

3. Derek Dutton is an adult resident of Sussex County in Delaware.
4. Superintendent Robert Fulton is an adult resident of Sussex County in Delaware.
5. Principal Nikki Miller is an adult resident of Sussex County in Delaware.
6. Brian Donahue is an adult resident of Sussex County in Delaware.

STATEMENT OF FACTS

7. At all times relevant to this lawsuit, Theresa Collins and K.C. were students attending Cape Henlopen School District in Sussex County, Delaware.

Actual Notice of Inappropriate Conduct and Sexual Harassment of Staff and Students

8. At all times material hereto, Derek Dutton was a staff member and agent/and/or employee of Cape Henlopen School District. Upon information and belief, he was not a licensed educator at all relevant times hereto.
9. Upon information and belief, in December 2011, a student complained to the Board that Derek Dutton called him a “pathetic a...hole.”
10. In October 2014, a 20 year old female intern for Ms. Martha Pfeiffer, Cape Henlopen School District theater director, was working in the theater. When she entered the theater, she told Derek Dutton that she had just gotten toilet water on her blouse. He replied to her “Well, you know we all like you better when you’re wet” and then winked at the female intern.
11. The female intern reported this to Ms. Pfeiffer, who told her she must report this to the School District.

12. Shortly thereafter, in October 2014 the female intern met with the principal of Cape Henlopen High School, Defendant Mr. Brian Donahue and told him what Mr. Dutton had said to her about liking her when she was wet.
13. Mr. Brian Donahue scoffed and rolled his eyes at the female intern.
14. Upon information and belief, Mr. Brian Donahue as Principal had authority to take corrective action and an opportunity to rectify the situation.
15. Upon information and belief, no one from the Defendant School District took any action in response to this complaint.
16. In or around October 2014 Superintendent Fulton was informed by Ms. Pfeiffer that Derek Dutton had anger issues and was scary. He indicated to her that he had heard this from others as well.
17. In or around October 2014, the Board and Superintendent Fulton became aware that Derek Dutton had made a slur about Jewish people directed to a Jewish student.
18. On or around November, 2014, members of the Board and then-Superintendent Fulton were made aware by theater teacher Martha Pfeiffer that the complaint by the intern had been made about Derek Dutton.
19. On or around November 2014, they were also made aware by Ms. Pfeiffer that Derek Dutton had called a red-headed student “firey,”
20. On March 9, 2015, Derek Dutton said to a female high school Senior, while she was preparing a monologue for a Shakespeare competition, “How good do you f.k?”
21. Upon information and belief, on April 20, 2015, Derek Dutton threw a power drill at a student, coming within an inch of hitting his head. Theresa Collins, then a 17 year

old junior at Cape Henlopen High School in Delaware, along with several other students were frightened by his violent acts and reported to Vice Principal Mr. Dmitchic to file a complaint. Mr. Dutton returned to the theater that morning.

22. On April 22, 2015, Theresa Collins, then a 17 year old junior at Cape Henlopen High School in Delaware, walked into the Cape Henlopen High School Theater to rehearse choreography for the school's upcoming production of *Anything Goes*. Theresa was wearing her mother's acid-washed jeans.
23. Derek Dutton then reached down the back of Theresa's jeans, coming into contact with Theresa's buttocks and underwear. It caused Theresa to feel unsafe, and she went to her car and cried. This constituted unlawful sexual contact.
24. On May 12, 2015, both the female high school Senior and Theresa Collins filed separate incident reports to report the March 9, 2015 and April 22, 2015 incidents.
25. On May 13, 2015, both students met with then Assistant Principal Defendant Principal Nikki Miller.
26. Defendant Miller assured the students, including Plaintiff Theresa Collins, that the matter would be taken care of and police contacted.
27. On May 15, 2015 Plaintiff Theresa Collins told her parents, Virginia and Stephen Collins, about the unlawful sexual contact perpetrated upon her by Derek Dutton.
28. Virginia and Stephen Collins contacted then Vice-Principal now Defendant Principal Nikki Miller and were told the incident was being taken care of. After some time, they also contacted then Principal Defendant Brian Donahue. Defendant Donahue assured Theresa's parents that he had turned everything over to Superintendent Robert Fulton and that it would be taken care of.

