

Rec# 5873-AA

UNITED STATES OF AMERICA
IN THE DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

DAVID PATTERSON and DENA PATTERSON
as next friend of their minor child DANE PATTERSON.,

Plaintiff,

Case No. **05-74439**

v

Honorable **LAWRENCE P. ZATKOFF**
MAGISTRATE JUDGE SCHERER

HUDSON AREA SCHOOLS and
KATHY MALNAR, jointly and severally,

Defendant.

TERRY E. HEISS, P.C. (P36687)
Attorney for Plaintiff
6440 East Fulton, Suite 201
Ada, Michigan 49301
(616) 676-3850

COMPLAINT

JURY DEMAND

PREPARED BY:

TERRY E. HEISS, P.C.
Attorney for Plaintiff

By: Terry E. Heiss (P-36687)
6440 East Fulton Street, Suite 201
Ada, Michigan 49301
616-676-3850

FILED
2005 NOV 22 A 10:05
U.S. DIST. COURT CLERK
EAST DIST. MICH
ANN ARBOR

FILED

NOV 22 2005

CLERK'S OFFICE
U.S. DISTRICT COURT
ANN ARBOR, MI

UNITED STATES OF AMERICA

IN THE DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

DAVID PATTERSON and DENA PATTERSON
as next friend of their minor child D.P.,

Plaintiff,

Case No.

v

HON.

HUDSON AREA SCHOOLS and
KATHY MALNAR, jointly and severally,

Defendant.

COMPLAINT

NOW COMES the Plaintiffs by and through their attorney, Terry E. Heiss, and hereby
Complain against the Defendants as follows:

I. PARTIES

1. Plaintiffs are residents of the City of Hudson, County of Lenawee, State of Michigan and this judicial district.
2. Plaintiffs are also residents of a geographic area in which is located the Hudson Area Schools (Defendant District).
3. That Plaintiffs are the parents of D.P., a minor child.
4. Defendant Hudson Area Schools is a quasi municipal corporation created pursuant to the law of the State of Michigan.

5. Defendant Kathy Malnar is the Superintendent of Schools for the Hudson Area Schools.

II. JURISDICTIONAL ALLEGATIONS

6. Plaintiffs claims in part are based upon Title IX of the Educational Amendments of the Civil Rights Act, being 20 U.S.C. §1331 and §1343 (3), (4) and 42 U.S.C. §1983.
7. Jurisdiction for the claims referenced in paragraph 6 above vests in this Honorable Court pursuant to 28 U.S.C. §1331 and §1343(3), (4) and 42 U.S.C. §1983 and §1988.

III. FACTUAL ALLEGATIONS

8. That at all relevant times related to this complaint, D.P. has been enrolled as a student in the Defendant District.
9. That from on or about the 2002-2003 academic school year, D.P. became the subject of harassment by students and teachers at Hudson Area Schools including, but not limited to taunting, teasing, and bullying to such a degree that said D.P. became anxious, upset, depressed, and socially withdrawn.
10. That some of the harassment experienced by D.P. included sexually oriented statements and acts including being called:
 - a. "gay"
 - b. "a fag"
 - c. "faggot"
 - d. "fat pig"

11. That some of the harassment experienced by D.P. included physical assaults, such as being slammed into locker while walking down the hall and being slapped in the face by other students.
12. That the type of harassment referenced above continued in the academic years 2003-2004 and 2004-2005.
13. As a result of the ongoing harassment experienced by D.P., he continued to socially withdraw, became afraid of the school environment, progressed poorly in school and experienced other negative aspects of harassment.
14. That during the 2004-2005 school year D.P. experienced:
 - a. The destruction of his locker;
 - b. continued taunts and remarks of sexually oriented and graphic content, including paint on his locker;
 - c. someone urinating on his clothes and shoes while placed in his gym locker;
 - d. false imprisonment and sexual assault.
15. That on one or more occasions throughout the above referenced multiple academic years, Plaintiffs informed the Defendants and/or their agents of the harassment of their son, D.P., including but not limited to the following:
 - a. That during the 2002-2003 academic year, Plaintiffs, on behalf of D.P., repeatedly contacted and discussed with teachers and/or administrative staff the teasing, bullying, and harassment being experienced by D.P. on the premises maintained

and operated by Defendant Hudson Area Schools;

