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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

JANE DOE, by and through her guardian,
SARAH DOE,

PLAINTIFF,

vs.

BEND - LA PINE SCHOOL DISTRICT 1,
an Oregon school district, **RON**
WILKINSON, individually and in his official
capacity, **PATTI CRAVEIRO**, individually
and in her official capacity, **KEN THORP**,
individually, **JEAN HILLMER**, individually,
DENICE BLAKE, individually and in her
official capacity, **DONALD SCHMALL**,
individually, and **JOHN and JANE ROE**,

Case No. CV 12-0053 TC

AMENDED COMPLAINT

(Civil Rights Violations - 42 USC 1983; Title
IX 20 USC 1681; Common Law Negligence,
Abuse of Vulnerable Person – ORS 124.100)

DEMAND FOR JURY TRIAL

Bend-La Pine Employees, individually and in their official capacities,

DEFENDANTS.

Plaintiff alleges:

1.

The claims asserted herein arise under 42 USC 1983, Title IX 20 USC 1681, Common Law Negligence, Abuse of Vulnerable Person – ORS 124.100, and Oregon common law. Jurisdiction over Plaintiff’s federal claims is conferred by 28 U.S.C. 1331. Supplemental jurisdiction over Plaintiff’s state law claims is conferred by 28 U.S.C. 1367.

2.

JANE DOE is an unemancipated adult female who at all material times has mental and cognitive disabilities and is a vulnerable person under the definition set forth in ORS 124.100(1)(e), a fact which, at all times material, Defendants knew or should have known. At all times material to this Complaint, JANE DOE was a student enrolled in the Transition Co-op program offered and conducted by Defendant Bend-La Pine School District 1 in Bend, Oregon. JANE DOE’s mother and legal guardian, SARAH DOE, brings this civil action on her daughter’s behalf.

3.

At all times material to this Complaint, Defendant Bend-La Pine School District 1 was an Oregon Public School District, authorized and chartered by the laws of the State of Oregon. At all times material, Defendant Bend-La Pine School District 1 had principals, employees, agents, or others within its control, or right of control, all of whom were acting under color of state law and within the course and scope of such position, the acts of whom Defendant Bend-La Pine

School District 1 is vicariously liable. All acts attributed to Defendant Bend-La Pine School District 1 herein were performed by said persons in said capacity.

4.

At all times material to this Complaint, Ron Wilkinson was the Superintendent of Defendant Bend-La Pine School District 1, authorized to administer the operation of schools and programs in the district, including the Transition Co-op program, and was acting under color of state law and within the course and scope of said position. Defendant Wilkinson set in motion a series of acts by others or knowingly refused to terminate a series of acts by others which he knew or reasonably should have known would cause others to inflict constitutional injury. He is sued in his individual and official capacity.

5.

At all times material to this Complaint, Patti Craveiro was the Executive Director of Special Programs for Defendant Bend-La Pine School District 1, authorized by Defendant Bend-La Pine School District 1 to control operations of special programs including the Transition Co-op program, including managing student conduct and placement of students, and was acting under color of state law and within the course and scope of said position. Defendant Craveiro set in motion a series of acts by others or knowingly refused to terminate a series of acts by others which she knew or reasonably should have known would cause others to inflict constitutional injury. She is sued in her individual and official capacity.

6.

At all times material to this Complaint, Ken Thorp was Case Manager and Special Education Teacher/Provider authorized by Defendant Bend-La Pine School District 1 to oversee students enrolled in special programs including the Transition Co-op program, and was acting

under color of state law and within the course and scope of said position. He is sued in his individual capacity only.

7.

At all times material to this Complaint, Jean Hillmer was a Special Education Teacher/Provider authorized by Defendant Bend-La Pine School District 1 to oversee students enrolled in special programs including the Transition Co-op program, and was acting under color of state law and within the course and scope of said position. She is sued in her individual capacity only.

