

NO. _____

JEFFERSON CIRCUIT COURT
DIVISION _____

SHERITA SMITH, ADMINISTRATOR OF THE
ESTATE OF TYREE SMITH

PLAINTIFFS

and

SHERITA SMITH, INDIVIDUALLY

vs.

COMPLAINT
electronically filed

DR. MARTIN POLLIO, in his individual capacity and for negligent ministerial acts and/or
discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Dr. Martin Pollio
3332 Newburg Road
Louisville, Kentucky 40218

MARCUS DOBBS in his individual capacity and for negligent ministerial acts and/or
discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Marcus Dobbs
3001 Crittenden Drive
Louisville, Kentucky 40209

DR. HEATHER ORMAN, in her individual capacity and for negligent ministerial acts and/or
discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Dr. Heather Orman
Eastern High School
12400 Old Shelbyville Road
Louisville, Kentucky 40243

ELISA HANLEY, in her individual capacity and for negligent ministerial acts and/or
discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Elisa Hanley
Kentucky Department of Education
300 Sower Blvd. #5
Frankfort, Kentucky 40601

STEVEN HAWES, in his individual capacity and for negligent ministerial acts and/or discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Steven Hawes
Eastern High School
12400 Old Shelbyville Road
Louisville, Kentucky 40243

DR. GREGORY HERBERGER, in his individual capacity and for negligent ministerial acts and/or discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Dr. Gregory Herberger
Eastern High School
12400 Old Shelbyville Road
Louisville, Kentucky 40243

JOYE KEELEY, in her individual capacity and for negligent ministerial acts and/or discretionary acts performed in bad faith acting in her capacity as an agent of JCBE/JCPS

SERVE: Joye Keeley
C.B. Young Jr. Service Center
3001 Crittenden Drive
Louisville, Kentucky 40209

LT. STAN MULLEN, in his individual capacity and for negligent ministerial acts and/or discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Lt. Stan Mullen
C.B. Young Jr. Service Center
3001 Crittenden Drive
Louisville, Kentucky 40209

KEN STITES, in his individual capacity and for negligent ministerial acts and/or discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Ken Stites
C.B. Young Jr. Service Center
3001 Crittenden Drive
Louisville, Kentucky 40209

and

CHRIS PERKINS, in his individual capacity and for negligent ministerial acts and/or discretionary acts performed in bad faith acting in his capacity as an agent of JCBE/JCPS

SERVE: Chris Perkins
C.B. Young Jr. Service Center
3001 Crittenden Drive
Louisville, Kentucky 40209

DEFENDANTS

Come the Plaintiffs, Sherita Smith, Administrator of the Estate of Tyree Smith, and Sherita Smith, individually, by counsel, and for their Complaint against Defendants, state as follows:

JURISDICTION AND VENUE

1. Plaintiff Sherita Smith is an adult resident of Jefferson County, Kentucky. Ms. Smith is the mother of Tyree Smith (“Tyree”), deceased. At the time of his death, Tyree was a student at Eastern High School. Ms. Smith was appointed Administrator of the Estate of her son Tyree by Order of the Jefferson County District Judge, Probate Division, on February 21, 2022. *Tab A.*

2. Defendant Dr. Martin Pollio (“Dr. Pollio”) was at all times relevant to this Complaint a resident of Jefferson County, Kentucky, employed by Jefferson County Board of Education (“JCBE”) as superintendent of Jefferson County Public Schools (“JCPS”). JCBE, by and through employees and agents, is responsible for developing, approving, and implementing policies and procedures applicable to JCPS. Among other things, JCBE is responsible for enforcing policies and procedures and ensuring compliance with state and federal laws and regulations related to student safety.

3. Defendant Dr. Heather Orman (“Dr. Orman”) was at all times relevant to this Complaint a resident of Jefferson County, Kentucky, employed by JCBE in the position of Principal of Eastern High School.

4. Defendant Elisa Hanley (“Ms. Hanley”) was at all times relevant to this Complaint a resident of Franklin County, Kentucky, employed by the Kentucky Department of Education (“KDE”) in the position of Manager of Pupil Transportation. Ms. Hanley acted as a liaison for KDE with JCBE/JCPS for matters involving student safety and security.

5. Defendant Steven Hawes (“Mr. Hawes”) was at all times relevant to this Complaint a resident of Jefferson County, Kentucky, employed by JCBE as Assistant Principal of Eastern High School in Jefferson County, Kentucky.

