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<p>N.N., PARENT AND NATURAL GUARDIAN : K.W., A MINOR,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>The School District of Philadelphia, Sandra S. Williamson. and David T. Johnson,</p> <p style="text-align: right;">Defendants.</p>	<p>COURT OF COMMON PLEAS PHILADELPHIA COUNTY</p> <p>CIVIL TRIAL DIVISION</p> <p>NOVEMBER TERM, 2021</p> <p>No. 01055</p>
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**ORDER**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, upon consideration of Defendants School District of Philadelphia, Sandra S. Williamson and David T. Johnson’s Preliminary Objections, and any response hereto, it is hereby **ORDERED and DECREED** that the Preliminary Objections are **SUSTAINED** and that Plaintiff’s Complaint is **DISMISSED** with **PREJUDICE** .

**BY THE COURT:**

\_\_\_\_\_  
J.

222757106v1

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N.N., PARENT AND NATURAL GUARDIAN :K.W., A MINOR, Plaintiffs,  v.  The School District of Philadelphia, Sandra S. Williamson and David T. Johnson,  Defendants.	COURT OF COMMON PLEAS PHILADELPHIA COUNTY  CIVIL TRIAL DIVISION  NOVEMBER TERM, 2021  No. 01055
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**DEFENDANTS THE SCHOOL DISTRICT OF PHILADELPHIA, SANDRA  
S. WILLIAMSON AND DAVID T. JOHNSON'S PRELIMINARY  
OBJECTIONS PURSUANT TO RULE 1028(A)(4) OF THE  
PENNSYLVANIA RULES OF CIVIL PROCEDURE**

Defendants The School District of Philadelphia, Sandra S. Williamson and David T.  
Johnson, by and through their counsel of record, hereby file these Preliminary Objections and  
aver the following:

**INTRODUCTION**

1. In a case of first impression, Plaintiffs to seek to hold the School District of  
Philadelphia, a school bus driver, and a bus attendant liable for unlimited monetary damages

under the newly enacted sexual abuse exception to the Political Subdivision Tort Claims Act (“Act”).<sup>1</sup>

2. The plain meaning of the sexual abuse exception only permits abrogation of local agency immunity in cases where an employee of the School District of Philadelphia engaged in conduct constituting certain enumerated sexual offenses, as defined by the Pennsylvania Crimes Code.

3. The sexual abuse exception does not apply in cases where the alleged perpetrator is a student, a trespasser, or any person not employed to perform services on behalf of the School District of Philadelphia.

4. Plaintiff’s Complaint expressly alleges that another student of “tender years” committed the purported sexual assault, and does not allege that a School District of Philadelphia employee (teacher, bus driver, bus attendant, custodian, lunch room aide...) committed the criminal offense. As such, the sexual abuse exception is not triggered. Plaintiffs’ Complaint must be dismissed as a matter of law.

## **PARTIES**

5. This action is brought on behalf of Minor Plaintiff, K.W. (“Minor Plaintiff”) by his parent and natural guardian, identified in the Complaint as N.N. N.N. is identified as a nominal party and the Complaint does not assert any separate or independent claim on behalf of

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<sup>1</sup> The newest exception appears in the comprehensive amendments set forth in 2019 Pa. Legis. Serv. Act 2019-87 (H.B. 962) (Sex Offenses—Crime Victims—Civil Actions) (November 26, 2019), which was later codified. A copy of H.B. 962 is attached hereto as Exhibit B. Defendants do not waive any arguments regarding the constitutionality of the statutory provisions that are the subject of this action and motion practice.

N.N. For ease of reference in this submission, all references to “Plaintiff” shall refer to the Minor Plaintiff, K.W. Minor Plaintiff is a fourteen-year-old mentally disabled child who, at all relevant times, attended the Morton McMichael school. Complaint ¶ 1.

6. Defendant School District of Philadelphia provides educational services to minor children in Philadelphia County. Complaint ¶ 4. Defendant Williamson was employed as a bus monitor. Complaint ¶ 19. Defendant Johnson was a bus driver employed by the School District of Philadelphia. Complaint ¶ 18.

7. By stipulation, dated November 23, 2021, the School Reform Commission of the School District of Philadelphia and the Board of Education of the School District of Philadelphia have been dismissed from the case.

### **FACTS**

8. On March 10, 2020, at approximately 3:45 p.m., Plaintiff was riding the bus home from school and was seated next to another minor student, D.L. Complaint ¶ 28. D.L. is also a special needs student. Complaint ¶ 29. Plaintiff and D.L. were seated directly behind Defendant Johnson, who was driving the bus. Plaintiff alleges he was visible to Defendant Johnson through a mirror designed to see the interior of the bus. Complaint ¶ 30. Plaintiff alleges that he and D.L. were seated five rows away from the school bus aide, Defendant Williamson. Complaint ¶ 31. Plaintiff further alleges that Defendant Williamson, during the relevant time period, was having a conversation on her cell phone. Complaint ¶ 32.

9. Plaintiff alleges that D.L. sexually assaulted him while they were en route from school to his home. Plaintiff claims that this activity took place directly behind the bus driver and that neither Johnson nor Williamson noticed the alleged activity. Complaint ¶ 33.

10. Plaintiff reported the incident to Johnson who reported the incident to the bus dispatcher, and completed an incident report. Complaint ¶¶ 35-36. Plaintiff claims that as a result of the sexual assault by Minor Student D.L., Minor Plaintiff K.W. has undergone, and continues to undergo, intensive therapy. Complaint ¶ 37.

### STANDARD OF REVIEW

11. Questions of immunity are an appropriate subject and may be raised by way of Preliminary Objections when the immunity is apparent on the face of the complaint. *See Orange Stones Co. v. City of Reading*, 87 A.3d 1014, 1022 (Pa. Commw. Ct. 2014) (“[A] party may raise the affirmative defense of immunity as a preliminary objection where it is clearly applicable on the face of the complaint; that is, that a cause of action is made against a governmental body and it is apparent on the face of the pleading that the cause of action does not fall within any of the exceptions to governmental immunity.”) (citing *Wurth v. City of Philadelphia*, 584 A.2d 403, 407 (Pa. Commw. Ct. 1990) (en banc )).

12. When reviewing preliminary objections, “[a]ll material facts set forth in the Complaint as well as all inferences reasonably deducible therefrom are admitted as true.” *Mahoney v. Furches*, 468 A.2d 458, 461 (1983) (quoting *Vattimo v. Lower Bucks Hospital, Inc.*, 465 A.2d 1231, 1232 (1983));

### CLAIMS

13. Count I of Plaintiff’s Complaint asserts a negligence claim. Plaintiff alleges that Defendants Johnson and Williamson owed a duty to him to use reasonable care to protect his health, safety, and well-being. Complaint ¶ 43. Plaintiff claims that as a result of Defendant Johnson’s and Defendant Williamson’s alleged negligence, he has suffered significant behavioral

setbacks, including compulsive sexual behavior and inappropriate touching. Complaint ¶¶ 37-38. Plaintiff seeks to hold Defendants Johnson and Williamson personally liable and the School District vicariously liable. Count I should be dismissed because these claims are barred by the statutory immunity provided by the Political Subdivision Tort Claims.

14. Count II of Plaintiff’s Complaint also asserts a negligence claim solely against the School District. Count II alleges that the School District condoned and/or created an environment on their buses that fostered child-on-child sexual assault. Complaint ¶ 43. Count II further alleges that the School District negligently and/or recklessly supervised, managed, and/or trained their employees, agents, and/or servants, which created an environment on the buses that fostered child-on-child sexual assault. Complaint ¶¶ 43, 57-59. The Complaint makes this broad-sweeping allegation without citing to any facts to support this claim. Count II should be dismissed because these claims are barred by the Political Subdivision Tort Claims.

15. Because the Plaintiff’s claims are barred by the Political Subdivision Tort Claims Act, and no applicable exception applies, the instant Preliminary Objections should be sustained and Plaintiff’s Complaint should be dismissed with prejudice.

## ARGUMENT

### **A. The School District Of Philadelphia And Its Employees Are Immune From Liability Under The Political Subdivision Tort Claims Act**

16. The School District of Philadelphia is a local agency and is entitled to immunity unless the Complaint alleges a cause of action that fits within one of the nine (9) exceptions to governmental immunity. *Geier v. Bd. of Pub. Educ. of the Sch. Dist. of Pittsburgh*, 153 A.3d 1189, 1193, n. 1 (Pa. Commw. Ct. 2017). “All [nine] exceptions to governmental immunity are limited to **specific acts of local agencies or their employees**. See 42 Pa. C.S.A. § 8542(b)(1) –

([9]).” *Id.* at 1197 (emphasis added). Each exception to governmental immunity is to be narrowly construed given the legislature's expressed intent to insulate political subdivisions from tort liability. *Dorsey v. Redman*, 626 Pa. 195, 96 A.3d 332 (2014). The Court must look to each exception, determine which exception fits, and apply the clear and unambiguous language of each exception.

17. When interpreting any exception, this Court must adhere to the letter of the words within the exception and not contort it to reach a conclusion that creates ambiguity and provides a remedy for which the General Assembly never intended. 1 Pa. C.S.A § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”).

18. Only the General Assembly has the power to decide which claims can be brought against local agencies of the Commonwealth. *See Zauflik v. Pennsbury Sch. Dist.*, 629 Pa. 1, 55, 104 A.3d 1096, 1129 (2014) (“The General Assembly has the authority under Article I, Section 11 to define the manner in which governmental entities may be sued in tort, and it has determined that such lawsuits may proceed in limited circumstances, subject to a uniform limitation on damages.”).

19. Any attempt to circumvent this well-established statutory interpretation rule would violate Article I, § 11 of the Pennsylvania Constitution.

20. The only exception that addresses the facts in the Complaint is the newest exception, (b)(9) Sexual Abuse. The plain meaning of this section abrogates immunity only when the alleged sexual abuse is committed by an employee of the local agency. Because the

Complaint expressly alleges that the assault was committed by a minor student, Plaintiff's Complaint fails to allege any facts which support abrogation of immunity.

**B. The Preliminary Objections Should Be Sustained Because The Complaint Fails To Allege That An Employee Of The School District Committed The Sexual Assault.**

21. On November 26, 2019, the General Assembly amended the Act and added the "Sexual Abuse" exception to allow claims for sexual abuse committed by local agency employees. See 42 Pa. C.S.A. § 8542(b)(9).

The Amendments to the Act, in pertinent part, state:

(b) Acts which may impose liability.--The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

...

(9) Sexual abuse.--Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the local agency which constitute negligence.

