

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

JANE DOE, individually and as mother)
and next friend, of JOHN DOE)
Plaintiffs)

COMPLAINT

v.)

JURY TRIAL DEMANDED

CITY OF LOWELL, NORTH)
READING-LYNNFIELD TAXI, INC.,)
MARY MOEs 1-5, and MICHAEL)
MOEs 1-5,)
Defendants)

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2/18/2022 HG

INTRODUCTION

1. This action against CITY OF LOWEL, NORTH READING-LYNNFIELD TAXI, INC., MARY MOEs 1-5, and MICHAEL MOEs 1-5 arises out of incidents in which minor Plaintiff JOHN DOE—a student in the LOWELL Public School District—was sexually assaulted on multiple occasions on a school bus operated by NORTH READING-LYNNFIELD TAXI, INC. Plaintiffs seek relief through various statutory and common law tort claims.

PARTIES

2. Plaintiff JANE DOE brings this lawsuit on her own behalf as well as the behalf of her minor son, JOHN DOE (“JOHN”). They are individuals residing in Middlesex County, Massachusetts.

3. Defendant CITY OF LOWELL (“LOWELL”) is a municipality of the Commonwealth of Massachusetts with its administrative offices located at 375 Merrimack Street, Lowell, Middlesex County, Massachusetts.

4. Defendant NORTH READING-LYNNFIELD TAXI, INC. (“NRT BUS”) is a for-profit

corporation, with principal offices at 230 Main Street, North Reading, Middlesex County, Massachusetts.

5. Defendants MARY MOEs and MICHAEL MOEs, are individuals whose true names are currently unknown to Plaintiffs, but during all relevant times were employees of CITY OF LOWELL and/or NORTH READING-LYNNFIELD TAXI, INC.

FACTS COMMON TO ALL COUNTS

6. LOWELL is responsible for the administration of the Lowell Public School District.
7. McAvinnue Elementary School is a school within the Lowell Public School District.
8. At relevant times and in the actions described in this Complaint, LOWELL employees were acting under the color of law, under the color of their authority as McAvinnue Elementary School employees, and within the scope of their employment with the CITY OF LOWELL.
9. At all times relevant to this action, JOHN was a student at McAvinnue Elementary School.
10. At all times relevant to this action, NRT BUS transported children to and from McAvinnue Elementary School, pursuant to a contract with the CITY OF LOWELL.
11. In the spring of 2018, then-8-year-old JOHN took the Number 6 Bus—operated by Defendant NRT BUS—to and from school each day.
12. The Number 6 Bus was a large yellow school bus that, despite transporting a number of small children, was not staffed with a bus monitor.
13. Another student on the bus, then-10-year-old ROBERT ROE, sexually abused Plaintiff JOHN during these bus rides.

14. The abuse occurred on nearly a daily basis for a period of several months during spring 2018.
15. Acts of abuse inflicted upon Plaintiff JOHN by ROBERT ROE included punching and forcefully grabbing and twisting Plaintiff JOHN's penis.
16. These assaults were so forceful that Plaintiff JOHN's penis became swollen.
17. During this period of time, ROBERT ROE abused other children on the NRT BUS as well.
18. On May 22, 2018, the abuse of Plaintiff JOHN ended when, upon learning of ROBERT ROE's abuse, Plaintiff JANE DOE reported the abuse to LOWELL.
19. In response, the school social worker assured Plaintiff JANE DOE that ROBERT ROE would not be permitted on the bus anymore.
20. In reliance on these assurances, Plaintiff JANE DOE continued to place Plaintiff JOHN on the NRT BUS.
21. About one week after the abuse ended, however, Plaintiff JANE DOE learned that ROBERT ROE continued to ride the same NRT BUS as Plaintiff JOHN, placing him at risk for further abuse and continuing to traumatize Plaintiff JOHN by forcing him to continue to see his abuser in the same setting where the abuse took place.
22. JOHN saw ROBERT ROE on the school bus and at school.
23. JOHN was afraid of ROBERT ROE and could not even look at him.
24. When Plaintiff JANE DOE contacted the Defendant CITY OF LOWELL's school district office about ROBERT ROE's presence on the bus, she was told ROBERT ROE would continue to ride the bus.

25. Further, the Defendant CITY OF LOWELL official told Plaintiff JANE DOE that “there was nothing they could do” to keep Plaintiff JOHN and ROBERT ROE separated.
26. Plaintiff JANE DOE contacted NRT about ROBERT ROE’s presence on the bus and was also told they could not place ROBERT ROE and Plaintiff JOHN on separate buses.
27. To protect Plaintiff JOHN, Plaintiff JANE DOE drove Plaintiff JOHN to and from school so that he would not be on the bus with ROBERT ROE.
28. As a result of the abuse and the defendants’ response, Plaintiff JOHN suffered physical injuries and severe emotional distress, requiring medical assistance and mental health treatment.
29. Plaintiff JOHN missed school to receive treatment for the abuse.
30. Plaintiff JOHN was diagnosed with PTSD and Anxiety.
31. Because of the abuse, Plaintiff JOHN no long wants to go to school and his grades have suffered.
32. Since the time of the abuse and continuing to the present, Plaintiff JOHN struggles in his relationships with his peers, suffers from emotional distress, and suicidal ideation.

COUNT 1
Claim for Negligence Under Mass. Gen. L. c. 258 § 2
Against Defendant CITY OF LOWELL

33. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
34. Defendant CITY OF LOWELL owed a duty to exercise reasonable care for the protection of JOHN DOE’s emotional well being.

