

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JANE JONES No. 90,
Plaintiff

v.

FREETOWN LAKEVILLE
REGIONAL SCHOOL DISTRICT
and GILBERT HERNANDEZ,
Defendants

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C. A. No.

JURY TRIAL DEMANDED

COMPLAINT

INTRODUCTION

1. This action against the FREETOWN LAKEVILLE REGIONAL SCHOOL DISTRICT arises out of a series of incidents in which the plaintiff, a 14 year old student in the Freetown Lakeville Middle School, was groomed, sexually harassed, assaulted and raped by GILBERT HERNANDEZ, a teacher in that school, because the school's teachers and administrators knew, or should have known, that he had a history of student sexual assaults, but took no action to protect students from him, pursuant to their obligations under Title IX, 20 U.S.C. § 1681, and Mass. G.L. c. 151C, § 2 (g), and further, failed to file any reports, pursuant to Mass. G.L. c. 119, § 51A.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331, as this civil action arises under the laws of the United States of America.
3. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(b)(2), because the events giving rise to this claim occurred within this District.

PARTIES

4. Plaintiff is an individual who resides in Bristol County and brings this action in the name JANE JONES No. 90 ("JANE"). She is identified in a separate Affidavit which will be served upon the defendants.
5. Defendant FREETOWN LAKEVILLE REGIONAL SCHOOL DISTRICT ("FREE-LAKE") is a regional school district within the Commonwealth of Massachusetts, formed pursuant to G.L. c. 71, § 14, with an usual place of business at 98 Howland Road, Lakeville, Plymouth County, Massachusetts.
6. Defendant GILBERT HERNANDEZ ("HERNANDEZ") is an individual in the custody of the Massachusetts Department of Corrections, NCCI Gardner, 500 Colony Road, Gardner, Worcester County, Massachusetts.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff brings this action pursuant to Massachusetts General Laws, Chapter 260, §§4C & 4C½, as amended by Chapter 145 of the Acts of 2014.
8. At all times relevant to this action defendant FREE-LAKE, through its School Department, was responsible for the operations and administration of the Freetown Lakeville Middle School (the "Middle School"), and employed the defendant HERNANDEZ.
9. At all times relevant to this action, defendant HERNANDEZ was employed by defendant FREE-LAKE as a teacher at the Middle School in Lakeville.
10. At all relevant times and in all actions described in this Complaint, defendant FREE-LAKE's employees, including, without limitation, defendant HERNANDEZ, were acting under the color of law, under color of their authority as members of the

FREE-LAKE School District, and within the scope of their employment with FREE-LAKE.

11. The FREE-LAKE School District Mission Statement states the “School District exists to provide all children with a safe haven to develop intellectually, emotionally, artistically, socially and athletically in an environment that stresses tolerance and understanding”, and it is “mindful of our responsibility to establish an ethical approach to learning in all of our students.”
12. The Middle School Handbook contains the FREE-LAKE District Sexual Harassment Policy which purports to comply with the requirements of Title IX, and states:

“Freetown-Lakeville is committed to maintaining an educational atmosphere in which each and every student can pursue scholastic achievement and personal fulfillment. Sexual harassment is a destructive behavior that interferes with the educational process and **will not be tolerated**. Sexual harassment is a violation of an individual’s right to privacy and personal dignity.” (Emphasis added).
13. At all times relevant to this action, plaintiff JANE was a student at the Middle School.
14. At all times relevant to this action, defendant FREE-LAKE and its employees were each Mandated Reporters who had a duty, under G.L. c. 119, §51A, to report all instances of sexual abuse of students at FREE-LAKE to the Massachusetts Department of Children and Families, or a law enforcement agency.
15. Plaintiff JANE was attending the Middle School during 2018, when she was fourteen (14) years old.
16. In 2018, defendant HERNANDEZ, was 53 years old, married, with two young children.
17. In 2018, defendant HERNANDEZ was a substitute teacher and a faculty advisor for

the Art Club at the Middle School.

18. Defendant HERNANDEZ was JANE's art teacher while she attended the eighth grade at the Middle School.
19. Defendant HERNANDEZ began grooming JANE when she was 14 years old, singling her out for special attention, praise and constant compliments.
20. Defendant HERNANDEZ showed JANE preferential treatment in Art Club, and other classes in which he substituted.
21. Defendant HERNANDEZ would often talk to JANE about his life, and other personal subjects.
22. Defendant HERNANDEZ would give JANE gifts. He gave her his credit card to send items to an old address because he was able to intercept them as a post office worker. He gave JANE the intercepted packages in bags at school.
23. Defendant HERNANDEZ gave JANE notes in school, to let her know he had gifts for her and which room they would be in. Then she would go to that room where HERNANDEZ was teaching and pick up the gift.
24. At a school dance defendant HERNANDEZ texted JANE to stop dancing with her female friend because he was jealous. So JANE had to sit alone at the table next to HERNANDEZ where he was standing at the entrance as a chaperone.
25. Defendant HERNANDEZ would constantly take pictures of JANE at the Middle School. See Exhibit A (redacted).
26. Defendant HERNANDEZ sexually harassed, assaulted and raped JANE on multiple occasions during 2018, including some of which occurred in the Middle School classrooms.

