

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

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|---|---|-------------------------|
| ADAM WALKER, an individual, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | Civil Action No. |
| BRADLEY T. BARRETT, an individual, |) | |
| |) | |
| and |) | |
| |) | |
| LOGAN - ROGERSVILLE R-VIII |) | |
| SCHOOL DISTRICT, |) | |
| |) | |
| and |) | |
| |) | |
| JOHN HETHERINGTON, an individual |) | |
| |) | |
| Defendants. |) | |

COMPLAINT WITH JURY DEMAND

COMES NOW Plaintiff, Adam Walker, and for his causes of action against Defendants states as follows:

JURISDICTION AND VENUE

1. Plaintiff alleges violations of Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. § 1681(a); the Equal Protection and Due Process Clause of the Fourteenth Amendment to the United States Constitution *via* 42 U.S.C. § 1983 (“Section 1983”); and Missouri common law.

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332 and 1343. The Court has pendent jurisdiction over all plaintiffs’ state law claims.

3. Venue is proper with this Court pursuant to the provisions of 28 U.S.C. §1391(b) as many of the acts alleged in this Complaint were committed within this Judicial District.

PARTIES

4. Plaintiff is now an adult residing in Greene County, Missouri.

5. Plaintiff was born on November 22, 1977, and was a minor at the time of the events alleged herein.

6. Defendant Barrett was an adult male residing in Laclede County, Missouri, and who at the times of the events alleged herein, was employed by Defendant Logan-Rogersville R-VIII School District as a vocal music teacher. Upon information and belief, Defendant Barrett currently resides in Cedar Falls, Iowa.

7. Defendant Logan-Rogersville R-VIII School District [hereinafter “School District”] is and was at all relevant times a public school district, located in Greene County, Missouri within the geographic area encompassed by the Western District of Missouri. Defendant School District is a recipient of federal financial assistance.

8. Defendant School District operates a junior high school and a high school in its district which are public schools which are recipients of federal financial assistance.

9. Defendant Hetherington was at all relevant times the principal at the Logan-Rogersville High School. His actions were taken under color of state law. He is sued in his individual capacity.

BACKGROUND FACTS

10. Plaintiff was a student in the Logan-Rogersville R-VIII School District during junior high school and high school and was a talented vocalist as a student.

11. Defendant Barrett was the vocal music teacher at the junior high school and high school during the years that Plaintiff attended school in the School District.

12. Beginning when Plaintiff was in the 7th grade, Defendant Barrett took a special interest in Plaintiff.

13. Defendant Barrett sexually abused the Plaintiff beginning when he was 15 years old and continuing through his high school years.

14. The act of sexual abuse included fellatio, forced fellatio, fondling and masturbation.

15. The sexual abuse occurred at Defendant Barrett's place of residence in Phillipsburg, Missouri, at Plaintiff's home and on the property owned and controlled by the Defendant School District.

16. The abuse also took place in other states and locations including Tulsa, Oklahoma, Washington D.C., Baton Rouge Louisiana, Jonesboro Arkansas, Northfield, Minnesota, Ames, Iowa, and San Antonio, Texas.

17. The abuse also took place in other countries including England, The Netherlands, Germany and France.

18. Defendant Barrett used his position as the vocal music teacher and the promise of travel with high school choral programs as a means of gaining access to the plaintiff, and other similarly situated students.

19. Defendant Barrett used the facilities of the School District to gain access to young male students, including the plaintiff.

20. Defendant Barrett operated choir programs with the endorsement of Defendant School District, using the facilities of the Defendant School District, and under the supervision of the School District and its agents.

21. All Defendants either knew or had constructive knowledge of Defendant Barrett's past history of sexual misconduct with boys, and of his use of choir and vocal programs affiliated with public schools to gain access to young boys in order to commit the sexual abuse and misconduct.

COUNT I
CHILDHOOD SEXUAL ABUSE AGAINST BARRETT

22. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded.

23. Defendant Barrett sexually abused the minor Plaintiff on a regular, frequent basis between 1992 and 1995.

24. Plaintiff's age and minority vitiated any consent to the sexual abuse.

25. Defendant Barrett's abuse of the plaintiff constituted actions that would constitute crimes of childhood sexual abuse, as outlined in Section 537.046 R.S.Mo.

