NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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August 16, 2019

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RE: *Jane Doe v. Congressional School, Inc. et al.*, Case No. CL-2019-4131

Dear Counsel:

This case involves an alleged sexual assault of Jane Doe (Plaintiff) by a fellow student, [redacted], and the alleged failure of Congressional School, Inc. ("Congressional") and its faculty and staff to protect Plaintiff. The issues presented on demurrer are whether Plaintiff has pled causes

OPINION LETTER

of action for negligence based on assumption of duty, gross negligence, punitive damages, and intentional infliction of emotional distress against Congressional and certain faculty and staff.

I. BACKGROUND

The facts from the Complaint, taken as true for the purposes of demurrer, *Russo v. White*, 241 Va. 23, 24 (1991), are as follows:

Plaintiff and Defendant [redacted] both attended Congressional, a private school in Falls Church that offers classes through eighth grade. On April 1, 2017, while Plaintiff and [redacted] were on a bus returning from a school-sponsored trip, [redacted] "violently pulled Plaintiff on top of him, then reached under Plaintiff's dress and forcibly touched her genitals." [redacted] also fondled Plaintiff's breasts under her dress and "forced Plaintiff's head down to briefly perform oral sex on him." Brenton T. Hinrichs,[1] Isabelle J. Rovinsky,[2] and Derek M. Bowley[3] acted as supervisors during this trip. In the subsequent months, [redacted] texted Plaintiff sexually explicit photos and slapped Plaintiff in the cafeteria on one occasion. In October 2017, Plaintiff told her mother everything that had happened. Her Mother immediately informed Mr. Hinricks about the assault and the photos. In response, Mr. Hinrichs told Plaintiff's Mother to send her to school as if nothing had happened. Plaintiff's Mother asked Mr. Hinrichs to relocate Plaintiff's locker, as it was next to [redacted]'s. Mr. Hinrichs denied that request. Mr. Hinrichs and Janet Marsh[4] chose not to suspend or expel [redacted] from Congressional.

As a result of Mr. Hinrichs' and Ms. Marsh's inaction, Plaintiff's Mother informed the school on October 29, 2017, that she would be removing Plaintiff and her other daughter from Congressional, and that they would return one last time to gather their belongings. Plaintiff's Mother instructed Ms. Marsh and Mr. Hinrichs that they were not permitted to speak with her daughters while they gathered their belongings. Despite these instructions, Ms. Marsh approached Plaintiff that day and pressured Plaintiff to speak with her alone.

Congressional was on notice of [redacted]'s inappropriate behavior towards females since as early as the fall of 2011 when another mother reported a sexual assault by [redacted] against her daughter. As a result of [redacted]'s abuse in 2017, Plaintiff has physical and mental health issues, bouts of depression, suffers from chest pains, loss of sleep and weight loss.

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[1] Assistant Head of Academics and Director of Lower and Middle School. Mr. Hinrichs has been employed by Congressional since 2012.

[2] French Teacher at Congressional since 2013.

[3] Speech and Drama Teacher at Congressional since 2009.

[4] Head of School from 2012 to October 2018.

Plaintiff filed her complaint by her next friend and mother on March 22, 2019 claiming assault and battery against [redacted]. She claims negligence, negligence on the theory of assuming a duty, and gross negligence against Congressional, Ms. Marsh, Mr. Hinrichs, Mr. Bowley, and Ms. Rovinsky. She also claims intentional infliction of emotional distress against all Defendants. Plaintiff asks for $2,000,000 on each count and punitive damages of $350,000 for the gross negligence count. Defendants Congressional, Ms. Marsh, Mr. Hinrichs, Ms. Rovinsky, and Mr. Bowley (hereinafter "Defendants") subsequently filed this Demurrer. I heard argument on the demurrer on June 14, after which I took it under advisement. My opinion follows.

II. ARGUMENTS

A. *DEMURRER*

Defendants demure to Counts IV (negligence of an assumed duty), V (gross negligence), and VI (intentional infliction of emotional distress) and punitive damages.