- b. That during the 2003-2004 academic year, Plaintiffs, on behalf of D.P., repeatedly contacted, met with and discussed with teachers and/or administrative staff the teasing, bullying, and harassment being experienced by D.P. on the premises maintained and operated by Defendant Hudson Area Schools, including in person meetings specifically called to discuss these issues;
 - c. That during the process of reviewing D.P.'s situation for possible eligibility for special education services, Plaintiffs discussed with and made agents of the Defendant Hudson Area Schools aware of the teasing, bullying, and harassment being experienced by D.P. on the premises maintained and operated by Defendant Hudson Area Schools, the impact of such acts on D.P.'s emotional and academic well being, and the need to address these issues, which were referenced in written form in the records of the Defendant Hudson Area Schools in its records, including but not limited to the July 24, 2003 Psychological Evaluation report prepared by or on behalf of the Defendant Hudson Area Schools;
 - d. That during the 2004-2005 academic school year, the Plaintiffs made agents of the Defendant Hudson Area Schools aware of the continuing and ongoing teasing, bullying, and harassment being experienced by D.P. on the premises maintained and operated by Defendant Hudson Area Schools, as well as the continued negative impact on D.P.'s ability to learn and function in the school environment.
16. That on one or more occasions, agents of the Defendants knew the identity of the

perpetrators of the harassment and either (1) took no corrective action, or (2) took minimal action, contrary to the written policies of the Hudson Area Schools and/or applicable state and/or federal law.

17. That the Defendant District's knowledge of the harassment of D.P. is well documented in the records, including the special education file of D.P.
18. That the harassment and physical assaults experienced by D.P. were offensive, unwanted and interfered with his educational environment and deprived D.P. of the educational opportunities or benefits provided by the Defendant District.
19. That in response to acts or updates of harassment and assault, teachers and/or administrators:
 - a. made comments such as "how does it feel to get hit by a girl?";
 - b. made comments indicating their belief that what D.P. experienced was his fault;
 - c. took only minimal disciplinary action contrary to the policies of the Hudson Area Schools and/or applicable law;
 - d. made comments to the perpetrator(s) that, if they were going to tease someone, pick on someone who can take it; and
 - e. discouraged the filing of a criminal complaint after the sexual assault of last spring.
20. That Defendants, collectively and by their agents, have condoned student-on-student sexual and physical harassment in the past, displaying a propensity to down play the acts, blaming the victims, inadequately investigating allegations and minimizing the severity

by little or no punitive sanctions against perpetrators, even to the point of violating their own policies, procedure and/or state law or federal law.

21. That Defendants acted under color of state law when they acted with actual knowledge and deliberate indifference to sexual, physical and verbal harassment and/or discrimination suffered by D.P. in violation of his Title IX right to be free from discrimination.
22. That Defendant District is an educational institution which, Plaintiffs believe is the recipient of federal funds and is subject to Title IX private causes of action.
23. That Defendant District had adequate notice that it could be liable for the conduct at issue, as evidenced by its policies which prohibit the act(s) at issue herein.
24. That the acts of harassment and assault experienced by D.P. were severe, pervasive, persistent, and objectively offensive.
25. That as a direct and proximate cause of the acts and/or omission of Defendants and/or their agents D.P. has been denied access to the educational opportunities or benefits provided by Defendant District.
26. That as a direct and proximate cause of the acts and or omissions of Defendants, D.P. suffered embarrassment, humiliation, fear of retaliation, intimidation, breach of trust, anxiety, depression, pain and suffering in an amount to be proven at trial; such amount which is alleged to be at least \$500,000.00, together with award of costs, interests and attorney fees as allowed by law.

