

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

FILED

SUPERIOR COURT DIVISION

FILE NO. 17 CVS _____

2017 APR 3 P 3:46
 MICHAEL BURGESS, JR., a minor)
 appearing by and through his Guardian ad)
 Litem, ANDREW P. CIOFFI, and WAKE CO. C.S.C.)
 MICHAEL BURGESS,)
 BY _____)

Plaintiffs,)

v.)

LINDSEY M. TIGHT; NICOLA A.)
 TIGHT; DOROTHY McCALL, in her)
 official and individual capacities; WAKE)
 COUNTY BOARD OF EDUCATION;)
 JAMES MERRILL, Superintendent of the)
 Wake County Board of Education, in his)
 official capacity; DELL EDWARDS,)
 Principal, West Lake Middle School, in)
 her official capacity; ROBERT)
 SNIDEMILLER, JR., Senior Director of)
 Transportation Operations & Finance for)
 the Wake County Public School System,)
 in his official and individual capacities;)
 ALVIN McNEIL, Director of Field)
 Operations, in his official and individual)
 capacities; JEFFREY TSAI, Director)
 Operations, Logistics, and Systems, in his)
 official and individual capacities; and,)
 SCOTT MOONEYHAM Director of)
 Transportation, in his official and)
 individual capacities,)

Defendants.)

COMPLAINT

NOW COME Plaintiffs Michael Burgess, Jr., a minor child appearing by and through his Guardian ad Litem, Andrew P. Cioffi, and Michael Burgess (hereafter collectively referred to as "Plaintiffs"), hereby complaining of Defendants and alleging as follows:

PARTIES

PLAINTIFFS

PLAINTIFF MICHAEL BURGESS JR.

1. Plaintiff MICHAEL BURGESS, JR. (hereafter referred to as “Michael” or “Plaintiff”) is a minor child and resident of Wake County, North Carolina. He was born on August 3, 2003. He was eleven (11) years of age at the time of the occurrence complained of herein and is thirteen (13) years of age at the time of filing of this Complaint.

2. Michael, Jr. appears in this action by and through his duly appointed Guardian ad Litem, Andrew P. Cioffi, who is a citizen and resident of Wake County, North Carolina, and a licensed member of the North Carolina State Bar.

PLAINTIFF MICHAEL BURGESS

3. Plaintiff Michael Burgess (hereafter referred to as “Mr. Burgess”) is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America.

4. Mr. Burgess is the biological father of Michael.

DEFENDANTS

Defendant Lindsey M. Tight

5. Upon information and belief, Defendant LINDSEY M. TIGHT (hereafter referred to as “Defendant L. Tight”) is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America. She was born on November 27, 1997 and was a minor child at the time of the occurrence complained of herein. Defendant L. Tight is now an adult who is competent to sue and be sued under North Carolina law.

Defendant Nicola A. Tight

6. Upon information and belief, Defendant NICOLA A. TIGHT (hereafter referred to as “Defendant N. Tight”) is a citizen and resident of Wake County, North Carolina, and is neither an infant, incompetent, nor in the military service of the United States of America.

7. Upon information and belief, Defendant N. Tight is the biological mother of Defendant L. Tight.

Defendant Dorothy McCall

8. Upon information and belief, Defendant DOROTHY MCCALL (hereafter referred to as “Defendant McCall”) is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America.

9. Upon information and belief, at all times relevant hereto, Defendant McCall was employed by Wake County Public School System (“WCPSS”) and/or Defendant Wake County Board of Education as a bus driver and was acting in the course and scope of said employment at the time of the occurrence described herein.

10. Upon information and belief, at all times relevant hereto, as a school bus driver for WCPSS, Defendant McCall was a public employee and is being sued in both her official and individual capacities.

11. At all times relevant hereto, Defendant McCall was operating a school bus owned by Defendant Wake County Board of Education for the purpose of transporting children in Wake County to a Wake County Public School.

12. At the time of the occurrence complained of herein, Defendant McCall was operating a school bus owned by Defendant Wake County Board of Education specifically for the purpose of transporting children, including Michael, to West Lake Middle School.

Defendant Wake County Board of Education

13. Defendant, WAKE COUNTY BOARD OF EDUCATION (hereafter referred to as “Defendant School Board”), is a corporation duly organized and existing under N.C. Gen. Stat. § 115C-40 with its principal place of business located at 5625 Dillard Drive, Cary, North Carolina 27518 in Wake County.

14. At all times relevant hereto, Defendant School Board was acting by and through its superintendent, area superintendents, principals, managers, members, directors, agents, servants and/or employees.

15. Upon information and belief, at all times relevant hereto, Defendant School Board was the governing body of the WCPSS and created, administered, operated, and managed the WCPSS, including West Lake Middle School located at 4600 West Lake Road, Apex, North Carolina 27539 in Wake County.

16. Any references herein to Defendant Wake County Board of Education are deemed to include the WCPSS, its officials, agents, servants and/or employees. Further, any references to the WCPSS shall be deemed to include and refer to its governing body, Defendant Wake County Board of Education, its agents, servants and/or employees.

Defendant James Merrill

17. Upon information and belief, Defendant JAMES MERRILL (hereafter referred to as “Defendant Merrill”) is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America.

18. Upon information and belief, at all times relevant hereto, Defendant Merrill was the elected Superintendent of the Wake County Board of Education in accordance with N.C. Gen. Stat. § 115C-271.

19. Upon information and belief, Defendant Merrill has served in his role as Superintendent of Defendant School Board since August 1, 2013.

20. Upon information and belief, at all times relevant hereto, the position of Chief Facilities and Operations Officer within the WCPSS was vacant, and Defendant Merrill assumed all duties of the Chief Facilities and Operations Officer including oversight of the Transportation Department and responsibility for the development, design, establishment, and implementation of school bus routes and stops for the transportation of students to and from Wake County Public Schools, including West Lake Middle School, and the training of school bus drivers.

21. Upon information and belief, at all times relevant hereto, Defendant Merrill was an agent, servant, and/or employee of Defendant School Board and was acting within the course and scope of his employment and/or agency with Defendant School Board.

22. Upon information and belief, as Superintendent of Defendant School Board, Defendant Merrill was a public official and is being sued in his official capacity.

Defendant Dell Edwards

23. Upon information and belief, Defendant DELL EDWARDS (hereafter referred to as "Defendant Edwards") is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America.

24. Upon information and belief, at all times relevant hereto, Defendant Edwards was the Principal of West Lake Middle School in accordance with N.C. Gen. Stat. § 115C-284.

25. Upon information and belief, as the Principal of West Lake Middle School, Defendant Edwards was a public official and is being sued in her official capacity.

26. Upon information and belief, Defendant Edwards, in her capacity as the Principal of West Lake Middle School, a Wake County Public School, was responsible for the

development, design, establishment, approval and implementation of school bus routes and bus stops for the transportation of students to and from West Lake Middle School.

