

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

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SC Court of Appeals

Case No. 2022-CP-32-02339

Nancy Arellano, as parent and natural guardian
Of Minor Z.A.,

Respondent,

v.

School District No. Two of Lexington
County, State of South Carolina,

Appellant.

RECORD ON APPEAL
(Volume II)

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Columbia, South Carolina

1 THE COURT: Re-direct?

2 MR. CROSSLAND: Nothing, your Honor.

3 THE COURT: Thank you, ma'am. You may step down. Call
4 your next witness.

5 MR. CROSSLAND: Yes. The district calls Principal
6 Andrew Drozdak.

7 THE COURT: Come around, please.

8 THE CLERK: Raise your right hand.

9 ANDREW DROZDAK,
10 being duly sworn, testified as follows:

11 THE CLERK: If you'll have a seat, please and state
12 your full name for the record.

13 THE WITNESS: My name is Andrew Drozdak.

14 DIRECT EXAMINATION

15 BY MR. CROSSLAND:

16 Q. Hey, Principal Drozdak. How are you?

17 A. Doing okay.

18 Q. Back in May of 2022, where were you employed at?

19 A. Lexington School District Two, as the principal of
20 Cayce Elementary School.

21 Q. And how long have you been in that position?

22 A. At that time four years.

23 Q. Can you walk the jury through your
24 responsibilities as a principal?

25 A. Overseeing day-to-day operations of the school,

1 overseeing the instructional work during the day, overseeing
2 student discipline, really hindering and supervising the
3 building, and pretty much all aspects.

4 Q. As a part of your position, are you ensuring that
5 policies and procedures are implemented?

6 A. Yes, sir.

7 Q. So you're pretty familiar with the policies and
8 procedures of the district?

9 A. Fairly, yes, sir.

10 Q. To help with discipline, do you have assistant
11 principals that help you with that?

12 A. Yes, I do.

13 Q. Was one of them Ms. Annette Ariail?

14 A. Yes.

15 Q. Back in May of 2022, was she assigned to the --
16 oversee kindergarten discipline?

17 A. I don't believe she was directly assigned to that,
18 but she would -- they all helped each other out. We had
19 three assistant principals in total, so at times they would
20 help each other in other areas.

21 Q. Did you have any concerns with Ms. Ariail's
22 qualifications or capabilities responding to discipline
23 issues?

24 A. No, I did not.

25 Q. Did you ever receive any complaints about

1 Ms. Ariail?

2 A. No.

3 Q. Did you enjoy working with Ms. Ariail?

4 A. Absolutely.

5 Q. You said as a part of your principal duties, you
6 are to implement the policies and procedures.

7 A. That's correct.

8 Q. Do you -- does the district have a policy that
9 relates about sexual harassment?

10 A. Yes, it does.

11 Q. If you were to see that policy, would you
12 recognize it?

13 A. Yes, I would.

14 MR. CROSSLAND: Your Honor, permission to approach?

15 THE COURT: Yes, sir.

16 BY MR. CROSSLAND:

17 Q. Principal Drozdak, do you recognize that --

18 A. Yes, sir.

19 Q. -- document?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's the school board's policy on sexual
23 harassment and relations between students.

24 MR. CROSSLAND: Your Honor, at this time, I move to
25 have this admitted as Defendant's Exhibit 2.

1 THE COURT: Any objection?

2 MR. EDDY: No objection, your Honor.

3 THE COURT: Mark it into evidence please, ma'am.

4 (Defendant's Exhibit Number 2 admitted into evidence.)

5 BY MR. CROSSLAND:

6 Q. Principle Drozdak, on the first page of the
7 subsection, does -- can you read the last bullet point to the
8 jury?

9 A. Starting with "At any time or place when the
10 behavior can be reasonably expected to materially and
11 subsequently interfere with or disrupt the education" --
12 "educational environment of the school"?

13 Q. I'm sorry, wrong bullet point. I led you to the
14 wrong spot.

15 A. Okay.

16 Q. The first sentence on the first page, I'm sorry.

17 A. The first sentence on the first page, "The
18 district is committed to maintaining a learning environment
19 free from sexual discrimination and harassment."

20 Q. So would this policy been in effect back on May
21 2022?

22 A. Yes, it is.

23 Q. Would the staff ever receive training on the
24 different responses and how to respond to sexual harassment?

25 A. Yes, they would have.

1 Q. Is this policy specifically relating to student
2 sexual harassment?

3 A. Yes.

4 Q. Are you familiar with the district's policy on the
5 staff's rights and responsibilities?

6 A. Yes, I am.

7 Q. If you see it, would -- would you be able to
8 recognize it?

9 A. Yes, I would.

10 Q. Do you recognize this document?

11 A. Yes, I do.

12 Q. What is it?

13 A. It's the Lexington School board policy, GBE staff
14 rights and responsibilities.

15 MR. CROSSLAND: At this time, your Honor, I move to --
16 move to have this entered into evidence as Defendant's
17 Exhibit Number 3.

18 THE COURT: Any objection?

19 MR. EDDY: Yes, your Honor. On the face of the
20 document, it's issued a year after the incident took place.

21 THE COURT: You wish to be heard?

22 MR. CROSSLAND: Yes, sir. The -- the policies are --
23 are constantly updated. It has language for when it was
24 adopted in the law that it applies. So there it was still
25 into effect at -- at the time of the incident.

1 THE COURT: You have to lay a foundation for that.

2 BY MR. CROSSLAND:

3 Q. Principal Drozdak, are you -- at -- back in May 20
4 -- 2022, was there a policy GBE for staff's rights and
5 responsibilities?

6 A. Yes, there was.

7 Q. Would the staff have received training on it?

8 A. Yes, it would've.

9 Q. Do you specifically remember receiving training on
10 this policy?

11 A. Yes, we would've received yearly training on all
12 of our policies.

13 Q. So are policies constantly updated?

14 A. Yes.

15 Q. And when they're updated, they -- can it vary in
16 changes, small changes or big changes?

17 A. Can vary, yes.

18 Q. As a -- a part of the staff's responsibilities,
19 are they expected to supervise children?

20 A. Yes, they are.

21 Q. More specifically, is it one of their main
22 responsibilities?

23 A. Yes.

24 Q. Thank you. This -- the last bullet point on the
25 policy.

1 A. Uh-huh.

2 Q. Can you read that to yourself, please?

3 A. Okay.

4 Q. Would that have been -- would that sentence have
5 been in effect at the time of this incident?

6 A. Yes.

7 MR. CROSSLAND: Your Honor, we move to have this
8 entered as Defendant's Exhibit Number 3, I believe.

9 THE COURT: Any objection?

10 MR. EDDY: Same objection, your Honor.

11 THE COURT: Sustained. Unless you're just entering
12 that one section.

13 MR. CROSSLAND: It -- it is fine, your Honor. We'll --
14 we'll move on.

15 BY MR. CROSSLAND:

16 Q. As a part of your policies and procedures, are
17 they accompanied by administrative rules?

18 A. Yes.

19 Q. Are you familiar with those as well?

20 A. Fairly, yes.

21 Q. In those administrative rules, are they required
22 to -- does it get more specifics on how to supervise the
23 children?

24 A. Yes.

25 Q. Would the staff ever receive training on that?

1 A. Yes. Yearly.

2 Q. Including classroom teachers?

3 A. Absolutely.

4 Q. Classroom teacher's assistants?

5 A. Yes.

6 Q. Did you have any concerns about Ms. Sadie Ray's
7 supervision of the students?

8 A. No.

9 Q. Did you have any concerns about Ms. Kimberly
10 Long's supervision of the students?

11 A. No.

12 Q. Had you ever received any complaints about
13 Ms. Sadie Ray's supervision of the students?

14 A. None.

15 Q. What about Ms. Kimberly Long?

16 A. None.

17 Q. Did you feel that they were fully capable of doing
18 their jobs as a teacher and a teacher's assistant?

19 A. Yes, I did.

20 Q. Moving forward. When there's an incident, a
21 discipline issue at the school would your assistants, the
22 principals, to keep you updated on what was happening?

23 A. Yes, they would.

24 Q. Going back to this specific incident, do you
25 remember Ms. Annette Ariail keeping you up to date on this

1 incident?

2 A. She would've had to have updated me after the
3 incident. I was off campus at that time at one of our high
4 school's graduations.

5 Q. So are you familiar with how the -- the incident
6 was investigated and handled?

7 A. Yes.

8 Q. Do you have any concerns with the way that it was
9 investigated?

10 A. No, I do not.

11 Q. Do you have any concerns with the way that it was
12 -- any other responses that were done?

13 A. No, I felt it was handled appropriately.

14 Q. Had you ever received any calls about this
15 incident from the Arellanos?

16 A. No.

17 Q. If you would've got a call, would you have spoken
18 with them?

19 A. Yes.

20 Q. Have you ever interacted before with Ms. Arellano?

21 A. No.

22 MR. CROSSLAND: Beg the court's indulgence?

23 THE COURT: Yes, sir.

24 MR. CROSSLAND: No further questions. Thank you.

25 THE COURT: Cross?

1 CROSS-EXAMINATION

2 BY MR. EDDY:

3 Q. Good afternoon, Mr. Drozdak.

4 A. Good afternoon.

5 Q. Am I saying that right?

6 A. Correct.

7 Q. Okay, good. Do you have any firsthand knowledge
8 of the allegations of what happened in that classroom to tell
9 it to the jury?

10 A. I do not.

11 Q. Okay. Do you think it is fair for parents of
12 students in your school to assume that they will be protected
13 at your school?

14 A. Yes.

15 Q. Does that include protection from other students?

16 A. Yes.

17 Q. Does that include protection from other students
18 who may commit sexual contact with them?

19 A. Yes.

20 Q. Do you think that the school owes a duty to the
21 students to supervise and protect them from other students?

22 A. To the best of their ability.

23 MS. WHITE: Objection, your Honor.

24 THE COURT: Yes.

25 MS. WHITE: The duty is established by state law.

1 THE COURT: Want to be heard?

2 MR. EDDY: I think we're both saying the same thing.

3 MS. WHITE: He's asking him, your Honor, to -- to
4 describe to the jury what the duty is as far as protecting
5 students. And again, that duty is set forth from the law,
6 and he's a -- he's a lay person. He's not a lawyer.

7 MR. EDDY: I'll rephrase, your Honor.

8 THE COURT: Okay.

9 BY MR. EDDY:

10 Q. Should the student's administrators and faculty of
11 your school supervise the students to ensure that there's no
12 inappropriate contact?

13 A. As best possible. Yes.

14 Q. And if a student does touch another student, would
15 you agree that the administrators, staff, and the school has
16 breached that -- that duty to supervise the children?

17 MS. WHITE: Objection, your Honor. Same objection.

18 MR. EDDY: I'll withdraw, your Honor.

19 THE COURT: All right.

20 BY MR. EDDY:

21 Q. If students are allowed to engage in
22 non-consensual sexual contact, does that mean that the school
23 has failed their supervision of the students?

24 A. I think it's impossible to -- and to completely
25 supervise anyone 100 percent all of the time.

1 Q. So it's an acceptable risk that children can be
2 molested at the school?

3 A. That's not what I said.

4 MS. WHITE: Objection your Honor, he's testifying.

5 THE COURT: Answer the question. Go ahead.

6 THE WITNESS: That's not what I said.

7 BY MR. EDDY:

8 Q. Okay. Then help me understand. You can't prevent
9 all of it. So the -- we shouldn't find the school liable for
10 failing to supervise these children?

11 A. I think as educators, we do all that we can to
12 follow policies, provide students with expectations, and have
13 those students hold to those expectations. Unfortunately,
14 human actions aren't always accountable for, and when you
15 have students who are young -- particularly five years old,
16 that are trying to understand the world around them
17 themselves and others, they'll make decisions in a second
18 that are not appropriate for a school environment. So I
19 think the -- the inability to prevent that is what I'm
20 referring to. No, it is not appropriate for any student to
21 be touched in a way that they do not want to happen, but I do
22 believe it is impossible to prevent that at all times as in
23 any other environment.

24 Q. There's limitations on what we can protect.

25 A. Correct.

1 Q. We are all human. We can all make mistakes.

2 A. Yes, sir.

3 Q. And if a teacher or administrator makes a mistake
4 and fails to properly supervise the children, what's that?

5 A. If that had happened, which it had not, it would
6 be a situation where there would be a consequence for that
7 adult.

8 Q. But you don't have any direct information to tell
9 the jury about what happened in that classroom?

10 A. Based on what was provided to me by my assistant
11 principal, as well as many other staff members at my school,
12 and throughout this entire process, I have no reason to
13 believe any member of the staff acted mistakenly.

14 Q. So is that a "Yes," or a "No"?

15 A. Ask the question again.

16 Q. You don't have any direct knowledge to tell the
17 jury about what happened in that classroom?

18 A. No.

19 Q. So you don't know, and you can't testify whether
20 there was a failure to supervise in that classroom?

21 A. Not firsthand, no.

22 MR. EDDY: Thank you. No further questions.

23 THE COURT: Re-direct?

24 MR. CROSSLAND: Yes, your Honor.

25 RE-DIRECT EXAMINATION

1 BY MR. CROSSLAND:

2 Q. Mr. Drozdak, how many -- approximately how many
3 classrooms are in -- were in Cayce Elementary at that time?

4 A. Approximately between 80 -- 85.

5 Q. Is it possible for you to be in every classroom
6 and every time?

7 A. No.

8 Q. How quickly can a student -- student discipline
9 issue occur?

10 A. Within moments. Just like any other incident.

11 Q. Moments? Is that seconds, minutes?

12 A. Within -- yes, within a -- within a second. Two
13 seconds.

14 Q. Are you familiar with classroom teacher
15 regulations for student to teacher ratios?

16 A. Yes, I am.

17 Q. Do you know how many students were in Ms. Ray's
18 classroom at the time?

19 A. 24.

20 Q. And what is the regulation -- what is the
21 appropriate student to teacher ratio and the regulations?

22 A. It's at least 25.

23 Q. So we're in -- the district was in compliance with
24 -- with that regulation?

25 A. Yes, it is.

1 MR. CROSSLAND: No further questions, your Honor.

2 THE COURT: Re-cross?

3 MR. EDDY: Nothing from the Plaintiff. Thank you.

4 THE COURT: Thank you, sir. You may step down.

5 Anything further from the Defense?

6 MS. WHITE: No, your Honor.

7 THE COURT: Any reply?

8 MR. EDDY: Nothing from the Plaintiff.

9 THE COURT: Thank you. All right. Ladies and
10 gentlemen, I told you when we reached the stage where all the
11 evidence is in, and I had to discuss legal issues with the
12 attorneys, that's where we are right now. I'm going to have
13 to make a judgment call about how we're going to proceed.
14 The Supreme Court has given us some general guidelines about
15 what time we should start submitting cases to the jury.
16 After a certain point in time, we should not do that. And I
17 can tell you we are running right up against it.

18 I think what I'm going to do is probably have you come
19 back in the morning. I'll stay here with the lawyers and
20 work on things and have them come back in the morning before
21 I have you come back. That's what I think I'm going to do,
22 but I'll know for sure very shortly. So if you'll step in
23 the jury room, not discuss the case, I'll get you back out
24 here as quickly as I can.

25 (Jury exits room at 3:00 p.m.)

1 THE COURT: Motions?

2 MS. WHITE: Yes, your Honor. We would renew -- renew
3 our motion for a directed verdict based on the fact that
4 there are simply no facts from which a jury could determine
5 that the district was grossly negligent in supervising the
6 classroom at the time the incident occurred. And also, as I
7 -- I pointed out earlier, before we brought the jury back in,
8 the discretionary -- I mean, the immunity provision in the
9 South Carolina Tort Claims Act related to the acts or
10 omissions of a third party including but not limited to
11 criminal conduct clearly apply here. In other words, there
12 is no vicarious liability to the district for Student K's
13 inappropriate touching of Zoe in the classroom. The district
14 cannot be found liable. If they wanted to recover for the
15 actual act of touching, they should have sued Student K's
16 family, is what they should have done. They chose not to do
17 that. They chose to come solely after the school district.
18 And so in order to recover, they have to be able to show that
19 the district exercised at least slight care.

20 And I would add here, as far as additional testimony,
21 Principal Drozdak testified that the district has policies
22 related to sexual harassment, student on student sexual
23 harassment. And that those policies have been implemented in
24 the school district. And again, that's another indication of
25 the district's exercise of slight care.

1 Also, in addition to the supervision of the classroom,
2 the district had been proactive. Ms. Prizer testified that
3 -- that she goes into classrooms and she went into Zoe's
4 classroom to teach about safe touching and to let students
5 know that it is not appropriate for an adult or another child
6 to touch you in your private areas. Again, another exercise
7 of slight care. I mean, things happen all the time -- all
8 the time in schools. And if we -- if the district was
9 vicariously liable because out on the playground a student is
10 -- is swinging and -- you know, their -- the student's legs
11 hit another student and that student suffers a concussion,
12 the district is not liable because that occurred. Just like
13 they're not liable here because the act occurred. There has
14 to be some facts from which a jury could find that the
15 district failed to exercise slight care, and that simply does
16 not exist here. And for those reasons, your Honor, we would
17 renew our motion for a directed verdict.

18 THE COURT: Yes, sir.

19 MR. EDDY: Thank you, your Honor. I'm unpersuaded by
20 any additional evidence and testimony that came through in
21 the past half hour by the two witnesses for the Defense. The
22 mere fact there is a policy in place regarding sexual
23 harassment of the students has no direct bearing on whether
24 there was a failure to supervise in that class. Which brings
25 us to this argument by the Defense that the school cannot be

1 held liable for the criminal acts of a third party, whether
2 the student's a third party, whether this incident itself is
3 a criminal act in and itself, put that to the side. This
4 defense does not apply in this case. And the reason is
5 because and I direct the Court to the case of Woodell v.
6 Marion School District One, 414 S.E.2d 794, where they
7 discuss that if the victim or plaintiff is seeking recovery
8 from the school district not based off of the direct criminal
9 acts of the assailant, but instead off of the school
10 district's failure to supervise the student or students, then
11 the claim is perfectly permissible, and is not barred in any
12 way by this third party criminal act defense in the Tort
13 Claims Act.

14 MS. WHITE: Your Honor, if I could respond just
15 briefly, he's saying exactly what we're saying. We -- we
16 cannot -- in fact, 15-78-60 number 20 says "A school district
17 cannot be held" -- of course, it's any political subdivision
18 of the State, "cannot be held liable if the alleged losses,
19 damages, and injuries sustained by a plaintiff arose out of
20 an act or omission of a person other than an employee,
21 including, but not limited to the criminal actions of third
22 persons." Mr. Eddy has been arguing to the jury that we are
23 liable simply because the inappropriate touching occurred.
24 That's not the case. The law explicitly says that the only
25 way we can be found liable is if there are -- or for the --

1 for there to be anything for the jury to decide, is if there
2 are facts in evidence from which the jury could conclude that
3 school officials failed to exercise slight care. We -- we
4 exercise an abundance of care. I don't know what else we
5 could have done, your Honor. What are we supposed to do?
6 Have one adult for each child and walk around holding them by
7 their hand, including when they go to lunch, including when
8 they go in the bathroom, including when they're waiting to go
9 in the car? There's simply nothing here from which a jury
10 could find that we failed to exercise slight care.

11 THE COURT: Anything else?

12 MR. EDDY: I would just ask you to take a peek at that
13 case, your Honor, it's directly on point and interpreting the
14 exact same defense saying that when you're alleging that the
15 failure of the school district is a failure to supervise
16 rather than a direct cause of action for the -- the criminal
17 act itself, this does not apply as a defense in Tort Claims
18 Act.

19 MS. WHITE: But you have to have facts from which the
20 jury could find that they failed to exercise slight care,
21 there are no facts in this case.

22 THE COURT: Let me look at the case.

23 MS. WHITE: Your Honor, may I say something else?

24 THE COURT: Yes, ma'am.

25 MS. WHITE: You're probably already looking at the

1 case, the Woodell case, but that was the -- the trial court
2 granted a 12(b)(6) motion to dismiss, and -- and simply held
3 that you -- you can sue for lack of supervision, but -- but
4 not for the criminal conduct of third person. So that's not
5 dispositive to the issue here, is -- which is whether or not
6 there are facts to indicate that the district was grossly
7 negligent in supervising the case. And again, it was -- you
8 know, the -- the court of appeals reversed the dismissal of
9 the case pursuant to 12(b)(6).

10 THE COURT: All right. So what is the Defense --
11 excuse me, the Plaintiff's position regarding the lack of
12 supervision is based on what facts? The fact that it
13 occurred?

14 MR. EDDY: The fact that it occurred, the fact that we
15 don't know how long it took to take place, the assault. We
16 know that the student stood up from one part of the room,
17 walked over to another part of the room, engaged in sexual
18 contact, including pulling out the pants, putting the hands
19 into the -- in between the legs and onto the underwear of --
20 of another student. And that student then had time to stand
21 up, leave and walked back to his desk. And the school
22 district has attempted to argue that the only way conceivable
23 was for that to have taken place in the blink of an eye, one
24 to two seconds, when we don't even know where Zoe was in this
25 room.

1 When you look at that and the fact that there was other
2 activities going on that Ms. Long was in the back helping
3 students, that Ms. Ray was sitting down at her desk, it
4 leaves room for the jury to decide that the teachers were not
5 paying sufficient proper attention to supervise the class.
6 The only explanation is that they weren't because it couldn't
7 have taken place in one to two seconds. Students don't
8 travel the speed of sound across the room. They didn't
9 engage in this contact. We -- we don't know that it took one
10 to two seconds. There's no evidence that this took one to
11 two seconds.

12 THE COURT: The teacher's assistant testified that she
13 saw nothing?

14 MR. EDDY: Correct.

15 THE COURT: She didn't elaborate on that in any way?

16 MS. WHITE: Your Honor, I believe she said she was
17 working at -- at her desk with students and -- and she is at
18 the back of the classroom. Ms. Ray is at the front of the
19 classroom. And Ms. Ray, if I'm recalling her testimony
20 correctly, is that Zoe was seated at -- towards the front of
21 the room, one of the front pods. She testified that she
22 couldn't say, because in those pictures, it's little like
23 almost half-moon desks pulled together. So she said the
24 table that the little pod where Zoe was, was at the front of
25 the room, very close to her desk. She couldn't testify which

1 of those three seats Zoe was sitting in. But the testimony
2 was is that Zoe was right there, that she had been
3 circulating around the room, monitoring students. She says
4 she walked back to her desk, her bottom hits her chair, and
5 Steven walks right up to her and says this happened. So the
6 only testimony on the record is that that's where -- that's
7 where Zoe was at that little pod right there. And also that
8 it was very close to where her desk was. So she testified
9 that it happened within a matter of seconds because she had
10 only been back at her desk for a matter of seconds. There's
11 no other -- there are no other facts and evidence to indicate
12 that it took any longer than that. There's simply nothing to
13 contradict her testimony.

