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

VALARIE MCNAIR, an individual,

Plaintiff,

v.

GRESHAM BARLOW SCHOOL DISTRICT, Public School District a public entity, JAMES MILLIKEN, an individual,

Defendants.

Case No.:

COMPLAINT

Negligence
Hostile Work Environment
Intentional Infliction of Emotional Distress

CLAIMS NOT SUBJECT TO MANDATORY ARBITRATION

JURY TRIAL DEMANDED

CLAIM FOR \$150,500 (ORS 21.160(1)(b))

Plaintiff Valarie McNair alleges as follows:

NATURE OF THE ACTION

1.

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

2.

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

PARTIES

3.

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

4.

Defendant Gresham-Barlow School District (“GBSD”) is a public school district in Gresham, Oregon with its principle place of business at 1331 NW Eastman Pkwy, Gresham, Oregon 97030, county of Multnomah, State of Oregon. At all relevant times, GBSD employed over 100 persons in the State of Oregon.

5.

Defendant James Milliken is an individual who, at all material times, was an employee and agent of GBSD and Principal of East Orient Elementary School.

6.

Pursuant to ORS 30.275 timely notice was served on GBSD by Plaintiff.

FACTUAL ALLEGATIONS COMMON TO MULTIPLE CLAIMS

FACTS

7.

Plaintiff is a single mother of two children who has worked in special education for four years.

8.

At all relevant times, Plaintiff was employed as an Education Assistant (“EA”) by Defendant GBSD at East Orient Elementary School in the Learning Essentials 1 classroom (“LE1”).

9.

In her role as EA in the LE1, Plaintiff supported the classroom and students in the LE1 class and kept the classroom safe and calm.

10.

Plaintiff has worked in LE1 since the beginning of the fall of 2017.

11.

The LE1 class is for students who have some learning disabilities and mild behavior issues and are able to work up to full mainstream. They do this by spending part of the day in general education classrooms.

12.

The LE1 is not meant for violent students. GBSD has a Learning Essentials 2 classroom (“LE2”) and Life Skills classrooms for students with more severe behavior issues and/or disabilities.

13.

Since the fall of 2017, Plaintiff has been the victim of frequent physical and sexual assaults by students in the LE1 classroom.

14.

Initially, Plaintiff did not report the assaults as she thought it was a type of “initiation” into special education at GBSD.

15.

However, as time went on and the assaults continued unabated, Plaintiff began to report these assaults to Defendant Milliken.

16.

1 At first, Defendant Milliken was sympathetic and would state that they would “look into it”
2 and see “why” the student was “doing that”.
3

4 17.

5 As the 2017-2018 school year wore on, Defendant Milliken became increasingly hostile with
6 Plaintiff, eventually questioning what she was doing in order to make her the target of the
7 frequent assaults.

8 18.

9 Plaintiff also submitted forms to GBSD’s human resource office. The forms were entitled
10 “Gresham-Barlow School District Employee Report of On-The-Job-Injury for Injuries Requiring
11 No Medical Treatment” (“Employee Report”).
12

13 19.

14 Between October 2017 and October 2018, Plaintiff filled out fifteen (15) Employee Reports.
15 Plaintiff did not fill out a report for every assault.

16 20.

17 Plaintiff has been the victim of physical assaults such as being kicked in the shins and
18 stomach, slapped across the face, punched in the eye, having her foot stomped on, punched in the
19 stomach, kicked in her knees, spit on, scratched on the arms and face, and bitten.

20 21.

21 Plaintiff has also been sexually assaulted by students including having her vagina grabbed,
22 her shirt lifted so the student could grab her breasts, and being slapped and punched in the
23 breasts.
24

22.

1
2 Plaintiff has had chairs and other furniture thrown at her and has been physically attacked
3 while trying to prevent a student from attacking other students in the classroom.

4
5 23.

6 In response to Plaintiff's Complaints and Employee Reports, GBSD provided a canned letter
7 but failed to prevent the assaults from continuing.

8
9 24.