27. Defendant HERNANDEZ's special focus, inappropriate attention, and persistent boundary violations were open, obvious, and readily observed by students and teachers.
28. In fact, one student reported her concern to FREE-LAKE teachers that defendant HERNANDEZ was getting too close to JANE.
29. JANE learned about this from a text which defendant HERNANDEZ sent to her:

“mr. McMahon asks about me playing favorites with you. The next day mr. Patota pulls me aside on my way in and tells me why McMahon said that. Because some student had said that They were worried that since you had social anxiety I was taking advantage of you. I explained who you were to me. And how long I knew you and he said ok. It's just that *if I wanted to pursue a career here I had to protect my reputation*. Then he gave me an example of some one else who had been likewise warned.” (Emphasis added).
30. No further investigation was made, and no other action was taken, by FREE-LAKE teacher Mr. McMahon.
31. No further investigation was made, and no other action was taken, by FREE-LAKE teacher Mr. Patota.
32. Neither FREE-LAKE teacher Mr. McMahon, nor FREE-LAKE teacher Mr. Patota, ever spoke with JANE about defendant HERNANDEZ.
33. Neither FREE-LAKE teacher Mr. McMahon, nor FREE-LAKE teacher Mr. Patota, ever spoke again to defendant HERNANDEZ about JANE.
34. Neither FREE-LAKE teacher Mr. McMahon, nor FREE-LAKE teacher Mr. Patota, ever spoke to other FREE-LAKE teachers or administrators about defendant HERNANDEZ's interactions with JANE.
35. Although they were both mandated reporters, neither FREE-LAKE teacher Mr.

McMahon, nor FREE-LAKE teacher Mr. Patota, ever filed a report about defendant HERNANDEZ's conduct with JANE under G.L. c. 119, § 51A.

36. After FREE-LAKE teacher Mr. McMahon, and FREE-LAKE teacher Mr. Patota, spoke with defendant HERNANDEZ, he continued to teach in the Middle School.
37. After FREE-LAKE teacher Mr. McMahon, and FREE-LAKE teacher Mr. Patota, spoke with defendant HERNANDEZ, he continued to sexually harass, assault and rape JANE for the remainder of the school term.
38. These assaults by defendant HERNANDEZ occurred at the Middle School over a long period of time, and were readily observable.
39. JANE's distress was obvious, because she was having problems concentrating, was becoming ill, and had visible emotional episodes.
40. No FREE-LAKE employees, who were mandated reporters, made any report of this information to the Department of Children and Families or the Lakeville Police Department, despite the requirement to do so under G.L. c. 119, § 51A.
41. By these failures to perform this duty, defendant FREE-LAKE intentionally inflicted emotional distress upon JANE, who then knew defendant HERNANDEZ would suffer no consequences for his acts, and that she was not going to be safe from future assaults by defendant HERNANDEZ.
42. JANE's life changed completely after this failure. She wanted to attend college, and had the ability to do so, but HERNANDEZ's assaults have made being in a learning environment with teachers impossible.
43. Because of these several failures of defendant FREE-LAKE, JANE was reasonably unable to understand that as a result of defendant HERNANDEZ's sexual abuse

and assaults, she had been severely harmed by defendant HERNANDEZ.

44. It took years before JANE was able to tell anyone what defendant HERNANDEZ had done to her.
45. On May 9, 2021, defendant HERNANDEZ was indicted in both the Barnstable and Plymouth Superior Courts for multiple sexual assaults of JANE.
46. Defendant HERNANDEZ was tried in Bristol County, where the jury found him guilty of all charges on eleven (11) indictments, after JANE testified for several days.
47. On April 10, 2024, defendant HERNANDEZ was sentenced to 30 to 40 years in Massachusetts state prison.
48. Because of the several failures of defendant FREE-LAKE, its teachers and administrators, JANE has been severely harmed, and will continue to require mental health treatment for the foreseeable future.

CLAIM 1 - NEGLIGENCE

49. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
50. Defendant FREE-LAKE knew or should have known that defendant HERNANDEZ would sexually harass, assault and rape JANE, and failed to prevent it, or to protect her from future assaults, after becoming aware of defendant HERNANDEZ's criminal conduct.
51. Further, defendant FREE-LAKE failed to perform its statutory duties under G.L. c. 119, §51A.
52. JANE has suffered and continues to suffer severe and permanent mental distress and emotional harm, as well as other consequential damages as a result of

defendant FREE-LAKE's negligence.