42 Pa. C.S.A. § 8542(b)(9).

22. The plain language of § 8542(b)(9) requires the offense (sexual assault) to be committed by a local agency employee.

23. The criminal offenses that are encompassed by the exception to immunity created by 42 Pa. C.S.A. § 8542(b)(9) are as follows: 18 Pa. C.S.A. § 3011(b) (relating to trafficking in individuals); 18 Pa. C.S.A. § 3012 (relating to involuntary servitude) as it relates to sexual servitude; 18 Pa. C.S.A. § 3121 (relating to rape); 18 Pa. C.S.A. § 3122.1 (relating to statutory sexual assault); 18 Pa. C.S.A. § 3123 (relating to involuntary deviate sexual intercourse); Section 3124.1 (relating to sexual assault); 18 Pa. C.S.A. § 3124.2 (relating to institutional sexual



assault); 18 Pa. C.S.A. § 3125 (relating to aggravated indecent assault); and 18 Pa. C.S.A. § 4302 (relating to incest).

24. Of these criminal offenses, the crime of institutional sexual assault, (18 Pa. C.S.A. § 3124.2) is most instructive. It demonstrates that the Act's intent to abrogate a school's immunity for acts of sexual assault is limited to those instances committed only by school employees. It is not intended to abrogate immunity for assault committed by other students.

25. Section 3124.2 defines a school employee as "a teacher, a supervisor, a supervising principal, a principal, an assistant principal ... a bus driver, a teacher aide and any other employee who has direct contact with school students. *Id.* The definition section excludes a student within the definition of employee or volunteer. *Id.* The plain meaning of this section is to hold responsible adults in a position of authority at a school who engage in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school.

26. The plain language of both § 8542(b)(9) and 18 Pa. C.S.A. § 3124.2 are consistent in that they do not identify students as potential perpetrators. Namely, § 8542(b)(9). requires the offense (sexual abuse/assault) to be committed by an employee of the local agency before immunity can be abrogated.

27. The Complaint here alleges that the assault was committed by another minor student with intellectual disabilities and not by a School District employee. Because the Complaint fails to allege that an employee of the School District engaged in sexual intercourse, deviate sexual intercourse or indecent contact with the Minor Plaintiff, the Preliminary Objections must be sustained.

**C. The Complaint Fails To Plead The Requisite Facts That Give Rise To One Of The Enumerated Offenses Set Forth In 42 Pa. C.S.A. § 5551(7).**

28. The sexual abuse exception sets forth specifically enumerated crimes codified in the Pennsylvania Criminal Code. Any attempt to abrogate the local agency's immunity based on the sexual assault exception must identify which of the criminal provisions was violated and further plead facts to demonstrate the conduct constituting the specified offense occurred.

29. Plaintiff must plead facts which show that the perpetrator had the requisite level of culpability, and was not subject to some mental incapacity, such as infancy, disability, or mental illness. 18 Pa. C.S.A. § 302 ("a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.").

30. All of the offenses enumerated in § 8551(7) require knowledge and intent.

31. The Complaint alleges that D.L. (alleged perpetrator) was a "special needs student." Complaint ¶ 29. The Complaint does not allege that D.L. had the requisite level of culpability or even capacity to be deemed to even have committed any of the enumerated offenses. For this reason, the Preliminary Objections must be sustained.

**D. THE SEXUAL ABUSE EXCEPTION ONLY APPLIES IF THE OFFENSE WAS COMMITTED BY AN ADULT, NOT A MINOR STUDENT.**

32. On November 26, 2019, the General Assembly amended the Sovereign Immunity Act, which abrogated immunity in civil cases based on sexual assault offenses. 42 Pa. C.S.A. § 8522(b)(10). The Legislature also removed the statutory cap for claims of sexual abuse, allowing for unlimited recovery against the Commonwealth and local agencies, including local school districts. See 42 Pa. C.S.A. § 8528(d) and 42 Pa. C.S.A. § 8553, respectively. See 2019

Pa. Legis. Serv. Act 2019-87 (H.B. 962) (SEX OFFENSES—CRIME VICTIMS—CIVIL ACTIONS)  
(November 26, 2019).

33. This drastic move was designed to prevent government officials from putting their “head in the sand,” while allowing (either through affirmative action or omission) their adult subordinates or co-workers to engage in criminal conduct that satisfies the elements of the offenses set forth in § 8551(7).

34. There can be no clearer example than Penn State University officials allegedly concealing the abuse committed by long-time assistant coach, Jerry Sandusky.

35. The investigation conducted by the Pennsylvania State University Board of Trustees determined that Penn State's longtime head football coach Joe Paterno, along with the school president, vice president, and athletic director knew about allegations of child sexual abuse by Sandusky as early as 1998, had shown a “total and consistent disregard ... for the safety and welfare of Sandusky's child victims.”

<https://s3.documentcloud.org/documents/396518/freeh-report-into-penn-state-university.pdf> (last visited Dec. 7, 2021).

36. The amendments embodied in H.B. 962, also extended the statute of limitations for commencing a civil action for sexual abuse. The amendments permit victims of sexual abuse who are 18 years or younger at time of the assault to bring a civil action against their adult perpetrator 37 years after attaining age 18. 42 Pa. C.S.A. § 5533. The amendment to § 5533 defines sexual abuse as:

sexual activities between an individual who is 23 years of age or younger and an adult, provided that the individual bringing the

civil action engaged in such activities as a result of forcible compulsion or by threat of forcible compulsion which would prevent resistance by a person of reasonable resolution

42 Pa. C.S.A. § 5533(b)(1)(ii).

37. The plain meaning and the totality of the amendments demonstrates that immunity can be abrogated only if the alleged perpetrator is an employee of the School District, as defined by 18 Pa. C.S.A. § 3124.2. and 42 Pa. C.S.A. § 8542(b)(9).

38. If the General Assembly intended to abrogate immunity and allow for lawsuits against local agencies for the affirmative acts of non-employees or other third parties who commit an enumerated offense under § 5551(7), it would have said so. Instead, the General Assembly, abrogated immunity for local agencies for sexual assaults to cases where the local agency employee committed the offense.

39. Likewise, had the General Assembly intended to expand the statute of limitations for civil actions based on sexual abuse committed by minors, it would have done so when it amended 42 Pa. C.S.A. § 5533. Instead, the General Assembly, expanded the statute of limitations for civil actions, only when the offense was committed by an adult.

40. The plain meaning of the amendments, contained in H.B. 962, demonstrates that the General Assembly intended that governmental immunity and the statutory cap would be abrogated only if an adult employee of the local agency engaged in conduct that satisfied any of the offenses set forth in § 5551(7).

**PRAYER FOR RELIEF**

41. Defendants The School District of Philadelphia, Sandra S. Williamson and David T. Johnson hereby request this Court to sustain these Preliminary Objections and dismiss this case with prejudice.

Date: December 9, 2021

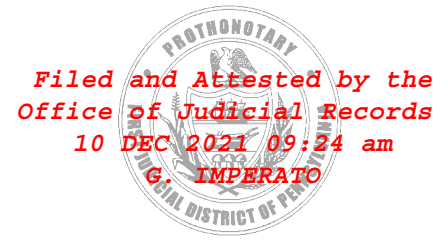
*/s/ Jeffrey M. Scott*

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<p>N.N., PARENT AND NATURAL GUARDIAN :K.W., A MINOR,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>The School District of Philadelphia, Sandra S. Williamson and David T. Johnson,</p> <p style="text-align: right;">Defendants.</p>	<p>COURT OF COMMON PLEAS PHILADELPHIA COUNTY</p> <p>CIVIL TRIAL DIVISION</p> <p>NOVEMBER TERM, 2021</p> <p>No. 01055</p>
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**DEFENDANTS THE SCHOOL DISTRICT OF PHILADELPHIA, SANDRA S.  
WILLIAMSON AND DAVID T. JOHNSON'S BRIEF IN SUPPORT OF THEIR  
PRELIMINARY OBJECTIONS**

Defendants The School District of Philadelphia, Sandra S. Williamson and David T.  
Johnson, by and through their counsel of record, hereby file this Brief in Support of their  
Preliminary Objections.

## **I. INTRODUCTION**

In a case of first impression, Plaintiffs seek to hold the School District of Philadelphia, a school bus driver, and a bus attendant liable for unlimited monetary damages under the newly enacted sexual abuse exception to the Political Subdivision Tort Claims Act (“Act”).<sup>1</sup> The plain meaning of the sexual abuse exception only permits abrogation of local agency immunity in cases where an employee of the School District of Philadelphia engaged in conduct constituting certain enumerated sexual offenses, as defined by the Pennsylvania Crimes Code.

The sexual abuse exception does not apply in cases where the alleged perpetrator is a student, a trespasser, or any person not employed to perform services on behalf of the School District of Philadelphia. Plaintiff’s Complaint expressly alleges that another student of “tender years” committed the purported sexual assault, and does not allege that a School District of Philadelphia employee (teacher, bus driver, bus attendant, custodian, lunch room aide...) committed the criminal offense. As such, the sexual abuse exception is not triggered. Plaintiffs’ Complaint must be dismissed as a matter of law.

## **II. MATTER BEFORE THE COURT**

Before the Court are the Preliminary Objections of the School District of Philadelphia, Defendant Williamson, and Defendant Johnson to Plaintiffs’ Complaint.

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<sup>1</sup> The newest exception appears in the comprehensive amendments set forth in 2019 Pa. Legis. Serv. Act 2019-87 (H.B. 962) (Sex Offenses—Crime Victims—Civil Actions) (November 26, 2019), which was later codified. A copy of H.B. 962 is attached hereto as Exhibit B. Defendants do not waive any arguments regarding the constitutionality of the statutory provisions that are the subject of this action and motion practice.

### III. STATEMENT OF QUESTIONS INVOLVED

A. Whether the sexual abuse exception to the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8542(b)(9), permits recovery of money damages for student-on-student sexual assault?

**Suggested Answer:** No. The sexual abuse exception to the Political Subdivision Tort Claims Act only abrogates local agency immunity when an **employee** of the local agency engages in conduct that constitutes an offense under the following statutes: 18 Pa. C.S.A. § 3011(b) (relating to trafficking in individuals), 18 Pa. C.S.A. § 3012 (relating to involuntary servitude) as it relates to sexual servitude, 18 Pa. C.S.A. § 3121 (relating to rape), 18 Pa. C.S.A. § 3122.1 (relating to statutory sexual assault), 18 Pa. C.S.A. § 3123 (relating to involuntary deviate sexual intercourse), 18 Pa. C.S.A. § 3124.1 (relating to sexual assault), 18 Pa. C.S.A. § 3124.2 (relating to institutional sexual assault), 18 Pa. C.S.A. § 3125 (relating to aggravated indecent assault), or 18 Pa. C.S.A. § 4302 (relating to incest).

