

Court file number: CV-21-00661680-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

AMENDED THIS 30 Oct 2023 PURSUANT TO
MODIFIÉ _____ CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (B _____)

THE ORDER OF _____
L'ORDONNANCE DU _____
DATED/FAIT LE _____

..... M. Godin Michelle Godin Digitally signed by Michelle Godin
Date: 2023.10.30 16:22:45 -0400
REGISTRAR SUPERIOR COURT OF JUSTICE GREFFIER COUR SUPÉRIEURE DE JUSTICE

JANE STUDENT by her litigation guardian **JANE'S FATHER,
JANE'S FATHER** and **JANE'S MOTHER**

Plaintiffs

and

**JEANNE LEONARD, CINDY SMITH, ~~ARNOLD POTMA~~ -
~~SUPERINTENDENT OF THE ERNEST C. DRURY SCHOOL,~~
PROVINCIAL SCHOOLS AUTHORITY,
HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

Defendants

FURTHER AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: May 7, 2021

Issued by

“A. Miller”

Registrar

Address of Courthouse:
Superior Court of Justice
330 University Avenue, 8th Floor
Toronto, Ontario
M5G 1R7

TO: Jeanne Leonard
255 Ontario Street South
Milton, Ontario L9T 2M5

AND TO: Cindy Smith
255 Ontario Street South
Milton, Ontario L9T 2M5

~~AND TO: Arnold Potma
255 Ontario Street South
Milton, Ontario L9T 2M5~~

~~AND TO: Superintendent of the Ernest C. Drury School
255 Ontario Street South
Milton, Ontario L9T 2M5
Provincial Schools Authority
Crown Law Office (Civil)
6th Floor, 720 Bay Street,
Toronto, Ontario M7A 2S9~~

AND TO: His Majesty the King on Right of Ontario
Crown Law Office (Civil)
6th Floor, 720 Bay Street,
Toronto, Ontario M7A 2S9

CLAIM

1. The plaintiff Jane Student claims:
 - (a) a declaration that she has been discriminated against on the basis of disability, sex and family status contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19 (the “Code”);
 - (b) an order requiring the defendants to devise and implement a plan to accommodate her disabilities, sex and family status in providing educational services and facilities;
 - (c) general damages in the amount of \$2,500,000;
 - (d) special damages in the amount of \$1,500,000;
 - (e) punitive and aggravated damages in the amount of \$300,000;
 - (f) pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (g) her costs of this action on a substantial indemnity basis; and
 - (h) such further and other relief as this Honourable Court deems just.

2. The plaintiffs Jane’s Father and Jane’s Mother each claim:
 - (a) general damages in the amount of \$250,000;
 - (b) special damages in the amount of \$100,000;
 - (c) pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (d) their costs of this action on a substantial indemnity basis; and
 - (e) such further and other relief as this Honourable Court deems just.

The Parties

3. The plaintiff Jane Student (“Jane”) is a person permitted to use a pseudonym pursuant to the order of Master Short dated May 3, 2021. She was born in 2002 and resides in Ontario.

4. The plaintiff Jane’s Father is a person permitted to use a pseudonym pursuant to the order of Master Short dated May 3, 2021. He is Jane’s father and resides in Ontario.

5. The plaintiff Jane’s Mother is a person permitted to use a pseudonym pursuant to the order of Master Short dated May 3, 2021. She is Jane’s mother and resides in Ontario. Jane’s Father and Jane’s Mother are referred to together as Jane’s Parents.

6. The defendant Jeanne Leonard (the “defendant Leonard”) was the principal at Ernest C. Drury School for the Deaf from in or about September 2001 to November 2015 and the superintendent for Ernest C. Drury School for the Deaf since November 2015.

7. The defendant Cindy Smith (the “defendant Smith”) was the principal at Ernest C. Drury School for the Deaf from in or about September 2017 to in or about February 2021.

8. ~~The defendant~~ Arnold Potma (~~the “defendant~~ Potma”) was the Vice-Principal of Ernest C. Drury School for the Deaf at all material times described in the claim until September 2019.

9. The defendant Provincial Schools Authority was at all material times an employer of the teachers, vice-principals and principals of Superintendent of the Ernest C. Drury School is the officeholder responsible for the placement and accommodation of students attending Ernest C. Drury School for the Deaf (“E. C. Drury School”) and is responsible in law for the acts and omissions of the individual defendants as well as the other employees and agents of E.C. Drury

School named as defendant for the purpose of the implementation of the restitutionary remedies sought under the Code.

10. The defendant His Majesty the King in Right of Ontario (“Ontario”) is also responsible in law for the acts and omissions of the individual defendants as well as the other employees and agents of the Ministry of Education (“Ministry”), including its Provincial and Demonstration Schools Branch (“Branch”), which incorporates Ernest C. Drury School for the Deaf and is further named as defendant for the purpose of the implementation of the restitutionary remedies sought under the Code.

