

ROLF E. KROLL, ESQUIRE
 Pa. Supreme Court I.D. No. 47243
 CLAIRE A. MURTHA, ESQUIRE
 Pa. Supreme Court I.D. No. 332014
 MARGOLIS EDELSTEIN
 214 Senate Avenue, Suite 402
 Camp Hill, PA 17011
 Telephone: (717) 760-7502 / (717) 760-7507
 Facsimile: (717) 975-8124
 E-mail: rkroll@margolisedelstein.com
cmurtha@margolisedelstein.com

Counsel for Defendant,
 T.F., a Minor

UNITED STATES DISTRICT COURT for the MIDDLE DISTRICT OF PENNSYLVANIA	
HOPE AMSPACHER, ADMINISTRATOR OF THE ESTATE OF ZACHARY KIRCHNER, and MATTHEW KIRCHNER, <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> RED LION AREA SCHOOL DISTRICT; JASON M. HOFFMAN, M.A.; OFFICER MARC GREENLY; L.D., a minor; D.M., a minor, T.F., a minor; C.H., a minor; W.G., a minor; and C.W., a minor, <p style="text-align: center;">Defendants</p>	No. 1:23-cv-00286-CCC CIVIL ACTION JURY TRIAL DEMANDED
MOTION TO DISMISS ON BEHALF OF DEFENDANT, T.F., A MINOR	

AND NOW COMES, T.F., a minor, by and through his counsel, Margolis Edelstein, to move to dismiss the Complaint of Plaintiffs, Hope Amspacher, Administrator of the Estate of Zachary Kirchner and Matthew Kirchner (“Plaintiffs”) and in support thereof aver the following:

1. Plaintiffs commenced this case by filing a Complaint with this Honorable Court. On April 19, 2023, Plaintiffs filed an Amended Complaint that is now before this Honorable Court.
2. Though most of Plaintiffs’ allegations are against the Defendant School District and two of its employees, Plaintiffs also allege that certain classmates of

Plaintiffs' Decedent ("Decedent") identified as "Student Defendants," harassed and verbally abused the Decedent causing him harm. See *Doc. 18* at ¶¶ 24 and 29.

3. Under the heading "Background," Plaintiff alleges that the Decedent was enrolled at the Defendant School District's junior high school for 8th grade during the 2019-2020 school year, and was a student at the senior high school in 9th grade during the 2020-2021 school year. See *id.* ¶ 30.

4. Plaintiffs openly concede that the Decedent was diagnosed with a variety of mental health disorders including:

- autism spectrum disorder;
- attention deficit hyperactivity disorder;
- anxiety;
- opposition defiance disorder; and
- mood disorder not otherwise specified.

See *id.* ¶ 31.

5. By way of further background, Plaintiffs allege that he identified openly as gay in 8th grade during the 2019-2020 school year.

6. Plaintiffs allege that the Student Defendants "bullied" Decedent "routinely," calling him "gay," "faggot," "gay boy," and other verbally abusive terms. See *id.* ¶ 40. However, no dates, times or context of these slurs are pled.

7. Moreover, though Plaintiffs have named six individual minor students as Defendants, the vast majority of Plaintiffs' allegations against T.F. are alleged only as part of the Plaintiffs' self-styled group of "Student Defendants."

8. With extremely limited exceptions, Plaintiffs routinely identify Defendant T.F. only in connection with his role as a Student Defendant. *See Doc 18.*

9. However, Plaintiffs do allege, in connection with conduct that apparently took place in 8th grade. Specifically, Plaintiffs allege that Defendant T.F. “repeatedly called decedent a faggot.” *See id.* ¶ 42. Once again, no context, nor date, nor manner with regard to these alleged “repeated” comments are pled.

10. Apparently during the same timeframe, Defendant T.F. is alleged to have “told decedent to kill himself” *over text message or other messaging services* and made similar posts on social media for Decedent and other classmates to see. *See id.* ¶ 44. However, once again, Defendant T.F.’s conduct is lumped together with that of other Student Defendants L.D., D.M., and C.A.

11. Plaintiffs further allege that as early as 8th grade Decedent made it known to his “bullies” that he was going to commit suicide. *See id.* ¶ 44.

12. However, nowhere in Plaintiffs’ Amended Complaint do Plaintiffs attribute any other specific conduct to Defendant T.F. in the absence of his connection with the other Student Defendants.

13. For example, Plaintiffs allege that unflattering graffiti was scratched in large letters in the bathroom stall. This act is not attributed to any particular Defendant.