B. Whether the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8542(b)(9), bars Plaintiff's claim for failure to train and supervise bus drivers, bus monitors, and other bus personnel?

**Suggested Answer:** Yes. Count II of Plaintiff's Complaint fails to set forth a cause of action that fits into any of the exceptions to immunity under the Political Subdivision Tort Claims Act. 42 Pa. C.S.A. § 8541 *et seq.*

### IV. Standard of Review

Questions of immunity are an appropriate subject and may be raised by way of Preliminary Objections when the immunity is apparent on the face of the complaint. *See Orange Stones Co. v. City of Reading*, 87 A.3d 1014, 1022 (Pa. Commw. Ct. 2014) (“[A] party may raise



the affirmative defense of immunity as a preliminary objection where it is clearly applicable on the face of the complaint; that is, that a cause of action is made against a governmental body and it is apparent on the face of the pleading that the cause of action does not fall within any of the exceptions to governmental immunity.”) (citing *Wurth v. City of Philadelphia*, 584 A.2d 403, 407 (Pa. Commw. Ct. 1990) (en banc )). When reviewing preliminary objections, “[a]ll material facts set forth in the Complaint as well as all inferences reasonably deducible therefrom are admitted as true.” *Mahoney v. Furches*, 468 A.2d 458, 461 (1983) (quoting *Vattimo v. Lower Bucks Hospital, Inc.*, 465 A.2d 1231, 1232 (1983)); *Kyle v. McNamara & Criste*, 487 A.2d 814, 634 (1985); *Dintzis v. Hayden*, 606 A.2d 660, 662 (1992); *Clevenstein v. Rizzuto*, 266 A.2d 623 (1970). The Court, “[h]owever, need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.” *Myers v. Ridge*, 712 A.2d 791, 794 (Pa. Commw. Ct. 1998), *petition for allowance of appeal denied*, 560 Pa. 677, 742 A.2d 173 (1999). In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain them. *Envirotest Partners v. Department of Transportation*, 664 A.2d 208 (Pa. Commw. Ct. 1998).

## **V. PARTIES**

This action is brought on behalf of Minor Plaintiff, K.W. (“Minor Plaintiff”) by his parent and natural guardian, identified in the Complaint as N.N.<sup>2</sup> Minor Plaintiff is a fourteen-year-old mentally disabled child who, at all relevant times, attended the Morton McMichael school. Complaint ¶ 1. Defendant School District of Philadelphia provides educational services

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<sup>2</sup> N.N. is identified as a nominal party and the Complaint does not assert any separate or independent claim on behalf of N.N. For ease of reference in this submission, all references to “Plaintiff” shall refer to the Minor Plaintiff, K.W.

to minor children in Philadelphia County. Complaint ¶ 4. Defendant Williamson was employed as a bus monitor. Complaint ¶ 19. Defendant Johnson was a bus driver employed by the School District of Philadelphia. Complaint ¶ 18. By stipulation, dated November 23, 2021, the School Reform Commission of the School District of Philadelphia and the Board of Education of the School District of Philadelphia have been dismissed from the case.

## **VI. FACTS**

On March 10, 2020, at approximately 3:45 p.m., Plaintiff was riding the bus home from school and was seated next to another minor student, D.L. Complaint ¶ 28. D.L. is also a special needs student. Complaint ¶ 29. Plaintiff and D.L. were seated directly behind Defendant Johnson, who was driving the bus. Plaintiff alleges he was visible to Defendant Johnson through a mirror designed to see the interior of the bus. Complaint ¶ 30. Plaintiff alleges that he and D.L. were seated five rows away from the school bus aide, Defendant Williamson. Complaint ¶ 31. Plaintiff further alleges that Defendant Williamson, during the relevant time period, was having a conversation on her cell phone. Complaint ¶ 32.

Plaintiff alleges that D.L. sexually assaulted and raped him while they were en route from school to his home. Plaintiff claims that this activity took place directly behind the bus driver and that neither Johnson nor Williamson noticed the alleged activity. Complaint ¶ 33.

Plaintiff reported the incident to Johnson who reported the incident to the bus dispatcher, and completed an incident report. Complaint ¶¶ 35-36. Plaintiff claims that as a result of the sexual assault by Minor Student D.L., Minor Plaintiff K.W. has undergone, and continues to undergo, intensive therapy. Complaint ¶ 37.

## VII. CLAIMS

Count I of Plaintiff's Complaint asserts a negligence claim. Plaintiff alleges that Defendants Johnson and Williamson owed a duty to him to use reasonable care to protect his health, safety, and well-being. Complaint ¶ 43. Plaintiff claims that as a result of Defendant Johnson's and Defendant Williamson's alleged negligence, he has suffered significant behavioral setbacks, including compulsive sexual behavior and inappropriate touching. Complaint ¶¶ 37-38. Plaintiff seeks to hold Defendants Johnson and Williamson personally liable and the School District vicariously liable. Count I should be dismissed because these claims are barred by the statutory immunity provided by the Political Subdivision Tort Claims.

Count II of Plaintiff's Complaint also asserts a negligence claim solely against the School District. Count II alleges that the School District condoned and/or created an environment on their buses that fostered child-on-child sexual assault. Complaint ¶ 43. Count II further alleges that the School District negligently and/or recklessly supervised, managed, and/or trained their employees, agents, and/or servants, which created an environment on the buses that fostered child-on-child sexual assault. Complaint ¶¶ 43, 57-59. The Complaint makes this broad-sweeping allegation without citing to any facts to support this claim. Count II should be dismissed because these claims are barred by the Political Subdivision Tort Claims.

Because the Plaintiff's claims are barred by the Political Subdivision Tort Claims Act, and no applicable exception applies, the instant Preliminary Objections should be sustained and Plaintiff's Complaint should be dismissed with prejudice.

## VIII. ARGUMENT

### A. The School District of Philadelphia and its Employees Are Immune from Liability under the Political Subdivision Tort Claims Act

The School District of Philadelphia is a local agency and is entitled to immunity unless the Complaint alleges a cause of action that fits within one of the nine (9) exceptions to governmental immunity. *Geier v. Bd. of Pub. Educ. of the Sch. Dist. of Pittsburgh*, 153 A.3d 1189, 1193, n. 1 (Pa. Commw. Ct. 2017). “All [nine] exceptions to governmental immunity are limited to **specific acts of local agencies or their employees**. See 42 Pa. C.S. § 8542(b)(1) – ([9]).” *Id.* at 1197 (emphasis added). Each exception to governmental immunity is to be narrowly construed given the legislature's expressed intent to insulate political subdivisions from tort liability. *Dorsey v. Redman*, 626 Pa. 195, 96 A.3d 332 (2014). The Court must look to each exception, determine which exception fits, and apply the clear and unambiguous language of each exception.

The language of the Act is clear and unambiguous; it requires the local agency or its employee to engage in conduct that fits into one of the exceptions to immunity before liability may attach. See 42 Pa. C.S.A. § 8542(b). When interpreting any exception, this Court must adhere to the letter of the words within the exception and not contort it to reach a conclusion that creates ambiguity and provides a remedy for which the General Assembly never intended. 1 Pa. C.S.A § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”). Only the General Assembly has the power to decide which claims can be brought against local agencies of the Commonwealth. See *Zauflik v. Pennsbury Sch. Dist.*, 629 Pa. 1, 55, 104 A.3d 1096, 1129 (2014) (“The General Assembly has the authority under Article I, Section 11 to define the manner in which governmental entities may be sued in tort, and it has determined that such lawsuits may

proceed in limited circumstances, subject to a uniform limitation on damages.”). Any attempt to circumvent this well-established statutory interpretation rule would violate Article I, § 11 of the Pennsylvania Constitution.

The only exception that addresses the facts in the Complaint is the newest exception, (b)(9) Sexual Abuse. The plain meaning of this section abrogates immunity only when the alleged sexual abuse is committed by an employee of the local agency. Because the Complaint expressly alleges that the assault was committed by a minor student, Plaintiff’s Complaint fails to allege any facts which support abrogation of immunity.

**B. The Complaint Fails to Plead A Cause of Action Under the Sexual Abuse Exception to the Act**

**1. The Preliminary Objections should be sustained because the Complaint fails to allege that an employee of the school district committed the sexual assault.**

On November 26, 2019, the General Assembly amended the Act and added the “Sexual Abuse” exception to allow claims for sexual abuse committed by local agency employees. See 42 Pa. C.S.A. § 8542(b)(9).

The Amendments to the Act, in pertinent part, state:

(b) Acts which may impose liability.--The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

...

(9) Sexual abuse.--Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the local agency which constitute negligence.

42 Pa. C.S.A. § 8542(b)(9). The plain language of § 8542(b)(9) requires the offense (sexual assault) to be committed by a local agency employee. In this case, Plaintiff alleges that the

purported assault occurred at the hands of another minor student. Thus, there is no question that a school district employee is not the perpetrator and the exception does not apply.

The offenses that are encompassed by the exception to immunity created by 42 Pa. C.S.A. § 8542(b)(9) are as follows: 18 Pa. C.S.A. § 3011(b) (relating to trafficking in individuals); 18 Pa. C.S.A. § 3012 (relating to involuntary servitude) as it relates to sexual servitude; 18 Pa. C.S.A. § 3121 (relating to rape); 18 Pa. C.S.A. § 3122.1 (relating to statutory sexual assault); 18 Pa. C.S.A. § 3123 (relating to involuntary deviate sexual intercourse); Section 3124.1 (relating to sexual assault); 18 Pa. C.S.A. § 3124.2 (relating to institutional sexual assault); 18 Pa. C.S.A. § 3125 (relating to aggravated indecent assault); and 18 Pa. C.S.A. § 4302 (relating to incest).

Of these offenses, the crime of institutional sexual assault, (18 Pa. C.S.A. § 3124.2) is most instructive. It demonstrates that the Act's intent to abrogate a school's immunity for acts of sexual assault is limited to offenses committed only by school employees. It is not intended to abrogate immunity for sexual assaults committed by other students.

Section 3124.2 states:

(a.2) Schools.

(1) Except as provided in sections 3121, 3122.1, 3123, 3124.1 and 3125, a person who is a volunteer or an employee of a school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school.

18 Pa. C.S.A. § 3124.2. This statute defines a school employee as “a teacher, a supervisor, a supervising principal, a principal, an assistant principal ... a bus driver, a teacher aide and any other employee who has direct contact with school students. *Id.* The definition section excludes a student within the definition of employee or volunteer. *Id.* The plain meaning of this section is

to hold responsible adults in a position of authority at a school who engage in sexual intercourse, deviate sexual intercourse or indecent contact.