6. Defendant Gregory Herberger (“Mr. Herberger”) was at all times relevant to this Complaint a resident of Jefferson County, Kentucky, employed by JCBE as Assistant Principal of Eastern High School in Jefferson County, Kentucky.

7. Defendant Joye Keeley (“Ms. Keeley”) was at all times relevant to this Complaint a resident of Jefferson County, Kentucky, employed by JCBE in the position of JCPS’ Captain of Security and Investigations in Jefferson County, Kentucky.

8. Defendant Stan Mullen (“Mr. Mullen”) was at all times relevant to this Complaint a resident of Jefferson County, Kentucky, employed by JCBE as JCPS’ Executive Administrator of Security and Investigations in Jefferson County, Kentucky.

9. Defendant Ken Stites (“Mr. Stites”) was at all times relevant to this Complaint a resident of Jefferson County, Kentucky, employed by JCBE in the position of JCPS’ Transportation Specialist in Jefferson County, Kentucky.

10. Defendant Chris Perkins (“Mr. Perkins”) was at all times relevant to this Complaint a resident of Jefferson County, Kentucky, employed by JCBE in the position of JCPS’ Chief Operations Officer.

11. The Defendants are named in their individual capacity and for negligent ministerial acts and/or discretionary acts performed in bad faith acting under color of their authority as employees and/or agents of JCBE/JCPS. Such acts performed by a government employee do not enjoy immunity.

12. Venue is proper in this Court because the events at issue occurred in Jefferson County and most parties reside in Jefferson County, Kentucky.

13. All amounts claimed exceed the minimum jurisdictional limits of this Court.

FACTS

14. Defendants name herein were individually and collectively responsible for JCPS students' lives and safety while at JCPS school bus stops during the school year 2021-2022.

15. At the beginning of the JCPS school year beginning in August 2021, Defendants were aware of gang activity within the JCPS school system and specifically aware of gang activity amongst pupils who attended Eastern High School. Defendants were aware of threats of shooting and violence made between these gangs at JCPS schools.

16. The Defendants became aware of threats made targeting the JCPS bus stops for Eastern High School Bus # 2080. Defendants were aware of specific threats of shootings at Bus # 2080's stops.

17. On or before August 26, 2021, Defendant Dr. Herberger informed Defendant Lt. Mullen that a JCPS student threatened to shoot another JCPS student at JCPS Bus #2080 stop at 24th and Jefferson Street. Both students rode Bus #2080. Dr. Herberger warned the parent of the targeted student.

18. No Defendant warned the parents of the other JCPS students who waited at Bus # 2080 stops and rode Bus #2080 that there were threats of shootings at the bus stops. Defendants failed to implement any safety or security measures at any of the stops along Bus # 2080's route.

19. On September 2, 2021, a gang related fight broke out among JCPS students at Eastern High School's bus depot when students from Bus #2080 confronted a student from another bus. Barry Goodall, a veteran JCBE employee in charge of security at Eastern High School, attempted to deescalate the fight. A student attacked Mr. Goodall, which resulted in Mr. Goodall informing JCPS that he no longer felt safe at his workplace.

20. On information and belief, one of the Eastern High School students involved in the gang related altercation on September 2, 2021, rode Bus # 2080 and typically got on and off the bus at the JCPS bus stop on 21st and Chestnut. It is believed that this JCPS student was the primary target of the threats of shooting at Bus # 2080 stops.

21. On September 7, 2021, Eastern High School students walking to Bus # 2080 stop at Chestnut and 21st Street were confronted by men who fired shots as they fled. The students reported the shooting to JCBE employees at Eastern High School. All Defendants were aware of the shooting, but no Defendant warned the parents of students who waited at this bus stop and/or rode Bus #2080. Once again, Defendants failed to implement safety or security measures at any of the stops along Bus # 2080's route, including the two stops that had been specifically targeted.

22. In the early morning hours of September 22, 2021, several JCPS students were waiting for JCPS Bus # 2080 at 21st and Chestnut when a car drove by the bus stop and began firing at the children. The children ran for cover, but three children were shot. Sixteen-year-old Tyree Smith was among the children who were shot. Tyree died later that day from gunshot wounds to his abdomen and flank.

23. Defendants knew and/or should have known about the repeated threats of shooting violence directed at the stops along JCPS Bus # 2080. Defendants knew and/or should have known that these threats created a dangerous environment for children, especially children assigned to the JCPS bus stop located at 21st and Chestnut.

