

IN THE CIRCUIT COURT OF TAYLOR COUNTY, WEST VIRGINIA

**WS, a minor, by and through
JUSTIN SHARP and
AMANDA SHARP, his parents
and next friends,**

Plaintiffs,

v.

Case No. 22-C- 15

**TAYLOR COUNTY BOARD OF EDUCATION,
SARA SIGLEY,
ELVIRA SUMMERS,
JESSICA AUSTIN, and
HEATHER SINCLAIR,**

Defendants.

CIRCUIT COURT
TAYLOR COUNTY
FILED

APR 25 2022

VONDA M. RENEMAN
CLERK

COMPLAINT

Introduction

1. Plaintiffs, WS, a minor, by and through Justin Sharp and Amanda Sharp, his parents and next friends, hereby bring this Complaint against Defendants, Taylor County Board of Education, Sara Sigley, Elvira Summers, Jessica Austin, and Heather Sinclair (hereinafter "Defendants"), for negligence, negligent training and supervision; violations of the West Virginia Human Rights Act, W. Va. Code § 5-11-1, *et seq.* (hereinafter "WVHRA"); and reckless infliction of emotional distress. WS, a 9-year-old student with special needs, was unlawfully, discriminatorily, and abusively restrained to a chair with a gait belt on September 29, 2021. For 22 exhausting minutes, WS tried desperately to free himself while his teacher ate lunch and his one-on-one aide sat at a table on the other side of the classroom. WS was freed after his physical therapist entered the classroom and questioned the restraint. There was no just cause for the restraint, and the required legal protocols for the use of restraints were disregarded.

Parties

2. Plaintiffs, Justin Sharp and Amanda Sharp, are citizens and residents of Grafton, West Virginia.

3. Plaintiff, WS, is a minor child who resides with his parents, Justin Sharp and Amanda Sharp, in Grafton, West Virginia. Because this case involves sensitive facts, the minor Plaintiff is being identified by his initials to protect his identity.

4. This Complaint is brought on WS's behalf by Justin Sharp and Amanda Sharp, his parents and next friends.

5. Defendant, Taylor County Board of Education (hereinafter "Taylor BOE"), is a political subdivision under West Virginia law and has its principal office located at 71 Utt Drive, Grafton, West Virginia.

6. Upon information and belief, Defendant, Sara Sigley (hereinafter "Sigley"), is a citizen and resident of Harrison County, West Virginia. Sigley was WS's Severe and Profound Special Education Teacher at the time of the events giving rise to this civil action.

7. Defendant, Elvira Summers (hereinafter "Summers"), is a citizen and resident of Taylor County, West Virginia. Summers was and continues to be WS's one-on-one special education classroom aide.

8. Defendant, Jessica Austin (hereinafter "Austin"), is a citizen and resident of Taylor County, West Virginia. Austin was and continues to be an aide for another special needs student in WS's special needs class.

9. Defendant, Heather Sinclair ("Sinclair") is a citizen and resident of Taylor County, West Virginia. Sinclair was and continues to be the Principal of Anna Jarvis Elementary School in Grafton, West Virginia.

Jurisdiction and Venue

10. Plaintiffs allege state law causes of action under the West Virginia common law and WVHRA. Plaintiffs do not allege a violation of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 728; the Americans with Disabilities Act, 42 U.S.C. §§ 12161 *et seq.*; 42 U.S.C. § 1983 of the Civil Rights Act; any other federal law or regulation; or failure to provide a free appropriate public education under the Regulations for the Education of Students with Exceptionalities, Policy 2419, 126 C.S.R. § 16.

11. The amount of Plaintiffs' damages exceeds the jurisdictional limits for claims filed in the Magistrate Court of Taylor County, West Virginia.

12. Venue is proper in this Court pursuant to the provisions of W. Va. Code § 56-1-1 because all Defendants reside in Taylor County, West Virginia, and because Plaintiffs' causes of action arose in Taylor County, West Virginia.