The plain language of both § 8542(b)(9) and 18 Pa. C.S.A. § 3124.2 are consistent in that they do not identify students as potential perpetrators. Namely, § 8542(b)(9). requires the offense (sexual abuse/assault) to be committed by an employee of the local agency before immunity can be abrogated. The Complaint here alleges that the assault was committed by another minor student with intellectual disabilities and not by a School District employee. Because the Complaint fails to allege that an employee of the School District engaged in sexual intercourse, deviate sexual intercourse or indecent contact with the Minor Plaintiff, the Preliminary Objections must be sustained.

**2. The Complaint fails to plead the requisite facts that give rise to one of the enumerated offenses set forth in 42 Pa. C.S.A. § 5551(7).**

As noted, the sexual abuse exception sets forth specifically enumerated crimes codified in the Pennsylvania Criminal Code. Any attempt to abrogate the local agency's immunity based on the sexual assault exception must identify which of the criminal provisions was violated and further plead facts to demonstrate the conduct constituting the specified offense occurred.

In order to do so, Plaintiff must plead facts which show that the perpetrator had the requisite level of culpability, and was not subject to some mental incapacity, such as infancy, disability, or mental illness. 18 Pa. C.S.A. § 302 (“a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.”). All of the offenses enumerated in § 8551(7) require knowledge and intent.

The Complaint alleges that D.L. (alleged perpetrator) was a “special needs student.” Complaint ¶ 29. The Complaint does not allege that D.L. had the requisite level of culpability or

even capacity to be deemed to even have committed any of the enumerated offenses. For this reason, the Preliminary Objections must be sustained.

**C. The Sexual Abuse Exception Only Applies if the Offense was Committed by an Adult, Not a Minor Student.**

In order to effectuate a comprehensive change, on November 26, 2019, the General Assembly amended the Sovereign Immunity Act, which abrogated immunity in civil cases based on sexual assault offenses. 42 Pa. C.S.A. § 8522(b)(10). The Legislature also removed the statutory cap for claims of sexual abuse, allowing for unlimited recovery against the Commonwealth and local agencies, including local school districts. *See* 42 Pa. C.S.A. § 8528(d) and 42 Pa. C.S.A. § 8553, respectively. *See* 2019 Pa. Legis. Serv. Act 2019-87 (H.B. 962) (SEX OFFENSES—CRIME VICTIMS—CIVIL ACTIONS) (November 26, 2019). This drastic move was designed to prevent government officials from putting their “head in the sand,” while allowing their (either through affirmative action or omission) adult subordinates or co-workers to engage in criminal conduct that satisfies the elements of the offenses set forth in § 8551(7).

There can be no clearer example than Penn State University officials allegedly concealing the abuse committed by long-time assistant coach, Jerry Sandusky. The investigation conducted by the Pennsylvania State University Board of Trustees determined that Penn State's longtime head football coach Joe Paterno, along with the school president, vice president, and athletic director knew about allegations of child sexual abuse by Sandusky as early as 1998, had shown a “total and consistent disregard ... for the safety and welfare of Sandusky's child victims.”

<https://s3.documentcloud.org/documents/396518/freeh-report-into-penn-state-university.pdf> (last visited Dec. 7, 2021).

To further address this issue, the amendments embodied in H.B. 962, which were codified into various sections of the Act, also extended the statute of limitations for commencing



a civil action for sexual abuse. The amendments permit victims of sexual abuse who are 18 years or younger at time of the assault to bring a civil action against their adult perpetrator 37 years after attaining age 18. 42 Pa. C.S.A. § 5533. Critically, the amendment to § 5533 defines sexual abuse as:

sexual activities between an individual who is 23 years of age or younger and an adult, provided that the individual bringing the civil action engaged in such activities as a result of forcible compulsion or by threat of forcible compulsion which would prevent resistance by a person of reasonable resolution

42 Pa. C.S.A. § 5533(b)(1)(ii).

Each of the amendments contained in H.B. 962 must be read in conjunction and construed with reference to the entire statute. 1 Pa.C.S. § 1922(2). *See Trust Under Agreement of Taylor*, 640 Pa. 629, 642–43, 164 A.3d 1147, 1155 (2017); *Commonwealth v. Mayhue*, 536 Pa. 271, 639 A.2d 421, 439 (1994) (“When construing one section of a statute, courts must read that section not by itself, but with reference to, and in light of, the other sections.”).

The plain meaning of the Amendments to the various statutes set forth in H.B. 962, when read in their totality, demonstrate that the General Assembly intended that the Sexual Abuse exception, the tolling of the statute of limitations in civil cases, and the abrogation of the statutory cap, are triggered only if the alleged perpetrator was an adult employee of the local or state agency, and the victim of the offense was 23 years of age or younger. 42 Pa. C.S.A. § 5533(b)(1)(ii). Thus, the totality of the amendments demonstrates that immunity can be abrogated only if the alleged perpetrator is an employee of the School District, as defined by 18 Pa. C.S.A. § 3124.2. and 42 Pa. C.S.A. § 8542(b)(9).

If the General Assembly intended to abrogate immunity and allow for lawsuits against local agencies for the affirmative acts of non-employees or other third parties who commit an enumerated offense under § 5551(7), it would have said so. Instead, the General Assembly,

abrogated immunity for local agencies for sexual assaults to cases where the local agency employee committed the offense.

Likewise, had the General Assembly intended to expand the statute of limitations for civil actions based on sexual abuse committed by minors, it would have done so when it amended 42 Pa. C.S.A. § 5533. Instead, the General Assembly, expanded the statute of limitations for civil actions, only when the offense was committed by an adult. The plain meaning of the amendments, contained in H.B. 962, demonstrates that the General Assembly intended that governmental immunity and the statutory cap would be abrogated only if an adult employee of the local agency engaged in conduct that satisfied any of the offenses set forth in § 5551(7).

For these reasons, the Preliminary Objections must be sustained and Plaintiff's Complaint dismissed with prejudice.

#### **IX. PRAYER FOR RELIEF**

Defendants The School District of Philadelphia, Sandra S. Williamson and David T. Johnson hereby request this Court to sustain these Preliminary Objections and dismiss this case with prejudice.

Date: December 9, 2021

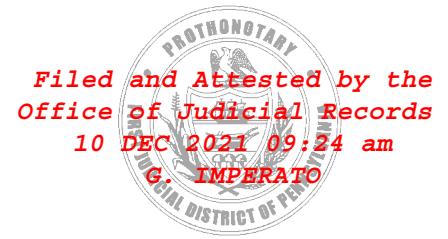
*/s/ Jeffrey M. Scott*

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<p>N.N., PARENT AND NATURAL GUARDIAN : K.W., A MINOR,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>The School District of Philadelphia, Sandra S. Williamson. and David T. Johnson,</p> <p style="text-align: right;">Defendants.</p>	<p>COURT OF COMMON PLEAS PHILADELPHIA COUNTY</p> <p>CIVIL TRIAL DIVISION</p> <p>NOVEMBER TERM, 2021</p> <p>No. 01055</p>
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**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the attached Preliminary Objections, and Exhibits have been filed of record on December 9, 2021 via the Court's ECF system and is available for viewing and downloading.

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Benjamin O. Present, Esquire  
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Philadelphia, Pennsylvania 19102  
*Attorneys for Plaintiff*

Case ID: 211101055  
Control No.: 21122023

*/s/ Jeffrey M. Scott*

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*Jeffrey M. Scott* (Attorney I.D. No. 60814)

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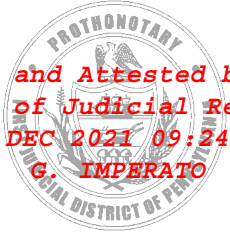
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*Attorneys for Defendants* The School District of Philadelphia,  
Sandra S. Williamson and David T. Johnson

222757411v1

Case ID: 211101055  
Control No.: 21122023

Filed and Attested by the  
Office of Judicial Records  
10 DEC 2021 09:24 am  
G. IMPERATO

The seal of the Prothonotary of the District of Columbia is circular. It features an eagle with wings spread, perched on a shield. The shield contains a scale of justice and a sword. The text "PROTHONOTARY" is at the top, and "DISTRICT OF COLUMBIA" is at the bottom.

# EXHIBIT A

Court of Common Pleas of Philadelphia County  
Trial Division

**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)

**NOVEMBER 2021**

**001055**

E-Filing Number: 2111027358

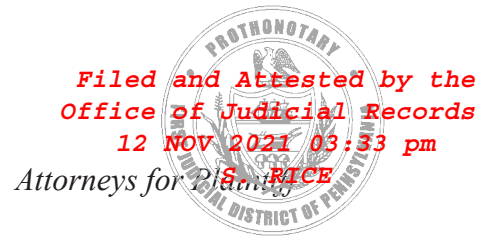
PLAINTIFF'S NAME N. N., ALIAS: PARENT AND NATURAL GUARDIAN OF K.W.		DEFENDANT'S NAME SCHOOL DISTRICT OF PHILADELPHIA	
PLAINTIFF'S ADDRESS 1525 LOCUST STREET 12TH FLOOR PHILADELPHIA PHILADELPHIA PA 19102		DEFENDANT'S ADDRESS 440 NORTH BROAD STREET PHILADELPHIA PA 19130	
PLAINTIFF'S NAME		DEFENDANT'S NAME SCHOOL REFORM COMMISSION OF SCHOOL DISTRICT OF PHILADELPHIA	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 440 NORTH BROAD STREET SUITE 101 PHILADELPHIA PA 19130	
PLAINTIFF'S NAME		DEFENDANT'S NAME BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF PHILADELPHIA	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 440 NORTH BROAD STREET SUITE 101 PHILADELPHIA PA 19130	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 5	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Non-Jury <input type="checkbox"/> Other: <input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition <input type="checkbox"/> Commerce <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival		
CASE TYPE AND CODE 20 - PERSONAL INJURY - OTHER			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
		<b>FILED</b> <b>PRO PROTHY</b> <b>NOV 12 2021</b> <b>S. RICE</b>	
<b>TO THE PROTHONOTARY:</b> Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>N. N.</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY THOMAS R. KLINE		ADDRESS KLINE & SPECTER 1525 LOCUST ST., 19TH FL. PHILADELPHIA PA 19102	
PHONE NUMBER (215) 772-1000	FAX NUMBER (215) 772-1359		
SUPREME COURT IDENTIFICATION NO. 28895	E-MAIL ADDRESS tom.kline@klinespecter.com		
SIGNATURE OF FILING ATTORNEY OR PARTY THOMAS KLINE		DATE SUBMITTED Friday, November 12, 2021, 03:33 pm	