29. Subsequently Virginia and Stephen Collins went to Superintendent Fulton to complain to them about the incident. He assured them that he was in the process of investigating and that Derek Dutton would not be allowed on campus while students were present.
30. On October 14, 2015, then a Senior, Plaintiff Theresa Collins encountered Derek Dutton in the Cape Henlopen High School parking lot when walking to her car after school. She was disturbed, shaken and shocked. She turned white and pale with surprise.
31. Theresa Collins told her parents about encountering Derek Dutton on school property, and Virginia Collins then reported this to Superintendent Fulton. He told Virginia that he was going to contact the administration of the high school to find out why Derek Dutton was there. Superintendent Fulton assured Virginia and her husband that he was in the process of investigating the situation, and that Mr. Dutton would not be allowed on campus while students were present. They were assured by Superintendent Fulton that Mr. Dutton would not be allowed on campus while students were present.
32. In December 2015, Martha Pfeiffer advised a Board member that Derek Dutton was still working in the theater building and that he had ran into Theresa Collins and this upset her.
33. On December 15, 2015, Martha Pfeiffer emailed then Principal Brian Donahue that she was concerned because she believed Derek Dutton would be present at an after school rehearsal for a school function.

34. On December 17, 2015, on their way to a parent-teacher conference, Virginia and Stephen Collins again encountered Derek Dutton working in the theater, while students were present.
35. On January 26, 2017, Virginia and Stephen Collins wrote a letter to the Cape Henlopen School Board notifying them that Derek Dutton was still allowed to work on school property while students were present, despite the previous reports of inappropriate behavior.
36. On December 12, 2017, K.C., then a minor in her junior year, encountered Derek Dutton working in the theater while students were present. K.C. complained to theater teacher Sadie Andros about how Derek Dutton had violated her sister and that she felt uncomfortable around him.
37. On March 7, 2018, K.C. again encountered Derek Dutton while in the theater with other students present. Ms. Andros was aware of this and knew it made K.C. uncomfortable because of what he had done to Theresa Collins.
38. Virginia and Stephen Collins requested a meeting with K.C.'s guidance counselor, the theater director, and then Defendant Principal Miller. Virginia and Stephen Collins explained that K.C. was withdrawing from the theater program because she no longer felt safe with Derek Dutton permitted on the school property and having to see him, knowing what he had done to Theresa Collins.
39. In April 2018 Master Corporal Tim Wolansky told the Collins that after searching school records, neither of the girls' (Theresa Collins nor the female high school student) initial complaints regarding Derek Dutton could be located.

40. Upon information and belief, Defendant the Board and its agents, including Defendants Fulton, Miller, and Donahue, took no action to investigate the complaint.
41. Upon information and belief, Defendant the Board and its agents, including Defendants Fulton, Miller, and Donahue, took no action to report any incidents of sexual abuse by Dutton to the Division of Child Protective Services.
42. The Delaware State Police confirmed that the Board and its agents, including Defendants Fulton, Miller, and Donahue, did not report any incidents of sexual abuse by Dutton to it, as required by Delaware state law, 16 Del. C. § 901, *et seq.*
43. Defendant the Board and its agents, including Defendants Fulton, Miller, and Donahue, took inadequate action to investigate the complaints and respond to the notice of sexual misconduct.
44. For example, Martha Pfeiffer, the theater teacher at the time, who shared an office with Dutton and in whose classroom Dutton regularly spent time, was not interviewed by anyone regarding Dutton.
45. School officials' response, and/or lack of response, to notice of sexual misconduct was clearly unreasonable in light of the known circumstances.
46. As a result of sexual harassment and assault, Theresa Collins and K.C. were deprived of access to the educational opportunities and benefits at Cape Henlopen School District, and suffered physical and emotional pain and suffering, distress, humiliation, anxiety, and other personal injuries.
47. This is a foreseeable harm of the Board and its agents, including Defendants Fulton, Miller, and Donahue's, failure to take any meaningful action in response to the complaint, or to take any corrective action.

COUNT I – Against the Board

(Violation of Title IX, Education Amendments of 1972 - 20 U.S.C. §1681 et seq.) 16.

48. Plaintiffs repeat and re-allege the foregoing paragraphs.
49. At all relevant times, upon information and belief, the education programs or activities at Cape Henlopen School District received federal financial assistance.
50. Theresa Collins and K.C. had a right to not be subject to sexual abuse while they participated in The Cape Henlopen School District's education programs or activities.
51. Superintendent Robert Fulton, Principal Brian Donahue, and Assistant Principal Nikki Miller, and the Board had actual notice of {i) the sexual harassment and assault suffered by Theresa Collins and others at school. Fulton, Donahue, and Miller had authority to institute investigative and corrective measures in response to her and her parents' complaints.
52. Upon information and belief, the decisions of Fulton, Donahue, Miller, and the Board after receipt of actual notice were official decisions to ignore the sexual harassments and assaults.
53. Upon information and belief, in response to actual notice, the Board could have instituted corrective measures including but not limited to: (i) reporting of sexual harassment and sexual abuse of a minor to the police; (ii) investigation of complaints and advising plaintiffs and their parents of the outcome; (iii) implementing protocols to assure that Derek Dutton would not come into contact with plaintiffs, her student sister, or other students or employees and communicating those to plaintiffs and their parents, especially when it was and/or should have been

clear to any reasonable school official that contact with Derek Dutton at school, or the apprehension of the same, would cause plaintiffs further harm; (iv) any such other action reasonably intended or designed to protect plaintiffs.