27. Upon information and belief, at all times relevant hereto, Defendant Edwards was an agent, servant and/or employee of Defendant School Board and/or the WCPSS governed by Defendant School Board and was acting within the course and scope of said employment and/or agency.

Defendant Robert Snidemiller, Jr

28. Upon information and belief, Defendant ROBERT SNIDEMILLER, JR. (hereafter referred to as "Defendant Snidemiller") is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America.

29. Upon information and belief, at all times relevant hereto, Defendant Snidemiller was the Senior Director of Transportation Operations & Finance for the WCPSS.

30. Upon information and belief, at all times relevant hereto, Defendant Snidemiller was an agent, servant, and/or employee of Defendant School Board and/or the WCPSS governed by Defendant School Board and was acting within the course and scope of said employment and/or agency.

31. Upon information and belief, at all times relevant hereto, as the Senior Director of Transportation Operations & Finance for the WCPSS, Defendant Snidemiller was a public employee and is being sued in both his official and individual capacities.

32. Upon information and belief, Defendant Snidemiller, in his capacity as the Senior Director of Transportation Operations & Finance for the WCPSS, was responsible for the development, design, establishment, and implementation of school bus routes and stops for the transportation of students to and from Wake County Public Schools, including West Lake Middle

School and the training of school bus drivers

Defendant Alvin McNeil

33. Upon information and belief, Defendant ALVIN MCNEIL (hereafter referred to as “Defendant McNeil”) is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America.

34. Upon information and belief, at all times relevant hereto, Defendant McNeil was the Director of Field Operations for the WCPSS.

35. Upon information and belief, at all times relevant hereto, Defendant McNeil was an agent, servant, and/or employee of Defendant School Board and/or the WCPSS governed by Defendant School Board and was acting within the course and scope of said employment and/or agency.

36. Upon information and belief, at all times relevant hereto, as the Director of Field Operations for the WCPSS, Defendant McNeil was a public employee and is being sued in both his official and individual capacities.

37. Upon information and belief, Defendant McNeil, in his capacity as the Director of Field Operations for the WCPSS, was responsible for the development, design, establishment, and implementation of school bus routes and stops for the transportation of students to and from Wake County Public Schools, including West Lake Middle School and the training of school bus drivers.

Defendant Jeffrey Tsai

38. Upon information and belief, Defendant JEFFREY TSAI (hereafter referred to as “Defendant Tsai”) is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America.

39. Upon information and belief, at all times relevant hereto, Defendant Tsai was the Director of Operations, Logistics and Systems for the WCPSS.

40. Upon information and belief, at all times relevant hereto, Defendant Tsai was an agent, servant, and/or employee of Defendant School Board and/or the WCPSS governed by Defendant School Board and was acting within the course and scope of said employment and/or agency.

41. Upon information and belief, at all times relevant hereto, as the Director of Director of Operations, Logistics and Systems for the WCPSS, Defendant Tsai was a public employee and is being sued in both his official and individual capacities.

42. Upon information and belief, Defendant Tsai, in his capacity as the Director of Operations, Logistics and Systems for the WCPSS, was responsible for the development, design, establishment, and implementation of school bus routes and stops for the transportation of students to and from Wake County Public Schools, including West Lake Middle School and the training of school bus drivers.

Defendant Scott Mooneyham

43. Upon information and belief, Defendant SCOTT MOONEYHAM (hereafter referred to as “Defendant Mooneyham”) is a citizen and resident of Wake County, North Carolina and is neither an infant, incompetent, nor in the military service of the United States of America.

44. Upon information and belief, at all times relevant hereto, Defendant Mooneyham was the Director of Transportation for the WCPSS.

45. Upon information and belief, at all times relevant hereto, Defendant Mooneyham was an agent, servant, and/or employee of Defendant School Board and/or the WCPSS governed by Defendant School Board and was acting within the course and scope of said employment

and/or agency.

46. Upon information and belief, at all times relevant hereto, as the Director of Transportation for the WCPSS, Defendant Mooneyham was a public employee and is being sued in both his official and individual capacities.

47. Upon information and belief, Defendant Mooneyham, in his capacity as the Director of Transportation for the WCPSS, was responsible for the development, design, establishment, and implementation of school bus routes and stops for the transportation of students to and from Wake County Public Schools, including West Lake Middle School.

WAIVER OF GOVERNMENTAL IMMUNITY

48. Upon information and belief, pursuant to N.C. Gen. Stat. § 115C-42 or other authority, the Defendant School Board had purchased and had in force on September 30, 2014, liability and/or umbrella insurance and/or participated in a local government risk pool and/or adopted, through its Board Members, a resolution creating a funded reserve and deeming the creation of said funded reserve to be the same as the purchase of insurance under N.C. Gen. Stat. § 115C-42 and thereby under North Carolina law, waived any governmental immunity it might have to the extent of such insurance as provided by a policy of insurance, participation in a local government risk pool or adoption of a resolution as aforesaid.

49. The aforesaid actions of Defendant School Board provided liability insurance coverage for damage by reason of death or injury to person or property caused by the negligence or tort of any officer, agent or employee of the WCPSS and/or the Wake County Board of Education when acting within the scope of his/her authority or within the course of his/her employment and/or agency with the WCPSS and/or the Wake County Board of Education. Defendant School Board, its officers, agents and/or employees, including officers, agents,

servants and/or employees of WCPSS, are therefore insured for their potential liability for the occurrence described herein and have thereby waived their sovereign immunity to the extent of said insurance.

50. Further, pursuant to Defendant School Board's own policies, upon information and belief, Defendant School Board purchased and provided general liability insurance for Defendant School Board collectively and individually, and for WCPSS employees, including, upon information and belief, the individual Defendants named in this action.

51. The injuries sustained by Michael are of the type and extent that fall within the scope of insurance coverage obtained and afforded by Defendant School Board and/or other funds set aside by Defendant School Board as described above.

FACTUAL ALLEGATIONS

52. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs.

53. In September of 2014, Michael was a 6th grade student enrolled at and attending West Lake Middle School, a Wake County public middle school located in Apex, North Carolina.

54. Each day, Michael was transported to and from West Lake Middle School on a North Carolina School Bus provided by the WCPSS (hereafter the "School Bus").

55. The School Bus on which Michael rode to and from school was owned by Defendant School Board and was regularly operated by Defendant McCall.

56. At all times relevant hereto, Michael lived in a neighborhood off Oak Park Drive in Apex, North Carolina and was assigned to a specific bus stop located at the intersection of Oak Park Drive and Johnson Pond Road (hereafter referred to as the "Bus Stop") by Defendant

School Board, its agents, servants, and/or employees, including those named as Defendants herein.

57. At the location of the Bus Stop, Johnson Pond Road is a divided two lane road with a posted speed limit of 45 mph.

58. Michael and the other children assigned to this Bus Stop were directed by Defendant School Board, its agents, servants and/or employees, including those named as Defendants herein, to wait for their bus at the intersection of Oak Park Drive and the southbound lane of Johnson Pond Road.

