

point where G. subjected P.B. to numerous instances of sexual abuse from October 31, 2019 to December 23, 2019. Id. ¶ 16.² In late December 2019, P.B. informed R.B and E.B. of G.'s abusive behavior. Id. ¶ 21.³

R.B. and E.B. initiated the instant matter by filing a Complaint on September 2, 2021. The complaint contains one count of negligence whereby Plaintiffs aver that Defendant was negligent in the handling of G. and the situation as a whole. Id. ¶¶ 5-8, 26. Defendant filed preliminary objections on October 6, 2021 and Plaintiffs filed an Amended Complaint in response. Defendant filed a second set of preliminary objections, and a brief in support thereof, on November 9, 2021. Plaintiffs subsequently filed a response on November 29, 2021. Arguments were heard before the undersigned on January 11, 2022. Having received the parties' respective briefs, the matter is ripe for disposition.

Standard of Law

A Court must "ascertain and effectuate the intent of the General Assembly," when conducting statutory interpretation. See 1 Pa.C.S. A. §§ 1501, et seq.; Pennsylvania Restaurant and Lodging Association v. City of Pittsburgh, 211 A.3d 810, 822 (Pa. 2019). "As [our Supreme Court] has noted time and time again, the plain language of a statute is the best indicator of its intent." Reuther v. Delaware County Bureau of Elections, 205 A.3d 302, 306 (Pa. 2019). Furthermore, it must be accepted that "the General Assembly intended the entire statute to be effective and did not intend a result that is absurd, impossible of execution or unreasonable." Harmon v. Unemployment Compensation Board of Review, 207 A.3d 292, 304 (Pa. 2019). When the language is "clear and free from all ambiguity, the letter of it is not to be disregarded

² G.'s sexual abuse of P.B. included: kissing P.B. on the lips; pulling P.B.'s pants down and performing oral sex, kissing P.B.'s "butt-hole"; inserting his fingers in P.B.'s anus, and inserting his penis into P.B.'s ear.

³ The Bethlehem Township Police were notified and during a January 16 interview with G. and his mother, G. confessed to the sexual abuse. Id. ¶¶ 22-24.

under the pretext of pursuing its spirit." 1 Pa.C.S.A. §1921. Courts will normally look beyond the plain language of the statute only when words are clear and unambiguous or the plain meaning would lead to an absurd result. Mercury Trucking, Inc. v. Pa. Pub. Util. Comm'n., 55 A.3d 1056, 1058 (Pa. 2012).

Pennsylvania Rule of Civil Procedure 1028(a) governs the types of preliminary objections that may be raised in response to a pleading. See Pa.R.C.P. 1028(a). One such type is a preliminary objection for insufficient specificity in pleadings. Pa.R.C.P. 1028(a)(3).

"Pennsylvania is a fact-pleading jurisdiction; as such, a complaint must as provide notice of the nature of the plaintiff's claims and also summarize the facts upon which the claims are based." Commonwealth by Shapiro v. Golden Gate Nat'l Senior Ctr., 194 A.3d 1010, 1029 (Pa. 2018); Alpha Tau Omega Fraternity v. Univ. of Pennsylvania, 464 A.2d 1349, 1253 (Pa. Super. 1983) ("[A complaint] must also formulate the issues by summarizing those facts essential to support the claim").⁴

Even though specificity is required, there is no requirement to plead the evidence upon which the pleader will rely to establish those facts. See United Refrigerator Co. v. Applebaum, 189 A.2d 253, 255 (Pa. 1963). Our courts have recognized that the line between pleading facts and evidence is not easily recognizable. Commonwealth by Shapiro, 194 A.3d at 1030. Two conditions have been distilled to aid in this analysis, namely: (1) the pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense; and (2) they must be sufficient to convince the court that the averments are not merely subterfuge. See id. (citing Bata v. Cent.-Penn Nat. Bank of Philadelphia, 224 A.2d 174, 179 (Pa.

⁴ This ensures that the pleader discloses material facts sufficient to notify the adverse party of the claims it will have to defend against. Martin v. Lancaster Battery Co., Inc., 606 A.2d 444, 448 (Pa. 1992).

1966)). Courts are to view the pleadings as a whole when engaged in a specificity analysis. Yacoub v. Lehigh Valley Med. Assocs., P.C., 805 A.2d 579, 589 (Pa. Super. 2002) (*en banc*).

Rule 1028(a) also allows for preliminary objections in the nature of a demurrer. A demurrer will be sustained where the contested pleading is legally insufficient. Caltairone v. Ceohalon, Inc., 190 A.3d 596, 599 (Pa. Super. 2018). When considering such preliminary objections, all well pleaded material facts set forth in the challenged pleadings, and all inferences deducible therefrom, are admitted as true. Feingold v. Hendrzak, 15 A.3d 937, 941 (Pa. Super. 2011).⁵ However, the Court is not bound by legal conclusions, unwarranted inferences from facts, argumentative allegations, or expressions of opinion encompassed in the petition for review. Meier v. Maleski, 648 A.2d 595 (Pa. Commw. 1994). Demurrers should only be granted where it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish relief. Feingold, 15 A.3d at 941. If *any* doubt exists, the demurrer should be overruled. See Haun v. Cmty. Health Sys., Inc., 14 A.3d 120, 123 (Pa. Super. 2011).

