

STATE OF INDIANA) IN THE ALLEN SUPERIOR COURT NO. ____
) SS:
 ALLEN COUNTY) CAUSE NO. _____

MICHAEL REED and ALISSA REED,)
 individually and on behalf of their)
 minor child, N.R.,)
)
 Plaintiffs,)
)
 v.)
)
 NORTHWEST ALLEN COUNTY SCHOOLS,)
)
 Defendant.)

COMPLAINT

Plaintiffs, Michael and Alissa Reed, individually and on behalf of their minor child, N.R., (the “Reeds”), by counsel, for their Complaint against Defendant, Northwest Allen County Schools (“NACS”), allege and state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are the parents and legal guardians of a minor child, N.R., and are individual residents of Allen County, Indiana.

2. NACS is a public school corporation organized and existing pursuant to the laws of the State of Indiana.

3. NACS is located in Allen County, Indiana and maintains its principal place of business and can be served with process at 13119 Coldwater Road, Fort Wayne, IN 46845.

4. Because NACS is an Indiana school corporation situated within the State of Indiana, this Court may exercise general and specific personal jurisdiction over NACS.

5. Venue is proper in this Court pursuant to Rule 75(A) of the Indiana Rules of Trial Procedure.

FACTS

6. The Reed family has had children attending schools in NACS since 2013.

7. The Reeds adopted N.R., who was born in Indiana and placed in foster care as an infant.

8. N.R., who is a kindergarten student at an elementary school in the NACS system, is the youngest of the Reeds four (4) children, all of whom have attended NACS schools.

9. Over the years, the Reeds have loved the experience their children have had in NACS. They have found the teachers to be excellent, caring, and compassionate without exception. The Reeds have been thankful for the educational opportunities their children enjoyed through NACS.

10. Until recently, the Reeds had no complaints with respect to their children's experience through NACS. Regrettably, things changed on May 4, 2021.

11. On May 4, 2021, N.R. was a kindergarten student, attending school at an elementary school in the NACS system.

12. That day, N.R. complained to the classroom teacher of itching in N.R.'s genital area.

13. N.R.'s teacher promptly sent N.R. to see the school nurse, Ms. Trisha Booth, who was serving as the substitute nurse at the school that day.

14. Upon information and belief, Ms. Booth was an employee of NACS when N.R. went to see her on May 4, 2021.

15. Upon N.R.'s arrival at Ms. Booth's office, Ms. Booth, acting within the course and scope of her employment for NACS, instructed N.R. to disrobe and began to examine N.R.'s genital area for signs of inflammation, discharge, blood or other irritation.

16. In so doing, Ms. Booth, acting as a representative and agent of NACS, performed an invasive and inappropriate examination of N.R., which included contact with N.R.'s genitals.

17. Indeed, Section 5310 of NACS' bylaws and policies defines "invasive physical examination" as, among others, "any medical examination that involves the exposure of private body parts."

18. At no time prior to conducting the invasive treatment of N.R. did Ms. Booth make any attempt to contact Mr. or Mrs. Reed to obtain their consent to treat N.R., who, as a minor, was unable to give consent.

19. Moreover, no other representative of NACS attempted to contact Mr. or Mrs. Reed to obtain consent prior to Ms. Booth conducting the inappropriate and invasive examination of N.R.

20. Following the invasive physical examination of N.R., Ms. Booth applied Vaseline to N.R.'s genital area – again making inappropriate contact with N.R.'s genital area without the knowledge or consent of N.R.'s parents – and sent N.R. back to class.

21. Only then did Ms. Booth attempt to contact N.R.'s parents, calling them to advise as to her examination and treatment of N.R.'s genital area and to confirm that there was no other adult present when she examined N.R.

22. Had Ms. Booth contacted N.R.'s parents, she would have learned that N.R.'s parents absolutely would not have consented to the examination conducted by Ms. Booth.

23. Nor would Mr. and Mrs. Reed have consented to the treatment provided without (at the very least) one of N.R.'s parents being physically present.

24. At all times during Ms. Booth's inappropriate examination of N.R., Ms. Booth was acting within the course and scope of her employment with NACS.

25. Upon information and belief, prior to Ms. Booth conducting the invasive and inappropriate examination of N.R., NACS had not provided adequate training to Ms. Booth with respect to the nonemergent care related to the genital areas of minor children like N.R.