59. The School Bus that picked Michael and the other children assigned to this Bus Stop up for school in the morning regularly traveled a route such that it approached the Bus Stop traveling northbound on Johnson Pond Road and stopped in the northbound lane of Johnson Pond Road directly across from Oak Park Drive and across the street from the location where Michael and the other children were instructed to wait for the bus.

60. Michael and other children assigned to this Bus Stop were thus required to cross the southbound and northbound lanes of Johnson Pond Road in the early morning hours to board the bus to go to school.

61. The bus typically arrived at the Bus Stop between 6:35 a.m. and 6:40 a.m.

62. At approximately 6:50 a.m. on September 30, 2014, Michael was waiting for the School Bus, along with several other students, in a grassy area near the Stop sign located at the intersection of Oak Park Drive and Johnson Pond Road in Apex, North Carolina, adjacent to the southbound lane of Johnson Pond Road, his designated Bus Stop.

63. At the aforesaid date and time, sunrise had not occurred and it was dark and extremely foggy.

64. At the aforesaid date and time, Defendant McCall was operating a School Bus owned by Defendant School Board along its normal route traveling northbound on Johnson Pond Road when she brought it to a complete stop in the northbound lane of Johnson Pond Road at the Bus Stop

65. At the same time and place, Defendant L. Tight was driving a 2010 Chevrolet owned by her mother, Defendant N. Tight, bearing Vehicle Identification Number (VIN) KL1TG5DE4AB046858 and North Carolina License Tag Number CHF6818 (hereafter referred to as the "Tight Family Vehicle") and traveling southbound on Johnson Pond Road toward the Bus Stop.

66. As Defendant McCall approached the Bus Stop and prior to bringing the School Bus to a complete stop, Defendant McCall failed to activate and turn-on the amber warning lights equipped on the School Bus at any time within 300 feet of the Bus Stop.

67. The amber warning lights equipped on the School Bus are designed to give other motorists operating in the vicinity of the School Bus maximum warning that it is preparing to stop and children will be attempting to board the School Bus.

68. Upon arriving at the Bus Stop and bringing the bus to a stop, Defendant McCall observed the Tight Vehicle in close proximity to the Bus Stop proceeding towards her in the southbound lane of Johnson Pond Road and failing to slow. Despite having observed the Tight Vehicle, Defendant McCall, proceeded to activate the red lights and the mechanical Stop arm and opened the bus doors, signaling Michael to cross southbound Johnson Pond Road from the Bus Stop to board the School Bus.

69. Observing the stopped bus, the flashing red lights, and the extended stop arm, Michael began to cross southbound Johnson Pond Road to board the School Bus as he did every morning.

70. As Defendant L. Tight drove southbound on Johnson Pond Road and approached the stopped School Bus in the northbound lane of Johnson Pond Road and Michael crossing the southbound lane of Johnson Pond Road, she failed to reduce her speed and stop, striking Michael's person as he was lawfully walking across southbound Johnson Pond Road, first catching his foot and ankle underneath the Tight Family Vehicle and then propelling him in the air into a drainage ditch adjacent to Johnson Pond Road (hereafter referred to as the "Crash").

71. Prior to the Crash, Defendant L. Tight did not sound her horn or otherwise take any action to warn Michael that she was about to strike him.

72. As a result of the Crash, Michael sustained immediate, apparent, and possibly permanent physical and psychological injuries, including, but not limited to: a right orbital bone fracture, a right frontal bone fracture, multiple right ankle fractures, multiple abrasions, a concussion and closed head injury, injuries to his left knee, left wrist, and back, and post-traumatic stress disorder.

FIRST CLAIM FOR RELIEF

NEGLIGENCE OF DEFENDANT LINDSEY M. TIGHT

73. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

74. The aforesaid Crash was caused by Defendant L. Tight's negligent operation of the Tight Family Vehicle, in that she:

- a. Failed to come to a full stop and remain stopped when a school bus was displaying its mechanical stop signal and flashing red lights and had stopped for the purpose of receiving passengers, in direct violation of N.C. Gen. Stat. § 20-217;
- b. Failed to decrease the speed of her automobile in a manner that was reasonable and prudent under the circumstances and conditions then and there existing, in order to avoid the Crash, in direct violation of North Carolina General Statutes § 20-141;
- c. Operated the vehicle she was driving carelessly and heedlessly with disregard for the rights or safety of others, in direct violation of North Carolina General Statutes § 20-140;
- d. Failed to keep and maintain a reasonably careful and proper lookout in order to avoid the Crash;
- e. Operated the Tight Family Vehicle without due caution and circumspection, thereby creating a substantial risk of injury to persons and damage to property;
- f. Failed to keep and maintain the vehicle she was driving under reasonable and proper control;
- g. Acted in a manner or engaged in conduct that a reasonable and prudent person would not have under the same or similar circumstances;
- h. Breached a duty to protect others from harm, failed to do what a reasonable and prudent person would have done under the circumstances, and failed to use the care of a reasonably prudent person in regard to the safety of others in proximity thereto, including Michael;
- i. Failed to decrease the speed of her automobile, failed to properly and timely apply the brakes of her automobile, failed to stop her automobile, or otherwise exercise

due care to avoid the Crash after the danger of the Crash was discovered by her or in the exercise of due care should have been discovered by her, although she had the time and means available to do so; and,

j. Was negligent in other ways to be shown through discovery and/or at trial.

75. The aforesaid Crash occurred as a direct and proximate result of the negligent acts and/or omissions of Defendant L. Tight as aforesaid.

76. The aforesaid acts of negligence on the part of Defendant L. Tight were in violation of her statutory duty to operate the Tight Family Vehicle in a safe and lawful manner such that her conduct constitutes negligence per se. Further, the aforesaid conduct of Defendant L. Tight was in violation of her duty to operate the Tight Family Vehicle in a reasonable and prudent manner, with due regard to the rights and safety of others, including Michael, such that her conduct constitutes ordinary negligence.

77. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant L. Tight, Michael has sustained damages and will continue to sustain damages in the future, including but not limited to the following:

- a. Physical injuries including but not limited to injuries to his face, head, brain and ankle;
- b. Psychological injury including post traumatic stress disorder or a similar disorder of the mind;
- c. Past, present and future physical pain and suffering;
- d. Past, present and future emotional and psychological distress;
- e. Scarring;
- f. Permanent impairment to his person; and

g. Such additional losses or damages that will be discovered during litigation or that may be shown at the trial of this action.

78. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant L. Tight, Mr. Burgess has incurred bills and expenses for the medical and healthcare attention received by Michael for the injuries referenced hereinabove and, upon information and belief, may incur bills and expenses for medical and healthcare attention to be received by Michael in the future.

79. As a result of the aforesaid negligence of Defendant L. Tight, Plaintiffs have been damaged in an amount in excess of Twenty-Five Thousand and 0/100 Dollars (\$25,000.00) and the Defendant L. Tight is liable to Plaintiffs for the aforesaid damages.

