

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

T.U., and Xiaolei Xu,)
)
 Plaintiffs,)
)
 V) **Case No. 24CV03464**
)
 Clifford Cohen,)
)
 Defendant,)

Proceeding Pursuant to K.S.A. Chapter 60

SECOND AMENDED PETITION FOR LEGAL MALPRACTICE AND RELATED DAMAGES

Plaintiff, serving as litigant pro se, for his cause of action against Defendant, states as follows:

1. Plaintiffs are individuals residing in Johnson County, Kansas.
2. Defendant is an individual who has an office in Johnson County, Kansas.
3. Defendant is a self-described student rights lawyer who Plaintiff T.U. retained on February 13, 2023, to defend his son from a scandalously improper and unfair disciplinary action that Blue Valley Unified School District 229 (hereinafter “the District”) took against him on February 10, 2023. The District is located in Johnson County, Kansas, and all the events and occurrences relevant to the aforementioned attorney-client relationship took place in Johnson County, Kansas.

BACKGROUND INFORMATION

4. D.U. and his family moved to Kansas from another state in July, 2022. D.U. and his brother A.U., who were eight years old and 10 years old at the time, respectively, started attending Wolf Springs Elementary (hereinafter “WSE”) in August, 2022. A.U. made a very successful transition into his new school and into his new state: he liked school; he liked Kansas; he made friends at school; he liked his teachers and classmates.
5. D.U.’s mother, whose background was a foreign language instructor, similarly made a very good transition into the family’s new state: she was working as a teacher aide at WSE, at the same school that her two children attended; she liked her job; she was well-liked by her colleagues, students, and parents.
6. However, D.U.’s experience was the opposite, as he was targeted by a teacher aide called Stephanie Cleland and a group of classmates favored by her: he did not like school and did not want to go to school in the morning; he was sensitive and irritable and occasionally had nervous breakdowns after he came back from school; he did not have any friends, he would just swing by himself during recess at school.
7. Hence, D.U.’s parents were concerned. They shared their concerns for the first time with D.U.’s English Language Arts (ELA) teacher, Kristin Kellerman, and his Chinese teacher, Lei Cheng, during the first parent-teacher conference on September 28, 2022. On the following school day, on October 3, 2022, however, D.U. was treated even worse and singled out by Stephanie Cleland.
8. The mistreatment continued and D.U. had a very bad day at school on October 6, 2022. The next day, on October 7, 2022, he had a breakdown before going to school. Shortly afterwards, T.U. sent an email to D.U.’s ELA teacher Kristin Kellerman and to his principal, Meaghan Graber, accusing Stephanie Cleland of emotional abuse.
9. T.U. met with Meaghan Graber on October 10, 2022. In the meeting, Meaghan

- Graber did not acknowledge that Stephanie Cleland engaged in any misconduct, and yet she still promised that Stephanie Cleland would back away from D.U.
10. T.U.'s advocacy for D.U., his unofficial complaint against Stephanie Cleland, and Meaghan Graber's irresolute response to it, elicited a vicious retaliation against D.U.'s entire family by Kristin Kellerman and Stephanie Cleland. This retaliation triggered a series of events that would turn the lives of D.U. and his family upside-down: D.U. would come to be known as a potential school shooter with a murder list and A.U. as a bomb maker, while T.U. would be portrayed as a safety threat to school staff and be banned from accessing school property and personnel, even via email.
 11. Specifically, following the meeting between T.U. and Meaghan Graber on October 10, 2022, Stephanie Cleland did back away from D.U. on the surface, but she, along with her close friend and associate Kristin Kellerman, engaged in a character assassination of not only D.U., but also of his entire family, thereby turning parents, students, teachers, and administrators against the newcomer family.

THE DISTRICT'S DISCIPLINARY ACTION

12. As a result of Stephanie Cleland's and Kristin Kellerman's character assassination campaign, D.U. had become an absolute pariah and scapegoat at school in January, 2023. In that regard, he had been increasingly subject to social isolation, humiliation, false accusations, and unfair punishments.
13. On February 10, 2023, D.U. was taken to the school counselor's office before lunch and was not allowed to go back to the educational setting afterwards. He was accused of having a murder list, which he knew nothing about. He did not even know what a murder list was, as the family never followed or mentioned the news of the sort.
14. D.U.'s mother was brought in, and heard D.U. repeatedly and vehemently denying the allegations about having a murder list. Neither D.U. nor his mother

was given any evidence or detailed information about the allegations, but Meaghan Graber told D.U.'s mother that "I will decide on his consequences later". Since D.U. was not allowed to go back to the educational setting until further notice, D.U.'s mother took both of her kids home before the school day was over.