26. Upon learning about the incident, Mr. Reed immediately contacted the principal of N.R.'s elementary school.

27. On May 5, 2021, the principal of the elementary school called the Reeds to express her deep sadness, shock and regret about what had happened to N.R. the previous day.

28. Also on May 5, 2021, Sam DiPrimio, NACS' Director of Secondary Education, called the Reeds and, after disclosing his knowledge regarding all of the details of the incident the previous day, understandably conceded to the Reeds that the care was inappropriate and that parental consent should absolutely have been obtained before Ms. Booth examined and treated N.R.

29. Also on May 5, 2021, Ms. Sherri West, the Corporation Nurse with NACS, called the Reeds to offer half-hearted and vague support for Ms. Booth's handling of the situation. However, Ms. West assured the Reeds that she would update the district's policies and instructions given to school nurses to prevent this sort of incident from occurring again in the future.

30. Two (2) days later, on May 7, 2021, NACS contends that it notified all of the nurses and substitute nurses employed by NACS that of a change in its policies and procedures regarding "requests for nurse help with hygiene or injury/illness."

31. Specifically, NACS has taken the position that it directed that its nurses and substitute nurses first notify a student's parent or guardian "regarding the situation without doing a visual assessment."

32. NACS also instructed its nurses and substitute nurses that for non-emergent cases, parents should be given the option of being present during the examination or picking up their child to take or home or to their physician or other healthcare provider.

33. However, NACS did not inform the Reeds or provide any sort of documentation related to this alleged directive to NACS nurses.

34. Further, the Reeds heard nothing further from Ms. West for several weeks.

35. Over the next several weeks, Mr. DiPrimio and Ms. West provided assurances to the Reeds that the district was implementing various policies and procedures designed to make it clear that its students would not be subjected to the sort of traumatic experience that N.R. endured at the hands of Ms. Booth and NACS on May 4, 2021.

36. Unfortunately for N.R., those policies and procedures were clearly not in place on May 4, 2021.

37. Worse, despite the Reeds' repeated requests for details and documentation regarding NACS' updated policies and procedures and inquiries regarding how and when the policies would be implemented and measured, NACS provided nothing but platitudes and vague promises.

38. On May 27, 2021, Mr. DiPrimio, who had previously noted that the treatment to N.R. on May 4, 2021 was inappropriate and that the Reeds should have been contacted prior to any treatment, emailed the Reeds and reversed course. Through his email, Mr. DiPrimio now claimed that, notwithstanding NACS' failure to comply with its own (apparently) newly adopted

policy requiring parental contact prior to the sort of invasive physical examination administered to N.R., Ms. Booth had provided “appropriate and proper medical care” to N.R. on May 4, 2021.

39. But even as he attempted to justify Ms. Booth’s – and NACS’s – mistreatment of N.R., Mr. DiPrimio informed the Reeds that NACS “would have preferred that [Ms. Booth] had contacted [the Reeds] prior to providing medical care.”

40. Like Ms. West, Mr. DiPrimio also sought to assure the Reeds that NACS’ policies and procedures had been (or would be) updated to ensure that school nurses at least attempt to reach a student’s parents prior to providing treatment when a student reports a condition affecting his or her genital area.

41. Of course, these representations were not consistent with what NACS now claims it promptly instructed its healthcare providers – that they must seek parental consent prior to conducting the sort of invasive examination that N.R. endured on May 4, 2021.

42. When weeks passed without receiving the updated policies and procedures that NACS had promises to provide, the Reeds again requested that NACS provide them. NACS again responded with a promise to the Reeds that it would provide the requested documentation. But NACS again failed to follow through.

43. After repeatedly receiving nothing from NACS, despite its repeated promises to provide documentation related to the updated policies and procedures, the Reeds requested a meeting with NACS superintendent, Dr. Chris Himsel, as well as Mr. DiPrimio and Nurse West.

44. Although Mr. DiPrimio and Nurse West communicated their willingness and availability to meet with the Reeds, Dr. Himsel did not initially respond.

45. In fact, even though someone had opened (and presumably read) the emails that the Reeds had sent to Dr. Himsel, he remained silent on the matter for some time.

46. While the Reeds were still awaiting a response from Dr. Himsel, they contacted Ms. West to renew once again their request for copies of the written policies and procedures that both Ms. West and Mr. DiPrimio had referenced concerning parental consent prior to nonemergent medical treatment.

