

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

John Doe and Jane Doe, Individually,)
and in a representative capacity as the)
parents and next friends of their minor)
daughter, S.D.,)

C.A. No.: 6:24-cv-03324-DCC

Plaintiffs,)

v.)

ANSWER

Dr. Phinnize J. Fischer Middle School,)
Greenville County Schools, Olivia G.)
Bennett, Robert E. Ivey, Bradley A.)
Harvey, Kyle D. Pearson, Christine V.)
Thomas, Paketrice S. White, Jeremie)
R. Smith, and Raashad L. Fitzpatrick,)

Defendant(s).)
_____)

Defendants, Greenville County Schools, Olivia G. Bennett, Robert E. Ivey, Bradley A. Harvey, Kyle D. Pearson, Christine V. Thomas, Paketrice S. White, Jeremie R. Smith, and Raashad L. Fitzpatrick, hereby respond to the Complaint of Plaintiffs, in accordance with its numbered paragraphs, as follows:

PARTIES

1. Admitted upon information and belief.
2. This paragraph contains no allegations which Defendants are required to admit or deny.
3. This paragraph contains no allegations which Defendants are required to admit or deny.
4. This paragraph contains no allegations which Defendants are required to admit or deny.
5. Denied for lack of knowledge. Defendants do not contest Plaintiffs' desire to proceed pseudonymously.
6. Denied for lack of knowledge. Defendants do not contest Plaintiffs' desire to

proceed pseudonymously.

7. Denied for lack of knowledge. Defendants do not contest Plaintiffs' desire to proceed pseudonymously.

8. Denied for lack of knowledge. Defendants do not contest Plaintiff's desire to proceed pseudonymously.

9. Denied for lack of knowledge. Defendants do not contest Plaintiff's desire to proceed pseudonymously.

10. Denied for lack of knowledge. Defendants do not contest Plaintiff's desire to proceed pseudonymously.

11. Denied for lack of knowledge. Defendants do not contest Plaintiff's desire to proceed pseudonymously.

12. Admitted.

13. Admitted upon information and belief.

14. Admitted in part and denied in part. Defendants admit only that the identity of Plaintiff S.D. is known to Defendants. Any remaining allegations of this paragraph are denied.

15. Denied as stated. Defendant Greenville County School District (GCSD) admits only that it is an arm of the State of South Carolina funded by federal, state, and local revenue sources and provides public education in Greenville County.

16. Admitted in part and denied in part. Defendants admit only that Fisher Middle School is in Greenville County, South Carolina. Defendants deny that Fisher Middle School is a proper entity defendant in this case.

17. Defendant admits that Plaintiff S.D. was a student at Fisher Middle School.

18. Admitted in part and denied in part. Defendants admit that Ms. Bennett is and was

a teacher at Fisher Middle School at relevant times and that she is a resident of Spartanburg County. Defendants deny that Ms. Bennett is a proper defendant in this case.

19. Admitted in part and denied in part. Defendants admit that Mr. Ivey is and was a teacher at Fisher Middle School at relevant times and that he is a resident of Spartanburg County. Defendants deny that Mr. Ivey is a proper defendant in this case.

20. Admitted in part and denied in part. Defendants admit that Mr. Harvey is and was a teacher at Fisher Middle School at relevant times and that he is a resident of Greenville County. Defendants deny that Mr. Harvey is a proper defendant in this case.

21. Admitted in part and denied in part. Defendants admit that Mr. Pearson was an assistant principal at Fisher Middle School at relevant times and that he is a resident of Greenville County. Defendants deny that Mr. Pearson is a proper defendant in this case.

22. Admitted in part and denied in part. Defendants admit that Ms. Thomas was an assistant principal at Fisher Middle School at relevant times and that she is a resident of Anderson County. Defendants deny that Ms. Thomas is a proper defendant in this case.

23. Admitted in part and denied in part. Defendants admit that Ms. White is and was an assistant principal at Fisher Middle School at relevant times and that she is a resident of Greenville County. Defendants deny that Ms. White is a proper defendant in this case.

