

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN AND
FOR FLAGLER COUNTY, FLORIDA

CASE NO.: 2023-CA-000364

MIRLOUSE ETIENNE PIERRE,

Plaintiff,

v.

FLAGLER COUNTY SCHOOL DISTRICT,

Defendant.

Unofficial Copy

**THE SCHOOL BOARD'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

The Flagler County School Board ("School Board"), through undersigned counsel,
answers the correspondingly numbered paragraphs of Plaintiffs' Complaint as follows:

GENERAL ALLEGATIONS

1. Admit jurisdiction of this Court. Deny the remaining allegations of this paragraph.
2. Without knowledge.
3. Admit.
4. Without knowledge.
5. Without knowledge.
6. Without knowledge.
7. Without knowledge.
8. Admit.
9. Without knowledge.
10. Without knowledge.

COUNT I
[NEGLIGENCE-FLAGLER COUNTY SCHOOL DISTRICT]

11. Answers and defenses to paragraphs 1 through 10 are re-alleged and incorporated herein by reference.

12. Admit.

13. Admit.

14. Deny.

a. Without knowledge.

b. Without knowledge.

c. Without knowledge.

d. Without knowledge.

e. Without knowledge.

15. Without knowledge.

16. Without knowledge.

Defendant School Board denies Plaintiff is entitled to the relief sought.

All allegations not specifically admitted to herein are denied.

DEMAND FOR TRIAL BY JURY

The School Board demands trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

Plaintiffs ought not to recover from the School Board because at the time and place alleged, Plaintiff herself was negligent in failing to observe and avoid the hazards alleged to have caused

this injury. Such negligence was either the sole legal cause or was a greater than fifty percent of the cause of the action and injury and damages claimed herein.

Second Defense

The School Board denies liability for the damages complained of, but in the event that the School Board should be found liable in any degree greater than fifty percent for such damages, its liability should be limited to the percentage of total fault, if any, assigned by the trier of fact to the School Board and not on the basis of the doctrine of joint and several liability, pursuant to Section 768.81, Florida Statutes.

Third Defense

The School Board is an agency or subdivision of the State and therefore is entitled to sovereign immunity, subject only to the limited waiver of that immunity provided by Section 768.28, Florida Statutes.

Fourth Defense

The damages complained of have been paid, in whole or in part, by collateral sources of indemnity as defined by Florida Statute and are not recoverable from Defendant.

Fifth Defense

The School Board is not the insurer of the safety of its visitors and is not strictly liable for any injuries that may occur. Benton v. Sch. Bd. of Broward Cnty., 386 So. 2d 831 (Fla. 4th DCA 1980).

Sixth Defense

The School Board is entitled to any and all health insurance contractual adjustments and/or write offs and only that sum should be presented to the jury as the actual damage incurred. Goble v. Frohman, 901 So 2d 830 (Fla. 2005); Thyssenkrupp Elevator Corp v. Lasky, 868 So 2d 547 (Fla. 4th DCA 2003).

Seventh Defense

Plaintiff's damages, if any, are the result of a preexisting condition for which the School Board is not responsible, or in the event of an aggravation of a preexisting condition, if at all, only for the aggravation and not for the original condition.

Eighth Defense

Plaintiff assumed the risk of sitting on the bench at issue after having opportunity to examine the bench. Plaintiff either failed to observe observable dangers or assumed the readily apparent risks of sitting on the bench.

Ninth Defense

Plaintiffs' claims are barred in whole or in part from recovery for failure to mitigate damages.

Tenth Defense

Defendant School Board will be entitled to a complete set-off of all monies paid in settlement by any other entity.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was filed with the Florida Courts E-Filing Portal and designated service to the following in accordance with Rule 2.516, Florida Rules of Judicial Administration: Ian D. Pinkert, Esq., Halpern Santos & Pinkert, P.A., 150 Alhambra Circle, Suite #1100, Coral Gables, FL 33134, ian@hsptrial.com ; on this September 29, 2023.

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**WEISS SEROTA HELFMAN COLE +
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