26. Defendant Barrett's actions were willful, wanton or reckless for which punitive damages are appropriate.

27. As a result of the above-described acts, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff prays for judgment against Defendants in Count I for actual and punitive damages in amounts that are fair and reasonable, and for such other and further relief as the Court deems just, fair and proper.

COUNT II
CHILDHOOD SEXUAL ABUSE AGAINST SCHOOL DISTRICT AND HETHERINGTON

28. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded.

29. Defendant Barrett engaged in Childhood Sexual Abuse as defined by R.S.Mo. 537.046.

30. Defendant School District and Defendant Hetherington either knew or reasonably should have known of Defendant Barrett's unlawful and abusive conduct, assault, and battery of Plaintiff.

31. Defendant School District and Defendant Hetherington took no action to prevent Defendant Barrett's abusive conduct, assault or battery.

32. Defendant School District aided and abetted Defendant Barrett's childhood sexual abuse of Plaintiff.

33. Defendant Hetherington aided and abetted Defendant Barrett's childhood sexual abuse of Plaintiff.

34. Defendant School District and Defendant Hetherington were accessories after the fact in the sexual abuse, assault and battery of Plaintiff; they condoned and ratified the unlawful and abusive conduct, assault and battery by failing to repudiate it.

35. Therefore, defendants have committed Childhood Sexual Abuse as defined by R.S.Mo. 537.046.

36. As a direct and proximate result of the defendants' wrongful conduct, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

37. Defendants' acts were willful, wanton and malicious, and in reckless disregard of Plaintiff's rights thereby entitling Plaintiff to punitive damages against Defendants.

WHEREFORE, Plaintiff prays for judgment against Defendants in Count II for actual and punitive damages in amounts that are fair and reasonable, and for such other and further relief as the Court deems just, fair and proper.

COUNT III
BREACH OF FIDUCIARY/CONFIDENTIAL RELATIONSHIP
AGAINST ALL DEFENDANTS

38. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded.

39. As a result of Plaintiff's minority, and by Defendants' undertaking the care, custody and guidance of the then vulnerable minor plaintiff, Defendants pursued and acquired a position of power and trust vis-à-vis the minor plaintiff.

40. Defendants pursued and acquired a position of power and trust over the minor plaintiff.

41. Further, Defendants, by holding out the School District vocal music programs and competitions as safe and secure, solicited and/or accepted this position of empowerment. This empowerment prevented the minor plaintiff from effectively protecting himself.

42. Defendants thus entered into fiduciary and confidential relationships with Plaintiff.

43. As a result of the confidential and fiduciary relationships, Defendants obtained the trust, confidence and custody of the minor plaintiff.

44. Plaintiff reposed trust and confidence in Defendant Barrett as an authority figure, mentor and confidante.

45. As her caretaker and fiduciary, Defendants owed the minor plaintiff the duty of trust and loyalty.

46. As fiduciary and confidante to the minor plaintiff, Defendants owed a strict duty to the minor plaintiff to not deploy their vastly superior resources, education, social and political power, experience and acumen to the detriment of the child.

47. Furthermore, a school district and its agents owe a duty to protect the child, to operate in the child's best interest, and to act so as to avoid harming the child, including sexually abusing the child.

48. Defendants breached their fiduciary duties to and confidential relationships with the minor plaintiff and abused their positions of trust and confidence for personal gain and gratification.

49. Defendants' actions and / or inactions were willful, wanton and reckless and in complete indifference to or conscious disregard for rights of and the safety of others, including Plaintiff, for which punitive damages are appropriate.

50. As a direct and proximate result of the defendants' wrongful conduct, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff prays for judgment against Defendants in Count III for actual and punitive damages in amounts that are fair and reasonable, and for such other and further relief as the Court deems just, fair and proper.

COUNT IV
NEGLIGENT FAILURE TO SUPERVISE CHILDREN
AGAINST ALL DEFENDANTS

51. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded.