Factual Allegations

13. WS, a 9-year-old child, suffers from a Traumatic Brain Injury, Cortical Visual Impairment, Cerebral Palsy, Epilepsy, muscular/skeletal impairment, physical/orthopedic impairment, speech impairment, and vision impairment.

14. WS is dependent upon adult support and close supervision for most tasks.

15. WS regularly uses a wheelchair or a custom stander to move from place to place.

16. WS needs adult assistance in most transitions, such as on and off furniture and in and out of his wheelchair and custom stander.

17. WS's vocabulary is limited to approximately 25 words, such as mom, dad, this, ball, baby, and grass.

18. WS cannot speak in sentences.

19. Based upon his special needs, WS qualified for and was placed on an Individualized Education Program (hereinafter "IEP") by the Taylor BOE.

20. The specific IEP that was in effect at the time of the events giving rise to this Complaint was dated January 20, 2021.

21. The January 20, 2021 IEP did not provide for the use of any form of restraint on WS in any kind of situation or circumstance.

22. At all relevant times herein, WS was a third-grade student at Anna Jarvis Elementary School in Grafton, West Virginia.

23. Based upon his special needs, WS was placed in a special needs classroom with other special needs students.

24. During the 2019 legislative session, the West Virginia Legislature enacted W. Va. Code § 18-20-11, which required county board of education to place video cameras in "self-contained classrooms."¹

25. Pursuant to W. Va. Code § 18-20-11(e)(1), all video cameras placed in "self-contained classrooms" were statutorily required to be capable of:

- a. Monitoring all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes; and

¹ "'Self-contained classroom' means a classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy." W. Va. Code § 18-20-11(b)(2).

- b. Recording audio from all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes.

26. Contrary to the statutory requirements of W. Va. Code § 18-20-11, the video camera placed in WS's special needs classroom by the Taylor BOE was not capable of monitoring all areas of the special needs classroom, and it was not capable of recording any audio.

27. At around 12:49 p.m. on September 29, 2021, Sigley carried WS across his special needs classroom to sit him down in a chair.

28. After Sigley sat WS in a chair, Austin left the classroom and returned moments later with a gait belt.

29. Sigley and Austin then wrapped the gait belt tightly around WS's mid-section, which bound him to the chair.

30. There was no just cause for WS to be restrained and bound to a chair with a gait belt.

31. Immediately after being bound to the chair, WS tried desperately to get the gait belt loose from around his mid-section.

32. WS pulled and tugged on the gait belt.

33. When the gait belt did not loosen, WS grabbed the excess part of the gait belt and flipped it around furiously.

34. WS placed the excess part of the gait belt in his mouth, seemingly in a further struggle to free himself.

35. WS rocked back and forth in the chair, causing it to bounce up and down and slide across the floor.

36. WS was scared and upset.

37. After restraining WS to the chair, Sigley walked to a blue U-shaped table, sat down, and began eating her lunch.

38. Sigley remained seated at the table eating her lunch while WS struggled to get free from the restraint.

39. At one point, Sigley got up and walked out of the classroom, leaving WS completely unattended.

40. A few minutes after WS was strapped to the chair, Summers appeared from behind a sliding partition wall.

41. Summers brought another special needs student into the classroom, and then sat down at a table at the other end of the classroom.

42. It appeared that Summers was doing paperwork as she sat at the table.

43. Despite being his one-on-one aide, Summers did not attend to WS at any point while he was restrained and bound to the chair with the gait belt.

44. Approximately 15 minutes after being restrained in the chair, WS scooted the chair several feet backward and out of the frame of the video camera that was placed in his special needs classroom.

45. WS remained out of the video camera's view for several minutes.

46. Then, WS was moved back into the frame of the video camera by Austin.

47. A few second later, WS scooted his chair outside of the frame of the video camera a second time.

48. WS was again brought back into the video camera's view by Austin.

49. WS crossed his arms and began hopping up and down furiously, causing the chair to rock and lift up off the floor.

50. Luckily, the chair did not tip over.

51. Physical Therapist Cara Noonan entered the special needs classroom and gestured toward WS, appearing to question why WS was restrained to the chair.