SECOND CLAIM FOR RELIEF

NEGLIGENCE OF DEFENDANT NICOLA A. TIGHT **FAMILY PURPOSE DOCTRINE**

80. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

81. At all times relevant hereto, the vehicle operated by Defendant L. Tight at the time of the Crash was owned by Defendant N. Tight, was registered in Defendant N. Tight's name, and was paid for by and insured by Defendant N. Tight.

82. Upon information and belief, Defendant N. Tight provided Defendant L. Tight with the use of the Tight Family Vehicle and regularly permitted Defendant L. Tight's use of said Vehicle, including on the date of the Crash.

83. Upon information and belief, at the time of the Crash, Defendant L. Tight was a member of the household of her parents, Defendant N. Tight and David Tight, and was living in their home.

84. Upon information and belief, at the time of the Crash, Defendant N. Tight owned, maintained, kept, and controlled the Tight Family Vehicle and it was regularly used and provided for use as a family car maintained for the use, pleasure, and convenience of the family, including Defendant L. Tight.

85. Upon information and belief, at the time of the Crash, the Tight Family Vehicle was being used by Defendant L. Tight with the express or implied consent, knowledge, authority and approval of Defendant N. Tight and as her agent and was being used for the general use, pleasure, and convenience of the family.

86. Upon information and belief, at the time of the Crash, Defendant L. Tight was driving the Tight Family Vehicle with the purpose of taking her younger sister to school and, as such, was acting as an agent for her mother, Defendant N. Tight.

87. The aforesaid negligent acts and omissions of Defendant L. Tight are imputed to Defendant N. Tight by operation of the family purpose doctrine and in accordance with the provisions of N.C.G.S. § 20-71.1 and pursuant to the principal-agent relationship between the Tight Defendants.

88. As a result of the aforesaid negligence of Defendant L. Tight imputed to N. Tight, Michael has sustained the injuries, harms, and losses set forth elsewhere herein, and Plaintiffs have been damaged in an amount in excess of Twenty-Five Thousand and 0/100 Dollars (\$25,000.00) and Defendant N. Tight is liable to Plaintiffs for the aforesaid damages.

THIRD CLAIM FOR RELIEF

NEGLIGENCE OF DOROTHY McCALL IN HER OFFICIAL AND INDIVIDUAL CAPACITIES

89. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

90. At all times relevant hereto, Defendant McCall was a certified school bus driver by the North Carolina Division of Motor Vehicles.

91. At all times relevant hereto, Defendant McCall was employed by Defendant School Board and/or the WCPSS as a school bus driver and was acting in the course and scope of said employment as a school bus driver at the time of the Crash.

92. At the time of the Crash, Defendant McCall was operating a school bus owned by Defendant School Board.

93. Upon information and belief, at all times relevant hereto, Defendant McCall was authorized to operate said school bus on said route and was driving the route assigned to her at the time of the Crash.

94. At all times relevant hereto, Defendant McCall was assigned to the school bus route designated to transport Michael to and from West Lake Middle School.

95. At all times relevant hereto, Defendant McCall, as a school bus driver, had a duty to ensure the safe transport of students to and from school.

96. At all times relevant hereto, Defendant McCall knew that the bus stop location to which Michael was assigned required him and others to cross Johnson Pond Road, a two lane roadway with a 45 mph speed zone, during the early morning hours when it was dark and often extremely foggy.

97. At all times relevant hereto, Defendant McCall knew or should have known that a safer stop was available for the pick-up of Michael inside the neighborhood where he and other children resided and where their bus stop had been previously located.

98. Defendant McCall had a duty to report any road, traffic, lighting, weather or other conditions which may affect the safety of the bus route or any bus stop along the route to

Defendant School Board, its agent, servants, and/or employees, including those Defendants named herein employed by Defendant School Board at the time of the crash.

99. Upon information and belief, the School Bus Passenger Stop Procedures provided to school bus operators such as Defendant McCall by the North Carolina Department of Transportation Division of Motor Vehicles, School Bus & Traffic Safety Section, instructs that the operator of each school bus must activate and turn-on the amber warning lights 300 feet before the each bus stop.

100. Upon information and belief, prior to the Crash, Defendant McCall had received training instructing her to activate and turn on the amber warning lights on the School Bus 300 feet before each designated bus stop.

101. At all times relevant hereto, Defendant McCall knew she had a duty under the circumstances to activate and turn-on the amber warning lights on the School Bus 300 feet before each designated bus stop.

102. Despite her foregoing knowledge and duties, Defendant McCall was negligent in that she:

- a. Failed to activate and turn on the amber warning lights of the School Bus at any time within 300 feet prior to the Bus Stop;
- b. Upon arriving at the Bus Stop, activated her red lights and stop arm and opened the bus door despite her knowledge that there was a car in close proximity quickly approaching in the southbound lane of Johnson Pond Road that did not appear to be slowing;
- c. Upon arriving at the Bus Stop, communicated to the children, including Michael, that it was safe to cross the road to get on the bus by activating the red

- lights and stop arm and opening the door, despite her knowledge that there was a car in close proximity quickly approaching in the southbound lane of Johnson Pond Road that did not appear to be slowing;
- d. Failed to instruct the children, including Michael, not to cross the road when she knew there was a car in close proximity quickly approaching in the southbound lane of Johnson Pond Road that did not appear to be slowing;
 - e. Failed to utilize an escorted crossing procedure given the lighting and weather conditions;
 - f. Utilized hand signals communicating to the children, including Michael, that it was safe to cross the road when she knew there was a car in close proximity quickly approaching in the southbound lane of Johnson Pond Road that did not appear to be slowing;
 - g. Utilized hand signals to communicating with the children waiting at the Bus Stop, including Michael, that were confusing and subject to misinterpretation by the children;
 - h. Failed to utilize or engage other safety and/or warning lights or systems on the bus;
 - i. Failed to conduct a pre-trip inspection and failed to fully and properly inspect, test, or otherwise ensure the warning lights, signs, and signals on the bus were properly working prior to operating said bus on the day of the Crash for the purpose of transporting school children, all in violation of state and federal laws, rules and regulations;

- j. Failed to report to her supervisor, Defendant Edwards, and/or Defendant School Board, its agents, servants, and/or employees, including those named as Defendants herein, that the Bus Stop for the pick-up and drop off of Michael was unsafe and dangerous given that it required the children to cross a high speed roadway in the dark in order to board the bus;
- k. Failed to report to her supervisor, Defendant Edwards, and/or Defendant School Board, its agents, servants, and/or employees, including those named as Defendants herein, that a safer alternate stop existed for the pick-up of Michael and other children; and
- l. Was otherwise negligent as may be shown through discovery or at the trial of this matter.

103. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant McCall, Michael was seriously injured, and Plaintiffs have suffered the damages as set forth elsewhere herein.

104. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant McCall, Plaintiffs are entitled to recover damages from Defendant McCall as set forth above in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

FOURTH CLAIM FOR RELIEF

NEGLIGENCE OF DEFENDANT WAKE COUNTY SCHOOL BOARD

105. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

106. At all times relevant hereto, Defendant School Board was acting by and through its agents, servants, officials and employees, and those agents, servants, officials and employees of

WCPSS, including but not limited to, all other named Defendants with the exception of Defendants L. Tight and N. Tight.