14. Plaintiffs allege that the means by which the alleged verbal abuse and remarks were delivered was by “text message” or “other messaging services,” the messages are, with one exception, not pled. *See e.g. id.* ¶ 43, *but see also, id.* ¶ 126.

15. Though Plaintiffs allege generally that on or about April 19, 2021, the “Student Defendants” continued to harass, make fun of and bully the Decedent, and

encourage the Decedent to kill himself, no specific reference to any conduct by T.F. is asserted. *See id.* ¶ 93.

16. Plaintiffs plead in a conclusory fashion that Defendants saw Decedent's suicidal social media posts.

17. On the basis of these vague allegations purportedly rooted in specific documents that are not specifically pled with respect to T.F., Plaintiffs allege in conclusory fashion that Defendants are liable to the Estate on the basis of gross negligence and/or recklessness. *See id. Count V.*

18. Nowhere in Plaintiffs' Amended Complaint do Plaintiffs plead or attempt to identify any specific duty owed by any of the Student Defendants to Plaintiffs' Decedent.

19. In the absence of a legal duty, Plaintiffs' claim against the Student Defendants must fail as a matter of law.

20. In addition, Plaintiffs' attempt to assert claims for Intentional Infliction of Emotional Distress (IIED) against the Student Defendants.

21. In order to state a claim for Intentional Infliction of Emotional Distress, ("IIED") a Plaintiff must establish that the conduct at issue is (1) extreme; (2) that the conduct is intentional or reckless; (3) that the conduct causes emotional distress; and (4) that the emotional distress is severe. *Hoy v. Angelone* 456 Pa. Super 596, 691 A.2d 476, 482 (1997).

22. Mere pleading of insults and verbal abuse is insufficient as a matter of law to establish a claim for IIED.

23. At a minimum, Plaintiffs should be required to state the specific facts attributable to T.F. to show a duty owed by T.F. to Plaintiffs and to establish that the breach of this duty caused Plaintiff's harm in accordance with Fed. R. Civ. P. 12(e).

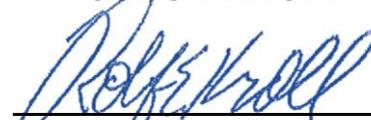
WHEREFORE, Defendant T.F., a minor, requests that this Honorable Court enter an Order Dismissing Plaintiffs' Complaint against T.F., a minor, for failure to state a claim upon which relief can be granted. Alternatively, T.F. requests that this Court require Plaintiffs to plead facts to "show" an entitlement to relief on the facts pled in the Complaint.

Respectfully submitted,

MARGOLIS EDELSTEIN

Date: May 3, 2023

By:



ROLF E. KROLL, ESQUIRE
Pa. Supreme Court I.D. No. 47243
CLAIRE A. MURTHA, ESQUIRE
Pa. Supreme Court I.D. No. 332014
MARGOLIS EDELSTEIN
214 Senate Avenue, Suite 402
Camp Hill, PA 17011
Telephone: (717) 760-7502 / 7507
Facsimile: (717) 975-8124
E-mail: rkroll@margolisedelstein.com
cmurtha@margolisedelstein.com
Counsel for Defendant, T.F., a minor

PROOF OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 2023, a copy of the foregoing document was served upon the following via ECF Notification:

Nathaniel L. Foote, Esquire
Renee Franchi, Esquire
Andreozzi & Foote
4503 North Front Street
Harrisburg, PA 17110
Counsel for Plaintiffs

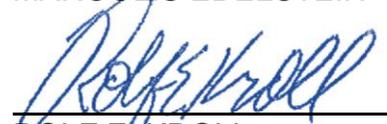
David J. MacMain, Esquire
Tricia M. Ambrose, Esquire
MacMain Leinhauser, P.C.
433 West Market Street, Suite 200
West Chester, PA 19382
*Counsel for Defendants, Red Lion Area School District and
Jason M. Hoffman, M.A.*

Anthony R. Sherr, Esquire
Sherr Law Group, LLC
101 West Airy Street, Suite 100
Norristown, PA 19401
Counsel for Defendant, Officer Marc Greenly

Carrie E. Evans, Esquire
Saxton & Stump, LLC
280 Granite Run Drive, Suite 300
Lancaster, PA 17601
and
Michael B. Scheib, Esquire
Griffith, Lerman, Lutz & Scheib
110 South Northern Way
York, PA 17402
Counsel for Defendant, W.G., a minor

MARGOLIS EDELSTEIN

By:


ROLF E. KRULL