52. The gait belt was finally removed a short time after Ms. Noonan entered the special needs classroom.

53. WS was restrained and bound to the chair for 22 minutes.

54. WS remained seated in the chair, unattended, after the gait belt was removed from around his mid-section.

55. WS again slid the chair across the floor.

56. Sigley approached WS, knelt down in front of him, and held the legs of the chair so WS could not slide the chair across the floor.

57. WS was visibly upset.

58. While WS was restrained to the chair, Sigley also restrained another special needs student who was attempting to interact with her while she was eating her lunch.

59. The restraint of the other special needs student lasted approximately 10 minutes.

60. Upon information and belief, Sinclair was verbally informed of WS's restraint on September 29, 2021.

61. WS was unable to tell his parents or anyone else about being restrained and bound to the chair by Sigley and Austin.

62. No effort was made to notify Justin Sharp or Amanda Sharp of WS's restraint on September 29, 2021.

63. Justin Sharp and Amanda Sharp were not notified of WS's restraint until October 4, 2021 – five (5) days after it occurred.

64. When Justin and Amanda Sharp were finally notified of the restraint, very few details were disclosed to them.

65. The West Virginia Department of Education, Office of Federal Programs and Support investigated the events surrounding WS's restraint on September 29, 2021.

66. By letter dated February 8, 2022, the West Virginia Department of Education, Office of Federal Programs and Support detailed its findings, which included 12 separate violations of state law, policy, and/or procedure with regard to the events that surrounded WS's restraint on September 29, 2021.

67. After his restraint on September 29, 2021, there were significant changes in WS's behavior at school.

68. The above actions of Sigley, Summers, Austin, and Sinclair were committed with a malicious purpose, in bad faith, and in a willful, wanton, reckless, and unjustifiable manner.

69. Sigley, Summers, Austin, and Sinclair demonstrated a disregard for the safety and well-being of WS.

70. As a direct and proximate result of the actions, omissions, and conduct described above, the Plaintiffs have suffered and will continue to suffer great physical, mental, psychological, and emotional injuries and damages.

COUNT I

Negligence – All Defendants

71. Plaintiffs restate and incorporate by reference each and every allegation contained in Paragraphs 1 through 70 of this Complaint as if the same were set forth fully herein.

72. The Defendants had a duty to demonstrate appropriate behavior.

73. The Defendants had a duty to treat WS with civility, courtesy, and respect.

74. The Defendants had a duty to create and maintain a safe and orderly learning environment.

75. The Defendants had a duty to keep and maintain a classroom that is free from harassment, intimidation, bullying, abuse, discrimination, and other inappropriate forms of conduct.

76. The Defendants had a duty to protect WS from harassment, intimidation, bullying, abuse, discrimination, and other inappropriate forms of conduct.

77. The Defendants had a duty to exercise reasonable care in handling and responding to WS's special needs.

78. The Defendants had a duty to act in a professional and sensitive manner in addressing WS's special needs.

79. The Defendants had a duty to stand in *loco parentis* to WS.

80. The Defendants had a duty to comply with West Virginia Board of Education Policy 4373, Expected Behavior in Safe and Supportive Schools, Chapter 2, Section 5.

81. The Defendants had a duty to avoid using physical restraint on WS except when it was absolutely necessary to prevent WS from hurting himself or any other person or property.

82. The Defendants had a duty to use behavior interventions and support practices

prior to using physical restraint on WS.

83. When using physical restraint on WS, the Defendants had a duty to:
- a. limit the restraint to the use of such reasonable force as necessary to address the emergency;
 - b. discontinue the restraint at the point at which the emergency no longer exists
 - c. implement the restraint in such a way as to protect the health and safety of WS; and
 - d. not deprive WS of basic human necessities.

84. The Defendants had a duty to avoid using a mechanical restraint – *i.e.*, a gait belt – on WS as an intervention or consequence for inappropriate behavior.