35. Based on the conduct described above, Defendant CITY OF LOWELL was aware or should have been aware that forcing JOHN DOE to ride the same school bus as his abuser would retraumatize JOHN DOE and cause severe emotional distress.
36. Defendant CITY OF LOWELL breached that duty by forcing JOHN DOE see his abuser every day on the school bus.
37. Presentment of this claim is not required pursuant to Massachusetts General Laws, Chapter 258 §4, as amended by Chapter 145 of the Acts of 2014, section 1.
38. By its actions, Defendant CITY OF LOWELL is the direct and proximate cause of the emotional distress endured by JOHN DOE.
39. Defendant CITY OF LOWELL is not immune from liability for negligence pursuant to Mass. Gen. L. c. 258 § 10(j)(1) because CITY OF LOWELL staff made specific assurances of safety and assistance to Plaintiff JOHN DOE's mother.

COUNT 2
Loss of Consortium Claim
Against Defendant CITY OF LOWELL

40. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
41. As a direct result of the negligence of Defendant CITY OF LOWELL, Plaintiff JANE DOE has incurred necessary expenses for the medical care and treatment of the minor plaintiff, JOHN DOE, and Plaintiff JANE DOE has suffered the loss of love, care, affection, services and parental consortium of the said minor plaintiff, and other consequential damages.

COUNT 3
Claim for Violation of Plaintiff's Rights Under 20 U.S.C. §§1681-1686 (Title IX)
Against Defendant CITY OF LOWELL

42. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
43. Defendant CITY OF LOWELL violated the plaintiff's rights as a resident of the United States under 20 U.S.C. §§1681-1686.
44. Defendant CITY OF LOWELL is an educational institution as defined by 20 U.S.C.A. § 1681(c), Title IX, Education Amendments of 1972 (hereinafter "Title IX") which receives federal financial assistance.
45. Defendant CITY OF LOWELL is a public entity and, through its public school system, maintains educational institutions, which plaintiff believes and therefore avers, receive federal assistance.
46. At all relevant times, Defendant CITY OF LOWELL, through its public school system, owned, operated, maintained, managed, supervised, and controlled, by and through its agents, servants, and employees, McAvinnue Elementary School.
47. Defendant CITY OF LOWELL receives federal funds through a variety of educational programs. As a result, even if it were not obliged to do so under state law, Defendant CITY OF LOWELL was required to adopt and implement sexual harassment policies under Title IX.
48. Plaintiff JOHN DOE was a student who was subjected to harassment based on his gender. This harassment was sufficiently severe and pervasive to create an abusive educational environment and persisted as a result of the deliberate indifference of staff at every level of authority.

49. The sexual harassment and abuse endured by plaintiff JOHN DOE at McAvinnue Elementary School, effectively denied Plaintiff JOHN DOE equal access to educational resources, benefits, and opportunities.
50. Defendant CITY OF LOWELL's actions altered and worsened the condition of Plaintiff JOHN DOE's educational environment.

COUNT 4
Strict Liability Claim Against
Against Defendant NORTH READING-LYNNFIELD TAXI, INC.

51. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
52. Defendant NORTH READING-LYNNFIELD TAXI, INC. as a common carrier engaged in the performance of its contract for service of carriage of the children, was strictly liable and liable absolutely for its conduct resulting in damages to the minor plaintiff. As such, the liability is strict and imposed regardless of negligence.
53. As a result of defendants' actions and inactions, the plaintiff was sexually molested and otherwise abused while in Defendant NORTH READING-LYNNFIELD TAXI, INC.'s bus on his way to and from school, and was damaged physically and psychologically as a result.

COUNT 5
Negligence Against
Against Defendant NORTH READING-LYNNFIELD TAXI, INC.

54. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.

55. Defendant NORTH READING-LYNNFIELD TAXI, INC. owed a duty to exercise reasonable care for the protection of JOHN DOE against misconduct and inappropriate conduct and/or contact.
56. Based on the conduct described above, Defendant NORTH READING-LYNNFIELD TAXI, INC. was aware or should have been aware that ROBERT ROE was sexually assaulting children on the school bus, including Plaintiff JOHN DOE.
57. Defendant NORTH READING-LYNNFIELD TAXI, INC. breached that duty by failing to protect Plaintiff JOHN DOE from sexual abuse by an older passenger.
58. By its actions, Defendant NORTH READING-LYNNFIELD TAXI, INC. is the direct and proximate cause of the emotional distress endured by JOHN DOE.

COUNT 6
Breach of Contract
Against Defendant NORTH READING-LYNNFIELD TAXI, INC.

59. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
60. Defendants CITY OF LOWELL and NORTH READING-LYNNFIELD TAXI, INC. had a contractual relationship for the transportation of children to and from public school. Such contract was formed on the one hand by Defendant CITY OF LOWELL's payment, and on the other by the transportation of students by Defendant NORTH READING-LYNNFIELD TAXI, INC.
61. Plaintiffs JANE DOE and JOHN DOE were beneficiaries of this contract between the defendants.

62. Plaintiffs JANE DOE and JOHN DOE had a reasonable expectation that Defendant NORTH READING-LYNNFIELD TAXI, INC. would adhere to the terms of such contract.
63. By its actions, Defendant NORTH READING-LYNNFIELD TAXI, INC. breached its contract when it failed to provide Plaintiff JOHN DOE with safe transportation to and from school.
64. Defendant NORTH READING-LYNNFIELD TAXI, INC.'s breach is the direct and proximate cause of the abuse endured by JOHN DOE.

RELIEF REQUESTED

Wherefore, the plaintiffs demand judgment against the defendants on each of the Counts, in an amount to be determined by a jury, as compensatory damages, and as punitive damages where appropriate, plus costs, interests, and attorney's fees.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL COUNTS.

The Plaintiffs,
By Their Attorneys,

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