

NO. A08-612

State of Minnesota
In Court of Appeals

JW on behalf of BRW, minor child,

Appellant,

vs.

287 Intermediate District; Independent School District 271, a/k/a
Bloomington Public Schools, a/k/a Transportation Center for
Independent School District 271; and Adam Services, Inc.,

Respondents.

RESPONDENT ADAM SERVICES, INC.'S BRIEF

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STATEMENT OF THE LEGAL ISSUES

- I. Did the trial court err in denying Respondent Adam Services' motion for summary judgment when the alleged abuse of B.R.W. was unforeseeable to Respondent as a matter of law?

The trial court held that the question of whether or not the harm to B.R.W. was foreseeable was a disputed issue of material fact given the following three factors: (1) the alleged perpetrator, C.R., was approximately 13 years old at the time; (2) the bus driver was instructed that C.R. must sit alone in the front seat; and (3) C.R. had been diagnosed with Emotional Behavioral Disorder.

Apposite Cases:

Mayo vs. Becker, 737 N.W.2d 200 (Minn. 2007).

K.L. vs. Riverside Med. Ctr., 524 N.W.2d 300 (Minn. Ct. App. 1994), review denied, (Minn. Feb. 3, 1995).

Jam vs. Independent School District #709, 413 N.W.2d 165 (Minn. Ct. App. 1987).

- II. Was it error for the trial court to grant summary judgment in favor of the Respondent school districts when fact issues exist with regard to conduct which is not protected by either statutory or official immunity?

The Hennepin County District Court held that the Respondent school districts were entitled to statutory and official immunity with regard to the claims asserted by Appellant and granted summary judgment in their favor, dismissing them from the lower court action.

Apposite Cases:

Watson v. Metropolitan Transit Com'n, 553 N.W.2d 406 (Minn. 1996).

Gleason v. Metropolitan Council Transit Operations, 583 N.W.2d 216 (Minn. 1998).

Apposite Statutes:

Minn. Stat. § 466.03 (2008)

Minn. Stat. § 466.02 (2008)

- III. Did the trial court correctly deny Appellant's motion to amend the Complaint to seek punitive damages against Respondent Adam Services when Appellant was unable to offer clear and convincing evidence to support her motion?

The lower court held that Appellant failed to offer clear and convincing evidence that would establish that Respondent Adam Services acted with deliberate disregard of the rights of B.R.W., and the trial court therefore denied Appellant's motion to amend the Complaint to seek punitive damages.

Apposite Cases:

Swanland v. Shimano Indus. Corp. Ltd., 459 N.W.2d 151 (Minn. Ct. App. 1990).
Nhep v. Roisen, 446 N.W.2d 425 (Minn. Ct. App. 1989).

Apposite Statutes:

Minn. Stat. § 549.191 (2008).
Minn. Stat. § 549.20 (2008).

STATEMENT OF CASE

Appellant brought numerous claims against Respondents which involved allegations of sexual abuse of her son, B.R.W., as he rode the school bus to and from school during the 2005 school year. The alleged abuser, C.R., was another student who rode the bus with B.R.W. Both C.R. and B.R.W. rode a bus operated by Respondent Adam Services, Inc. ("Adam Services") during the school year, and they rode a bus operated by Respondent Independent School District #271 ("Bloomington Schools") during the summer session. Both students rode the Adam Services bus from April 6, 2005 to sometime in June, 2005. They rode the Bloomington Schools bus from June, 2005 to mid-July, 2005. Both boys attended the Hosterman School which is located within Respondent 287 Intermediate District ("Hosterman School").

In the lower court action, Appellant brought the following claims against all three Respondents: Negligence, Negligent Supervision, Respondeat Superior, and Joint Venture / Joint Enterprise. Both Bloomington Schools and Hosterman School asserted cross-claims against Adam Services, and Adam Services cross-claimed against Respondent school districts.

After lengthy discovery and numerous depositions had taken place in the lower court action, all Respondents brought separate motions for summary judgment seeking the dismissal of Appellant's claims. At the same time, Appellant brought her motion seeking

leave to amend her Complaint to seek punitive damages against Adam Services. The trial court granted the summary judgment motions of the Respondent school districts and dismissed them from this action. The court further granted the motions for summary judgment on the joint venture/joint enterprise claims and the negligent supervision claims and dismissed those claims. The motion for summary judgment of Adam Services was denied by the trial court on the remaining negligence claim. The trial court also denied Appellant's motion to amend the Complaint to allege punitive damages.

Appellant has now appealed Judge McGunnigle's March 7, 2008 Order granting summary judgment in favor of Bloomington Schools and Hosterman School and denying Appellant's motion to amend the Complaint to allege punitive damages. Respondent Adam Services filed its Notice of Review, seeking review of the lower court's denial of Adam Services' motion for summary judgment, and joining Appellant's appeal of the Order dismissing Respondent school districts. Adam Services further opposes Appellant's appeal of that portion of Judge McGunnigle's Order denying her motion to amend the Complaint to allege punitive damages.

Appellant Adam Services requests oral argument.

STATEMENT OF FACTS

Appellant brought the lower court action on behalf of her minor child, B.R.W., alleging that B.R.W. was sexually assaulted on numerous occasions while riding the bus to and from school during the 2005 school year. (Complaint). The alleged perpetrator of these assaults was another student on the bus, C.R. (Complaint).

B.R.W. and C.R. rode the same bus to and from school from April 6, 2005 through July of 2005. (Complaint; A 398). During this time, B.R.W. was 10 years old and C.R. was 13 years old. (Complaint). Both boys were diagnosed with Emotional/Behavioral Disorder (“EBD”). (A 1523). Both boys were residents of the Bloomington School District, but attended the Hosterman School in District 287. (A 1522-1523). Respondent Adam Services provided bus service for the students during the school year. (Complaint; A 1523). During that time, both boys rode Bus 219 which was driven by Sid Sauer. (A 1523). Bloomington Schools provided bus service during the summer months. (Complaint; A 1523). The summer bus, Bus 419, was driven by Eric Johnson and was staffed by bus aide Andrew Boone. (A 1524).

With regard to the Adam Services bus, Bus 219, B.R.W. and C.R. rode the bus together from April 6, 2005 until the school year ended in June. (Complaint; A 398). Adam Services provided bus transportation for the overflow of special needs students that the Bloomington School District was unable to bus itself. (A 465; A 1523). Adam Services is in

the business of bussing primarily special needs students. (A 490).

