

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

JOHN Q. PERCICH, an individual,

Plaintiff,

v.

BEAVERTON SCHOOL
DISTRICT, Public School District a
public entity, ANNE ERWIN, an
individual, and ALLYSON
DUBUQUE, an individual,

Defendants.

Case No.: 18CV50044

FIRST AMENDED COMPLAINT

Battery
Hostile Work Environment
Intentional Infliction of Emotional Distress

**CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION**

JURY TRIAL DEMANDED

CLAIM FOR \$504,000 (ORS 21.160(1)(b))

Plaintiff John Q. Percich alleges as follows:

NATURE OF THE ACTION

1.

This is an action for battery, hostile work environment and intentional infliction of emotional distress.

2.

The intentional actions described herein are alleged to have been committed in Washington County Oregon.

PARTIES

3.

Plaintiff is an individual residing in Washington County, Oregon. At all relevant times he was living and working in Washington County, Oregon.

4.

Defendant Beaverton School District (“BSD”) is a public school district in Beaverton, Oregon with its principle place of business at 16550 SW Merlo Rd., Beaverton, Oregon 97003, county of Washington, State of Oregon. At all relevant times, BSD employed over 100 persons in the State of Oregon.

5.

Defendant Anne Erwin is an individual who, at all material times, was an employee and agent of BSD and Principal of Beaverton High School.

6.

Defendant Allyson Dubuque is an individual who, at all material times, was an employee and agent of BSD and Vice Principal at Beaverton High School.

7.

Pursuant to ORS 30.275 timely notice was served on BSD by Percich.

FACTUAL ALLEGATIONS COMMON TO MULTIPLE CLAIMS

FACTS

8.

Plaintiff is a football coach, husband, father of 2 daughters, and has worked in special education in Beaverton School District for the last 6 years.

9.

At all relevant times, Plaintiff was employed as Paraeducator II by Defendant BSD at Beaverton High School in the Structured Routine Center (“SRC”).

10.

In his role as Paraeducator in the SRC, Plaintiff was to support the classroom and the certified SRC teacher, Pauline Lee (“Lee”) and keep the classroom safe and calm.

11.

Plaintiff has worked in the SRC since 2015.

12.

The SRC is for students who have moderate to severe mental deficiencies that inhibit their ability to interact safely with the world around them. These students require direct supervision at all times.

13.

The SRC is not meant for violent students.

14.

For the last two years, Plaintiff has observed violent and criminal behavior from a male student (“MS”) in the SRC. In particular, MS was prone to unwanted, unprovoked and inappropriate touching of other students and adults.

15.

Defendants were aware of MS’ violent and criminal behavior, knew that it would continue, and yet chose to continue to expose their students and staff, including Plaintiff, to interactions with MS that they knew would result in injury.

16.

1
2 Despite being in the SRC every day and witnessing this behavior, Plaintiff had no way of
3 reporting incidents with violent students, as there is no system of reporting for paraeducators and
4 staff. Defendants knew that employees and students were being assaulted by MS and would
5 continue to be assaulted by MS, but chose to continue to have no system of reporting in place.

6
7 17.

8 During the 2016-2017 school year, MS sexually assaulted a physical education (PE) teacher,
9 another teacher, as well as several other students.

10
11 18.

12 Each time MS assaulted someone and it was known to Lee, she would report it to Defendant
13 Dubuque via email and/or verbal reports.

14
15 19.

16 Defendant Dubuque then reported these assaults to Defendant Erwin.

17
18 20.

19 Defendant BSD was aware of these reports of past assaults and knew future assaults were
20 certain to occur and were ongoing, but chose to do nothing to protect its students and staff from
21 these continuing assaults.

22
23 21.

24 During the fall of 2017, MS' behavior began to escalate.

25
26 22.

27 Between November 2017 and December 2017, MS sexually and physically assaulted both
28 students and faculty. Assaults known to Lee were reported by her to Defendants Dubuque and
29 Erwin.

23.

1
2 Defendants Dubuque and Erwin chose to send MS home on the days he assaulted someone,
3 but he was back in school the next day with no systems in place to protect anyone and no way to
4 report incidents other than if Lee was told about, or witnessed, the incident. Defendants knew
5 someone would be injured when they allowed MS to return to school.

24.

6
7 On November 29, 2017, MS assaulted Lee and another staff member. Lee wrote an email to
8 MS' parents, as well as Defendant Dubuque, and expressed concern that this behavior kept
9 happening as the day before, MS had done the same thing. He touched Lee and the staff member
10 and that she was worried he was "getting into a routine" of inappropriately touching people to
11 get attention. Despite Lee's reports, Defendants chose to allow MS back into school where they
12 knew that these assaults on students and staff, including Plaintiff, would continue.