15. On February 11, 2023, T.U. and D.U.'s mother (hereinafter "the Parents") were notified by Meaghan Graber by email that D.U. was not allowed to go back to school until an investigation into the allegations against him was complete. Meaghan Graber's email did not provide any details about allegations, and did not even mention what these allegations were based on. After months, the Parents would find out that the allegations at the time were based solely on the oral reports of one classmate, who had been bullying D.U., and who had been favored by the teachers over D.U.
16. On February 12, 2023, Meaghan Graber made an announcement to the entire school community, i.e., all the school staff and parents. The announcement mentioned a murder list created by a student; stated that the allegations were reported to her on Friday; stated that an investigation is under way with the assistance of Overland Park and Blue Valley Police Departments (which, combined with the "murder list" label, invoked the community's deepest fears, i.e., a school shooting); implied that the accused student was a 3rd grader; stated that the accused student would not be allowed at school until the ongoing investigation was complete. This announcement alone made it obvious at least to many 3rd graders that the accused student was D.U., as many knew that he was separated from his classmates on Friday in the middle of the day and never came back afterwards.
17. On February 13, 2023, a second announcement was made, again to the entire school community, reiterating the messages in the first announcement, and implying that the aforementioned investigation was not yet complete.
18. On February 13, 2023, T.U. paid Defendant in advance for about five hours of service and went to Defendant's office along with D.U. There, Defendant callously

interrogated D.U. about the allegations, which D.U. denied once again.

19. On February 17, 2023, the Parents and Defendant had a so-called re-entry meeting in the District headquarters with Meaghan Graber and the District bigwigs, including the Head of Security and the Chief Legal Officer, Dan Carney and Melissa Hillman, respectively. The Parents had previously been told that during the meeting, the investigation findings would be shared with them, and D.U. would get to share his side of the story.
20. The only findings that were presented to the Parents were D.U.'s silly artwork. The Parents were told that there was no murder list, but that a peer reported that D.U. said he had a murder list. In addition to that, Meaghan Graber mentioned a surveillance footage that shows D.U. making gun gestures, but did not share or present the footage. Dan Carney also said something along the lines of "In isolation, none of these means anything, but when combined together, they mean something". He also brought up the recent news on a kindergartner shooting his teacher in Virginia, suggesting that anyone at any age could be a potential school shooter.
21. During the meeting, the District bigwigs tried to talk the Parents into requesting a transfer to a school of their choice. They referred to this transfer as a "fresh start", which constituted a carrot for their offer.
22. Furthermore, Meaghan Graber showed D.U.'s silly artwork to him and asked him leading questions, attempting to coach him to say something like "These drawings are scary and make my classmates feel threatened". D.U. did not say that, but the last question she asked before the family left the meeting was "How do you think these pictures make your classmates feel?".
23. Defendant was still in the room when the family left. Shortly afterwards, he emailed T.U. the deal the District offered and tried to talk him into accepting it, like he did during the meeting. This time, however, the deal also included a stick besides the carrot: the consequences of not accepting the deal would be a suspension and imposition of strict rules on D.U., such as assigning a monitor to him, not allowing him to bring a backpack, frequent inspections, etc.

24. On February 19, 2023, T.U. made a counter offer to the District via Defendant: The Parents would request a school transfer for both children as long as their names were cleared from the accusations. The district dismissed this offer, saying that they would make the announcements they deemed appropriate. The District also stated that they had “revoked” the children’s transfer to WSE and were sending them back to their so-called “home school”, Cedar Hills Elementary (hereinafter CHE). In reality, the two children had not attended CHE a single day in their lives.
25. On February 20, 2023, Meaghan Graber made another announcement, suggesting that although there was no “criminal threat”, the allegations against the accused student were sustained and the student was given a punishment consistent with the findings of the investigation. This announcement, combined with the fact that D.U. was removed from the educational setting on the day the murder list was reported to her (as stated in her first announcement), and never came back, sparked rumors in the community about D.U. being “expelled because of having a murder list”.
26. On February 21, 2023, Melissa Hillman informed Defendant that D.U. and his brother could begin attending their “home school”, CHE, from February 23 onwards. Defendant subsequently informed T.U. that this decision could not be appealed and that it marked the end of the services that he could provide to the family.
27. D.U.’s mother was similarly assigned to another school, but as a special education teacher aide in an intense resource classroom that was meant for students with severe disabilities. She was told about this punishment-like “re-assignment” on the day she started her new position.

LEGAL MALPRACTICE BY DEFENDANT

28. Overall, Defendant breached his legal duty to D.U. and T.U. and was negligent in his representation of them in several material respects, including but not limited to the instances below.

