

RICHARD ERICKSON, in his official capacity as)
 Superintendent of Tonganoxie USD 464 and in his)
 individual capacity,)
)
 STEPHAN WOOLF, in his official capacity as)
 Principal of Tonganoxie Junior High School and in)
 his individual capacity,)
)
 MICHAEL BOGART, in his official capacity as)
 Principal of Tonganoxie High School and in his)
 individual capacity, and)
)
 BRENT SMITH, in his official capacity as Vice-)
 Principal of Tonganoxie High School and in his)
 individual capacity,)
)
 Defendants.)
)

ANSWER

Defendants answer plaintiff's complaint as follows:

1. All allegations of the complaint not expressly admitted herein are denied.
2. In response to ¶ 1, defendants also request a jury trial.
3. In response to ¶ 2, defendants also designate Kansas City as the place of trial.
4. In response to ¶ 3, because plaintiff and his father are identified only by initials, defendants cannot confirm whether the allegations of that paragraph are correct or not. Those allegations are therefore denied.
5. In response to ¶ 4, defendants admit that U.S.D. 464 is a school district organized under the laws of Kansas, the office of which is situated in the city of Tonganoxie.
6. In response to ¶ 5, defendants admit that the identified defendants are members of U.S.D. 464 School Board with responsibilities established in accordance with Kansas law. The

Board does employ a superintendent who serves as the chief operating officer of U.S.D. 464. All allegations of ¶ 5 not expressly admitted are denied.

7. In response to ¶ 6, defendants admit that Richard Erickson is the Superintendent of U.S.D. 464 with responsibilities as assigned by the Board including overall supervision of the operation of the District. All allegations of ¶ 6 not expressly admitted are denied.

8. In response to ¶ 7, defendants admit that defendant Bogarat was the principal at Tonganoxie High School. Defendant Bogart is retiring and no longer has an official capacity with U.S.D. 464 and therefore is not appropriately sued in his official capacity. Defendants deny that any individual defendant has liability to plaintiff in their individual capacities.

9. In response to ¶ 8, defendants admit that Steve Woolf is the principal of Tonganoxie Junior High School. Defendants deny that defendant Woolf is appropriately sued in either his official or individual capacities.

10. In response to ¶ 9, defendants admit the Court has subject matter jurisdiction over plaintiff's federal claims. Defendants deny that the Court should accept supplemental jurisdiction of plaintiff's purported state law claims. Defendants deny that plaintiff has any legitimate or viable claims whether under state or federal law.

11. In response to ¶ 10, defendants deny any unlawful acts were committed.

12. In response to ¶ 11, defendants admit that venue is proper in this Court but deny any unlawful or improper act or omission.

ANSWER TO GENERAL ALLEGATIONS

13. Because the complaint fails to identify the plaintiff, defendants cannot confirm the allegations of ¶ 12 and for that reason only, deny those allegations.

14. In response to ¶ 13, defendants state that U.S.D. 464 maintains a code of conduct which precludes sexual harassment.

15. In response to ¶ 14, defendants state that U.S.D. 464 maintained a policy of investigating and taking appropriate action with respect to student-on-student sexual harassment, irrespective of whether the harassment was between students of opposite gender. Defendants also investigated and took appropriate action with respect to harassment between students of the same gender.

16. In response to ¶ 15, since the complaint fails to identify the plaintiff, defendants cannot confirm or deny the specific allegations and for that reason deny those allegations. Defendants do admit that an incident was reported in February, 2000, in which a student complained of being teased with respect to masturbation in a restroom and that school officials took appropriate action to discipline students involved. All other allegations of ¶ 15 not expressly admitted are denied.

17. Defendants have insufficient information to form a belief as to the truth of the allegations of ¶ 16 and for that reason deny those allegations.

18. ¶ 17 is denied. Defendants do admit that one student did complain occasionally, approximately annually, that he had been called names. On each occasion, defendants took appropriate action to investigate and address such complaints. Defendants deny that plaintiff was subjected to "sexual harassment."

19. ¶ 18 is denied.

20. Because ¶ 19 fails to identify the plaintiff, defendants cannot confirm or deny the allegations of ¶ 19 and for that reason deny those allegations. Defendants admit that parents of one

student submitted occasional complaints on an infrequent basis, not more than once per year, related to alleged harassment of their son, talked with Board members, attended a school board meeting, submitted a letter to Dr. Erickson and attempted to generate publicity in various media. Defendants deny that the student was subjected to sexual harassment at anytime and deny any implication that defendants failed to take appropriate and reasonable action.

21. ¶ 20 is denied.

ANSWER TO COUNT I: SEX DISCRIMINATION--TITLE IX

22. Defendants incorporate the remainder of their answer in response to ¶ 21.

23. ¶¶ 22, 23, 24, 25, 26 and 27 are denied.