25.

13
14 Every time MS would start touching people and had to be pulled away, it fell to Plaintiff and
15 the other male "coaches" to physically pull him off and/or escort him away from the situation.

26.

16
17 In response, MS would lunge for and grab Plaintiff's and the other males' genitals.

27.

18
19
20 Other than the assault on April 16, 2018, the physical assaults on Plaintiff by MS did not
21 require Plaintiff to get any medical treatment.

28.

22
23 The only reporting "system" involved Plaintiff verbally reporting the assaults to Lee who
24 would report them to defendants Dubuque and Erwin, who would report them to BSD. Despite

1 these reports and Defendants' knowledge that MS would continue to assault students and staff,
2 including Plaintiff, if allowed back in school, Defendants made the choice to allow MS back into
3 school and not have in place a formal reporting system where paraeducators, such as Plaintiff,
4 could directly inform Defendants of these assaults.

5 29.

6 On December 5, 2017, MS assaulted two teachers and sexually assaulted a fellow SRC
7 student.

8 30.

9 Specifically, MS was in PE and went up to a teacher and pulled up her pant leg without
10 permission. MS was removed by the male coaches and was being escorted to a de-escalation
11 room when he broke away from the escort, stopped a minor female SRC student, pulled down
12 her pants and underwear, and put his hands on her exposed genitals. Staff had to physically
13 remove his hands from the traumatized student, and took him into a sensory room where he
14 proceeded to laugh.
15

16 31.

17 Upon information and belief, that minor female student's parents were never notified about
18 her assault.

19 32.

20 MS was taken to the office to be sent home as a "punishment" for the behavior, but as he was
21 waiting to be picked up, he sexually assaulted Lee by grabbing her genitals.

22 33.

23 Lee again emailed MS' parents about the incident, copying Defendant Dubuque.
24

34.

1
2 Despite the incident being a sexual assault of a minor, Defendants Dubuque and Erwin did
3 not notify the police, her parents, or campus safety. MS was sent home and was back in school
4 the next day. Defendants knew that if they allowed MS to return to school, he would continue to
5 assault students and staff.

35.

6
7 Over the course of at least two school years, Plaintiff observed these behaviors by MS and
8 was copied on several emailed reports to the administration, including Defendant Dubuque,
9 about this escalating behavior. Even with these reports, Defendant Dubuque chose to allow MS
10 in school where she knew he would assault students and staff, including Plaintiff
11

36.

12
13 Defendant Dubuque was not only informed about MS' behavior, she was a victim of it
14 herself - having been slapped across the face and grabbed.

37.

15
16 Defendant Dubuque has also personally witnessed MS' assaults. On one occasion, Plaintiff
17 was in the gym standing in a group with several staff members and students when Defendant
18 Dubuque walked up to them to inform them a student had passed away. Everyone was grief
19 stricken and in that moment MS grabbed an 18 year old female student on the leg.
20

38.

21
22 The student began crying and went to Defendant Dubuque to speak about what just
23 happened. Defendant Dubuque did nothing in response.
24

39.

1 After the winter break of the 2017-2018 school year, starting sometime in the spring, MS
2 again began to escalate behavior. Defendants were aware of this behavior and aware that by
3 allowing MS to remain in school he would continue to assault students and staff, including
4 Plaintiff. Despite this knowledge, they chose to allow MS to remain in school
5

6 40.

7 MS' abuse of Plaintiff included taunts about Plaintiff's recently deceased mother.

8 41.

9 Plaintiff reported the verbal harassment to Lee, and asked to not work with MS in the
10 classroom.

11 42.

12 Lee tried to transition Plaintiff as much as possible to other students, but MS would still seek
13 out Plaintiff, and Plaintiff would still have to physically remove MS from other teachers, staff,
14 and students.
15

16 43.

17 After enduring the constant physical and verbal assaults, Plaintiff went to Defendant
18 Dubuque to request removal from MS' classroom. Plaintiff expressed concern that the behaviors
19 were escalating and ongoing.

20 44.

21 Instead of removing Plaintiff from the classroom, doing any sort of investigation into the
22 matter, or working with Lee to figure out how to protect staff and students, Defendant Dubuque
23 dismissed Plaintiff's complaints, and ignored his request to be moved. Defendant Dubuque knew
24 that by dismissing his complaints and his request to be moved, that MS would continue to assault

1 students and staff, including Plaintiff, but decided to require Plaintiff to continue to be in the
2 classroom.