**COMPLETE LIST OF DEFENDANTS:**

1. SCHOOL DISTRICT OF PHILADELPHIA  
440 NORTH BROAD STREET  
PHILADELPHIA PA 19130
2. SCHOOL REFORM COMMISSION OF SCHOOL DISTRICT OF PHILADELPHIA  
440 NORTH BROAD STREET SUITE 101  
PHILADELPHIA PA 19130
3. BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF PHILADELPHIA  
440 NORTH BROAD STREET SUITE 101  
PHILADELPHIA PA 19130
4. DAVID JOHNSON  
440 NORTH BROAD STREET  
PHILADELPHIA PA 19130
5. SANDRA WILLIAMSON  
440 NORTH BROAD STREET  
PHILADELPHIA PA 19130



**KLINE & SPECTER, PC**  
 THOMAS R. KLINE, ESQUIRE  
 BENJAMIN O. PRESENT, ESQUIRE  
 Identification No. 28895/322682  
 1525 Locust Street, 19th Floor  
 Philadelphia, Pennsylvania 19102  
 215-772-1000




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N.N., PARENT AND NATURAL GUARDIAN	:	
K.W., A MINOR	:	
c/o KLINE & SPECTER, P.C.	:	COURT OF COMMON PLEAS
1525 Locust Street	:	PHILADELPHIA COUNTY
The Nineteenth Floor	:	
Philadelphia, Pennsylvania 19102	:	NOVEMBER 2021 TERM
	:	
Plaintiffs,	:	NO.:
	:	
v.	:	<b>JURY TRIAL DEMANDED</b>
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
440 North Broad Street	:	
Philadelphia, Pennsylvania 19130	:	
	:	
and	:	
	:	
SCHOOL REFORM COMMISSION OF THE	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
440 North Broad Street, Suite 101	:	
Philadelphia, Pennsylvania 19130	:	
	:	
and	:	
	:	
BOARD OF EDUCATION OF THE	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
440 North Broad Street, Suite 101	:	
Philadelphia, Pennsylvania 19130	:	
	:	
and	:	
	:	
DAVID JOHNSON	:	
c/o SCHOOL DISTRICT OF PHILADELPHIA	:	
440 North Broad Street	:	
Philadelphia, Pennsylvania 19130	:	
	:	
and	:	
	:	

SANDRA WILLIAMSON :  
c/o SCHOOL DISTRICT OF PHILADELPHIA :  
440 North Broad Street :  
Philadelphia, Pennsylvania 19130 :

Defendants. :

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<b>NOTICE</b>	<b>ADVISO</b>
<p>You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.</p>	<p>Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.</p>
<p>YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.</p>	<p>LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.</p>
<p>Lawyer Referral Service Philadelphia Bar Association 1101 Market Street, 11<sup>th</sup> Floor Philadelphia, PA 19107 (215) 238-6338</p>	<p>Lawyer Referral Service Philadelphia Bar Association 1101 Market Street, 11<sup>th</sup> Floor Philadelphia, PA 19107 (215) 238-6338</p>

**CIVIL ACTION COMPLAINT**

Minor-Plaintiff K.W. is a minor student with significant developmental disabilities at the Morton McMichael school within the School District of Philadelphia. On March 10, 2020, Minor-Plaintiff was sexually assaulted by another student, D.L., on a School District of Philadelphia school bus. During the sexual assault, Minor-Plaintiff and Minor-Student D.L. were directly behind the bus driver, well within his fields of visual and auditory perception. In addition to the bus driver, there was another employee of the School District on the bus, a bus attendant. Instead of monitoring the students, the bus attendant sat and talked on her cell phone during the sexual assault. Minor-Plaintiff, by and through his Parent and Natural Guardian, N.N., by and through their undersigned counsel, Kline & Specter, P.C., respectfully files this Complaint against

Defendants, School District of Philadelphia, School Reform Commission of the School District of Philadelphia, the Board of Education of the School District of Philadelphia, David T. Johnson, and Sandra Williamson, seeking all damages recoverable under Pennsylvania law. In support of this action, Plaintiff avers as follows:

**PARTIES**

1. Minor-Plaintiff, K.W. (sometimes hereinafter “Minor-Plaintiff”), is a fourteen-year-old mentally disabled minor individual who is a citizen of, and currently resides in, the Commonwealth of Pennsylvania who, at all relevant times, attended the Morton McMichael School in Philadelphia, and who may be reached through undersigned counsel only.

2. Plaintiff, N.N. (sometimes hereinafter “Plaintiff”), is an adult individual who is a citizen of, and currently resides in, the City of Philadelphia, within the Commonwealth of Pennsylvania, and who may be reached through undersigned counsel only. N.N. is the parent and natural guardian of Minor-Plaintiff K.W.

3. Defendant School District of Philadelphia is, and was at all relevant times, a municipal corporation or other jural entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with a principal place of business at 440 North Broad Street, Philadelphia, Pennsylvania, 19130.

4. At all relevant times, Defendant School District of Philadelphia has provided educational services to minor children in Philadelphia County.

5. Defendant, School Reform Commission of the School District of Philadelphia (sometimes hereinafter “School Reform Commission”), is a municipal corporation or other jural entity organized and existing under and by virtue of the laws of the Commonwealth of

Pennsylvania with a principal place of business at 440 North Broad Street, Suite 101, Philadelphia, Pennsylvania 19130.

6. At all relevant times, Defendant School Reform Commission adopted, oversaw, and/or enforced rules and regulations for management of school affairs and the conduct and department of employees and students within the School District of Philadelphia.

7. Defendant, Board of Education of the School District of Philadelphia (sometimes hereinafter “Board of Education”), is a municipal corporation or other jural entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with a principal place of business at 440 North Broad Street, Suite 101, Philadelphia, Pennsylvania 19130.

8. At all relevant times, Defendant Board of Education adopted, oversaw, and/or enforced rules and regulations for management of school affairs and the conduct and department of employees and students.

9. Defendant, David T. Johnson (sometimes hereinafter “Johnson”), is an adult citizen and resident of the City of Philadelphia within the Commonwealth of Pennsylvania who, at all relevant times, was employed as a school bus driver by the School District of Philadelphia and had a business address of 440 North Broad Street, Suite 101, Philadelphia, Pennsylvania 19130.

10. Defendant, Sandra Williamson (sometimes hereinafter “Williamson”), is an adult citizen and resident of the City of Philadelphia within the Commonwealth of Pennsylvania who, at all relevant times, was employed as a school bus monitor/bus attendant by the School District of Philadelphia and had a business address of 440 North Broad Street, Suite 101, Philadelphia, Pennsylvania 19130.

11. At all relevant times hereto, Defendant School District of Philadelphia acted individually and by and through its employees, agents, and/or servants, including bus drivers, bus

monitors, bus attendants, and other bus personnel, including Johnson and Williamson, to provide bus transportation services to students within the School District of Philadelphia, including Minor-Plaintiff. Accordingly, Defendant School District of Philadelphia is liable for the acts and/or omissions of its employees, agents, and/or servants that occurred in the course of providing bus transportation services to Minor-Plaintiff under theories of agency, master-servant, respondeat superior, and/or right of control.

12. At all relevant times hereto, Defendant School Reform Commission acted individually and by and through its employees, agents, and/or servants, including bus drivers, bus monitors, bus attendants, and other bus personnel, including Johnson and Williamson, to provide bus transportation services to students within the School District of Philadelphia, including Minor-Plaintiff. Accordingly, Defendant School Reform Commission is liable for the acts and/or omissions of its employees, agents, and/or servants that occurred in the course of providing bus transportation services to Minor-Plaintiff under theories of agency, master-servant, respondeat superior, and/or right of control.

13. At all relevant times hereto, Defendant Board of Education acted individually and by and through its employees, agents, and/or servants, including bus drivers, bus monitors, bus attendants, and other bus personnel, including Johnson and Williamson, to provide bus transportation services to students within the School District of Philadelphia, including Minor-Plaintiff. Accordingly, Defendant Board of Education is liable for the acts and/or omissions of its employees, agents, and/or servants that occurred in the course of providing bus transportation services to Minor-Plaintiff under theories of agency, master-servant, respondeat superior, and/or right of control.

14. There may be other employees, agents, and/or servants of Defendants with responsibilities for the care and safety of Minor-Plaintiff whose acts and/or omissions contributed to the injuries and damages suffered by Minor-Plaintiff. The identities of such persons will be discerned through discovery and such persons will be joined as defendants, if and when appropriate.

### **STATEMENT OF FACTS**

15. Plaintiff incorporates by reference and realleges all the above paragraphs as though fully set forth herein.

16. The School District of Philadelphia provides busing services for students attending its 326 schools.

17. For some of its students, the School District of Philadelphia provides buses through various private contractors. For other students, the city provides buses that are owned and operated by the School District, and operated by bus drivers employed by the School District of Philadelphia.

18. At all relevant times, Minor-Plaintiff rode to and from school at the Morton McMichael School on a bus that was owned and operated by the School District of Philadelphia and was operated by Defendant Johnson, a driver who was employed by the School District of Philadelphia.

19. At all relevant times, Defendant Williamson was employed directly by the School District of Philadelphia and was the bus monitor/bus attendant on Minor-Plaintiff's bus.

20. At all relevant times, Defendants School District of Philadelphia, School Reform Commission, and Board of Education promulgated and enforced policies related to the busing of

students to and from school, including for buses owned and operated by the School District of Philadelphia.

21. The above-referenced policies include, but are not limited to, policies governing the safety of students like Minor-Plaintiff who take School District of Philadelphia buses to and from school every day.

22. The School District of Philadelphia's "Transportation" policy states, in relevant part, "The Board of Education ("Board") is responsible for providing School District of Philadelphia ("District") students with timely, efficient, and safe transportation and superior customer service in accordance with applicable laws."

23. Additionally, The School District of Philadelphia's "Transportation – Video/Audio Recording" policy states, in relevant part, "The Board of Education ("Board") aims to ensure the highest level of safety and security of all students, staff, contractors, and others being transported on District-owned, operated, or contracted school buses or school vehicles. The purpose of this policy is to allow for the use of video and audio recording equipment on these vehicles and to provide guidelines to ensure proper use and notice."

24. The School District of Philadelphia has posted job descriptions for the Bus Attendant role that state, among other things, that "By providing safe, structured and secure transportation experience for our students, Bus Attendants help to ensure our students arrive and depart from school eager to return the next day."

