

CAUSE NO. \_\_\_\_\_

**Ninfa Andrea Davis, Individually and as  
next friend to R.O.H., a minor**

*Plaintiffs,*

VS.

**Prosper Independent School District and  
Peggy C. May,**

*Defendants.*

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**IN THE DISTRICT COURT**

\_\_\_\_ **DISTRICT COURT**

**COLLIN COUNTY, TEXAS**

**PLAINTIFFS’ ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiffs Ninfa Andrea Davis, Individually and as next friend to R.O.H., a minor, by and through their attorney of record, Janelle L. Davis Law, PLLC and file this Original Petition. Plaintiffs would show the Court the following:

**I. DISCOVERY CONTROL PLAN**

- 1. This case shall be governed by Discovery Plan Level III.

**II. PARTIES**

2. Plaintiff Ninfa Andrea Davis is a resident of Collin County, Texas. She is represented by her attorney of record in this matter, Janelle L. Davis Law, PLLC. Her date of birth is \*\*/\*\*/\*969, the last four digits of her driver license are \*\*\*\*0917, and the last four digits of her Social Security number are \*\*\*-\*\*-5824.

3. Plaintiff R.O.H. is a resident of Collin County, Texas. He is represented by his attorney of record in this matter, Janelle L. Davis Law, PLLC. Plaintiff R.O.H. is a minor.

4. Defendant Prosper Independent School District (“PISD”) is a public school district located and operating in both Denton and Collin County, Texas. PISD’s administration building is located at 605 East Seventh Street, Prosper Texas in Collin County, Texas. PISD can be served by serving its registered agent for service of process Drew Watkins, 605 E. 7<sup>th</sup> Street, Prosper, Texas 75078. *Issuance of citation is requested at this time and can be provided to Plaintiffs’ counsel via email at [Janelle@JanelleLDavisLaw.com](mailto:Janelle@JanelleLDavisLaw.com).*

5. Defendant Peggy C. May is an individual who at the time of the events giving rise to this lawsuit worked at Rucker Elementary in PISD. She can be served with process at her last known address 1920 Grassmere Lane, Apartment 413, McKinney, Texas 75071, or wherever she may be found. *Issuance of citation is requested at this time and can be provided to Plaintiffs’ counsel via email at [Janelle@JanelleLDavisLaw.com](mailto:Janelle@JanelleLDavisLaw.com).*

### **III. REQUEST FOR USE OF PSEUDONYM/INITIALS**

6. Because this lawsuit involves intimate personal information and circumstances related to a minor child, Plaintiffs request the Court permit Plaintiff N.O.H. to proceed anonymously to help protect the privacy, dignity, and well-being of the minor Plaintiff. *Doe v. El Paso County Hosp. Dist.*, 2015 Lexis 46081 (W.D. Tex. Apr. 1, 2015) (examples of situations warranting anonymous actions, including (i) challenging governmental activity; (ii) disclosure of intimate, personal information; (iii) lawsuits involving particularly vulnerable parties or witnesses – including but not limited to, victims of assault; and (iv) protecting against risk of mental harm).

### **IV. JURISDICTION AND VENUE**

7. The subject matter in controversy is within the jurisdictional limits of this court. This court has jurisdiction over the parties because Defendants are in Collin County, Texas and the acts in question occurred in Collin County, Texas.

8. Plaintiffs seek monetary relief within the jurisdictional limits of this Court.

9. Venue is proper in Collin County because Defendants are located in Collin County, and the events giving rise to this lawsuit took place in Collin County, Texas.

## V. FACTS

10. Plaintiff R.O.H. is a 5-year-old child (the “Student”) who attends Rucker Elementary in PISD. He also attended Rucker Elementary during the 2022-2023 school year.

11. On March 23, 2023, Defendant May was a teacher in the Student’s classroom. While attempting to discipline the Student, she intentionally stepped on his leg as he tried to crawl away from her. She also grabbed the Student by his ankles and dragged him across the floor while he was sitting. The Student suffered visible, documented injuries because of Defendant May’s actions. No one intervened to protect the Student.

12. The Student’s mother was not made aware of the incident until after 6:00 p.m. the day it happened when she was contacted by an officer with the Prosper ISD Police Department.

13. Upon information and belief, Defendant May was investigated by the Texas State Board of Education and received a reprimand on October 16, 2023.

14. As a proximate result of Defendant May’s conduct, the Student suffered both physical injuries and mental anguish damages that continue to impact him today. His mother has also suffered emotional distress because of what her son has endured.

15. Unfortunately, Defendant May’s behavior appears to be part of a larger pattern of students being abused and staff failing to intervene at Rucker Elementary. Rucker Elementary is the same campus where a school bus driver sexually molested two Rucker Elementary students every day for the entire 2021-2022 school year. Despite seeing warning signs throughout the year, no one at Rucker Elementary asked questions or investigated any of the concerning behavior. To

date and upon information and belief, none of the administrative staff at Rucker Elementary or within PISD has been disciplined or fired for their failure to protect students from sexual abuse.

16. And at the beginning of the 2022-2023 school year, another bus driver assigned to Rucker Elementary allegedly got lost while driving students home. The driver kept students on the bus for an extended period of time in August without proper air conditioning. PISD did not adequately communicate what was going on to parents, which led to worry and several parents following the bus and forcing it to pull over so they could get to their children. Again, upon information and belief, none of the administrative staff at Rucker Elementary or within PISD has been disciplined or fired for this incident either.