8.

At all times material to this Complaint, Denice Blake was the Transportation Supervisor for Defendant Bend-La Pine School District 1, authorized by Defendant Bend-La Pine School District 1 to control operations of student transportation, including transportation to and from the Transition Co-op program, and was acting under color of state law and within the course and scope of said position. Defendant Blake set in motion a series of acts by others or knowingly refused to terminate a series of acts by others which she knew or reasonably should have known would cause others to inflict constitutional injury. She is sued in her individual and official capacity.

9.

At all times material to this Complaint, Donald Schmall was a bus driver for Defendant Bend-La Pine School District 1, authorized by Defendant Bend-La Pine School District 1 to transport students, some of which were transported to and from the Transition Co-op program, was acting under color of state law and within the course and scope of said position. He is sued in his individual capacity only.

10.

At all times material to this Complaint, John and Jane Roe Bend-La Pine personnel and other school officials were employees acting within the course and scope of their employment with Bend-La Pine School District. They are sued in their individual capacities. The John and Jane Roe officials are also sued in their official capacities.

11.

On or about January 13, 2011, while attending the Transition Co-op program at 2600 NE Forum Drive in Bend Oregon, JANE DOE was sexually molested by Rain Teeman (herein "Teeman"), a male fellow student in the Transition Co-op program. Teeman assaulted JANE DOE on school grounds during the school day while Teeman was subject to the school's disciplinary authority. The students were unsupervised, and the molestation was reasonably foreseeable.

12.

On or about January 13, 2011, while being transported from the Transition Co-op program to La Pine on a Bend-La Pine Schools bus, JANE DOE was again sexually molested by Rain Teeman. At the time of the assault, both students were not adequately supervised, and the molestation was reasonably foreseeable.

13.

Prior to January 13, 2011, Defendants had notice that Rain Teeman had previously sexually molested another female student enrolled in the Bend - La Pine School District 1. Defendants did not take effective remedial action against Teeman to deter future offenses, thereby emboldening him to engage in further sexual misconduct against his fellow female

students. Defendants did not put adequate measures in place to protect other students from similar molestation.

14.

One or more of the defendants sued in their individual capacity affirmatively assigned Teeman, who had a history of sexual molestation of his fellow female students, to work alone in a room unsupervised with plaintiff, thereby affirmatively placing her in a position of danger and causing her to be more vulnerable than she would have otherwise have been. In doing so, defendants acted with deliberate indifference to a known or obvious danger - Rain Teeman's predilection for sexual molestation.

15.

Defendant Donald Schmall (herein "Defendant Schmall") was the bus driver during this bus trip. Defendant Schmall affirmatively permitted Teeman to sit next to JANE DOE, knowing that Teeman had previously assaulted a female student, thereby affirmatively placing her in a position of danger and causing her to be more vulnerable than she otherwise would have been. In doing so, Defendant Schmall acted with deliberate indifference to a known or obvious danger - Rain Teeman's predilection for sexual molestation.

16.

Defendant Denice Blake failed to supervise or train Defendant Schmall regarding the supervision of mentally and cognitively impaired students to ensure their safety and failed to institute or adequately enforce policies to prevent the sexual assault of students while on transport provided by Bend-La Pine School District.

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17.

Prior to the date JANE DOE was molested, the Bend-La Pine School district was sued in an equally tragic and egregious sexual assault case in which a female student suffering from autism spectrum disorder and emotional disabilities was repeatedly sexually assaulted by her fellow students.

18.

After being previously sued and being on notice of the critical importance of providing adequate supervision of the students in their Special Education program, Defendant Bend-La Pine failed and/or refused to institute or implement effective policies for supervision of students and failed to implement effective policies and programs to deter sexual misconduct and ensure the safety of their vulnerable female students. Failing to provide or implement such policies was deliberately indifferent and/or negligent with regard to a known and obvious risk.

19.