IV. FEDERAL CLAIMS

27. Plaintiffs incorporate by referenced paragraphs one (1) through 26 as if fully restated herein.
28. That Defendants are liable to Plaintiff under Title IX of the Educational Amendments of the Civil Rights Act, being 20 U.S.C. §1681 and 42 U.S.C. §1983.
29. That Defendants are liable to the Plaintiffs for violation of the equal protection rights of D.P. by failing to take decisive and appropriate remedial measures against known perpetrators of the offensive harassment, said failure being deliberate and intentional.
30. That Defendant Malnar is liable to the Plaintiffs based upon the fact that she failed to implement and enforce meaningful procedures to ensure compliance with federal law and the policies of Defendant District and failed to ensure the proper education and training of staff as to harassment issues.

V. PENDENT STATE CLAIMS

31. Plaintiffs incorporate by reference paragraphs one(1) through 30, as if fully restated herein. That the Court has jurisdiction over state law claims vests supplemental jurisdiction to hear related state law claims.

A. INTENTIONAL INFLICTING EMOTIONAL DISTRESS

32. That act(s) and/or deliberate omission(s) by the Defendants/or their agents as to their failures to protect, prevent and properly punish the perpetrator(s) of harassment, including

staff, against D.P. was and is extreme and outrageous conduct.

33. That the action(s) and/or omission(s), including failure to persistently and consistently enforce its policies against harassment and assaults was the result of a deliberate administrative decision and/or the reckless disregard by Defendant Malnar and other administrators for the safety and rights of students, including D.P..
34. That as a direct and proximate cause of the action(s) and/or deliberate omission(s) of Defendants, D.P. suffered, among other things, severe emotional distress, including but not limited to anxiety, stress, fear of the school environment, nausea and more.
35. That Plaintiffs, on behalf of D.P., are entitled to recover damages, which Plaintiffs claim as to this claim in the amount of \$500,000.00, together with award of costs, interests and attorney fees as allowed by law.

B. GROSS NEGLIGENCE

36. That at all relevant times, the Defendants owed a duty to provide a safe and appropriate environment for D.P. to learn and to benefit from the benefits provided by a public school education.
37. That the Defendants failed to provide a safe and appropriate environment for D.P. as outlined previously in this Complaint.
38. That the failure to provide a safe environment for D.P. is or was the result of conduct so reckless as to demonstrate a substantial lack of concern for whether injury would result to D.P.


39. That as a direct and proximate cause of the actions and/or deliberate omissions of Defendants, D.P. suffered, among other things, severe emotional distress.
40. That Plaintiffs, on behalf of D.P., are entitled to recover damages, which Plaintiffs claim as to this claim in the amount of \$500,000.00, together with award of costs, interests and attorney fees as allowed by law.

WHEREFORE those Plaintiffs respectfully request entry of a judgment on behalf of D.P. in their favor and against the Defendants jointly and severally in the amount of \$500,000.00, together with cost, interest and attorney fees as allowed by law.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues.

Dated: 11/21/2005



Terry E. Heiss (P36687)
Attorney for Plaintiffs
6440 East Fulton Street, Suite 201
Ada, Michigan 49301
(616) 676-3850

Approved and verified for accuracy

Dated: 11-18-05

D. B. Patt
David Patterson

Dated: 11-18-05

Dena Patterson
Dena Patterson

STATE OF MICHIGAN)
)ss
COUNTY OF Lenawee)

The foregoing instrument was subscribed and sworn to before me this 18th day of November 2005.

Joyce C. Chase
Joyce C. Chase NOTARY PUBLIC
Lenawee County, Michigan
My commission expires: 6-1-2012
Acting In Lenawee County, Michigan

Zetkoff 74439 Schoen

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 David Patterson
 Dena Patterson

(b) County of Residence of First Listed Plaintiff Lenawee
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Terry E. Heiss, 6440 East Fulton St., Ste 201, Ada, MI 49301
 616-676-3850

DEFENDANTS
 Hudson Area Schools
 Kathy Malnar

05-74439

County of Residence of First Listed Defendant Lenawee
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
LAWRENCE B. ZATKOFF

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question U.S. Government Not a Party

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1331

Brief description of cause: Title IX Civil Rights action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 500,000.00

CHECK YES only if demanded in complaint
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 11/21/2005

SIGNATURE OF ATTORNEY OF RECORD
Terry E. Heiss P36682

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes

No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes

No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