24. Prior to Tyree's murder, Defendants had direct knowledge of threats to shoot a target child at the bus stop on 21st and Chestnut and failed to take safety reasonable measures or issue adequate warnings.

25. Defendants failed to follow policies and procedures meant to provide a safe environment for children who must wait at JCPS bus stops in order to go to school.

26. Defendants failed to adequately warn students and parents of the foreseeable danger of violence at the JCPS bus stop and failed to protect JCPS students of foreseeable violence. Among other failures, Defendants failed to provide surveillance and/or security at the targeted bus stop, failed to move the bus stop, and failed to get adequate help, intervention, or security from JCPS or from LMPD.

27. After Tyree was murdered, JCPS moved the 21st and Chestnut bus stop, something that could have and should have been done prior to Tyree's death.

28. The acts and/or omissions of Defendants as described herein were substantial factors in causing Tyree's suffering and death, as well as medical and funeral expenses. The Defendants' acts and omissions have caused his mother Sherita to endure, severe mental anguish and the loss of the love and affection of her son.

29. Each act or failure to act of Defendants is a substantial factor in causing damages to Plaintiff as a result of the injuries as set forth herein.

30. Plaintiff's damages are in excess of the minimum amount necessary to establish the jurisdiction of this court.

COUNT ONE
NEGLIGENCE

31. The preceding allegations of this Complaint are reiterated and incorporated herein by reference as if fully set forth in this Count.

32. Defendants owed JCPS children, including Tyree, a duty to exercise reasonable care to prevent violence, injuries, and death to students. These Defendants violated the reasonable standard of care and as a result, Tyree was killed.

33. The conduct, actions, and omissions of these Defendants, jointly and individually, breached this duty and constituted negligence.

34. The Defendants failed to follow and/or enforce policies in a negligent manner.

35. The Defendants' negligent actions/inactions were performed within the scope of their employment with JCPS.

36. The Defendants' actions/inactions involved negligent ministerial acts and/or discretionary acts done in bad faith.

37. The conduct, actions and omissions of Defendants were substantial factors in causing the injuries to Plaintiff set forth herein.

38. Defendants are liable to Plaintiffs for damages as described above in an amount to be determined by the jury.

COUNT TWO
PREMISES LIABILITY

39. The preceding allegations of this Complaint are reiterated and incorporated herein by reference as if fully set forth in this Count.

40. Defendants were in control of the bus stop that Tyree and other JCPS students were assigned to.

41. Defendants owed the children including Tyree a duty to reasonably provide for the welfare and safety of JCPS children while waiting for the JCPS school bus.

42. Defendants had actual knowledge that the JCPS bus stop where Tyree was killed was unreasonably dangerous prior to Tyree's death. The violence that caused Tyree's death was foreseeable to Defendants.

43. The conduct, actions, and omissions of Defendants, jointly and individually, breached their duty and constituted negligence.

44. The conduct, actions, and omissions of Defendants were substantial factors in causing Tyree's death and the damages claimed herein.

45. Defendants are liable to Plaintiffs for these damages in an amount to be determined by the jury.

COUNT THREE
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AND OUTRAGEOUS CONDUCT

46. The preceding allegations of this Complaint are reiterated and incorporated herein by reference as if fully set forth in this Count.

47. The actions and failures to act of Defendants constitute intentional infliction of emotional distress and the tort of outrage and were a substantial factor in causing Tyree's death and Plaintiffs' damages claimed herein.

48. Defendants are liable to Plaintiffs for these damages in an amount to be determined by the jury.

COUNT FOUR

PUNITIVE DAMAGES

49. The preceding allegations of this Complaint are reiterated and incorporated herein by reference as if fully set forth in this Court.

50. Defendants acted with gross negligence and reckless disregard for the safety of the JCPS children at the bus stop, including Tyree Smith.

51. The negligence and gross negligence of the Defendants was a substantial factor in causing or contributing to Tyree's injuries and death.

WHEREFORE, Plaintiffs demand Judgment against Defendants for such amounts as will fairly and reasonably compensate for Tyree's pain and suffering, medical expenses, the loss to Tyree's Estate caused by his untimely death, funeral and burial expenses, loss of consortium compensation for his mother, reasonable compensatory and punitive damages. Plaintiffs also demand their costs herein including reasonable attorneys' fees; prejudgment and post judgment interest; a trial by jury; and for all other relief to which they may appear properly entitled.

Respectfully Submitted,

/s/ Kirsten Daniel

Kirsten Daniel, KY Bar #85288

Stephanie Rivas, KY Bar # 97536

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