

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MARGO SMITH, as Guardian Ad Litem)	Case No.: 14CV05314
for FOSTER SMITH, a minor,)
) AMENDED COMPLAINT FOR
Plaintiff,) PERSONAL INJURY
)
v.)
) NOT SUBJECT TO ARBITRATION
REYNOLDS SCHOOL DISTRICT, an)
Oregon school district,) PRAYER: \$858,000
) Ch. 595, Sec. 15(1)(d)
Defendant)
) JURY TRIAL DEMANDED

Plaintiff demands a jury trial and alleges:

1.

This is a negligence action brought by Margo Smith, the duly appointed Guardian ad litem on behalf of Foster Smith, a minor.

2.

At all times mentioned herein, Reynolds School District, a public corporation, provided educational services to Foster Smith, who was a student with special needs, at the Margaret Scott Elementary School in Portland, Oregon. Notice of this claim was properly given to defendant Reynolds School District within 180 days of the incident.

1 3.

2 At all times mentioned herein, defendant knew or had reason to know
3 that Foster Smith suffered from Duchenne Muscular Dystrophy and required
4 assistance with all transfers due to his instability and weak bones. On or
5 about December 12, 2012, while at Margaret Scott Elementary School, Foster
6 Smith fell to the floor while walking from one area of the classroom to another,
7 fracturing his femur. At the time, the district was required to provide an aide
8 for Foster Smith when he was walking.

9 4.

10 The injuries to Foster Smith were caused by the negligence of defendant
11 in one or more of the following ways:

- 12 a) In failing to provide adult assistance to Foster Smith during
13 transfers, as required by his IEP and/or 504 Plan, or
14 b) In failing to adequately monitor Foster Smith at times when he
15 would need to transfer in the classroom; or
16 c) In failing to adequately train and supervise classroom aides on
17 transfer assisting techniques of students such as Foster Smith.

18 5.

19 As a result of the above-described conduct of defendant, Foster Smith
20 suffered a broken femur, pain, anguish, fear, loss of ability to walk,
21 deterioration of his health as a result of immobility, disability and impairment
22 all to his non-economic damages in the amount of \$800,000 and incurred
23

1 medical expenses in the value of \$8,500.00, and in the future will require
2 medical services in the value of \$50,000.

3 WHEREFORE, plaintiff prays for judgment against defendant in the
4 amount of \$800,000 in noneconomic damages, \$58,500 in economic damages,
5 and for the costs and disbursements necessarily incurred herein.

6 Dated: August 4, 2015.

7 */s/ Gregory Kafoury*

8 _____
9 Gregory Kafoury, OSB #741663
10 Kafoury@kafourymcdougal.com
11 Mark McDougal, OSB #890869
12 mcdougal@kafourymcdougal.com
13 Jason Kafoury, OSB #091200
14 jkafoury@kafourymcdougal.com
15 Attorneys for Plaintiff
16
17
18
19
20
21
22
23

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing AMENDED COMPLAINT FOR
3 PERSONAL INJURY on the defendant(s) on the date indicated below by the
4 following method:

- 5 emailing & facsimile transmission
6 hand delivery
7 regular mail
8 overnight delivery

9 to said person(s) a true copy thereof, addressed to said persons at their last
10 known address(es) and facsimile number(s) as follows:

11 JOHN STELLWAGEN, ESQ.
12 Oregon School Boards Association
13 Legal, Labor & Employment Services
14 P.O. Box 1068
15 Salem, Oregon 97308
16 Fax: 503.588.2813

17 Dated: August 4, 2015.

18 /s/ Gregory Kafoury

19 Gregory Kafoury, OSB #741663
20 Kafoury@kafourymcdougal.com
21 Mark McDougal, OSB #890869
22 mcdougal@kafourymcdougal.com
23 Jason Kafoury, OSB #091200
jkafoury@kafourymcdougal.com
Attorneys for Plaintiff