14 THE COURT: I -- I -- I understand your position, and
15 I've tried to state my role. My role is not to decide if
16 there -- if there are inconsistencies not to decide between
17 the inconsistencies. It's the existence of the evidence.
18 And you keep arguing to me that that's the only evidence.
19 And I understand your argument, and I...

20 MS. WHITE: I get passionate about these things, your
21 Honor, I apologize.

22 THE COURT: Well, good. I -- I -- I don't fault an
23 attorney for being a vigorous advocate. And as I've said
24 earlier, there -- there's a -- an abundance of evidence that
25 the jury could use. The other way, the difficulty I'm having

1 in a practical sense is I can read subsection (20) as an
2 exemption, but I know in practice that there are lawsuits
3 every day about fights on school grounds. There's lawsuits
4 about prisoners hurting other people. And they go through.
5 They -- I do agree with you this is a 12(b)(6) motion on the
6 case of Woodell versus the Marion School District One. And
7 basically what the opinion says is both what -- is what both
8 of you are saying. One is that if the claim is based on the
9 supervision, you shouldn't throw it out on -- at the --

10 MS. WHITE: At the dismissal.

11 THE COURT: -- at the dismissal, on the pleading
12 section, you should let the facts be it developed. And your
13 argument is there aren't any facts now. All right. Here's
14 what I'm going to do. The inclination is to deny the
15 remaining directed verdict motion.

16 It's nearly 20 minutes after 3:00. What I would like
17 to do -- normally what I do is I go home, I finish up the
18 charge, and at some point in the night, I email it to the
19 attorneys. I'm not going to be able to email anything from
20 Edgefield. My -- my cell signal is way too spotty to try to
21 even accomplish anything like that. So what I'm probably
22 going to do is to ask you folks to be here in the morning at
23 9:45, and I'll give you a copy of the charge at that time,
24 and you all can look at it, the draft, and we'll talk about
25 it in a charge conference. I'll have the jury come at 10:30

1 and hopefully by then we'll have everything resolved. I
2 don't know that I'll have a verdict form that. Yes?

3 MR. EDDY: I don't know if this is appropriate, but
4 what time's the funeral tomorrow?

5 THE COURT: I'm not going to the funeral.

6 MS. WHITE: Your Honor, I -- I have a doctor's
7 appointment in the morning. I've contacted my doctor's
8 office about seeing if they could see me later tomorrow
9 afternoon. They cannot.

10 THE COURT: When is your appointment?

11 MS. WHITE: At 9:30, I'll -- I'll be done. He's
12 assured me that he would get me in at 9:30, and then I'll be
13 out at 10:30.

14 THE COURT: All right.

15 MS. WHITE: Any possibility that we could move it
16 forward I would greatly appreciate it.

17 THE COURT: Sure. It's in Columbia?

18 MS. WHITE: It is. It's actually in St. Andrew's. So
19 it -- you know, really close.

20 THE COURT: You think you can be here at 10:45?

21 MS. WHITE: Yes, your Honor.

22 THE COURT: Well, if you're not, don't break your neck.
23 All right. Bring the jury in. We'll need to order them
24 lunch tomorrow.

25 (Jury enters room at 3:20 p.m.)

1 THE COURT: All right. Ladies and gentlemen, it's --
2 what I'm about to tell you is unusual, but I think it's the
3 best way to proceed in this fashion -- in this case. I'm
4 going to ask you folks to be here tomorrow at 11:15. That's
5 late. I know it. We will have your lunch brought in. They
6 usually either get sandwich trays or pizza, but that's what
7 they normally do. And we -- the lawyers are going to meet me
8 sooner than that. And we're going to go over everything and
9 hopefully we'll be ready for you all at 11:15. Again, I'm
10 sorry for that lengthy break, but all things considered,
11 you'd either be sitting back there waiting on us or you'd be
12 home or where you want to be till 11:15, okay? Thank you so
13 much. Don't discuss the case. I look to see you at 11:15
14 tomorrow. Thank you.

15 (Jury exits room at 3:36 p.m.)

16 THE COURT: Let me just say on this third-party action.
17 Something I mentioned earlier when we were just talking about
18 the criminal side, I -- I also think you have to factor in
19 two things. One, you have to read all these statutes and
20 context. And if you read some of them. Even in situations
21 where you know there are cases all the time that come along
22 down the road, if you read the thing literally, it -- it
23 provides absolute immunity. And the other thing is, I'm
24 dealing with five-year-olds, five or six-year-old children.
25 And it seems to be more of a supervision -- right at this

1 moment, it seems to be more of a supervision issue, control
2 and protection than it does and act of a third party. But
3 I'll -- I'll mull all that over tonight and since we're going
4 to be that late, I should be able to get over here and email
5 stuff to you here. So, Mr. Crossland, you can look at it and
6 Mr. Eddy, you can look at it and maybe that'll shortcut it a
7 little bit. All right. Be careful you don't have contact
8 with the jurors, and I apologize to you all for going into
9 the fourth day. Court's in recess until 10:00 -- oh, I
10 didn't tell you what time to be here.

11 MS. WHITE: You said 10:45.

12 MR. EDDY: 10:45.

13 THE COURT: 10:45. Okay.

14 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
15 3:23 P.M.)

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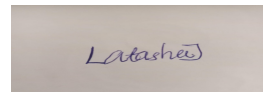
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CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on October 9, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 18, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

Transcriber

1 CONTINUATION OF PROCEEDINGS - OCTOBER 10, 2024.

2 THE COURT: All right. On the charge conference, I
3 distributed last night a proposed or charge a draft and a
4 proposed verdict form. And my understanding is that both
5 sides have had a chance to go over it. So we'll conduct a
6 charge conference now related to any matters that you think
7 should be excluded or excluded -- included or excluded excuse
8 me. Plaintiff?

9 MR. EDDY: No notes from the Plaintiff on other
10 document, your Honor.

11 THE COURT: Defense?

12 MS. WHITE: Yes, your Honor. Just a couple things.
13 First of all, there wasn't any -- there were no expert
14 witnesses who testified in the case. Dr. Amador testified as
15 a treating physician, and we don't have any issue with it. I
16 just don't think it's applicable to charge about expert
17 witnesses here. More importantly though, we would ask that
18 the Court include our charge number 27, which is the
19 affirmative defense provided in the Tort claims that related
20 to the X-ray omissions of a third party, 15-78-60 number 20.
21 I think that could probably be incorporated into the
22 information on gross negligence.

23 THE COURT: Okay. What's your position about expert
24 witness, Mr. Eddy?

25 MR. EDDY: I'm fine with that section being removed,

1 your Honor.

2 THE COURT: I've given a lot of thought to the question
3 about third party exemption. I put on our listserv to invite
4 input from the other judges -- circuit judges about their
5 thoughts. I -- I've only gotten two responses. One was that
6 he looks at foreseeability, mainly. The other one I think
7 may have missed the point that I was asking about because he
8 -- he was talking about the other part of the claim, but I
9 appreciate them responding. And they -- there may be some
10 more that come in. I fully concede I may be completely wrong
11 about this, but I have decided to deny the motion for
12 directed verdict on the ground of a third-party act. And I
13 am not going to charge it because I guess the essence of what
14 I'm feeling is, this is an exclusion or exemption for acts of
15 a third party. If we looked up definitions in dictionaries
16 about third parties, I don't know exactly what they would
17 say, but the situation in this case is you've got a
18 five-year-old child who is under the care, custody and
19 control of the school. I just don't think that's what the
20 third-party exemption was intending to provide for allowing a
21 school district to avoid -- or any governmental entity to
22 avoid responsibility. So I -- I -- again, concede I may be
23 wrong. I hope I'm not, I don't try to be wrong, but I note
24 your exception and you --

25 MS. WHITE: Yes, your Honor.

1 THE COURT: -- need to raise it after I charge in order
2 to preserve it.

3 MS. WHITE: We will to preserve it because we -- it is
4 an affirmative defense that's available to the school
5 district. We raised it in our answer and I think we're
6 entitled to that charge, but nonetheless, I understand your
7 Honor's ruling. The -- the only other objection that -- that
8 we would have is on page 4 of the proposed charge agency.

9 It's our position that -- and -- and actually the law's
10 pretty clear if you go read all the cases under the Tort
11 Claims Act, that there is not responding its superior. So
12 the district, in fact, is not responsible for acts and
13 omissions of its employees. The district does act through
14 its employees and its officials, but there's not responding
15 its superior liability for a school district. In fact, the
16 Tort claims spells out that in certain instances school
17 officials can be individually liable for their acts and
18 omissions. So we would ask that the second sentence here,
19 which says they are agents of the governmental entity, which
20 is responsible for the acts of -- acts and omissions of its
21 agents be excluded.

22 THE COURT: What's the Plaintiff's position?

23 MR. EDDY: Your Honor, I agree that the -- it's a
24 different employee-employer relationship in terms of the
25 employer's responsibility for employee's actions or failures

1 to act. The -- the issue is Tort claims with exceptions.
2 The one majority of the time you can't name the individual
3 employee. So it does need to be made clear to the jury that
4 at least in this circumstance, if they find that there is a
5 failure to act and omission itself, that the school district
6 is responsible for that.

7 MS. WHITE: Your Honor, could I suggest some
8 alternative wording?

9 THE COURT: Sure.

10 MS. WHITE: What if we said the school district is a
11 governmental entity which acts through its employees and
12 officials. If you find -- if you find that any of those
13 employees or officials were grossly negligent in their acts
14 and omissions, the school district could be held liable for
15 those acts and omissions. It's -- it's -- it's -- it's
16 semantics in a way. But I think it's important because
17 again, there is no -- just like there's no vicarious
18 liability, which is why we believe that 15-78-60 20 should be
19 charged, but we understand your position because there's not
20 responding it superior liability here, I think that needs to
21 be reworded.

22 THE COURT: You want to be heard on that, Mr. Eddy?

23 MR. EDDY: Solely to add on the last clause of her
24 proposed sentence I think that sentence is largely fine. I
25 don't have issues with it except to add or clarify that if

1 the school employees or officials are found within gross
2 negligence, it should be the school district is responsible,
3 not could be or should be.

4 MS. WHITE: I'm okay with that.

5 THE COURT: All right. I'll be honest with you, I
6 think it's a distinction without a difference, but I will
7 yield to greater knowledge in what I present. All right. So
8 I'll make that change. What else?

9 MS. WHITE: Nothing else from the Defense, your Honor.

10 THE COURT: Go see if they got all the jurors. Is the
11 Plaintiff ready for the jury?

12 MR. EDDY: Yes, your Honor.

13 THE COURT: Defense?

14 MS. WHITE: Yes, your Honor.

15 THE COURT: You want to open and close, Mr. Eddy?

16 MR. EDDY: Yes, your Honor.

17 THE COURT: Bring the jury, please.

18 (Jury enters room at 11:16 a.m.)

19 THE COURT: All right. Ladies and gentlemen, good
20 morning. We're going to go to the next stage of the trial,
21 and that's the closing arguments. In my opening remarks to
22 you, I told you that the lawyers were not permitted to engage
23 in what we refer to as argument in their opening statements.
24 I told you that an opening statement is generally an
25 introduction and that we're taught that it's pretty much

1 means that the lawyer gets an opportunity at that early stage
2 to tell you what he or she believes the evidence will show.
3 We now have all the evidence in the case and the attorneys
4 are given the -- the permission to use the art of advocacy to
5 attempt to get you to see things as they would like you to
6 see them on behalf of their respective positions.

7 Now the way that this works is that since the Plaintiff
8 has the initial burden of proof, Plaintiff's Counsel will go
9 first. Mr. Eddy has to close in full when he finishes, then
10 the Defense makes its only closing argument and after that,
11 Plaintiff's Counsel can respond to whatever the Defense
12 counsel brought up. I always take a break between when they
13 finish and when I start giving you the law it looks like
14 based on what I have right now, it's going to take me about
15 22 minutes to explain the law to. Sometimes I take breaks
16 between the arguments. It just depends on how -- how things
17 are going. But I invite your close attention, ladies and
18 gentlemen, and Mr. Eddy, you're recognized for your closing
19 argument.

20 MR. EDDY: Thank you, your Honor. Good morning -- good
21 morning, folks. I want to thank you for your care and
22 (inaudible) this past week. I know this has not been an easy
23 case to listen to. It has not been easy for the attorneys to
24 present. It has not been easy for the witnesses on either
25 side of this court to testify to. But all of us, everyone

1 here is appreciative of your help, appreciative of your
2 service, appreciative of you guys paying attention to the
3 witnesses and paying attention to the documents that you'll
4 be reviewing when you go back into your deliberations.
5 Because when you guys are making your decision today, you
6 guys are weighing the facts, weighing the evidence. Not only
7 will you get to review the testimony, but you'll also get to
8 read over some these documents and I want you to. Those
9 documents are important, we'll get to that in a second.

10 So like the judge said, we can now start talking a
11 little bit about the law. What I tell you right now is not
12 the law. I'm going to summarize what I think you'll be
13 hearing from the judge in a little bit. If there's a
14 difference between what I'm saying and he said go with him.
15 He knows better than me. All right.

16 Now like the judge said, I represent the Plaintiff in
17 this case. The duty is on me to prove things in this case
18 it's called "the burden of proof." What on earth does that
19 mean? Most of us come across this term watching law and
20 order and what do they say in law and order? Beyond a
21 reasonable doubt. That's a pretty high standard. What's
22 important is in criminal cases you're dealing with a very --
23 very important issue and it has to be proved by the
24 government beyond a reasonable doubt. This is a civil case.
25 It is a different burden. The threshold is much lower.

1 You see, we started Monday to scale for justice and
2 they were balanced. The Plaintiff wasn't ahead, the Defense
3 wasn't ahead. We started like this. And now in order to
4 prove a fact or issue to you, I'm required to prove it by a
5 preponderance of the evidence. What does that mean in
6 practice? That, did you see that? You take the scales there
7 at 50/50? (Inaudible). That's it. It just means more
8 likely than not, if we were to put these on percentages, we
9 started at 50/50. If I prove something that 51 percent of
10 your solitude, your understanding, that's it.

11 Preponderance of the evidence, tilt something very
12 slightly towards the Plaintiff. And that's a fact. That is
13 evidence that is true that happened. Because -- the nature
14 of this case, this is a negligence case. The Plaintiff has
15 to prove a few things. We understand now the scale, how we
16 judge those proofs, whether I prove those things. But what
17 do I have to prove to you?

18 Judge is going to teach you about a term called "gross
19 negligence." Gross negligence means the failure to exercise
20 slight care. It's a relative term. The Supreme Court has
21 put it another way. It says that it's the failure to
22 exercise the absence of care that is necessary under the
23 circumstances. The absence of care that is necessary under
24 the circumstances. What care are we talking about? We're
25 talking about the care and the duty just like the teachers

1 and the administrators testified to. The duty to protect,
2 the duty to protect the students and the parents of this
3 State, the parents of this county they trust the school. In
4 return, the school owes them a duty to protect the students.
5 I also have to prove that the Plaintiff was hurt, that the
6 Plaintiff has suffered damages. That's an easier of the two
7 questions.

8 So let's talk about some of the evidence and testimony.
9 What I'm saying right now is not evidence, it's not
10 testimony, but I want to bring your attention back to what I
11 think are some of the important parts of this case. Here's
12 what we know. Second to last day of school, sometime in the
13 morning, 24 students sitting in their desks, we got a teacher
14 in the back, we got a teacher walking around and eventually
15 sitting down at her desk. Students are working on an end of
16 the year project or a scrapbook, and they got a documentary
17 on the TV. Ms. Long, teacher assistant, in the back, she's
18 in charge of helping the kids when they've got issues with
19 the -- with their scrapbooks, they go to her students are not
20 allowed to be standing up. Students are not allowed to be
21 congregated, not allowed to be walking around, not over with
22 the toys, not over at the sinks, they're at their desks
23 unless they need to go to Ms. Long to work on their
24 assignments.

25 The school's position is that the head teacher was only

1 not looking at the class, was only not observing the class
2 for one to two seconds. That's it. That's it. That's the
3 entire time that they claim there was a hole in their
4 observation. For that to be true, here's what has to happen
5 in one to two seconds. Zoe sitting somewhere in the
6 classroom, we don't know where, has to turn around, find
7 Karter, call him, bring him over to her table. "Come sit
8 with me." He has to stand up, walk across the classroom, sit
9 down next to her, open her pants and put his hand on her
10 vagina. K has to do this for long enough that another
11 student notices and report this. K is then able to stand
12 back up, walk back to his desk, sit down.

13 The witness S who's the one that brought this to the
14 teacher's attention. He then has to stand up from his desk
15 having made the decision that he needs to report this. Walks
16 over to the teacher, get her attention and report this. Can
17 that have happened in one to two seconds? Absolutely not.
18 It can't. That is impossible. A teacher had to be distracted
19 for longer than that.

20 Now how do we know that? How do we know that the
21 teacher is wrong about how long she wasn't paying attention?
22 Let's look at her memory. Let's look at her memory of this
23 incident, and judge whether we can trust that her memory is
24 accurate. She testified here under oath, looked you all dead
25 in the eye, and what did she say S told her? She sat right

1 there and she said, "S told me Zoe opened her pants and asked
2 Karter to touch her." S said Zoe opened her pants and asked
3 Karter to touch her. Now when I took that same teacher's
4 deposition, I got to interview her before this. That was
5 sworn, that was under oath. You all heard me ask her about
6 this deposition testimony where she said at that point S he
7 was pointing towards K and Zoe. He was saying K and then
8 like gesturing towards his pants and they were being pulled
9 down. Those are not the same thing.

10 She told you today or this week something totally
11 different than she told me in the deposition. Is she lying?
12 I don't think so. I don't think so. I think she just
13 doesn't remember. I think she just doesn't remember. These
14 details they are important, because if you don't remember big
15 details like this, how on earth can you remember how long you
16 weren't looking at the desks for?

17 As she testified, she also took the witness's statement
18 very shortly after this. And if there was a difference
19 between S's written statement and what he told her at the
20 desk, she would've known, she would've noticed it would've
21 been an issue. Here's that statement. You all will get a
22 chance to read this. "K opened the pants of Zoe. I've seen
23 him." That's the exact opposite of which she claims that the
24 witness told her the exact opposite. That's a difference.
25 She stood up there again and said she didn't. There was no

1 difference between what S told her at the desk and what S put
2 in the written statement. She doesn't remember.

3 "Had you dimmed the lights in the classroom? Had you
4 dimmed the lights in the classroom for the movie? Sat
5 there?" "No, had not dimmed the lights." What did she say
6 in her deposition? We dim the lights for the movie. We
7 don't dim the lights all the time, but for a movie, yes those
8 both can't be true. Is she lying? No, it's just memory.
9 It's not. Her attorney asks her -- her attorney asks her,
10 "What's the size difference of K and Zoe?" You remember what
11 she said? It's the head teacher who is in charge, the one
12 who's supposed to have this perfect recollection. I was only
13 not looking for that long. What did she say? She said
14 they're the same height. She said K and S is the same size.

15 End of the day yesterday Ms. Long gets up, teacher's
16 assistant, and she said nope. No, that's not true. K is a
17 foot taller than Zoe that's a foot -- a foot difference. How
18 you not remember a foot difference? This is a foot. Add
19 that on. That's a big difference. Put that on a
20 five-year-old. How do you not remember that a five-year-old
21 is a foot taller than the other one? Memory wasn't good.
22 Doesn't remember the words. Doesn't remember the importance
23 of those words. Doesn't remember what those kids looked
24 like. And we're supposed to buy that she was only distracted
25 for one to two seconds. Like I said at the beginning, I get

1 it. It's the end of the year. This is not lazy job. It's
2 exhausting, tough job. Beginning of the year, I remember
3 when I was a senior sliding right into summer, I wasn't
4 paying attention to stuff, nor did she. Had end of year
5 school work to get done, all year paperwork to get done. She
6 had to fix up those forms into your reporting.

7 I've sat down at my desk at work, fresh cup of coffee,
8 8:30 in the morning ready to get work done. I blink and it's
9 5:00 and I got to go run to pick up my kids. When you're
10 focused on something, it's easy to lose track of time. When
11 I lose track of time, I respond with email too. When a
12 teacher loses track of time, when a teacher loses focus, when
13 a teacher is not observing and keeping an eye on the kids,
14 what happens? Zoe is assaulted.

15 The absence of care that is appropriate under the
16 circumstances. The failure to exercise slight care. Slight
17 care, watching the kids. I'm not saying you got to chain
18 them to the desks, it's go watch the kids. We know Ms. Long
19 is distracted because she's dealing with the kids who are
20 coming up to her for help to do something. So the moment
21 that the teacher -- the head teacher takes her eyes off the
22 class, nobody has their eyes on the class. And what do the
23 teachers administrators say? "Kids are curious. Kids are
24 going to do things." We know this and that's why you got to
25 keep an eye.

1 The -- the teacher -- teachers in the school broke
2 their duty to protect the students in that classroom. They
3 broke the duty to protect Zoe. All they had to do was this.
4 Open their eyes. That's it. Eyes on the kids. The failure
5 to keep eyes on the kids is gross negligence. It is the
6 failure to exercise the care that is wanted in the classroom.
7 What's the consequence?

8 Wonderful little girl, the Plaintiff, Zoe, was groped,
9 molested and assaulted. I don't know the right word. There
10 is no right word. I never thought professionally I'd have to
11 try to describe the non-consensual contact the young girl had
12 to (inaudible) in broad daylight in front of not one, two
13 teachers should have done better. But it's not over. Zoe's
14 story doesn't end. That's because the school also secondly,
15 separately harmed her all over again (inaudible) know even
16 worse.

17 The school botched the investigation of this incident.
18 Re-victimized, traumatized her all over again. This child
19 without her consent has been made the victim of sexual
20 assault, had to repeat her story again, again, again, again.
21 I lost count of how many times those teachers had to care
22 give. What does that do to the mind of a five-year-old?
23 What does that do to a child? Get questioned again and again
24 and again and again. What's worse when I ask a teacher, the
25 counselor, "Why didn't you find out what K said, what K did?"