Defendants first argue that as teachers and heads of school, they cannot be liable for any harm to Plaintiff where that liability is premised on a claim of a "special relationship" between a principal or teacher with a student. Defendants contend that the Virginia Supreme Court's decision to *not* recognize a "special relationship" between a principal and student precludes this Court from recognizing a "special relationship" between teacher and student, and by extension, head of school and student. *See Burns v. Gagnon*, 283 Va. 657 (2012).

Defendants argue that a claim of negligence under the common law principal of assumption of duty also cannot lie here because the Complaint fails to allege that any of the Defendants knew about the pending criminal charges against [redacted] for his assault on Plaintiff, or agreed to take any action to safeguard the Plaintiff in response to this report. Defendants contend that the mission statement of the school, which states that the school will protect students from bullying, cannot qualify as assuming a duty to protect Plaintiff from [redacted].

As to Count V, Defendants claim the Complaint fails to state a cause of action for gross negligence because the allegations did not show that the Defendants exhibited a *complete disregard* for her safety. Defendants also contend that the Complaint fails to state a claim for punitive damages because Plaintiff failed to show malicious conduct or willful or wanton negligence. Further, Congressional, as a corporation, argues that it could only be subject to punitive damages if it authorized or participated in the wrongful acts. Since no allegations were made to that effect, Defendants posit that Count V should be dismissed in its entirety.

Lastly, Defendants state that Count VI, Intentional Infliction of Emotional Distress, should be dismissed because Plaintiff failed to particularize acts that show the Defendants were reckless, that their conduct was outrageous and intolerable, or that they knew their actions would cause intense emotional distress. Ms. Marsh was not on the school trip. No faculty was alleged to be present in the cafeteria when Plaintiff was slapped. There is no allegation that the texting

occurred on school premises or in the presence of the faculty. Further, Plaintiff's allegations regarding the school's investigation after the incidents were reported do not show that the investigation was conducted in a reckless or outrageous manner. Defendants further contend that Plaintiff failed to particularize her physical and mental symptoms.

B. PLAINTIFF'S OPPOSITION

Plaintiff first maintains that there was a "special relationship" between her and the Defendants which imposed a duty on the Defendants to protect Plaintiff. Plaintiff argues that while in *Burns v. Gagnon*, the Virginia Supreme Court declined to find a special relationship existed between a principal and his student, Virginia case law allows a special relationship to arise based on the circumstances of each case. *Burdette v. Marks*, 244 Va. 309, 312-13 (1992). Plaintiff also distinguishes *Burns* from the present case by noting the Virginia Supreme Court's hesitancy to subject the vice principal, as a public official, to liability.[5] *Burns*, 283 Va. at 671. Plaintiff contends the facts alleged in the Complaint establish that Defendants Hinrichs, Bowley and Rovinsky were acting *in loco parentis* for Plaintiff and [redacted] on the extracurricular trip and therefore are subject to liability under the "special relationship" theory of negligence.

As to the gross negligence count, Plaintiff argues that if reasonable minds can differ as to whether the act or failure to act amounted to an utter disregard for the victim's safety, then the claim should withstand a demurrer. Plaintiff posits that if her allegations support a claim of negligence, the gross negligence claim is for the jury to decide. Plaintiff contends the punitive damages is also an issue for the jury. Plaintiff argues Congressional may be subject to punitive damages if the Heads of School (Ms. Marsh and Mr. Hinrichs) are subject to them.

For her claim for intentional infliction of emotional distress, Plaintiff states that she alleged specific symptoms of severe emotional distress: *viz.*, by "forcing Plaintiff to share a locker and sit in class with [redacted] after he had assaulted her is tantamount to assaulting her again." Plaintiff argues that the Defendants acted recklessly in failing to discipline [redacted] in 2011 and again in 2017, causing severe emotional distress in Plaintiff.