54. Despite receipt of actual notice, the Board, its agents and representatives, acted with deliberate indifference in failing to take or maintain corrective measures to protect Theresa Collins and K.C., or otherwise failing to follow through to assure that corrective measures were implemented and maintained.

55. As a result, Theresa Collins and K.C. were made vulnerable to further harassment.

56. Upon information and belief, as a result of this failure to act, Theresa Collins and K.C. were deprived of access to the educational opportunities or benefits provided by the school, that she was otherwise entitled to, such as a right to attend school without fear, anxiety, or upset due to sexual harassment and assault, and the right to participate in the theater program.

57. As a direct result and moving force behind the conduct described herein, upon information and belief, Theresa Collins and K.C. have suffered severe and permanent psychological and physical injuries, emotional distress, inconvenience, pain and suffering, loss of enjoyment of life and aggravation of a pre-existing condition.

COUNT II- Assault and Battery – Against Dutton and Board

58. Plaintiffs repeat and re-allege the allegations in the foregoing paragraphs as set forth above.

59. The acts of Dutton toward plaintiffs are crimes in Delaware. They also constitute civil assault and battery.

60. Dutton and the Board, pursuant to respondent superior and vicarious liability, are legally responsible for these torts.
61. The actions of Dutton were willful, wanton or oppressive and merit an award of punitive damages.
62. Plaintiffs' right to be free of assault and battery under the common law of the State of Delaware has been denied by Dutton and the Board.

COUNT III - Gross Negligence – All Defendants

63. Plaintiffs repeat and re-allege the foregoing paragraphs as set forth above.
64. At all times relevant hereto, upon information and belief, defendants had actual or constructive knowledge and actual notice of prior misconduct by Dutton which endangered students and subjected them to sexual abuse, sexual harassment, and fear of same.
65. Defendants owed a duty of care to plaintiffs under the circumstances then existing to properly supervise Dutton, to properly run its school and theater program, to protect its students from harm from persons on its property, to as well as to protect Plaintiffs.
66. Defendants intentionally, willfully, wantonly, recklessly and with gross negligence breached their duties as set forth above.
67. Defendants' breach of this duty constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of Dutton, including plaintiffs.
68. As a direct and proximate result of defendants' gross negligence and intentional, willful, wanton and reckless acts, plaintiffs have been injured.
69. The actions of defendants were willful, wanton or oppressive and merit an award of

punitive damages.

70. Plaintiffs' right to be free of gross negligence under the common law of the State of Delaware has been denied by each defendant.

COUNT IV – Gross Negligence - Premises Liability- Restatement 343

71. Plaintiffs repeat and re-allege the foregoing paragraphs.
72. Defendant Board, as a possessor of land, is subject to liability for physical harm caused to his invitees by a condition on the land if they know or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and fail to exercise reasonable care to protect them against the danger.
73. The actions of the Defendants were grossly negligent, willful, wanton or oppressive and merit an award of punitive damages.
74. Plaintiffs' right be free of gross negligence by Defendants has been denied under the common law of the State of Delaware.

COUNT V - Intentional Infliction of Emotional Distress- Dutton and Board

75. Plaintiffs repeat and re-allege the foregoing paragraphs.
76. The conduct of Defendant Dutton towards Plaintiff Theresa Collins, as described herein, was outrageous and extreme.
77. A reasonable person would not expect or tolerate the sexual abuse of the Plaintiffs by Defendant.
78. Defendant's conduct was intentional and/or malicious and was done for the purpose of causing or with substantial certainty that Plaintiffs would suffer humiliation,

mental anguish, and emotional or physical distress.

79. As a result of the above described conduct, Plaintiffs have suffered and continues to suffer pain and suffering, including, but not limited and emotional distress.
80. The Plaintiffs' right to be free of the emotional distress intentionally inflicted by Defendant has been denied in violation of the common law of the State of Delaware.
81. The actions of Defendant were intentional and/or malicious and merit an award of punitive damages.
82. Defendant Board is responsible for the conduct of Dutton through respondent superior and/or vicarious liability.

COUNT VI - Negligent Infliction of Emotional Distress – Dutton and Board

83. Plaintiffs repeat and re-allege the foregoing paragraphs.
84. Defendant Dutton acted negligently in that he knew or should have known that his conduct toward Plaintiffs would be offensive to her, and that she would suffer emotional distress thereby.
85. As a direct and proximate result of the conduct of Defendant, Plaintiffs suffered the injuries and losses set forth above.
86. The Plaintiffs' right to be free of the emotional distress negligently inflicted by Defendant has been denied in violation of the common law of the State of Delaware and the Act.
87. Defendant Board is responsible for the conduct of Dutton through respondent superior and/or vicarious liability.