Background

11. In or about 2006, Jane enrolled as a student at the E. C. Drury School. Jane’s pre-existing health conditions included a learning disability, cerebral palsy, auditory neuropathy, attention deficit hyperactivity disorder and development coordination disorder.

12. In an individual education plan (“IEP”) in April 2008, Jane was designated as having multiple exceptionalities. This designation was made for the purpose of ensuring that Jane would receive the accommodations necessary for her education.

13. In or about late 2009, the defendant Leonard or another official at E.C. Drury School altered Jane’s IEP by removing the multiple exceptionalities designation. In discussions respecting subsequent IEPs, Leonard and later Smith and Potma refused to reinstate the multiple exceptionalities designation, despite the fact that the designation was required so that adequate resources and appropriate accommodations would be made available to Jane. The defendant Leonard specifically threatened to withdraw Jane from the school if she required a multiple exceptionalities designation.

14. As a result of the withholding of the multiple exceptionalities designation, Jane was deprived of resources including trained staff to support her physical and psychological needs, an appropriately designed and implemented individual education plan and an appropriately designed and implemented safety plan.

15. Over more than two years beginning in or about 2008, Jane was the victim of at least six separate assaults and sexual assaults by a male student (“Student A”) in which Jane was repeatedly punched and kicked, resulting in multiple bruises and sores on Jane’s vaginal and groin area (the “2008-2011 Assaults”).

16. Jane’s Parents reported the 2008-2011 Assaults and Jane’s injuries to school officials, who failed to take steps to protect Jane from Student A. Jane’s Parents then reported the assaults and the failure of the school to take steps to protect Jane to the police and the Children’s Aid Society, after which further assaults by Student A were prevented.

17. As a result of the 2008-2011 Assaults and the initial inaction of the school, Jane developed a fear for her safety at school and experienced nightmares and flashbacks about being assaulted at school.

18. In the spring of 2015, Jane was the victim of an assault at school by Students B and C, who were older, larger, stronger and more agile than her (the “2015 Assault”). During the assault, Jane was 13 years of age and was wearing two leg braces for support due to her condition of cerebral palsy.

19. As Jane stood in the schoolyard watching the end of a soccer game, Student B suddenly approached Jane from the front while Student C crept up and crouched down immediately behind

her. Student B then pushed Jane hard causing Jane to fall backward over Student C's back and hit her head with great force on the ground.

20. When the 2015 Assault was reported to school authorities, the nature and severity of the incident were denied and suppressed. ~~The defendant~~ Potma claimed falsely that the 2015 Assault was a prank, that Jane was a willing participant and that the supervision at the school was adequate.

21. As a result of the 2015 Assault, Jane experienced a severe and lasting head trauma, including a severe concussion and traumatic brain injury. Jane remained symptomatic through the summer of 2015 with light sensitivity, sound sensitivity, dizziness, headaches and nausea. Jane was further psychologically traumatized as a result of her version of events being disbelieved and denied by the school.

22. In November 2015, still at the age of 13, Jane attempted suicide using a knife. Jane was placed in the child and youth psychiatric inpatient program for two weeks. Jane's Parents reported the suicide attempt and the diagnosis of adjustment disorder with disturbances of mood to school officials. A case worker was assigned to Jane by the defendants to help her re-integrate back into school. The case worker referred Jane for a psychoeducational assessment, which was never administered.

23. For the next two years, Jane required a low stimulation environment at school and at home, with reduced light and sound. She experienced ongoing headaches and her balance was also affected. She further developed social anxiety disorder that manifested itself in, among other things, an inability to self-advocate, and post-traumatic stress disorder.

24. The 2008-2011 Assaults and the 2015 Assault were the subject of claims asserted in a class action brought against three Ontario Provincial Schools for the Deaf, including E. C. Drury School, on behalf of students who attended the schools from March 31, 1978 to August 23, 2016. The plaintiffs in the class action alleged that the members of the class were physically, sexually and psychologically abused at the Schools and that the Province breached its fiduciary and common law duties to the class and failed to supervise, care for and protect class members, resulting in injury, including psychological trauma, pain and suffering (the “Class Action”).

25. The court awarded Jane damages as part of the settlement of the Class Action. The Class Action neither claimed nor excluded future claims for negligence, breach of fiduciary duty, discrimination or the failure to accommodate Jane’s disabilities after August 23, 2016.

26. As a result of her experiences described in paragraphs 13 to 23 and the consequent conditions of social anxiety disorder and post-traumatic stress disorder, of which the school was aware, Jane remained fearful for her safety at school.

27. In 2017, Jane experienced bullying by another student, Student D. The bullying consisted of Student D ridiculing Jane in front of her peers during lunchtime daily, commenting that she hated Jane, making sarcastic and rude facial expressions at Jane and encouraging other students to laugh at Jane. Jane’s Father notified school officials of the behaviour and that it was causing Jane to experience escalated anxiety and fear for her life.