47. At the same time, the Reeds also requested a written explanation from NACS explaining how it had concluded that Ms. Booth's treatment of N.R. on May 4, 2021 were appropriate and medically necessary without first obtaining informed parental consent. To this day, many months later, NACS has failed to provide the requested explanation.

48. The very next day (June 25, 2021), Mr. DiPrimio called the Reeds and attempted to dissuade them from pursuing a meeting with Dr. Himsel.

49. During this call, Mr. DiPrimio also misrepresented his understanding of the incident involving N.R. on May 4, 2021.

50. Specifically, although the Reeds and Mr. DiPrimio had previously discussed the full details of Ms. Booth's invasive and inappropriate examination and treatment of N.R., Mr. DiPrimio represented that he believed Ms. Booth may have "taken a peek" at N.R.'s genitals and then applied Vaseline by hand.

51. This latest account by Mr. DiPrimio was in conflict with both his prior communications with the Reeds and Ms. Booth's own handwritten notes detailing her examination of N.R.

52. On June 26, 2021, Ms. West finally responded to the Reeds' request for information and documentation. However, rather than provide the requested information, she offered excuses and obfuscation, claiming that her limited work schedule during summer months made it difficult for her to respond in a timely manner and also claiming that Nurse Booth was on or preparing for

an overseas trip and therefore unavailable to provide information concerning her actions on May 4, 2021.

53. Shortly thereafter, the Reeds were finally able to schedule the requested meeting with Dr. Himsel, Mr. DiPrimio and Ms. West for July 8, 2021.

54. Through an email dated July 6, 2021, Mr. DiPrimio again claimed that NACS had updated its policies and procedures with respect to parental communication in advance of providing nonemergent medical care to a student's "private area."

55. However, Mr. DiPrimio did not provide any further information regarding these policies and procedures, and Ms. West continued to ignore the Reeds' request for copies of the written policies and procedures.

56. Through the same email, Mr. DiPrimio also surprised the Reeds with the news that Dr. Himsel would not be present for the previously scheduled meeting on July 8, 2021.

57. The Reeds were able to reschedule and were finally able to meet with Dr. Himsel, along with Mr. DiPrimio and Nurse West, at the NACS board room on July 15, 2021.

58. During this meeting, the Reeds shared their concerns with Dr. Himsel regarding NACS' treatment – through Ms. Booth – of N.R. on May 4, 2021.

59. Specifically, the Reeds recounted the details of the May 4, 2021 incident and asserted to Dr. Himsel that the care Ms. Booth provided to N.R. was inappropriate and unnecessary, that N.R.'s symptoms could not reasonably be deemed an emergency and the situation did not present any reasonable suspicion of abuse or neglect.

60. The Reeds also referenced the Indiana Department of Child Services ("DCS") investigation of the incident. Only after the Reeds complained about the incident did NACS file a report with DCS. However, DCS concluded that, because Ms. Booth did not derive sexual

gratification from her examination and treatment of N.R., no further action would be taken against her or NACS.

61. The Reeds then inquired of Dr. Himsel as to whether the NACS, as a school system, should strive to determine safe and appropriate practice by the bottom line of an employee receiving sexual gratification.

62. The Reeds also explained to Dr. Himsel that, in any medical setting, examination and/treatment of a child's genital area requires the parent's informed consent and that, absent such consent, the entire incident is inappropriate.

63. The Reeds also expressed to Dr. Himsel their concerns that Ms. Booth, as an employee and representative of NACS, acted recklessly in treating an unknown and undiagnosed condition.

64. The Reeds further expressed their concern that N.R., who is African American, was treated differently by Ms. Booth because of N.R.'s race, which could have easily arisen from an unconscious bias by Ms. Booth.

65. The Reeds further conveyed to Dr. Himsel that, even a month after the incident, N.R. advised Mr. and Mrs. Reed as to N.R.'s extreme discomfort and fear at the mere thought of Ms. Booth, whom N.R. described as "the lady who touched me down there."

66. N.R. also expressed extreme discomfort and fear in simply returning to school, fearful of another possible encounter with Ms. Booth.

67. As the Reeds informed Dr. Himsel, when they asked N.R. about this fear of Ms. Booth, N.R. responded: "I don't know what she would do next time."

68. The Reeds also informed Dr. Himsel that N.R.'s pediatrician had counseled them that N.R. has likely suffered a severe mental and emotional trauma from this incident, the full effects of which may not become evident for years.