107. At all times relevant hereto, Defendant School Board elected to provide school transportation to and from its schools for eligible students.

108. Defendant School Board had a duty to ensure that the WCPSS Transportation Department (hereafter referred to as the "Transportation Department"), and the transportation services provided by said Department, met the current student transportation needs and requirements of the school district, including but not limited to providing safe means of transportation to and from school through the establishment, placement and assignment of safe school bus stops.

109. Defendant School Board had a duty to make safety a priority in providing transportation to and from school for its eligible students, to recruit and train qualified bus drivers and other staff responsible for transportation services for eligible students, and to teach students to act in a safe manner while utilizing school transportation services.

110. Defendant School Board was responsible for the identification and evaluation of the presence of factors that might endanger the safety of students in the establishment and designation of bus stops and the assignment of students to a particular bus, bus stop and/or bus route.

111. Defendant School Board had a duty to consider all criteria identified in its policies and procedures for determining safe bus stops, as well as those identified by other local, state and national industry guidelines and standards.

112. Defendant School Board was responsible for informing students and parents about safety issues and for providing instruction pertaining to school bus safety to students utilizing transportation services.

113. At all times relevant hereto, Defendant School Board developed, designed, established, and implemented school bus routes for the transportation of students to and from West Lake Middle School, including the school bus route for the Wake County school bus on which Michael was transported to and from West Lake Middle School.

114. At all times relevant hereto, Defendant School Board developed, designed, established, implemented, designated and assigned school bus stop locations for the pick-up and drop off of students being transported by Wake County school buses to and from West Lake Middle School.

115. At all times relevant hereto, Defendant School Board, designated and assigned Michael to that school Bus Stop located on Johnson Pond Road at its intersection with Oak Park Drive.

116. At the time of this Crash Michael resided in a neighborhood on the opposite side of the road of the location where the school bus stopped to pick him up, and he was required to cross said street when it was dark and often foggy in order to board the School Bus for transportation to school in the morning.

117. Said Bus Stop constituted a dangerous bus stop in that it required Michael and other children to cross a 45 mph roadway in the dark in order to board the bus to be transported to school.

118. Defendant School Board was negligent in the development, design, establishment, determination, designation and assignment of the bus route and Bus Stop to which Michael was

assigned in that it:

- a. Failed to use reasonable care in the design of the school bus route to which Michael was assigned in that said route included unsafe stops for the pick-up and drop off of students being transported by said bus to and from school, including but not limited to Michael;
- b. Failed to use reasonable care in the establishment, designation and/or placement of the Bus Stop for the pick-up and drop off of Michael;
- c. Failed to use reasonable care in the assignment of Michael to the Bus Stop located at the intersection of Johnson Pond Road and Oak Park Drive with the bus stopping on the opposite side of a highway from the neighborhood in which he resided;
- d. Failed to follow its own policies and procedures for school bus routing and the placement of school bus stops in determining the placement of said Bus Stop;
- e. Failed to follow local, state, national and industry standards, guidelines and policies and procedures in determining the placement of said Bus Stop;
- f. Failed to enact adequate guidelines for establishing a safe student school bus stop for Michael;
- g. Failed to establish and implement appropriate policies and procedures for identifying factors rendering bus routes and/or bus stops hazardous and dangerous for use by students;
- h. Failed to appropriately consider factors rendering said Bus Stop dangerous, including but not limited to the speed limit on Johnson Pond Road, the

amount of traffic on Johnson Pond Road at pick-up and drop-off times, and the lighting and weather at pick-up and drop-off times;

- i. Failed to consider the safety of the route Michael was required to travel between his doorstep and the Bus Stop when designating said Bus Stop and assigning Michael to said Bus Stop;
- j. Placed a higher priority on efficiency than on student safety in determining the placement of said Bus Stop and assigning Michael to said Bus Stop;
- k. Failed to assess the volume of traffic on Johnson Pond Road at the times Michael was being picked up and dropped off for school;
- l. Failed to assess the lighting and weather conditions during pick-up times and the impact of said lighting and weather on the safe crossing of the street and/or boarding of the bus;
- m. Knew or should have known that designating said Bus Stop and assigning Michael to said Bus Stop requiring him to cross Johnson Pond Road was unsafe, hazardous and dangerous;
- n. Failed to designate and assign a safe bus stop for Michael such that he would not be required to cross Johnson Pond Road in the dark in order to board his bus;
- o. Failed to designate a bus stop that offered adequate lighting knowing students would be crossing a major road in dark and often foggy conditions in order to board the bus;
- p. Designated said Bus Stop and assigned Michael to said Bus Stop when Defendant School Board knew or should have known that the volume of

traffic on Johnson Pond Road at the time Michael was being picked up rendered crossing Johnson Pond Road at that time hazardous and dangerous;

- q. Designated said Bus Stop and assigned Michael to said Bus Stop when Defendant School Board knew or should have known that the lighting and weather conditions at the time he was being picked up were poor, rendering the stop unsafe for requiring Michael to cross the street in order to board the bus;
- r. Designated a stop for the pick-up and drop off of Michael and others that was unsafe and dangerous in that it required said children to cross a two lane highway designated as a 45 mph speed zone in the dark;
- s. Designated an unsafe and dangerous school bus stop for the pick-up and drop off of Michael and others, when a safer alternative for said children in the neighborhood was available and had been previously used;
- t. After establishing the aforesaid bus route and Bus Stop and assigning Michael to said Bus Stop and route, Defendant School Board continued to allow the bus driver, including Defendant McCall, and Michael and other children, to utilize said Bus Stop when it knew or should have known that said Bus Stop was dangerous and hazardous; and
- u. Was otherwise negligent as may be shown through discovery or at the trial of this matter.

119. Defendant School Board was further negligent in the organization and staffing of the Transportation Department in that it:

- a. Failed to ensure that the organizational structure of its Transportation Department was able to consistently meet the changing and growing transportation needs of the school district, including the establishment, placement and assignment of safe school bus stops;
- b. Failed to make changes to the organizational structure of its Transportation Department to facilitate the changing and growing transportation needs of the school district in a manner to provide adequate and safe transportation services to WCPSS students;
- c. Allowed the structure of the Transportation Department to become outdated and overwhelmed with too few employees and managers assigned too many tasks, to adequately and safely provide transportation services to WCPSS students;
- d. Failed to provide sufficient staffing to appropriately meet the need for the design, development and implementation of safe bus routes and for the establishment and placement of safe bus stops and the assignment of students to safe bus stops;
- e. Failed to provide adequate staffing in order to provide adequate and safe transportation services to WCPSS students;
- f. Failed to ensure adequate staffing for the regular and proper inspection, maintenance, repair and upkeep of Defendant School Board's buses and their warning systems;

- g. Assigned tasks to those not qualified for said tasks including the development, design and implementation of bus routes, the establishment and placement of bus stops and the assignment of students to said bus stops;
- h. Failed to enact policies and procedures relevant to student safety in crossing a roadway to board buses;
- i. Failed to provide necessary resources to the Transportation Department to ensure that it could adequately and safely meet the transportation needs of the school district's students;
- j. Failed to utilize systems, policies and procedures to account for all necessary criteria in developing bus routes and in establishing bus stops safe for the transportation of students;
- k. Allowed there to exist a shortage of trained and available bus drivers at the time relevant hereto impacting the design of bus routes and the establishment, placement and assignment of safe bus stops; and
- l. Was otherwise negligent as may be shown through discovery or at the trial of this matter.

