

**IN THE CIRCUIT COURT, IN AND
FOR THE SEVENTH JUDICIAL CIRCUIT
FLAGLER COUNTY, FLORIDA
CASE NO.: 2016 CA 000469
DIVISION:**

**GREG AND TAMI DUNN individually and
on behalf of their natural son, J [REDACTED] D [REDACTED],
a minor, and their natural daughter, S [REDACTED]
I [REDACTED], a minor**

Plaintiffs,

v.

**FLAGLER COUNTY BOARD
OF EDUCATION, JACOB OLIVA,
superintendent, BEN OSYPIAN, principal
ROBIN DUPONT, principal, CARMEN
HERNANDEZ, teacher**

Defendants.

COMPLAINT

Plaintiffs, J [REDACTED] D [REDACTED] and S [REDACTED] D [REDACTED], minors, by and through their natural guardians and **GREG and TAMI DUNN individually** sue Defendants **FLAGLER COUNTY BOARD OF EDUCATION JACOB OLIVA, superintendent, BEN OSYPIAN, principal, ROBIN DUPONT, principal and CARMEN HERNANDEZ, teacher** and allege the following:

1. This is an action for damages in excess of fifteen thousand dollars (\$15,000.00) exclusive of costs and attorney's fees.

2. At all times material to this cause, Plaintiffs, J [REDACTED] D [REDACTED] and S [REDACTED] D [REDACTED] were minor siblings residing in Flagler County, Florida with their natural parents **GREG and TAMI DUNN.**

3. At all times material to this cause, Defendant, Flagler County Board of Education was a government entity headed by JACOB OLIVA (Superintendent) that provided a public pre-kindergarten program at Old Kings Elementary School 301 Old Kings Road South, Flagler Beach, FL 32136 within its authority and control.

4. At all times material to this cause, Defendant, Flagler County Board of Education was a government entity that held within its scope of authority a county-wide Pre K program maintained at several Flagler County elementary schools including Old Kings Elementary School.

5. At all times material to this cause, Plaintiffs J [REDACTED] D [REDACTED] and S [REDACTED] I [REDACTED] were students enrolled in the VPK and elementary school programs at Old Kings Elementary School. At all times material to this cause Plaintiff, J [REDACTED] D [REDACTED], and minors B [REDACTED] and DA [REDACTED] E were students in the VPK program at Old Kings Elementary School.

6. At all times material to this cause, Defendant Flagler County Board of Education, as the governing authority of Old Kings Elementary, through its attendant programs and agents were charged with the custody, care, and control of minor children attending their facility and at all times material to this action had a *parens patriae* duty to care for the minor children in their charge, including the minor Plaintiffs, J [REDACTED] N D [REDACTED] and S [REDACTED] D [REDACTED] and to protect their health, safety and well-being.

7. At all times material to this cause, Defendant's agents and employees, JACOB OLIVA, BEN OSYPIAN, ROBIN DUPONT and CARMEN HERNANDEZ at Old Kings Elementary School, were charged with the custody, care, and control of minor children at their facility and had a *parens patriae* duty to care for the minor children in their charge, including the Plaintiff, 4 years 10 months old J [REDACTED] I [REDACTED], and to protect their health, safety, and well-being.

8. The Plaintiffs herein have complied with all conditions precedent including Fla. Stat. 768.28, by certified mailing a notice of claim dated January 14, 2016 to the Florida Department of Financial Services, Flagler County Board of Education and Old Kings Elementary School and is now permitted to file suit.

COUNT I – NEGLIGENT SUPERVISION

9. Plaintiff realleges paragraphs 1-8 and further alleges:

10. During the 2014 -2015 school year **B** and **D** repeatedly targeted Plaintiff **J** **D** with escalating teasing, social exclusion, intimidation, bullying, physical violence, sexual and racial harassment resulting in public and private humiliation of the Plaintiff **J** **D**.

11. The bullying perpetuated by minors **B** and **D** and suffered by Plaintiff, **J** **D**, was reported multiple times to all the named Defendants herein who failed to adequately address the bullying and allowed it to continue and escalate.