During the time both boys rode Bus 219, Ashley Baggett was a bus aide on the bus on the following days: April 6, 7, 8, 11, 12, and 13. (2/1/08 Affidavit of Joseph R. Regan, ¶ 4).

Thereafter, Richard Bentley was the bus aide from at least April 14, 2005 to the end of the school year in June. (Regan Aff., ¶ 4). According to his time records, Mr. Bentley never missed a day. (Regan Aff., ¶ 4). Ashley Baggett no longer rode on Bus 219 after April 13, 2005. (Regan Aff., ¶ 5).

The bus driven by Mr. Sauer was a small bus, approximately 15 feet long and 7 feet wide. (A 492; A 1523; A 1520-1521). The bus had four or five rows of seats with an aisle between. (A 397; A 1523). Mr. Sauer's bus contained 4 or 5 students, including B.R.W. and C.R. (A 397).

Mr. Sauer is in the profession of bussing special needs students. (A 397; A 405). He received training from Adam Services with regard to bussing special needs students. (A 397). In his experience, special needs students do not necessarily require more supervision than an average child since some are very well behaved. (A 397). Richard Bentley had experience driving a bus for special needs kids before coming to Adam Services. (A 507). In his experience, special needs kids do not necessarily need more supervision than average children. (A 506).

All information and instruction Adam Services receives with regard to Bloomington

students it transports comes from the Bloomington School District. (A 468; A 494). Typically the Bloomington School District Transportation Department would provide Adam Services with the routing for the students and an emergency form for each student. (A 493-494). An emergency form is a form provided by the Bloomington School District to the parents to fill out with emergency contact information and special instructions with regard to the student. (A 418; A 467, 472; A 512). The form is returned to the Bloomington School District Student Services office where staff ensures it is filled out correctly, and is then in turn faxed to the Bloomington Transportation Department. (A 516). It was the responsibility of the school district's transportation department to provide the information to Adam Services. (A 468; A 516). All information to Adam Services filters through the Bloomington School District, and Adam Services relies upon the Bloomington School District for the information it needs with regard to the students it transports. (A 468).

At the time of the alleged incidents, C.R. was a resident of Mount Olivet Rolling Acres Group Home, and had come to the Bloomington School District from another group home. (A 512; A 530). When C.R. arrived in Bloomington, the Bloomington District gathered information with regard to C.R.'s special needs and determined he would be placed in District 287 (Hosterman). (A 530). Information obtained by the Bloomington District with regard to C.R. included:

- He had a history of intimidating / assaultive behavior and could be aggressive;

- He had a history of sexual inappropriateness;
- He was not to be around children under 12 unsupervised;
- He required constant adult supervision;
- He required special seating on the bus and, if needed, a bus aide to assist with behavioral issues;

(A 417-418, 423-424; A 537-540; A 530-531). Hosterman School was also aware of this information. (A 545-546, 549). There is no evidence that any of this information with regard to C.R. was ever conveyed to Adam Services, and in fact, Bloomington assumes such information was not conveyed to Adam Services due to its confidential nature. (A 418-419, 420, 424; A 498; A 519-120; A 533, 534). In fact, the only information the Bloomington Transportation Department received with regard to C.R. was the information contained on his emergency form. (A 476). Thus, it is undisputed that none of the information with regard to C.R.'s past history was conveyed to the Bloomington Transportation Department. (A 476) As a part of its working relationship with Bloomington Schools, Adam Services would have expected to have been informed if a student had a past history of acting out sexually with other children. (A 498).

Deirdre Yarbrow from the Bloomington School District was one of the persons who attended C.R.'s IEP meetings to discuss C.R.'s special education needs. (A 417). Kayleen Taffe, a teacher at Hosterman School, also attended C.R.'s IEP meeting. (A 544). An IEP is

an Individualized Educational Program document that describes a student's levels of performance academically, socially, emotionally, and behaviorally. (A 1523). It describes the student's needs, sets goals and objectives, and describes the accommodations and modifications which will provide the student with an appropriate education in the least restrictive environment. (A 1523). It is undisputed that no one from Adam Services attended C.R.'s IEP meetings or had access to his IEP. (A 417; A 533, 534).

The issue of C.R.'s transportation to and from Hosterman School was discussed at the March 30, 2005 IEP meeting. (A 550). Before C.R. began riding the school bus, Hosterman staff were aware of his history of acting out inappropriately in a sexual manner in the past. (A 550). At the March 30, 2005 IEP meeting it was determined that C.R. should sit alone in the front seat behind the driver on the school bus. (A 418, 419). It was determined that this was the least restrictive accommodation for C.R. given his issues. (A 418). There is no evidence that anyone from Hosterman School ever informed Adam Services of the requirement that C.R. sit in the front seat alone, or the basis for that requirement. (A 550-551).

The emergency form for C.R. was initially filled out in January of 2005 when he moved into Bloomington. (A 419; A 512). Judy Verplank from the Bloomington Student Services Office received the document from Deirdre Yarbrow on March 30, 2005. (A 517-518). She was instructed to fax the form to the transportation department to get the

transportation routing going. (A 518). Ms. Yarbrow told her that she would likely have additional information for her later in the day. (A 518). Ms. Verplank then faxed the emergency form to the transportation department. (A 518). The first emergency form contained no special instructions with regard to C.R.'s seating on the bus. (A 512; A 517-518).

That same day, March 30, 2005, Darwin Hauser of the Bloomington Transportation Department faxed the first emergency form regarding C.R. to Adam Services and noted on the document that he had done so. (A 512; A 565-566). It was typically Mr. Hauser's practice to note on the document when it was faxed. (A 500). The first emergency form regarding C.R. was received by Adam Services. (A 495). Other than describing C.R. as "EBD," the form contained no further instructions with regard to the transportation of C.R. (A 512). On its own, a designation of "EBD" would not signal Adam Services that the child needed any particular special seating arrangements. (A 498, 500). A designation of EBD does not necessarily mean that the student is at any greater risk of acting out sexually than any other student, and staff at Hosterman did not consider C.R.'s history of acting out inappropriately in the past to be a part of his designation as EBD. (A 549-550).