24. Admitted in part and denied in part. Defendants admit that Mr. Smith is and was the principal at Fisher Middle School at relevant times and that he is a resident of Spartanburg County. Defendants deny that Mr. Smith is a proper defendant in this case.

25. Admitted in part and denied in part. Defendants admit that Dr. Fitzpatrick was an assistant superintendent at relevant times and that he is a resident of Lancaster County. Defendants deny that Dr. Fitzpatrick is a proper defendant in this case.

26. Admitted.

27. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendant GCSD admits only that its duties and responsibilities to students by way of its employees and agents are controlled by state and federal law and denies any breach of duty.

28. Admitted in part upon information and belief and denied in part. Defendants admit upon information and belief that the individual defendants were acting in the courses and scopes of their employment at all times. Defendants deny any breach of duty to Plaintiffs.

29. Denied.

30. Denied.

JURISDICTION AND VENUE

31. Admitted upon information and belief.

32. Defendants admit only that the claims arise out of alleged conduct that occurred in Greenville County, South Carolina. Defendants deny any actionable conduct.

33. Admitted.

JOINT AND SEVERAL LIABILITY

34. Denied.

DAMAGES ALLEGATIONS AS TO DEFENDANTS

35. Admitted in part and denied in part. Defendants admit only that GCSD is a governmental entity subject to the Tort Claims Act. Defendants deny that Fisher Middle School is a proper entity defendant in this case.

36. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, the statutory section is properly quoted.

37. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, the statutory section is properly quoted.

38. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, the statutory section is properly quoted.

39. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, the statutory section is properly quoted.

40. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, the statutory section is properly quoted.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

TEACHER AND STUDENT IMBALANCE OF POWER PROMOTES AND FACILITATES HARASSMENT AND PHYSICAL ABUSE OF STUDENTS

46. Denied for lack of knowledge.

47. Denied for lack of knowledge.

48. Admitted in part and denied in part. Defendants admit in theory only that teachers possess power to intimidate and mistreat students. Any such conduct in this case is denied.

49. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any specific applicability to this case.

50. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any specific applicability to this case.

51. Admitted in part and denied in part. Defendants admit the allegations of this

paragraph in general but deny any “exposure to risk when the teacher sees the relationship as an opportunity to promote their own goals” in this case.

52. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any specific applicability to this case.

53. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any specific applicability to this case.

54. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any specific applicability to this case.

55. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any specific applicability to this case.

56. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any specific applicability to this case.

57. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any specific applicability to this case.

58. Denied for lack of knowledge.

59. Admitted in part and denied in part. Defendants admit the allegations of this paragraph in general and deny for lack of knowledge any exploitation, harassment, or physical abuse in this case.

**AN INSTITUTION OF LEARNING IS SUBJECT TO TITLE VIII AND TITLE IX
RULES AND REGULATIONS**

60. Admitted.

61. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, the statutory section is properly quoted.

62. This paragraph states legal conclusions that do not require a response. To the

extent a response may be required, Defendants deny any violation of Title IX.

63. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants deny any violation of Title IX.

64. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants deny any violation of Title IX.

AN INSTITUTION OF LEARNING IS SUBJECT TO 42 U.S.C. § 1983

65. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants deny any violation of 42 U.S.C. § 1983.

66. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants deny any violation of 42 U.S.C. § 1983.

67. Denied.

68. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants deny any violation of 42 U.S.C. § 1983.

69. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants deny any violation of 42 U.S.C. § 1983.

70. Denied.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

71. Denied for lack of knowledge.

72. Admitted in part and denied in part for lack of knowledge. Defendants admit only that one student said S.D. looked like a man and that Defendant Bennett pointed to S.D. when another student asked “where’s the roach?” on or around December 17, 2021. Any remaining allegations of this paragraph are denied.

73. Admitted in part and denied in part. Defendants admit only that Jane Doe sent an

email to Defendant Bennett and Defendant Smith on or around December 18, 2021, which email speaks for itself. Any remaining allegations are denied.