The 2018-2019 School Year

28. Leading up to the 2018-2019 school year, Jane was experiencing nightmares and flashbacks respecting the 2015 Assault and experiencing thoughts of suicide. She was particularly fearful of Student B, who she expected would be on her bus route and Student C,

who she expected would be in her classes. Student C had left E. C. Drury for a year but returned for the 2018/2019 school year.

29. On August 3, 2018, Jane's Parents met with the Halton Regional Police Education Services Unit – High School Liaison Department regarding Jane's fear that she would again be assaulted at school by Students B and C.

30. At the conclusion of the August 3, 2018 meeting, an officer agreed to seek further information from E. C. Drury School respecting the events of 2015.

31. On or about August 28, 2018, Jane's Father wrote to the defendant Smith to alert her to Jane's ongoing fear of harm from Students B and C and the harm caused to Jane by the school's prior mischaracterization of the 2015 Assault. He requested that a safety plan be put in place for Jane that included Student B not being on the same bus route as Jane and that Jane not be placed in classes with Student C.

32. On or about August 29, 2018, Jane's Father called Smith to discuss Jane's mental health conditions, the nature and severity of the 2015 Assault, the prior mischaracterization of the 2015 Assault by ~~the defendant~~ Potma and Jane's fears for her safety. Smith responded to Jane's Father in a dismissive manner, inappropriately referring to her own personal circumstances. Jane's Father's request that Jane and Student B be placed on different bus routes was denied.

33. Despite Jane's Father's advice, the defendant Smith maintained generally and in her dealings with the Halton Regional Police the false claims by ~~the defendant~~ Potma respecting the 2015 Assault, and asserted that the circumstances of the 2015 Assault did not, in fact, constitute an assault.

34. The defendant Smith's position revisited upon Jane the traumas of having been assaulted and then disbelieved by school officials in 2015 and established in Jane's mind the perpetuation of an environment of impunity at E. C. Drury School in which violence was condoned, and further prevented Jane from being able to access protective remedies through the Halton Regional Police.

The 2018 Assaults

35. Student E was an older, much larger male student at E. C. Drury School with poor impulse control ("Student E"). Student E had been Jane's boyfriend and, in the fall of 2018, wished to resume this relationship. Jane did not wish to resume the relationship. On September 4, 2018, Student E followed Jane upstairs and down a school hallway angrily asking her why she broke up with him. When he got close to Jane, Student E pushed her hard, hurting her.

36. Jane sent a text message to Jane's Mother to inform her about the assault. Jane's Mother asked Jane to inform the principal. Due to her fear of being disbelieved and the ineffectiveness of past efforts to report violent incidents at the school, Jane froze and was unable to inform the school authorities or tell her parents that she had been unable to do so.

37. On October 12, 2018, a further incident of assault occurred in the small hallway in the vocational area of the school out of the view of security cameras. Student E repeatedly followed after Jane screaming at her, causing her to become fearful and triggering post-concussive symptoms of headache, nausea and dizziness. Student E refused to stop when Jane asked him to and instead moved beside Jane to scream closer to her face. In an attempt to end the assault, Jane scratched Student E's arm in self-defence.

38. Student E tried to conceal the injury to his arm but it was observed by staff at the school who asked Student E what had caused it. Student E attributed it to injury to rough play with Jane. Without interviewing Jane or checking on her safety or wellbeing, school authorities created an incident report stating that Student E required medical attention after being scratched by Jane while the two were playing aggressively. The incident report portrayed Jane as the aggressor. The school officials took no measures to notify Jane of the manner in which the October 12, 2018 incident was characterized in the school's report.

39. The defendant Smith and the school authorities took no measures to inform Jane's Parents or otherwise address the harm caused to Jane as a result of the October 12, 2018 incident. The school's conduct prevented both the school and Jane's Parents from creating a safety plan to prevent further assaults.

40. On October 22, 2018, while Jane was engaged in a video call with a third student, Student E joined the video call and threatened to harm himself if Jane did not resume her relationship with him. In response to Student E, Jane, who was in her kitchen at the time, held up a kitchen knife and said that she would harm herself if he did not leave her alone. One of Student E's friends shared a still photograph of Jane holding the knife captured from the video call with ~~the defendant~~ Potma.

41. ~~The defendant~~ Potma interviewed Jane, who, due to her limited ability to self-advocate, could not explain that she was being pressured by Student E into resuming an unwanted relationship with him. ~~The defendant~~ Potma interpreted Jane's behaviour toward Student E as bullying and notified Jane's Parents that Jane was being disciplined.

42. On the morning of October 23, 2018, concerned that there had been a misunderstanding in relation to her actions the prior day, Jane tapped Student E on the shoulder to give him a note explaining that she had not meant to bully him. Student E turned around in response to the tap and assaulted Jane, pushing her very hard in the breast. Jane notified her parents and Jane's Father immediately called the school to report the incident. The office support staff notified Jane's Father that they would inform the defendant Smith. The defendant Smith called Jane's father at 10:30 a.m. to tell him that she was busy and would deal with the matter later.