1 You'll see the statement of the witness. You'll see the
2 statement of K. K admits to touching her. What did they sit
3 there and tell you? It doesn't matter. They said the word
4 it's irrelevant. It's irrelevant whether you are talking to
5 someone who is just curious, play a doctor versus someone
6 who's a victim of sexual abuse? How is that irrelevant? On
7 one hand, you're talking to a kid who needs some -- some
8 lessons on boundaries and what you can do in class. The
9 other hand, you're trying to help an assault. You think it
10 is appropriate and reasonable proper to repeatedly
11 interrogate a victim of sexual assault? No. No, it can't
12 be. School says, "We did not look. We did not blame her for
13 this." This is a lie. The school is lying. How do we know?
14 Because they put in the (inaudible). Look at this
15 (inaudible) words on this document. "She also accused the
16 same boy of pulling her pants away from her waist and looking
17 down them. But she had actually pulled the pants down and
18 asked him to look." They blamed her. That is their words.
19 I didn't write this document. I didn't put these words in
20 their mouth. They blamed Zoe. They made her feel it was her
21 fault.

22 You may know people, friends, family members you've
23 seen on Facebook something sexual assault victims don't
24 report it. Over all majority of sexual assault victims don't
25 report. Why not? Both (inaudible) don't understand. Don't

1 understand it. Why won't -- they don't report? So these
2 cases has taught -- has taught me the consequences of being a
3 victim. Because you're not a victim once. You can get
4 revictimized again and again and again, and made to feel like
5 you are (inaudible).

6 Was the school grossly negligent in failing to
7 supervise that classroom? Absolutely. It couldn't have --
8 the incident could not have happened in one to two seconds.
9 And we shouldn't even bother these one to two seconds because
10 we know all the different ways that teacher's memory was
11 short. Was the school grossly negligent, interrogating that
12 young girl, that victim again, and again, and again and
13 again? Absolutely. (Inaudible) just a little bit. Who was
14 grossly negligent? Both. Gross negligence is one thing I
15 got to prove over damages.

16 Let's talk about damages. The form you're going to
17 receive, you get a form called "a verdict form." You have
18 one little one and it's not going to have any explanation.
19 There's no equation, there's no calculator, there's no
20 formula. What are the Plaintiff's -- Zoe's actual damages?
21 It may say Z.A. on the form. It says Z.A. because we can't
22 put a minor's name on the public record, okay? So if you see
23 Z or Z.A. on the copy, that is Zoe, right?

24 Damages are difficult. Damages are easier in a car
25 wreck case. If Zoe broke her leg in a car wreck, we got the

1 medical bills, we got physical therapy, orthopedist, hospital
2 bills. And we can say, all right, got X number of bills.
3 We're going to pay suffering on top of that. Good to go.
4 It's got its own challenges, but it's a whole heck of a lot
5 easier that you guys have to decide on to that. And that is
6 what is the -- the value of emotional trauma. It has just as
7 much, if not far more value than a broken bone.

8 So what part has Zoe suffered? We heard from Zoe,
9 Nancy, Ferrey, Ms. Amador about the harms. A bright, sweet,
10 happy -- I don't remember if they said bubbly or bouncy, but
11 they're both pretty good things. And this incident took the
12 like. She now has to deal with anxiety, anxiety attacks,
13 depression, nightmares, and night terrors that she is still
14 coping with. The family all wakes up hearing the screams and
15 cries. So panic attacks feel like (inaudible). Shame. The
16 shame of her sexual assault. "God doesn't want me to live."
17 That's what she told her counselor. She told Ms. Amador,
18 "God doesn't want me to live." No six-year-old should say
19 that. She should be talking about "Bluey, my little pony."
20 She's like a six-year-old. How do you treat that?

21 Going back to a broken bone, we had an orthopedist on
22 the scene instead of the licensed therapist, Ms. Amador, that
23 orthopedist would say, "Yeah, see we got to do a surgery on
24 September. And then some follow-up care MRI, they'll do
25 physical therapy for three months and she will be fine.

1 Done. That's it. Fully recovered." What did Ms. Amador
2 say? There's no cure. This might not ever end. You can't
3 put a bandaid on what this young girl's going through and
4 will continue to go through. Ms. Amador said this could be
5 lifelong. Even if somehow miraculously Zoe returns to
6 baseline as a child, which she still hasn't, even she did.
7 This can come back up later month. What are the long-term
8 consequences Ms. Amador was talking about? (Inaudible)
9 forming relationships, friendships, trust bonding, intimacy,
10 academics, school, jobs, careers, self harm and suicide
11 (inaudible). I asked myself -- I said earlier this week, I
12 have a six-year-old and a four-year-old. What would I want?
13 What value would I propose if it was my child. It's not just
14 emotional trauma, it has injuries. When my child looks at me
15 in the eye and say (inaudible). That's easy. For me that's
16 easy. That's a million dollars. The value of what I would
17 want. That's for my child. But that's not the only aspect
18 that goes into what are her actual damages. It's not just
19 her emotional pain supplement from -- Ms. Amador said that
20 (inaudible). And I like the Arellanos very much. Nancy's a
21 great mom. She's working three jobs to (inaudible) as a
22 single mom, for these kids and she got great kids. Isis and
23 Ferrey working at the flea market to bring some extra money.
24 (Inaudible) this kid needs therapy, likely going to need
25 medication. What does therapy cost? Don't bring in your

1 outside knowledge. You know, counseling and psychological
2 services and medication. 10 bucks a visit or a 100, 150 \$300
3 a visit. What does that look like over a lifetime? Couple
4 times a week, couple times a month for the next 70 years.
5 That's not tens of thousands of dollars. It's hundreds of
6 thousands of dollars.

7 What is it going to cost to help her over (inaudible)
8 her life. She doesn't get to come back here in 70 years and
9 submit a (inaudible). You here right now have to decide.
10 (Inaudible) sign of caution. There's no do overs for her.
11 This is her own shot. A hundred thousand dollars for medical
12 treatment, therapy, counseling, and medication. Well, I
13 don't know what you should put down on that line, but it was
14 somewhere between \$100,000 and \$1,000,000, is what I would
15 do. And what I hope you do. Zoe was failed by her teachers.
16 Zoe was failed by her school. Zoe was failed by the police.
17 This is her last chance. Help me not to have failed Zoe.
18 Help this story. Zoe's story end.

19 THE COURT: Thank you, Mr. Eddy. Which of you is going
20 to do the closing?

21 MS. WHITE: I am, your Honor.

22 THE COURT: You ready, Ms. White?

23 MS. WHITE: Yes, I'm, your Honor. May it please the
24 Court?

25 THE COURT: You're recognized.

1 MS. WHITE: Good morning. I guess it's still morning,
2 I missed lunchtime. First of all, I want to echo Mr. Eddy in
3 thanking each of you for your service as a juror in this case
4 and for your attention to all of these witnesses. I don't
5 know that I've ever seen a jury that was more engaged with
6 all the witnesses who testified here. And I really -- really
7 appreciate that from -- from each and every one of you. This
8 is the fourth day you've been here in a row. Everybody's got
9 things going on in their life, but you all have been a -- a
10 fabulous -- fabulous jury. And on behalf of all of these
11 individuals who are sitting back here, we really do -- we
12 really do appreciate that.

13 The first thing that I want to say is that, quite
14 frankly, I find it offensive that Mr. Eddy is describing what
15 happened to Zoe as a sexual assault. For any of us here in
16 this courtroom, or people out in the world who have been
17 actually been the victim of a sexual assault, I find that
18 offensive. Now was Zoe touched inappropriately? Yes, she
19 was. I don't think anybody disputes that Zoe was touched in
20 a private area where she should not have been touched. And
21 that's not okay. That's not okay. And the school officials
22 told you that was not okay, and that they responded to that
23 by doing what? By referring Student K for a disciplinary
24 hearing. Because you can't go putting your hands on other
25 people in a school environment, but does that happen? We all

1 know that happens. Is the school district automatically
2 liable because one student touches another student in an
3 inappropriate way? No.

4 When the judge tells you about the -- what the law is
5 in this case, one of the things that he is going to tell you
6 is that school districts are not the insurers of student
7 safety. How can they be? Think about -- think about
8 everything that goes on during the school day with students
9 in the lunchroom, in the classroom, out on the playground.
10 And sometimes despite everyone's best efforts, something
11 happens, something happens at school. And if every time that
12 something happened at school where a student was either
13 touched inappropriately or a student got hurt on the
14 playground or a student got hurt in the lunchroom or during
15 athletic practice, if every time that something like that
16 happened, the school district was liable for that, for
17 failing to prevent it, we basically have to shut the schools
18 down because that's all we'd be doing. We'd be in court
19 every single day if we were automatically liable simply
20 because something happens at school.

21 So when is a school district liable? A school district
22 is liable whenever they fail to exercise slight care. Slight
23 care, not ordinary care. And to give you -- just to give you
24 an example that -- we'll -- we'll talk in a little bit more
25 about the example using the classroom. But I like to explain

1 the difference between ordinary negligence and gross
2 negligence in this way. Because we as citizens, we are
3 supposed to conduct ourselves, what, in a reasonable manner,
4 right? We -- we -- we cannot be negligent. And if we are,
5 then what? We face legal responsibility. Legal liability
6 for that. So here's an example. If you are driving your car
7 and you run a stop sign and as a result there is a car
8 accident, what have you done? You have failed to exercise
9 reasonable care. You were negligent because you failed to
10 obey the stop sign. And you are responsible for any accident
11 that might result because of your negligence.

12 On the other hand, if you were driving down the road,
13 the speed limit is 35, you're going 85, you are talking on
14 your cell phone, there's a stop sign. You run that stop sign
15 and there is an accident. You have been grossly negligent.
16 You have failed to exercise slight care. So that's the
17 difference between ordinary negligence and gross negligence.
18 And our general assembly has placed into law that school
19 districts can only be liable if there was gross negligence.

20 So let's take a look at the facts in this case, and
21 talking about whether the school district and school
22 officials, these individuals sitting back here in this
23 courtroom, whether or not they were grossly negligent. Did
24 they fail to exercise slight care in their supervision of Zoe
25 and in their supervision of Student K and the other students

1 in Sadie Schmidt's classroom? So what -- what did the
2 district do to try to prevent something like what happened to
3 Zoe, the inappropriate though developmentally normal touching
4 that happened? First of all, the district has a policy that
5 prohibits sexual harassment in the schools. That's the first
6 step to have a policy that explains to students and employees
7 and parents that we will not and do not tolerate sexual
8 harassment in the schools.

9 And that includes student on student sexual harassment.
10 And if you take a look at that policy, which you will have
11 before you in the jury room, it spells out what that is and
12 how a student or a parent can file a complaint if the student
13 believes that he or she has been the victim of sexual
14 harassment, which would include a sexual assault had one
15 occurred here, which again, it did not in our opinion, but it
16 explains that. So that is one piece of care. We have a
17 policy on sexual harassment.

18 What else do school officials do? They actually send
19 -- at Cayce Elementary School, the school counselor,
20 Catherine Prizer, went into Ms. Sadie Schmidt's classroom to
21 give a lesson to the students on safe touching and explain to
22 all the students, "It is not okay for anyone other than
23 yourself or a doctor or a parent/guardian to touch you in
24 your private areas." Now that's something that ought to be
25 taught at home as well, correct? But the school actually

1 goes in and does that lesson. And in fact, in this case,
2 Ms. Prizer testified that they did that couple of weeks
3 before this accident -- this incident actually happened. So
4 it was fresh in everyone's mind or it should have been
5 talking about five and six-year-olds here though. We're not
6 talking about older elementary school children, middle school
7 kids or high school kids. We're talking about little kids.

8 What else did the district do? What else in particular
9 did Sadie Schmidt and Kimberly Long do? The classroom was
10 set up in a way so that the teacher was at the front of the
11 room. The teacher assistant was at the back of the room so
12 they could observe the students and what was going on with
13 the students. The students' pods -- and you can see in these
14 pictures again, you'll have these back -- back in your
15 classroom (sic). The pods here, there were three students
16 seated at a pod and none of those little pods were very far
17 from the desk of either Ms. Long or Ms. Schmidt. So they set
18 the classroom up and away so they could observe what was
19 going on in the classroom.

20 Did they turn the lights off in the classroom while
21 they were watching this documentary? No, they did not. Did
22 they close the blinds so that it was dark in the classroom?
23 Didn't do that either. Did they turn off the lamps that they
24 were in the classroom? They didn't do that either. They had
25 the classroom set up in such a way on this particular -- for

1 the whole year, but on this particular day so that they could
2 see what was going on with the students. What did
3 Ms. Schmidt testify to? She testified that she was walking
4 around that classroom -- again, about the size of this
5 courtroom. We're not talking about a -- a big huge room.
6 And she was watching these students. 24 students in the
7 room. She was walking around watching what was going on.
8 Ms. Long testified that while she was at her desk in the back
9 of the room, she was not distracted. She was keeping her
10 eyes on the students as well.

11 Ms. Schmidt finishes going around monitoring the
12 students. And what does she say? She goes back to her desk,
13 she goes to sit down. As soon as she sits down, Student S
14 comes up to tell her what has occurred. We all know how
15 quickly something can occur. And here, the touch in question
16 was not what Zoe had initially described. If what Zoe had
17 initially told Ms. Prizer and Ms. Ariail, if what she had
18 initially said that there was oral sex, that there was white
19 sticky stuff, that there was a tongue in her mouth. If all
20 that had occurred, as I told you on Monday, I wouldn't be
21 standing here because this matter would've been resolved.
22 Because if something like that had happened in that
23 classroom, that would've taken some period of time for all
24 that to occur. And so what was the teacher and the teacher
25 assistant doing? But that's not what happened here. It is

1 not what happened here.

2 So then let's -- let's turn to -- after Student S came
3 up to Ms. Schmidt's desk and said, "This is what happened. I
4 saw -- I saw K -- Student K touch Zoe," and is it really
5 material whether Zoe pulled her pants out or Student K pulled
6 -- pulled the pants out. That's really not material. And
7 that's what school officials were telling you. Mr. Eddy was
8 attempting to couch that as well. They're lying about this.
9 The school officials are lying. And again, I find that
10 offensive to say that school officials would come in here and
11 lie to a jury in front of a judge. Do you really believe
12 that they would come in here and lie about that? What they
13 said was, as far as they were concerned, it didn't matter
14 whether Zoe pulled her pants out or Student K pulled the
15 pants out. The fact of the matter was there was an incident
16 involving two students, an inappropriate act by a student.

17 So when Ms. Schmidt learned about that because Student
18 S came off and told her about it, did she say, "Okay, no big
19 deal, go sit back down." Had she done that? Could that have
20 constituted the lack of slight care? Yes, it could because
21 just ignoring it when a student says something is going on
22 with another student, she told Student S, "Just go sit down."
23 And she kept -- you know, right on with the classroom
24 assignment, that maybe could be gross negligence. But what
25 does she do? She calls Student K up, asks him what happened.

1 He tells her -- tells her honestly what happened. "Yeah,
2 well, she told me to," but doesn't matter if she told them to
3 or not. You can't go doing that. And so then what does she
4 do? She called Zoe up and I think she testified that -- that
5 Zoe started crying and -- and -- and was upset. So felt the
6 -- the need to write then go ahead and get an administrator.

7 Now I'm going to tell you what I think happened here as
8 -- as far as how the incident occurred. Ms. Schmidt
9 testified earlier that Zoe was an emotional child before this
10 incident happened. That she would get upset if something
11 happened like I think her shoes got dirty and she went to
12 places and so they -- they weren't able to get in touch with
13 -- with Ms. Arellano. So they went and found another pair of
14 -- of shoes for Zoe to wear that day.

15 She also testified that on -- on a particular day there
16 was some sort of smell in the cafeteria. You know, I'm in
17 and out to schools all the time and sometimes I'm like, "What
18 -- what are they cooking in there?" But in any event, she --
19 she had a smell and she refused to go in the cafeteria. So
20 Zoe was a very emotional child.

21 She also testified that Zoe had a best friend in the
22 class. Well, a female student. And that if Zoe got in
23 trouble for something, if Zoe was talking for instance, that
24 she would tend to deflect to the other student. "Well, it
25 wasn't me, it was -- it was my friend over here." I used to

1 do that too. I was a talker. You know, if you get in
2 trouble, you're like, ooh, it wasn't just me, it was this
3 person too. Or that's who it was. Because I was a talker in
4 school. No, that's hard to imagine. But in any event, so
5 what -- given that, what do I think happened? And you all
6 are going to have to decide yourselves what happened, but
7 what I think happened is it's clear Zoe testified for -- for
8 Student K to come over to the table.

9 I think Zoe probably initiated this. Now does that
10 mean that Zoe did something wrong or that Zoe is a bad girl?
11 No, that's not what that means. Again, children are curious
12 when they're young. These are five and six-year-olds. I
13 think that's what happened. And then what's going to happen?
14 You're going to deflect, you're going to deflect. And in
15 this case, the deflection was not just, "Well, Student K did
16 this. It wasn't me. I didn't invite it." The deflection
17 became a story that was extremely concerning to school
18 officials. How does Zoe have this knowledge? How is she
19 able to describe graphic sexual acts? So because of that,
20 when the questioning began, when -- when Zoe was taken to
21 Catherine Prizer's office -- and let's talk about that for a
22 minute.

23 Was Zoe sent to Annette Ariail's office to an
24 administrator's office or taken into the principal's office?
25 He testified he was off campus that day. But did Ms. Ariail

1 take her in there and say, "You sit here behind the desk and
2 I'm going to sit at the desk and interrogate her?" No, that
3 is not what happened. She was taken to Ms. Prizer's room,
4 which Ms. Prizer testified has fidgets and dolls and -- and
5 toys in there to try to make the child feel comfortable while
6 she shared with Ms. Prizer and Ms. Ariaail what had occurred.
7 Is that slight care, as far as how they handled this
8 incident? I think it's undisputed that that was slight care.

9 And that what does the district do as far as Student K?
10 He is taken to Ms. Ariaail's office with Mr. Snyder so as to
11 have a male presence available. And he is questioned about
12 what occurred. And once the questioning has been finished
13 that the interview of the students, Ms. Prizer and
14 Ms. Schmidt talk about it and they decide, "Look, something
15 isn't right here for this child, this six-year-old child to
16 have this knowledge." And so they respond to that with that
17 knowledge that the child had.

18 I don't know where the child got the knowledge. I
19 don't know that we'll ever know that, but it was information
20 that caused the school officials to be concerned, which is
21 why Ms. Prizer testified -- and Mr. Eddy would have you
22 believe that questioning five or six times. I didn't hear
23 anything about that. What I heard was that Ms. Prizer met
24 with Zoe, Ms. Ariaail goes out for a minute to go check on
25 Student K and what's going on with that. And then she comes

1 back in and they finish questioning Zoe. And why are they
2 doing that? Are they doing that to make Zoe upset or to make
3 Zoe feel like she here is -- has done something wrong? No,
4 they're doing that because they're trying to figure out what
5 is the child -- what is the story that this child is telling
6 so that we can respond appropriately.

7 And then finally, when they finish looking into this
8 matter, did they tell Student K, "Okay, well, you go on back
9 to class, you and Zoe just go on back to class and we'll keep
10 on doing the scrapbooks." No. They send Student K for a
11 disciplinary hearing in accordance with the student --
12 student code of conduct.

13 What else could they have done? What else could they
14 possibly have done to have prevented this and how else could
15 they have followed up on it? I cannot think of anything. Is
16 it going to get to the point where we have to have one adult
17 per student in a classroom? Is that where we're going to get
18 to with this? Because again, if that's what's going to have
19 to happen, are we still going to be able to continue to
20 operate public schools? It's hard right now. I'm sure --
21 you know, you've heard about the teacher shortage all around
22 the country. It's particularly bad in South Carolina. We
23 had two teachers in this classroom with 24 students in there.
24 Simply is no testimony or evidence whatsoever to indicate
25 that they were distracted or that they were not doing their

1 jobs. They were doing their jobs this happened. It's
2 unfortunate. I'm sorry that Zoe was touched by another
3 student, but it is not the district's fault that this
4 happened.

5 So now I'd like to talk to you for a little bit about
6 Ms. Arellano and what she did. She gets a call from the
7 school. Ms. Ariail with the use of an interpreter calls
8 Ms. Arellano to say "This has occurred. Zoe is very upset
9 and I think you ought to come get her." Does Ms. Arellano
10 come to the school? Does she come in the school and say
11 "Well, can I please sit down with Ms. Schmidt and Ms. Ariail,
12 Ms. Prizer, or any school official to try to figure out what
13 happened?" Because I can tell you if my child -- when --
14 when I had young children, if my child told me, or if I heard
15 that my -- my child was saying that a -- a -- "A boy licked
16 me between my legs," licked my child between their legs, put
17 their tongue in their mouth, there was white sticky stuff. I
18 can guarantee you I would've been in that school saying "What
19 in the world, how possibly could that have happened?" And
20 that was Zoe's initial story is that is what had occurred. I
21 would want to go see the classroom, I would want to meet with
22 the principal, I would want to meet with everybody involved
23 to try to figure out what happened. Did Ms. Arellano do
24 that? No. No, she did not. She didn't even come in the
25 school. We're not even sure if she picked her up or if her

1 grandmother picked her up or what. Because Zoe was a bus
2 rider normally. But it is undisputed that she did not go
3 into that school to figure out what happened.

4 The next thing is -- well, what -- what did she do?
5 She somehow, Zoe gets home, Zoe's at home. According to
6 Ms. Arellano, Zoe is crying and hysterical and upset and
7 everybody's upset. Did she call the child's pediatrician to
8 say "Look, my child is telling me that this is what happened
9 at school. That there was" -- because if what Zoe initially
10 described had happened, that would be a sexual assault. Did
11 she call the pediatrician and say "Look, I need to bring my
12 child into you because I am not certain how far this went
13 that my child has described graphic sexual acts and we need
14 to figure out what's going on here." No, she did not do
15 that. She did not contact the child's pediatrician.

16 Did she contact mental health or did she reach out to
17 the school to say "Look I -- I need to find somebody, some
18 therapist to help me with this child. The child is having
19 nightmares. The child is inconsolable, the child is crying
20 hysterically." Nope, didn't do that either. What did she
21 do? What did she do? She got on the internet and she did a
22 search for a lawyer. That's what was important to her at
23 that time, was getting an attorney. Is this really about an
24 apology from the school officials? I don't think so. I
25 don't think that's what this is about. When did Zoe go see a

1 therapist? After an attorney was already involved in the
2 matter.