3 45.

4 Defendant Dubuque sent Plaintiff back to the classroom and Plaintiff was instructed that the
5 way to deal with MS was to “turn [his] back on him” and ignore him. Defendant Dubuque knew
6 that by sending Plaintiff back into the classroom and telling him to turn his back on and ignore
7 MS, that MS would continue to assault students and staff, including Plaintiff, but decided to
8 require Plaintiff to continue to be in the classroom.

9 46.

10 On Friday April 13, 2018, Plaintiff was with MS in the classroom and the teacher, Lee, was
11 out for the day. Instead, there was a substitute teacher. Towards the end of the school day, MS
12 was acting out, and decided to squat down, reached his finger into his own anus to get feces on it,
13 and proceeded to try and touch Plaintiff and others in the classroom.

14 47.

15 Plaintiff managed to avoid being touched, and escorted Plaintiff to the bus.

16 48.

17 Plaintiff tried to report this incident to Defendant Dubuque, but she was not available.

18 49.

19 Because there is no system in place for Plaintiff and other paraeducators and staff to report
20 incidents that don't require medical treatment, Plaintiff had no choice but to write it on the
21 whiteboard in the classroom to discuss on Monday with Lee. He never got the chance.
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

50.

Defendants knew that by not having a system in place to report incidents such as this, employees such as Plaintiff would have no way of timely and directly informing Defendants of MS' assaults.

51.

That Monday, April 16, 2018, MS arrived late to school and was being escorted to PE class by a male aid and a female student volunteer in the SRC program.

52.

As they were walking to PE, MS violently grabbed the student volunteer.

53.

The male aid had to remove MS' hands and escort him to a sensory room to calm down.

54.

Plaintiff went with the male aid to keep an eye on MS and, as they had been instructed, the two men turned their backs on MS.

55.

Without warning, MS came up behind Plaintiff, stuck his hand down the back of his pants, and used his finger to violently penetrate Plaintiff's anus.

56.

As Plaintiff turned around, MS proceeded to grab his genitals.

57.

Plaintiff went immediately to report what had happened to Lee and write up an incident report. Plaintiff then reported to Defendant Dubuque who sent him home. Defendant Dubuque then reported to Defendant Erwin, who reported to BSD.

58.

1
2 In the meantime, as MS was being escorted to Defendant Dubuque's office by Lee and the
3 male aid, he sexually assaulted another teacher by grabbing her buttocks.

4
59.

5 MS was sent home, but returned to school the next day. Defendants knew that by allowing
6 MS to return to school, MS would continue to assault students and staff, but nonetheless decided
7 to allow MS to return to school.

8
60.

9 Plaintiff went to his doctor who determined that MS had penetrated Plaintiff in such a violent
10 manner that he had contusions inside his rectum.

11
61.

12 Plaintiff filed a police report with the School Resource Officer and met with Defendants
13 Erwin, Dubuque, and the Sexual Incident Response Team regarding his sexual assault.

14
62.

15 Plaintiff was told he would be kept up-to-date on the investigation and that they would keep
16 him informed of how they were going to address the serious behavioral issues and constant
17 sexual and physical assaults by MS.
18

19
63.

20 As of the date of filing this complaint, Plaintiff has had no communication from anyone at
21 BSD or Defendants Dubuque or Erwin regarding any investigation.

22
64.

23 To this date, no investigation has actually taken place, MS is still a student at Beaverton High
24 School, and is still assaulting students and teachers, as Defendants knew he would.

65.

1
2 Plaintiff has been diagnosed with PTSD and is under the care of a therapist. He has been
3 unable to return to work.

4
66.

5 Since April 16, 2018, Plaintiff has been on workers compensation. He only gets two-thirds of
6 his \$24,000 per year salary.

7
67.

8 Plaintiffs hereby reserve the right to amend this complaint pursuant to ORS 31.725.

9
DAMAGES

10
68.

11 As a direct and proximate cause of the Defendants' actions, Plaintiff has suffered and
12 continues to suffer economic damages, including loss of earnings, benefits, job opportunities,
13 and other employment benefits, in an amount continuing to accrue to be determined at trial.
14 This amount, at the time of the filing of this complaint, is approximately \$4,000.00 and his
15 economic damages continue to accrue at an annual rate of approximately \$8,000.00.
16

17
69.

18 As a direct and proximate cause of the defendants' actions, Plaintiff has suffered severe
19 emotional distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness,
20 humiliation, and loss of enjoyment of life. Plaintiff therefore requests an award of non-
21 economic damages in an amount to be determined at trial but not exceeding \$500,000.
22

23
70.

