

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

**AMBER PACK, as Mother and
Next Friend of ADRIANNA PACK,
a minor,**

Plaintiff,

v.

**CIVIL ACTION NO. 19-C- 93
Judge _____**

**BERKELEY COUNTY BOARD OF EDUCATION;
CHRISTINA LESTER;
JUNE YURISH;
KRISTIN DOUTY; and
AMBER BOECKMANN,**

Defendants.

COMPLAINT

COMES NOW the Plaintiff, Amber Pack, as Mother and Next Friend of Adrianna Pack, by counsel, for her Complaint against the Defendants, Berkeley County Board of Education, Christina Lester, June Yurish, Kristin Douty, and Amber Boeckmann, and alleges as follows:

1. Plaintiff Amber Pack in the mother and next friend of Adrianna Pack, a minor. At all times material hereto Amber and Adrianna Pack were residents of Berkeley County, West Virginia.

2. Defendant Berkeley County Board of Education (hereinafter referred to as "Defendant Board") is the county agency that governs the public schools in Berkeley County, West Virginia. At all times mentioned herein, Defendant Board controlled and maintained Berkeley Heights Elementary School in Berkeley County, West Virginia.

3. At all times mentioned herein, Defendant Christina Lester (hereinafter

referred to as “Defendant Lester”) is a citizen and resident of Berkeley County, West Virginia. At all times mentioned herein, Defendant Lester was employed in the capacity of school teacher at Berkeley Heights Elementary School during the relevant times alleged in this Complaint.

4. At all times mentioned herein, Defendant June Yurish (hereinafter referred to as “Defendant Yurish”) is a citizen and resident of Berkeley County, West Virginia. At all times mentioned herein, Defendant Yurish was employed in the capacity of school aide at Berkeley Heights Elementary School during the relevant times alleged in this Complaint.

5. At all times mentioned herein, Defendant Kristin Douty (hereinafter referred to as “Defendant Douty”) is a citizen and resident of Berkeley County, West Virginia. At all times mentioned herein, Defendant Douty was employed in the capacity of school aide at Berkeley Heights Elementary School during the relevant times alleged in this Complaint.

6. At all times mentioned herein, Defendant Amber Boeckmann (hereinafter referred to as “Defendant Boeckmann”) is a citizen and resident of Berkeley County, West Virginia. At all times mentioned herein, Defendant Boeckmann was employed in the capacity of Principal at Berkeley Heights Elementary School during the relevant times alleged in this Complaint.

7. At all relevant times herein, Adrianna Pack was a minor child who suffered from autism. Adrianna Pack was in the first-grade special education class at Berkeley Heights Elementary School during all relevant times of the 2018-2019 school year.

8. Jurisdiction and venue are proper in the Circuit Court of Berkeley County, West Virginia as the events and the circumstances giving rise to this Complaint occurred in Berkeley County, West Virginia.

FACTS

9. In October 2018, six-year-old Adrianna Pack attended Berkeley Heights Elementary School. Adrianna Pack is autistic and non-verbal. In October 2018, Adrianna Pack was enrolled in Defendant Lester's first-grade special education class with school aides, Defendants Yurish and Douty.

10. On and before October 2, 2018, Adrianna Pack exhibited signs of emotional distress and anxiety, and would cry both before and after school.

11. On October 2, 2018, Adrianna Pack returned home from school with suspicious bruises on her arms consistent with physical abuse. Adrianna Pack also exhibited signs of emotional distress that included crying and vomiting.

12. On October 3, 2018, and as a result of the above, Adrianna Pack stayed home from school.

13. On October 4, 2018, and as a result of the suspected abuse, Amber Pack placed an audio recording device in Adrianna Pack's hair.

14. On October 4, 2018, after Adrianna Pack returned home from school, Amber Pack listened to the recording and discovered Defendants Lester, Yurish and Douty verbally and physically abusing Adrianna and other students throughout the day.

15. As discovered by Amber Pack, on October 4, 2018, Defendants Lester, Yurish and Douty made numerous inappropriate, abusive and threatening comments to then six-year-old Adrianna Pack that included, among other things:

- Threatening to punch Adrianna Pack in her face;
- Threatening to pull Adrianna Pack's hair until she starts crying;
- Threatening to backhand Adrianna Pack "right in her teeth" and afterwards asking her "how's that for your anxiety";

- Calling Adrianna Pack and other students words such as animal, wench and pygmy; and
- Requesting that Adrianna Pack massage the teacher and/or aide's feet.

16. On October 5, 2018, Amber Pack provided a copy of the audio recording to the Martinsburg Police Department.

17. On or about October 5, 2018, the Martinsburg Police Department provided the audio recording to Defendant Principal Amber Boeckmann.

18. Remarkably, instead of taking any measures to terminate, discipline and/or otherwise investigate Defendants Lester, Yurish and Douty, Defendant Boeckmann contacted Amber Pack and indicated that Defendants "would never hurt her child and that the aides were speaking to each other and not to Adrianna Pack." In addition, Defendant Boeckmann failed to report the same to the West Virginia Department of Health and Human Resources Child Protective Services Division within twenty-four hours as required by law.