Deirdre Yarbrow also attended the March 30, 2005 IEP meeting for C.R. (A 419). Following that meeting, Ms. Yarbrow phoned Judy Verplank and asked her to add language to the emergency form that C.R. was to sit in the front seat alone. (A 418-419). She did not tell

Ms. Verplank that C.R. had a history of acting out inappropriately sexually, or that he was not to be around kids under age 12 unsupervised. (A 419). Ms. Verplank added the information to the emergency form as instructed. (A 516-517; A 571). She then faxed the form to the Bloomington Transportation Department and noted that she had done so on the form. (A 516; A 571). There is no evidence this amended form was ever provided to Adam Services, and Adam Services denies receiving it. (A 495; A 534; A 566;).

Upon receipt of an emergency form, Adam Services would make a copy for the file and a copy would go to the driver of the bus carrying that student. (A 494). Any verbal instructions conveyed to Adam Services by the Bloomington Transportation Department would be written on the emergency form. (A 494). The driver would then share the information relating to the student with any bus aide present on the bus. (A 494).

Absent any specific instruction with regard to seating, bus drivers for Adam Services may use their discretion in allowing the students to sit wherever they want, so long as the driver feels is appropriate. (A 498). On the first or second day C.R. rode Mr. Sauer's bus, a person from C.R.'s group home approached Mr. Sauer at the school bus pick-up and told Mr. Sauer that C.R. was to sit in the front of the bus. (A 401). This person has never been identified. No one ever told Mr. Sauer why C.R. was to sit in the front of the bus or for how long. (A 411). Beyond that one day, no one ever told Mr. Sauer again that C.R. needed to sit in the front seat. (A 412; A 551). Mr. Sauer assumed that C.R. was being punished for

something he had done at the group home. (A 406-407). He did not assume that this instruction meant he was also supposed to keep C.R. away from other children or that the instruction was indefinite, and he did not assume that C.R. would misbehave on the bus. (A 406-407).

Any specific instructions with regard to any of the students transported by Adam Services must be in writing and must come directly from the District. (Regan Aff., ¶ 8; A 1149). While drivers receive verbal requests from time to time from parents or guardians of children they transport, they are instructed to advise the parent or guardian to contact the District with regard to these requests. (Regan Aff., ¶ 8). A driver is not necessarily obligated to comply with a verbal request received from someone at the bus stop. (Regan Aff., ¶ 8). The reason for this is that the request may be a violation of District policy or may contradict some other instruction with regard to the student. (Regan Aff., ¶ 8). To ensure that all policies are followed and that all instructions are consistent and appropriate, all special requests and/or instructions must go through the District. (Regan Aff., ¶ 8). The District then makes the final decision with regard to the particular student. (Regan Aff., ¶ 8). Once Adam Services receives a written instruction with regard to a student, this is then added to the driver's file and a driver is expected to follow that written instruction. (Regan Aff., ¶ 8). Adam Services received no written instructions from the District with regard to any special transportation needs of C.R. (Regan Aff., ¶ 9).

Mr. Sauer never received any information that C.R. had acted out inappropriately sexually in the past. (A 403). He was never told that C.R. should not be around children under the age of 12. (A 403).

After the first week or so, when Mr. Sauer had no problems with C.R., he then let him sit wherever he wanted. (A 403). It was during this first week, when C.R. was seated in the front seat alone, that Ashely Baggett rode Bus 219 as a bus aide. (Regan Aff. ¶ 4). Had C.R.'s emergency form contained instructions that C.R. was to sit upfront, Mr. Sauer would have made sure he would have stayed up front. (A 407).

Mr. Sauer would routinely write up incident reports on students who were misbehaving, including B.R.W. (A 407; A 601-624). Mr. Sauer wrote students up for such things as throwing a toy out the window, not keeping their seat-belt fastened, inappropriate comments, passing gas in an offensive manner, trying to kick another student, and picking their nose. (A 601-624). Between September 21, 2004 and January 28, 2005, Mr. Sauer wrote at least 16 different incident reports on the various students on his bus. (a 601-624).

Mr. Sauer kept a close eye on B.R.W. while he rode his bus. (A 408). During the time they rode his bus, Mr. Sauer never noticed any problems between B.R.W. and C.R. (A 409). The two of them seemed to be well-behaved and seemed to be getting along fine. (A 409). B.R.W. never appeared upset or concerned, and never complained to Mr. Sauer that something was going on with C.R. that he did not like. (A 409). Mr. Sauer never noticed

anything about B.R.W. or C.R. that would indicate that something sexually inappropriate had happened or was going on. (A 411). He saw no inappropriate touching and heard no sexual comments between the two. (A 403-404). Had he noticed anything inappropriate, he would have taken some action. (A 410). Mr. Sauer felt he had a good relationship with B.R.W. and never had the sense that B.R.W. was shying away from him. (A 409, 411). While drivers are allowed to write up incident report and re-seat a child who is causing trouble, they are not allowed to discipline the children on the bus. (A 497, 498).

Richard Bentley rode on Mr. Sauers' bus as a bus aide from at least April 14, 2005 to the end of the school year in June. (Regan Aff., ¶ 4). Like Mr. Sauer, Mr. Bentley also did not notice any inappropriate conduct between B.R.W. and C.R. (A 505). He never noticed any inappropriate touch between the two or inappropriate sexual talk. (A 505, 507). He did notice inappropriate sexual comments from another student on the bus, however. (A 507). It is not alleged that this student had any involvement in the alleged incidents toward B.R.W. (Complaint). Mr. Bentley typically sat one seat in front of B.R.W. and C.R. (A 505). The only instruction Mr. Bentley received with regard to C.R. was from Mr. Sauer who told him to keep an on him because he liked to jump off the bus. (A 506). Because of this, Mr. Bentley kept a close eye on C.R. (A 508).

C.R. and B.R.W. typically sat in separate seats. (A 508; A 1079). Had Mr. Bentley noticed anything that looked at all sexual happening between C.R. and B.R.W., Mr. Bentley

would have reported the behavior. (A 508). Mr. Bentley would not have allowed any sort of inappropriate behavior or horseplay between C.R. and B.R.W. (A 508). When they sat next to each other, C.R. and B.R.W. seemed to get along fine. (A 508). B.R.W. never appeared unhappy or concerned about anything that C.R. did. (A 508).

Mr. Bentley became friends with B.R.W. (A 509). B.R.W. never came to Mr. Bentley and told him he did not want to sit by C.R. anymore. (A 509). In fact, B.R.W. would often ask permission from Mr. Bentley to sit by C.R. (A 509). Mr. Bentley never saw anything about the two children that would indicate that anything sexual or inappropriate had occurred or was occurring. (A 509).