25. The School District of Philadelphia has posted job descriptions for the Bus Driver role that state, among other things, that "Bus Drivers provide safe and efficient transportation city-wide to our students. We need individuals with the demonstrated knowledge of Pennsylvania

traffic laws, and necessary skill to operate a large vehicle with an automatic transmission to ensure safety of students, staff and families. Typical duties include:

- driving the school bus to a number of assigned routes, picking up and discharging students
- supervising the students while on the bus
- cleaning and maintaining the vehicle. Daily maintenance can include checking batteries, checking radiators and changing tires.”

26. Minor-Plaintiff is a mentally disabled individual who, at all relevant times, was in the seventh grade but read at and performed mathematics at a first-grade level. Minor-Plaintiff has significantly underdeveloped cognitive and language skills and is also significantly smaller in stature than other children his age. At all relevant times, Minor-Plaintiff functioned at a first-grade educational and behavioral level.

27. As part of Minor-Plaintiff’s Individualized Education Program (“IEP”), Minor-Plaintiff was required to take “Special Transportation,” which is supposed to provide added safety and supervision by, among other things, limiting the number of students on a given bus.

28. On March 10, 2020, at approximately 3:45 p.m., Minor-Plaintiff, then thirteen years old, was riding the bus home from school and was seated next to another minor student, D.L.

29. Minor-Student D.L. was also a special needs student who, upon information and belief, had known behavioral problems.

30. Minor-Plaintiff and Minor-Student D.L. were seated directly behind Defendant Johnson, who was driving the bus. The minors were visible to Defendant Johnson through a mirror designed to see the interior of the bus. The minors were also within earshot of Johnson given his close proximity to them.



31. The minors were also seated five rows away from Defendant Williamson, who should have been able to see them and hear them if she were observing the students, as required by her job.

32. Defendant Williamson, however, spent much of the relevant timeframe of the bus ride having a personal conversation on her cell phone, instead of supervising the special needs children whom she was entrusted to keep safe.

33. While seated next to one another over the course of at least twenty-two minutes, Minor-Student D.L. repeatedly sexually assaulted and raped Minor-Plaintiff, including groping Minor-Plaintiff's genitals, forcing Minor-Plaintiff to touch Minor-Student D.L.'s genitals, and penetrating Minor-Plaintiff's anus with his penis, all while seated directly behind the bus driver and all while both Minor-Plaintiff and Minor-Student D.L. were within the visual field and earshot of both Defendants Johnson and Williamson, and while Defendant Williamson sat and talked on the phone.

34. All of Minor-Student D.L.'s acts were caught on video, which, in addition to Minor-Student D.L. persistently sexually assaulting Minor-Plaintiff, also shows Defendant Williamson seated in the middle of the bus talking on her phone, instead of observing and supervising the students on the bus and ensuring their safety.

35. More specifically, and in relevant part, the video shows:

- a. At the 16:20 timestamp of the video, Minor-Plaintiff is heard groaning.
- b. At the 16:28 timestamp of the video, Minor-Student D.L. removed his shirt.

- c. At the 16:29 timestamp of the video, Minor-Student D.L. inappropriately touched Minor-Plaintiff.
- d. At the 16:31 timestamp of the video, Minor-Student D.L. picked up Minor-Plaintiff and put him on top of his lap.
- e. From the 16:32 to 16:34 timestamps of the video, Minor-Student D.L. repeatedly humped and/or thrust into Minor-Plaintiff.
- f. From the 16:35 to 16:36 timestamps of the video, Minor-Student D.L. repeatedly kissed Minor-Plaintiff, while Minor-Plaintiff remained on Minor-Student D.L.'s lap. During this timeframe, Minor-Plaintiff can be seen curling into a ball and recoiling in fear, as Minor-Student D.L. continued to kiss him.
- g. At the 16:41 timestamp of the video, upon information and belief, Minor-Student D.L. penetrated Minor-Plaintiff's anus with his penis and continued to kiss him.
- h. At the 16:42 timestamp of the video, Minor-Student D.L. got off the bus.
- i. At the 16:45 timestamp of the video, Minor-Plaintiff reported to Defendant Johnson that Minor-Student D.L. had inappropriately kissed and touched his "private parts." Johnson responded by asking Minor-Plaintiff why he didn't report the incident while it was taking place. Minor-Plaintiff

also reported to Johnson that Minor-Student D.L. had told him not to mention the assault to anyone.

- j. At the 16:46 timestamp of the video, Defendant Williamson also attempted to place blame on Minor-Plaintiff, stating that she wished Minor-Plaintiff had told her about the incident while Minor-Student D.L. was still on the bus.

36. Following the incident, Defendant Johnson reported what Minor-Plaintiff told him to Jennifer Barnes, a bus dispatcher, and completed an incident report.

37. As a result of being sexually assaulted by Minor-Student D.L. due to Defendants' negligence, Minor-Plaintiff has undergone, and continues to undergo, intensive therapy.

38. As a result of being sexually assaulted by Minor-Student D.L. due to Defendants' negligence, Minor-Plaintiff has suffered significant behavioral setbacks, including compulsive sexual behavior and inappropriate touching.

39. The aforementioned incident was caused solely and exclusively by the negligence and/or recklessness of Defendants, their employees, agents, and/or servants. In no manner was it due to any act or failure to act on the part of Plaintiff or Minor-Plaintiff.

40. But for the acts and/or omissions of Defendants, their employees, agents, and/or servants, Minor-Plaintiff would not have been sexually assaulted by D.L. on March 10, 2020.

41. As a result of the negligence and/or recklessness of Defendants, their employees, agents, and/or servants, Minor-Plaintiff suffered severe and permanent injuries, including *inter alia*, the following:

- a. rape and/or involuntary sexual relations and its signs, symptoms, and sequelae;

- b. anal injury;
- c. emotional distress;
- d. anxiety;
- e. fear and fright;
- f. various and severe and painful bodily injuries as set out in  
Minor-Plaintiff's medical records;
- g. past and future psychological injuries and conditions;
- h. past and future psychiatric injuries and conditions;
- i. exacerbation of previous psychological conditions;
- j. exacerbation of previous psychiatric conditions;
- k. past and future educational setbacks;
- l. past and future pain and suffering;
- m. past and future medical expenses;
- n. past and future mental anguish;
- o. past and future embarrassment;
- p. past and future humiliation;
- q. past and future loss of life's pleasures;
- r. future lost wages; and
- s. future loss of earning capacity.

**WHEREFORE**, Plaintiff demands judgment in her favor and against Defendants, jointly and severally, with all Defendants named herein, for a sum in excess of fifty thousand dollars (\$50,000.00) in compensatory and punitive damages, exclusive of pre-judgment interest, post-judgment interest and costs.

**COUNT I – NEGLIGENCE**

**Plaintiff, N.N., as Parent and Natural Guardian of Minor-Plaintiff, K.W.**

**v.**

**David Johnson and Sandra Williamson and Vicariously and Derivatively Liable  
Defendants School District of Philadelphia, School Reform Commission of The School  
District of Philadelphia, and Board of Education of The School District of Philadelphia**

42. Plaintiff incorporates by reference and realleges all the above paragraphs as if set forth fully herein.

43. Defendants Johnson and Williamson owed a duty to Plaintiff to use reasonable care to protect the health, safety, and well-being of Minor-Plaintiff while transporting him to and from the Morton McMichael School.

44. Defendants Johnson and Williamson’s duties included safely transporting mentally disabled and/or special needs student passengers to and from school, supervising mentally disabled and/or special needs student passengers on the bus, controlling passenger behavior on the bus, preventing passenger misconduct on the bus, preventing child-on-child sexual assault, and otherwise providing a safe environment for Minor-Plaintiff while being transported to and from school.

45. Defendant Johnson and Williamson knew or reasonably should have known that breaching these duties would expose Minor-Plaintiff to the potential dangers of student misconduct, including child-on-child sexual assault.

46. Defendants Johnson and Williamson breached these duties by failing to protect Minor-Plaintiff from the sexual assault committed by Minor-Student D.L. on March 10, 2020 while Minor-Plaintiff was being transported from school to his home, which occurred within the visual and auditory fields of both Defendants Johnson and Williamson, who should have prevented

the assault and/or identified the ongoing sexual assault and immediately stopped it from continuing.

47. The negligent and/or reckless conduct of Defendants Johnson and Williamson consisted of, *inter alia*, the following:

- a. failure to provide a safe means of transportation to and from Morton McMichael School;
- b. failure to identify and act upon circumstances indicating a risk of harm and sexual/physical assault to Minor-Plaintiff, including failure to properly supervise mentally disabled and/or special needs student passengers on the bus, especially given the presence of a bus driver and a bus monitor, who was supposed to both see and hear events occurring on the bus;
- c. failure to notice or prevent sexual activity among mentally disabled and/or special needs student passengers while on the bus, especially given the presence of a bus driver and a bus monitor, who was supposed to both see and hear events occurring on the bus;
- d. failure to take immediate action to remove Minor-Plaintiff from circumstances that caused an increased a risk of harm to Minor-Plaintiff, including the failure to recognize signs of sexual assault occurring against Minor-Plaintiff, such as when Minor-Student D.L. kissed Minor-Plaintiff, repeatedly

groped him and fondled his genitals, placed Minor-Plaintiff onto his lap, and then repeatedly thrust into Minor-Plaintiff while Minor-Plaintiff was on his lap;

- e. failure to properly evaluate Minor-Plaintiff's physical and mental well-being while riding the bus;
- f. failure to prevent Minor-Plaintiff from suffering grievous and permanent physical, emotional, and psychological injuries; and
- g. other negligent acts and omissions that may be identified in discovery.

48. The above-referenced conduct of Defendants Johnson and Williamson condoned and/or created an environment that fostered child-on-child sexual assault.

49. The above-referenced conduct of Defendants Johnson and Williamson provided Minor-Plaintiff's student attacker, Minor-Student D.L., with unfettered and inadequately-supervised access to Minor-Plaintiff over a prolonged period of time, as set forth above, needlessly endangering Minor-Plaintiff's health, safety, and well-being.

50. The above-referenced conduct of Defendants Johnson and Williamson demonstrates an outrageous and/or reckless disregard for the health, safety, and well-being of Minor-Plaintiff.

51. The above-referenced conduct of Defendants Johnson and Williamson was the direct and proximate cause of Minor-Plaintiff's damages as set forth above.

52. Defendants School District of Philadelphia, School Reform Commission, and Board of Education are vicariously liable for the above-described negligent and reckless conduct

of their agents, employees, workers, and/or servants, Johnson and Williamson, under the doctrine of *respondeat superior*.