CLAIM 2 - NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION

53. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
54. Defendant FREE-LAKE had a duty to exercise reasonable care in hiring, training, supervising and/or retaining defendant HERNANDEZ. It was negligent and breached this duty.
55. As a result of defendant's FREE-LAKE's negligence and breach of duty in hiring, training, supervising, and/or retaining defendant HERNANDEZ, it allowed and failed to prevent defendant HERNANDEZ from sexually assaulting and sexually harassing JANE, and continuing to sexually assault her after becoming aware of defendant HERNANDEZ's criminal conduct..
56. JANE has suffered and continues to suffer severe and permanent mental distress and emotional harm, as well as other consequential damages as a result of defendant FREE-LAKE's negligence.

CLAIM 3 - NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION

57. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
58. Defendant FREE-LAKE had a duty to exercise reasonable care in hiring, training, supervising and/or retaining its Middle School teachers and administrators. It was negligent and breached this duty.
59. As a result of defendant's FREE-LAKE's negligence and breach of duty in hiring, training, supervising, and/or retaining its Middle School teachers and administrators,

they allowed and failed to prevent defendant HERNANDEZ from sexually assaulting and sexually harassing JANE, and continuing to sexually assault her after becoming aware of defendant HERNANDEZ's criminal conduct.

60. As a result of defendant's FREE-LAKE's negligence and breach of duty in hiring, training, supervising, and/or retaining its Middle School teachers and administrators, they allowed and failed to prevent defendant HERNANDEZ from sexually assaulting and sexually harassing JANE, and continuing to sexually assault her after becoming aware of defendant HERNANDEZ's criminal conduct, and they failed to perform their statutory duties under G.L. c. 119, §51A.
61. JANE has suffered and continues to suffer severe and permanent mental distress and emotional harm, as well as other consequential damages as a result of defendant FREE-LAKE's negligence.

CLAIM 4 - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

62. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
63. By its conduct, defendant FREE-LAKE negligently inflicted emotional distress on JANE, by negligently hiring, training, supervising and/or retaining defendant HERNANDEZ, and/or by allowing and/or failing to prevent defendant HERNANDEZ from sexually assaulting, and/or sexually harassing JANE, and continuing to assault JANE after becoming aware of defendant HERNANDEZ's criminal conduct, and knew or should have known that its negligence would result in emotional distress to JANE.
64. JANE has suffered and continues to suffer severe and permanent mental distress

and emotional harm, physical symptoms, as well as other consequential damages as a result of defendant FREE-LAKE's negligence.

CLAIM 5 - VIOLATIONS OF G.L. C. 151C

65. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
66. Defendant FREE-LAKE is an educational institution within the meaning of G.L. c. 151C, § 2 (g).
67. Defendant FREE-LAKE is strictly and vicariously liable for actions committed by its employees that are within the scope of employment and furthered by their employment.
68. Defendant FREE-LAKE committed an unfair educational practice under G.L. c. 151C, § 2 (g) when defendant HERNANDEZ, an employee of defendant FREE-LAKE, sexually harassed, assaulted, battered and raped JANE, a minor and a student at defendant FREE-LAKE.
69. Defendant FREE-LAKE committed an unfair educational practice under G.L. c. 151C, § 2 (g) when it became aware defendant HERNANDEZ, an employee of defendant FREE-LAKE, had sexually harassed, assaulted, battered and raped JANE, a minor and a student at defendant FREE-LAKE, but took no action to stop HERNANDEZ from future sexual harassment, assaults, batteries and rapes, after becoming aware of defendant HERNANDEZ's criminal conduct.
70. The sexual harassment, assaults, batteries and rapes, perpetrated by defendant HERNANDEZ, under the supervision of defendant FREE-LAKE, had the purpose or effect of interfering with JANE's education by creating an intimidating, hostile,

humiliating, and sexually offensive educational environment.

71. As a result of defendant FREE-LAKE's unfair educational practices, in violation of G.L. c. 151C, § 2 (g), and enforceable through G.L. c. 214, § 1C, JANE suffered and continues to suffer severe and permanent mental distress, emotional harm, as well as other consequential damages.