Adam Services is of the opinion that Mr. Sauer was good at paying attention to what the children on the bus were doing and noticing if there was any misbehavior. (A 501). Adam Services was also of the opinion that the same was true for Mr. Bentley. (A 501). If there was some type of sexual misconduct on Mr. Sauer's bus, Adam Services would have expected either Mr. Sauer or Mr. Bentley to notice it, and it is surprising that there is any complaint that such conduct occurred on Mr. Sauer's bus. (A 501). Adam Services denies the alleged abuse occurred on board the Adam Services bus. Other than B.R.W. and C.R., Appellant has identified no other independent witnesses to the alleged abuse or anyone who can corroborate B.R.W.'s allegations.

B.R.W. claims that, while riding the school bus, C.R. sexually abused him by placing

both his hand and his mouth on B.R.W.'s penis. (Complaint; A 573-580). The allegations came to light sometime in July of 2005. (A 525). B.R.W. claims that the incidents took place four times while riding the Adam Services bus, and four times while riding the summer bus. (A 589, 597).

The bus driver of the Bloomington Schools summer bus, Eric Johnson, received two emergency forms with regard to C.R. indicating he needed to sit in the front of the bus alone. (A 964, 966; A 1436-1437, 1442-1443). Mr. Johnson understood that it was a mandatory requirement that C.R. sit up front and alone while on the summer bus. (A 1446). Mr. Johnson testified in his deposition that he assigned C.R. the seat directly behind him on the very first day C.R. rode the bus. (A 1436 – 1437, 1439). According to Mr. Johnson, all the children on his bus always sat in seats by themselves; they never sat together. (A 1446).

Contrary to Mr. Johnson's testimony, however, C.R. testified in his deposition that he normally sat either the second seat back from the front or tried to sit in the third seat where B.R.W. sat. (A 1080). On the summer bus, C.R. normally followed where B.R.W. would sit and would typically try to sit next to him. (A. 1080-1082).

The Minnesota Department of Education conducted an investigation into the alleged incidents and, as a result, found neglect on the part of Bloomington Schools. (A 531; A 573-580). The Department of Education conducted interviews of Bloomington School District employees and Adam Services employees. (A 573-580). The Department of Education also

received evidence from the parties. (A 573-580). In the course of the investigation, the Bloomington School District failed to offer any evidence that Adam Services had received any special instructions with regard to C.R. or with regard to his past history. (A 573-580). Following its investigation, the Department of Education found that Bloomington Schools had an obligation to share the information about C.R.'s sexual propensities with the bus drivers and that they did not do so. (A 578-579). The Department also found no maltreatment on the part of Adam Services, finding that Adam Services did not have sufficient information with regard to C.R. to implement further precautions. (A 579). The Bloomington School District did not challenge the findings of the Department of Education. (A 531).

SCOPE OF REVIEW

In reviewing a District Court Order granting Summary Judgment, the Court of Appeals must make two determinations: (1) whether there are any genuine issues of material facts; and, (2) whether the District Court erred in its application of the law. State by Cooper v. French, 460 N.W.2d 2, n. 4 (Minn. 1990). An appellate court reviews questions of law de novo. Frost-Benco Elec. Ass'n v. Minnesota Pub. Util. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984).

Whether government entities and public officials are protected by statutory immunity and official immunity is a legal question which the courts review de novo. Snyder v. City of Minneapolis, 441 N.W. 2d 781, 786 (Minn. 1989).

An appellate court may not reverse a district court's denial of a motion to add a claim for punitive damages absent an abuse of discretion. LeDoux v. N.W. Publ'g, Inc., 521 N.W. 2d 59, 69 (Minn. Ct. App. 1994), review denied.

ARGUMENT

I. BECAUSE THE ALLEGED ABUSE OF B.R.W. WAS UNFORESEEABLE TO ADAMS SERVICES AS A MATTER OF LAW, THE TRIAL COURT IMPROPERLY DENIED ADAM SERVICES' MOTION FOR SUMMARY JUDGMENT.

In denying Adam Services' motion for summary judgment, the lower court devotes only 7 lines of text to its analysis and finds that the alleged abuse was somehow foreseeable because: 1) C.R. was approximately 13 years old at the time; 2) the bus driver was instructed that C.R. must sit alone in the front seat; and 3) C.R. had been diagnosed with Emotional Behavioral Disorder. Based on **these three facts alone**, the lower court concludes that "the question of whether or not the harm was foreseeable is a disputed issue of material fact." (Order, p. 10). However, these facts either alone or in combination do not and cannot present a fact issue with regard to the foreseeability of the abuse. Moreover, none of the facts on the record support a finding that the alleged abuse was foreseeable to Adam Services as a matter of law. Because the undisputed facts show that the alleged abuse was unforeseeable to Adam Services, summary judgment in favor of Adam Services is appropriate and the lower court's order denying summary judgment must be reversed.

Negligence is the failure to use ordinary care. See, Seim v. Garavalia, 306 N.W.2d 806, 810 (Minn. 1981); Minn. CivJig IV 25.10. An action or omission is not negligence if the harm that resulted from it could not be reasonably anticipated or foreseen. Flom v. Flom,

291 N.W.2d 914, 916 (Minn. 1980); Luke v. City of Anoka, 151 N.W.2d 429, 434 (Minn. 1967). Generally, no duty is imposed on a person to protect another from harm, even when he or she realizes or should realize that action on his or her part is necessary for another's aid or protection. Mayo v. Becker, 737 N.W.2d 200, 212 (Minn. 2007) (citations omitted). An exception to this general rule arises when the harm is foreseeable *and* a special relationship exists between the plaintiff and defendant. Id. (emphasis added). Because the undisputed facts show that the alleged abuse of B.R.W. was not foreseeable to Adam Services, the inquiry ends and there can be no negligence on the part of Adam Services. Thus, the Appellant's negligence claims fail as a matter of law.

The common law test of duty for negligence purposes is based on the probability or foreseeability of risk to the particular plaintiff. Jam v. Independent School District #709, 413 N.W.2d 165, 169 (Minn. Ct. App. 1987) (citations omitted). Whether conduct is negligent as to a particular plaintiff, and thus whether the actor owes the plaintiff a duty for negligence purposes, depends on whether the actor could reasonably have anticipated injury to that person as a result of his conduct. Id. The duty to protect exists only to the extent the underlying act is foreseeable. Gaines-Lambert v. Francisco, 2004 WL 1244337 *4 (Minn. Ct. App. 2004).