III. ANALYSIS

A. *DEMURRER STANDARD*

The purpose of a demurrer "is to test only whether the challenged pleading states a cause of action upon which relief can be granted if all the allegations are admitted as true." *Faulknier v. Shafer*, 264 Va. 210, 214 (2002). In reviewing a demurrer, the Court must draw all reasonable factual inferences in favor of the pleading. *Russo v. White*, 241 Va. 23, 24 (1991). The Court is permitted to consider any exhibits attached to the pleading. *Flippo v. F & L Land Co.*, 241 Va.

[5] Plaintiff also notes that Defendants failed to argue in their Demurrer why her allegations failed to establish a special relationship. Plaintiff argues they are therefore barred from raising that argument under Virginia Code § 8.01-273.

15, 17 (1991). Although "a demurrer admits as true all averments of material facts which are sufficiently pleaded, it does not admit the correctness of the conclusions of law stated by the pleader." *Arlington Yellow Cab Co. v. Transp., Inc.*, 207 Va. 313, 318-19 (1996).

B. NEGLIGENCE – ASSUMPTION OF DUTY THEORY

Applicable Law

While one generally does not have a duty to protect or warn another from the conduct of a third party, particularly if that conduct is criminal in nature, there is an exception if the parties have a "special relationship."[6] *Burns v. Gagnon*, 283 Va. 657, 668-669 (2012); *Commonwealth v. Peterson*, 286 Va. 349, 356 (2013). A special relationship exists in two situations: 1) "[B]etween the actor and the third person which imposes a duty upon the actor to control the third person's conduct," and 2) "between the actor and the other which gives to the other a right to protection." Restatement (Second) of Torts, §315; *Burns*, 283 Va. at 669. While some special relationships are widely recognized, such as innkeeper-guest and common carrier-passenger, a special relationship may also arise from the specific facts of a case. *Burdette v. Marks*, 244 Va. 309, 312-13 (1992).[7]

After determining if a special relationship exists, the Court must then ask whether the defendant had a duty to warn or protect the plaintiff from a third party's dangerous or criminal acts in that instance. *Peterson*, 286 Va. at 357.[8] The harm caused to the plaintiff must have been *reasonably foreseeable* to the defendant before the defendant can be held liable for that injury.

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[6] Defendants explain in depth about a "special relationship," but then fail to argue *why a special relationship does not exist here*. Virginia Code § 8.01-273 states, in pertinent part, "[a]ll demurrers shall be in writing and shall state specifically the grounds on which the demurrant concludes that the pleading is insufficient at law. No grounds other than those stated specifically in the demurrer shall be considered by the court." For reasons that will become clear below, I will discuss the merits of both arguments.

[7] Here, the Court noted that while a special relationship between a deputy sheriff (Marks) and a citizen (Burdette) had not been previously recognized, the particular facts of this case imposed a duty on Marks to protect Burdette from the injuries of a third party. The facts that led to this conclusion were as follows: Marks was aware that the third party was savagely beating Burdette because Burdette called out for help and Marks witnessed the incident from a fairly close proximity; further, Marks was an armed deputy, capable of subduing the third party without great danger to himself. *Id.*

[8] *Peterson* is the tragic case of the 2007 mass shooting at Virginia Tech. The police were investigating the murder of two people at the university just before the mass shooting occurred in a different location at the university. Here, the Virginia Supreme Court first assumed *arguendo* that the Commonwealth had a special relationship with the university students. The Court then held the "Commonwealth did not have a duty to protect students against third party criminal acts" because the police did not know, nor was it reasonably foreseeable, that the murderer of the couple would subsequently instigate a mass shooting at Norris Hall. *Id.* at 359-60.