29. Defendant made absolutely no effort to clear D.U.'s name from the outrageous allegations against him. He did not even once say D.U. was innocent, let alone asserting his innocence, even though all the evidence against him was his silly artwork. Quite the opposite, he acted all along as if D.U. was guilty.
30. D.U.'s brother and mother were treated and punished as if they were guilty, although they were accused of nothing. In that regard, Defendant did not challenge D.U.'s brother's and mother's ejection from WSE, which was clearly a retaliation by the District against the Parents for advocating for D.U.
31. A.U.'s educational and medical records included a history of anxiety and selective mutism (being tongue-tied when nervous, a symptom of anxiety), which made him eligible for special education services. The implication is that A.U. was entitled to the procedural safeguards that are extended to special education students pursuant to 34 C.F.R. § 300.534(b)(2) and (3). Specifically, it was illegal for the District to change A.U.'s placement unilaterally. In this respect, Defendant could have easily challenged the District's decision to transfer A.U. to another school. However, Defendant never bothered to examine A.U.'s educational records.
32. Defendant failed to take D.U.'s educational and medical records into consideration, and use them to challenge the District's disciplinary action, even though T.U. asked him to. In that regard, D.U. had no history of behavior issues. D.U. had an impeccable disciplinary record, with not a single instance of expulsion, suspension, or even detention. He had been sent to the principal's office only once in his life, by Kristin Kellerman in October 2022, and that was only for making silly noises in class. T.U. brought D.U.'s educational records to his first meeting with Defendant, but the latter dismissed those records. He refused even to take a look at them.
33. Defendant did not investigate the bullying, and particularly the false accusations D.U. and A.U. had been subject to at WSE, even though T.U. informed him of them. Such an investigation would have revealed that the bullying had a pattern: A.U. and D.U. were humiliated and/or punished solely as a result of the oral reports made by peers who were favored by teachers over A.U. and D.U. In all the bullying cases, there was no adult witness, and no physical evidence. The murder list

allegations against D.U. clearly fit in this pattern.

34. Even though Defendant callously interrogated D.U. in his office regarding the allegations against him, he did not even request the District to provide more information and evidence that supported their allegations. Quite the opposite, Defendant stopped the Parents from making inquiries about the investigation findings during the so-called re-entry meeting.
35. Defendant did not attempt to access the police reports or to talk to the two school resource officers who conducted investigations on the murder list allegations. T.U. subsequently reached out to one of the school resource officers, who told T.U. that he found no threat on February 10, 2023, and that D.U. could go back to the educational setting on the same day.
36. Defendant's conduct served more to preserve the District's reputation than to protect D.U.'s and his family's rights. The highly-publicized and humiliating ejection of D.U., A.U., and their mother from WSE in the middle of the semester, made them look guilty of a serious misconduct, and set up D.U. and A.U. for failure in life. The District, on the other hand, whitewashed the bullying A.U. and D.U. had been subject to, as well as gave the community the impression that the District competently and swiftly solved a security crisis.
37. Defendant gave T.U. misleading legal advice.
 - a. Defendant told T.U. that it was not worthwhile for him to file a defamation claim against the District. That was because D.U. was a minor who did not make any money, and hence the damage inflicted by the murder list accusations on his reputation would not translate into monetary damages. However, T.U.'s main motivation, which he repeatedly informed Defendant of, was clearing D.U.'s name, not seeking monetary damages.
 - b. Defendant told T.U. that the District did not violate Family Educational Rights and Privacy Act (hereinafter "FERPA") by disclosing D.U.'s personally identifiable information in the murder list announcements, simply because the District did not disclose his name. Name alone is indeed sufficient but not necessary for identifying a student. Disclosing a

combination of personal information, as the District did, may reveal the identity of the student and hence constitute a FERPA violation. In that regard, the murder list announcements allowed at least a large number of 3rd graders to identify D.U., thereby having a snowball effect on the exposure of his identity.

- c. Similarly, Defendant told T.U. that Kristin Kellerman did not violate FERPA by badmouthing D.U. and his family to other District employees. In that regard, Defendant said that District employees violate FERPA only if they disclose D.U.'s information to other parents. According to Defendant, all the District employees had the right to talk about all the students and about all the parents with each other all they want, regardless of whether the employees involved had legitimate educational interests on the information shared or not.
- d. Considering FERPA violations do not create a private right of action, all the efforts Defendant made to convince T.U. that the District did not violate FERPA raise question marks. Defendant could have just told T.U. to file a FERPA complaint with the U.S. Department of Education and see it for himself.
- e. When T.U. asked the Defendant how to challenge the District's disciplinary action, the latter recommended the worst possible avenues, i.e., filing complaints with the Department for Children and Families and with the Kansas Department of Education. The former does not investigate schools, a fact which Defendant definitely knew, and the latter only handles special education complaints, the facts which the Parents subsequently found out to their disappointment. When the Parents approached other lawyers later, however, they were told that their case fell under defamation and discrimination. They were also told that they should have sought litigation right after the District's disciplinary action.