When considering whether a risk is foreseeable, courts look at whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of

any conceivable possibility. Whiteford v. Yamaha Motor Corp., 582 N.W.2d 916, 918 (Minn. 1998). Speculative risks are insufficient to create a duty of care. Larson v. Larson, 373 N.W.2d 287, 288 (Minn. 1985). A criminal act by a third party is foreseeable only when a reasonably prudent person could have anticipated that the act was likely to occur. K.L. v. Riverside Med. Ctr., 524 N.W.2d 300, 302 (Minn. Ct. App. 1994), review denied, (Minn. Feb. 3, 1995). The foreseeability of a sexual assault often hinges on whether the defendant was aware of similar prior behavior by the third party. Id.

The lower court cites three facts as the basis for its determination that it is for the jury to decide whether the alleged abuse of B.R.W. was foreseeable to Adam Services. In examining each of these three facts, however, it is clear that the lower court's analysis is flawed and that Adam Services' motion for summary judgment was improperly denied.

A. "C.R. was approximately 13 years old at the time" of the alleged abuse.

The first fact cited by the lower court in support of its holding is that C.R. was approximately 13 years old at the time he allegedly abused B.R.W. It is inconceivable how this fact alone could possibly support the lower court's determination that his alleged abuse of B.R.W. was foreseeable. Adam Services is in the business of busing special needs kids. They have transported an untold number of children who were 13 years old. There is no evidence in the record to support the inference that a 13-year-old child is more likely than any other to sexually abuse another child. Moreover, over his career Mr. Sauer has

presumably carried hundreds, if not thousands, of children who were approximately 13 years old. There is no evidence that there is anything about this age that would indicate to Mr. Sauer that C.R. was any particular risk, nor is there any evidence that either Mr. Sauer or Adam Services had any knowledge specifically as it related to C.R. that would warn anyone that the risk of sexual abuse was imminent or even likely.

Because the fact that C.R. was approximately 13 years old at the time of the alleged abuse lends no support to the argument that the abuse was somehow foreseeable, the lower court's reliance on this fact in denying Adam Services' motion is misplaced. This fact alone, or in combination with the other facts, does not render the alleged abuse foreseeable to Adam Services.

B. "The bus driver was instructed that C.R. must sit alone in the front seat."

The lower court also relies on the fact that Mr. Sauer was verbally instructed by someone at the group home on the first or second day C.R. rode the bus that C.R. was to sit in the front seat alone. It is important to remember that this person has never been identified. Moreover, it is undisputed that neither Mr. Sauer nor Adam Services ever received any other instruction with regard to C.R.'s seating at any other time. It is also undisputed that neither Mr. Sauer nor Adam Services was ever notified of the basis for this request, that they were advised for how long C.R. was to sit in the front seat alone, or that they were made aware of the harm the instruction was meant to prevent. In fact the trial court recognizes this

elsewhere in its Order:

“It is undisputed that the bus driver was unaware of the reason for the instruction or the nature of the harm that it was meant to prevent.” (Order, p. 12); and

“Plaintiff’s themselves admit that the school bus employees were provided no specific information about the behavioral history of C.R. It is therefore unclear how the school bus employees can be accused of misconduct for failing to guard against that unknown behavioral history.” (Order, p. 9).

The lower court therefore acknowledges that, in the absence of specific information about the behavioral history of C.R., his alleged conduct was unforeseeable to the school bus employees, and that it is unclear how the school bus employees could have guarded against C.R.’s unknown behavioral history.

Given this analysis elsewhere in the order, it is inconsistent at best for the court to rely on this same fact in finding that the alleged abuse was somehow foreseeable to Adam Services. The undisputed facts show that this instruction either alone or in combination with the other 2 facts cited by the court, could not make the alleged acts of C.R. foreseeable to Adam Services.

It is undisputed that bus drivers for Adam Services frequently receive verbal instructions at bus stops, and that they do their best to accommodate these instructions when they can, but that all official instructions must come through the district and must be in writing. The reasons for this are clear: verbal instructions could be inconsistent with the

written instructions, they could be contradictory to each other, or they could contradict an IEP or other directive with regard to a student. There is nothing about the verbal instruction received by Mr. Sauer that did alert him, or should have alerted him, to any unusual behaviors on the part of C.R. or that he would be more prone than any other student to sexually abuse another student on the bus. For that reason, it was error for the lower court to rely on this fact in denying Adam Services' summary judgment motion.

C. "C.R. had been diagnosed with Emotional Behavioral Disorder."

The lower court also relied upon the fact that C.R. had been diagnosed with Emotional Behavioral Disorder in concluding that the alleged abuse of B.R.W. was somehow foreseeable to Adam Services. Again, however, this fact either alone or in conjunction with all other facts, does not make the alleged acts of abuse foreseeable to Adam Services.

Both C.R. and B.R.W. were special needs students. Adam Services is in the business of busing special needs students. Presumably Adam Services has transported countless students diagnosed as "EBD" over the years. There is no evidence that a diagnosis of EBD makes sexual abuse more foreseeable than any other diagnoses. In fact, the evidence is just the opposite. It is undisputed that, on its own, a designation of EBD would not signal to Adam Services that the child needed any particular special seating arrangements, or that that child would be at risk for sexually abusing another child. More importantly, however, Hosterman School did not view C.R.'s past history of inappropriate behavior as a part of his

diagnosis of EBD. In fact, B.R.W. himself was diagnosed as EBD at the time the alleged abuse was occurring.

The diagnosis of EBD, on its own, does not and can not give rise to a factual issue with regard to the foreseeability of the alleged abuse of B.R.W. Thus, this fact lends no support to the trial court's denial of Adam Services' motion.

D. All other undisputed facts show that the alleged abuse was unforeseeable to Adam Services as a matter of law.

Regardless of the facts relied upon by the trial court, in looking at the record as a whole, it is clear that any alleged abuse on the part of C.R. was wholly unforeseeable to Adam Services, and that Adam Services had no reason to anticipate or even suspect that such conduct might take place between C.R. and B.R.W.

It is undisputed that Adam Services had no knowledge of C.R.'s history at any time while he was riding the Adam Services bus. It is further undisputed that Adam Services was never informed that C.R. had a history of acting out in a sexually inappropriate manner, or that C.R. was to be supervised at all times, or that C.R. was not to be around children under 12 years of age. However, it is also undisputed that both Bloomington Schools and Hosterman School possessed this information with regard to C.R. and chose not to convey it to Adam Services out of privacy concerns.