85. Within one (1) hour of WS's restraint on September 29, 2021, Sigley, Summers, and Austin had a duty to provide Sinclair or her designee with a verbal and written description of the restraint used.

86. The same day as the restraint, Sinclair and/or the Taylor BOE had a duty to make a good-faith effort to verbally notify WS's parents of the restraint processed used.

87. Within one (1) school day, Sinclair and/or the Taylor BOE had a duty to provide a written notification of the use of restraint to WS's parents and include the notification in WS's official school record.

88. The Defendants had a duty to comprehensively document the use of restraint on WS, including:

- a. name of the student;
- b. name of the staff member(s) administering the restraint;

- c. date of the restraint and the time the restraint began and ended;
- d. location of the restraint;
- e. narrative that describes antecedents, triggers, problem behavior(s), rationale for application of the restraint, and the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
- f. documentation of all parental/guardian contact and notification efforts.

89. The Defendants breached their duty by failing to demonstrate appropriate behavior.

90. The Defendants breached their duty by failing to treat WS with civility, courtesy, and respect.

91. The Defendants breached their duty by failing to create and maintain a safe and orderly learning environment.

92. The Defendants breached their duty by failing to keep and maintain a classroom that is free from harassment, intimidation, bullying, abuse, discrimination, and other inappropriate forms of conduct.

93. The Defendants breached their duty by failing to protect WS from harassment, intimidation, bullying, abuse, discrimination, and other inappropriate forms of conduct.

94. The Defendants breached their duty by failing to exercise reasonable care in handling and responding to WS's special needs.

95. The Defendants breached their duty by failing to act in a professional and sensitive manner in addressing WS's special needs.

96. The Defendants breached their duty by failing to stand in *loco parentis* to WS.

97. The Defendants breached their duty by failing to comply with West Virginia Board of Education Policy 4373, Expected Behavior in Safe and Supportive Schools, Chapter 2, Section 5.

98. The Defendants breached their duty by using physical restraint on WS when it was not absolutely necessary to prevent WS from hurting himself or any other person or property.

99. The Defendants breached their duty by failing to use behavior interventions and support practices prior to using physical restraint on WS.

100. The Defendants breached their duty when using physical restraint on WS by failing to:

- a. limit the restraint to the use of such reasonable force as necessary to address the emergency;
- b. discontinue the restraint at the point at which the emergency no longer exists
- c. implement the restraint in such a way as to protect the health and safety of WS; and
- d. not deprive WS of basic human necessities.

101. The Defendants breached their duty by using a mechanical restraint – *i.e.*, a gait belt – on WS as an intervention or consequence for inappropriate behavior.

102. Sigley, Summers, and Austin breached their duty by failing to provide Sinclair or her designee with a verbal and written description of the restraint used within one (1) hour of WS's restraint on September 29, 2021

103. Sinclair and/or the Taylor BOE breached their duty by failing to make a

good-faith effort to verbally notify WS's parents of the restraint processed used on the same day of the restraint.

104. Sinclair and/or the Taylor BOE breached their duty by failing to provide a written notification of the use of restraint to WS's parents and include the notification in WS's official school record within one (1) school day.

105. The Defendants breached their duty by failing to comprehensively document the use of restraint on WS, including:

- a. name of the student;
- b. name of the staff member(s) administering the restraint;
- c. date of the restraint and the time the restraint began and ended;
- d. location of the restraint;
- e. narrative that describes antecedents, triggers, problem behavior(s), rationale for application of the restraint, and the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
- f. documentation of all parental/guardian contact and notification efforts.

106. Sigley, Summers, Austin, and Sinclair's actions were committed with a malicious purpose, in bad faith, and in a willful, wanton, reckless, and unjustifiable manner.

107. Sigley, Summers, Austin, and Sinclair demonstrated a disregard for the safety and well-being of WS.

108. The Taylor BOE is liable for the actions of Sigley, Summers, Austin, and Sinclair pursuant to W. Va. Code § 29-12A-4(c).