3 The other thing I'll point out here too is when is the
4 last time that Zoe saw a therapist? Almost a year ago in
5 November of 2023. But yet according to testimony from
6 Ms. Arellano and testimony from Ferrey and Isis, she's
7 continuing to have nightmares and night terrors, and she's
8 scared to be around other children. She and -- and
9 Ms. Amador testifying she's having trouble in school, which
10 is not what Ms. Arellano testified to. She said she's doing
11 fine. But again, if those problems are continuing, why is
12 Zoe not under the care of a therapist now? Why has it been
13 almost a year since she went to see a therapist? But I will
14 say -- I'm glad Zoe went to see a therapist because again,
15 that story that she initially told is concerning. It is
16 concerning to me and I imagine it's concerning to all of you.
17 So I am glad that she saw a therapist and I hope that if she
18 is continuing to have any sort of problems, that she
19 continues to see a therapist because Zoe has had a lot of
20 stressors in her life recently.

21 She's been in three different schools over the last few
22 years. She was at Cayce Elementary School, then she went to
23 Saluda River Academy for the arts, which is also located in
24 Lexington Two. And then the family moved to North Augusta,
25 and she's now in school there. And that's a lot of -- that's

1 a lot of changes for a young child. The family has also
2 moved to a different state. Well, North Augusta is actually
3 in South Carolina, so I'm not sure. I think part of it is in
4 Georgia, and part of it is in South Carolina. But
5 nonetheless, she's in a whole different town. She's in a new
6 house. Her father has recently come back into her life.
7 Those are all stressors for a young child. And so all of
8 those things should be taken into account when you're looking
9 at whether or not, in fact, Zoe is continuing to have
10 problems. And I've been observing Zoe here in the courtroom,
11 and I -- I know that you have too, and so you'll have to
12 judge for yourself. Is -- is Zoe the same child that she was
13 before? Is she continuing to have problems? Use your common
14 sense as far as that is concerned.

15 The judge -- once after we finish our closing
16 arguments, the judge is going to charge you with the law and
17 then he's going to give you a verdict form. Mr. Eddy
18 referred to that a little bit early -- earlier and -- and
19 verdict comes from the Latin word "verdictum." What does
20 that mean? It means to speak the truth. And who is speaking
21 the truth here? I submit to you that it is all of these
22 school officials back here who told you exactly what
23 happened. Did they lie? No, they didn't lie. This has been
24 almost three years ago. And little details about: Is this
25 child taller or is that child taller? What -- what's in this

1 record? Were the lights like they are here in the courtroom
2 or were they lighter? You know, again, have you ever heard
3 of red herrings? That's what Mr. Eddy is doing. All these
4 little things. Well, they must be lying about everything if
5 they can't remember whether the lights were on like they are
6 in here or if they were a little bit dimmer, but none of that
7 is critical. What is critical here is that the district did
8 what they could. Did they exercise slight care? Yes. In
9 fact, they exercised an abundance of care in this matter.

10 And so for all those reasons, we would ask that you
11 return a verdict on behalf of Lexington School District Two,
12 and let these school officials know that they did everything
13 they could to prevent something like this from happening.
14 Thank you.

15 THE COURT: Thank you, Ms. White. Any response,
16 Mr. Eddy?

17 MR. EDDY: Briefly, your Honor. I used to be a defense
18 attorney. I used to defend cases, not dissimilar from this.
19 I used to stand in front of juries and defend folks in
20 lawsuits like this. And I used to come up with a lot of
21 creative arguments. Would never would I ever have tried to
22 gatekeep sexual assault. Never would I ever have tried to
23 reframe the non-consensual groping of someone else's genitals
24 as not sexual assault. It offends the Defense that I'm
25 calling that sexual assault, non-consensual grabbing of

1 someone else's genitals?

2 When I was a defense attorney, it was always very
3 important to apologize to the victim. You can apologize
4 without admitting you did anything wrong. I put my folks on
5 the stand, I teach them to say "I'm sorry." In my opening
6 and my closing, I tell the victim I'm sorry this happened to
7 you. Here's all the reasons why -- even though I'm sorry
8 this unfortunate occurrence happened, here's all the reasons
9 why my folks shouldn't be held responsible. We haven't had
10 one acknowledgment what happened to Zoe. We haven't had one
11 apology from the teacher, administrator, or an attorney.
12 They're not sad that this happened. They're not sad that Zoe
13 got touched. They're sad they got sued. They sure as heck
14 don't like that I did that. I don't like it either. I don't
15 like that this was necessary. This is a shame.

16 I give you a cheat sheet, guys. Whole case -- whole
17 case, everything -- everything down to one teeny tiny
18 question. The Defense gave you nothing to contradict this
19 whatsoever. It's one question. Real simple. Do you believe
20 that the teacher only took her eyes off the class for one to
21 two seconds? Do you believe that? If you do, my case is
22 done, okay? If you believe that it was only one to two
23 seconds that she wasn't looking at those kids, the case is
24 done. Why shouldn't you believe that? The school
25 possibility of the events, teacher's poor recollection,

1 doesn't remember what was said to her, doesn't remember what
2 was written, doesn't remember what she wrote, doesn't
3 remember if the lights were all going on, doesn't remember
4 how tall the darn kid was, doesn't remember where they were
5 sitting. Doesn't remember anything. What does she remember?
6 One thing. There's only one to two seconds. That's it.
7 That's the only concrete detail against the judge -- against
8 instructions and credibility, weighing the credibility of
9 witnesses. What's the way you can judge credibility on
10 someone's perfect recollection of that one thing? Well, how
11 are they on all the other details? Who said what, when?
12 Where were they sitting? Where was everyone sitting? What
13 was going on? What were the details in the classroom? You
14 lose credibility. You can't remember those things. You
15 expect us here to put the whole case on. That's it. I
16 appreciate all your help this week. You all only get some
17 beans or some sandwiches or something. Don't rush this
18 decision, okay? Take your time. Think about this. Read
19 those documents. Thank you, folks.

20 THE COURT: Thank you, Mr. Eddy. All right. Ladies
21 and gentlemen, I told you I always take a brief break between
22 when they finish and when I start so I can get set up out
23 here. You'll be back there maybe five minutes at the most,
24 and I'll bring you out to give you the law. Don't discuss
25 the case yet. Follow the bailiff, please.

1 (Jury exits room at 12:25 p.m.)

2 THE COURT: All right. We'll be at ease for five
3 minutes.

4 (Off the record at 12:26 p.m.)

5 (On the record at 12:34 p.m.)

6 THE COURT: Don't do anything to distract the jury.

7 (Jury enters room at 12:35 p.m.)

8 THE COURT: Members of the jury, all the evidence has
9 been presented and you've heard the arguments of Counsel.
10 It's now time for me to instruct you on the law that applies
11 to this case. Please continue to pay close attention during
12 this next stage of the procedure. At first, we need to cover
13 some basic ground rules. You, the jury members, are the sole
14 judges of the facts. You'll decide all the issues of facts,
15 the truth of the evidence, its effect, its value, and its
16 weight. You alone will judge the credibility of the
17 witnesses. In other words, whether the testimony is
18 believable.

19 In this regard, you may believe all that a witness said
20 or none of it. You may believe part of what a witness said
21 and not believe the balance. You may believe one witness
22 against many or many against one. You may consider any
23 interest, bias or prejudice that you feel that a witness has
24 in the case. You may consider the demeanor and the
25 appearance of the witness and the opportunity for knowledge

1 that the witness had. You may consider whether a witness has
2 been consistent or inconsistent, but you're not to exercise
3 these considerations arbitrarial. You are to use your common
4 sense, your sense of logic and reason and your good judgment.

5 It's not proper for me to give you a charge on the
6 facts of the case. I cannot discuss the facts with you or
7 convey to you an impression that I have any personal opinion
8 about the facts. If during any stage of this trial you
9 develop an impression that I have a personal opinion about
10 the facts, you have to remove that belief totally from your
11 mind. You're the sole judge of the facts. I am the judge of
12 the law that applies to the case. You're bound by your oath
13 to accept and apply the law as I tell it to you. You must
14 abandon any conflicting ideas you might have as to what the
15 law is or what it should be. I give you the law, you apply
16 it to the facts as you determine them to be. And that way,
17 you reach your verdict.

18 It's also my duty to decide what evidence is
19 admissible. If I have ruled something inadmissible, or
20 instructed you to disregard something, you're not to consider
21 those things in arriving at your verdict. Base your verdict
22 on the competent evidence before you consider the testimony
23 from the witnesses and the exhibits admitted.

24 I need to explain that there are two types of evidence
25 generally presented during a trial. There's direct evidence

1 and circumstantial evidence. Direct evidence is the
2 testimony of a person who claims to have actual knowledge of
3 a fact, such as an eyewitness. It is evidence that
4 immediately establishes the main fact to be proof.
5 Circumstantial evidence is proof of a chain. It is proof of
6 a chain of facts and circumstances indicating the existence
7 of a fact. It is evidence that immediately establishes
8 collateral facts from which the main fact may be inferred.

9 Circumstantial evidence is based on inference. It is
10 proof that does not actually establish the fact in question,
11 but that an assert or describes something else from which you
12 may either reasonably infer the truth of the fact, or at
13 least reasonably infer an increase in the probability that
14 the fact is true. For circumstantial evidence to be
15 sufficient to warrant the finding of a fact, the
16 circumstances must lead to that fact with reasonable
17 certainty. The facts and circumstances should be considered
18 in light of ordinary experience and common sense. The
19 existence of a fact cannot be based on speculation, surmise,
20 or conjecture. The law makes absolutely no distinction
21 between the weight or value to be given to either direct or
22 circumstantial evidence. Nor is a greater degree of
23 certainty required for circumstantial evidence and of direct
24 evidence.

25 I need to explain that the school district is a

1 governmental entity which acts through its employees and
2 officials. If you find that any of the school officials or
3 employees were grossly negligent and a minor claim by the
4 plaintiff, the district is responsible for those acts and
5 omissions of its agents.

6 Now let's turn to this specific lawsuit. The party who
7 brings a lawsuit is called "a plaintiff." And here the
8 plaintiff is Zoe. A minor's lawsuit must be brought by an
9 adult representative who is appointed as the guardian ad
10 litem for the child. The party against which a lawsuit is
11 brought is called "the defendant," and Lexington County
12 School District Two is the Defendant. The Plaintiff is
13 claiming two things.

14 First, that the district gross -- was grossly negligent
15 in preventing her from being sexually assaulted by another
16 student. More specifically, the Plaintiff alleges that the
17 district was grossly negligent in failing to properly
18 supervise and control Student K, and in failing to protect
19 Zoe from that alleged assault.

20 Secondly, she claims that the school was grossly
21 negligent in how it responded to the alleged assault. Now
22 the Plaintiff having brought this lawsuit, has the burden of
23 proving her claim. As I'll explain later, the school
24 district has raised an affirmative defense related to
25 discretionary immunity, and the district bears the burden of

1 proof as to that defense. The burden of proof in a civil
2 case is known as "the greater weight," or "the preponderance
3 of the evidence." And the easiest way for me to explain this
4 to you is to ask you to imagine a traditional set of scale.

5 When a party has a burden of proving something, that
6 party must present evidence to tilt those scales in her or
7 his favor as to that issue. So when a case begins, the
8 scales are even after all the evidence has been presented if
9 the scales remain that way, if they remain even, or if they
10 should tilt even slightly in favor of the opposing party,
11 then the party with the burden of proof has failed to meet
12 the burden of proof. If on the other hand, those scales
13 should tilt even slightly in favor of the party bearing the
14 burden of proof, then the burden of proof has been met. And
15 all I'm trying to do with that explanation is to give you a
16 mental picture because weighing evidence is entirely a mental
17 -- mental process, and the evidence to which you should give
18 the most weight is that which convinces you of its truth.

19 In order for Zoe to recover, she must prove by the
20 greater weight or preponderance of the evidence that the
21 district acted in a grossly negligent manner with regard to
22 the particular claim. Public school districts are not
23 guarantors or insurers of a student's safety. The mere fact
24 that a student may have been harmed while at school does not
25 necessarily entitle that student to a monetary recovery.

1 Rather, the school district is liable only if you find that
2 the Plaintiff has proven that the district was grossly
3 negligent and caused her harm.

4 I'm sure you've heard the term "negligence."
5 Negligence is synonymous with being careless, but gross
6 negligence is a higher level of wrongdoing. It is the
7 failure to exercise even slight care under the circumstances.
8 The Plaintiff must prove that the district did not exercise
9 even slight care towards Zoe. Gross negligence involves an
10 intentional conscious failure to do something that a party is
11 obligated to do. Put it another way, it is the intentional
12 doing of a thing that one ought not to do. Gross negligence
13 involves conduct that shows an utter disregard of caution
14 amounting to a complete neglect of the safety of another. It
15 is want and conduct done with conscious or reckless disregard
16 for the safety of others.

17 Another concept I need to explain is "proximate cause."
18 In general terms, even where a party acted with gross
19 negligence, that party is only responsible for those things
20 that the gross negligence cause, either as the sole cause or
21 as a contributing cause. We call that concept "proximate
22 cause." Proximate cause is something that bring -- produces
23 a natural chain of events, which in the end brings about the
24 injury. It is a direct cause. Proximate cause requires
25 proving causation and fact. This involves proof that the

1 injury would not have occurred, but for the gross negligence
2 of the district.

3 Proximate cause also requires proving legal cause.

4 Legal cause is proven by showing that it was foreseeable that
5 injury would flow from the gross negligence in question.

6 This means that the injury must have occurred as a natural
7 and probable consequence of the gross negligence. Proving
8 foreseeability does not require proof that the particular
9 injury that occurred was foreseeable. However, a wrongdoer
10 cannot be held responsible for things that could not be
11 expected to result from that party's misconduct.

12 Proximate cause cannot be left to surmise, speculation
13 or conjecture. The Plaintiff must prove that any injuries or
14 damages sustained were the proximate result of the
15 Defendant's gross negligence, either in supervising or
16 controlling its students or protecting Zoe -- Zoe, or in how
17 it responded to the alleged assault. Where the cause may be
18 as reason -- reasonably attributed to something from which a
19 defendant is not responsible as to something from which the
20 Defendant is responsible, then the burden of proof is
21 proximate cause has not been established.

22 Now when the district received a complaint, it filed an
23 answer. The first defense is known as a qualified general
24 denial, which admits certain things but denies that it failed
25 in its duties towards the students or mishandled the incident

1 or acted inappropriately in any way. The district denies
2 that it is responsible for any injuries or damages claimed by
3 the Plaintiff, and this qualifies general denial places the
4 burden of proof on the Plaintiff to prove her claim.

5 The school district has also raised an affirmative
6 defense concerning governmental immunity. And affirmative
7 defense means that the school district has the burden of
8 proving it by the greater weight of the evidence. As background
9 until the late 1900s, the government could not be sued by a
10 private citizen. This was called "sovereign immunity,"
11 meaning that the sovereign was immune from liability. Under
12 current law, a governmental agency can be sued and held
13 liable. That legislation known as "the Tort Claims Act" has
14 placed limitations on the ability to collect from a
15 governmental entity. These limitations are in the form of
16 exemptions that protect governmental agencies for certain
17 things. If the district proves that an exemption applies,
18 there can be no recovery from the school district. Excuse
19 me. One such immunity is called "discretionary immunity."

20 A governmental entity is given leeway with regard to
21 acts of discretion. It cannot be held liable for the
22 exercise of discretion or judgment by an employee or for the
23 performance or failure to perform any act or service, which
24 is in the discretion or judgment of the governmental entity
25 or employee. To establish discretionary immunity, the

1 district has to prove by the greater weight or preponderance
2 of the evidence that its employees, faced with alternatives,
3 actually weighed competing considerations and made a
4 conscious choice. Furthermore, the district must prove that
5 in weighing the competing considerations and alternatives,
6 the employee used accepted professional standards appropriate
7 to resolve the issue. If the school district proves these
8 things, it cannot be held liable for the Plaintiff's alleged
9 injury.

10 So now we'll turn to the issue of damages. If you find
11 that the Plaintiff has proven that the school district was
12 grossly negligent in a way alleged by the Plaintiff, and that
13 the gross negligence was a proximate cause of physical or
14 mental injury to the Plaintiff, you will then be asked to
15 evaluate the Plaintiff's claims for damages. In this case,
16 you are concerned with actual damages. You are not permitted
17 to award damages to punish the district or to make an example
18 of the Defendant. Punitive damages are not before you, only
19 those actual damages proven to have been suffered by Zoe are
20 permissible.

21 Now actual damages are sometimes called "compensatory
22 damages" because they're designed to compensate the damaged
23 party to put that party in the same position that she
24 would've occupied had the incident not occurred. Actual
25 damages include compensation or such things as pain and

1 suffering, mental anguish, emotional distress, loss of
2 enjoyment of life together with other related losses that are
3 proven to be the proximate result of the Defendant's gross
4 negligence. There is no yardstick that I can give you by
5 which to measure such things as mental anguish, emotional
6 distress, and loss of enjoyment of life. But while they are
7 difficult to measure, they are material elements of actual
8 damages. And if proven to have been suffered due to the
9 gross negligence of the Defendant, they should be assessed
10 and awarded to the Plaintiff.

11 Actual damages include damages that a plaintiff proves
12 to be reasonably certain to occur in the future provided that
13 they are proximate result of the district's gross negligence.
14 The question with future damages is not whether they might be
15 suffered, but whether the Plaintiff has proven with
16 reasonable certainty that the damages probably will
17 materialize. If you award future damages, they must be
18 reduced to the present day value.

19 The Plaintiff has the burden of proving her damages by
20 the greater weight of the evidence. Damages cannot be based
21 on speculation, or conjecture, or mere sympathy, but this
22 does not mean that they must be proven with mathematical
23 precision. Rather, the evidence should be such as to enable
24 you the jury to determine what amount of damages, if any, is
25 fair, just, and reasonable under the circumstances. That's

1 the law.

2 Folks, when you go back to the jury room, you're going
3 to have with you all the exhibits that have been admitted in
4 the trial, and you're going to have this verdict form and I'm
5 going to send back to you one copy of the written
6 instructions that I just read to you. On this verdict form,
7 you're going to tell us your decision, and you'll see when
8 you get it up top is just the caption, the case number and it
9 reads, "We, the jury, unanimously find" -- and you have two
10 options. Don't think I'm trying to suggest one over the
11 other by the order in which I state -- I -- I will state
12 them. One has to be said first, and one has to be said
13 second. The first option is to find for the Plaintiff, Z.A.,
14 in the amount of blank dollars actual damage. So if your
15 verdict is in Zoe's favor, you would check that box and you
16 would fill in the blank as to the amount of money to be paid
17 to her by the Defendant. The other option is that you find
18 for the Defendant, School District Two. If that's your
19 option, you check that response.

20 Mr. Foreman, part of your duties includes filling out
21 this verdict form. I think you'll find it to be
22 self-explanatory. Whatever option the jury chooses, please
23 sign your name at the bottom on the line. Folks, how you go
24 about your deliberations and taking your votes is in your
25 discretion. Subject to this requirement, your verdict must

1 be unanimous. All 12 of you must agree in order for the
2 foreperson to record your verdict.

3 Now when you've reached your verdict, if you'll knock
4 on the door, the bailiff will respond to your knock. I've
5 told you dozens of times over the last few days not to
6 discuss the case until I tell you to. Well, believe it or
7 not, it's not quite time. The law says I have to meet with
8 the attorneys and go over what I just discussed with you.
9 The truth of the matter is that I put this together last
10 night. Miraculously around 8:00, they restored my internet
11 connection. So I emailed it out. We met this morning and
12 discussed it. So we've already been over this. It shouldn't
13 take long, but I'll tell you that I never read the written
14 words verbatim. Sometimes I say things I don't even realize
15 I said. So the lawyers have to be given a chance to point
16 out to me whatever they might disagree with me on.

17 If I'm satisfied with what I told you, here is the
18 signal that you need to look for. I will send in to the jury
19 room, the exhibits, the verdict form, and a copy of the
20 instructions I gave you. I'll bring the alternate out. When
21 it's just the 12 of you in there, and you've got these
22 documents, you don't have to wait one more second, you can
23 start talking about the case, but don't talk about it until
24 then. I told the -- but -- the clerk to have your food here
25 at 1:00. So I made a pretty good guess is done. So whenever

1 the food is brought in they -- they'll bring it to you. It
2 may already be here. And the alternate is certainly welcome
3 to pick up whatever food was ordered. Okay.

4 Folks, I do want to thank you so much. You have been
5 an exemplary jury and I appreciate your respect and the
6 attention you've shown. You may retire to your jury room.

7 (Jury exits room at 12:55 p.m.)

8 THE COURT: Please state for the record any objections,
9 additions or objections -- exceptions, additions or
10 objections to the charge. Plaintiff?

11 MR. EDDY: No exceptions from the Plaintiff. Thank you

12 THE COURT: And the Defense?

13 MS. WHITE: The Defense again would restate its
14 position that under the Tort Claims Act, it's specifically
15 section 15-78-60, numeric 20, that the charge related to acts
16 or omissions of third party, including but not limited to the
17 criminal conduct of the third person should have been
18 included in the charges.

19 THE COURT: Thank you. I'm going to stick with what I
20 did. All right, folks, I appreciate very much your
21 professionalism, the way you've treated me and the respect
22 you've shown for the Court. The jury has the most difficult
23 job in the courthouse and we'll put it in their hands. I
24 want you to check the exhibits and the verdict form has
25 already been supplied to you. Here's what I'm going to do.

1 Since I send back a copy of the instructions, I will mark one
2 as the Court's exhibit, and that one has Zoe's initials. The
3 one that goes back to the jury actually has her name, but
4 it's exactly the same except the initial. Harrison is going
5 to have to go upstairs and print those. But if you'll check
6 the exhibits and check the verdict form, let -- let me know
7 when you're got that done. And as soon as we can get down --
8 back down with the copies of the instruction to send to the
9 jury, and to mark as court exhibit, we'll bring the alternate
10 out. All right. Harrison.

11 THE REPORTER: Did you want to I -- I used to mark the
12 charge too. Do you have it?

13 THE COURT: That --

14 THE REPORTER: Okay.

15 THE COURT: He's going to get it.

16 THE REPORTER: Okay. All right.

17 THE COURT: Is the (inaudible)?

18 THE BAILIFF: Yes, they have.

19 THE COURT: All right. Ms. Holley, we made it through.
20 We only have to use one alternate. So I appreciate you being
21 with us. If you need any kind of certificate, you check
22 downstairs and get it to you at the clerk's office, but they
23 will mail you a check for jury (inaudible) and inside that
24 envelope there will be a certificate if you need that. They
25 -- they tell me unless it takes about 10 days from Friday,

1 you always get a text. So if you need it sooner than that,
2 just check with the clerk she will get you anything, okay?
3 You're welcome to stick around if you want to stick around,
4 but you're discharged from jury service. Thank you. We're
5 at ease pending a verdict.