Moreover, there was no activity on the bus between C.R. and B.R.W. that alerted

either the bus driver or the bus aide to any alleged improper sexual activity between the two. It is important to remember that there were only 4 or 5 students on the bus at the time this alleged conduct took place, and that this was a very small bus consisting of only 5 rows of seats. Neither Sid Sauer nor Richard Bentley ever noticed anything that even remotely suggested that inappropriate sexual conduct was taking place between C.R. and B.R.W. B.R.W. never approached either adult to let them know that he did not want to be near C.R. or that C.R. was engaging in activity that made him uncomfortable. Both Mr. Sauer and Mr. Bentley had what they felt to be a good relationship with B.R.W. and felt he could come to either of them if he had any problems with anyone else on the bus. In fact, B.R.W. would often ask Mr. Bentley if he could sit next to C.R. There was nothing about the interaction of B.R.W. and C.R. that raised any red flags to either Mr. Sauer or Mr. Bentley that inappropriate behavior was occurring. Moreover, Appellant has never been able to offer any independent evidence of the alleged abuse in the form of witness testimony or other evidence which would corroborate B.R.W.'s claims other than the conflicting and inconsistent testimony of two children with documented and significant disabilities that it occurred.

Both Mr. Sauer and Mr. Bentley kept a close eye on the students on the bus. Mr. Sauer was not afraid to write up a student for misbehaving on his bus. If he noticed a student passing gas or picking his nose in an offensive manner, certainly it is reasonable to assume that he would have noticed the type of sexual conduct alleged by B.R.W. and would have

taken immediate action with regard to the situation. Given the knowledge Adam Services had at the time, and considering the lack of any outward signs of inappropriate sexual activity, it is impossible to see how Adam Services could have taken any further steps to prevent the alleged conduct.

Because the alleged events between C.R. and B.R.W. were wholly unforeseeable to Adam Services at the time both students rode the bus, the only conclusion that may be drawn is that Adam Services had no duty to protect B.R.W. from the alleged conduct on the part of C.R. Summary judgment in favor of Adam Services is therefore appropriate and it was error for the trial court to deny Adam Services' motion. For that reason, the trial court must be reversed and summary judgment entered in favor of Adam Services dismissing it from this action.

II. BECAUSE FACT ISSUES EXIST WITH REGARD TO ACTIONS OF THE RESPONDENT SCHOOL DISTRICTS WHICH ARE NOT PROTECTED BY EITHER STATUTORY OR OFFICIAL IMMUNITY, THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF THE SCHOOL DISTRICTS.

In its March 7, 2008 Order on the parties' motions for summary judgment, the trial court found that Defendant Bloomington Schools and Defendant Hosterman School were entitled to summary judgment in their favor based on the theories of statutory immunity and official immunity. However, the trial court's holding was based on an incomplete analysis of the facts at issue in this matter. While the court correctly recognized that some of the

districts' acts were discretionary, and therefore subject to immunity, it failed to recognize that questions of fact exist with regard to whether the districts abided by two specific ministerial duties: (1) providing the appropriate emergency forms regarding C.R. to Adam Services; and (2) ensuring C.R. sat in the front seat of the Bloomington School District bus alone. Because there are genuine issues of material fact concerning whether the districts properly performed these ministerial tasks, neither statutory nor official immunity applies, and the granting of summary judgment in favor of the districts was improper. For that reason, that portion of the March 7, 2008 Order dismissing the Respondent school districts from this action is in error and the trial court's Order must be reversed.

A. Statutory Immunity

The imposes liability on every municipality, including school districts, for its torts and the torts of its officers, employees and agents acting within the scope of their employment. Minn. Stat. § 466.02 (2008). The Act also enumerates a number of specific exceptions to municipal tort liability. Minn. Stat. § 466.03 (2008); however, liability of the municipality is the rule and the exceptions to statutory immunity are to be narrowly construed. Zank v. Larson, 552 N.W. 2d 719, 721 (Minn. 1996).

One of the statutory exceptions provides that a municipality is immune from tort liability for “any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.” Minn. Stat. § 466.03,

subd. 6 (2008). The test for determining whether statutory immunity protects the conduct of a municipality is whether the challenged conduct involved evaluation of the financial, political, economic or social effects of a given policy. Watson v. Metropolitan Transit Com'n, 553 N.W. 2d 406, 413 (Minn. 1996). Whether certain consequences of the policy are immune depends on whether the consequential conduct itself involves the balancing of public policy consideration in the formulation of policy. Id.

Discretionary immunity, however, does not protect all acts of judgment by government agents. Nusbaum v. Blue Earth County, 422 N.W.2d 713, 722 (Minn. 1988). In defining what is a discretionary act, the courts have made a general distinction between “operational” and “planning” decisions. Larson v. Indep. Sch. Dist. No. 314, 289 N.W.2d 112, 120 (Minn. 1979). Planning decisions involve questions of public policy and are protected as discretionary decisions. Operational decisions relate to the day-to-day operation of government and are not protected as discretionary decisions. Holmquist v. State, 425 N.W.2d 230, 232 (Minn. 1988), reh'g denied (Minn., Aug. 24, 1988). Discretionary immunity provides protection only when the municipality can produce evidence its conduct was of a policy-making nature involving social, political, or economic considerations, rather than merely professional or scientific judgments. Nusbaum, 422 N.W.2d at 722.

A court's first step in determining whether conduct is protected statutory immunity is to “identify the conduct at issue.” Conlin v. City of St. Paul, 605 N.W.2d 396, 400 (Minn.

2000). In this case, the trial court identified the conduct at issue on the part of both school districts as “the decision of whether to disclose C.R.’s history of sexual misconduct on his Emergency Transportation Form.” (Order at p. 5). The court went on to hold that this decision required school district employees to weigh various safety and confidentiality issues in order to determine whether or not to disclose this information. Id.

While this may be true, it is also true that both districts were subject to the specific directive that C.R. was to sit in the front seat of the bus alone, and the Bloomington District was subject to the directive that its transportation department supply Adam Services with the necessary information regarding all students it transported. In fact, the district is mandated by law to supply drivers of special needs students with “a typewritten card indicating (a) the pupil’s name and address; (b) the nature of the pupil’s disabilities; (c) emergency health care information; and (d) the names and telephone numbers of the pupil’s physician, parents, guardians, or custodians, and some person other than the pupil’s parents or custodians who can be contacted in case of an emergency.” Minn. Rule § 7470.1700 (2008). Certainly it must be expected that this information be accurate and up-to-date as it relates to each individual student.