109. As a direct and proximate result of the actions, omissions, and conduct described

above, the Plaintiffs have suffered and will continue to suffer great physical, mental, psychological, and emotional injuries and damages.

COUNT II

Negligent Training & Supervision– Taylor BOE

110. Plaintiffs restate and incorporate by reference each and every allegation contained in Paragraphs 1 through 109 of this Complaint as if the same were set forth fully herein.

111. The Taylor BOE had a duty to train and supervise Sigley, Summers, and Austin to ensure that they were suitable and fit to be in a special needs classroom.

112. The Taylor BOE had a duty to train and supervise Sigley, Summers, and Austin to ensure that they kept and maintained a safe and orderly learning environment in WS's special needs classroom.

113. The Taylor BOE had a duty to train and supervise Sigley, Summers, and Austin to ensure that they treated WS with civility, courtesy, and respect.

114. The Taylor BOE had a duty to train and supervise Sigley, Summers, and Austin to ensure that they exercised reasonable care in handling and responding to WS's special needs.

115. The Taylor BOE had a duty to train and supervise Sigley, Summers, and Austin to ensure that they acted in a professional and sensitive manner in addressing WS's special needs.

116. The Taylor BOE had a duty to train and supervise Sigley, Summers, and Austin to ensure that they complied with West Virginia Board of Education Policy 4373, Expected Behavior in Safe and Supportive Schools, Chapter 2, Section 5.

117. The Taylor BOE had a duty to annually train, oversee, and supervise Sigley, Summers, and Austin in the use of a nationally recognized restraint process.

118. The Taylor BOE had a duty to annually train, oversee, and supervise Sigley,

Summers, and Austin in the current professionally accepted practices and standards regarding behavior interventions and supports including prevention and de-escalation techniques.

119. The Taylor BOE had a duty to train and supervise Sigley, Summers, and Austin to ensure that they complied with the anti-discrimination laws as embodied within the WVHRA.

120. The Taylor BOE breached its duty by failing to train and supervise Sigley, Summers, and Austin to ensure that they were suitable and fit to be in a special needs classroom.

121. The Taylor BOE breached its duty by failing to train and supervise Sigley, Summers, and Austin to ensure that they kept and maintained a safe and orderly learning environment in WS's special needs classroom.

122. The Taylor BOE breached its duty by failing to train and to supervise Sigley, Summers, and Austin to ensure that they treated WS with civility, courtesy, and respect.

123. The Taylor BOE breached its duty by failing to train and supervise Sigley, Summers, and Austin to ensure that they exercised reasonable care in handling and responding to WS's special needs.

124. The Taylor BOE breached its duty by failing to train and supervise Sigley, Summers, and Austin to ensure that they acted in a professional and sensitive manner in addressing WS's special needs.

125. The Taylor BOE breached its duty by failing to train and supervise Sigley, Summers, and Austin to ensure that they complied with West Virginia Board of Education Policy 4373, Expected Behavior in Safe and Supportive Schools, Chapter 2, Section 5.

126. The Taylor BOE breached its duty by failing to train, oversee, and supervise the annual training of Sigley, Summers, and Austin in the use of a nationally recognized restraint process

127. The Taylor BOE breached its duty by failing to train, oversee, and supervise the annual training of Sigley, Summers, and Austin in the current professionally accepted practices and standards regarding behavior interventions and supports including prevention and de-escalation techniques.

128. The Taylor BOE breached its duty by failing to train and supervise Sigley, Summers, and Austin to ensure that they complied with the anti-discrimination laws as embodied within the WVHRA.

129. As a direct and proximate result of the actions, omissions, and conduct described above, the Plaintiffs have suffered and will continue to suffer great physical, mental, psychological, and emotional injuries and damages.

COUNT III

Violation of WVHRA – All Defendants

130. Plaintiffs restate and incorporate by reference each and every allegation contained in Paragraphs 1 through 129 of this Complaint as if the same were set forth fully herein.

131. The Taylor BOE, Sigley, Summers, Austin, and Sinclair are all a “person” within the meaning of W. Va. Code § 5-11-3(a).