38. At the beginning of the re-entry meeting, Defendant said to the District bigwigs that he had grandkids attending the District's schools, which shocked the Parents.

That did not only indicate a conflict of interest, but also made Defendant look like a bootlicker in front of the District bigwigs.

39. Defendant appeared very subservient to Melissa Hillman in his interactions with her during the re-entry meeting. This was consistent with Defendant's overall representation of D.U., during which Defendant consistently acted as if he was Melissa Hillman's messenger, rather than D.U.'s advocate.
40. Overall, Defendant's conduct as D.U.'s attorney served to legitimize the District's misconduct that defamed and victimized D.U. and his family to this day, rather than to protect the family's rights and reputation against such misconduct.

DAMAGES INCURRED AS A RESULT OF DEFENDANT'S LEGAL MALPRACTICE

41. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 40 of this Petition as though fully set forth herein.
42. By not challenging, and in fact by supporting the District's obviously predetermined decision to transfer D.U. and A.U., Defendant enabled the District to make out D.U. and A.U. to be the kind of students who could disrupt the learning environment and make other students feel threatened. As a result, the brothers, and especially D.U., were treated with prejudice and harassed by school staff and peers alike.
43. D.U. consequently had serious school avoidance issues and missed school during the entire April, May, October, and November 2023, as well as during parts of August, September, and December, 2023. The Parents watched D.U. becoming a shadow of himself during those times.
44. D.U. was diagnosed with anxiety by a licensed therapist in August, 2023. He was also diagnosed with anxiety by the Johnson County Mental Health Center in October 2023, and was assigned a case manager. In addition, he received a serious emotional disturbance waiver from the same organization.
45. D.U. became a truant and was assigned a Guardian Ad Litem by the truancy

court in October, 2023. Partly due to the pressure from the truancy court, and partly due to the relentless harassment of D.U. by school staff and peers, T.U. had to unenroll D.U. from the District and register for homeschooling in February, 2024.

46. Shortly afterwards, D.U. started shadowing a private school in Missouri, where a parent who had recently heard about D.U.'s so-called "murder list" and his consequent "expulsion" shared her grave concerns with the teacher and administrative staff. The teacher suggested that the Parents changed D.U.'s name to something like Danny to dissociate him from such rumors in the future.
47. Considering that, the rumors originating from the District's disciplinary action (which Defendant did not only challenge but also supported), did not only deny D.U. the right to free, public education, but also ruined his educational and social prospects in the Kansas-Missouri area. In that sense, Defendant shares responsibility with the District for setting up D.U. for failure in life.
48. Having left unchallenged, and even justified by Defendant, the District's retaliation against T.U. intensified after February, 2023. In that regard, all the emails T.U. sent to the District were blocked between April and August 2023, without the knowledge of neither T.U. nor the personnel who T.U. was trying to communicate with. For this reason, T.U. faced hurdles when he tried to exercise his basic rights, such as reviewing his children's educational records, registering his child for school, and making a request for special education evaluation.
49. The District's retaliation against T.U.'s advocacy for his children reached a climax when the District arbitrarily imposed communication and access restrictions on T.U. in December, 2023. As a result, T.U. was not able to enter school property or to communicate with D.U.'s teachers. This deprived T.U. of school staff's acceptance and basic respect, which had a negative spillover effect into his children's school experience at the same time.
50. As a result, D.U. has been attending a private school since March 2024, which have cost the Plaintiffs \$11,182 so far.
51. Plaintiffs also incurred attorney expenses to develop a Section 504 Plan for D.U.,

which amounted to \$1,596.

52. Plaintiffs also incurred psychotherapy expenses for D.U., which were \$3,729.

53. Plaintiff Xiaolei Xu had to miss work to take care of D.U. when he had school avoidance issues. The damages she incurred in that regard were equal to around \$930.

WHEREFORE, Plaintiffs pray for judgment against Defendant for a fair amount for damages, together with his reasonable attorney fees, and for whatever further relief the Court deems proper.

JURY DEMAND

Plaintiffs demand a trial by jury as to all claims so triable.

REQUEST ON THE CASE TITLE

Since Plaintiff T.U.'s surname is unique, it counts as the personally identifiable information of his minor children. In the name of protecting his children's privacy, Plaintiff T.U. respectfully requests that the case title include his initials only, rather than his full name, and/or whatever measure the Court deems proper in that regard.



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