10 The form letter from GBSD states: "HR received your written report documenting your
11 injury of [date] that occurred in the Eagle's Nest at East Orient Elementary School. You stated
12 [assaults that occurred]. Your report indicates that you have not seen a healthcare provider for
13 medical treatment. At this time, it is not necessary to report the incident to our workers'
14 compensation carrier, SAIF, but I will keep the paperwork for future reference."

15
16 25.

17 Not once did GBSD followed up with Plaintiff in any other way regarding these assaults.

18
19 26.

20 Plaintiff was not offered any additional training, support, protective gear, or any other
21 assistance in dealing with these assaults.

22
23 27.

24 Although Plaintiff made multiple complaints directly to Defendant Milliken, he never
followed up or assisted her in any way.

28.

GBSD has been placing violent and severely behavioral children in classrooms without the proper support. As a result, there have been constant assaults on teachers, staff, and other students. Due to these assaults teachers have walked out of their jobs and other EAs have quit.

29.

Because Plaintiff is a mother of two children and brings home less than minimum wage due to her election to get paid for 12 months instead of 9, she cannot afford to lose her job. Plaintiff has to work a second job to make ends meet.

30.

Plaintiff has been traumatized by the constant assaults upon her person. . She fears going to work. She has nightmares. It changed the way she has been able to interact with her children – she is jumpy and feels fear when they make fast movements towards her.

31.

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

DAMAGES

32.

Plaintiff is entitled to such economic damages incurred as a result of Defendants' actions as alleged herein in an amount to be determined at trial. To date, such economic damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount of \$500.

33.

Plaintiff is also entitled to recover noneconomic damages, including physical, emotional, and mental harm, for which she should be compensated in an amount found to be appropriate by a jury based on the evidence presented at trial. Solely for purposes of ORCP 18B, plaintiff

1 estimates and alleges such damages in the amount of \$150,000.

2 34.

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

5 **FIRST CLAIM FOR RELIEF**

6 **(Negligence)**

7 **(Against All Defendants)**

8 35.

9 Plaintiff incorporates paragraphs 1 through 34 by reference as though set forth
10 fully herein.

11 36.

12 Defendants had a duty to keep Plaintiff safe and free from sexual harassment and assault.

13 37.

14 Defendants had a duty to investigate, report, and manage sexual and other assaults to staff
15 members and students in their schools pursuant to ORS 342.704; ORS 339.356, and OAR 581-
16 021-0038.

17 38.

18 Defendants breached their duty by failing to investigate claims of sexual harassment and
19 assault, failing to abide by their own policies on sexual harassment and assault, and failing to
20 properly take action to protect the employees.

21 39.

22 As a direct, proximate, and foreseeable result of Defendants' breach of their duties,
23 Plaintiff has suffered damages as alleged in paragraphs 32 to 34.
24

SECOND CLAIM FOR RELIEF

(Battery)

(Against Defendant GBSD)

40.

Plaintiff incorporates paragraphs 1 through 39 by reference as though set forth fully herein.

41.

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

42.

Defendant knew that Plaintiff was the victim of assault and battery to her person on an ongoing basis due to her constant reporting to human resources. Defendant did not follow up on Plaintiff's reports of assault and battery, nor offer Plaintiff any support, solutions, training, protective gear, or any assistance of any kind.

43.

Plaintiff was harmed by the offensive physical contact of the students.

44.

There exists a special relationship between Defendant and its students and Defendant and Plaintiff.

45.

As a direct, proximate, and foreseeable result of Defendant's intentional conduct, Plaintiff has suffered damages as alleged in paragraphs 32 to 34.

THIRD CLAIM FOR RELIEF
(Hostile Work Environment - ORS 659A.030)
(Against All Defendants)

46.

Plaintiff incorporates and realleges paragraphs 1 through 45 by reference as though set forth fully herein.

47.

Defendant GBSD 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.

48.

Defendant GBSD'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.

49.

Throughout the many complaints of harassment and assaults, Defendants Milliken failed to properly investigate, failed to take appropriate action to prevent harm to Plaintiff, and instead aided, abetted, and incited the assaults.

50.

As a direct and proximate cause of the defendant's actions, Plaintiff has suffered damages as alleged in paragraphs 32 to 34.

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 7th day of January, 2019.

/s/ Rebecca Cambreleng
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