132. Anna Jarvis Elementary School is a “place of public accommodations” within the meaning of W. Va. Code § 5-11-3(j).

133. WS’s various special needs qualify as a “disability” within the meaning of W. Va. Code § 5-11-3(m).

134. WS is a qualified person with a disability.

135. At all relevant times herein, the Taylor BOE, Sigley, Summers, Austin, and Sinclair were aware of WS’s disability and special needs.

136. The Taylor BOE, Sigley, Summers, Austin, and Sinclair discriminated against WS based upon his disability.

137. WS attempted to avail himself to the accommodations, advantages, facilities, privileges, and services of Taylor County Schools.

138. The accommodations, advantages, facilities, privileges, and services of Taylor County Schools were withheld, denied, and refused to WS based upon his disability.

139. The Taylor BOE, Sigley, Summers, Austin, and Sinclair violated the anti-discrimination laws as embodied within the WVHRA.

140. Sigley, Summers, Austin, and Sinclair actions were committed with a malicious purpose, in bad faith, and in a willful, wanton, reckless, and unjustifiable manner.

141. Sigley, Summers, Austin, and Sinclair demonstrated a disregard for the safety and well-being of WS.

142. The Taylor BOE is liable for the actions of Sigley, Summers, Austin, and Sinclair pursuant to W. Va. Code § 29-12A-4(c).

143. As a direct and proximate result of the actions, omissions, and conduct described above, the Plaintiffs have suffered and will continue to suffer great physical, mental, psychological, and emotional injuries and damages.

COUNT IV

Reckless Infliction of Emotional Distress – All Defendants

144. Plaintiffs restate and incorporate by reference each and every allegation contained in Paragraphs 1 through 143 of this Complaint as if the same were set forth fully herein.

145. The conduct of the Taylor BOE, Sigley, Summers, Austin, and Sinclair, as described above, was atrocious, utterly intolerable in a civilized educational community, and so

extreme and outrageous as to exceed all possible bounds of decency.

146. The Taylor BOE, Sigley, Summers, Austin, and Sinclair acted recklessly when they were certain that such distress would result from such conduct.

147. The actions of the Taylor BOE, Sigley, Summers, Austin, and Sinclair caused the Plaintiffs to suffer emotion distress.

148. The emotional distress suffered by the Plaintiffs was so severe that no reasonable person could be expected to endure it.

149. Sigley, Summers, Austin, and Sinclair actions were committed with a malicious purpose, in bad faith, and in a willful, wanton, reckless, and unjustifiable manner.

150. Sigley, Summers, Austin, and Sinclair demonstrated a disregard for the safety and well-being of WS.

151. The Taylor BOE is liable for the actions of Sigley, Summers, Austin, and Sinclair pursuant to W. Va. Code § 29-12A-4(c).

152. As a direct and proximate result of the actions, omissions, and conduct described above, the Plaintiffs have suffered and will continue to suffer great physical, mental, psychological, and emotional injuries and damages.

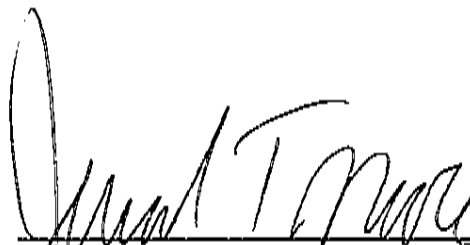
WHEREFORE, Plaintiffs, WS, Justin Sharp, and Amanda Sharp, demand judgment against the Defendants, jointly and severally, for the following damages:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages against Sigley, Summers, Austin, and Sinclair in an amount to be determined by a jury;
- c. Pre-judgment and post-judgment interest as provided under West Virginia law;
- d. Costs, including reasonable attorney's fees, in the prosecution of this matter; and

e. Such other and further relief as this Court and/or a jury deems fair, just, and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY!

WS, a minor, by and through Justin Sharp
and Amanda Sharp, his parents and next
friends,
By Counsel,



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