24. Defendants deny that any defendant other than U.S.D. 464 is an education, program or activity receiving federal financial assistance subject to Title IX.

25. Defendants deny that plaintiff was subjected to gender discrimination within the scope of Title IX.

26. Defendants deny that plaintiff was subjected to actionable harassment of any nature.

27. School officials and employees responded appropriately to all complaints and information regarding plaintiff, and none were deliberately indifferent to plaintiff's complaints.

28. Some of plaintiff's claims are time barred.

WHEREFORE, defendants pray for judgment dismissing plaintiff's claims and for their costs.

ANSWER TO COUNT II: SEX DISCRIMINATION--FOURTEENTH AMENDMENT

29. Defendants incorporate the remainder of their answer in response to ¶ 28.

30. ¶¶ 29, 30, 32, 33, 34, 35, 36 and 37 are denied.

31. ¶ 31 is sufficiently vague in its identification of alleged acts or omissions that defendants cannot form a belief as to the truth of the allegations of that paragraph and for that reason deny those allegations.

WHEREFORE, defendants pray for judgment dismissing Count II of plaintiff's complaint and for their costs and attorney's fees.

ANSWER TO COUNT III--FOURTEENTH AMENDMENT STATE CREATED
DANGER CLAIM UNDER 42 U.S.C. § 1983

32. Defendants incorporate the remainder of their answer in response to ¶ 38.

33. ¶¶ 39, 40, 41, 42, 43 and 44 are denied.

WHEREFORE, defendants pray for judgment dismissing Count III of plaintiff's complaint and for their costs and fees.

ANSWER TO COUNT IV: NEGLIGENT SUPERVISION

34. Defendants incorporate the remainder of their answer in response to ¶ 45.

35. In response to ¶ 46, defendants assert that students were properly supervised and defendants took reasonable steps to protect students' safety. Defendants deny that Kansas law recognizes a duty as alleged by plaintiff under the circumstances alleged by plaintiff.

36. In response to ¶ 47, defendants admit adoption of a code of conduct which prohibited sexual harassment but deny that the code of conduct created any duty under Kansas law.

37. ¶¶ 48, 49 and 50 are denied.

38. Plaintiff's claims under Kansas law are limited by K.S.A. 75-6105.

39. Each defendant is immune from liability to plaintiff by the provisions of the Kansas Tort Claims Act, K.S.A. 75-6103 *et seq.*, including but not limited to K.S.A. 75-6104(a), (b), (c), (d), (e), (i), and (n).

40. Plaintiff's claims under Kansas law are limited to the scope of plaintiff's notice of claim submitted pursuant to K.S.A. 12-105b.

WHEREFORE, defendants pray for judgment dismissing Count IV of plaintiff's complaint.

ADDITIONAL DEFENSES

41. Plaintiff's claims are barred by failure to mitigate his damages.

42. Plaintiff's claims are barred by plaintiff's own fault and that of his parents and others.

43. Defendants are entitled to legislative and quasi-judicial immunity from plaintiff's claims.

44. Defendants are entitled to qualified immunity from plaintiff's claims in their individual capacities.

45. Plaintiff's claims against individual defendants in their official capacities are redundant of plaintiff's claims against U.S.D. 464 and should be dismissed.

46. Plaintiff's claims relating to events or conduct occurring more than two years before the filing of his complaint are time barred.

47. Plaintiff's own conduct and conduct of others constitute intervening causes of any purported damage to plaintiff which bar his claims against these defendants.

48. Plaintiff's claims are without reasonable factual or legal basis such that defendants are entitled to recover their attorney's fees and costs for defending plaintiff's claims under 42 U.S.C. § 1983 pursuant to 42 U.S.C. § 1988 and for defending plaintiff's claims under Title IX pursuant to the provisions of Title IX.

WHEREFORE, defendants pray for judgment dismissing plaintiff's complaint and for their costs and attorney's fees.

DEMAND FOR JURY TRIAL

Defendants demand all appropriate fact issues be tried to a jury.

s/J. Steven Pigg
J. Steven Pigg
Attorney's Bar #09213
Attorney for all Defendants
FISHER, PATTERSON, SAYLER & SMITH, L.L.P.
3550 S.W. 5th Street
P. O. Box 949
Topeka, KS 66601-0949
Phone number: (785) 232-7761
Fax number: (785) 232-6604
Attorney's E-mail address: spigg@fisherpatterson.com

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2004, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following: Arthur A. Benson, II, Jamie Kathryn Lansford and Aften P. McKinney. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: No one.

s/J. Steven Pigg
J. Steven Pigg
Attorney's Bar #09213
Attorney for all Defendants
FISHER, PATTERSON, SAYLER & SMITH, L.L.P.
3550 S.W. 5th Street
P. O. Box 949
Topeka, KS 66601-0949
Phone number: (785) 232-7761
Fax number: (785) 232-6604
Attorney's E-mail address: spigg@fisherpatterson.com