17. In addition, upon information and belief, during the past two school years other children attending Rucker Elementary have been abused and/or injured due to the neglectful supervision of Rucker Elementary staff.

18. This lack of accountability is pervasive in PISD and created an environment where R.O.H. was hurt.

## **VI. SOVEREIGN IMMUNITY AND EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19. Plaintiffs incorporate the above paragraphs by reference as though set forth fully herein.

20. Defendants' actions fall within the exception to sovereign immunity that typically protects improper behavior of Texas public school districts and their employees. *See* Texas Education Code § 22.0511(a) ("A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee,

*except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.”* (emphasis added)).

21. To the extent the Defendants argue that Plaintiffs’ case should be dismissed for failure to exhaust administrative remedies, Plaintiffs allege that (i) exhaustion would be futile; (ii) Plaintiffs’ claims do not involve questions of fact (i.e., there is no question that Defendant May’s conduct towards the Student occurred); and (iii) the Commissioner does not have the authority to provide Plaintiffs with adequate relief. Therefore, exhaustion is not required in this instance.

## **VII. CAUSES OF ACTION**

### **COUNT 1: Negligence (Against All Defendants)**

22. Plaintiffs incorporate the above paragraphs by reference as though set forth fully herein.

23. Defendants had a duty to protect and supervise the children in their care, including R.O.H. Defendant PISD also had a duty to exercise reasonable care in its hiring, supervision, and training of its employees, including Defendant May.

24. On information and belief, Defendant PISD breached these duties by, among other things:

- i. Failing to exercise reasonable care in its hiring of Defendant May and other employees;
- ii. Failing to exercise reasonable care in its supervision of Defendant May and other employees;
- iii. Failing to exercise reasonable care in the training of Defendant May and other employees;
- iv. Failing to train and supervise its teachers and/or staff regarding the proper discipline of students;
- v. Failing to train and supervise its teachers and/or staff regarding the proper way to intervene to protect students who were being disciplined improperly;
- vi. Failing to adequately supervise Defendant May;

25. As a result of PISD’s breach of its duties, Plaintiffs were injured.

**COUNT 2: Intentional Infliction of Emotional Distress  
(Against All Defendants)**

26. Plaintiffs incorporate the above paragraphs by reference as though set forth fully herein.

27. Plaintiffs are both individuals. The Defendants in this case acted intentionally or recklessly. Defendants' conduct towards Plaintiffs was extreme and outrageous.

28. As a direct and proximate result of the Defendants' action, Plaintiffs suffered severe emotional distress.

29. There is no alternative cause of action that will provide a remedy for the severe emotional distress suffered by Plaintiffs because of the Defendants' actions.

**COUNT 3: Breach of Fiduciary Duty  
(Against All Defendants)**

30. Plaintiffs incorporate the above paragraphs by reference as though set forth fully herein.

31. Pleading additionally and in the alternative, Defendants committed a breach of their fiduciary duties to Plaintiffs.

32. Specifically, as set forth herein, Plaintiffs had a fiduciary relationship with Defendants May and PISD. Defendants breached their fiduciary duties to Plaintiffs and the breaches proximately caused injuries to Plaintiffs and resulted in benefit to Defendants.

**COUNT 4: Offensive Physical Contact  
(Against Defendant May)**

33. Plaintiffs incorporate the above paragraphs by reference as though set forth fully herein.

34. Defendant May committed an assault on R.O.H. by offensive physical contact for which she is directly liable. Specifically, as set forth herein, Defendant May acted intentionally or

knowingly, Defendant May made contact with R.O.H. Defendant May knew or reasonably should have known that R.O.H. would regard the contact as offensive or provocative, and Defendant May's contact caused injury to R.O.H.

### **RESPONDEAT SUPERIOR**

35. Plaintiffs incorporate the above paragraphs by reference as though set forth fully herein.

36. The unlawful behavior of Defendant PISD's employees and agents proximately caused Plaintiffs' damages. At all times material to this action, Defendants were acting in the course and scope of their employment or work for Defendant PISD. Accordingly, PISD may be held responsible for its employees' and agents' unlawful conduct under the doctrine of respondent superior.

### **DAMAGES**

37. Plaintiffs incorporate the above paragraphs by reference as though set forth fully herein.

38. As a direct and proximate cause of Defendants' unlawful actions, Plaintiffs have suffered mental anguish, pain, humiliation, emotional distress, and compensatory damages.

### **VIII. NOTICE PURSUANT TO TRCP 193**

39. Plaintiffs provide notice to Defendants pursuant to Rule 193.7 of the Texas Rules of Civil Procedure that he may utilize as evidence during the trial of this lawsuit all documents exchanged by the parties in written discovery.

### **IX. REQUESTS FOR DISCLOSURE**

40. Pursuant to Rule 194.1 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the initial disclosures described in Rule 194.2(b).

**X. DEMAND FOR JURY TRIAL**

41. Plaintiffs hereby demand that a jury of their peers be empaneled to hear and decide the issues presented in this case.

**XI. ATTORNEYS' FEES AND COSTS**

42. Plaintiffs are entitled to an award of attorneys' fees and costs.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendants for damages in an amount within the jurisdictional limits of the Court, including but not limited to:

- a. An award of compensatory damages to Plaintiffs from all Defendants, jointly and severally, for their conduct;
- b. Reasonable and necessary attorneys' fees, costs, and expenses;
- c. All other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,



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