Both the directives as they relate to the districts are specific instructions dealing with the day-to-day operations of both the busing and the school attendance of C.R. The conduct of both school districts as it relates to their obligation to ensure C.R. sat in the front of the

summer bus alone is in no way discretionary. Moreover, the Bloomington School District's transportation department had no discretion in determining whether or not to provide Adam Services with up to date and accurate emergency forms. Rather, these were specific tasks the districts were obligated to follow. Because the instruction that C.R. was to sit in the front seat of the bus leaves room for no discretion on the part of the school districts, it is therefore not protected under the narrow exception to the Minnesota Municipal Tort Liability Act. In the same way, because the Bloomington School District's transportation department had no discretion with regard to whether or not to provide Adam Services with the appropriate emergency forms, likewise this behavior is not protected under statutory immunity. Thus, the districts may properly be included as defendants in the lower court action pursuant to the Minnesota Municipal Tort Liability Act.

There is evidence that the summer bus drivers routinely ignored the directive that C.R. sit in the front seat of the summer bus alone. Thus, it was error for the lower court to find that statutory immunity applied. Moreover, it is undisputed that the second emergency form which contained specific instructions that C.R. was to sit in the front seat alone was never conveyed by the Bloomington School District's transportation department to Adam Services. Accordingly, the decision of the trial court finding statutory immunity for Bloomington Schools and Hosterman School and dismissing Appellant's claims on this basis must be reversed.

B. Official Immunity

The doctrine of official immunity states that “a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong. Elwood v. Rice County, 423 N.W.2d 671, 677 (Minn. 1988). To be protected under official immunity, conduct must require more than mere ministerial duties. Pletan v. Gaines, 494 N.W. 2d 38, 40 (Minn. 1992). In other words, there is no official immunity when it relates to the performance of a ministerial task.

An official's duty is ministerial when it is “absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts.” Gleason v. Metropolitan Council Transit Operations, 582 N.W. 2d 216, 220 (Minn. 1998) (quoting Cook v. Trovatten, 274 N.W. 165, 167 (Minn. 1937)). This is precisely the type of duty or task the Bloomington School District’s transportation department had with regard to conveying accurate and up-to-date emergency forms to Adam Services. This is also they type of duty which arose from the specific instruction on the emergency form and IEP that C.R. was to sit in the front seat of the summer bus alone.

The lower court completely failed to identify that the Bloomington School District transportation department had a ministerial duty to convey accurate information and emergency forms to Adam Services, and that it failed to do so. The fact that this is a

ministerial duty and is in no way discretionary is reflected in Minnesota Rule § 7470.1700 which requires that emergency forms be provided by the district to any driver transporting special needs students. Moreover, Minn. Stat. § 169.449, subd. 1, provides that “each school, its officers and employees, and each person employed under the contract is subject to” the rules set forth in § 7470. Minn. Stat. § 169.449, subd. 1 (2008). Thus, the district’s obligation to provide Adam Services with current and accurate information with regard to the students on the bus is a mandatory, ministerial task with no room for discretion.

The district acknowledges its ministerial duty in this regard by providing Adam Services with the first version of C.R.’s emergency form. Moreover, the district acknowledges that Adam Services depends entirely upon the information received from the school district’s transportation department with regard to all Bloomington School District students it transports. However, it is undisputed that the Bloomington District failed to provide Adam Services with the second updated version of C.R.’s emergency form, and in doing so violated a ministerial duty that is not protected under either statutory or official immunity. In that regard, it was error for the lower court to dismiss the Bloomington School District from this action.

It is undisputed that the only emergency form Adam Services received concerning C.R. contained no special instructions with regard to his seating. Yet the school district’s transportation department received a second version of the form **the same day the first**

version was faxed to Adam Services which specifically indicated that C.R. was to sit in the front seat alone. The district failed to provide this second form to Adam Services. This ministerial duty of the school district's transportation department is not protected under official immunity. Because it is undisputed that the district failed to provide Adam Services with the information it was obligated to provide with regard to C.R., it was error for the lower court to dismiss the Bloomington School District from this action.

It was further error to dismiss the Respondent school districts from this action when there is evidence they did not follow another ministerial function, namely, ensuring that C.R. sat in the front seat of the summer bus alone. While the lower court correctly recognized that the seating instruction with regard to C.R. was a ministerial function (Order, p. 8), it failed to identify the genuine issues of material fact that exist with regard to whether or not this ministerial function was performed properly. As a ministerial function, the actions of the districts as they relate to the seating of C.R. on the summer bus are not protected by either statutory or official immunity. Moreover, fact issues exist with regard to whether the instruction that C.R. sit alone in the front seat of the summer bus operated by Bloomington Schools was followed. For example, C.R. testified in his deposition that he knew he was supposed to sit in the front seat alone, but that he was routinely allowed to sit wherever he wanted on the summer bus. He testified that he sat often in the middle or the back of the bus, as long as it was near B.R.W. In addition, B.R.W. testified that the alleged sexual abuse took

place at least four times on the summer bus which necessarily implies that the boys were seated next to or with each other, contrary to the instruction contained on the two emergency forms received by the summer bus driver, and the IEP in the hands of Hosterman School. Moreover, there is evidence that Hosterman School took no action to ensure that the seating restriction was enforced on the summer bus. Thus, there are genuine issues of material fact with regard to whether the districts properly performed the ministerial task of ensuring that C.R. sat alone in the front seat of the summer bus.

It defies reason that the Respondent school districts, and particularly the Bloomington School District, were dismissed from the lower court action, leaving Adam Services as the sole remaining defendant when the districts had ample information with regard to C.R., they failed to convey that information to Adam Services, and there is evidence to suggest that they failed to even follow their own directives as they related to C.R. Despite this, the districts who had the updated emergency form, who had ample information with regard to C.R., and who, as the evidence suggests, disregarded the instruction, were dismissed, while Adam Services, who did not have the revised form and who did not have any information with regard to C.R., remains as a defendant even in the absence of any reliable independent evidence corroborating B.R.W.'s claims.