Tabaoda v. Daly Seven, Inc., 271 Va. 313, 323 (2006) ("The special relationship does not make the defendant an insurer of the plaintiff's safety.").[9]

Current case law contains some ambiguity concerning the analysis of a "special relationship." In *Peterson*, 286 Va. at 357, and *Tabaoda*, 271 Va. at 323, the Supreme Court first established (or assumed) whether a special relationship existed, and then proceeded to determine if the duty arising from that special relationship was breached. *See, eg.*, *Tabaoda*, 271 Va. at 323 ("Even though the necessary special relationship is established so as to create a *potential* duty on the defendant to protect or warn the plaintiff against criminal conduct of a third party, there is no liability when the defendant neither knows of the danger of an injury to a plaintiff from the criminal conduct of a third party nor has reason to foresee that danger.") (emphasis added). However, in *Burns*, 283 Va. at 669, the Supreme Court stated that in determining whether a special relationship exists at all, the Court must examine whether the defendant could have reasonably foreseen that he would be expected to take affirmative action to protect plaintiff.[10]

Is there a special relationship between the Defendants and Plaintiff? Both parties relied extensively on the *Burns* case. In *Burns*, a high school student informed the vice principal Burns that Plaintiff and another student would fight, but she did not say who the other student was, or where and when the fight would take place. The Plaintiff suffered a severe injury as a result of the fight and named the vice principal in his suit for damages on the grounds that Burns had a duty to stop the fight. The Virginia Supreme Court held that a special relationship did *not* exist between a vice principal and student for three reasons: 1) No facts showed that the vice principal "knew or should have known that [the plaintiff] was in great danger of serious bodily injury or death, and was not told the name of the student [the plaintiff] would fight with, or the time or place of the fight." *Burns*, 283 Va. at 669-70 (quotations omitted), 2) a special relationship between principal-student has not been recognized in Virginia, and 3) the principal was a public official ("[W]e have repeatedly been hesitant to recognize a special relationship where a public official is being sued for acts committed in his official capacity."). *Id.* at 671.

The case presented is distinguishable from *Burns* in the following ways: The Defendants are the staff of a *private* school and therefore are not public officials, and the defendant supervisors had more information. Specifically, the supervisors knew or should have known exactly where Plaintiff and [redacted] were at all times, they were presumably in close proximity to

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[9] The Supreme Court has recognized two types of foreseeable harm: harm that is known or reasonably foreseeable, and the "imminent probability of harm." *Peterson*, 286 Va. at 357; *see also Burns*, 283 Va. at 669.

[10] This Court will attempt to rectify this apparent discrepancy by noting that *Taboada* involves the assertion of innkeeper-guest, which has long been held to be a "special relationship" subject to elevated duties. In *Peters*, the Supreme Court merely assumed *arguendo* a special relationship existed. In *Burns*, by contrast, the Supreme Court examined *whether the principal-student relationship should arise from the specific facts of the case*, as it declined to hold the principal-student as an established "special relationship." Thus, perhaps the analysis for those special relationships arising out of a set of circumstances warrants an analysis of the foreseeability of harm before that special relationship can be established.

them, and the kids were much younger than the plaintiff in *Burns*, a high school student. These facts may indeed establish a "special relationship" between the parties because of these Defendants' supervisory roles and ability to both control and protect the students under their charge.

Even so, the parties appear to have conflated the negligence theories of "special relationship" and assumption of duty. *See, e.g.*, *Terry v. Irish Fleet, Inc.*, 296 Va. 129, 139 (2018) (discussing "two theories on which we have recognized a duty to warn or protect against criminal assault by a third party—a duty arising from the existence of a special relationship and a duty voluntarily assumed by an express undertaking."). The former theory *imposes* a duty based on the particular facts of a case, or where it is warranted by public policy, whereas the latter theory *recognizes* the duty a party voluntarily took upon herself. Because Plaintiff's Count IV claims only negligence under the Restatement (Second) of Torts § 324(A), Assumption of Duty, the argument for negligence based on a "special relationship" between the parties is irrelevant to this case.[11]

Now, as to the negligence theory of assumption of duty, the Restatement (Second) of Torts, § 324A states as follows:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if
>
> (a) his failure to exercise reasonable care increases the risk of such harm, or
>
> (b) he has undertaken to perform a duty owed by the other to the third person, or
>
> (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

