

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: Other

Emily Benson, on behalf of
her minor child, W.B.,

Court File No.: 27-CV-19-14679
Judge: Mary R. Vasaly

Plaintiff,

vs.

**AMENDED COMPLAINT
JURY TRIAL DEMANDED**

Independent School District No. 273, Edina
Public Schools,

Defendant.

Plaintiff Emily Benson, on behalf of her minor child, W.B., for her Amended Complaint against Independent School District No. 273, Edina Public Schools (“School District”), Defendant, states and alleges as follows:

FACTUAL BACKGROUND

1. Plaintiff Emily Benson resides in the City of Edina, Hennepin County, Minnesota.
2. Plaintiff brings this action on behalf of her minor child, W.B., now 9 years old and who was, at all material times, a student at Countryside Elementary School in Edina.
3. Defendant School District is a government entity of the State of Minnesota, owns and operates schools in the City of Edina, including Countryside Elementary School and is a public educational agency or institution.
4. During the spring of the 2017-18 school year while W.B. then age 8, was attending Countryside School in the 2nd grade, he was subject to a body cavity “strip” search, including a search of his naked rectal area, which was done without his authorization or the

authorization or knowledge of Plaintiff Benson and contrary to the policies and procedures of the School district, which restrict such searches only to situations involving “imminent danger” or an “emergency health situation,” which were not present on this occasion..

5. The aforesaid body search was conducted by employees of Defendant School District.

6. The aforesaid action by school district employees was undertaken during the course and scope of their employment with Defendant School District.

7. The aforesaid body search was done to determine whether W.B. had defecated on the floor of the student lavatory.

8. The aforesaid body search was done without probable cause or other justification and, in fact, W.B. had not committed the defecation or other impropriety.

9. Defendant School District has a policy of notifying parents of students in connection with any such actions.

10. Neither the School District nor its employees who conducted the search informed the parents of W.B. of the aforesaid action, contrary to the policies of Defendant School District.

11. The aforesaid search was excessive, unnecessary, unreasonable and unwarranted.

12. The aforesaid body search was traumatic and caused harm to W.B., including mental and emotional distress, as well as pain and suffering.

13. Following a complaint by Plaintiff, the School District conducted a review of the aforesaid conduct and prepared a written report about it.

14. The official report is maintained by Defendant School District.

15. The aforesaid written report relates to the student, W.B. who is the subject of the report.

16. Plaintiff has made a request for the aforesaid report about her child, W.B.

17. The aforesaid request was made with the informed consent of Plaintiff.

18. Defendant School District has failed and refused to provide a full and complete copy of the aforesaid report about W.B. to Plaintiff, his mother.

COUNT I. VIOLATION OF MINNESOTA GOVERNMENT DATA PRACTICES ACT

19. Plaintiff restates and realleges the above allegations as though fully set forth and states and allege as follows:

20. The aforesaid report prepared by Defendant School District constitutes “educational data” within the meaning of the Minnesota Government Data Practices Act, Minn. Stat. § 13.32, because it consists of data on individuals which relates to a student, W.B.

21. The aforesaid report constitutes private data on individuals, which is accessible by Plaintiff as the mother of the subject of the data, pursuant to Minn. Stat. § 13.32, subd. 3 and § 13.05.

22. Plaintiff is entitled to a full and complete copy of the aforesaid report.

23. The failure of Defendant School District to provide a full and complete copy of the report to Plaintiff constitutes a violation of the aforesaid statute.

24. As a result of the above, Plaintiff is entitled to an Order enjoining production to her of a copy of the report, pursuant to Minn. Stat. § 13.08, together with reasonable attorney’s fees and costs incurred herein.

COUNT II. ASSAULT

25. Plaintiff restates and realleges the above allegations as though fully set forth and states and allege as follows:

26. The aforesaid conduct by persons acting on behalf of Defendant School District caused W.B. to have apprehension or fear of bodily contact and harm.

27. The aforesaid apprehension or fear was reasonable.

28. The aforesaid conduct constitutes assault.

29. As a result of the above, W.B. suffered damages, including mental and emotional distress and other harm in a reasonable amount in excess of \$50,000.