**WHEREFORE**, Plaintiff demands judgment in his favor and against Defendants, jointly and severally, with all Defendants named herein, for a sum in excess of fifty thousand dollars (\$50,000.00) in compensatory and punitive damages, exclusive of pre-judgment interest, post-judgment interest and costs.

**COUNT II – NEGLIGENCE**

**Plaintiff, N.N., as Parent and Natural Guardian of Minor-Plaintiff, K.W.**

**v.**

**Defendants School District of Philadelphia, School Reform Commission of The School District of Philadelphia, and Board of Education of The School District of Philadelphia**

53. Plaintiff incorporates by reference and realleges all the above paragraphs as if set forth fully herein.

54. In addition to the derivative and vicarious liability of Defendants School District of Philadelphia, School Reform Commission, and Board of Education for the negligent acts and/or omissions of their employees, agents, and/or servants, Defendants School District of Philadelphia, School Reform Commission, and Board of Education further owed a direct and non-delegable duty to Minor-Plaintiff to exercise reasonable care in supervising, managing, and training their employees, agents, and/or servants, including bus drivers, bus monitors, and other bus personnel.

55. These duties included training employees, agents, and/or servants in passenger safety and the prevention of child-on-child sexual assaults and establishing policies and procedures for the safety and protection of mentally disabled student passengers while they were being transported to and from schools within the School District of Philadelphia, including the Morton McMichael School.



56. Defendants School District of Philadelphia, School Reform Commission, and Board of Education knew or reasonably should have known that breaching these duties would expose Minor-Plaintiff to the potential dangers of student misconduct, including child-on-child sexual assault.

57. Defendants School District of Philadelphia, School Reform Commission, and Board of Education breached these duties by failing to adequately supervise, manage, and/or train their employees, agents, and or/servants.

58. As a result, Defendants School District of Philadelphia, School Reform Commission, and Board of Education's employees, agents, and/or servants were uninformed and unaware of how to promptly and correctly identify ongoing sexual assault and/or signs of sexual assault, and were uninformed and unaware as to how to appropriately respond to suspected assault.

59. Defendants School District of Philadelphia, School Reform Commission, and Board of Education negligently and/or recklessly supervised, managed, and/or trained their employees, agents, and/or servants as follows:

- a. failure to select and retain bus drivers and bus monitors who are competent in the supervision and management of mentally disabled and/or special needs student passengers;
- b. failure to oversee all persons who operate and monitor vehicles on their behalf and to ensure that they are properly trained in the supervision and management of mentally disabled and/or special needs student passengers;
- c. failure to formulate, adopt, and enforce adequate rules and policies to ensure appropriate behavior among mentally

disabled student and/or special needs passengers, including policies listed herein above;

- d. failure to formulate, adopt, and enforce adequate rules and policies to ensure timely recognition of inappropriate behavior among mentally disabled and/or special needs student passengers;
- e. failure to formulate, adopt, and enforce adequate rules and policies regarding the appropriate level of physical contact among mentally disabled and/or special needs student passengers;
- f. failure to formulate, adopt, and enforce adequate rules and policies regarding sexual contact among mentally disabled student and/or special needs passengers;
- g. failure to properly monitor and/or supervise bus drivers and bus monitors, including failure to supervise bus activities through use of a live feed/video camera;
- h. failure to install a live feed/video camera on vehicles to deter inappropriate conduct and to ensure the safety of mentally disabled and/or special needs student passengers;
- i. failure to properly monitor and/or supervise the actions of any subordinate employees and/or agents whose actions or inactions contributed to the harms suffered by Minor-Plaintiff;

- j. failure to adequately monitor existing bus surveillance footage to detect or discover prior sexual assaults and/or other inappropriate conduct of Minor-Student D.L., who sexually assaulted Minor-Plaintiff, as set forth above;
- k. failure to otherwise investigate, discover, and/or prevent the activities of Minor-Student D.L., who sexually assaulted Minor-Plaintiff, as set forth above; and
- l. failure to prevent Minor-Plaintiff from suffering grievous and permanent physical, emotional, and psychological injuries.

60. The above-referenced conduct of Defendants School District of Philadelphia, School Reform Commission, and Board of Education condoned and/or created an environment on their buses that fostered child-on-child sexual assault.

61. The above-referenced conduct of Defendants School District of Philadelphia, School Reform Commission, and Board of Education provided Minor-Plaintiff's student attacker, Minor-Student D.L., with unfettered and inadequately-supervised access to Minor-Plaintiff on March 10, 2020, endangering Minor-Plaintiff's health, safety, and well-being.

62. The above-referenced conduct of Defendants School District of Philadelphia, School Reform Commission, and Board of Education demonstrates an outrageous and/or reckless disregard for the health, safety, and well-being of Minor-Plaintiff.

63. The above-referenced conduct of Defendants School District of Philadelphia, School Reform Commission, and Board of Education was the direct and proximate cause of Minor-Plaintiff's damages as set forth above.

**WHEREFORE**, Plaintiff demands judgment in his favor and against Defendants, jointly and severally, with all Defendants named herein, for a sum in excess of fifty thousand dollars (\$50,000.00) in compensatory and punitive damages, exclusive of pre-judgment interest, post-judgment interest and costs.

Respectfully submitted,

**KLINE & SPECTER, P.C.**

Dated: November 12, 2021

BY:



THOMAS R. KLINE, ESQUIRE

BENJAMIN O. PRESENT

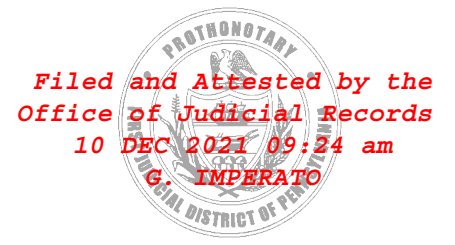
*Attorneys for Plaintiffs*

**VERIFICATION**

I, N.N., Parent and Natural Guardian of K.W., a minor, hereby verify that I am the Plaintiff in the foregoing action; that the attached Complaint is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and is not mine. I have read the Complaint and to the extent that the allegations therein are based upon information I have given counsel, they are true and correct to the best of our knowledge, information and belief. To the extent that the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.

Dated: 11/08/2021

  
\_\_\_\_\_  
N  N 



Filed and Attested by the  
Office of Judicial Records  
10 DEC 2021 09:24 am  
G. IMPERATO

# EXHIBIT B

2019 Pa. Legis. Serv. Act 2019-87 (H.B. 962) (PURDON'S)

PENNSYLVANIA 2019 LEGISLATIVE SERVICE

Two Hundred Third Regular Session of the General Assembly

Additions are indicated by **Text**; deletions by  
~~Text~~ .

Vetoed are indicated by ~~Text~~ ;  
stricken material by ~~Text~~ .

ACT NO. 2019-87

H.B. No. 962

SEX OFFENSES—CRIME VICTIMS—CIVIL ACTIONS

AN ACT Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, reforming remedies for victims of sexual abuse: in limitation of time, further providing for six months limitation, for infancy, insanity or imprisonment, for no limitation applicable and for other offenses; in matters affecting government units, further providing for exceptions to sovereign immunity, for limitations on damages in actions against Commonwealth parties, for exceptions to governmental immunity and for limitations on damages in actions against local parties; in sentencing alternatives, providing for counseling services for victims of sexual abuse; and transferring money from the General Fund into the Crime Victim's Compensation Fund.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5522 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

<< PA ST 42 Pa.C.S.A. § 5522 >>

**§ 5522. Six months limitation**

\* \* \*

**(c) Exception.—This section shall not apply to any civil action or proceeding brought under section 8522(b)(10) (relating to exceptions to sovereign immunity) or 8542(b)(9) (relating to exceptions to governmental immunity).**

Section 2. Section 5533(b)(2) of Title 42 is amended to read:

<< PA ST 42 Pa.C.S.A. § 5533 >>

**§ 5533. Infancy, insanity or imprisonment**

\* \* \*

**(b) Infancy.—**

\* \* \*

(2)(i) If an individual entitled to bring a civil action arising from ~~childhood~~ sexual abuse is under 18 years of age at the time the cause of action accrues, the individual shall have a period of ~~12~~ **37** years after attaining 18 years of age in

which to commence an action for damages regardless of whether the individual files a criminal complaint regarding the ~~childhood~~ sexual abuse.

**(i.1) If an individual entitled to bring a civil action arising from sexual abuse is at least 18 and less than 24 years of age at the time the cause of action occurs, the individual shall have until attaining 30 years of age to commence an action for damages regardless of whether the individual files a criminal complaint regarding the sexual abuse.**

(ii) For the purposes of this paragraph, the term ~~“childhood sexual abuse”~~ **“sexual abuse”** shall include, but not be limited to, the following sexual activities between a ~~minor~~ **an individual who is 23 years of age or younger** and an adult, provided that the individual bringing the civil action engaged in such activities as a result of forcible compulsion or by threat of forcible compulsion which would prevent resistance by a person of reasonable resolution:

(A) sexual intercourse, which includes penetration, however slight, of any body part or object into the sex organ of another;

(B) deviate sexual intercourse, which includes sexual intercourse per os or per anus; and

(C) indecent contact, which includes any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire in either person.

(iii) For purposes of this paragraph, “forcible compulsion” shall have the meaning given to it in 18 Pa.C.S. § 3101 (relating to definitions).

Section 3. Section 5551 of Title 42 is amended by adding a paragraph to read:

<< PA ST 42 Pa.C.S.A. § 5551 >>

**§ 5551. No limitation applicable**

A prosecution for the following offenses may be commenced at any time:

\* \* \*

**(7) An offense under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses), or a conspiracy or solicitation to commit an offense under any of the following provisions of 18 Pa.C.S. if the offense results from the conspiracy or solicitation, if the victim was under 18 years of age at the time of the offense:**

**Section 3011(b) (relating to trafficking in individuals).**

**Section 3012 (relating to involuntary servitude) as it relates to sexual servitude.**

**Section 3121 (relating to rape).**

**Section 3122.1 (relating to statutory sexual assault).**

**Section 3123 (relating to involuntary deviate sexual intercourse).**

**Section 3124.1 (relating to sexual assault).**

**Section 3124.2 (relating to institutional sexual assault).**

**Section 3125 (relating to aggravated indecent assault).**



**Section 4302 (relating to incest).**

Section 4. Section 5552(b.1), (c)(3) and (c.1) of Title 42 are amended and subsection (c) is amended by adding a paragraph to read:

<< PA ST 42 Pa.C.S.A. § 5552 >>

**§ 5552. Other offenses**

\* \* \*

**(b.1) Major sexual offenses.**—A **Except as provided in section 5551(7) (relating to no limitation applicable),** a prosecution for any of the following offenses under Title 18 must be commenced within 12 years after it is committed:

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

**Section 3124.2 (relating to institutional sexual assault).**

Section 3125 (relating to aggravated indecent assault).