6 (Off the record at 1:11 p.m.)

7 (On the record at 2:04 p.m.)

8 THE COURT: The jury sent a note and it reads "Zoe's
9 transcripts, Nancy's transcripts, Ms. Schmitz transcripts."
10 I had the bailiff ask what they meant by transcripts, whether
11 they were talking about the trial or the depositions, and
12 they responded they want trial notes. There are no
13 transcripts of the trial and they can't have the depositions.
14 All I can do is tell them that if they want testimony
15 replayed, we can replay it.

16 MR. EDDY: Your Honor, what witnesses was that?

17 THE COURT: Zoe, Nancy and mo -- I guess that's
18 Ms. Schmitz not Mo -- Ms.

19 MR. EDDY: I've never had that come up in a trial
20 before with the -- because the court usually doing
21 (inaudible).

22 THE COURT: I tell them that we -- there are no
23 transcripts that I can give. There are no transcripts that -
24 - all I can do is play back -- have the court reporter play
25 back the audio that was picked up during the testimony. And

1 they need to be specific as to what they want to hear. If
2 they want to hear the entire witness, they can hear the
3 entire witness. If they want to hear about a specific
4 subject, that gets problematic because it might be in
5 different parts of their testimony.

6 MS. WHITE: I think it would have to be the whole --
7 the whole thing, really.

8 MR. EDDY: Doesn't agree with that.

9 THE COURT: Sometimes they want to hear it and
10 sometimes they don't. I -- I tell them, but that's what I
11 intend to do. Bring the clerk -- bring the jury.

12 THE BAILIFF: Bring the jury?

13 THE COURT: Yes, please.

14 (Jury enters room at 2:08 p.m.)

15 THE COURT: All right. Mr. Foreman, I received a note
16 from the jury, which seems to indicate that you're requesting
17 Zoe's transcripts, Nancy's transcripts, and Ms. Schmitz's
18 transcripts. And on clarification, they indicated what
19 you're asking for is transcripts related to their testimony
20 in trial. Is that the request of the jury?

21 JUROR 162: Yes, sir.

22 THE COURT: Ladies and gentlemen, there are no
23 transcripts. Those are prepared over a course of weeks or
24 months after a trial if -- if they're requested. The only
25 thing that can be done is that the court reporter can play

1 back the audios of the witnesses. If you want that done, you
2 just need to send a note out telling me that you want to hear
3 the audio play of whatever witness you want. If you're just
4 looking for certain issues, that gets to be problematic
5 because it may be in different parts of the testimony, and I
6 don't know that we can find all those different parts. So
7 I'm not discouraging you, I'm not encouraging you, I'm just
8 telling you that's the only option we have. We can play back
9 the audio of a witness. And if -- if that's what you want,
10 just send me a second note, and we will get that queued up
11 with the court reporter. All right. You all step back in
12 the jury room, and send me a note if you want to hear that.

13 (Jury exits room at 2:10 p.m.)

14 THE COURT: Exceptions -- addition objections to the
15 instructions from the Plaintiff?

16 MR. EDDY: Nothing from the Plaintiff, your Honor.

17 THE COURT: Defense?

18 MS. WHITE: Nothing, your Honor.

19 THE COURT: Thank you. We're at ease.

20 (Off the record at 2:11 p.m.)

21 (On the record at 8:09 p.m.)

22 THE COURT: I've been informed the jury has a verdict.
23 Obviously, I have no way of knowing what they decided. I say
24 this in every case. Please don't show signs of approval or
25 disapproval with the verdict. Don't show any emotion. Don't

1 nod your head in agreement or disagreement. Just please stay
2 still and stay quiet. Bring the jury in, please.

3 (Jury enters room at 8:10 p.m.)

4 THE COURT: Mr. Foreman, has the jury reached a
5 verdict?

6 JUROR 162: Yes, sir.

7 THE COURT: Would you pass it to the bailiff, please?
8 All right. "State of South Carolina, county of Lexington,
9 Case Number 2022-CP-32-02339, Nancy Arellano versus -- as --
10 as natural guardian for Z.A., versus Lexington School
11 District Two. We, the jury, unanimously find for the
12 Plaintiffs, Z.A., in the amount of \$245,000 actual damages."
13 Ladies and gentlemen, if I've accurately stated your verdict
14 for the Plaintiff, please raise your right hand. All hands
15 are raised. Are there any matters to take up prior to the
16 jury being discharged? From the Plaintiff?

17 MR. EDDY: Not from the Plaintiff, your Honor.

18 THE COURT: From the Defense?

19 MS. WHITE: Not in front of the jury, your Honor.

20 THE COURT: Okay. Thank you. All right. Ladies and
21 gentlemen, thank you very much for your service. They will
22 mail to you your checks, and inside the envelope there'll be
23 a certificate. You can show your employer if you need that.
24 If -- they tell me it takes about 10 days to get to you, if
25 your employer won't wait that long, to check with the clerk's

1 office, they'll get you what you need. You have an exemption
2 from jury duty for 2024/25 and '26 at this level. Won't help
3 you in federal court, magistrate's court, or municipal court.
4 Also since you actually sat on the trial jury, you're
5 disqualified for service for a year. So I thank you very
6 much. You're free to go.

7 (Jury exits room at 8:12 p.m.)

8 THE COURT: You want 10 days for post-trial motion?

9 MS. WHITE: Yes, for post-trial motion.

10 THE COURT: All right. Court grants 10 days for filing
11 post-trial motions. Which of these -- I want to make sure
12 I've got your charge preserved. Do you remember the number?

13 MS. WHITE: (Inaudible) 27. Hold on one second. I
14 think that's right.

15 MR. EDDY: Yeah. 27.

16 MR. CROSSLAND: It was 27.

17 THE COURT: All right. Madam Court Reporter, mark this
18 as a court's exhibit when you get a chance, please. Thank
19 you all very much.

20 MS. WHITE: Thank you, your Honor.

21 THE COURT: Good night.

22 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
23 8:13 P.M.)

24

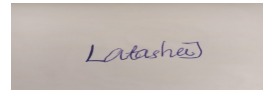
25

CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on October 10, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 3, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

Transcriber

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 11
COUNTY OF LEXINGTON) DOCKET No. 2022-CP-32-02339

NANCY ARELLANO	)
	)
Plaintiff,	)
versus	)
	)
SCHOOL DISTRICT 2,	)
	)
Defendant.	)

H E A R I N G
BEFORE THE HONORABLE WILLIAM P. KEESLEY

DATE: February 7, 2025.
TIME: 10:28 A.M.
LOCATION: South Carolina Circuit Court 11
TRANSCRIBED BY: Latasha Jefferson

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6 EXAMINATIONS

7 (None)

8

9 EXHIBITS

10 (None Marked)

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: Okay. Let's go on the record. Nancy
2 Arellano, A-R-E-L-L-A-N-O, individually, and as guardian ad
3 litem for Z.A., a minor, versus School District Two of
4 Lexington County. It's February 7, 2025, at 10:28 a.m. This
5 hearing's been scheduled using the Webex virtual courtroom.
6 Court reporters are not assigned to these hearings. If a
7 transcript is needed once prepared by a transcriptionist
8 using the Webex recording. The rule requires consent of the
9 parties to do this by virtual hearing. I'm going to assume
10 based on the fact that we've scheduled this with the
11 attorneys, that there is no objection unless I hear one.

12 The matter before the Court relates to post-trial
13 motions from a trial that's been -- was conducted between
14 October 7 and October 10, 2024, resulting in a verdict of
15 \$245,000. The Defendant has filed post-trial motions for a
16 judgment notwithstanding the verdict. A new trial --
17 absolute a new trial, and that so readmitted to it and under
18 the thirteenth juror doctrine is seeking a new trial. So,
19 Ms. White, are you going to argue this?

20 MS. WHITE: I am, your Honor.

21 THE COURT: Happy to hear from you, please.

22 MS. WHITE: I apologize I had to close the door.

23 THE COURT: That's all right.

24 MS. WHITE: Are you ready for me to proceed, your
25 Honor?

1 THE COURT: Yes, please.

2 MS. WHITE: Yes. May it please the Court? As your
3 Honor noted, we have filed several post-trial motions in
4 response to the verdict that was rendered back in October, in
5 which the jury returned a verdict of \$245,000 against
6 Lexington School District Two. And your Honor just outlined
7 the basis for our post-trial motions. The only thing that I
8 would add is that we also are seeking a new trial on the
9 grounds that we believe the Court's failure to -- to charge a
10 provision of the Tort Claims Act, was error, and that that
11 should entitle us to a new trial. That -- that is folded
12 into the post-trial motions that -- that we filed.

13 So I will start with our motion for a judgment
14 notwithstanding the verdict. All of the evidence -- and of
15 course this was a -- you know, relatively lengthy trial, and
16 it is our position that all of the evidence presented at
17 trial by the School District's numerous witnesses leads to,
18 but one conclusion, and that is that the district exercised
19 at least slight care with regard to the supervision and
20 protection of the minor plaintiff. And because district
21 employees and officials did exercise at least slight care as
22 a matter of law, the district was not grossly negligent. And
23 so before I -- I turn to the evidence that was presented, I
24 first would -- would ask the Court to focus on the line of
25 cases going back to the late 1980s where the term "gross

1 negligence" has been defined by -- by our appellate courts.

2 And basically, what the Court have said, that in order
3 to find a political subdivision, such as the school district,
4 to find that the district was grossly negligent, it must be
5 shown by the plaintiff that the political subdivision -- in
6 this case, Lexington School District Two, failed to exercise
7 at least slight care. And the courts have stated that gross
8 negligence is conduct that shows an utter disregard of
9 caution amounting to a complete neglect of the safety of
10 another. And the courts have continued to state that just
11 because a school district could have done more to prevent
12 some loss that occurred, that doesn't mean that the district
13 failed to exercise at least slight care. And of course,
14 there also is case law stating that school districts are not
15 the insurer of -- of student's safety.

16 So -- so here, I'd like to -- to take a moment to go
17 through what the uncontradicted evidence that was before the
18 jury shows. And initially I think it's important to note
19 that the district not only created policies and procedures
20 relevant to the supervision and protection of students in its
21 classroom, but those policies, procedures, and practices were
22 also fully implemented by the -- the two educators, Ms. Long
23 and Ms. Ray, who were in the classroom at the time. And
24 there was no evidence whatsoever presented by Plaintiff and
25 her witnesses to indicate otherwise.

1 You know, the -- there were two teachers in a classroom
2 of approximately -- I want to say it was about 20 students --
3 20 students in the classroom at the time. The -- the teacher
4 and the aide were in the classroom the entire time. There
5 were lights on in the classroom, the lights were -- were
6 dimmed, that there were open windows and lamps in the
7 classroom. So there was sufficient lighting. Both of these
8 adults were experienced, particularly with regard to
9 Ms. Long, she had significant experience in supervising young
10 children. And Ms. Ray, while she was a new teacher, it's
11 important to note, and again, this evidence was before the
12 jury that she had received significant training while she was
13 in school obtaining her -- her teacher -- her -- her degree
14 to be able to teach on how to supervise students.

15 And there also had been training of students on safe
16 touches within the classroom. There was testimony that
17 Ms. Ray and Ms. Long were -- were not distracted. The only
18 -- there's not any evidence to indicate that they were
19 distracted or that they somehow were not implementing the --
20 the procedures and policies that were in place. And in fact,
21 Mr. Eddy doesn't dispute that that's what the evidence was.
22 He simply argues that -- that the incident occurred. And so
23 because of that, they must have been distracted, without any
24 evidence to indicate that they were in fact distracted.

25 So for -- for all those reasons, it is clear that there

1 was the -- the exercise of at least slight care by the
2 district, you know, by the administrators and officials who
3 set the policies and procedures and by the teacher and
4 teacher assistant in the classroom who were -- who were
5 monitoring -- who were monitoring the class. And so, because
6 of all of those reasons that there was substantial evidence
7 before the jury to indicate that we exercised at least slight
8 care, and that school officials did not utterly disregard the
9 rights of students, we believe that the district is entitled
10 to judgment as a matter of law, and ask the Court to -- to
11 issue a judgment on behalf of the district notwithstanding
12 the -- the jury's verdict. Again, based on the -- the
13 evidence that was -- that was unrefuted, quite frankly, by --
14 by the Plaintiff.

15 So in the event that the Court declines to issue a JNOV
16 we then -- you know, we alternatively believe that the
17 district is entitled to a -- a new trial in this matter. And
18 I'll start as the basis for a new trial with the -- the
19 thirteenth juror doctrine, which allows a -- a trial judge
20 basically to -- to set aside the verdict of the jury based on
21 the Court's -- the Court's view of the fact that -- that were
22 presented in a situation indicating that the jury did not
23 consider the evidence and -- and follow the jury instructions
24 that were provided by the Court.

25 You know, here it's clear. And in fact, as -- as I

1 recall Judge Keesley, you even commented that there was -- I
2 think when I was arguing our motion for a directed verdict,
3 you even commented that there was substantial evidence from
4 which a jury could find for the district in this matter. The
5 -- the amount of the verdict, in fact, indicates that the --
6 that the jury completely disregarded the evidence or lack of
7 evidence that was presented at trial. And so because of
8 that, we ask you to exercise your authority under the
9 thirteenth juror doctrine to weigh in on the facts here and
10 to grant the district a new trial in -- in front of a -- in
11 front of a new jury.

12 Next, I would like to turn to the issue regarding the
13 Court's failure to charge the provisions of the Tort Claims
14 Act, in particular with regard to section 15-78-60(20), in
15 which our General Assembly stated that a school district is
16 not liable for a loss resulting from an act or omission of a
17 third -- of a person other than an employee including, but
18 not limited to, the criminal actions of third persons. And
19 that -- the district should have had the benefit of that
20 provision being charged to the jury, because here there is
21 absolutely no evidence that was presented during the trial,
22 that it was foreseeable to the district, that the -- the male
23 student, Student K, would touch the minor plaintiff in a
24 sexual way. And because there was no evidence indicating the
25 -- the possibility of that being foreseeable, that provision

1 should have been charged. And -- and the facts indicating
2 that there was no foreseeability include that there was no
3 negative history between the minor plaintiff and -- and
4 Student K. In fact, school officials -- and I believe Zoe
5 herself, testified that the two of them were actually
6 friendly. So there was nothing that would've put the
7 district on notice that there might be this -- this touching
8 -- this sexual touching of the minor plaintiff by Student K.

9 Not only that, but there was no -- no history and no
10 evidence presented to the jury indicating that there had been
11 problems with Ms. Long and Ms. Ray's supervision of the
12 classroom. In fact, the principal and assistant principal at
13 the school both testified that both of them had been good
14 employees. There were no history of complaints. They had
15 never had to counsel or reprimand them regarding supervision
16 of students in the classroom.

17 And then finally, there was no evidence -- you know,
18 adduced by Mr. Eddy that the teachers were distracted in the
19 classroom. Mr. Eddy tried to insinuate that -- basically
20 arguing to the jury -- again, with no evidence supporting his
21 argument that, "Well, if this incident occurred where Student
22 K touched the minor plaintiff in a sexual way, that the
23 teachers must have been distracted." And that is
24 impermissible hypothesizing theorizing speculating without
25 any evidence to support that. And so in light of all that,

1 the -- the district was entitled to that -- the -- the judge
2 charging -- the Court charging that provision of the Tort
3 Claims Act. And that's exactly why, in my opinion anyway,
4 that the General Assembly included that as -- as part of the
5 Tort Claims Act. Because I think what happened in this case
6 with the jury is that the -- the jury -- the jury found they
7 appeared to have made their decision based on the fact that
8 the incident itself occurred without regard to the slight
9 care that the district -- that the district exercised.

10 So basically, the incident occurred, the district
11 admitted that the incident occurred, and so in the jury's
12 mind, the district is liable for the actions of Student K
13 with no evidence to indicate that the district failed to
14 exercise at -- at least slight care. So had the jury been
15 charged that the district could not be held liable simply
16 because the incident occurred involving the acts of a third
17 person, it's very likely that the outcome of this trial would
18 have been -- would've been different.

19 So next I'd like to -- to move on to the next two basis
20 for our motion for a new trial. First of all, we believe and
21 contend that the district is entitled to a new trial because
22 the verdict is -- is grossly excessive. And in fact, because
23 of the excessive amount of the verdict, it must be the result
24 of passion, caprice, prejudice or some other influence
25 outside of the evidence that was presented. And here we

1 believe that -- that that is the case for several reasons.
2 First of all, there were no medical bills whatsoever
3 presented by the Plaintiff as evidence to the jury of -- of
4 any costs or damages that have been incurred by the minor
5 plaintiff. Plaintiff relied solely on the testimony of their
6 witness, Narumi Amador, a licensed professional counselor,
7 who testified that she had not even seen the minor plaintiff
8 since November of 2023. So almost a year before this case
9 was tried to a jury.

10 Ms. Amador also testified that there was -- she had no
11 information to indicate that the minor plaintiff was seeing
12 any other medical provider for therapy related to the
13 incident in question. And in fact, in response to -- to
14 questioning, Ms. Amador testified that Zoe may need therapy.
15 She did not testify in fact that Zoe would need therapy or
16 that she -- you know, she intended to continue providing
17 therapy for Zoe, but merely that Zoe may need therapy at some
18 point in the future.

19 And interestingly and significantly, Ms. Amador also
20 testified that she had no -- she had not had any kind of
21 follow-up appointments with -- with the minor plaintiff. And
22 in fact, the last time that she had spoken with Nancy
23 Arellano -- the mother, that was with regard to her son
24 Ferrey -- Ferreys -- Ferrey. And so because of that, there
25 was simply no evidence that would support a jury verdict in

1 the amount of \$245,000. And we contend that the jury must
2 have made their -- their decision based on the fact that this
3 was an emotional subject matter. You know, a -- a
4 five-year-old child being touched in a sexual way by another
5 child. The minor plaintiff actually was crying hysterically
6 at several times in front of the jury, including when the --
7 when the jury pool was qualified, and also potential
8 prejudice against the district here, because there's simply
9 no other basis for that \$245,000 amount. And so because of
10 that, we believe that the verdict, in no way, shape or form,
11 reflects the evidence or lack of evidence that was before the
12 jury. And for that reason, the district is entitled to a --
13 a new trial absolute in front of a -- a new jury.

14 And then finally, if the Court does not see fit to
15 grant a new trial absolute based on the -- you know,
16 excessive and -- and, quite frankly, shocking amount of this
17 verdict, then we would ask the Court to issue a remittitur
18 reducing the amount of the verdict to an amount that is more
19 in keeping with the evidence, or again, lack of evidence that
20 was presented during trial. So to recap, your Honor, we are
21 asking that you issue a JNOV, or in the alternative that the
22 district be granted a -- a new trial in front of a new jury.
23 Thank you, your Honor.

24 THE COURT: Thank you, Ms. White. Mr. Eddy?

25 MR. EDDY: Thank you, your Honor. I'll try to address

1 these in the order in which Ms. Wright -- White addressed
2 them -- raised them. So starting with the JNOV regarding the
3 evidence that the Plaintiff presented, that the Defendant was
4 in fact (inaudible) that there is substantial evidence that
5 was put to -- put forth in the -- at trial about what
6 happened in that classroom. We know from testimony that the
7 victim and the assailant were sitting in different parts of
8 the classroom at different desks. We know from testimony
9 that the assailant stood up and walked across the classroom
10 to the victim. We know that there was a physical altercation
11 and interaction between the victim and the assailant. We
12 know that the victim had her genitals assaulted, molested,
13 touched in some way. We know that the assailant then stood
14 up and walked to the other -- to his desk, another part of
15 the classroom. We know -- again, from testimony that a
16 witness then stood up and walked to -- to the Ms. Ray's desk.
17 Okay. That is all evidence. That is all put forth for the
18 jury to hear, see, and review.

19 The policies and procedures of the school district are
20 relevant, and were presented to the jury. And I think that
21 is an useful and effective defense establishing the
22 preventive measures that were taken in advance of this
23 incident to reduce the chances and likelihoods of
24 inappropriate conduct and contact. However here, the primary
25 defense as to gross negligence of this case is that the

1 teacher had only taken her eyes off the classroom for one to
2 two seconds.

3 And like we said to the jury, if you believe that that
4 teacher only took her eyes off the classroom one to two
5 seconds, then you have to find for the defense. If however,
6 this series of events that we have evidence that happened,
7 you believe that that happened in a longer period of time in
8 one to two seconds, then you know that the school district is
9 responsible because that teacher took her eyes off the class
10 for longer than she remembers, or is telling you.

11 As evidence of the teacher's challenges in memory, we
12 presented evidence that she had misremembered the relative
13 size of the children by a significant amount, that she had
14 given varying statements between her deposition testimony and
15 her trial testimony, and that she had errors in her memory
16 compared to the written statements from that day. So because
17 there was evidence that this incident had to take longer than
18 the -- Ms. Ray had claimed, and because there was evidence
19 presented of memory challenges for Ms. Ray, the Plaintiff
20 believes they put forth sufficient evidence for which the
21 jury could decide that the teachers were in fact distracted
22 and were in fact failing to protect, monitor, and supervise
23 the children in that class. And the teachers were not
24 correct that they'd only taken their eyes off the class for
25 one to two seconds.

1 Turning to the thirteenth juror doctrine and the new
2 trial, which are essentially the same thing that were shot by
3 the amount of the jury verdict -- you know, they -- there's a
4 lot of issues that go into the calculation of a jury verdict
5 here. As your Honor discussed, this is a different kind of
6 injury, and a different kind of damages, and a different kind
7 of award that we'd be dealing with, with broken bones, final
8 injury or something like that. There is no ability to
9 present finite bills and records and treatment for someone's
10 injuries in mental health, and mental injury case like the
11 one that was presented to this jury.