43. In the afternoon on October 23, 2018, Student E sat himself in front of Jane's locker and refused to permit her access. Attempts by Jane and other students to encourage Student E to move failed. Student E then got up and shoved Jane, causing her to fall to the ground and experience, among other injuries, a further concussion. Further incidents of assault of Jane by Student E occurred in 2018 and were reported to the defendants but were not disclosed to Jane's Parents.

44. Student E received a two-day suspension and was further charged criminally with a single count of assault in respect of the October 23, 2018 afternoon assault.

45. On or about October 29, 2018, under the mistaken impression that Jane had notified the school authorities of the September 4, 2018 assault, Jane's Father inquired of the school respecting the outcome of any investigation into that incident and specifically whether it had interviewed Jane and identified witnesses to this assault.

46. In early January 2019, a male student, Student F, told Jane that she should go to jail because she was hurting Student E by complaining of his conduct toward her. Jane's Parents emailed the school to report this incident.

47. Also in January 2019, Jane was experiencing anxiety that Student E would be returning to school. Jane's Father wrote to the defendants Leonard and Smith to inform them of Jane's concerns and determine what plans were in place for Student E's return and also to determine whether Student C would be in Jane's second semester classes. The requests for this information were ignored. Jane was required to attend classes with Student C and Jane was neither notified nor offered alternatives for her safety.

48. On or around January 17, 2019, Student B removed Jane's hat on the school bus and spat and stomped on it. Jane's Father notify the school administration of the incident and repeated his request that Jane's bus route be changed. Jane's Father also reminded the school that Jane had been hospitalized in the past for mental health reasons attributable to bullying at school. Jane's bus route was finally changed to exclude Student B.

49. On January 25, 2019, Jane's Parents met with the Halton Regional Police and the Crown Attorney expecting to discuss the impact upon Jane of the October 23, 2018 afternoon assault in the context of the pending charge against Student E. In that meeting, Jane's Parents learned for the first time of the October 12, 2018 incident and, further, that based on what the school officials had told the police, they would be obliged to charge Jane with assault in respect of that incident.

50. Jane's Parents further learned from the Halton Regional Police on January 25, 2019 that the school officials denied that the September 4, 2018 assault occurred.

51. In its investigations and reporting of the four incidents of assault in September and October 2018, the defendants repeatedly mischaracterized and withheld information. In particular:

- (a) They failed to interview Jane respecting the September 4 and October 12 assaults;
- (b) They portrayed Jane as an assailant to police investigators with respect to the October 12 incident;
- (c) Their incident reports in respect of the four assaults were deficient in a number of respects, including:
 - i. The reports were prepared without adequate review of evidence and information; and
 - ii. At least one of the reports was subsequently altered and backdated.
- (d) During the police investigation, they withheld information and evidence from the police respecting the October 23 morning assault; and
- (e) None of the school's incident reports in reference to the above assaults discuss the significant size discrepancy between Jane and Student E or the circumstances of Student E seeking to resume a relationship that Jane did not want.

52. On January 31, 2019, Student E entered a peace bond with conditions that he not communicate with Jane and that he stay away from her except in accordance with the *Education Act*. One of the conditions of Student E's return to school was that the school would provide an educational assistant to accompany Student E at all times. Jane's Parents asked the defendant Smith to confirm that an educational assistant would, in fact, accompany Student E. Smith refused to answer.

53. On or about February 22, 2019, the defendants implemented a safety plan for Jane. It recognized that Jane felt unsafe at school but asserted that she was at risk of putting herself in danger by initiating contact with others. The safety plan recommended that Jane stay in designated locations to minimize contact with Student E and placed the onus upon Jane to report incidents and communicate with safe adults for support as needed. In placing the onus on Jane to seek out help, the safety plan disregarded Jane's education plan and medical documentation which identified her struggle with self-advocacy.

53A. On March 4, 2019, it came to the attention of Sheila Rees, then a Vice-Principal at E.C. Drury School, that Student E was showing a digital image of Jane taken in 2017 or 2018, with her shirt pulled up to one or more other students at the school. Ms. Rees further learned that Student E was claiming, when showing the image, that he had dared Jane to take the image of herself and that when she had refused, he had "beat her up" in order to force her to do so.

53B. On March 4, 2019, Potma met with Student E, who admitted having the image of Jane with her shirt pulled up and another nude image of Jane. The defendant Smith instructed Potma to confiscate Student E's iPad and stated an intention to address the issue with Student E's parents.

53C. The defendants took no further steps to prevent the possession or circulation of the images of Jane despite such acts constituting criminal offences. They never informed Jane's parents, the Halton Police Service or the Children's Aid Society of the circumstances of the obtaining or sharing of the images so as to ensure that further possession or sharing of the images were prevented and that Jane was otherwise protected.

53D. In view of Jane's poor ability to self-advocate, Jane and Jane's Parents were deprived by the defendants of the opportunity to deal with the obtaining, possession and sharing of the images in a manner that ensured that Jane was safe and had support to address this traumatic event.