52. Defendants had a duty to protect students, including Plaintiff, served by their school and district.

53. Defendants undertook and accepted the care, custody and supervision of the minor Plaintiff.

54. Defendants were in a fiduciary and confidential relationship to Plaintiff.

55. Defendants knew or reasonably should have known of the sexual abuse that resulted in the sexual abuse of Plaintiff, but failed to take action to protect him.

56. Defendants School District and Hetherington stood *in loco parentis* to Plaintiff but failed to exercise that degree of care necessary to protect Plaintiff from a known harm.

57. Plaintiff's injuries are of the type that Missouri's childhood sexual abuse statutes are designed to protect against.

58. As a direct and proximate result of the defendants' wrongful conduct, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

59. Defendants' actions and / or inactions were willful, wanton and reckless and in complete indifference to or conscious disregard for rights of and the safety of others, including Plaintiff, for which punitive damages are appropriate.

WHEREFORE, Plaintiff prays for judgment against Defendants in Count IV for actual and punitive damages in amounts that are fair and reasonable, and for such other and further relief as the Court deems just, fair and equitable.

COUNT V
SCHOOL DISTRICT LIABILITY UNDER TITLE IX

60. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded.

61. The Logan-Rogersville R-VIII School District and its junior high and high schools are federally funded educational facilities.

62. The Logan-Rogersville R-VIII School District, through Defendant Hetherington and other agents and employees, had actual knowledge and notice of the sexual abuse and harassment of Plaintiff by Defendant Barrett.

63. The Logan-Rogersville R-VIII School District, through Defendant Hetherington and other agents and employees, was deliberately indifferent to the sexual abuse and harassment of Plaintiff.

64. The Logan-Rogersville R-VIII School District, through Defendant Hetherington and other agents and employees, ignored Title IX's mandate for equal educational opportunities.

65. The sexual abuse and harassment occurred in the context of an educational activity.

66. The sexual abuse and harassment had the systematic effect of depriving plaintiff of access to educational benefits or opportunities.

67. Defendant's alleged policies against sexual harassment and/or sexual abuse and its procedures or mechanisms for reporting sexual harassment and/or sexual abuse claims were inadequate or ineffective.

68. Defendant failed to supervise those persons it employed to provide education to plaintiff so as to ascertain that said occurrences were taking place and so as to prevent their repetition.

69. Defendant failed to train its employees to provide proper care, treatment, training and education to plaintiff.

70. As a direct and proximate result of the defendants' wrongful conduct, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

71. Defendants acted with evil motive or reckless indifference to Plaintiff's rights, thereby entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in Count V for actual and punitive damages in amounts that are fair and reasonable, grant such declaratory and injunctive relief as is necessary and appropriate to remedy the wrongs alleged herein, award reasonable attorneys' fees and expenses, and for such other and further relief as the Court deems just, fair and equitable.

COUNT VI
SECTION 1983 LIABILITY

72. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded.

73. Plaintiff is a citizen of the United States of America.

74. Defendant School District is a person under Section 1983 and is responsible for all official conduct by Hetherington and other agents and employees of said district.

75. As alleged herein, all conduct by Defendants occurred under color of state law.

76. All actions taken by the individual Defendants with respect to Plaintiff was in furtherance of Defendant's governmental policy regarding educational matters.

77. Plaintiff student has a constitutional right, via the Fourteenth Amendment to the U.S. Constitution, to Equal Protection of the laws and substantive and procedural Due Process.

78. Plaintiff has a protected property right to education which cannot be denied arbitrarily and capriciously or without due process of law.

79. Plaintiff has a constitutionally protected liberty interest to be free from sexual abuse in a public school.

80. Plaintiff has a constitutionally protected right to be free from arbitrary and capricious action by persons acting under color of law.

81. Plaintiff has a constitutionally protected liberty interest to be free from arbitrary and capricious actions that stigmatize him and create or disseminate a defamatory impression regarding his conduct.

82. The course of sexual harassment and sexual abuse, described herein, deprived Plaintiff of his constitutionally and federally protected rights described in the proceeding paragraphs.

83. Defendants, acting under color of state law, place Plaintiff in a position of danger that he otherwise would not have been in.