12 Your Honor instructed the jury that dealing with mental
13 health and emotional injuries is very complicated, and
14 there's no set formula for it. And that there's a number of
15 factors that could go into calculating that number. When I
16 was requesting damages from the jury, I had given them a
17 proposed range and reasons for calculating between 100,000
18 and \$1,000,000. I think it's preposterous to say that the
19 jury was overcome with caprice, and bias, and outrage, and
20 not exercising diligence when they were calculating the
21 number because if they were overcome with caprice or
22 prejudice, they would not have given an award for the victim
23 in the bottom third of what I had been requesting in terms of
24 damages. We have seen runaway jury verdicts in other cases
25 before. A \$245,000 verdict in a case where a child was

1 sexually assaulted is not a runaway verdict. If this had a
2 bunch of comments on the tail end, frankly, I'd agree with
3 the -- with the Defense. I -- I'd still frame that judgment
4 on the wall, but I would agree with the Defense that there --
5 that this could have been an award where the jury clearly
6 been overcome with caprice or prejudice in this case. But
7 here, because we're dealing with such a grave situation, and
8 we're dealing with something that is a mental health and
9 emotional injury -- which is nice to calculate, because the
10 jury did not give us anywhere near what I had been asking for
11 in the jury verdict, I think there is no evidence that the
12 jury was overcome with prejudice or caprice, and the -- the
13 judgment should not be -- verdict should not be overturned or
14 the thirteenth juror doctrine, nor should a new trial be
15 ordered because of the excess judgment.

16 I want to turn to the issue with the Tort Claims Act
17 provision with the criminal act defense. I think the Court
18 got it right in declining to charge the jury on this
19 particular defense for the Tort Claims Act as more outlined
20 and more detailed in my memo. The -- the Plaintiff was never
21 seeking direct compensation from the Defendant for the
22 criminal acts of a third party. Here, the claims against the
23 Defendant are the failure to monitor, protect, and supervise.
24 This is very different than trying to hold them directly
25 responsible for the act itself. So that exclusion does not

1 apply. In addition, there is an open question as to whether
2 a -- a five or six-year-old is capable of a criminal act
3 itself. And if a five or six-year-old is not capable of a
4 criminal act, then this -- this exclusion wouldn't apply in
5 the first place.

6 In addition, we have numerous cases stemming from
7 school districts as well as prison systems and other cases
8 where government entities are held responsible for their
9 failure to monitor, supervise, or protect, where a third
10 party caused a criminal act -- perform a criminal act and
11 caused injury. And the courts have routinely upheld cases
12 against government entities for the failure to monitor,
13 supervise, or protect as is the claim in this particular
14 case.

15 And lastly, to briefly address the question of
16 remittitur, this goes a bit back towards the thirteenth juror
17 doctrine, the question in trial, because of the shocking
18 amount. It -- I do not believe that it's possible for the
19 Court to fairly and accurately calculate what a new judgment
20 should be, or verdict amount should be in a case where we're
21 dealing with the mental health emotional shock and trauma to
22 a child for a sexual assault case. And for that reason, I
23 ask the Court uphold the verdict and allow it to stand.
24 Thank you, your Honor.

25 THE COURT: Thank you, sir. Any response? Anything

1 else?

2 MS. WHITE: Just briefly, your Honor. First of all,
3 with regard to our request for a JNOV, the incident -- the
4 incident occurred. We all know that the incident occurred,
5 but just because the incident occurred doesn't mean that the
6 district failed to exercise slight care. And there -- the --
7 the evidence that the district did exercise at least slight
8 care, if not an abundance of care is indicated by the
9 testimony of everything that district officials did, both in
10 terms of developing policies and also implementing those
11 policies and procedures. And with regard to this point about
12 "Well, it had to have taken longer than -- than one to two
13 seconds." What -- what Ms. Ray was testifying to was that it
14 happened so quickly, okay? So even if she took her eyes off
15 of the minor plaintiff, or Student K, for three minutes,
16 okay? That doesn't mean that she and the other adults failed
17 to exercise slight care.

18 So the -- the Plaintiff and the jury -- you know, found
19 that because the incident happened, and that's basically what
20 Mr. Eddy is arguing, the district must have been liable for
21 it. But where -- where is there evidence that the district
22 had a want and disregard for -- for the minor plaintiff, or
23 that where is the complete neglect of care here with regard
24 to the protection and supervision of the students in that
25 classroom? There's not any evidence, and this is a clear-cut

1 case of the incident occurred, so therefore the district must
2 have been liable for that ignoring the uncontroverted
3 evidence that was before the jury.

4 Again, that evidence was not contradicted by any
5 evidence deduced from witnesses by Mr. Eddy. Mr. Eddy is
6 basically arguing the incident occurred, so therefore the
7 teacher must have been distracted, without any evidence that
8 the teacher was distracted, or that's also ignoring the fact
9 that Ms. Long was in the classroom supervising the students.
10 You know, we all know how quickly children can move and --
11 and act, and -- and, you know, run from here to there. It
12 happened in a split, you know, you've heard the phrase "it
13 happened in a split second," right? Is that literal or is
14 that "it happened so quickly that -- that, you know, there
15 was nothing we could have done to have prevented it from
16 happening"? What are we supposed to do, you know, have one
17 adult per -- per one student? I mean, you know, not to be
18 facetious here, but, you know, should Ms. Ray have had eyes
19 in the back of her head? You know, what if a child fell down
20 in the classroom and -- you know, split their lip open? Are
21 we supposed to just leave the child laying there -- you know,
22 or -- or should she run over, take her eyes off of the other
23 student while the teacher's aide watches what's going on in
24 the classroom? So there -- there simply is no evidence that
25 the district failed to exercise at least slight care here.

1 With regard to the range of the verdict, Mr. Eddy's
2 argument to the jury that -- you know, to return a verdict
3 between -- you know, \$100,000 and \$1,000,000 that's not
4 evidence. You know, that's simply his arguing to the jury.
5 So to say that, "Well, they found in the lower quartile of --
6 of that range," doesn't mean that the evidence that was
7 presented during the trial supports the jury's verdict.
8 That's simply Mr. Eddy's argument to the jury, and is not
9 sufficient to support such a shocking amount of -- of the --
10 the jury verdict without any evidence to -- to support it.

11 And then with regard to the -- the Tort Claims Act
12 provision, I -- I would -- first of all, call to the Court's
13 attention that -- the fact that the provision doesn't say
14 "the criminal conduct of a third person," it says "acts or
15 omissions of a third person, including but not limited to the
16 criminal conduct of the third person." You know, here
17 Student K acted, and because he acted, Mr. Eddy and the
18 Plaintiff are attempting to say, "Well, because the act
19 occurred, the district must be responsible," again in the
20 absence of any evidence whatsoever, that it was foreseeable
21 that the accident would occur.

22 And I know we, in our -- in our brief in support of our
23 post-trial motions -- you know, pointed to the case of
24 Greenville Memorial Auditorium, where there was evidence
25 presented that Greenville Memorial Auditorium had a -- a -- a

1 history of -- of things occurring at rock concerts where the
2 bottle was thrown and -- and hit the patron, and the Supreme
3 Court in pointing all that out and finding that the judge was
4 correct in not granting a directed verdict, specifically
5 stated that the Memorial Auditorium did not get the benefit
6 of that provision with regard to the granting of a directed
7 verdict, because there was evidence from which a jury could
8 conclude that the -- I mean, I'm sorry, that the auditorium
9 failed to exercise slight care. That is simply not the case
10 here. So for those reasons, your Honor, we would ask that
11 you either enter a JNOV, or that you grant the district a new
12 trial. Thank you.

13 THE COURT: Anything else?

14 MR. EDDY: Nothing further from the Plaintiff. Thank
15 you, your Honor.

16 THE COURT: Mr. Crossland, you need to chime in?

17 MR. CROSSLAND: I do not. Thank you, sir.

18 THE COURT: All right. Thanks very much. I'll notify
19 you the decision in writing.

20 MS. WHITE: Thank you, your Honor. Have a good
21 weekend.

22 MR. EDDY: Have a great weekend, folks.

23 MR. CROSSLAND: Thank you, your Honor.

24 MS. WHITE: You too, Trevor. Bye.

25 MR. CROSSLAND: Have a good weekend, Trevor. Bye-bye.

1 THE COURT: Hearing is over at 11:02.

2

3 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT 11:02

4 A.M.)

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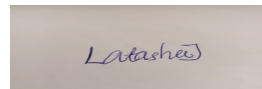
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CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 11 of Lexington County, South Carolina, on February 7, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 4, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON

Transcriber

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Nancy Arellano individually and as parent and
natural guardian of minor ZA,

Plaintiffs,

v.

School District No. Two of Lexington County,
State of South Carolina,

Defendant.

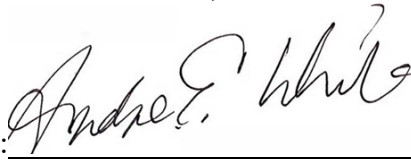
IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

C/A No. 2022-CP-32-02339

**DEFENDANT'S PROPOSED
JURY INSTRUCTIONS**

Defendant Lexington County School District Two ("the District") hereby submits the following proposed written instructions to the jury and reserves the right to supplement, amend, or remove such proposed instructions as may be necessary following the proof at trial.

WHITE & STORY, LLC

By: 

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Attorneys for Lexington County School District Two

October 7, 2024
Columbia, South Carolina

DEFENDANT'S REQUEST TO CHARGE NO. 1

In determining the facts, you are reminded that you took an oath to render judgment impartially and fairly, without prejudice or sympathy and without fear, solely upon the evidence in the case and the applicable law. I know that you will do this and reach a just and true verdict.

Federal Jury Instruction, Instruction 71-10, Matthew Bender & Co., Inc. (Rel. 21 – 8/94 Pub. 485).

DEFENDANT'S REQUEST TO CHARGE NO. 2

Under our constitution and code of laws, you and I have separate and distinct duties. Only you, the jury, can make the findings of fact in the case. I am not permitted to indicate to you how I may feel about the testimony and evidence presented. Throughout the trial I have attempted to be fair and impartial toward all of the parties.

To determine the facts in the case you will have to evaluate the credibility, which means believability, of each witness. In considering whether to believe a witness's testimony about a particular matter, you may consider:

What was the manner and appearance of the witness who testified - was he or she straightforward, or hesitant in answering?

Was the testimony of a witness consistent - or inconsistent?

How did the witness come to know the facts that he or she testified to? - Or what was his or her ability to know these facts?

Is there some reason a witness would want to give testimony which would help - or hurt - one side or the other? In other words, was the witness biased or prejudiced?

And was the testimony of a witness strengthened - or weakened - by other testimony or evidence?

You can believe as much or as little of each witness's testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses, or just the opposite.

Of course, you do not determine the truth merely by counting the number of witnesses presented by each side.

Throughout this process you have but one objective, to seek the truth, regardless of its source.

The same constitution and laws that designate you the finders of the facts also make me the instructor of the law. You must accept the law as I give it to you. If I am wrong, there is

another place and time for that error to be corrected. In this case you must apply the law as I give it to you. This means you should not be concerned with what you may think the law should be, but only with what the law is.

S.C. Requests to Charge - Civil § 1-1.

DEFENDANT'S REQUEST TO CHARGE NO. 3

I charge you that the Plaintiffs have the burden of proof to show, by a preponderance of the evidence, that the District is liable in this case. A “preponderance of the evidence” means that it is more likely than not, or greater than fifty percent more likely, that the District is liable.

See Fowler v. Coca-Cola Bottling Co., 252 S.C. 579, 167 S.E.2d 572 (1969).

DEFENDANT'S PRE-TRIAL REQUEST TO CHARGE NO. 4

You must not consider as evidence any statement of counsel made during the trial; however, if counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively proved as to the party or parties making the stipulation or admission.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the court; such matter is to be treated as though you had never known of it.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

Ralph King Anderson, Jr., *South Carolina Requests to Charge- Civil, 2002*, §§ 1-8, 1-9, 1-10, 1-11, 1-12.

DEFENDANT'S PRE-TRIAL REQUEST TO CHARGE NO. 5

During the trial of this case, we have had testimony by way of deposition of witnesses taken outside of the courtroom. That witness may or may not appear personally before you. The deposition was taken in the manner prescribed by law and you will consider the testimony from that deposition just as if the witness were here upon the stand testifying. You take this deposition testimony in connection with all other testimony and you assess the credibility of that witness from anything that is in the record that will aid you in doing so. You consider that deposition evidence along with the testimony of the witnesses who have appeared in person and you determine from all the evidence in the case whether by witnesses present or by depositions or whether by exhibits in the case what the truth of this controversy is according to the facts as you find them to be and then apply the law as I give it to you.

Rule 32, SCRPC (regarding the use of depositions in court proceedings). See also Visual Graphics Leasing Corp., Inc. v. Lucia, 311 S.C. 484, 429 S.E.2d 839 (Ct. App. 1993).

DEFENDANT'S REQUEST TO CHARGE NO. 6

Now on the issue of determining whether the District is liable in the case, I charge you that the Plaintiffs must establish by a preponderance of the evidence that the District was grossly negligent and that Plaintiff's injuries were proximately caused by the District's gross negligence.

Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).

DEFENDANT'S REQUEST TO CHARGE NO. 7

On the issue of determining whether the District is liable in this case for negligence, I charge you that South Carolina law states that a public school district is liable only if it was grossly negligent in supervising, protecting, or controlling its students and/or its employees.

S.C. Code Ann. § 15-78-60(25) (Supp. 1999).

DEFENDANT'S REQUEST TO CHARGE NO. 8

Public school districts are not guarantors or insurers of students' safety. The fact that a student may have been harmed while at school does not necessarily entitle that student to monetary recovery.

Lilley v. Elk Grove Unified Sch. Dist., 80 Cal. Rptr.2d 638, 642 (Cal. Ct. App. 1998); **Coleman v. Joiner**, 593 So.2d 451 (La. App. 2 Cir. 1992); **Tomlinson v. Board of Education**, 583 N.Y.S.2d 666 (App. Div. 3 Dept. 1992); **Gathright v. Lincoln Ins. Co.**, 688 S.W.2d 931 (Ark. 1985). **See also Burns v. South Carolina Comm'n for the Blind**, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994) (stating in suit under S.C. Tort Claims Act that trial judge erred in refusing to charge jury that Commission for the Blind was not insurer of clients' safety).

DEFENDANT'S REQUEST TO CHARGE NO. 9

Rather, the District is liable only if you find that the District was grossly negligent in supervising, protecting, or controlling its students and/or its employees. Gross negligence is an intentional, conscious failure to do something that a party is obligated to do. Put another way, it is the intentional doing of a thing that one ought not to do. Gross negligence involves conduct that shows an utter disregard of caution amounting to a complete neglect of the safety of another. It is wanton conduct done with conscious or reckless disregard for the safety of others.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000); Clyburn v. Sumter County School District 17, 451 S.E.2d 885 (S.C. 1994); Moore v. Berkeley County Sch. Dist., 486 S.E.2d 9 (Ct. App. 1998).

DEFENDANT’S REQUEST TO CHARGE NO. 10

Gross negligence is “the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” Therefore, if a defendant proves it exercised slight care under the circumstances, that defendant cannot be held liable for gross negligence.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000); Clyburn v. Sumter County School District 17, 451 S.E.2d 885 (S.C. 1994); Moore v. Berkeley County Sch. Dist, 486 S.E.2d 9 (Ct. App. 1998).

DEFENDANT'S REQUEST TO CHARGE NO. 11

As long as school officials make some effort to take precautions to protect students from foreseeable harm, they will have exercised at least slight care. Just because a school district could have done more does not mean that the district did not exercise slight care.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000); Clyburn v. Sumter County School District 17, 451 S.E.2d 885 (S.C. 1994); Richardson v. Hambright, 374 S.E.2d 296 (S.C. 1988).

DEFENDANT'S REQUEST TO CHARGE NO. 12

I charge you that school authorities are accorded substantial latitude and discretion in their handling of school matters.

Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 340 S.E.2d 144 (1986).

DEFENDANT'S REQUEST TO CHARGE NO. 13

I charge you that in addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy.

S.C. Code Ann. § 59-24-60

DEFENDANT'S REQUEST TO CHARGE NO. 14

I charge you that school teachers, counselors, principals, assistant principals, and social workers must report, when in such person's professional capacity, they have received information that gives them reason to believe that a child has been or may be abused or neglected. Additionally, persons required or permitted to report under the law that acted in good faith are immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed.

S.C. Code Ann. § 63-7-310; S.C. Code Ann. § 63-7-390

DEFENDANT'S REQUEST TO CHARGE NO. 15

As I informed you earlier, the Plaintiffs must prove that the District was grossly negligent and that the District's gross negligence was the proximate cause of Plaintiffs' injuries. Proof of proximate cause requires proof of both causation in fact and legal cause. Cause in fact is proved by establishing that the injury complained of would not have occurred "but for" the defendant's gross negligence. Legal cause is proved by establishing that the injury in question occurred as a natural and probable consequence of the defendant's gross negligence.

Rush v. Blanchard, 310 S.C. 375, 379, 426 S.E.2d 802, 804 (1993); Vincent v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (S.C. App. 1996).

DEFENDANT'S REQUEST TO CHARGE NO. 16

I further charge you that even if Plaintiffs provide evidence of gross negligence; Plaintiffs must also establish that the exercise of the slight care would have prevented the injury.

Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). (finding that even where plaintiff provided evidence of deficiencies in supervision, dismissal was appropriate because there was no evidence that the deficiencies were connected to prevention of the incident)

DEFENDANT'S REQUEST TO CHARGE NO. 17

I charge you that an affirmative defense raised by the District is known as discretionary immunity. Under discretionary immunity, a school district is not liable for damages caused as a result of its employees' good faith performance of discretionary acts which are related to their official duties – that is, acts that require the exercise of deliberation, decision and judgment. In that regard, I charge you that neither a governmental agency nor an employee acting within the scope of his employment is liable for loss resulting from the exercise of discretion or judgment or the performance or failure to perform any act or service which is in the discretion or judgment as a governmental employee.

I charge you that the District bears the burden of establishing discretionary immunity as an affirmative defense. In order to invoke the discretionary immunity defense, the District must prove that its employees, faced with alternatives, actually weighed competing considerations and made a conscious choice. In addition, I charge you that the District must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issues before it.

Finally, I charge you that discretionary immunity exists because the exercise of discretion includes the right to be wrong. If you find that the District damaged the Plaintiffs as they claim, but that their damage was occasioned by the good faith performance of protected discretionary acts, the Plaintiffs may not recover for that damage.

S.C. Tort Claims Act § 15-78-60(5); Foster v. Department of Highway and Public Transportation, 413 S.E.2d 31 (S.C. 1992).

DEFENDANT'S REQUEST TO CHARGE NO. 18

I charge you that to establish discretionary immunity, a school district must show that it or its employees (1) were faced with alternatives; and (2) weighed competing considerations according to accepted professional standards when choosing between the alternatives. If the school district makes such a showing, it cannot be held liable for Plaintiffs' alleged injuries.

Strange v. S.C. Dept. Of Highways and Public Trans., 314 S.C. 427, 445 S.E.2d 439 (1994).

DEFENDANT'S REQUEST TO CHARGE NO. 19

As I mentioned before, I charge you that in order for Plaintiffs to recover damages, there must be proof not only of damages, but also that the damages were caused by the gross negligence of the defendant.

Hunter v. Dixie Home Stores, 101 S.E.2d 262 (S.C. 1957).

DEFENDANT'S REQUEST TO CHARGE NO. 20

I charge you that the existence or amount of damages cannot be left to conjecture, guesswork, or speculation. Plaintiffs must prove the existence and amount of damages to a reasonable degree of certainty.

Piggie Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968).

DEFENDANT'S REQUEST TO CHARGE NO. 21

In personal injury actions, the general rule is that the Plaintiffs may recover for the necessary and reasonable expenses caused by the injury, such as amounts necessarily incurred for medicine, medical services, hospital expense and care, and nursing. A person who suffers personal injuries because of the negligence of another is entitled to recover the reasonable value of medical care and expenses incurred for the treatment of the injuries to the time of trial, as well as the cost of those reasonably certain to be incurred in the future. Accordingly, Plaintiffs may recover amounts incurred for past and future medical care, including hospital, physician, and nursing care costs; medicine; and other out-of-pocket and anticipated expenses, such as vocational, physical and other rehabilitation efforts. Recovery for medical expenses is controlled by what the services rendered were reasonably worth and not by what was actually paid or contracted to be paid.

If you determine from the evidence and under the law as I have instructed you that the Plaintiffs are entitled to recover damages, including medical, hospital, or other health care costs, then the Plaintiffs can only recover such sums as you determine from the evidence to be both reasonable and necessary. While the amount actually charged and incurred may be considered by you, you are not bound by that amount. You must find only such sum as is reasonable and necessary.

To recover for future medical expenses, the Plaintiffs must prove such expenses are reasonably certain to result in the future from the injury giving rise to the lawsuit.

Pearson v. Bridges, 344 S.C. 366, 544 S.E.2d 617 (2001).

DEFENDANT'S REQUEST TO CHARGE NO. 22

Pain and suffering is a material element of damages on which a recovery may be based. The Plaintiffs are entitled to compensation for their pain and suffering directly resulting from the wrongful acts of the defendant.

An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. In making an estimate of damages to be awarded for pain and suffering, you may consider:

- (1) the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration;
- (2) the age, health, habits, and condition of the injured party before the injury as compared with his condition afterwards;
- (3) the Plaintiffs use of sedatives and other drugs to relieve pain and their effect; and
- (4) any aggravation of pre-existing disorders by the incident in question.

Pain and suffering have no market price. They are not capable of exact measurement, and there is no fixed rule or standard whereby damages for them can be measured.

The amount of damages to be awarded for pain and suffering must be left to the judgment of you, the jury. Additionally, you may include such damage for pain and suffering as it is reasonably certain will of necessity result in the future from the injury. Future pain and suffering on the part of the Plaintiffs in consequence of the injury constitute a proper element of the damages which may be allowed, provided there is the requisite certainty that such pain and suffering will result.

Boan v. Blackwell, 343 S.C. 498, 541 S.E.2d 242 (2001).

DEFENDANT'S REQUEST TO CHARGE NO. 23

I charge you that if you find that damages are appropriate to compensate for pain and suffering, the minor Plaintiff's pain and suffering is the only pain and suffering that you are allowed to consider in determining whether to award such damages and, if so, in what amount.

Kindard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985).

DEFENDANT’S REQUEST TO CHARGE NO. 24

I further instruct you that State law does not permit a jury to award damages against the District which are intended to punish—also known as punitive damages.

S.C. Code Ann. § 15-78-120(b) (Supp. 1999); Charleston County Sch. Bd. v. State Budget & Control Bd., 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993) (reaffirming that “[n]o punitive damages are recoverable under the State Tort Claims Act”).