69. As a five-year-old, N.R.'s parents are N.R.'s voice. A child in this situation cannot reasonably be expected – or legally permitted – to give consent to genital contact, which is why school nurses absolutely must contact parents before such contact or treatment occurs.

70. The Reeds further noted to Dr. Himsel that not one representative of NACS ever inquired about how N.R. was doing or expressed concern for N.R.'s well-being.

71. The Reeds concluded their remarks to Dr. Himsel by calling for accountability.

72. Specifically, the Reeds conveyed to Dr. Himsel that it's not possible to remedy a problem without first acknowledging and taking ownership of that problem and requested that the following actions be taken: (a) NACS must publish clearly defined, written policies and procedures concerning examination and treatment of children's genital areas; (b) NACS must provide clear, written consequences that will result from any of its representatives failing to comply with such policies and procedures; (c) provide a definite timeline for NACS to complete a training structure designed to ensure that current and future NACS healthcare providers understand and agree to comply with the policies and procedures; (d) Ms. Booth to provide a written statement concerning why she took the action she took on May 4, 2021 without first contacting the Reeds; and (e) NACS to provide a written statement clearly defining its stance with respect to the actions taken by its representatives on and after May 4, 2021.

73. After listening to the Reeds' presentation of their concerns, Dr. Himsel responded with disrespect and callous indifference, quipping that, with regard to the trauma visited upon little

N.R., there would be “**NO WAY TO GET THE TOOTHPASTE BACK INTO THE TUBE**” and otherwise generally dismissing the Reeds’ concerns.

74. In response to the Reeds’ renewed request for documentation to support NACS’s promises to update its policies to protect children entrusted to NACS’ care, Dr. Himsel flippantly (and incorrectly) stated that Mr. DiPrimio had already sent those materials to the Reeds and that he would “cut and paste” Mr. DiPrimio’s email and send it to the Reeds.

75. Shortly thereafter, NACS terminated Ms. Booth’s employment.

76. Prior to filing this lawsuit, the Reeds complied with all notice requirements of the Indiana Tort Claims Act.

COUNT I: NEGLIGENCE

77. The Reeds incorporate by reference and re-allege each allegation set forth in paragraphs 1 through 76 as if fully set forth herein.

78. NACS owes a duty to the Reeds and N.R., as well as all students and families attending NACS schools, to provide a safe environment for N.R. and all students attending NACS schools.

79. NACS breached this duty to the Reeds and N.R. by virtue of the conduct of its agent and representative (Nurse Booth) in providing improper and invasive treatment of N.R. without first obtaining the Reeds’ informed consent.

80. NACS further breached its duty to the Reeds and N.R. by not taking reasonable measures to ensure that NACS agents and employees, particularly those serving in healthcare capacities, were properly trained with respect to the treatment of children in non-emergent situations.

81. NACS further breached its duty by failing and refusing to take remedial measures to address its failures with respect to the treatment of N.R.

82. As a direct and proximate result of NACS' breaches of its duty owed to the Reeds and N.R., the Reeds and N.R. have sustained considerable damages, including severe emotional distress, in an amount to be established at trial.

COUNT II: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

83. The Reeds incorporate by reference and re-allege each allegation set forth in paragraphs 1 through 76 as if fully set forth herein.

84. The actions of NACS, by and through Ms. Booth, Mr. DiPrimio, Ms. West and Dr. Himself, constituted extreme and outrageous conduct.

85. The extreme and outrageous conduct engaged in by NACS, by and through Ms. Booth, Mr. DiPrimio, Ms. West and Dr. Himself, was undertaken intentionally and/or recklessly.

86. As a direct and proximate result of this intentional and/or reckless conduct, the Reeds have sustained severe emotional distress.

COUNT III: BATTERY

87. The Reeds incorporate by reference and re-allege each allegation set forth in paragraphs 1 through 76 as if fully set forth herein.

88. The actions of NACS, by and through Ms. Booth, in knowingly and intentionally touching N.R.'s genital area without consent constitutes battery.

89. As a direct and proximate result, the Reeds and N.R. have sustained considerable damages, including severe emotional distress, in an amount to be established at trial.

WHEREFORE, Plaintiffs, Michael and Alissa Reed, individually and as the parents and legal guardians of their minor child, N.R., respectfully request that judgment be entered in their favor and against Defendant, Northwest Allen County Schools, in an amount to be determined at trial and any other appropriate relief.

Respectfully submitted,

/s/ Daniel K. Burke

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