Discussion

Defendant contends that Plaintiffs' Amended Complaint fails to state a legally recognizable cause of action and is insufficiently specific pursuant to the Pennsylvania Rules of Civil Procedure. Based upon a thorough review of the complaint and respective memoranda, the Court finds that Defendant's preliminary objections must be overruled.

⁵ "Preliminary objections in the nature of a demurrer requires the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer." Kilmer v. Sposito, 146 A.3d 1275, 1278 (Pa. Super. 2016) (quoting Hess v. Fox Rothschild, LLP, 925 A.2d 798, 805 (Pa. Super. 2007)).

I. Demurrer

Initially, Defendant raises a preliminary objection in the nature of a demurrer averring that the Political Subdivision Tort Claims Act ("PSTCA")⁶ shields it from any liability. Def.'s Br. in Supp. Prelim. Obj., at 3-6. Plaintiffs completely rebut this assertion, arguing that this case clearly falls under the sexual abuse exception to the PSTCA. See 42 Pa.C.S.A. § 8542(b)(9). A careful examination of the applicable statutes leads the Court to overrule Defendant's demurrer.⁷

Generally, the PSTCA legislatively raises the shield of governmental immunity against any damages on account of injury to a person or property caused by any act of a local agency or employee thereof. 42 Pa.C.S. § 8541.⁸ Section 8542 of the PCTCA enumerates exceptions to this general rule, providing in pertinent part:

- (a) Liability imposed.—A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):
 - (1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under section 8541 (relating to governmental immunity generally) or section 8546 (relating to defense of official immunity); and
 - (2) The injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b).
- (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:

⁶ 42 Pa.C.S.A. § 8542.

⁷ Neither party was able to proffer supporting caselaw regarding the sexual abuse exception as enumerated in Section 8542 (b)(9), nor was the Court able to find controlling caselaw on point.

⁸ Section 8541 of the Tort Claims Act states: "Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa. C.S. § 8541. School districts are considered local agencies entitled to immunity under the Tort Claims Act. Taylor v. Ne. Bradford Sch. Dist., 101 A.3d 144, 147 (Pa. Commw. 2014).

(9) Sexual abuse.--Conduct which *constitutes an offense enumerated under section 5551(7)*⁹ (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. § 8542(a), (b)(9) (emphasis added).¹⁰ Because of the clear intent to insulate government from exposure to tort liability, the exceptions to immunity are to be strictly construed. Kiley v. City of Philadelphia, 645 A.2d 184, 185–186 (Pa. 1994).

According to Defendant, the case at hand does not trigger the sexual abuse exception because G.'s actions cannot "constitute" a crime under Section 5551(7) due to his status as a minor at the time of offense. Br. in Supp. of Def.'s Prelim. Obj., at 4-6.¹¹ Defendant refers to both the distinction of a delinquency adjudication to criminal proceeding, and the infancy defense, to suggest that G.'s actions cannot constitute sexual abuse. Id. at 5. Plaintiff refutes this argument, suggesting that Defendant's argument "turns the entire Statute on its head" by focusing on whether the abuser is prosecutable for the sexual abuse they inflict. Mem. in Opp'n. to Prelim. Obj., at 6. The Court finds that Plaintiffs' interpretation more closely mirrors the intent of the General Assembly.

The unambiguous language of 42 Pa.C.S.A. § 8452(b)(9) clearly states that governmental immunity is waived where an action or omission by a local agency, or its agents, causes a child

⁹ The offense enumerated in 42 Pa.C.S.A. § 5551(7) include: trafficking individuals, sexual involuntary servitude, rape, statutory sexual assault, involuntary deviate sexual assault, institutional sexual assault, aggravated indecent assault, and incest.

¹⁰ The Court notes that Defendant cites the PTCSA while Plaintiffs cite the Sovereign Immunity Act when referencing the sexual abuse exception. See Def.'s Br. in Supp. of Prelim. Obj., at 3; Mem. in Opp'n. to Prelim. Obj., at 5-6. Our courts have found that the Sovereign Immunity Act and the Political Subdivision Tort Claims Act are to be read *in pari materia* inasmuch as they address the same subject matter. See Kilgore v. City of Phila., 717 A.2d 514, 516 n.2 (Pa. 1998); 1 Pa.C.S. § 1932. Here, the General Assembly utilized identical language in codifying the sexual abuse exception in each Act. Compare 42 Pa.C.S.A. 8452(b)(9) with 42 Pa.C.S.A. 8522(b)(10). Thus, the Court interprets the sections identically.

¹¹ Defendant's memorandum suggests that G. was less than 10 years old at the time of the offense. However, the Amended Complaint merely states that G. is an "older student." Compl. ¶13.

to be the victim of sexual abuse.¹² Nowhere in the language of section 8542(b)(9) does the General Assembly mention criminal charges, convictions, or the age of the offender as a precondition for the abrogation of governmental immunity. The District Court for the Middle District of Pennsylvania, in one of the only cases that has examined the sexual abuse exception, came to a similar conclusion in finding that a case of sexual abuse perpetrated by a minor on school grounds fell squarely within the Section 8542(b)(9) exception. See Doe, 2020 WL 4584372, at *1, 5 (finding that a school district could be held liable for the negligence of its employees that caused the sexual abuse of a minor by a fellow classmate).