120. Defendant School Board was further negligent in that it failed to adequately instruct and train its bus drivers, including but not limited to Defendant McCall.

121. Defendant School Board was further negligent in that failed to adequately teach, instruct, or otherwise inform and provide sufficient direction to Michael, his parents and others as to the safest manner in which to walk, cross, travel, or otherwise get to the school bus in order to avoid injury or death.

122. Defendant School Board was further negligent in that it failed to ensure Michael a safe means by which to board the bus to which he was assigned for his transportation to school.

123. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant School Board, Michael was seriously injured, and Plaintiffs have suffered the damages as set forth elsewhere herein.

124. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant School Board, Plaintiffs are entitled to recover damages from Defendant School Board as set forth above in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

FIFTH CLAIM FOR RELIEF

NEGLIGENCE OF DEFENDANT JAMES MERRILL **IN HIS OFFICIAL CAPACITY**

125. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

126. At all times relevant hereto, as Superintendent of Defendant School Board, Defendant Merrill served as the Chief Administrative Officer of the WCPSS and was responsible for the administration of the school system consistent with Defendant School Board's policies.

127. At all times relevant hereto, Defendant Merrill was responsible for the oversight and supervision of all personnel of the WCPSS, including but not limited the other named Defendants herein with the exception of the Tigt Defendants.

128. At all times relevant hereto, Defendant Merrill was responsible for the appointment, hiring and other designation of Transportation Department staff to design and implement routing strategies, establish bus routes and bus stops and assign students to buses, bus stops and bus routes.

129. At all times relevant hereto, Defendant Merrill was responsible for informing students and parents about safety issues and for providing instruction in school bus safety to students utilizing transportation services.

130. Defendant Merrill was negligent in the development, design, establishment, determination, designation and assignment of the bus route and Bus Stop to which Michael was assigned in that he:

- a. Failed to use reasonable care in the design of the school bus route to which Michael was assigned in that said route included unsafe stops for the pick-up and drop off of students being transported by said bus to and from school, including but not limited to Michael;
- b. Failed to use reasonable care in the establishment, designation and/or placement of the Bus Stop for the pick-up and drop off of Michael;
- c. Failed to use reasonable care in the assignment of Michael to the Bus Stop located at the intersection of Johnson Pond Road and Oak Park Drive with the bus stopping on the opposite side of a highway from his house;
- d. Failed to follow Defendant School Board's own policies and procedures for school bus routing and the placement of school bus stops in determining the placement of said Bus Stop;
- e. Failed to follow local, state, national and industry standards, guidelines and policies and procedures in determining the placement of said Bus Stop;
- f. Failed to enact adequate guidelines for establishing a safe student school bus stop for Michael;

- g. Failed to establish and implement appropriate policies and procedures for identifying factors rendering bus routes and/or bus stops hazardous and dangerous for use by students;
- h. Failed to appropriately consider factors rendering said Bus Stop dangerous, including but not limited to the speed limit on Johnson Pond Road, the amount of traffic on Johnson Pond Road at pick-up and drop-off times, and the lighting and weather at pick-up and drop-off times;
- i. Failed to consider the safety of the route Michael was required to travel between his doorstep and the Bus when designating said Bus Stop and assigning Michael to said Bus Stop;
- j. Placed a higher priority on efficiency than on student safety in determining the placement of said Bus Stop and assigning Michael to said Bus Stop;
- k. Failed to assess the volume of traffic on Johnson Pond Road at the times Michael was being picked up and dropped off for school;
- l. Failed to assess the lighting and weather conditions during pick-up times and the impact of said lighting and weather on the safe crossing of the street and/or boarding of the bus;
- m. Knew or should have known that designating said Bus Stop and assigning Michael to said Bus Stop requiring him to cross Johnson Pond Road was unsafe, hazardous and dangerous;
- n. Failed to designate and assign a safe bus stop for Michael such that he would not be required to cross Johnson Pond Road in the dark in order to board the bus;

- o. Failed to designate a bus stop that offered adequate lighting knowing students would be crossing a major road in dark and often foggy conditions in order to board the bus;
- p. Designated said Bus Stop and assigned Michael to said Bus Stop when Defendant Merrill knew or should have known that the volume of traffic on Johnson Pond Road at the time Michael was being picked up rendered crossing Johnson Pond Road at that time hazardous and dangerous;
- q. Designated said Bus Stop and assigned Michael to said Bus Stop when Defendant Merrill knew or should have known that the lighting and weather conditions at the time he was being picked up were poor, rendering the stop unsafe for requiring Michael to cross the street in order to board the bus;
- r. Designated a stop for the pick-up and drop off of Michael and others that was unsafe and dangerous in that it required said children to cross a two lane highway designated as a 45 mph speed zone in the dark;
- s. Designated an unsafe and dangerous school bus stop for the pick-up and drop off of Michael and others, when a safer alternative for said children inside the neighborhood where he resided was available and had been previously used;
- t. After establishing the aforesaid bus route and Bus Stop and assigning Michael to said Bus Stop and route, Defendant Merrill continued to allow the bus driver, including Defendant McCall, and Michael and other children, to utilize said Bus Stop when it knew or should have known that said Bus Stop was dangerous and hazardous; and

- u. Was otherwise negligent as may be shown through discovery or at the trial of this matter.

131. Defendant Merrill was further negligent in the organization and staffing of the Transportation Department in that he:

- a. Failed to ensure that the organizational structure of the Transportation Department was able to consistently meet the changing and growing transportation needs of the school district including the establishment, placement and assignment of safe school bus stops;
- b. Failed to make changes to the organizational structure of the Transportation Department to facilitate the changing and growing transportation needs of the school district in a manner to provide adequate and safe transportation services to WCPSS students;
- c. Allowed the structure of the Transportation Department to become outdated and overwhelmed with too few employees and managers assigned too many tasks, to adequately and safely provide transportation services to WCPSS students;
- d. Failed to provide sufficient staffing to appropriately meet the need for the design, development and implementation of safe bus routes and for the establishment and placement of safe bus stops and the assignment of students to safe bus stops;
- e. Failed to provide adequate staffing in order to provide adequate and safe transportation services to WCPSS students;

- f. Failed to ensure adequate staffing for the regular and proper inspection, maintenance, repair and upkeep of Defendant School Board's buses and their warning systems;
- g. Assigned tasks to those not qualified for said tasks including the development, design and implementation of bus routes, the establishment and placement of bus stops and the assignment of students to said bus stops;
- h. Failed to enact policies and procedures relevant to student safety in crossing a roadway to board buses;
- i. Failed to provide necessary resources to the Transportation Department to ensure that it could adequately and safely meet the transportation needs of the school district's students;
- j. Failed to utilize systems, policies and procedures to account for all necessary criteria in developing bus routes and in establishing bus stops safe for the transportation of students;
- k. Allowed there to exist a shortage of trained and available bus drivers at the time relevant hereto impacting the design of bus routes and the establishment, placement and assignment of safe bus stops; and
- l. Was otherwise negligent as may be shown through discovery or at the trial of this matter.