12. On May 27, 2015 this pattern of bullying included sexual battery, wherein minors **B** and **D** pulled down Plaintiff, **J** **D**'s pants and committed sexual battery on his private areas during class within view of the teacher, **CARMEN HERNANDEZ**'s desk.

13. At all times material to this action, the Defendants herein violated the policy of the Flagler County Schools VPK program requiring both a primary teacher and an assistant teacher in each classroom at all times.

14. At all times material to this action, the Defendant knew it had inadequately staffed and overcrowded the VPK classroom in which minors **B**, **D** were students with known behavioral problems.

15. On May 27, 2015 Defendant CARMEN HERNANEZ, a recently promoted teacher, was reportedly the only agent/employee present in J [REDACTED] D [REDACTED] class immediately prior to, and at the time of, the sexual battery.

16. As a direct and proximate cause of all named Defendants' herein negligent supervision, Plaintiff J [REDACTED] D [REDACTED] suffered repeated severe bullying including but not limited to sexual battery upon his private areas, shame, humiliation, loss of dignity, suffering, inconvenience, mental anguish, post traumatic stress disorder ("PTSD"), loss of capacity for the enjoyment of life, medical and psychological care expenses.

**COUNT II – RECKLESS / INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS –JOHN DOE, a minor**

17. Plaintiff, JOHN DOE re-alleges paragraphs 1 – 16 and further alleges:

18. Following the sexual battery on May 27, 2015, all named Defendants herein intentionally caused or acted with a reckless disregard in their allowing minors B [REDACTED] and D [REDACTED] to return to Old Kings Elementary School approximately three months later in violation of their zero tolerance policy towards sexual battery causing the Plaintiff, J [REDACTED] D [REDACTED] to suffer severe mental anguish, PTSD and forced him to relocate to a different community and school.

19. The following actions of the named Defendants herein went beyond all possible bounds of decency and was shocking, atrocious, odious and utterly intolerable in a civilized community generally and Flagler County specifically:

- a) Failing to adequately address repeated serious and escalating instances of bullying despite being informed of same and assuring the Plaintiff, J [REDACTED] D [REDACTED] that it would be rectified.
- b) Failing to adequately discipline minors B [REDACTED] and D [REDACTED] regarding their repeated bullying and sexual battery of the Plaintiff, J [REDACTED] D [REDACTED].

- c) Failing to adhere to Flagler County Board of Education’s written zero tolerance policy and related disciplinary actions for the applicable Class IV offenses perpetrated on the Plaintiff J [REDACTED] D [REDACTED] by minors E [REDACTED] and D [REDACTED]
- d) Allowing minors B [REDACTED] and D [REDACTED] who sexually battered the Plaintiff, J [REDACTED] D [REDACTED] to return to Old Kings Elementary School three months later which would have resulted in their being in the same or adjacent class and otherwise in close proximity to the now five year old Plaintiff, J [REDACTED] D [REDACTED]

20. As the direct and proximate result of all named Defendants’ herein intentional or reckless infliction of emotional distress, Plaintiff J [REDACTED] D [REDACTED] has suffered, damages and losses – including, without limitation including but not limited to bullying, sexual battery upon his private areas, uncontrollable diarrhea, shame, humiliation, loss of dignity, suffering, inconvenience, mental anguish, aggravation of post traumatic stress disorder (“PTSD”), loss of capacity for the enjoyment of life, medical and psychological care expenses.

COUNT III – RECKLESS / INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS –SUSAN DOE, a minor

21. Plaintiff, S [REDACTED] D [REDACTED], re-alleges paragraphs 1 through 20 and further alleges:

22. Plaintiff, S [REDACTED] D [REDACTED], was a child with special education needs that were adequately met by her elementary teachers at Old Kings Elementary School.

23. Plaintiff, S [REDACTED] D [REDACTED] as the older sister of Plaintiff, J [REDACTED] D [REDACTED], felt a responsibility for the health and well-being of her younger brother while attending the same school.

24. Plaintiff, S [REDACTED] D [REDACTED] was targeted by minors B [REDACTED] with intimidation, bullying and harassment resulting in public and private humiliation of the Plaintiff S [REDACTED] D [REDACTED] at Old Kings Elementary School which was reported to Defendant, **BEN OSYPIAN** among others.