Accepting all well-plead averments as true, the instant Amended Complaint contends that P.B. suffered sexual abuse at the hands of G., over a span of months, caused by Defendant's negligence. Pursuant to the clear and unambiguous language of Section 8542(b)(9), such a case squarely falls within the sexual abuse exception.

Conversely, Defendant asserts that Section 8542(b)(9) is inapplicable because Plaintiffs' Amended Complaint fails to plead a legally cognizable negligence claim. Br. in Supp. of Prelim. Obj., at 6-10. Defendant claims that the pleading does not establish that Defendant owed a duty of care to P.B. The Court respectfully disagrees.

Pursuant to Section 8542(b)(9), governmental immunity is only abrogated if the sexual abuse is " caused by *actions or omissions of the local agency which constitute negligence.*" Pa.C.S.A. 8542(b)(9) (emphasis added). Generally, to state a cause of action for negligence, a plaintiff must allege facts which establish the breach of a legally recognized duty or obligation of

¹² See Doe by Brown v. Harrisburg Sch. Dist., Civ. A. No. 1:19-cv-1027, 2020 WL 4584372, at *5 (M.D. Pa. Aug. 10, 2020) ("The intended purpose of this amendment to the [Pennsylvania Political Subdivision Tort Claims Act] was to 'waive sovereign immunity for public entities guilty of covering up childhood sexual abuse.'" (discussing statute governing immunity as applied to local agencies)); see also PA. H.R. LEGIS. JOURNAL, 203rd Assy., Reg. Sess., at 509-10 (Apr. 10, 2019).

the defendant that is causally connected to actual damages suffered by the plaintiff." Scampono v. Highland Park Care Center, LLC, 57 A.3d 582, 596 (Pa. 2012). Stated differently, negligence is established by proving the following four elements: "(1) a duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages." Grossman v. Burke, 868 A.2d 561, 566 (Pa. Super. 2005). When determining whether a duty is owed, the following factors are to be applied: "(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; (5) the overall public interest in the proposed solution." McCandless v. Edwards, 908 A.2d 900, 903-04 (Pa. Super. 2006) (citing in F.D.P. ex. rel. S.M.P. v. Ferrara, 804 A.2d 1221 (Pa. Super. 2002)).

Here, the Amended Complaint specifically avers that Defendant owed P.B. multiple duties including, but not limited to, a duty to provide safe transportation and to see that students are safe from sexual and physical assaults by other students on school grounds and/or during transportation. Compl., ¶¶ 5-8. Furthermore, Plaintiff specifically avers that Defendant had knowledge that G. was a physical danger to students and that he created a threat of physical and/or sexual attacks which makes the threat to P.B. foreseeable. Id. ¶¶ 14-15, 20. When viewing all well-pled facts, and any reasonable inferences drawn therefrom, as true, the Court finds that it is not so clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish relief. See Feingold, 15 A.3d at 941.

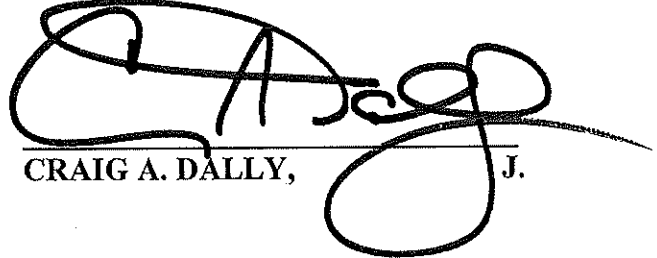
Thus, at this stage of litigation, a demurrer based upon governmental immunity is unwarranted and the Court **OVERRRULES** Defendant's initial preliminary objection.¹³

II. Factual Specificity

Defendant also raises a preliminary objection in the nature of a motion to strike for insufficient factual specificity pursuant to Pa.R.C.P. 1028(a)(3). This objection contends that Plaintiffs' pleading lacks the necessary specificity regarding the duty and breach elements of their negligence claim, citing paragraph 26 of the Amended Complaint as support. *Id.* at 12. Viewing paragraph 26's multiple subsections within the context of the entire Amended Complaint, the Court finds that the instant pleading adequately explains the alleged duties and breaches allegedly attributable to Defendant so as to permit it to prepare a defense. Thus, Defendant's motion to strike for insufficient specificity pursuant to 1028(a)(3) is **OVERRULED.**

Defendant shall file its respective answer to the Amended Complaint within twenty (20) days of the date of this Order.

BY THE COURT:


CRAIG A. DALLY, J.

¹³ The Court emphasizes that this decision does not foreclose the possibility of raising these issues in a motion for summary judgment as the case progresses. A more factually developed record may reveal that Defendant is entitled to judgment as a matter of law, but the instant matter is not so clear as to justify a demurrer.