COUNT VII - Fraud – versus Fulton and Miller

88. Plaintiffs repeat and re-allege all paragraphs set forth above.
89. Defendant Fulton falsely represented to Plaintiffs and their parents that Dutton would not be allowed on campus while students were present. Defendant Miller falsely assured the students, including Plaintiff Theresa Collins, that the matter would be taken care of and police contacted.
90. Defendants knew that the representations were false or that they were made with reckless indifference to the truth.
91. The representations were made with the intent to induce Plaintiffs and their parents to continue to send their children to Defendant's school and not to complain, publicize the incident with Dutton or notify authorities.
92. Plaintiffs' continued attendance at school, silence and continued association with Dutton was done with justifiable reliance upon that representation.
93. As a direct and proximate result of Defendants' false representations, Plaintiffs were injured.
94. The actions of Defendants were willful, wanton or oppressive and merit an award of punitive damages.
95. Plaintiffs' rights have been denied by each Defendant under the common law of the State of Delaware.

COUNT VIII - Negligent Misrepresentation – versus Fulton, Miller

96. Plaintiffs repeat and re-allege all paragraphs set forth above.
97. Defendant Fulton negligently represented to Plaintiffs and their parents that Dutton would not be allowed on campus while students were present. Defendant Miller

negligently assured the students, including Plaintiff Theresa Collins, that the matter would be taken care of and police contacted.

98. Defendants knew or should have known that the representation was false or that they were made with reckless indifference to the truth.

99. The representations were made with the intent to induce Plaintiffs and their parents to continue to send their children to Defendant's school, attend school, and not to complain, publicize the incident with Dutton or notify authorities.

100. Plaintiffs' continued attendance at school, silence and continued association with Dutton was done with justifiable reliance upon that representation.

101. As a direct and proximate result of Defendants' false representations, Plaintiffs were injured.

102. The actions of Defendants were willful, wanton or oppressive and merit an award of punitive damages.

103. Plaintiffs' rights have been denied by each Defendant under the common law of the State of Delaware.

Count IX - Negligence *Per Se* – Against all Defendants

104. Each of the preceding paragraphs is incorporated by reference herein.

105. At all relevant times, Defendants owed a duty of care to Plaintiffs to act in a manner consistent with 16 Del. C. § 901, *et seq.* to protect a class of individuals, of which Plaintiffs are members.

106. Defendants owed a duty to act in such a manner, and report Dutton's abuse of Theresa Collins to either the Division of Family Services and/or the Delaware State

Police, due to their special relationship with Dutton as well as plaintiffs, under the circumstances then existing.

107. Defendants breached this duty by failing to comply with 16 Del. C. § 901, *et seq.*

108. As a proximate and direct result of Defendants' negligence *per se*, Plaintiffs have suffered harm including personal injuries, and other damages.

109. Plaintiffs' right to be free of negligence under the common law of the State of Delaware has been denied by Defendant Mountaire.

Count IX – Gross Negligence Per Se- Against All Defendants

110. Each of the preceding paragraphs is incorporated by reference herein.

111. At all relevant times, Defendants owed a duty of care to Plaintiffs to act in a manner consistent with 16 Del. C. § 901, *et seq.* to protect a class of individuals, of which Plaintiffs are members.

112. Defendants owed a duty to act in such a manner, and report Dutton's abuse of Theresa Collins to either the Division of Family Services and/or the Delaware State Police, due to their special relationship with Dutton as well as plaintiffs, under the circumstances then existing.

113. Defendants breached this duty by failing to comply with 16 Del. C. § 901, *et seq.*

114. Defendants' breach of this duty was an extreme departure from the standard of care and what was required by the statute.

115. As a proximate and direct result of Defendants' gross negligence *per se*, Plaintiffs have suffered harm including personal injuries, and other damages.

116. Plaintiffs' right to be free of gross negligence under the common law of the State of Delaware has been denied by Defendants.

WHEREFORE, Plaintiffs demand compensatory and punitive damages, attorney's fees and costs pursuant to 42 U.S.C. §1988, and such other relief as this Court deems just and proper.

WHEREFORE, Plaintiffs demand judgment against the Defendants for compensatory damages, special damages, costs, and such other and further relief as this Court deems just and proper.

Respectfully submitted,
JACOBS & CRUMLAR, P.A.

/s/ Raeann Warner
RAEANN WARNER, ESQ. (# 4931)
750 Shipyard Dr., Suite 200
Wilmington, DE 19801
(t) (302) 656-5445
(f) (302) 656-5875

Attorneys for Plaintiffs

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