19. On or about October 11, 2018, Amber Pack also provided a copy of the recording to Superintendent Manny Arvon, Assistant Superintendent David Banks and Special Education Coordinator Karen Petrucci.

20. On or about October 25, 2018, Amber Pack met with Special Education Coordinator Karen Petrucci wherein Ms. Petrucci advised Amber Pack that Defendants Lester, Yurish and Douty were still teaching at Berkeley Heights Elementary School.

21. On or about November 2, 2018, Superintendent Manny Arvon contacted Amber Pack and stated that the teachers and aides were on paid administrative leave pending an investigation. Subsequently, Amber Pack learned information that Defendant Lester was still teaching the first-grade class.

22. Upon information and belief, Defendants Lester, Yurish and Douty were allowed to resign from employment with the Board.

23. To the extent that any claims asserted herein are subject to governmental immunity, said claims are being asserted only to the extent of available insurance coverage.

COUNT I
STATE CONSTITUTIONAL TORT

24. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

25. Count One alleges a state constitutional tort action against Defendant Board and Defendants Lester, Yurish, Douty, and Boeckmann under the West Virginia Constitution, pursuant to the common law of West Virginia, and specifically is not filed pursuant to 42 U.S.C. §1983 or any other related federal statute.

26. The actions of Defendant Board and Defendants Lester, Yurish, Douty, and Boeckmann violated the constitutional rights guaranteed to Plaintiff under Article III, Sections 1, 5, 10, and 14, and Article XII, Section 1 of the West Virginia Constitution.

27. The actions of Defendant Board and Defendants Lester, Yurish, Douty, and Boeckmann also violated the constitutional rights guaranteed to Adrianna Pack under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

28. The provisions of the United States Constitution are cited in this Complaint because, with some limited exceptions, the rights guaranteed to Adrianna Pack under the West Virginia and United States Constitutions are so parallel that the violation of one similarly situated would constitute the violation of the other. In civil rights litigation, plaintiffs often cite the state and federal constitutional provisions implicated so that the issues in the case are federalized to allow for possible review by the United States Supreme Court in the unlikely event

that either the trial court or the West Virginia Supreme Court interprets a constitutional right contrary to decisions of the United States Supreme Court.

29. By alleging that Defendant Board and Defendants Lester, Yurish, Douty, and Boeckmann violated Adrianna Pack's rights under the West Virginia and United States Constitutions, Adrianna Pack clearly and unambiguously has not created any federal cause of action to warrant the removal of this case to federal court.

30. In fact, in three other cases—*Taylor v. Kanawha County Board of Education*, Civil Action No. 2:05-00877, *Lilly v. City of Clendenin*, Civil Action No. 2:05-0303, and *McGhee v. City of South Charleston*, 2:01-1308--where the defendants removed cases asserting this same or similar state constitutional action, three different judges in the United States District Court for the Southern District of West Virginia concluded that removal was improper and those cases were remanded to state court. In the *Taylor* case, the District Court awarded attorneys' fees and costs in granting the motion to remand. Furthermore, by alleging violations of the United States Constitution, the West Virginia Governmental Tort Claims and Insurance Reform Act are inapplicable.

31. As a direct and proximate result of the Defendants' aforesaid actions, Adrianna Pack is entitled to compensatory damages and punitive damages.

COUNT II
**UNLAWFUL DISABILITY HARRASSMENT AND DISCRIMINATION IN VIOLATION
OF THE WEST VIRGINIA HUMAN RIGHTS ACT**

32. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

33. During the course of her first-grade special education class, Adrianna Pack was subjected to inappropriate, abusive and threatening disability harassment and discrimination by

Defendants Lester, Yurish, Douty, and Boeckmann due to her condition of autism. The conduct was severe and pervasive.

34. Defendant Board is vicariously and/or strictly liable for the conduct of its employees/agents, Defendants Lester, Yurish, Douty, and Boeckmann.

35. Through their unlawful conduct, Defendants acted to harass and discriminate against Adrianna Pack because of her autism.

36. At all times relevant, Defendants were in violation of the West Virginia Human Rights Act, W.Va. Code §5-11-1, *et. seq.*, including, but not limited to, W.Va. Code §§ 5-11-2, 5-11-9 which prohibits discrimination based on disability.

37. As a direct result of Defendants' unlawful conduct, Adrianna Pack has suffered injury and damages, including but not limited to, emotional distress, humiliation, mental anguish, and other damages for which Defendants are liable.

38. The Defendants' actions were willful and malicious and violated the West Virginia Human Rights Act entitling the Plaintiff to compensatory damages and attorney fees and costs pursuant to West Virginia Code §5-11-13 and/or the decisions of the West Virginia Supreme Court of Appeals.

