

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BELINDA BROADERS, AS PARENT, NATURAL GUARDIAN AND
FOR AND ON BEHALF OF HER SON, B.B., A MINOR

Plaintiffs,

vs.

Case No.:

THE SCHOOL BOARD OF POLK COUNTY

Defendant

_____ /

ORIGINAL COMPLAINT

Plaintiff, BELINDA BROADERS, as parent, natural guardian and for and on behalf of her son, B. B., a minor, hereby sues the Defendant, THE POLK COUNTY SCHOOL BOARD, ("SCHOOL BOARD") and state:

Jurisdiction and Venue

1. This action is for claims of violations of the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the U.S. Constitution as enabled through and pursuant to 42 U.S.C. section 1983 and various Florida state law claims. This action is for damages in excess of \$50,000.00.

2. Subject matter jurisdiction is properly invoked pursuant to this Court's original, concurrent and pendent jurisdiction as permitted by Federal and State law.

3. Venue is properly invoked insofar as the unlawful

conduct alleged herein occurred in Polk County, the Defendant, SCHOOL BOARD, is an entity within Polk County and the Plaintiffs resided within Polk County.

Parties

4. At all times material to this Complaint, Plaintiff, B. B. was a thirteen (13) year old seventh (7th) grade student attending Dundee Ridge Middle School. B. B. suffers from Attention Deficit Disorder (ADD), has a learning disability and is on an Individualize Education Program (IEP) with the Polk County School Board. Belinda Broaders is the mother and legal guardian of B.B. and they resided together in Polk County.

5. At all times material to this Complaint, Defendant, Polk County School Board was a municipal corporation or entity organized and existing under the laws of the State of Florida, Federal Government and was receiving and accepting federal money.

6. At all times material to this Complaint, Dundee Ridge Middle School was an agency organized and existing under the authority of the Defendant, Polk County School Board.

7. At all times material to this Complaint, Defendant, or Defendant through its agents, employees, teachers, administrators, staff or representatives were acting under color of State and Federal law, *to wit*: Federal and State statutes, ordinances, regulations, customs and usages of the

State of Florida and in their actions and appearances pursuant to their authority.

8. All conditions precedent to the filing of this Complaint have occurred, been satisfied, or been waived in that written notice has been provided to the Defendants and Department of Insurance pursuant to Fla.Stat. 768.28 et seq.

Facts Common To All Counts

9. During the school year of 2007, Plaintiff, B.B., an African-American student with a disability was attending school at Dundee Middle School in Haines City, Polk County, Florida. To this end, there existed a "special relationship" between the Plaintiffs and the Defendant and Defendant owed or had a duty and due process duty to protect Plaintiff, B. B. while Plaintiff, B. B. was in the care of the Defendant.

10. At the outset and throughout said school year, and prior to the incident of April 27, 2007, Plaintiff, BELINDA BROADERS was constantly at Dundee Middle School complaining to the administration that B.B. was continually being "bullied" by other students but nothing was being done about these complaints. In fact, B.B. indicated he "hated" going to school because he felt like the teachers did not help him or believe him when he reported being bullied.

11. On or about April 27, 2007, B.B. arrived home from school complaining that his "butt hurt." Plaintiff, BELINDA BROADERS inquired into his pain. Belinda Broaders examined B.B. and noticed something hard in his rectum which could not be seen. Immediately, Belinda Broaders rushed B.B. to the ER in Haines City where he was examined by a physician and a sewing needled was discovered embedded in his rectum, which had to be medically removed.

12. According to B.B., while at school that day, April 27, which was a Field Day, three (3) other male students accosted and assaulted him in the bathroom. While two (2) of the boys held him down, the third boy inserted a sewing needle in his rectum.

13. As a result of the aforementioned treatment of B.B. and the Polk County School Board's and Dundee Middle School's failure to remedy said harassment or protect Plaintiff, Plaintiff, B. B. was ultimately sexually assaulted and suffered various injuries.

COUNT I- 42 U.S.C. §1983/ FOURTEENTH AMENDMENT VIOLATIONS AGAINST POLK COUNTY SCHOOL BOARD D/B/A DUNDEE MIDDLE SCHOOL

14. Plaintiffs BELINDA BROADERS and B.B. incorporate the allegations contained in the preceding paragraphs as if fully set forth herein.

15. The Defendant, POLK COUNTY SCHOOL BOARD d/b/a

DUNDEE MIDDLE SCHOOL, while acting under federal and state law deprived Plaintiff, B. B., of his civil rights (including his rights to an education) pursuant to the 42 U.S.C. §1983, the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the U.S. Constitution by condoning, practices, including inadequate training of teachers and administrators, regarding sex harassment, harassment of disabled students, or students with learning disabilities, or minority students and inadequate investigation of complaints by parents and students, such as in B.B's case(s), of said harassment, and by having a custom of failing to protect students with learning disabilities from sex harassment, sexual assaults or harassment because of their disabilities and of discriminating or permitting the discrimination of said students of which was intentional or negligent and with complete, reckless and callous disregard for Plaintiff's civil rights in violation of the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment.

16. In fact, it was discovered by Belinda Broaders that during the incident of April 27, 2007 there was insufficient supervision of the students and an administrator of Dundee Middle School was actually present outside near the bathroom when the incident occurred and saw the three (3) assailants enter the restroom behind B.B. Of equal importance, no meaningful investigation was conducted by Defendant into the incident.