To establish a claim of negligence based on assumption of duty, a plaintiff must show that the defendant "expressly communicat[ed] his intention [to undertake this duty]." *Terry* at 136. An implied undertaking cannot "give rise to an assumed duty to warn or protect against the danger of a criminal act by a third party." *Terry*, 296 Va. at 139. Thus, without an agreement, promise, or expressed intent to undertake a certain duty, the law cannot recognize an assumption of duty. *Id.* For example, in *Kellerman v. McDonough*, the Court held that the plaintiff successfully pled a cause of action against one of the defendants on the grounds that she assumed a duty to plaintiff's deceased, minor daughter because in response to the plaintiff's direction that his daughter "was not to be in a car with any young, male drivers" while in the defendant's care,

[11] *See* Restatement (Second) of Torts § 315 for the "special relationship" negligence theory.

the defendant stated "don't worry, I promise we'll take good care of her." 278 Va. 478, 490 (2009).

The Supreme Court has contrasted this intentional assumption of a duty with a defendant voluntarily taking precautions to decrease a known risk. *Terry*, 296 Va. at 137. For example, the Supreme Court held that a newspaper station taking precautions to decrease the risk of assault on its newspaper carriers *did not* "give rise to a duty to give a more complete warning." *A.H. v. Rockingham Pub. Co., Inc.*, 255 Va. 216, 223 (1998).[12] As another example, the Supreme Court held in *Kellerman* that the plaintiff failed to state a claim against the defendant's husband because he was not present at the time the agreement was exchanged. *Kellerman*, 278 Va. at 490.

Facts Applied

Drawing all reasonable inferences in the Plaintiff's favor, I have analyzed all incidents alleged in the Complaint, outlined below, to find allegations supporting Plaintiff's negligence claim.

Congressional

Under *Kellerman* and *Terry*, the mission statement of Congressional, advocating a bully-free zone and a free and safe learning environment, does not rise to an assumption of a duty to protect Plaintiff from [redacted]. No allegations were made that Congressional took any precautions, so Plaintiff has even less of a case than the parties in *A.H.* and *Terry*. While Plaintiff may have a negligence claim against Congressional, it cannot be on the assumption of duty theory.

Assault on the Bus on April 1, 2017

Plaintiff alleged that Mr. Hinrichs, Mr. Bowley, and Ms. Rovinsky[13] acted as supervisors on the Congressional-funded school field trip to New York in April 2017. [redacted] assaulted Plaintiff while they were on the bus returning from the field trip. While these three defendants were charged with supervising the children during the field trip, the Complaint fails to allege any express promise, agreement, or intent to protect Plaintiff. While Plaintiff alleged that they had a duty to stop [redacted] from sexually assaulting Plaintiff because of their supervisory role, under Virginia Supreme Court precedent this cannot rise to a voluntary undertaking of a duty to protect Plaintiff. *See Burns*, 283 Va. at 671 (contrast the Court's analysis of the negligence of a supervising adult and negligence under the assumption of duty theory).

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[12] In response to plaintiff's contention that the newspaper carrier voluntarily assumed a legal duty to (1) advise the carriers of the three prior attacks, (2) warn the carriers of the possibility of similar attacks, and (3) see that all carriers, including the plaintiff, received whistles and attended safety lectures," the Court "decline[d] to impose these additional duties upon [the carrier] merely because it took precautions not required of it." *A.H.* at 223.

[13] Plaintiff is suing these three in their *personal capacity*.

Reports to Mr. Hinrichs on October 23 & 24, 2017

Here, neither Mr. Hinrichs nor Ms. Marsh communicated to the Plaintiff or her mother that they would do anything in response to the report of [redacted]'s sexual assault and subsequent inappropriate acts. While under a simple negligence theory Plaintiff may argue that they *should* have acted, because they did *not* undertake any duty to protect Plaintiff, this theory of negligence cannot stand.

Further, Plaintiff does not allege any subsequent assault after she made them aware of the harm [redacted] had done to her. Thus, even if Ms. Marsh and Mr. Hinrichs assumed a duty to protect Plaintiff, because no subsequent harm occurred, there has been no breach of a duty.[14]

Conclusion

There are no other instances alleged, involving any or all the Defendants, which could possibly construe an assumption of duty. In light of the facts alleged, in which either the Defendants were present but did not assume a duty, or were not present at all, the Demurrer to Count IV (assumed duty) is SUSTAINED with leave to amend.