25. The following actions of the named Defendants herein went beyond all possible bounds of decency and was shocking, atrocious, odious and utterly intolerable in a civilized community generally and Flagler County specifically:

- a) Failing to adequately address repeated serious and escalating instances of bullying despite being informed of same and assuring the Plaintiff, J [REDACTED] D [REDACTED] that it would be rectified.
- b) Failing to adequately discipline minors B [REDACTED] and D [REDACTED] regarding their repeated bullying and sexual battery of the Plaintiff, J [REDACTED] D [REDACTED] and intimidation of the Plaintiff, S [REDACTED] D [REDACTED]
- c) Failing to adhere to Flagler County Board of Education's written zero tolerance policy and related disciplinary actions for the applicable Class IV offenses perpetrated on the Plaintiff J [REDACTED] D [REDACTED] by minors B [REDACTED] and D [REDACTED].
- d) Allowing minors B [REDACTED] and D [REDACTED] who sexually battered the Plaintiff, J [REDACTED] D [REDACTED], to return to Old Kings Elementary School three months later which would have resulted in their being in close proximity to the Plaintiff, S [REDACTED] D [REDACTED]

26. As the direct and proximate result of all the named Defendants' herein intentional or reckless infliction of emotional distress, Plaintiff S [REDACTED] D [REDACTED] has suffered, damages and losses – including, without limitation shame, humiliation, mental anguish, suffering, loss of dignity, inconvenience, loss of capacity for the enjoyment of life, loss of her special needs educational opportunities, relocation and related psychological care expenses.

**COUNT IV – RECKLESS / INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS –GREG DUNN**

27. Plaintiff, **GREG DUNN**, re-alleges paragraphs 1 through 26 and further alleges:

28. Plaintiff, **GREG DUNN** received notice the sexual battery involving his minor son, Plaintiff, **J [REDACTED] D [REDACTED]** shortly after its occurrence.

29. Plaintiff, **GREG DUNN** upon learning that the perpetrators of the sexual battery were minors **B [REDACTED]**, and **D [REDACTED]**, whom he had previously informed all the Defendants herein of their bullying issues on multiple prior occasions became outraged and frustrated.

30. The following actions of all the named Defendants herein went beyond all possible bounds of decency and was shocking, atrocious, odious and utterly intolerable in a civilized community generally and Flagler County specifically:

- a) Failing to adequately address repeated serious and escalating instances of bullying despite being informed of same and assuring the Plaintiff, **GREG DUNN** that it would be rectified.
- b) Failing to timely provide information, transparency, and otherwise failing to fully inform the Plaintiff, **GREG DUNN** as to the teachers present and other pertinent details surrounding the May 27, 2015 sexual battery under the pre-text that such information would give rise to “privacy concerns.”
- c) Failing to adequately discipline minors **B [REDACTED]** and **D [REDACTED]** regarding their repeated bullying and sexual battery of the Plaintiff, **J [REDACTED] D [REDACTED]**
- d) Failing to adhere to Flagler County Board of Education’s written zero tolerance policy and related disciplinary actions for the applicable Class IV offenses perpetrated on the Plaintiff **J [REDACTED] D [REDACTED]** by minors **B [REDACTED]** and **D [REDACTED]**
- e) Allowing minors **B [REDACTED]** and **D [REDACTED]** who sexually battered the Plaintiff, **J [REDACTED] D [REDACTED]** to return to Old Kings Elementary School three months later which would

have resulted in their being in the same or adjacent class and in close proximity to the minor Plaintiffs, J [REDACTED] D [REDACTED] and S [REDACTED] D [REDACTED]

31. As the direct and proximate result of all the named Defendants' herein intentional or reckless infliction of emotional distress, Plaintiff **GREG DUNN** has suffered, damages and losses – including, without limitation mental anguish, suffering, loss of dignity, inconvenience, anxiety, increased blood pressure and development of heart condition(s), loss of capacity for the enjoyment of life, expense of relocation, related medical and psychological care expenses.