17. That as a direct and proximate result of Defendant's actions, which were shocking to the conscience, and omissions, Plaintiff, B. B. was humiliated, embarrassed, suffered mental anguish, was subjected to insult, oppression, inconvenience, loss of dignity and suffered physical injury.

18. These damages are continuing, permanent or will continue in the future.

WHEREFORE, Plaintiffs demands judgment against the Defendant for compensatory damages, costs, attorneys under §1988, and demands trial by jury of all issues so triable.

**COUNT II-NEGLIGENT TRAINING AND SUPERVISION
AGAINST POLK COUNTY SCHOOL BOARD D/B/A DUNDEE MIDDLE SCHOOL**

19. Plaintiffs, Belinda Broaders and B.B. incorporate the allegations contained in the preceding as if fully set forth herein.

20. Defendant, POLK COUNTY SCHOOL BOARD d/b/a DUNDEE MIDDLE SCHOOL, recruited, hired, instructed, trained, employed, supervised and retained the teachers, administrators and faculty members to which Plaintiffs complained of the harassment and to which Plaintiffs sought assistance. Likewise, the School Board is responsible for supervising, disciplining, controlling and protecting children in its control, custody, possession and care, which it failed to do.

21. As Plaintiff, B. B., was in the care of Defendant, the Defendant had a duty of care to protect Plaintiff, B. B., from

"bullying", assaults and harassment by other students and Defendant breached its duty to the students of Dundee Middle School in general and specifically to Plaintiff, B. B., in failing to adequately perform the activities cited in paragraph 14. Specifically, in failing to implement policies, procedures, training and supervision to faculty members and administrators, regarding investigating, remedying and prohibiting harassment of students with learning disabilities, and of being sexually assaulted and of African-Americans and other minority students. Said policies or customs, or lack thereof, amounted to and reflected the Defendant's deliberate indifference to the constitutional rights of Plaintiff, B.B.

22. As a direct and proximate result of the acts and omissions of the Defendant, including defendant's knowledge prior complaints by Plaintiffs, which caused, encouraged or precipitated the acts of the continued harassment and ultimate sexual assault of Plaintiff, B.B., the acts against and injuries to Plaintiff were foreseeable and hence the defendant was negligent and are therefore liable to Plaintiff, B.B, for the injuries he sustained.

WHEREFORE, Plaintiffs demand judgment against the Defendant, for compensatory damages, costs and demands trial by jury on all issues so triable.

**COUNT III-NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
AGAINST THE POLK COUNTY SCHOOL BOARD D/B/A DUNDEE MIDDLE SCHOOL**

23. Plaintiffs incorporate the allegations contained in the preceding paragraphs 1-13 as if fully set forth herein.

24. The aforementioned acts, omissions and conduct of the Defendant were extreme, outrageous, malicious or with the total disregard or deliberate indifference to the constitutional and civil rights of the Plaintiff and therefore, the Defendant was aware, knew or should have known that its acts, omissions and conduct would cause Plaintiff extreme and severe emotional distress.

25. Insofar as the Defendant knew or should have known of the conduct in which B. B. was being subjected to, including, bullying, harassment, and harassment due to his learning disability and the battery on Plaintiff, Defendant had a duty to Plaintiff and/or owed a Plaintiff a duty to intervene so as to prevent further harassing conduct and the sexual assault on B.B. and therefore, the acts to Plaintiff and injuries to Plaintiff were foreseeable.

26. That Defendant breached its duty owed Plaintiff by failing to intervene so as to prevent further harassment by students and said breach resulted in continued harassment, emotional and psychological harm to Plaintiff and the ultimate physical assault and impact to B.B. To this end, the School Board is responsible for supervising, disciplining, controlling and protecting children in its control, custody, possession and care, which it failed to do.

27. The outrageous acts, including physical impact of holding Plaintiff, B.B. down and inserting a needle in his rectum, which caused extreme physical pain and injury, and said omissions and conduct of the Defendant caused Plaintiff severe and extreme emotional distress, mental anguish, anxiety and physical injury.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages, costs and demands trial on all issues so triable.

IV-NEGLIGENCE AGAINST POLK COUNTY SCHOOL BOARD d/b/a Dundee Middle School

28. Plaintiffs, incorporate the allegations contained in the preceding paragraphs 1-13 as if fully set forth herein.

29. As Plaintiff B.B., was in the care of the Defendant, Defendant had a duty of care to Plaintiff, B.B., to protect him from being harassed, bullied and sexually assaulted by other students. Likewise, the School Board is responsible for supervising, disciplining, controlling and protecting children in its control, custody, possession and care, which it failed to do.

30. The defendant breached its duty to Plaintiff by failing to adequately implement policies, procedures, guidelines, training, supervision or instructions to its employees and students attending DUNDEE MIDDLE SCHOOL so as to

prevent bullying, harassment, and harassment of students with disabilities or learning disorders, like, B.B.

31. As a direct and proximate result of the actions and omissions of the Defendant, including Defendant's prior knowledge of behavioral problems with students harassing B. B., disciplinary problems of students harassing B.B. and prior complaints by B. B. and Belinda Broaders, to which no remedial measures followed, which caused, encourage or precipitated the actions which led to the continued harassment and ultimate sexual assault and battery on B. B., acts against and injuries to Plaintiff were foreseeable, the defendants were negligent and are therefore liable to Plaintiff for the injuries she sustained at the hands of their son.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages, costs and demands trial by jury on all issues so triable.

S/ Frank T. Allen
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