C. GROSS NEGLIGENCE

While simple negligence is the "failure to use the degree of care that an ordinarily prudent person would exercise under similar circumstances to avoid injury to another," gross negligence "is a degree of negligence showing indifference to another and an utter disregard of prudence that amounts to a complete neglect of the safety of such other person." *Cowan v. Hospice Support Care, Inc.*, 268 Va. 482, 486-7 (2004). Gross negligence, while a step below "willful recklessness," must "shock fair-minded persons." *Id.* at 487.

"Whether certain actions constitute gross negligence is generally a factual matter for resolution by the jury and becomes a question of law only when reasonable people cannot differ." *Koffman v. Garnett*, 265 Va. 12, 15 (2003). Further, "a claim for gross negligence must fail as a matter of law when the evidence shows that the defendants exercised some degree of care." *Elliott v. Carter*, 292 Va. 618, 623 (2016).

Plaintiff alleged that Congressional was on notice of [redacted]'s behavior since 2011 and that Defendants failed to respond to [redacted]'s behavior and protect Plaintiff, resulting in serious trauma to Plaintiff. Given the assault on the bus and the response of the school, reasonable minds may differ as to whether the Defendants actions constituted gross negligence. This is a matter for the jury.

Therefore, the demurrer to Count V (gross negligence) is OVERRULED.

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[14] Physical and emotional harm was alleged, but these resulted from the sexual assault on the bus, the inappropriate texts, and [redacted] slapping the Plaintiff. *Plaintiff did not allege any harm resulting from the defendants' inaction when they heard the report.* In fact, Plaintiff withdrew from the school only a few days later.

D. PUNITIVE DAMAGES

The purpose of imposing punitive damages is to "punish the wrongdoer if he has acted wantonly, oppressively, or with such malice as to evince a spirit of malice or criminal indifference to civil obligations." *Wallen v. Allen*, 231 Va. 289, 297 (1986). Punitive damages are only appropriate when the defendant exhibits willful or wanton conduct; in other words, the defendant must have "full knowledge that an injury would result from the act committed." *Id.* Punitive damages are warranted only by "malicious conduct" or a "conscious disregard of the rights of others." *Infant C. v. Boy Scouts of America, Inc.*, 239 Va. 572, 580-82 (1990). Therefore, this Court must determine if "reasonable persons could differ in their conclusions whether [the Defendants] acted with reckless indifference to the consequences of [their] actions." *Woods v. Mendez*, 265 Va. 68, 77 (2003). If reasonable minds could disagree whether the alleged conduct warrants punitive damages, then the issue must go to the jury. *Egin v. Butler*, 290 Va. 62, 77 (2015).

Further, to subject Congressional to punitive damages liability, its "employee[s] who committed the wrongful acts must be in a sufficiently high position in the employer's corporate structure." *Egan*, 290 Va. at 75. Therefore, Ms. Marsh and Mr. Hinrichs must be subject to punitive damages for Congressional to be liable.

Plaintiff alleges Congressional was on notice as early as 2011 about [redacted]'s inappropriate behavior. However, the only staff alleged in the Complaint who has been at the school since 2011 is Mr. Bowley. Further, the only allegations against Mr. Bowley and Ms. Rovinsky involve the bus incident. No reasonable minds could differ as to Mr. Bowley's and Ms. Rovinksy's lack of malicious conduct or conscious disregard for Plaintiff's safety.

The conduct of Ms. Marsh and Mr. Hinrichs', namely, their failure to respond at all to the serious allegations against [redacted], is a more difficult issue. Plaintiff alleges they did nothing in response to Plaintiff's requests to move her locker, have adult supervision when [redacted] was present, and to suspend or expel [redacted] Reasonable minds may differ as to whether this conduct warrants punitive damages. Because Ms. Marsh and Mr. Hinrichs are subject to punitive damages, Congressional is subject to the same.