74. Admitted in part and denied in part. Defendants admit only that Defendant Harvey responded to Jane Doe's email. Any remaining allegations are denied.

75. Admitted in part and denied in part. Defendants admit only that Defendant Smith's email of December 19, 2021 speaks for itself. Any remaining allegations are denied.

76. Admitted in part and denied in part. Defendants admit only that between December 17, 2021 and January 6, 2022, John and Jane Doe met with Defendant Smith, and that John and Jane Doe discussed H.C.J. Any remaining allegations of this paragraph are denied.

77. Denied for lack of knowledge.

78. Denied.

79. Denied.

80. Admitted in part and denied in part for lack of knowledge. Defendant admits only that Jane Doe sent an email dated October 13, 2022, which speaks for itself. Any remaining allegations of this paragraph are denied or denied for lack of knowledge.

81. Denied for lack of knowledge.

82. Admitted in part upon information and belief and denied in part. Defendants admit only upon information and belief that S.D. attempted suicide by hanging and was unsuccessful and suffered significant brain damage. The remaining allegations are denied for lack of knowledge.

83. Denied for lack of knowledge.

84. Admitted in part and denied in part. Defendants admit only that Jane Doe emailed Defendant Smith on April 9, 2023, which email speaks for itself. Any remaining allegations of

this paragraph are denied.

85. Admitted upon information and belief.

86. Admitted.

87. Denied.

88. Denied.

89. Denied.

**FOR A FIRST CAUSE OF ACTION AS TO DEFENDANTS
(Negligent Hiring, Supervision, Monitoring and Retention)**

90. Denied.

91. Denied.

92. Denied.

93. Denied.

**FOR A SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS
(Negligence/Recklessness/Willful and Wanton Conduct)**

94. Defendants incorporate their responses to paragraphs 1 through 93 of the Complaint herein by reference.

95. Admitted in part and denied in part. Defendants admit only that they were employed by GCSD during the events alleged in the complaint. Any remaining allegations are denied.

96. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants admit only that any duties of GCSD are created by state or federal law. Defendants deny breach of any applicable duty.

97. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants admit only that any duties of GCSD are created

by state or federal law. Defendants deny breach of any applicable duty.

98. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants admit only that any duties of GCSD are created by state or federal law. Defendants deny any breach of duty.

99. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, Defendants admit only that any duties of GCSD are created by state or federal law. Defendants deny any breach of duty.

100. Denied, including all subparts.

101. Denied.

102. Denied.

103. Denied.

**AS TO FISCHER [SIC] MIDDLE AND DEFENDANTS BENNETT, IVEY, HARVEY,
PEARSON, THOMAS, WHITE, SMITH, AND FITZPATRICK**

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

**FOR A THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS
(Outrage/Intentional or Reckless Infliction of Emotional Distress)**

110. Defendants incorporate their responses to paragraphs 1 through 109 of the Complaint herein by reference.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

FOR A FOURTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Title IX, 20 U.S.C. § 1681, et seq.)

116. Defendants incorporate their responses to paragraphs 1 through 115 of the Complaint herein by reference.

117. This paragraph states legal conclusions that do not require a response. To the extent a response may be required, the statutory section is properly quoted.

118. Denied as stated. GCSD is subject to Title IX, Fisher Middle School is not a legal entity for purposes of Title IX.

119. Denied as stated. GCSD is subject to Title IX, Fisher Middle School is not a legal entity for purposes of Title IX.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied, including all subparts.

128. Denied.

129. This paragraph states legal conclusions that do not require a response. To the

extent that a response may be required, Defendants admit only that any duties and responsibilities are established by statute and judicial precedent. Defendants deny breach of any applicable legal duty.

130. Denied.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

FOR A FIFTH CAUSE OF ACTION AS TO ALL DEFENDANTS' VIOLATION OF 42 U.S.C. § 1983 AND VIOLATION OF TITLE IV AND VIOLATION OF 20 U.S.C. § 28 ET SEQ.