54. By March 6, 2019, despite Jane's Parents' request, the defendant Smith had not interviewed Jane in respect of the September 4, 2018 assault. That day, when picking up Jane from school, Jane's Father asked the defendant Leonard when Jane's interview would take place. The defendant Leonard stated the interview had already been conducted by Smith. Jane's Father questioned this. Two weeks later, the Director of the Provincial and Demonstration Schools Branch June Rogers sent Jane's Father a warning that he could be banned from the school for accusing the defendant Leonard of lying.

55. Later in March 2019, to assist in the investigation of the September 4, 2018 assault, Jane's Father provided the school with his text messages exchanged with Student E's father after the incident in which Student E's father apologized for his son's behaviour. Jane's Father repeated his request that Jane be interviewed, but received no response.

56. On March 21, 2019, the defendant Leonard wrote to Jane's Parents and copied the Director June Rogers. The defendant Leonard stated no report had been received in relation to the September 4, 2018 assault. The next day, the defendant Leonard wrote to Jane's Parents again without a copy to the Director stating that an assault was reported and that the school responded appropriately.

57. Still in March 2019, the Defendant Leonard agreed to meet with Jane's Parents. Prior to the meeting, Jane's Parents requested an agenda and asked that the September 4 and October 12, 2018 assaults be added. The Defendant Leonard did not provide an agenda but stated specifically that she was not prepared to discuss the assaults. Jane's Parents postponed meeting so that the school could first complete its investigation into these assaults.

58. Jane was ultimately never interviewed by the school in relation to the September 4, 2018 assault or the October 12, 2018 assault such that the incidents were never investigated properly.

59. In August 2019, Jane's Parents requested a meeting with school officials to discuss Jane's health and accommodation needs. The defendant Smith initially responded and provided her availability for a meeting. Jane's Parents responded with their availability but Smith failed to respond further or provide a meeting time.

60. As of September 2019, though he remained subject to a peace bond that he stay away from Jane, Student E was left free to move within the school unaccompanied. Jane often observed Student E in close proximity to her and places she frequented in the school.

61. Jane's Parents reported to the Halton Police that Student E was unaccompanied at school and often in close proximity to Jane. The police informed Jane's Parents that it was the school's responsibility to ensure Student E's compliance with the peace bond.

62. Jane's Parents reported Jane's observations of Student E being unaccompanied in close proximity to her to the defendant Leonard. The school did not investigate Jane's observations and no incident reports were created.

63. Ultimately, despite knowing that Student E had poor impulse control and was capable of violence towards Jane if given the opportunity, the school failed to monitor Student E's

compliance with the peace bond. The school's inaction deprived Jane of support and exacerbated Jane's fears for her safety and triggered post-concussive symptoms.

64. Also in September 2019, Jane was assaulted by another student, Student G, who poked her in the head repeatedly. The defendant Smith emailed Jane's Parents on September 6, 2019 stating that the school had begun investigating and would advise of results once completed. After a week without further word from the defendant Smith, Jane's Parents reported this incident to the Halton Police.

65. In or about September 2019, the defendant Smith altered the school's incident report in respect of the October 23, 2018 afternoon assault by adding details of the October 23, 2018 morning assault as well as a description of the video evidence of the morning assault. The report was further amended to read that both Student E and Jane had been interviewed regarding the October 23 morning incident and that it was recommended that both students block each other on social media. The school never notified the police of the additional findings.

66. On September 27, 2019, as Jane had still not been interviewed by the school administration in respect of the events of October 12, 2018, Jane's Father asked to meet with teacher Tamara Witcher, who had prepared the school's incident report in respect of the incident. In response, the defendant Leonard prohibited Jane's Parents from communicating with all staff at the school and mandated that all communication be through Leonard.

67. On December 9, 2019, Student E entered into an extended peace bond respecting Jane for a further period of 12 months.

68. Despite Jane's Parents' continued attempts through school officials to correct misinformation regarding the 2018 assaults, such requests were denied or ignored.

Current efforts to secure accommodation

69. Despite numerous attempts by Jane's Parents to secure accommodations in respect of Jane's pre-existing and acquired disabilities, which are supported by ample medical documentation, no therapeutic intervention or support has been offered.

70. In or around August 2019, Jane's Parents provided the report of Jane's clinical neuropsychologist recommending American Sign Language ("ASL") fluent counselling support for Jane through her school. This support was withheld from Jane despite the resource being available at the school.

71. Leading up to the 2019/2020 school year, appreciating a worsening of Jane's general psychological and neurological conditions, Jane's Parents provided the report of Jane's clinical neuropsychologist recommending an updated psychoeducational assessment. The plaintiffs were initially led by the school to believe that a psychoeducational assessment would be conducted by the school but were later informed that the re-assessment was withheld at the direction of the defendant Leonard purportedly due to a funding freeze.

72. In May 2019, Jane reported to her health care providers experiencing seizure-like neurological episodes that she described as "lightning in the brain" that were triggered by stress and anxiety. Jane's Parents provided the school a copy of the doctor's report which indicated a concern that these episodes might be seizures. Jane's neurological struggles started to drastically increase in October 2019 and Jane's parents sought to notify Jane's teachers immediately in case they observed such an event at school as they were concerned that Jane was unlikely to report experiencing an episode unprompted.