30. By reason of the foregoing, Plaintiff is entitled to judgment against Defendant in an amount in excess of \$50,000.

COUNT III. BATTERY

31. Plaintiff restates and realleges the above allegations as though fully set forth and states and allege as follows:

32. The aforesaid conduct by Defendant School District constitutes an unpermitted touching of W.B. The aforesaid conduct was done intentionally by those acting on behalf of Defendant.

33. The aforesaid conduct constitutes battery.

34. As a result of the above, W.B. suffered damages, including mental and emotional distress and other harm in a reasonable amount in excess of \$50,000.

35. By reason of the foregoing, Plaintiff is entitled to judgment against Defendant in an amount in excess of \$50,000.

COUNT IV. INVASION OF PRIVACY

36. Plaintiff restates and realleges the above allegations as though fully set forth and state and allege as follows:

37. The aforesaid conduct by Defendant constitutes an unreasonable intrusion into the privacy of W.B.

38. The aforesaid conduct constitutes an invasion of privacy.

39. As a result of the above, W.B. suffered damages, including mental and emotional distress and other harm in a reasonable amount in excess of \$50,000.

40. By reason of the foregoing, Plaintiff is entitled to judgment against Defendant in an amount in excess of \$50,000.

**COUNT V. INTENTIONAL INFLECTION OF MENTAL
AND EMOTIONAL DISTRESS**

41. Plaintiff restates and realleges the above allegations as though fully set forth and states and alleges as follows:

42. The aforesaid conduct by Defendant was done intentionally.

43. The aforesaid conduct by Defendant was extreme and outrageous.

44. The aforesaid conduct by Defendant has caused W.B. to suffer extreme mental and emotional distress.

45. The aforesaid conduct by Defendant constitutes intentional infliction of mental and emotional distress.

46. By reason of the foregoing, Plaintiff is entitled to judgment against Defendant in an amount in excess of \$50,000.

**COUNT VI. NEGLIGENCE INFLECTION OF MENTAL
AND EMOTIONAL DISTRESS**

47. Plaintiff restates and realleges the above allegations as though fully set forth and state and allege as follows:

48. The aforesaid conduct by Defendant was done negligently.

49. The aforesaid conduct by Defendant was extreme and outrageous.

50. The aforesaid conduct by Defendant has caused W.B. to suffer extreme mental and emotional distress.

51. The aforesaid conduct by Defendant constitutes intentional infliction of mental and emotional distress.

52. By reason of the foregoing, Plaintiff is entitled to judgment against Defendant in an amount in excess of \$50,000.

WHEREFORE, Plaintiff Emily Benson, on behalf of her child, W.B., requests the following relief against Defendant as follows:

1. Ordering and adjudging that the aforesaid report prepared by Defendant School District constitutes “educational” data about a student within the meaning of Minnesota Government Data Practices Act.
2. Enjoining and requiring Defendant School District to furnish to Plaintiff a full and complete copy of the aforesaid report.
3. Awarding judgment against Defendant in a reasonable amount in excess of \$50,000 for assault.
4. Awarding judgment against Defendant in a reasonable amount in excess of \$50,000 for battery.
5. Awarding judgment against Defendant in a reasonable amount in excess of \$50,000 for invasion of privacy.
6. Awarding judgment against Defendant in a reasonable amount in excess of \$50,000 for intentional infliction of mental and emotional distress.

7. Awarding judgment against Defendant in a reasonable amount in excess of \$50,000 for negligent infliction of mental and emotional distress.
8. Granting leave to Plaintiff to amend the Complaint to include a claim for punitive damages.
9. Awarding to Plaintiff pre-judgment and post-judgment interest.
10. Awarding to Plaintiff reasonable costs and disbursements incurred herein.
11. Awarding to Plaintiff reasonable attorney's fees incurred herein.
12. Such other and further relief as may be deemed just and equitable.

PLAINTIFF REQUESTS A JURY TRIAL OF ALL ISSUES TRIABLE BY JURY.

MEYER NJUS TANICK, PA

Dated: August 30, 2019

By: /s/ Marshall H. Tanick
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**ATTORNEYS FOR PLAINTIFF
 EMILY BENSON**

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.

Dated: August 30, 2019

By: /s/ Marshall H. Tanick
 Marshall H. Tanick, ID # 108303