraid to go to school robbed him of his right to an opportunity for an adequate education thus causing J.A. to suffer damages for which he should be compensated.

COUNT II: NEGLIGENT SUPERVISION

36. Plaintiff adopts and incorporates by reference all averments above as if fully set forth herein.

37. KRS 161.180(1) states in pertinent part: "Each teacher and administrator in the public schools shall hold pupils to a strict account for their conduct on school premises, on the way to and from school, and on school sponsored trips and activities."

38. JCPS policy 09.221 states: "Students will be under the supervision of a qualified adult." This policy then goes on to mirror the language of KRS 161.180(1) above.

39. Defendant Gentry had a ministerial duty to adequately supervise his classroom and ensure that the district's and school's policies were enforced.

40. Defendants Newman, Raho, and Sieg had a ministerial duty to ensure that the teachers and staff at Western High School adequately supervised the students at the school so that the district's and school's policies were enforced.

41. Defendants Gentry, Newman, Raho, and Sieg breached their duty to ensure that the district's and school's policies were enforced causing J.A. to suffer damages for which he should be compensated.

**COUNT III: FAILURE TO FOLLOW DISTRICT POLICY REGARDING
BULLYING/HARASSING BEHAVIOR**

42. Plaintiff adopts and incorporates by reference all averments above as if fully set forth herein.

43. JCPS policy 09.422 and 09.42811 make clear that Defendants Gentry, Raho, and Sieg had a ministerial duty to report G.S.'s behaviors to the school principal and that Defendant Newman had a ministerial duty to report these same behaviors to the Superintendent or his designee.

44. Defendants Gentry's, Raho's, and Newman's failure to carry out their ministerial duty pursuant to district policy caused J.A. to suffer damages for which he should be compensated.

**COUNT IV: FAILURE TO PROVIDE A FREE AND APPROPRIATE PUBLIC
EDUCATION (FAPE)**

45. Plaintiff adopts and incorporates by reference all averments above as if fully set forth herein.

46. Due to the multiple debilitating conditions from which J.A. suffers, he is a special education student with an individualized education plan (IEP).

47. J.A.'s IEP is predicated upon a safe and secure school environment.

48. As clearly set forth above, the acts and omissions of the Defendants herein have denied J.A. and the opportunity to a FAPE, and therefore, he is entitled to recover damages and to receive compensatory education services.

WHEREFORE, Plaintiff J.A. demands as follows:

1. Judgment on all counts of his complaint;
2. Award of such damages as he may prove at trial of this matter;

3. Award of punitive damages in such amount as a jury might find right and just at trial of this matter;
4. Award of his costs expended herein including a reasonable attorney fee;
5. Post judgment interest at the maximum legal rate until such judgment may be satisfied;
6. Trial by jury on all issues so triable;
7. Leave to amend his complaint has proof develops; and
8. Any and all other such relief to which he may appear reasonably entitled.

Respectfully submitted,

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