73. Jane's Father wrote to the defendant Leonard respecting the neurological episodes and asked that this information be shared with Jane's teachers as soon as possible. The defendant Leonard replied that defendant Smith was away and that she would discuss the parents' email with Smith upon her return. Considering the matter to be urgent, Jane's Father asked that the school provide the work email addresses of Jane's teachers so that he could share information respecting the neurological episodes.

74. While the school secretary was providing Jane's teachers' email addresses to Jane's Father, the defendant Leonard personally intervened to prevent the release of contact information for Jane's teachers and further withheld from the teachers the information she had been provided respecting the neurological episodes. Jane's Parents were only able to notify Jane's teachers for whom they already had contact information.

75. That day, Jane in fact experienced neurological episodes during her first period class but was unable to communicate this to her teacher. Jane's second period teacher, who was also designated as Jane's "caring adult" within the school, had been notified by Jane's Father of the neurological episodes. She noticed that Jane seemed unwell and determined from Jane that she was indeed experiencing "lightning in her brain" and informed Jane's Parents.

76. Jane was ultimately hospitalized. When Jane's Parents notified the defendant Leonard of Jane's resulting harm, the defendant responded in a way that mocked both Jane's school-acquired social anxiety condition and Jane's Parents' efforts to alert the school of the neurological episodes, stating that she was happy Jane was able to self-advocate and that Jane should continue to do so.

77. Also in October 2019, Jane's Father asked the defendant Leonard to arrange for him to speak directly with Student Health Services and Jane's school-based psychiatrist. The defendant denied this request, citing the communication ban she imposed on Jane's Father the prior month.

78. In November 2019, after withholding the psychoeducational re-assessment, the defendant Leonard restored Jane to a waiting list but assigned Jane's re-assessment low priority such that it never proceeded. Jane was not re-identified as having multiple exceptionalities despite comprehensive medical evidence of multiple diagnoses and symptoms and two written requests by Jane's Parents. Jane's Parents' subsequent requests to meet with the defendants Leonard or Smith to discuss educational accommodation needs were generally ignored or refused, with the defendant Leonard disingenuously claiming that it was Jane's Parents who had not responded to offers to meet or requests for updated medical information.

79. In November 2019, Jane's Parents provided the school administration with evidence from Jane's treating pediatrician in support of a request for permission to carry a cell phone for safety reasons as a necessary accommodation of Jane's disabilities. Leonard refused permission.

80. The defendants further denied the plaintiffs' requests for parental consultation in respect of Jane's IEP, ignored medical documentation respecting the amplification of Jane's symptoms and her neurological and psychological struggles and generally impeded the flow of information between Jane's Parents and her outside health care providers and those health care providers within the school.

81. The defendant Leonard further inaccurately informed Jane's Parents that responsibility for Jane being designated as having multiple exceptionalities and receiving an Identification, Placement and Review Committee (IRPC) meeting rested with the school board in the district in which she lived when the designation, IRPC meetings and annual reviews were the responsibility of the defendants.

82. In November 2019, Jane's Parents attended at the school library for parent-teacher interviews and found that their time allotments had been arbitrarily reduced to a single 30-minute meeting with three of Jane's teachers, including her assigned "caring adult" rather than 15-minute one-on-one sessions with each of the teachers. The single meeting was not held in a private setting as per the standard practice.

83. On November 5, 2019, Jane experienced further neurological episodes at school and had to be picked up.

84. In October and November 2019, Jane's Parents attempted to secure alternatives to in-person classes so that Jane could continue her education.

85. Jane attended a single session with a teacher at a library close to Jane's home but experienced neurological episodes triggered by her anxiety disorder and the lighting at the library and could not attend there further. Jane also experienced significant anxiety in relation to online learning.

86. Jane's Parents asked the defendant Leonard whether Jane's teachers teach Jane at their home. The defendant Leonard refused to consider this request, claiming falsely that Ontario Secondary School Teachers' Federation rules prohibited teachers from attending at students' homes.

87. In November and December 2019, Jane was experiencing debilitating levels of anxiety attributable to the school's failures to keep her safe, properly investigate incidents of violence and establish a plan to accommodate her disabilities. As of December 3, 2019 Jane was determined to be medically unfit to return to school in person.

88. During Jane's absence from school, Jane's Parents learned of information withheld from them by virtue of the ban imposed by the defendant Leonard on communication between them and teachers and staff at the school, including:

(a) Jane experienced a psychotic episode in which she screamed during a class and ran into the hall where she had to be cared for by a teacher who was later directed by the defendant Leonard not to inform Jane's Parents;

(b) During this psychotic episode, Jane experienced hallucinations of people telling her to either harm or kill herself; and

(c) in October or November 2019, Jane brought a knife into the school bathroom intending to attempt suicide but stopped short and disposed of the knife in the garbage.