136. Defendants incorporate by reference their responses to paragraphs 1 through 135 of the Complaint.

137. Denied.

138. Denied.

139. Denied

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

- 147. Denied.
- 148. Denied.
- 149. Denied.
- 150. Denied.
- 151. Denied.
- 152. Denied, including all subparts.
- 153. Denied.
- 154. Denied.
- 155. Denied.
- 156. Denied.
- 157. Denied.
- 158. Denied.

FOR A SIXTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Assault and Battery)

159. Defendants incorporate their responses to paragraphs 1 through 158 of the Complaint herein by reference.

- 160. Denied for lack of knowledge.
- 161. Denied for lack of knowledge.
- 162. Denied for lack of knowledge.
- 163. Denied for lack of knowledge.
- 164. Denied for lack of knowledge.
- 165. Denied.

FOR A SEVENTH CAUSE OF ACTION
(Violation of Restatement of Torts 323)

166. Defendants incorporate their responses to paragraphs 1 through 158 of the Complaint herein by reference.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

FOR AN EIGHTH CAUSE OF ACTION
(Necessaries Claim)

171. Defendants incorporate their responses to paragraphs 1 through 170 of the Complaint herein by reference.

172. Denied for lack of knowledge.

173. Denied for lack of knowledge.

174. Denied, including all subparts.

175. Denied, including all subparts.

176. Denied.

177. Any remaining allegations of the Complaint not specifically admitted herein are denied.

178. Defendants deny that Plaintiffs are entitled to any of the relief requested in the Complaint.

FIRST AFFIRMATIVE DEFENSE

Defendants are immune from liability under Section 15-78-60(5) of the Tort Claims Act because Plaintiffs' alleged injuries resulted, if at all, from Defendants' exercise of discretion or judgment or Defendants' performance or failure to perform an act or service that was in their discretion or judgment.

SECOND AFFIRMATIVE DEFENSE

Defendants are immune from liability under Section 15-78-60(25) of the Tort Claims Act because Plaintiffs' alleged injuries resulted, if at all, from an exercise of Defendants' responsibility or duty to supervise, protect, and control its students and/or employees, and Defendants did not exercise this responsibility or duty in a grossly negligent matter.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are subject to the South Carolina Tort Claims Act's limitations and immunities with respect to causes of action and liability, including §§15-78-40, and -70.

FOURTH AFFIRMATIVE DEFENSE

The individual defendants are entitled to have this action dismissed on the grounds of qualified immunity. Defendants acted with a reasonable, good faith belief in the lawfulness and constitutionality of their actions, and the alleged wrongful conduct did not violate clearly settled law or established rights. The conduct of Defendants was lawful, justified, and made in good faith.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for punitive damages are subject to, limited by, and governed by the due process clause of the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

Defendants plead as a further bar to and limitation on this action each and every provision of the South Carolina Tort Claims Act, including the limitations on damages and the exceptions to the waiver of sovereign immunity.

EIGHTH AFFIRMATIVE DEFENSE

At all times relevant to the Complaint, Defendants acted within the scope of their employment and official duties and are immune from individual liability under the South Carolina Tort Claims Act.

NINTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs seek recovery under 42 U.S.C. § 1983, their claims are barred because no official policy or custom of Defendant School District played any part in the alleged constitutional violation, which is expressly denied.

TENTH AFFIRMATIVE DEFENSE

Any injury claimed to have been sustained by Plaintiffs was not proximately caused by an act of Defendants, but rather was due to the intervening, independent, and intentional act of a third person; said act being the sole, proximate and direct cause of Plaintiffs' alleged injuries, for which Defendants are not liable.

ELEVENTH AFFIRMATIVE DEFENSE

At all times, Defendants' actions were reasonable and in good faith.

WHEREFORE, having fully answered the Complaint, Defendants respectfully pray that the Court dismiss Plaintiffs' claims against them, with all costs and expenses awarded to Defendants, together with any and all further relief that the Court deems equitable and just.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
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Columbia, South Carolina