**COUNT V – RECKLESS / INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS –TAMI DUNN**

32. Plaintiff, **TAMI DUNN**, re-alleges paragraphs 1 through 26 and further alleges:

33. Plaintiff, **TAMI DUNN** received notice the subject incident involving her minor son, Plaintiff, J [REDACTED] D [REDACTED] shortly after its occurrence.

34. Plaintiff, **TAMI DUNN** upon learning that the perpetrators of the sexual battery were minors **B [REDACTED]** and **D [REDACTED]** whom she had previously informed all the Defendants herein of their bullying issues on multiple prior occasions became outraged and frustrated.

35. The following actions of all the named Defendants herein went beyond all possible bounds of decency and was shocking, atrocious, odious and utterly intolerable in a civilized community generally and Flagler County specifically:

- a) Failing to adequately address repeated serious and escalating instances of bullying despite being informed of same and assuring the Plaintiff, **TAMI DUNN** that it would be rectified.
- b) Failing to timely provide information, transparency, and otherwise failing to fully inform the Plaintiff, **TAMI DUNN** as to the teachers present and other pertinent

details surrounding the May 27, 2015 sexual battery under the pre-text that such information would give rise to “privacy concerns.”

- c) Failing to adequately discipline minors B [REDACTED] and D [REDACTED] regarding their repeated bullying and sexual battery of the Plaintiff, J [REDACTED] D [REDACTED].
- d) Failing to adhere to Flagler County Board of Education’s written zero tolerance policy and related disciplinary actions for the applicable Class IV offenses perpetrated on the Plaintiff J [REDACTED] D [REDACTED] by minors B [REDACTED] and D [REDACTED].
- e) Allowing minors B [REDACTED] and D [REDACTED] who sexually battered the Plaintiff, J [REDACTED] D [REDACTED], to return to Old Kings Elementary School three months later which would have resulted in their being in the same or adjacent class and in close proximity to the minor Plaintiffs, J [REDACTED] D [REDACTED] and S [REDACTED] D [REDACTED].

36. As the direct and proximate result of all the named Defendants’ herein intentional or reckless infliction of emotional distress, Plaintiff TAMI DUNN has suffered, damages and losses – including, without limitation mental anguish, suffering, loss of dignity, inconvenience, loss of capacity for the enjoyment of life, expense of relocation, related psychological care expenses.

COUNT VI – CONSEQUENTIAL DAMAGES FOR RELOCATION

37. All the named Plaintiffs herein re-allege paragraphs 1 - 36 and further allege:

38. At all times material to this cause, all the named Defendants herein failed to implement their own zero tolerance policy as to sexual battery which should have resulted in the expulsion of minors B [REDACTED] and D [REDACTED]. Instead, B [REDACTED] and D [REDACTED] were merely suspended in May 2015 and were permitted to return three months later which would result them being placed

in the same or adjacent class or otherwise in close proximity to the minor Plaintiffs J [REDACTED] D [REDACTED] and S [REDACTED] D [REDACTED]

39. Upon learning that B [REDACTED] and D [REDACTED] were to return to the same school and would be in close proximity to the Plaintiffs J [REDACTED] D [REDACTED] and S [REDACTED] D [REDACTED] the Dunn family was required to relocate to a suitable environment in New Mexico in an effort to minimize long term psychological damage.

40. As a direct and proximate cause of all the named Defendants herein, Plaintiff's GREG DUNN, TAMI DUNN, J [REDACTED] D [REDACTED] & S [REDACTED] D [REDACTED] have incurred consequential damages in relocating and diminished educational opportunities and benefits as to their daughter, Plaintiff S [REDACTED] D [REDACTED].

WHEREFORE, the Plaintiff sues and demands judgment against Defendants FLAGLER COUNTY BOARD OF EDUCATION, JACOB OLIVA, BEN OSYPIAN, ROBIN DUPONT and CARMEN HERNANDEZ for all damages allowed by law and demands a trial by jury for all issues so triable by right.

DEMAND FOR JURY TRIAL

All the named Plaintiffs herein hereby demand trial by jury on all issues as set forth herein.

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