89. The communication ban imposed by the defendant Leonard remained in place during Jane's absence from school and through the subsequent COVID-19 pandemic. Jane's Parents' attempts on February 19, 2020 and May 20, 2020 to speak with the teacher who cared for Jane during the psychotic episode were unsuccessful. Jane's Parents may speak only with Leonard while Jane's teachers have been restricted by Leonard from speaking with Jane about anything other than her school work.

90. When Jane contacted her Caring Adult to discuss the psychotic episodes, she was informed that they could only speak in a group chat with four other adults, that the chat would be recorded, and that Jane was only allowed to discuss school work.

91. Jane further experienced significant delays in her efforts to obtain the remote work required for her to complete her 2019-2020 first semester course requirements, which was to consist of a single project for each course. On the last day of the semester in January 2020 Jane received 31 separate emails, each containing different assignments. Jane experienced an immediate recurrence of the neurological episodes triggered by receiving so much coursework at once in this manner.

92. Two days later, the defendant Leonard forwarded to Jane's Parents an email from the defendant Smith stating that Jane was not, in fact, required to do any of the work set out in the 31 emails. Jane would not receive the actual assignments required to complete her first semester until March 10, 2020, almost two months after the first semester ended, causing additional stress and anxiety.

93. In August 2020, Jane experienced renewed anxiety over the approaching school year and again made a suicide attempt. Jane remains under psychiatric care and, in the absence of necessary accommodations, has been unable to resume her studies. At the age of 19, Jane has completed Grade 11.

The Plaintiffs' Assertions

94. The plaintiffs assert that the defendants owed a duty of care to Jane and further stood in a fiduciary position to her deepened by Jane's communication barriers as a deaf child of hearing

parents. They further had a duty to accommodate Jane's disabilities and provide an environment free from discrimination on the basis of sex and family status in the provision of her education.

95. The plaintiffs state that the acts and omissions of the defendants described in paragraphs 27 to 93 above, both inclusive, constitute negligence and breaches of fiduciary duty. In particular, they

- (a) they failed to act as a prudent parent in the school environment;
- (b) they knew that Jane was subject to bullying, harassment, sexual exploitation and assaults at school but failed to take steps to protect her;
- (c) they failed to implement and enforce safety plans to prevent harm to Jane;
- (d) they knew or ought to have known that certain students at school required supervision but they failed to supervise them;
- (e) they permitted Student E to remain unaccompanied at school when they knew or ought to have known that he was likely to cause harm to Jane and cause her to fear for her safety;
- (f) they unreasonably put Jane at risk;
- (g) they failed to properly investigate incidents or interview Jane;
- (h) they failed to accommodate Jane's had difficulty with self-advocacy;
- (i) they arbitrarily imposed a communication ban on Jane's Parents;
- (j) they knew or ought to have ought that Jane required accommodations in order to continue her education but failed to provide accommodations;

- (k) they restricted Jane's communications needed for safety purposes during the school day by failing to make an exception to the cell phone ban policy.
- (l) failed to provide a safe environment;
- (m) failed to supervise students generally;
- (n) failed to properly investigate incidents and take appropriate remedial steps;
- (o) withheld information from Jane's parents;
- (p) withheld and gave misleading information to the police;
- (q) withheld and gave misleading information to supervisory authorities in the Provincial and Demonstrations School Branch;
- (r) excluded Jane and Jane's Parents from discussions regarding her safety and accommodation;
- (s) failed to designate Jane as having multiple exceptionalities;
- (t) failed to provide appropriate educational and psychological supports;
- (u) failed to hold IRPC meetings to determine Jane's needs; and
- (v) failed to ensure compliance with the terms of the safety plan and the peace bond respecting Student E;
- (w) failed to comply with sections 300.2, 300.3 and 310 of the *Education Act*, RSO 1990, c E.2;
- (x) failed to comply with sections 18 to 20 of Regulation 296, RRO 1990, under the *Education Act*; and

(y) failed to comply with sections 7, 14 and 21 of Regulation 181/98 under the *Education Act*.

96. The plaintiffs further state that the acts and omissions of the defendants described in paragraphs 27 to 93 above, both inclusive, constitute discrimination on the basis of disability, sex and family status in the provision of services and facilities contrary to section 1 of the *Human Rights Code*.

97. The defendants' discrimination on the basis of disability arises from the failure or refusal to recognize Jane's disabilities and her multiple exceptionalities and to accommodate these needs in her education.

98. The defendants' discrimination on the basis of family status arises from the defendants' knowledge that both of Jane's Parents are hearing and therefore less able to communicate with Jane regarding her mistreatment at school and her need for greater accommodations. In the result, by failing to interview Jane in respect of incidents and other conduct, the defendants were able to disregard Jane's experiences and needs knowing that Jane's Parents would be less able to advocate for her.

99. The defendants' discrimination against Jane on the basis of sex arises from Student E's conduct toward Jane constituting, among other things, sexual harassment that was permitted to occur in the context of the defendants failing to establish and preserve an environment free from sexual harassment.