At least in part, failure to implement one or more of the above policies was a cause of DOE's injuries.

20.

On or about January 21, 2011, SARAH DOE contacted the Bend Police Department. During an interview with police that same day, Rain Teeman confessed to sexually molesting JANE DOE as well as a previous sexual molestation of another female Bend-La Pine School District 1 student.

21.

As a result of Defendants' said acts and omissions alleged herein, JANE DOE suffered physical and emotional injuries, all to her general damage in an amount to be determined by a jury at trial, as well as reasonable and necessary therapy and education expenses.

22.

Defendants knew or should have known that their actions would put JANE DOE in a danger she would not otherwise have faced and made her more vulnerable to sexual harassment and misconduct. Their conduct was wanton, reckless and in conscious disregard of JANE DOE's well-established constitutional and state rights. As such, JANE DOE is entitled to recover punitive damages from Defendants in an amount to be determined at the time of trial. Defendant Bend-La Pine ratified the misconduct of its employees by failing to discipline them or take adequate remedial action, once it learned of the employee's misconduct.

23.

As discovery in this civil rights action reveals, plaintiff will seek in an amended complaint to add the true names of any John and Jane Roe defendants who may be determined to have caused constitutional violations.

FIRST CLAIM FOR RELIEF

(Civil Rights Violations – 42 U.S.C. 1983 – 14th Amendment Due Process Violation)

24.

JANE DOE realleges and reaffirms paragraphs 1 – 23 above.

25.

By deliberately assigning a known sexual molester to work unsupervised with plaintiff, one or more of the individual Defendants acted with indifference to the danger they were creating and caused JANE DOE to be more vulnerable to harassment and sexual molestation than she otherwise would have been. The same individual defendant(s) acted with deliberate indifference when they engaged in this conduct. This conduct violated JANE DOE's

Constitutional rights of Substantive Due Process under the 14th Amendment of the United States Constitution.

26.

As a result of Defendants' violations of her 14th Amendment Due Process rights, JANE DOE suffered severe emotional and psychological damage, as well as economic damage, as alleged in Paragraph 21 above.

27.

JANE DOE is entitled to recover her reasonable costs and attorney fees pursuant to 42 U.S.C. 1988.

SECOND CLAIM FOR RELIEF

(Civil Rights Violations – 42 U.S.C. 1983 – 14th Amendment Due Process Violation - *Monell*)

28.

JANE DOE realleges and reaffirms paragraphs 1 – 27 above.

29.

Defendant Bend-La Pine's policies or lack of policies in the face of known or obvious dangers and their conduct as described above, caused, or otherwise makes them liable for the violation of JANE DOE's Constitutional rights of Substantive Due Process under the 14th Amendment of the United States Constitution.

THIRD CLAIM FOR RELIEF

(Title IX – 20 USC §1681 et seq.)

30.

JANE DOE realleges and reaffirms paragraphs 1 – 23 above.

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31.

Bend-La Pine School District is a public education school district and the recipient of federal funding.

32.

Defendant Bend-La Pine School District and the individual defendants in their roles as public officials acting on behalf of the district had knowledge that Teeman had previously sexually molested another female student, and it was reasonably foreseeable that he would do so in the future.

33.

Defendant Bend-La Pine School District had previously been sued for failing to intervene to stop abuse of female special education students by their male peers, yet failed to institute appropriate safeguards to ensure the safety of their female special education students from sexual assault and/or molestation and failed to handle prior complaints and/or instances of sexual molestation in an effective and appropriate manner that would deter future harassing behavior and/or sexual molestation or abuse. Defendants did not put adequate measures in place to protect other students from similar molestation. Their failure to act perpetuated an environment where sexual molestation and misconduct was permitted, condoned, and sanctioned by the District.

35.

Defendant Bend-La Pine School District exercised substantial control over Rain Teeman and the school environment in which the harassment occurred.

36.