Section 4302 (relating to incest).

Section 6312 (relating to sexual abuse of children).

**(c) Exceptions.**—If the period prescribed in subsection (a), (b) or (b.1) has expired, a prosecution may nevertheless be commenced for:

\* \* \*

(3) Any sexual offense committed against a minor who is less than 18 years of age any time up to the later of the period of limitation provided by law after the minor has reached 18 years of age or the date the minor reaches 50 ~~50~~ **55** years of age. As used in this paragraph, the term “sexual offense” means a crime under the following provisions of Title 18 ~~(relating to crimes and offenses):~~

~~Section 3011(b) (relating to trafficking in individuals).~~

~~Section 3012 (relating to involuntary servitude) as it relates to sexual servitude.~~

~~Section 3121 (relating to rape).~~

~~Section 3122.1 (relating to statutory sexual assault).~~

~~Section 3123 (relating to involuntary deviate sexual intercourse).~~

~~Section 3124.1 (relating to sexual assault).~~

Section 3125 (relating to aggravated indecent assault). **or a conspiracy or solicitation to commit an offense under any of the following provisions of Title 18 if the offense results from the conspiracy or solicitation:**

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4304 (relating to endangering welfare of children).

Section 6301 (relating to corruption of minors).

Section 6312(b) (relating to sexual abuse of children).

Section 6320 (relating to sexual exploitation of children).

**(3.1) Any sexual offense committed against an individual who is 23 years of age or younger any time up to the later of the period of limitation provided by law after the individual has reached 24 years of age or 20 years after the date of the offense. As used in this paragraph, the term “sexual offense” means a crime under the following provisions of Title 18 or a conspiracy or solicitation to commit an offense under any of the following provisions of Title 18 if the offense results from the conspiracy or solicitation:**

**Section 3011(a) (relating to trafficking in individuals) as it relates to sexual servitude.**

**Section 3012 (relating to involuntary servitude) as it relates to sexual servitude.**

**Section 3121(a) and (b).**

**Section 3123(a).**

**Section 3124.1.**

**Section 3124.2(a) and (b).**

**Section 3125(a).**

**Section 3126.**

**Section 3127.**

**Section 4302(a).**

\* \* \*

**(c.1) Genetic identification evidence.**—Notwithstanding any provision of law to the contrary, if evidence of a misdemeanor sexual offense set forth in subsection (c)(3) **or (3.1)** or a felony offense is obtained containing human deoxyribonucleic acid (DNA) which is subsequently used to identify an otherwise unidentified individual as the perpetrator of the offense, the prosecution of the offense may be commenced within the period of limitations provided for the offense or one year after the identity of the individual is determined, whichever is later.

\* \* \*

Section 5. Section 8522(b) of Title 42 is amended by adding a paragraph to read:

<< PA ST 42 Pa.C.S.A. § 8522 >>

**§ 8522. Exceptions to sovereign immunity**

\* \* \*

**(b) Acts which may impose liability.**—The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:

\* \* \*

**(10) Sexual abuse.**—Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the Commonwealth party which constitute negligence.

Section 6. Section 8528(c)(5) of Title 42 is amended and the section is amended by adding a subsection to read:

<< PA ST 42 Pa.C.S.A. § 8528 >>

**§ 8528. Limitations on damages**

\* \* \*

**(c) Types of damages recoverable.**—Damages shall be recoverable only for:

\* \* \*

(5) Property losses, except that property losses shall not be recoverable in claims brought pursuant to section 8522(b)(5) (relating to potholes and other dangerous conditions **exceptions to sovereign immunity**).

**(d) Exclusions.**—This section shall not apply to damages awarded under section 8522(b)(10).

Section 7. Section 8542(b) of Title 42 is amended by adding a paragraph to read:

<< PA ST 42 Pa.C.S.A. § 8542 >>

**§ 8542. Exceptions to governmental immunity**

\* \* \*

**(b) Acts which may impose liability.**—The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

\* \* \*

**(9) Sexual abuse.**—Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the local agency which constitute negligence.

\* \* \*

Section 8. Section 8553 of Title 42 is amended by adding a subsection to read:

<< PA ST 42 Pa.C.S.A. § 8553 >>

**§ 8553. Limitations on damages**

\* \* \*

**(e) Exclusions.—This section shall not apply to damages awarded under section 8542(b)(9) (relating to exceptions to governmental immunity).**

Section 8.1. Title 42 is amended by adding a section to read:

<< PA ST 42 Pa.C.S.A. § 9730.3 >>

**§ 9730.3. Counseling services for victims of sexual abuse**

**(a) Eligibility.—**

**(1) Subject to subsection (b), the office shall provide, for an individual who is a direct victim of sexual abuse, counseling services related to the sexual abuse. Payment shall be made directly to the health care provider that provides the services from the Crime Victim's Compensation Fund. The office shall determine the form and manner for receiving payment under this paragraph.**

**(2) Eligibility under paragraph (1) is not affected by an adverse determination under section 704(c) or 707(a) of the act of November 24, 1998 (P.L. 882, No. 111)<sup>1</sup>, known as the Crime Victims Act.**

**(b) Value of services.—**

**(1) The total value of services under subsection (a)(1) shall not exceed:**

**(i) \$5,000 if the individual was, at the time of the sexual abuse, 18 years of age or older; and**

**(ii) \$10,000 if the individual was, at the time of the sexual abuse, under 18 years of age.**

**(2) The value of services under subsection (a)(1) shall be reduced by the amount of any of the following payments received or to be received by the individual for counseling subject to subsection (a) as a result of the sexual abuse:**

**(i) Payment by the individual who committed the sexual abuse.**

**(ii) Payment under an insurance program or a health and welfare program. This subparagraph includes a program mandated by law.**

**(iii) Payment under a contract of insurance in which the individual is the beneficiary.**

**(iv) Payment from public funds.**

**(v) Payment under a pension program. This subparagraph includes a program providing for disability or survivor's benefits.**

**(vi) Payment by a party alleged to be responsible in whole or in part for the sexual abuse, without regard to the party's criminal culpability.**

(vii) **Payment made under the Crime Victims Act.**

**(c) Cooperation.—**

**(1) Health care providers and insurers shall respond in writing to a request by the office for information related to this section within 30 days of receipt of the request.**

**(2) Commonwealth agencies shall cooperate with the office for information related to this section.**

**(3) A person that fails to respond to a request under paragraph (1) shall be subject to a penalty of not more than \$50 per day, up to and including the date of compliance. The office may enforce this paragraph. The office may utilize revenue under this paragraph to implement this section or to assist local victim service agencies.**

**(d) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:**

**“Counseling services.” Mental health therapy performed by or under the supervision of a health care provider.**

**“Direct victim.” An individual against whom a crime has been committed or attempted and who as a direct result of the criminal act or attempt suffers physical or mental injury.**

**“Health care provider.” Any of the following:**

**(1) A psychiatrist.**

**(2) An individual licensed under the act of March 23, 1972 (P.L. 136, No. 52)<sup>2</sup>, known as the Professional Psychologists Practice Act.**

**(3) A licensed professional counselor, as defined in section 3 of the act of July 9, 1987 (P.L. 220, No. 39)<sup>3</sup>, known as the Social Workers, Marriage and Family Therapists and Professional Counselors Act.**

**(4) A licensed social worker, as defined in section 3 of the Social Workers, Marriage and Family Therapists and Professional Counselors Act.**

**“Office.” The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.**

**“Sexual abuse.” Conduct which occurs in this Commonwealth and would constitute an offense under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):**

**Section 3011(b) (relating to trafficking in individuals).**

**Section 3012 (relating to involuntary servitude) as it relates to sexual servitude.**

**Section 3121 (relating to rape).**

**Section 3122.1 (relating to statutory sexual assault).**

**Section 3123 (relating to involuntary deviate sexual intercourse).**

**Section 3124.1 (relating to sexual assault).**

**Section 3124.2 (relating to institutional sexual assault).**

**Section 3125 (relating to aggravated indecent assault).****Section 3126 (relating to indecent assault).****Section 3127 (relating to indecent exposure).****Section 4302 (relating to incest).****Section 6312 (relating to sexual abuse of children).**

<< Note: PA ST 42 Pa.C.S.A. § 9730.3 >>

Section 8.2. The sum of \$5,000,000 is transferred from the General Fund to the Crime Victim's Compensation Fund to be used until June 30, 2021, to implement the addition of 42 Pa.C.S. § 9730.3(a)(1) for counseling services provided after the effective date of this section. In fiscal years beginning after June 30, 2021, the General Assembly shall appropriate money to implement the addition of 42 Pa.C.S. § 9730.3(a)(1).

<< Note: PA ST 42 Pa.C.S.A. § 5522 >>

Section 9. The provisions of this act are severable. If any provision of this act is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

<< Note: PA ST 42 Pa.C.S.A. § 5533 >>

Section 10. This act shall apply as follows:

(1) The amendment or addition of 42 Pa.C.S. §§ 5533(b)(2), 5551(7) and 5552(b.1) and (c)(3) and (3.1) shall not be applied to revive an action which has been barred by an existing statute of limitations on the effective date of this section.

(2) The amendment of 42 Pa.C.S. § 5533(b)(2) shall apply retroactively to civil actions where the limitations period has not expired prior to the effective date of this section.

(3) The addition of 42 Pa.C.S. §§ 5522(c)(3.1), 8522(b)(10), 8528(d), 8542(b)(9) and 8553(e) shall apply as follows:

(i) Prospectively, to a cause of action which arises on or after the effective date of this section.

(ii) Retroactively, to a cause of action if the cause of action arose before the effective date of this section. Nothing in this subparagraph shall do any of the following:

(A) Revive a cause of action as to which the limitation period has expired prior to the effective date of this section.

(B) Permit the application of the addition of 42 Pa.C.S. §§ 5522(c)(3.1), 8522(b)(10), 8528(d), 8542(b)(9) and 8553(e) to a claim:

(I) that is subject to a final judgment which, on the effective date of this section, is not subject to appeal; or

(II) that, on the effective date of this section, has been nonjudicially resolved in its entirety by the parties, in a form which is enforceable.

Section 11. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) Section 10 of this act.

(ii) This section.

(2) The remainder of this act shall take effect upon first passage of House Bill No. 963, Printer's No. 1130 (2019), by both chambers of the General Assembly or immediately, whichever is later.

Approved November 26, 2019.

### Footnotes

- 1 18 P.S. § 11.201 et seq.
- 2 63 P.S. § 1201 et seq.
- 3 63 P.S. § 1901 et seq.

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