Therefore, the demurrer to punitive damages is SUSTAINED as to Mr. Bowley and Ms. Rovinksy, with leave to amend and OVERRULED as to Congressional, Ms. Marsh, and Mr. Hinrichs.

E. *INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS*

A plaintiff's claim of intentional infliction of emotional distress may survive the demurrer if she shows the Defendants acted recklessly, and that this conduct was "outrageous and intolerable [and] … offen[sive] against the generally accepted standards of decency and morality," resulting in severe emotional distress to Plaintiff. *Womack v. Eldridge*, 215 Va. 338, 342 (1974). "Where reasonable men may differ, it is for the jury, subject to the control of the

court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability." *Id.* A plaintiff must allege all facts necessary to establish the cause of action for intentional infliction of emotional distress to survive a demurrer. *Almy v. Grisham*, 273 Va. 68, 77 (2007).

Mr. Hinrichs, Ms. Rovinsky, and Mr. Bowley were all present on the field trip when [redacted] sexually assaulted Plaintiff. Mr. Hinrichs, Ms. Marsh, and Congressional were on notice of [redacted]'s assaultive and inappropriate behavior towards female students and failed to act to protect these students. They failed to act in response to Plaintiff's Mother's report to Mr. Hinrichs about the abuse Plaintiff had suffered that year at the hands of [redacted]. While this may exhibit subpar and irresponsible behavior, no reasonable person could find that this conduct goes "beyond all possible bounds of decency," or could be "regarded as atrocious, and utterly intolerable in a civilized community." *Russo v. White*, 241 Va. 23, 27 (1991).

The allegations of Plaintiff's severe emotional distress could possibly satisfy the last element. The Supreme Court has held that "liability arises … only where the distress inflicted is so severe that no reasonable person could be expected to endure it." *Russo*, 241 Va. at 27. Plaintiff alleged that she suffers bouts of depression, anxiety, headaches, stomach aches, and suffers from chest pains, loss of sleep and weight loss due to [redacted]'s treatment of her in 2017. Even after Plaintiff transferred to another school, she has continued to exhibit these symptoms and has missed class time as a result. Plaintiff alleges she continues to be under psychiatric care and has incurred medical expenses. This may meet the Supreme Court's standard for "severe emotional distress." However, as discussed above, the Defendants' conduct (excluding [redacted]'s) does not rise to the required level of outrageousness.

The demurrer is SUSTAINED without leave to amend as to Count VI.

An order is attached.

Sincerely,

[redacted]

Robert J. Smith
Judge, Fairfax County Circuit Court

Enclosure

OPINION LETTER

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE DOE, by her mother, as Jane Doe's next friend pursuant to Va. Code § 8.01-8 Plaintiff,	)	
v.	)	Case No. CL-2019-4131
CONGRESSIONAL SCHOOL, INC. *et al* Defendants.	)	

ORDER

This cause came to be heard on the 14th day of June 2019 on the Defendants' Demurrer to Counts IV, V, VI, and punitive damages of Plaintiff's Complaint.

For the reasons explained in my Opinion Letter dated August 15, 2019, it is hereby

ADJUDGED, **ORDERED**, and **DECREED** that the Demurrer is:

SUSTAINED with leave to amend for Count IV, negligence based on assumption of duty;

OVERRULED for Count V, gross negligence;

SUSTAINED as to punitive damages, with leave to amend, as to Defendants Bowley and Rovinksy and,

OVERRULED as to Congressional, Ms. Marsh, and Mr. Hinrichs; and

SUSTAINED without leave to amend for Count VI, Intentional Infliction of Emotional Distress as to all Defendants except Defendant [redacted],

Plaintiff has 21 days from the date of the attached order to file her Amended Complaint.

AND THIS CAUSE IS CONTINUED

Entered this 16 day of Aug, 2019.

[redacted]

Judge, Fairfax County Circuit Court

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.