132. Defendant Merrill was further negligent in that he failed to ensure adequate instruction and training of school bus drivers, including but not limited to Defendant McCall.

133. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant Merrill, Michael was seriously injured, and Plaintiffs have suffered the damages as

set forth elsewhere herein.

134. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant Merrill, Plaintiffs are entitled to recover damages from Defendant Merrill as set forth above in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

SIXTH CLAIM FOR RELIEF

**NEGLIGENCE OF DEFENDANT DELL EDWARDS
IN HER OFFICIAL CAPACITY**

135. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

136. At all times relevant hereto, Defendant Edwards was responsible for student transportation for all buses serving West Lake Middle School.

137. At all times relevant hereto, Defendant Edwards was responsible for informing students and parents about safety issues and for providing instruction in school bus safety to students utilizing transportation services.

138. At all times relevant hereto, Defendant Edwards had the duty to assign drivers to bus routes for the transportation of students to and from West Lake Middle School.

139. At all times relevant hereto, Defendant Edwards had the duty to establish safe bus routes, bus stops and turn around points for the transportation of students to and from West Lake Middle School.

140. At all times relevant hereto, Defendant Edwards had the duty to assign students to buses and bus stops.

141. Defendant Edwards was negligent in that she failed to teach, instruct, or otherwise inform and provide sufficient direction to Michael, his parents and others as to the safest manner in which to walk, cross, travel, or otherwise get to the school bus in order to avoid injury or death.

142. Defendant Edwards was negligent in the development, design, establishment, determination, designation and assignment of the bus route and Bus Stop to which Michael was assigned in that she:

- a. Failed to use reasonable care in the design of the school bus route to which Michael was assigned in that said route included unsafe stops for the pick-up and drop off of students being transported by said bus to and from school, including but not limited to Michael;
- b. Failed to use reasonable care in the establishment, designation and/or placement of the Bus Stop for the pick-up and drop off of Michael;
- c. Failed to use reasonable care in the assignment of Michael to the school Bus Stop located at the intersection of Johnson Pond Road and Oak Park Drive with the bus stopping on the opposite side of a highway from the neighborhood in which he resided;
- d. Failed to follow Defendant School Board's own policies and procedures for school bus routing and the placement of school bus stops in determining the placement of said Bus Stop;
- e. Failed to follow local, state, national and industry standards, guidelines and policies and procedures in determining the placement of said Bus Stop;

- f. Failed to enact adequate guidelines for establishing a safe student school bus stop for Michael;
- g. Failed to establish and implement appropriate policies and procedures for identifying factors rendering bus routes and/or bus stops hazardous and dangerous for use by students;
- h. Failed to seek input from bus drivers, including but not limited to Defendant McCall, as to any hazards rendering any bus stops potentially unsafe;
- i. Failed to appropriately consider factors rendering said Bus Stop dangerous, including but not limited to the speed limit on Johnson Pond Road, the amount of traffic on Johnson Pond Road at pick-up and drop-off times, and the lighting and weather conditions at pick-up and drop-off times;
- j. Failed to consider the safety of the route Michael was required to travel between his doorstep and the Bus when designating said Bus Stop and assigning Michael to said Bus Stop;
- k. Placed a higher priority on efficiency than on student safety in determining the placement of said Bus Stop and assigning Michael to said Bus Stop;
- l. Failed to assess the volume of traffic on Johnson Pond Road at the times Michael was being picked up and dropped off for school;
- m. Failed to assess the lighting and weather conditions during pick-up times and the impact of said lighting and weather on the safe crossing of the street and/or boarding of the bus;

- n. Knew or should have known that designating said Bus Stop and assigning Michael to said Bus Stop requiring him to cross Johnson Pond Road was unsafe, hazardous and dangerous;
- o. Failed to designate and assign a safe bus stop for Michael such that he would not be required to cross Johnson Pond Road in dark and often foggy conditions in order to board the bus;
- p. Failed to designate a bus stop that offered adequate lighting knowing students would be crossing a major road in dark and often foggy conditions in order to board the bus;
- q. Designated said Bus Stop and assigned Michael to said Bus Stop when Defendant Edwards knew or should have known that the volume of traffic on Johnson Pond Road at the time Michael was being picked up rendered crossing Johnson Pond Road at that time hazardous and dangerous;
- r. Designated said Bus Stop and assigned Michael to said Bus Stop when Defendant Edwards knew or should have known that the lighting conditions at the time he was being picked up were poor rendering the stop unsafe for requiring Michael to cross the street in order to board the bus;
- s. Designated a stop for the pick-up and drop off of Michael and others that was unsafe and dangerous in that it required said children to cross a two lane highway designated as a 45 mph speed zone in the dark;
- t. Designated an unsafe and dangerous school bus stop for the pick-up and drop off of Michael and others, when a safer alternative for said children

within the neighborhood where they resided was available and had been previously used;

- u. After establishing the aforesaid bus route and Bus Stop and assigning Michael to said Bus Stop and route, Defendant Edwards continued to allow the bus driver, including Defendant McCall, and Michael and other children, to utilize said Bus Stop when he knew or should have known that said Bus Stop was dangerous and hazardous; and
- v. Was otherwise negligent as may be shown through discovery or at the trial of this matter.

143. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant Edwards, Michael was seriously injured, and Plaintiffs have suffered the damages as set forth elsewhere herein.

144. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendant Edwards, Plaintiffs are entitled to recover damages from Defendant Edwards as set forth above in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

SEVENTH CLAIM FOR RELIEF

NEGLIGENCE OF DEFENDANTS ROBERT SNIDEMILLER JR., ALVIN McNEILL, JEFFREY TSAI and SCOTT MOONEYHAM IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

145. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

146. Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Scott Mooneyham were responsible for the administration and operation of the transportation services for eligible WCPSS students.

147. Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Scott Mooneyham were responsible for centralized bus routing, the establishment of bus routes and bus stops, and the assignment of students to buses, bus stops and bus routes.

148. Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Scott Mooneyham were responsible for the identification and evaluation of the presence of factors that may endanger the safety of students in the establishment and designation of bus stops and the assignment of students to a particular bus, bus stop and/or bus route.

149. Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Scott Mooneyham had a duty to consider all criteria for determining safe bus stops identified in Defendant School Board's policies and procedures, as well as those identified by other local, state and national industry guidelines and standards.

150. Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Scott Mooneyham were responsible for informing students and parents about safety issues and for providing instruction in school bus safety to students utilizing transportation services.

151. Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Scott Mooneyham were negligent in the development, design, establishment, determination, designation and assignment of the bus route and Bus Stop to which Michael was assigned in that they:

- a. Failed to use reasonable care in the design of the school bus route to which Michael was assigned in that said route included unsafe stops for the pick-up and drop off of students being transported by said bus to and from school, including but not limited to Michael;

- b. Failed to use reasonable care in the establishment, designation and/or placement of the Bus Stop for the pick-up and drop off of Michael;
- c. Failed to use reasonable care in the assignment of Michael to the Bus Stop located at the intersection of Johnson Pond Road and Oak Park Drive with the bus stopping on the opposite side of a highway from his house;
- d. Failed to follow their own policies and procedures for school bus routing and the placement of school bus stops in determining the placement of said Bus Stop;
- e. Failed to follow local, state, national and industry standards, guidelines and policies and procedures in determining the placement of said Bus Stop;
- f. Failed to enact adequate guidelines for establishing a safe student school bus stop for Michael;
- g. Failed to establish and implement appropriate policies and procedures for identifying factors rendering bus routes and/or bus stops hazardous and dangerous for use by students;
- h. Failed to seek input from bus drivers, including but not limited to Defendant McCall, as to any hazards rendering any bus stops potentially unsafe;
- i. Failed to appropriately consider factors rendering said Bus Stop dangerous, including but not limited to the speed limit on Johnson Pond Road, the amount of traffic on Johnson Pond Road at pick-up and drop-off times, and the lighting at pick-up and drop-off times;
- j. Failed to consider the safety of the route Michael was required to travel between his doorstep and the bus stop when designating said Bus Stop and assigning Michael to said Bus Stop;

- k. Placed a higher priority on efficiency than on student safety in determining the placement of said Bus Stop and assigning Michael to said Bus Stop;
- l. Failed to assess the volume of traffic on Johnson Pond Road at the times Michael was being picked up and dropped off for school;
- m. Failed to assess the lighting conditions during pick-up times and the impact of said lighting on the safe crossing of the street and/or boarding of the bus;
- n. Knew or should have known that designating said Bus Stop and assigning Michael to said Bus Stop requiring him to cross Johnson Pond Road was unsafe, hazardous and dangerous;
- o. Failed to designate and assign a safe bus stop for Michael such that he would not be required to cross Johnson Pond Road in the dark in order to board his bus;
- p. Failed to designate a bus stop that offered adequate lighting knowing students would be crossing a major road in the dark in order to board the bus;
- q. Designated said Bus Stop and assigned Michael to said Bus Stop when Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Gregory Scott Mooneyham knew or should have known that the volume of traffic on Johnson Pond Road at the time Michael was being picked up rendered crossing Johnson Pond Road at that time hazardous and dangerous;
- r. Designated said Bus Stop and assigned Michael to said Bus Stop when Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Gregory Scott Mooneyham knew or should have known that the lighting conditions at the time they were being picked up were poor rendering the stop unsafe for requiring Michael to cross the street in order to board the bus;

- s. Designated a stop for the pick-up and drop off of Michael and others that was unsafe and dangerous in that it required said children to cross a two lane highway designated as a 45 mph speed zone in the dark;
- t. Designated an unsafe and dangerous school bus stop for the pick-up and drop off of Michael and others, when a safer alternative for said children was available;
- u. After establishing the aforesaid bus route and Bus Stop and assigning Michael to said Bus Stop and route, Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Gregory Scott Mooneyham continued to allow the bus driver, including Defendant McCall, Michael, and other children, to utilize said Bus Stop when it knew or should have known that said Bus Stop was dangerous and hazardous; and
- v. Were otherwise negligent as may be shown through discovery or at the trial of this matter.

152. Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Gregory Scott Mooneyham were further negligent in the organization and staffing of the Transportation Department in that they:

- a. Failed to ensure that the organizational structure of the Transportation Department was able to consistently meet the changing and growing transportation needs of the school district including the establishment, placement and assignment of safe school bus stops;
- b. Failed to make changes to the organizational structure of the Transportation Department to facilitate the changing and growing transportation needs of the school district in a manner to provide adequate and safe transportation services to WCPSS students;

- c. Allowed the structure of the Transportation Department to become outdated and overwhelmed with too few employees and managers assigned too many tasks, to adequately and safely provide transportation services to WCPSS students;
- d. Failed to provide sufficient staffing to appropriately meet the need for the design, development and implementation of safe bus routes and for the establishment and placement of safe bus stops and the assignment of students to safe bus stops;
- e. Failed to provide adequate staffing in order to provide adequate and safe transportation services to WCPSS students;
- f. Failed to ensure adequate staffing for the regular and proper inspection, maintenance, repair and upkeep of Defendant School Board's buses and their warning systems;
- g. Assigned tasks to those not qualified for said tasks including the development, design and implementation of bus routes, the establishment and placement of bus stops and the assignment of students to said bus stops;
- h. Failed to enact policies and procedures relevant to student safety in crossing a roadway to board buses;
- i. Failed to provide necessary resources to the Transportation Department to ensure that it could adequately and safely meet the transportation needs of the school district's students;
- j. Failed to utilize systems, policies and procedures to account for all necessary criteria in developing bus routes and in establishing bus stops safe for the transportation of students;

- k. Allowed there to exist a shortage of trained and available bus drivers at the time relevant hereto impacting the design of bus routes and the establishment, placement and assignment of safe bus stops; and
- l. Were otherwise negligent as may be shown through discovery or at the trial of this matter.

153. Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and/or Scott Mooneyham were further negligent in that they failed to ensure adequate instruction and training of school bus drivers, including but not limited to Defendant McCall.

154. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and Scott Mooneyham, Michael was seriously injured, and Plaintiffs have suffered the damages as set forth elsewhere herein.

155. As a direct and proximate result of the aforesaid negligent acts and/or omissions of Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and Scott Mooneyham, Plaintiffs are entitled to recover damages from Defendants Robert Snidemiller Jr., Alvin McNeill, Jeffrey Tsai and Scott Mooneyham, jointly and severally, as set forth above in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

PRAYER FOR RELIEF

WHEREFORE, having set forth their causes of action herein, Plaintiff Michael Burgess, Jr., through his Guardian ad Litem, Andrew P. Cioffi, and Michael Burgess pray the Court for the following relief:

1. That Plaintiffs have and recover of Defendants, jointly and severally, judgment for compensatory damages in an amount exceeding the sum of Twenty-Five Thousand and 00/100

Dollars (\$25,000.00), plus interest at the highest rate allowed by law from and after the filing of this action until paid;

2. That the costs of this action, including expert witness fees, filing fees, and other costs be taxed against Defendants, or any of them;
3. That Plaintiffs' attorneys' fees be paid by Defendants, or any of them;
4. A trial by jury on all issues so triable; and
5. Such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 31ST day of March, 2017.

Attorneys for Plaintiffs

BY:



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