DEFENDANT'S REQUEST TO CHARGE NO. 25

I charge you that a school district cannot be held liable if you determine that the Plaintiffs' alleged harm resulted from the adoption, enforcement, or compliance with a law or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

S.C. Code Ann. § 15-78-60(4)

DEFENDANT'S REQUEST TO CHARGE NO. 26

I further charge you that a school district cannot be held liable for a loss resulting from the exercise of discretion or judgment by the government entity or employee or the performance or the failure to perform any act or service which is in the discretion of judgment of the governmental entity or employee.

S.C. Code Ann. § 15-78-60(5)

DEFENDANT'S REQUEST TO CHARGE NO. 27

I further charge you that a school district cannot be held liable if you find that the alleged losses, damages, and injuries sustained by Plaintiffs arose out of an act or omission of a person other than an employee, including but not limited to the criminal actions of third persons.

S.C. Code Ann. § 15-78-60(20)

DEFENDANT'S REQUEST TO CHARGE NO. 28

I further charge you that a school district is not liable for loss resulting from the responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.

S.C. Code Ann. § 15-78-60(25)

17104 25 202

"K [REDACTED] opened the pants of
"I see him" "Him touched her pants
but him not touch her anymore."
"Them was sitting at their desk, the
Chair"

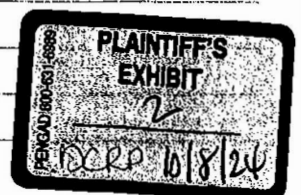
DE



May 25, 2022

I was walking around to help kids with their books they're making, I sat at my table to put papers in files when Witness [redacted] walked up to tell me he saw K [redacted] look at student pants (Witness gestured to his private area). I called K [redacted] over to ask what happened, he started crying. I said "did you look inside student pants?" He nodded yes and said "She told me to", I asked if he only looked and he said yes. I called student over, she also said K [redacted] looked inside her pants but she said she did not tell him to and that she told him to stop. I told them both to sit down and I told Mrs. Long I was leaving to find guidance or admin.

Sadio Ray





**2021-2022 School Year Abuse/Neglect
Mandated Reporter Form**

Name of Reporting Line Intake Worker (1-888-227-3487): Brandy Gray

Date of Report 05/26/22 Time of Report: 10:20 am

Name of School Staff Member Making Report Sadie Ray/Catherine Prizer

Student's Name Z W A DOB 16 Race W/Hisp

School Cayce Elem Grade K Phone # 936-5500

Nature of Report:

☐ Physical Abuse ☒ Sexual Abuse ☐ Emotional Abuse ☐ Abandonment

☐ Neglect (Mark type of neglect: ☐ Medical Neglect ☐ Physical Neglect ☐ Educational)

Parent/Caregiver: Nancy Arellano Relationship mom

Other Caregiver(s) in home: Relationship

Address Phone

Place of Employment and address

Phone

Other Children in the home, ages, and schools attending

Older sister - don't know age or name

Nature and description of incident or injury (Please tell why you have reasonable cause to believe that child is being abused or neglected, any evidence or information received and history of which you are aware including person(s) believed responsible.

Displays knowledge that she shouldn't have about sexual activities. For example, she accused a boy of "licking" her under her pants. She also accused the same boy of pulling her pants away from her waist & looking down them, but she had actually pulled the pants down and asked him to look. Her story changed a lot & she also said the boy held her down & wouldn't let her up. She said he held her arms down to keep her from getting away.

Copy of Report Provided to:

☒ School Administrator A. Drozdak, A. Ariail Date 05/26/22

☒ School Social Worker Assigned to School D. Morey, J. Snyder Date 05/26/22

DEFENDANT C



K [redacted] M [redacted]

[redacted] When we were in the classroom student tapped me + then did this (demonstrated tapping private area). Then I was looking at tv + she tapped me again + did this (tapped his bottom). student told me to look in her pants and so I did b/c she told me to.

This witness told us

— Didn't tell us this the first time, he said b/c he forgot.

— He also said he touched her under her pants b/c she told him to.

W/ Mr. Snyder in the room



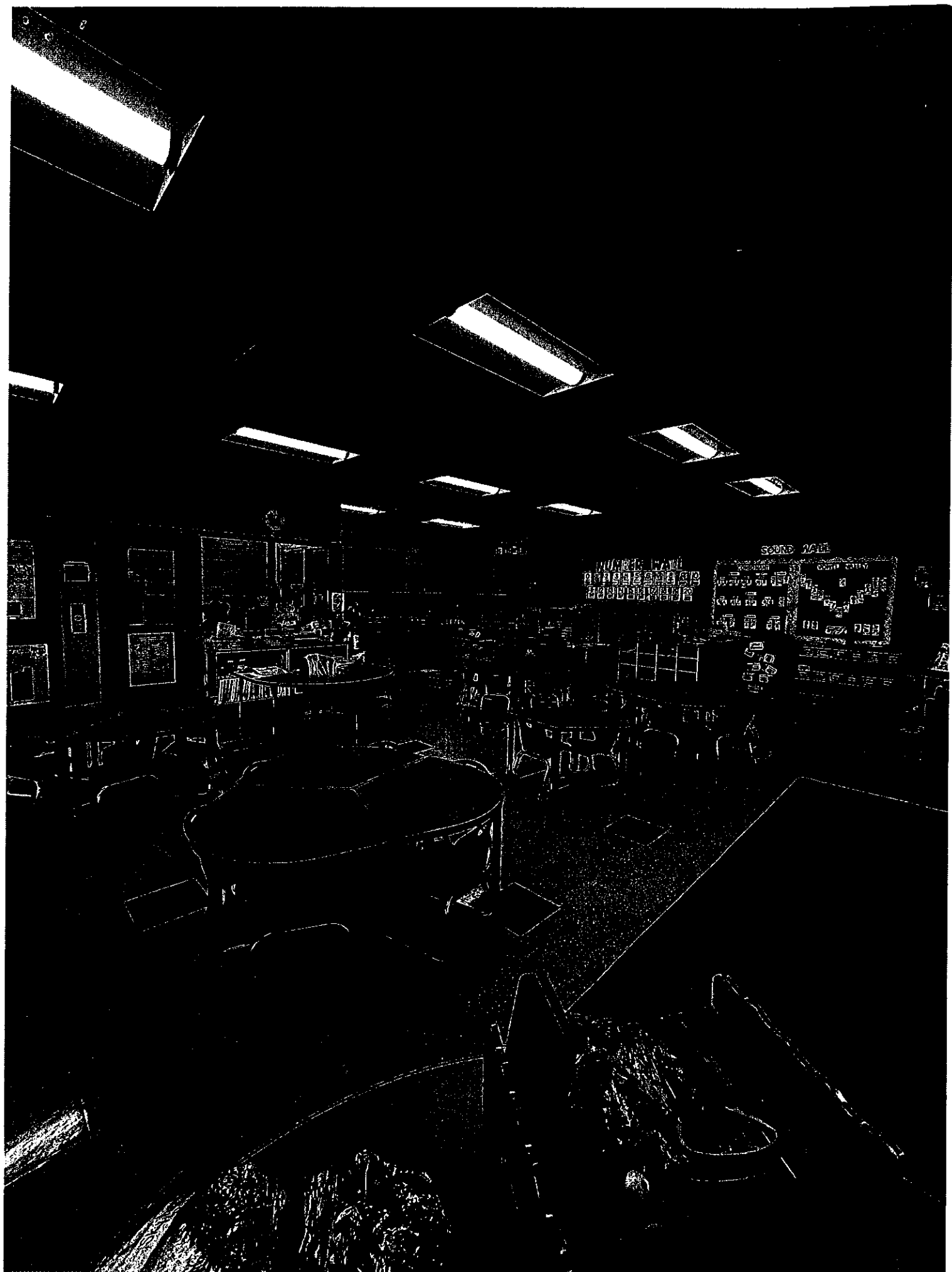
On May 25, 2022, I was made aware of a situation by Ms. Sadie Ray, a kindergarten teacher. She said a situation had occurred in her classroom and asked me to come and talk to the students. When I spoke with Z█ in the hallway she said that a boy had touched her there and pointed in-between her legs. Once she told me this, Z█ and I went to our school counselors so I could get more details about the situation and have another adult present. Z█ told us that they were watching a movie and the other student pulled her by the waist and pulled her pants back and touched her without permission. She was upset by the situation and worried she was in trouble. We explained to her she was not in any trouble, that it's her body and no one can touch her without permission. I also spoke to the student and a witness and had their account of the events written down. The counselor and I spoke to Z█ several different times getting clarifying information and each time we spoke to her, her story would change, at times adding several events taking place that, according to the teacher, would not have had time to take place based on when she saw the students watching the movie and the time where it was reported to her of what happened.

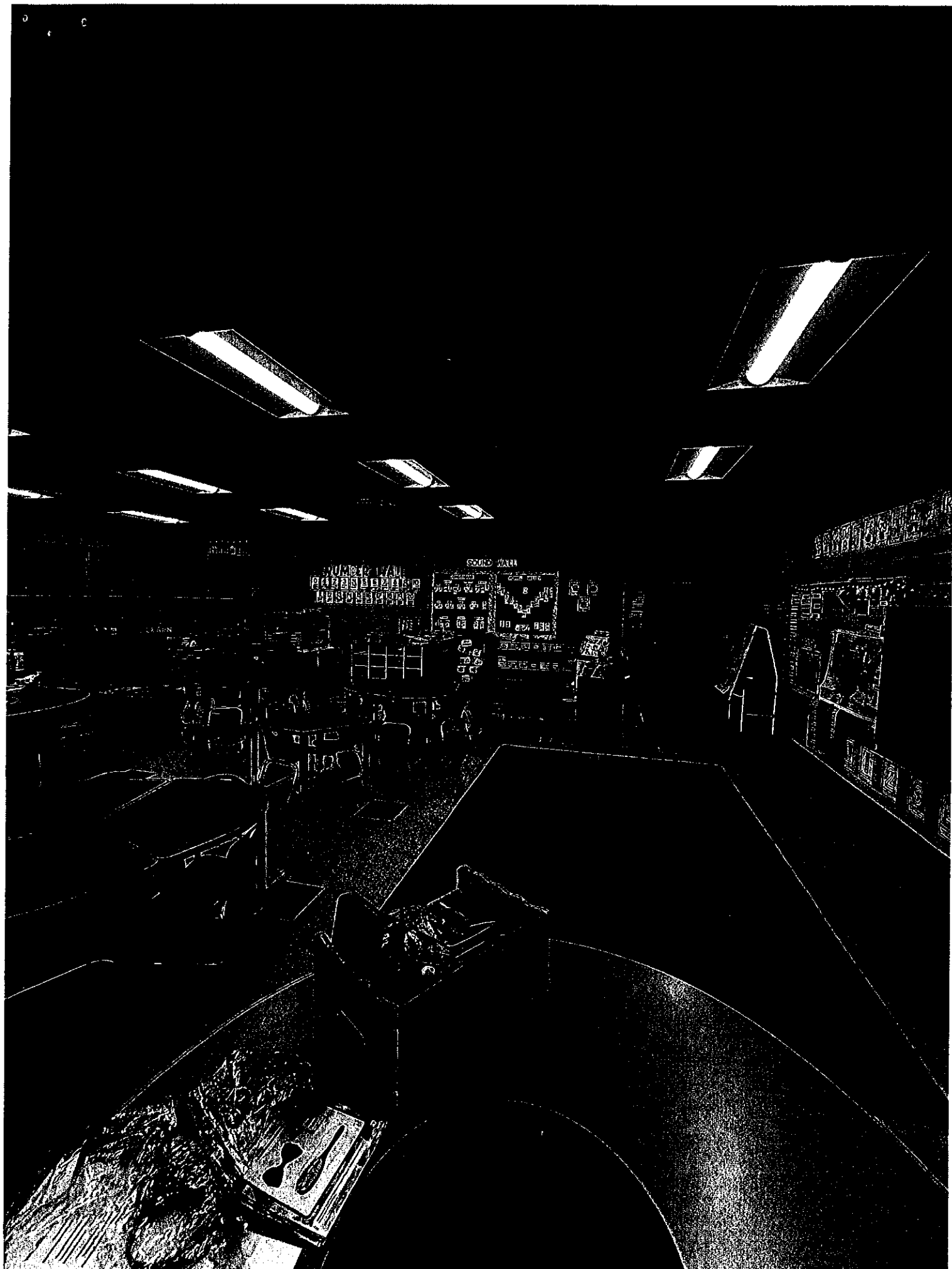
Based on the witness confirming that they did see the student pull Z█ pants back and touch her, we did follow the discipline policy with the other student. I called Z█ mom with a district translator to explain what had happened. The mom's tone did not change during the course of the call, she asked some clarifying questions, I explained Z█ was not in trouble and although I do not recall the exact words, she did tell me that Z█ told her she had a boyfriend in the class. I remember the mom saying some names of what the child's name could be but that she didn't remember exactly. She explained that she had told Z█ not to have a boyfriend. I explained that the counselor had written down what Z█ said happened, by the time the counselor wrote down what happened, her story had changed several times, each time adding more events that she said took place. Neither the witness nor the teacher saw anything other than the student pull her pants back and touch in-between her legs. I told mom that Z█ was with the counselor because she was upset about the situation and I would like for someone to come pick her up instead of sending her home on the bus, since she was still upset. I explained again to mom that Z█ was not in any trouble and could return to school the next day. When I asked the teacher about it the next day, she said Z█ was not at school.

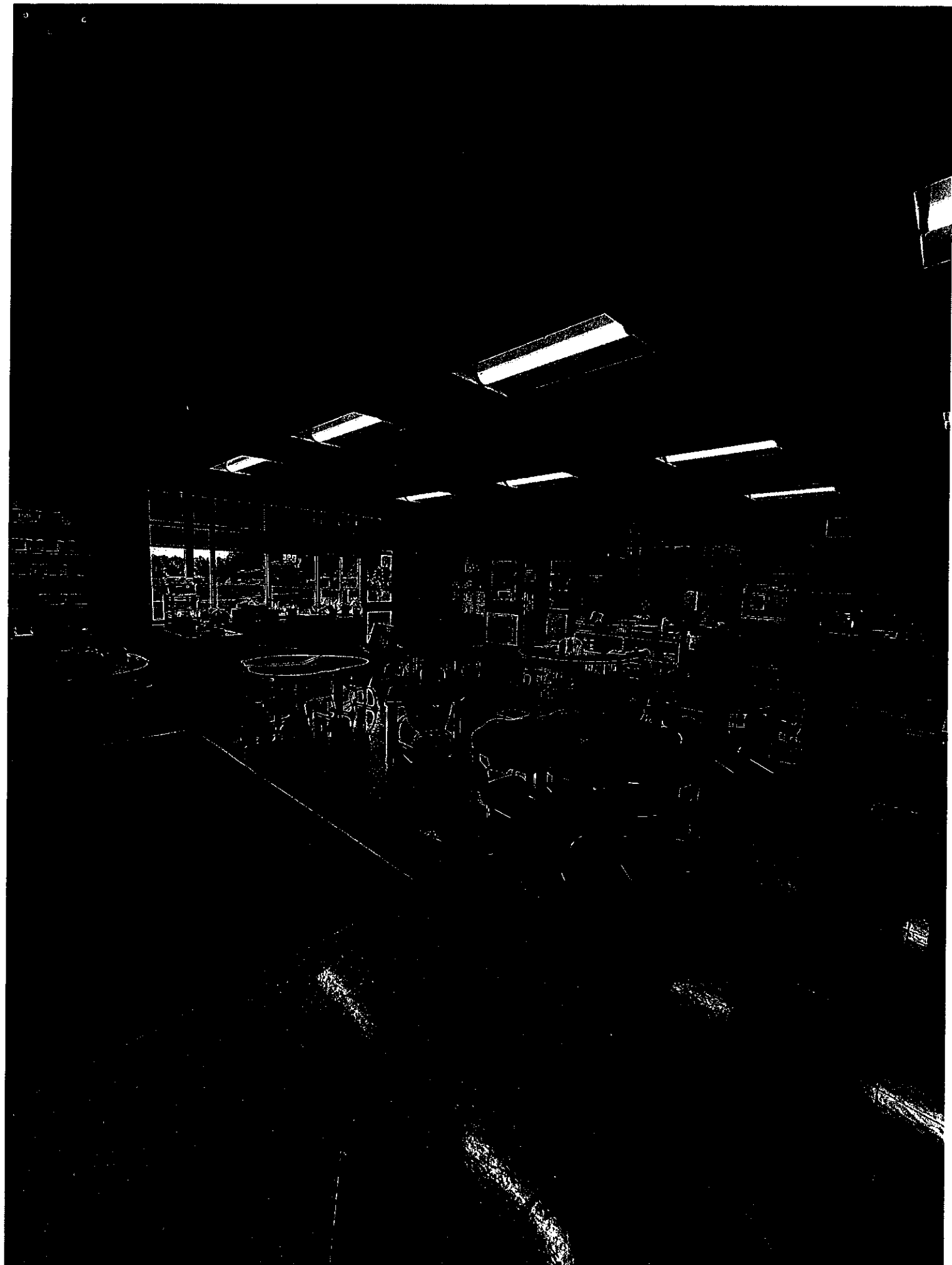
The above was written by Annette Ariail, Assistant Principal at Cayce Elementary, due to Mr. Chatman requesting the details.

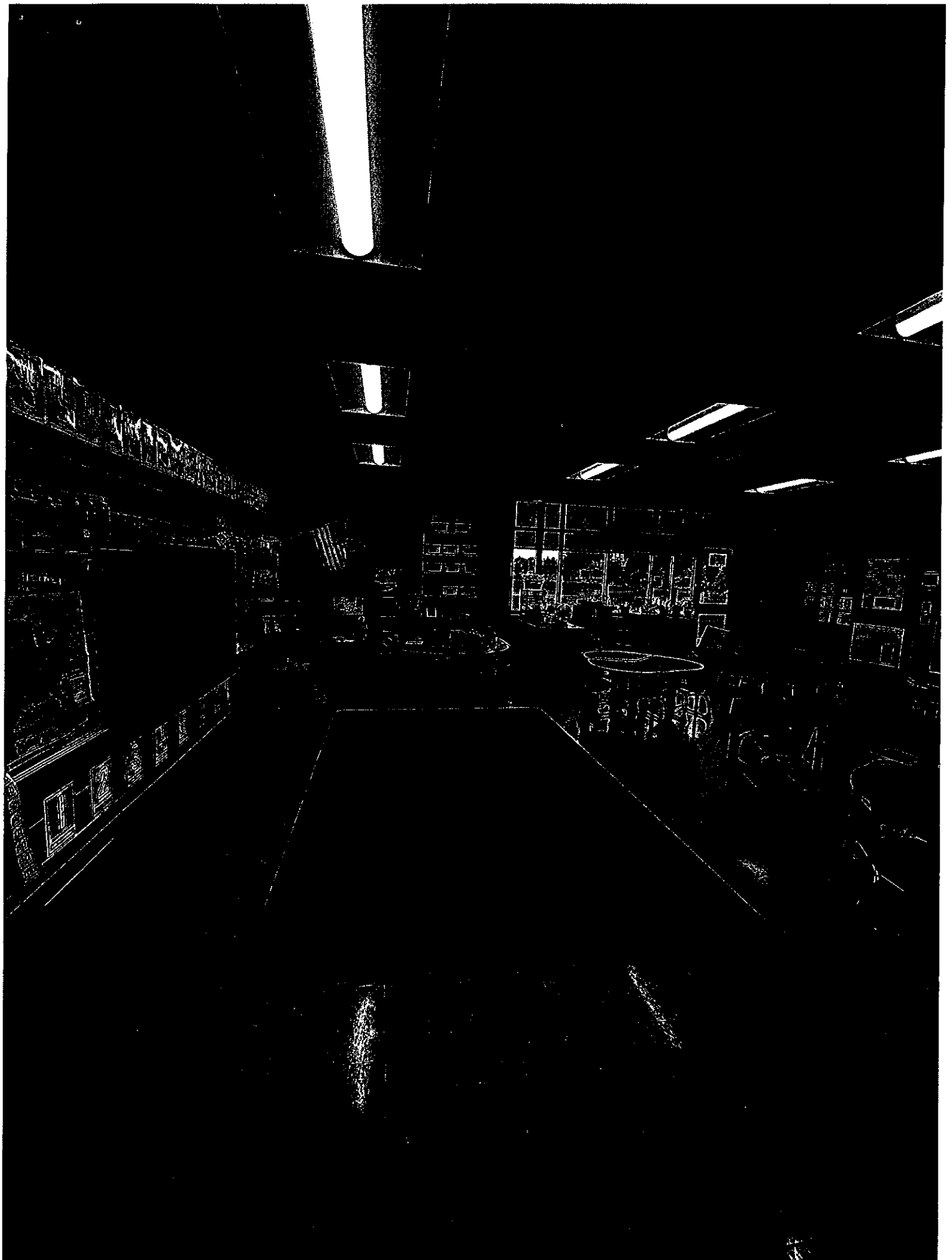


DEFENDANT





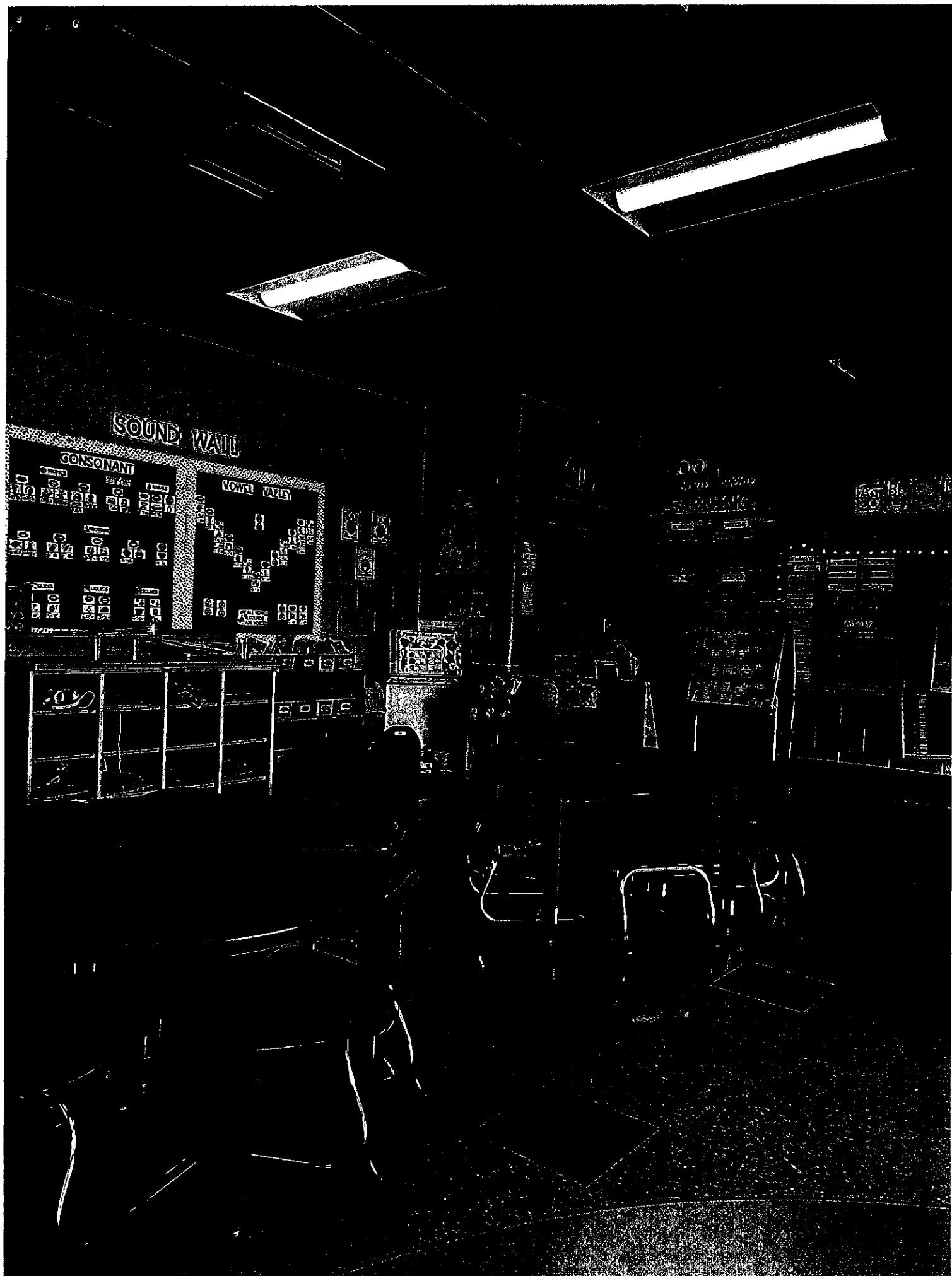






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Policy JIAA Sexual Harassment and Retaliation (Students)

Issued 8/20

The district is committed to maintaining a learning environment free from sexual discrimination and harassment. In keeping with this commitment, the district will not tolerate sexual harassment of students in the education program or any district activity (including admission) by any person, including, but not limited to, other students, staff members, volunteers, or visitors. Further, the district will not tolerate retaliation against a person who has made a report or filed a complaint alleging sexual harassment or who has participated as a witness in a sexual harassment investigation.