Defendant Bend-La Pine School District's conduct and violations of plaintiff's guaranteed rights and benefits of education cause her harm in the form of severe emotional

trauma, humiliation, mood swings, loss of trust, frustration, anxiety, emotional pain and mental anguish, loss of enjoyment of life and is therefore entitled to compensatory damages in an amount to be determined by a jury.

37.

Plaintiff is entitled to an award of attorneys' fees, expert fees and costs incurred herein.

38.

The sexual molestation of plaintiff was a direct result of the hostile environment maintained and perpetuated by defendants and caused her to be deprived of access to educational opportunities and benefits provided by the school.

FOURTH CLAIM FOR RELIEF

(Common Law Negligence)

39.

JANE DOE realleges and reaffirms paragraphs 1 – 23 above.

40.

This is a suit of damages arising out of negligence on the part of Defendants in failing their duty to protect a person in their care. Defendants' duty of care encompasses protecting students from assault and sexual molestation by classmates known to have propensities to commit such acts, including Rain Teeman, which Defendants knew or should have known.

41.

Defendants breached their duty of care, and were thus negligent, by not protecting JANE DOE from Rain Teeman by way of appropriate adult supervision and/or physically separating the two, which constituted an unreasonable and foreseeable risk of sexual molestation and injury to JANE DOE.

42.

JANE DOE's psychological injury and emotional harm arose directly out of Defendants' failure to prevent the sexual molestation of JANE DOE by Rain Teeman.

43.

Plaintiff gave Defendants timely written notice of her state law claims and has satisfied the notice requirement of the Oregon Tort Claims Act. The limits under the Oregon Tort Claims Act are insufficient to compensate JANE DOE for the harm caused to her.

FIFTH CLAIM FOR RELIEF

(ORS 124.100 – Abuse of Vulnerable Person)

44.

JANE DOE realleges and reaffirms paragraphs 1 – 23 above.

45.

At all material times, JANE DOE was a vulnerable person within the meaning of ORS 124.100(1)(e) in that she was incapacitated and/or susceptible to force, threat, duress, coercion, persuasion, or physical or emotional injury because of her physical and/or mental impairment.

46.

As described herein, Defendants permitted, and are liable for, the acts of physical molestation and abuse upon JANE DOE, a vulnerable person.

47.

As a result of the above-described conduct of Defendants, JANE DOE has suffered psychological injury and emotional harm as alleged herein.

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48.

Under ORS 124.100, Plaintiff is entitled to her statutory damages and reasonable attorneys' fees and costs of litigation, including her expert witness fees.

49.

Plaintiff gave Defendants timely written notice of her state law claims and has satisfied the notice requirement of the Oregon Tort Claims Act. The limits under the Oregon Tort Claims Act are insufficient to compensate JANE DOE for the harm caused to her.

WHEREFORE, Plaintiff prays for relief from the Court as follows:

1. Assume jurisdiction in this matter over Plaintiff's claims;
2. Award economic and non-economic damages against Defendants in the amount the jury determines to be reasonable;
3. Award Plaintiff her reasonable attorneys' fees in accordance with the allegations set forth above;
4. Award Plaintiff punitive damages in accordance with the allegations set forth above;
5. Award Plaintiff treble damages pursuant to ORS 124.100 in accordance with the allegations set forth above;
6. Award Plaintiff pre-judgment and post-judgment interest as appropriate and allowed by law;

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7. Award Plaintiff her costs and disbursements incurred herein in accordance with the allegations set forth above; and
8. For any other relief the Court deems appropriate.

Dated: February 3, 2012.

DWYER WILLIAMS POTTER
ATTORNEYS, LLP

CREIGHTON & ROSE, PC

By: /s/ Beth Creighton
Tim Williams, OSB No. 03494
Beth Creighton, OSB No. 97244
Michael E. Rose, OSB #75322
Of Attorneys for Plaintiff
Trial Attorney: Same