COUNT III
RESPONDEAT SUPERIOR/NEGLIGENT HIRING, SUPERVISION AND RETENTION

39. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

40. Upon information and belief, the Defendant Board was negligent in several aspects, including but not limited to the following facts:

- a. Failing to properly interview, evaluate and screen Defendants Lester, Yurish and Douty prior to hiring;

- b. Failing to properly supervise and monitor Defendants Lester, Yurish and Douty;
- c. Failing to remove Defendants Lester, Yurish and Douty from Berkeley Heights Elementary School when it became apparent, they were actively engaging in inappropriate, abusive and threatening behavior with Adrianna Pack and other students; and
- d. Failing to discipline and/or terminate Defendant Boeckmann for failing to report the abuse to the West Virginia Department of Health and Human Resources Child Protective Services Division within twenty-four hours as required by law.

41. Defendant Board had an affirmative duty to properly investigate the background of its employees prior to providing employment. Upon information and belief, Defendant Board breached said duty by negligently hiring Defendants Lester, Yurish and Douty thereby directly introducing them to countless children and students, including but not limited to Adrianna Pack.

42. As a direct and proximate result of the Defendants' aforesaid actions, Adrianna Pack is entitled to compensatory damages.

COUNT IV
NEGLIGENCE

43. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

44. Defendants owed a duty of care to Adrianna Pack to conduct their activities in a reasonable and prudent manner.

45. Defendants negligently and recklessly breached the duty of care they owed to Adrianna Pack.

46. The actions and inactions, as described above, proximately caused physical and emotional harm to Adrianna Pack.

47. Defendants' negligent and reckless misconduct was the sole proximate cause of the harm experienced by Adrianna Pack.

48. As a direct and proximate result of Defendants Lester, Yurish, Douty, and Boeckmann's intentional and reckless misconduct, Adrianna Pack is entitled to compensatory damages.

COUNT V
TORT OF OUTRAGE

49. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

50. Defendants Lester, Yurish, Douty, and Boeckmann's conduct was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency.

51. Defendants acted with the intent to inflict emotional distress, or acted recklessly when it was certain or substantially certain emotional distress would result from their conduct.

52. The actions of Defendants Lester, Yurish, Douty, and Boeckmann caused Adrianna Pack to suffer severe emotional distress that no reasonable person should be expected to endure.

53. As a direct and proximate result of Defendants Lester, Yurish, Douty, and Boeckmann's intentional and reckless misconduct, Adrianna Pack is entitled to compensatory damages.

COUNT VI
ASSAULT

54. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

55. On and before October 4, 2018 and as described above, Defendants Lester, Yurish and Douty willfully, wantonly, and intentionally assaulted Adrianna Pack while under their care.

56. Defendant Board either knew or should have known of the aforesaid assault and failed to take reasonable and prudent steps to prevent the same.

57. Defendants Lester, Yurish and Douty's negligent, reckless, willful, wanton, and intentional misconduct proximately caused physical and emotional harm to Adrianna Pack.

58. Defendant Board is liable for the actions and inactions of Defendants Lester, Yurish and Douty under the doctrine of *respondeat superior*.

59. As a direct and proximate result of the Defendants' negligent, willful, wanton, intentional and reckless misconduct, Adrianna Pack is entitled to compensatory damages.

COUNT VII
VIOLATION OF STATUTE

60. Plaintiff repeats and incorporates by reference the allegations contained hereinabove in each and every paragraph as if set forth herein verbatim.

61. West Virginia Code § 55-7-9, entitled "*Violation of statutes*" provides:

Any person injured by the violation of any statute may recover from the offender such damages as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed, unless the same be expressly mentioned to be in lieu of such damages.

62. Plaintiff is a "*person injured by (Defendant's) violation of . . . statute*" as set forth in West Virginia Code § 55-7-9.

63. Defendant Amber Boeckmann's actions and inactions were in violation of West Virginia Code § 49-2-803 in that, as Principal of Berkeley Heights Elementary School, she failed to report the above-referenced harassment, abuse, threats and other actions/misconduct to the

West Virginia Department of Health and Human Resources Child Protective Services Division
within twenty-four hours after the same was reported.

64. Defendant Boeckmann's statutory violations proximately caused injuries and damages to Plaintiff including – but not limited to – Adrianna Pack being required to transfer to another school.

65. Plaintiff is entitled to an award of statutory and common law damages resulting from said violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. Damages set forth in this Complaint, damages for permanent psychological injuries, and past and future damages including – but not limited to – pain and suffering; emotional and mental anguish; loss of enjoyment of life, indignity, embarrassment, humiliation, annoyance, shame, inconvenience; and other past and future consequently damages for which Adrianna Pack deserves to be compensated in an amount to be determined by the jury;
2. Punitive damages as provided by law;
3. Prejudgment and post-judgement interest as provided by law;
4. Attorney fees and costs as provided by law; and
5. Such further relief as this court may deem just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES TRIABLE TO A JURY.

**AMBER PACK, as Mother and Next
Friend of ADRIANNA PACK,
By Counsel,**

/s/ Ben Salango

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