This policy applies to behavior that takes place:

- in any school or district building or on any school or district premises before, during, or after school
- on any bus or other vehicle as part of a school activity
- during any school or district-sponsored activity or extracurricular activity
- at any time or place when the student is under the care of district staff
- at any time or place when the behavior can be reasonably expected to materially and substantially interfere with or disrupt the educational environment of the school

It also applies to behavior communicated in writing or electronically through mail, telephones, cell phones, computers, or other telecommunication devices and includes text messaging, instant messaging, and social media. In the situation that the behavior originated from a non-school computer or network, but has been brought to the attention of school officials, the decision for the district to take action in accordance with this policy will be based on whether the conduct is determined to be reasonably expected to materially and substantially interfere with or disrupt the educational environment of the school. While the behavior may not be considered a violation of Title IX, it should be treated as a violation of district policy and the applicable code of conduct.

All students and staff members are responsible for helping to ensure that sexual harassment does not occur. If a student or staff member feels that he/she has experienced or witnessed sexual harassment directed towards a student, he/she will immediately notify a teacher, supervisor, or building-level principal, and/or file a formal complaint with the district's chief administrative officer, who is the Title IX coordinator as outlined in the administrative rule associated with this policy. A staff member who does not promptly report what he/she reasonably believes to be sexual harassment may be subject to disciplinary action.

Reports of sexual harassment may be made anonymously, but formal disciplinary action will not be taken solely on the basis of an anonymous report. The district will investigate all sexual harassment reports impartially, thoroughly, and promptly and will take immediate and proportionate corrective action to end the sexual harassment and prevent the reoccurrence of similar misconduct. Investigations may occur even if the alleged victim does not file a complaint directly or does not wish to see action taken by district or school administration. On an individualized and appropriate basis, interim measures may be taken following receipt of a complaint to minimize the risk of harm to all parties and to prevent continued sexual harassment or retaliation.

Confidentiality

To the fullest extent practicable, while ensuring a thorough and impartial investigation, the district will keep reports and the terms of their resolution confidential, including the names of individuals who submit reports, witnesses who provide information regarding reports, and the individuals named in

such reports. All records generated under the terms of this policy and related administrative procedures will be maintained with utmost confidentiality to the extent permitted by law, specifically the Family Educational Rights and Privacy Act (FERPA). Confidentiality, however, cannot be guaranteed. All complainants proceeding through the complaint process will be advised that their identities will be disclosed to the party being accused of inappropriate conduct.

Parents/Legal guardians of any student making a complaint or against whom any complaint is made will be notified as soon as possible following the filing of the complaint.

Discipline

Students whose behavior is found to be in violation of this policy will be subject to discipline and graduated consequences, up to and including expulsion, consistent with student discipline policies JKAA, High School Student Discipline, and JKAB, Elementary/Middle School Student Discipline.

Staff members found in violation of this policy will be subject to disciplinary action, up to and including termination and may be referred to law enforcement officials, as appropriate, consistent with district policy, including GBEB, *Staff Conduct* and GBEBB, *Staff Conduct with Students*.

Visitors or volunteers found in violation of this policy will be subject to appropriate sanctions and may be referred to law enforcement officials, as appropriate.

Notification

Notice of this policy will be circulated to all district schools and departments and incorporated in student handbooks. At the beginning of each school year, the information in this policy and its associated administrative rule will be provided to staff members, students, and parents/legal guardians. Information provided to students will be presented in a manner appropriate to the student's age, grade, and comprehension level.

Adopted 8/20/20

Legal References:

United States Code of Laws, as amended:

Age Discrimination Act of 1975, 42 U.S.C.A. Section 6101, *et seq.*

Americans with Disabilities Act of 1990, 42 U.S.C.A. Section 12101, *et seq.*

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. Section 701, *et seq.*

Title II of the Americans with Disabilities Act, 42 U.S.C.A. Section 12132.

Title IV of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000c, *et seq.*

Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000d, *et seq.*

Title IX of the Education Amendments of 1972, 20 U.S.C.A. Section 1681, *et seq.*

S.C. Code of Laws, 1976, as amended:

Section 16-3-755 - Sexual battery with a student.

Lexington County School District Two

AR JIAA-R Sexual Harassment and Retaliation (Students)

Issued 10/23

The district has adopted the following procedures to promptly and fairly address reports of sexual harassment and retaliation.

Definitions

Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent is an individual who is reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature under any of the following conditions:

- Submission to such conduct is made either expressly or implicitly a term or condition of a student's education regarding aid, benefit, or service.
- Such conduct or communication is so severe, pervasive, and objectively offensive under the reasonable person standard that it effectively denies a person equal access to the education program or activity.
- Sexual assault, dating violence, domestic violence, or stalking as defined in federal law.

Sexual harassment may include, but is not limited to, the following:

- sexually-oriented teasing, name-calling, abuse, or harassment
- unwelcome comments or conduct based on an individual's gender identity or nonconformity with gender stereotypes
- graphic or written statements including, but not limited to, text messages, typed or hand-written notes, derogatory cartoons, drawings, posters, or graffiti
- inquiries into one's sexual experiences or activities
- unwelcome touching including, but not limited to, pinching, patting, constant brushing against another's body, or physical interference with movement or work
- remarks with sexual or demeaning implications
- subtle or direct propositions for sexual favors

Note that such harassment does not have to be of a sexual nature and can include offensive remarks about a person's sex, sexual orientation, and/or gender identity or expression.

Sexual harassment is prohibited against members of the same sex as well as against members of the opposite sex.

Supportive measures are non-disciplinary, non-punitive, individualized services and will be offered to the complainant and the respondent, as appropriate. These measures may include, but are not limited to, the following:

- counseling
- class modifications

- schedule changes
- increased monitoring or supervision

The measures offered to the complainant and the respondent will remain confidential to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures.

The Title IX coordinator is the district staff member(s) designated to receive and investigate complaints of alleged sexual harassment and retaliation. Additionally, this individual is available during regular work hours to discuss concerns related to sexual harassment and retaliation, as well as to assist students, parents/legal guardians, and others in navigating the complaint resolution process. The Title IX Coordinator may request assistance in investigating complaints from other administrators who have been trained on Title IX and the process of conducting investigations.

Following is information to reach the Title IX coordinator(s) for students for the district:

Title IX Coordinator
114 Hook Avenue
West Columbia, SC 29169
(803) 739-3141
TitleIXStudentCoordinator@lex2.org

Reporting

Members of the district community, including, but not limited to, staff, parents/legal guardians, and students, are encouraged to promptly report incidents of alleged sexual harassment to the Title IX coordinator or building-level principal.

Reports may be made orally or in writing via mail, telephone, electronic mail, or in person meeting at any time, including non-business hours. All reports not made directly to the Title IX coordinator will be memorialized in writing and reported to the Title IX coordinator within two business days.

Reports of prohibited conduct should be made as soon as possible after the alleged act or knowledge of the alleged act. Failure to promptly report may impair the district's ability to investigate and address the prohibited conduct.

Harassing or retaliatory behavior perpetrated against a student by a staff member and/or violations of policy GBEBB, *Staff Conduct with Students*, should be reported immediately to both the district Title IX coordinator and the superintendent. Informal complaint procedures will not be utilized to handle such complaints.

If a complaint involves allegations of child abuse, appropriate notifications to law enforcement and the Department of Social Services will be made in accordance with policy JLF, *Student Welfare*.

The parent/legal guardian of any student subject to sexual harassment or retaliation, or the student himself/herself if over the age of eighteen (18), may seek resolution through either the informal or formal procedures described below except as otherwise prohibited by this policy. When complaints involve two (2) or more students, the parent/legal guardian of each student will be notified of and receive all correspondence related to such complaints.

Grievance Process

Upon learning of an instance of alleged sexual harassment or retaliation, even if no formal complaint is filed, the Title IX coordinator will promptly contact the complainant to discuss the availability of

supportive measures irrespective of the filing of a formal complaint and explain the process for filing a formal complaint.

The district will respect the confidentiality of the complainant and the respondent to the greatest extent possible, and information will only be disclosed to the appropriate individuals as necessary to investigate allegations of harassment and take disciplinary action.

Disciplinary consequences or sanctions will not be initiated against the respondent until the grievance process has been completed. Unless there is an immediate threat to the physical health or safety of any student arising from the allegation of sexual harassment that justifies removal, the respondent's placement will not be changed. The respondent will have the opportunity to challenge the decision immediately following a change in placement. If the respondent is a staff member, he/she may be placed on administrative leave during the pendency of the grievance process.

Formal complaint

The formal complaint process under Title IX does not apply to sexual harassment and retaliation occurring outside of the United States. However, the district will investigate all instances of sexual harassment and retaliation, including those that occur outside of the country (field trips, study abroad, etc.) in accordance with district policy. Should an investigation conclude that such actions took place, the respondent will be subject to discipline.

Forms for initiating a formal complaint may be found online as an exhibit to this administrative rule. Printed copies are available in the principal's office, the district office, and from the Title IX coordinator. All formal complaints must include the following information, to the extent it is available:

- identity of the individual believed to have engaged in harassing conduct (hereinafter "respondent")
- nature of the alleged conduct
- date and location of the alleged violation
- list of potential witnesses
- resolution sought by the complainant
- signature of complainant

The Title IX coordinator can initiate a formal complaint by alleging sexual harassment against a respondent and signing the complaint document. The Title IX coordinator is not the complainant in such circumstances.

Investigation

Upon receipt of a formal complaint, the Title IX coordinator will provide written notice of the grievance process to the parties to include the following information:

- statement of the allegations
- statement that the respondent is presumed not responsible for the allegations until a determination is made
- prohibition against making a false statement or knowingly submitting false information
- right to have an advisor, who may be an attorney, present during any subsequent meetings
- list of supportive measures available to both parties

If the Title IX coordinator dismisses a complaint that does not meet the requirements of Title IX, after

the complaint is withdrawn in writing, when the respondent moves out of the district or is no longer employed with the district, or for any other reason during the investigation process, written notice, including the reasons for dismissal, will be provided to both parties simultaneously. This does not preclude the district from investigating the facts under another district policy JICFAA, *Intimidation, Harassment, or Bullying*, or the student/staff member code of conduct. The dismissal of a formal complaint is subject to appeal.

The investigator is responsible for investigating complaints in an equitable manner that involves an objective evaluation of all relevant evidence; credibility determinations may not be based on an individual's status as a complainant, respondent, or witness. The burden for obtaining evidence sufficient to reach a determination regarding responsibility rests on the school district and not the complainant or respondent.

Once a complaint is received, the investigator will initiate an investigation within, no more than five (5) business days of receipt of the complaint. If an investigation is not initiated within five (5) business days, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation was not initiated within the required timeframe.

All investigations will be completed within thirty (30) business days from the receipt of the initial complaint. If the investigation is not complete within thirty (30) business days, the investigator will provide the Title IX coordinator with appropriate documentation detailing the reasons why the investigation has not been completed.

Investigations will be conducted in the following manner:

- provide an equal opportunity for the parties to present witnesses and evidence
- not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence
- refrain from requiring, allowing, relying upon, or otherwise using questions or evidence that seek disclosure of information protected under a legally recognized privilege unless such privilege has been waived
- provide the parties with the same opportunities to have others present during any grievance proceeding
- provide to parties whose participation is requested written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate
- provide both parties an equal opportunity to inspect and review evidence directly related to the allegations in the formal complaint
- result in the creation of an investigative report that fairly summarizes relevant evidence
- prior to the completion of the investigative report, the investigator will send to each party the evidence subject to inspection and review; all parties will have at least ten (10) days to submit a written response which will be taken into consideration in creating the final report

Within the parameters of the Family Educational Rights and Privacy Act (FERPA), the Title IX coordinator will keep the complainant and the respondent informed of the status of the investigation process. At the close of the investigation, a written final report on the investigation will be delivered to the parents/legal guardians of the complainant and the parents/legal guardians of the respondent.

Determination of responsibility

The respondent is presumed to not be responsible for the alleged conduct until a determination

regarding responsibility is made at the conclusion of the grievance process. The clear and convincing evidence standard will be used in making this determination.

The Deputy Superintendent will act as the decision-maker. He/She will receive the final report of the investigation and allow each party ten (10) business days to submit additional questions to be answered by the appropriate party with limited follow-up prior to determining responsibility.

The decision-maker will provide the written determination to the parties simultaneously along with information about how to file an appeal within fourteen (14) business days after the deadline for receiving all information from the parties.

A substantiated complaint against a student may result in corrective or disciplinary action up to and including expulsion. A substantiated complaint against a staff member will result in disciplinary action up to and including termination.

After a determination of responsibility is made, the Title IX coordinator will work with the complainant to determine if further supportive measures are necessary. The Title IX coordinator will also determine whether any other actions are necessary to prevent reoccurrence of the harassment.

Appeals

The Superintendent will hear appeals. If the complainant or respondent is not satisfied with the determination of the decision maker, he/she may request a review by the Superintendent. Additionally, a complainant can request an appeal upon the dismissal of a formal complaint.

To file an appeal, contact the Superintendent's office at (803) 739-8399.

The request for appeal must be made in writing to the Title IX coordinator within ten (10) business days of receipt of the decision maker's determination or dismissal of the complaint. The appeal must include the original complaint form, a copy of the report and determination, and a written statement as to the reason for appeal.

Grounds for appeal include the following factors:

- procedural irregularity that affected the outcome of the case
- new evidence that was not reasonably available when the complaint was dismissed or a determination was made that could affect the outcome of the matter
- district staff member assigned to the matter had a conflict of interest or bias for or against the parties that affected the outcome of the matter

The Superintendent will review the material submitted and provide both parties five (5) business days to submit a written statement outlining their position. Within fourteen (14) business days of the deadline to receive submissions from the parties, a written decision will be issued simultaneously to both parties stating whether the determination of the decision maker will be upheld, modified, or reversed along with the rationale.

The decision of the Superintendent is final.

Informal Complaint Procedure (Mediation)

The district's informal complaint procedure may be initiated after a formal complaint has been made. The informal complaint process is designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Mediation is a voluntary process intended to allow the parties involved in a complaint to discuss their respective understandings of the incident with each other

through the assistance of a trained mediator. Mediation is designed to encourage each person to be honest and direct with the other and to accept personal responsibility where appropriate. Where circumstances allow, and both parties agree to participate in writing, mediation will be initiated as soon as possible.

Mediation is only available in those circumstances where the district believes that the allegations are appropriate for resolution through an informal process, and both parties voluntarily agree to participate. Mediation is not appropriate in certain cases, such as alleged sexual assaults, even on a voluntary basis.

Participation in mediation does not waive an individual's right to participate in the formal complaint procedure or to pursue other remedies available by law, including the filing of a complaint with state or federal agencies, as appropriate. An individual may request suspension of the informal complaint procedure and initiation of the formal complaint procedure at any time.

Upon the written consent of all parties to the complaint, the Title IX coordinator will seek an outcome through mediation conducted by a qualified district mediator or an external professional engaged by the district. All parties to the complaint must mutually agree upon any resolution reached through the mediation process. The outcome of the mediation will be documented and maintained by the Title IX coordinator.

Retaliation

It is a separate and distinct violation of policy for any member of the district community to retaliate against any student who reports alleged sexual discrimination or harassment or against any student who testifies, assists, or participates in an investigation, proceeding, or hearing relating to such discrimination or harassment. It is possible that an individual may be found to have violated this anti-retaliation provision even if the underlying complaint of sexual harassment is not found to be a violation of district policy. An individual is not allowed to do anything that would discourage a student from resisting or complaining about sexual harassment. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

Students found to have engaged in retaliation may be subject to discipline and graduated consequences, up to and including expulsion, consistent with policies JKAA and JKAB.

Staff found to have engaged in retaliation may be subject to disciplinary action, up to and including termination, consistent with district policy, including GBEB, *Staff Conduct* and GBEB, *Staff Conduct with Students*.

False Reports

Because incidents of sexual harassment and retaliation frequently involve interactions between persons that are not witnessed by others, reports of such conduct cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from making a report under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth may be subject to discipline and graduated consequences, up to and including expulsion consistent with policy JKAA and JKAB. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

Training

The district will provide training for all staff members serving as the Title IX coordinator, investigator, decision maker, or appellate authority for the informal or formal grievance process. Staff members will

be trained on the following:

- definition of sexual harassment
- procedures of the grievance process
- impartiality required to prevent prejudgment of facts, conflicts of interest, and bias
- technology necessary for the grievance process
- relevance and summary of evidence
- determination of responsibility report

Materials used for training purposes may not rely on sex stereotypes, will promote impartial investigations and adjudication, and will be posted online.

Recordkeeping

The district must maintain records of complaints, investigations, and appeals for seven years.

Issued 8/20/20; Revised 1/21/21, 8/5/21, 10/24/23

Lexington County School District Two

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Trial Case No. 2022-CP-32-02339

Nancy Arellano, individually and as parent
and natural guardian of Minor Z.A.,

Respondent.

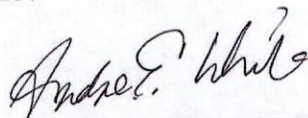
v.

School District No. Two of Lexington
County, State of South Carolina,

Appellant,

NOTICE OF APPEAL

Lexington County School District Two ("the District") hereby appeals the Order of the Honorable William P. Keesley upholding the verdict of a Lexington County Jury entered on October 11, 2025, and his Order denying the District's post-trial Motion for Judgment Notwithstanding the Verdict, filed on March 5, 2025.



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Dylan A. Crossland (SC Bar No. 105736)
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Attorneys for Appellant

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SC Court of Appeals

Other Counsel of Record:

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Attorney for Respondent

April 3, 2025
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Trial Case No. 2022-CP-32-02339

Nancy Arellano, individually and as parent
and natural guardian of Minor Z.A.,

Respondent.

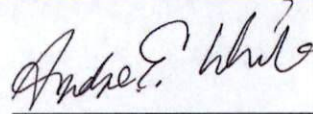
v.

School District No. Two of Lexington
County, State of South Carolina,

Appellant,

PROOF OF SERVICE

I certify that I have served Appellant Lexington County School District Two's *Notice of Appeal*, on Respondent, Nancy Arellano, by depositing a copy in the United States Mail, postage prepaid to the Attorney of Record, Trevor P. Eddy, located at 1516 Richland Street, Suite B, Columbia, SC 29201, and by electronic mail to trevor@theeddylawfirm.com.



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Andrea E. White
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April 3, 2025

VIA PERSONAL DELIVERY

The Honorable Jenny Abbotts Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
APR 03 2025
SC Court of Appeals

Re: Nancy Arellano v. School District No. Two of Lexington County
C/A No. 2022-CP-02339

Dear Ms. Kitchings:

Enclosed please find the following for filing with the S.C. Court of Appeals:

- 1) Appellant Lexington County School District Two's Notice of Appeal;
- 2) Appellant's Proof of Service;
- 3) Copies of Order and Judgment to be challenged on Appeal; and
- 4) Filing fee of \$250.00.

Thank you for your assistance in this matter.

Sincere regards,

A handwritten signature in dark ink, appearing to read 'Andrea E. White'. The signature is fluid and cursive, with the first name 'Andrea' and last name 'White' clearly distinguishable.

Andrea E. White

Enclosures

c: Dylan A. Crossland, Esq. (w/o enclosures)
Trevor P. Eddy, Esq., Attorney for Respondent (w/enclosures)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Trial Court Case No. 2022-CP-32-02339
Appellate Case No. 2025-000647

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Jan 09 2026

SC Court of Appeals

Nancy Arellano, individually and as parent
and natural guardian of Minor Z.A.,

v.

Respondents,

School District No. Two of Lexington County,
State of South Carolina,

Appellant.

CERTIFICATE OF COUNSEL

This is to certify that Appellant Lexington County School District Two's Record on Appeal complies with Rule 240(c), SCACR.



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Attorneys for Appellant

December 22, 2025
Columbia, South Carolina