84. Defendant School District is liable for the unlawful acts of Defendants Barrett and Hetherington for depriving Plaintiff of her constitutionally and federally protected rights as described above.

85. Defendants demonstrated deliberate indifference toward Plaintiff's constitutional rights by failing to take action that was obviously necessary to prevent or stop the sexual abuse and harassment in violation of his rights under the equal protection clause and/or the due process clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

86. As a direct and proximate result of the defendants' wrongful conduct, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

87. Defendants acted with evil motive or reckless indifference to Plaintiff's rights, thereby entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in Count VI for actual and punitive damages in amounts that are fair and reasonable, grant such declaratory and injunctive relief as is necessary and appropriate to remedy the wrongs alleged herein, award

reasonable attorneys' fees and expenses, and for such other and further relief as the Court deems just, fair and equitable.

COUNT VII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST ALL DEFENDANTS

88. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded.

89. The above described conduct of Defendants was extreme and outrageous.

90. Defendants' conduct was intentional.

91. By their conduct, Defendants intentionally and recklessly caused Plaintiff severe emotional distress.

92. As a direct and proximate result of the defendants' wrongful conduct, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

93. Defendants acted with evil motive or reckless indifference to Plaintiff's rights, thereby entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in Count VII for actual and punitive damages in amounts that are fair and reasonable, and for such other and further relief as the Court deems just, fair and equitable.

COUNT VIII
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
AGAINST ALL DEFENDANTS

94. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded

95. Defendants owed the minor Plaintiff a duty to protect him from known dangers while he was in their custody and under their supervision.

96. Defendants owed the minor plaintiff a duty to control their behavior so as to avoid causing medically significant emotional distress to the Plaintiff.

97. Defendants breached their duty to plaintiff.

98. Plaintiff was in the zone of danger of Defendants' negligent actions.

99. Such negligence involved an unreasonable risk of causing emotional distress to Plaintiff.

100. Defendants knew or should have known that their actions or inactions posed a substantial risk of psychologically harming the minor plaintiff and causing him emotional distress.

101. As a direct and proximate result of the defendants' wrongful conduct, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

102. Defendants' actions and / or inactions were willful, wanton and reckless and in complete indifference to or conscious disregard for rights of and the safety of others, including Plaintiff, for which punitive damages are appropriate.

WHEREFORE, Plaintiff prays for judgment against Defendants in Count VIII for actual and punitive damages in amounts that are fair and reasonable, and for such other and further relief as the Court deems just, fair and equitable.

COUNT IX
PREMISES LIABILITY AGAINST DEFENDANT SCHOOL DISTRICT

103. Plaintiff hereby incorporates by reference each and every allegation heretofore pleaded.

104. At all times relevant, Logan-Rogersville R-VIII School District exposed its students to dangerous conditions on its premises.

105. Defendant School District and its agents and employees had a duty to protect Plaintiff from foreseeable injury as a result of the unsafe conditions located upon its premises.

106. Defendant failed to protect Student.

107. As a result of these unsafe conditions, Plaintiff was injured.

108. Defendant had the authority, right and power to control the actions of its teachers and students, and particularly, the actions of Defendant Barrett and others.

109. Defendant knew or had reason to know of the propensity or proclivity of Defendant Barrett to engage in inappropriate sexual misconduct or sexual abuse.

110. Defendant failed to exercise control or take appropriate action to supervise and monitor Defendant Barrett.

111. As a direct and proximate result of the defendants' wrongful conduct, the plaintiff has suffered, and continues to suffer significant and physically diagnosable emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; past and

future lost earnings and/or earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

112. Defendant's actions and / or inactions were willful, wanton and reckless and in complete indifference to or conscious disregard for rights of and the safety of others, including Plaintiff, for which punitive damages are appropriate.

WHEREFORE, Plaintiff prays for judgment against Defendant in Count IX for actual and punitive damages in amounts that are fair and reasonable, and for such other and further relief as the Court deems just, fair and equitable.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all issues triable in this case.

Respectfully Submitted,

RANGLES, MATA & BROWN, LLC

/s Sarah A. Brown

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