The ministerial duties of school officials are not protected under the theory of official immunity. Because it is undisputed that the Bloomington School District utterly failed to

comply with its ministerial duty of providing the second version of the emergency form regarding C.R. to Adam Services, and because fact issues remain as to whether the Bloomington Schools and Hosterman School carried out their ministerial duties of following the clear instruction on C.R.'s emergency form and IEP, it was error for the lower court to find that the districts' actions were protected by immunity, and the decision of the trial court in dismissing Appellant's claims on the basis of official immunity must be reversed.

III. THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO AMEND THE COMPLAINT TO SEEK PUNITIVE DAMAGES AGAINST RESPONDENT ADAM SERVICES.

Punitive damages are allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show a deliberate disregard for the rights and safety of others. Minn. Stat. § 549.20 (2008). Punitive damages are an extraordinary remedy to be allowed with caution and within narrow limits. Nhep v. Roisen, 446 N.W.2d 425, 427 (Minn. Ct. App. 1989) (citing, Lewis v. Equitable Life Assurance Society of the United States, 389 N.W.2d 876, 892 (Minn. 1986)).

The general principle disfavoring punitive damages, other than in extreme situations, also prompted the legislature to pass Minn. Stat. §549.191. Minn. Stat. §549.191 provides that punitive damages cannot be directly pled by a plaintiff in a Complaint, but must be the subject of a separate motion to amend the pleadings once the lawsuit has been commenced. See Minn. Stat. §549.191. A motion brought under §549.191 must include the applicable

legal basis to support the motion. Id. A trial court may not allow amendment to the pleadings when the motion and accompanying affidavits do not reasonably allow the conclusion that the necessary evidence exists to establish the requisite standard for an award of punitive damages. Swanlund v. Shimano Industrial Corp., 549 N.W.2d 151, 154 (Minn. Ct. App. 1990).

Motions for leave to Amend a Complaint to assert a claim for punitive damages must conform to the requisites of Minn. Stat. §§549.191 and 549.20. Minn. Stat. §549.20 sets forth the factors in determining when punitive damages may be plead:

Subdivision 1. (a) Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show a deliberate disregard for the rights or safety of others.

(b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others **and:**

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to the rights and safety of others.

Minn. Stat. §549.20, subd. 1 (emphasis added).

In this case the lower court correctly held that Appellant failed to provide a sufficient showing to support her motion. The lower court correctly recognized that there has been no

evidence offered to date which would show that Adam Services demonstrated a deliberate disregard of the rights of B.R.W., or that Adam Services had any specific knowledge about C.R. that would create a high probability of injury to B.R.W. (Order, p. 11).

Appellant cites to no evidence which would indicate the trial court abused its discretion in denying her motion to amend. Rather, the lower court's opinion is supported by the undisputed evidence in this case. It is undisputed that Adam Services had no knowledge with regard to C.R.'s past history of sexually inappropriate behavior or his need for heightened supervision. It is undisputed that the only instruction received by Adam Services with regard to C.R. was the emergency form identifying C.R. only as "EBD" and containing no special transportation instructions.

The trial court also correctly recognized that, even if bus aide Ashley Baggett routinely fell asleep on Bus 219, she only rode the bus for a limited period of time, during which it is undisputed that C.R. was sitting in the front seat alone. (Order, pp. 11-12). Thus, it is impossible to see how these alleged actions could have lead to the harm claimed by B.R.W., and certainly does not rise to the level of clear and convincing evidence of a deliberate disregard by Adam Services for the rights of B.R.W.

The lower court also properly recognized that there is no evidence the driver of Bus 219 acted with deliberate disregard of the rights of B.R.W. when he allowed C.R. to sit wherever he wanted after the first week or two C.R. rode the bus. The court correctly noted

that the bus driver was unaware of the reason for the verbal instruction from the group home or the nature of the harm it was meant to prevent. Finally, as to any alleged disability on the part of bus aide Richard Bentley, the trial court was correct in finding that it is disputed whether Bentley was disabled at the time he was working for Adam Services or did not become disabled until later; regardless, his disability does not demonstrate a deliberate disregard of the rights of B.R.W. (Order, p. 12).

It is also important to note that Bus 219 was a very small bus. The trial court recognized that this bus was small, consisting of only 4 or 5 rows of seats. (Order, p. 2). There is no evidence in the record that Mr. Sauer, Ms. Baggett or Mr. Bentley noticed any behavior on the part of C.R. or B.R.W. that would indicate that inappropriate conduct was occurring. It is undisputed that the bus driver, Sid Sauer would routinely write up incident reports on students who were misbehaving, including B.R.W. All evidence shows that the level of supervision on Bus 219 was reasonable and appropriate given the knowledge Adam Services had at the time.

Absent any evidence that Adam Services actually knew of any specific reason to protect B.R.W. or others from C.R., the trial court properly denied Appellant's motion. The lower court correctly recognized that none of the evidence relied upon by Appellant in support of her motion rises to the level of clear and convincing evidence of a deliberate disregard of the rights of B.R.W. Thus, the decision of the lower court to deny Appellant's

motion to amend her Complaint to seek punitive damages against Adam Services must be affirmed.

CONCLUSION

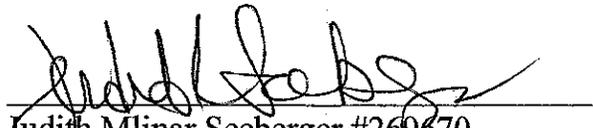
Based on the foregoing, Respondent Adam Services respectfully requests the following relief from this Court:

- 1) That the decision of the lower court denying Adam Services' motion for summary judgment be reversed and a judgment of dismissal of all claims be entered in Adam Services' favor;
- 2) That the decision of the lower court granting summary judgment in favor of the Respondent school districts be reversed; and
- 3) That the decision of the lower court denying Appellant's motion to amend her Complaint to seek punitive damages against Adam Services be upheld.

Respectfully submitted,

REDING & PILNEY, PLLP

Date: 6.3.08

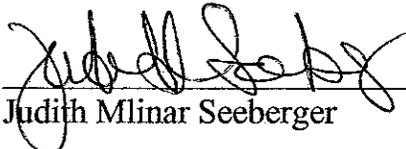


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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word-count requirements of Minn. R. Civ. App. P. 132.01, subds 1 and 3 for a brief produced with a proportional font. This brief was prepared using Microsoft Office Word 2003, complies with the typeface requirements of the Rules, and contains 9,994 words.

Dated: 6-30-06



Judith Mlinar Seeberger