CLAIM 6 - VIOLATIONS OF 20 U.S.C.A. §1681(c), TITLE IX

72. Defendant FREE-LAKE 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, through a variety of educational programs. As a result, even if it were not obliged to do so under state law, FREE-LAKE was required to adopt and implement sexual harassment policies under Title IX.
73. Plaintiff JANE suffered extraordinary harm due to the repeated sexually harassing conduct of defendant HERNANDEZ, and the sexually hostile environment created by him, of which defendant had actual knowledge and failed to correct.
74. Defendant failed to take appropriate actions to protect plaintiff and others from sexual harassment within the FREE-LAKE school system, after having actual notice of the harassment, all in violation of Title IX and in violation of rights guaranteed by the United States and Massachusetts constitutions, statutes, laws and regulations.
75. Defendant FREE-LAKE actually knew about the specific misconduct and sexual harassment committed by defendant HERNANDEZ, and was deliberately indifferent to this conduct, all to plaintiff's harm and continuing exposure to a sexually hostile educational environment.
76. Alternatively, FREE-LAKE should have been aware of the misconduct and sexual

harassment committed by HERNANDEZ due to its pervasive nature, and HERNANDEZ's prior history of committing such acts.

77. Defendant, through its actions and inactions described herein, and through a pattern of deliberate indifference, created and permitted a severe, pervasive and persistent sexually hostile educational environment in violation of Title IX of the Education Amendments of 1972.
78. HERNANDEZ's sexually harassing conduct and physical touching were not welcomed by plaintiff, and were not made with the plaintiff's permission.
79. Defendant violated the requirements of Title IX by these acts and omissions, all of which were conducted, and/or failed to be conducted, in reckless and deliberate indifference to the rights of plaintiff guaranteed by Title IX and in reckless and deliberate indifference to the risk of harm posed to plaintiff.
80. Because of the several failures of defendant FREE-LAKE, its teachers and administrators, JANE has been severely harmed, and will continue to require mental health treatment for the foreseeable future.

CLAIM 7 - BATTERY

81. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint
82. Defendant HERNANDEZ battered the plaintiff JANE, by engaging in unlawful and non-consensual sexual conduct with her.
83. JANE has suffered and continues to suffer severe and permanent mental distress and emotional harm, as well as other consequential damages as a result of defendant HERNANDEZ's intentional conduct.

CLAIM 8 - ASSAULT

84. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
85. Defendant HERNANDEZ assaulted the plaintiff JANE, by placing her in fear that he would engage, or would attempt to engage, in unlawful and non-consensual sexual conduct with her.
86. JANE has suffered and continues to suffer severe and permanent mental distress and emotional harm, as well as other consequential damages as a result of defendant HERNANDEZ's intentional conduct.

CLAIM 9 - NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS

87. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
88. Defendant HERNANDEZ negligently inflicted emotional distress upon plaintiff JANE by placing her in fear that he would engage, or would attempt to engage, in unlawful and non-consensual sexual conduct with her in the future.
89. JANE has suffered and continues to suffer severe and permanent mental distress and emotional harm, as well as other consequential damages as a result of defendant HERNANDEZ's negligent conduct.

CLAIM 10 - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

90. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
91. Defendant HERNANDEZ intentionally inflicted emotional distress upon plaintiff JANE by placing her in fear that he would engage, or would attempt to engage, in

unlawful and non-consensual sexual conduct with her in the future.

92. JANE has suffered and continues to suffer severe and permanent mental distress and emotional harm, as well as other consequential damages as a result of defendant HERNANDEZ's intentional conduct.

CLAIM 11 - CIVIL RIGHTS

93. Plaintiff realleges and incorporates herein the allegations contained in each and every other paragraph of this Complaint.
94. Defendant HERNANDEZ interfered with plaintiff JANE's rights under the constitution and laws of the United States, and under the constitution and laws of the Commonwealth of Massachusetts by threats, intimidation and coercion.
95. Defendant HERNANDEZ's conduct deprived plaintiff JANE of her constitutional rights to bodily integrity, and to be free from sexual harassment which constitutes discrimination, based upon her gender, under both Article 1 of the Declaration of Rights, and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. Defendant HERNANDEZ is liable to the plaintiff in accordance with G.L. c. 12, §§11H & 11I.
96. Plaintiff JANE suffered bodily harm, humiliation, severe emotional distress, and permanent psychological damages. She has incurred expenses and will likely incur future expenses for medical and psychological treatment, and has suffered loss of earning capacity.

DEMANDS FOR RELIEF

Wherefore Plaintiff prays this Honorable Court to grant to the Plaintiff the following relief:

- A. Judgment against defendant FREE-LAKE on each of the CLAIMS stated, in an amount which is fair, just and adequate for the injuries and damages sustained, and the pain and suffering endured, plus interest, costs, and attorney's fees in accordance with G.L. c. 151B, § 9.
- B. Judgment against defendant HERNANDEZ on each of the CLAIMS stated, in an amount which is fair, just and adequate for the injuries and damages sustained, and the pain and suffering endured, plus interest, costs and attorney's fees.
- C. Such other and further relief as the Court may deem appropriate and just.

DEMAND FOR JURY TRIAL

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS.

By her Attorneys,

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