100. The plaintiffs further state that Jane's injuries and damages were further caused or contributed to by the negligence and discrimination of the Ministry of Education and the Provincial Schools Authority, particulars of which are as follows:

- (a) ~~it~~-they failed to ensure that ~~its~~-their members, employees and agents carried out their duties in a manner that reflects the needs of the students, in particular the need for the safety and well-being of the students;
- (b) ~~it~~-they failed to establish appropriate policies to ensure the safety and well-being of students at E. C. Drury School;
- (c) ~~it~~-they failed to enforce policies to ensure compliance with the *Education Act* and similar *Acts* and regulations;
- (d) ~~it~~-they failed to establish and enforce policies required to comply with the *Human Rights Code*;
- (e) ~~it~~-they failed to train ~~its~~-their employees and agents respecting their roles, duties and obligations towards students;
- (f) ~~it~~-they failed to provide accessible means for the reporting of incidents of violence and harassment without fear of reprisal;
- (g) ~~it~~-they permitted the creation of a culture of impunity in which incidents of violence and harassment were condoned and failed to take steps to remedy this;
- (h) ~~it~~-they permitted the creation of a poisoned educational environment and failed to take steps to remedy this;
- (i) they failed to investigate allegations of negligence and misconduct against ~~its~~ their employees and agents;
- (j) ~~it~~-they failed to train ~~its~~-their employees and agents respecting the needs of vulnerable populations; and

(k) ~~it~~ they failed to supervise ~~its~~ their employees and agents.

101. As a result of the defendants' negligence, breach of fiduciary duty and discrimination, Jane has suffered injuries and sustained damages including the following:

- (a) concussion and exacerbation of post-concussion symptoms;
- (b) other painful injuries affecting her body;
- (c) triggering and exacerbation of her post-traumatic stress disorder;
- (d) traumatic brain injury symptoms;
- (e) post-concussive syndrome;
- (f) frequent neurological phenomena;
- (g) adjustment disorder with disturbances of mood;
- (h) social anxiety disorder;
- (i) functionally debilitating anxiety disorder;
- (j) headaches;
- (k) fatigue;
- (l) depression;
- (m) significant anxiety;
- (n) increased stress;
- (o) loss of balance;
- (p) difficulty concentrating;

- (q) nausea;
- (r) suicide attempts;
- (s) suicidal ideation;
- (t) other self-harming behaviour;
- (u) light and noise sensitivity;
- (v) buzzing in the ears;
- (w) self-deprecation;
- (x) episodes of psychosis;
- (y) sleep difficulties;
- (z) nightmares;
- (aa) flashbacks;
- (bb) isolation;
- (cc) low self-esteem;
- (dd) increased hyperactivity and disinhibition;
- (ee) amplification of neurological episodes and physical symptoms caused by fear for safety at school;
- (ff) feelings of being misunderstood or disbelieved at school;
- (gg) injury to dignity, feelings and self-respect;
- (hh) demotivation and low energy;
- (ii) loss of enjoyment of life;

- (jj) loss of reputation;
- (kk) inability to attend school;
- (ll) delay of her academic progress;
- (mm) delay of her educational development;
- (nn) delays of diagnoses and treatment;
- (oo) loss of educational opportunities;
- (pp) loss of trust;
- (qq) past and future loss of income and earning capacity;
- (rr) expenses for medical and related treatment; and
- (ss) further out-of-pocket expenses, particulars of which will be provided prior to trial.

102. As a result of the injuries caused to Jane by virtue of the negligence of the defendants, Jane's Parents have sustained the following losses:

- (a) the loss of the guidance, care and companionship they would reasonably have expected but for the negligence of the defendants;
- (b) expenses incurred for the purpose of Jane's care;
- (c) travel expenses incurred in transporting Jane to hospital and visiting her during her treatment and recovery;
- (d) the value of the services rendered in providing nursing, housekeeping and other services to Jane; and

(e) special damages or a reasonable allowance for loss of income suffered as a result of ongoing nursing, housekeeping and other services to Jane.

103. Jane further seeks a declaration and mandatory orders in respect of the provision of educational services and facilities pursuant to section 46.2(1)(2) of the *Code*.

104. The plaintiffs plead and rely upon Part V of the *Family Law Act*, RSO 1990, c F.3.

105. The plaintiffs plead and rely upon the *Negligence Act*, RSO 1990, c N.1.

106. The plaintiffs plead and rely upon the *Education Act*, RSO 1990, c E.2 and the regulations made thereunder and the *Provincial Schools Authority Act*, RSO 1990, c P.35.

107. The plaintiffs plead and rely upon the *Human Rights Code*, RSO 1990, c H.19.

108. The plaintiffs state that the conduct of defendants Leonard, and Smith ~~and Potma~~ was highhanded, callous and arbitrary such that awards of punitive damages are warranted against them.

May 7, 2021

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ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

FURTHER AMENDED
AMENDED STATEMENT OF CLAIM

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