24 Plaintiff also seeks reasonable attorneys' fees and costs in an amount to be proven at
trial.

FIRST CLAIM FOR RELIEF

(Battery)

(Against All Defendants)

71.

Plaintiff incorporates paragraphs 1 through 70 by reference as though set forth fully herein.

72.

Defendants intended to cause a harmful or offensive physical contact or cause an apprehension that harmful or offensive physical contact would occur.

73.

Defendants knowingly and intentionally placed MS back with students, staff, and teachers after each physical and sexual assault. Defendants did not put in place a system of reporting assaults for students and staff, and when Plaintiff specifically asked to be removed from MS' classroom, kept him in the class knowing that MS would assault and injure Plaintiff.

74.

Plaintiff was harmed by the offensive physical contact by MS.

75.

There exists a special relationship between Defendants and MS and Defendants and Plaintiff.

76.

As a direct, proximate, and foreseeable result of Defendants' intentional conduct, Plaintiff has suffered damages as alleged in paragraphs 68 to 70.

SECOND CLAIM FOR RELIEF

(Hostile Work Environment - ORS 659A.030)

(Against All Defendants)

77.

Plaintiff incorporates and realleges paragraphs 1 through 76 by reference as though set forth fully herein.

78.

Defendant BSD subjected Plaintiff to a hostile work environment through its continued misconduct in its treatment of Plaintiff. Defendant engaged in a pattern and practice of ignoring and condoning sexual, physical, and verbal abuse to Plaintiff's person. The condoned conduct against Plaintiff was pervasive, severe, offensive, and outrageous.

79.

Defendant BSD's actions had the purpose and effect of creating an intimidating, hostile, and offensive working environment, and had the effect and purpose of unreasonably interfering with Plaintiffs' work, safety, and wellbeing.

80.

Throughout the many complaints of harassment and assaults, Defendants Dubuque and Erwin failed to properly investigate, failed to take appropriate action to prevent harm to Plaintiff, purposefully and with intent put MS back in the classroom and in contact with other students and staff knowing that he would assault Plaintiff, and instead aided, abetted, and incited the harassment.

81.

As a direct and proximate cause of the defendant's actions, Plaintiff has suffered damages as alleged in paragraphs 68 to 70.

THIRD CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress)
(Against all Defendants)

82.

Plaintiff incorporates and realleges paragraphs 1 through 81 by reference as though set forth fully herein.

83.

Defendants' actions were committed deliberately and intentionally in order to cause Plaintiff severe emotional distress.

84.

Defendants knew, or should have known, that Plaintiff would suffer severe emotional distress, mental anguish, fear, humiliation, and public embarrassment and that such distress was substantially certain to result from her conduct.

85.

Defendants intended such a result, and their conduct did, in fact, cause Plaintiff severe emotional distress.

86.

In engaging in such intentional conduct, Defendants Dubuque and Erwin acted outside their respective job roles.

87.

Such severe emotional distress is permanent and progressive and as such Plaintiff has suffered and continues to suffer damages as alleged in paragraphs 68 to 70.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Economic damages against the defendants as alleged herein,
2. Non-economic damages against the defendants as alleged herein,
3. Attorney fees and costs as allowed by law, as well as prejudgment and post-judgment interest, and
4. Any other relief the Court deems just and equitable.

Dated this 9th day of December, 2018.

/s/ Rebecca Cambreleng

Rebecca Cambreleng, OSB No. 133209
Rebecca@cambrelenglaw.com
CAMBRELENG LAW LLC
1400 SW Montgomery Street
Portland, OR 97201
(503) 308-1481

And

/s/ Jovanna Patrick

Jovanna Patrick, OSB No. 111339
Jovanna@hollanderlaw.com
Hollander, Lebenbaum & Gannicott
1500 SW First, Suite 700
Portland, OR 97201

Attorneys for Plaintiff John Percich

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2018, I served the foregoing First Amended Complaint on the following individual(s):

Naomi Haslitt
Miller Nash Graham & Dunn LLP
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204
naomi.haslitt@millernash.com
Attorney for Defendants

by:

Mailing a true copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said individual(s) at their last known address as listed above and deposited in the post office at Portland, Oregon on said day.

Electronically mailing a copy to said individual(s) at their last known electronic address as listed above.

Delivering true copy/copies thereof, certified by me as such, to said individual, in person.

DATED this 9th day of December, 2018.

/s/ Rebecca Cambreleng
Rebecca Cambreleng, OSB #133209
Attorney for Plaintiff