

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

J.H.,)	
)	
Plaintiff,)	
)	
vs.)	Cause Number: 2:12-cv-69 PS
)	
SCHOOL TOWN OF MUNSTER, et al.,)	
)	
Defendants,)	

JURY INSTRUCTIONS

Dated: May 24, 2016

s/Philip P. Simon
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy to influence you.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

INSTRUCTION NO. 2

During this trial, I have asked questions of witnesses myself, often in an effort to try to clarify matters. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

INSTRUCTION NO. 3

In this case one of the defendants, School Town of Munster, is a corporation.

All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

INSTRUCTION NO. 4

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations. A stipulation is an agreement between both sides that certain facts are true.

INSTRUCTION NO. 5

During the trial, certain testimony was presented to you by either reading a deposition transcript out loud to you in court or showing you the video of the deposition. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

INSTRUCTION NO. 6

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. The parties have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

INSTRUCTION NO. 7

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

INSTRUCTION NO. 8

In determining whether any fact has been proven, you should consider all of the evidence bearing on the question regardless of who introduced it.

INSTRUCTION NO. 9

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

INSTRUCTION NO. 10

You must give separate consideration to each claim and each party in this case. Although there are five defendants, it does not follow that if one is liable, the others are liable.

Each party is entitled to have the case decided solely on the evidence that applies to that party.

INSTRUCTION NO. 11

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

INSTRUCTION NO. 12

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

INSTRUCTION NO. 13

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

INSTRUCTION NO. 14

You may consider statements given by parties or by witnesses under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

INSTRUCTION NO. 15

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

INSTRUCTION NO. 16

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

INSTRUCTION NO. 17

You have heard certain expert witnesses – Dr. Beth Rom-Rymer, Elliot Hopkins, Dr. David Harris, and Dr. David Hartman – give opinions about matters requiring special knowledge or skill. You should judge the testimony of these witnesses in the same way that you judge the testimony of any other witness. The fact that they have given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness’s qualifications, and all of the other evidence in this case.

INSTRUCTION NO. 18

A demonstrative exhibit — specifically, a time line of events — has been shown to you. This exhibit is used for convenience and to help explain the facts of the case. It is not itself evidence or proof of any facts.

INSTRUCTION NO. 19

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

INSTRUCTION NO. 20

Joseph Hunt has brought three claims:

First, Joseph Hunt claims that he was discriminated against on the basis of sex in violation of a federal statute that goes by the name "Title IX." This claim is brought only against the School Town of Munster.

Second, Joseph Hunt claims that he was discriminated against on the basis of sex in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. This claim is brought against all five defendants.

Third, Joseph Hunt claims the School Town of Munster was negligent because its employees failed to provide adequate supervision of the Munster boys swim program. This claim is brought only against the School Town of Munster.

I will now instruct you on what must be proved in order to succeed on these claims.

INSTRUCTION NO. 21

As a recipient of Federal funds, defendant, School Town of Munster, must comply with Title IX of the Education Amendments of 1972 which states that “[n]o person ... shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” The parties agree that the School Town of Munster received federal financial assistance during the relevant period of time. Please note that the individual defendants – Pfister, Tripenfeldas, Smith, and Pavlovich – are not subject to the Title IX claim.

Plaintiff, Joseph Hunt, claims that defendant, School Town of Munster, violated Title IX by tolerating and promoting hazing on the male school swim team but not the female school swim team. Based on this alleged sex-based difference in the two swim teams, plaintiff claims a violation of Title IX.

In order to recover on this claim under Title IX, Joseph Hunt must prove the following propositions by a preponderance of the evidence:

- (1) that hazing took place that was discriminatory;
- (2) that the School Town of Munster had actual knowledge of the hazing;
- (3) that the hazing was so severe, pervasive, and objectively offensive that it deprived the plaintiff of access to educational opportunities; and
- (4) that the defendant was deliberately indifferent to the hazing.

If you find that the plaintiff established by a preponderance of the evidence each of these four elements, then you must find in favor of the plaintiff. However, if you find that the plaintiff did not prove by a preponderance of the evidence each of the four elements, then you must find in favor of the defendant, School Town of Munster.

INSTRUCTION NO. 22

The term “actual knowledge” means that school officials were witnesses to or received reports of hazing. The person allegedly doing the hazing must be under the school’s disciplinary authority. A school acts with deliberate indifference when it is aware of the hazing, but its response is clearly unreasonable in light of the known circumstances.

Federal law does not protect students from commonplace school incidents, including teasing, name-calling and minor physical altercations such as pushing or shoving. Damages are not available for such acts, even when the comments target differences in gender. School officials have wide discretion in making disciplinary decisions.

INSTRUCTION NO. 23

Joseph Hunt's second claim is that each defendant violated the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. Specifically, Hunt claims that the defendants operated a male swim team in which swimmers were subjected to hazing while operating a female swim team in which swimmers were not subjected to hazing.

To establish a violation of the Equal Protection Clause against the individual defendants — Tripenfeldas, Smith, Pfister and Pavlovich — Mr. Hunt must prove the following propositions by a preponderance of the evidence:

(1) that the defendants discriminated against Mr. Hunt on the basis of gender; and

(2) that the discrimination was intentional or done with deliberate indifference.

If you find that Mr. Hunt established each of these two (2) elements, then you must find in favor of the plaintiff and award him compensatory damages against the defendants. However, if you find that the plaintiff did not prove by a preponderance of the evidence each of these elements, then you must find for the defendants.

INSTRUCTION NO. 24

The phrase “deliberate indifference” as used in Instruction No. 23 means that the defendants were aware of hazing on the boys swim team but not on the girls swim team at Munster High School but consciously chose to disregard the difference in the two programs.

INSTRUCTION NO. 25

If you find that the plaintiff, Joseph Hunt, has established a violation of the Equal Protection Clause of the Fourteenth Amendment against any individual defendant, you must then go on to consider whether the School Town of Munster is also liable to Mr. Hunt.

Mr. Hunt claims that the School Town of Munster violated the Equal Protection Clause by operating a male swim program in which swimmers were subjected to hazing, while operating a female swim program in which swimmers were not subjected to hazing. Based on this sex-based difference in the two swim programs, Mr. Hunt claims the School Town of Munster violated the Equal Protection Clause.

A municipal entity, such as the School Town of Munster, is not responsible simply because it employs an individual who is found to have violated the Equal Protection Clause. But the School Town of Munster is liable if the plaintiff proves, by a preponderance of the evidence that the defendants' conduct was a result of its official policy.

When I use the term "official policy" this is what I mean:

- First, a decision or policy statement made by Mr. Pfister, Mr. Tripenfeldas or Mr. Smith who are policy-making officials of the School Town of Munster. This includes Mr. Pfister, Mr. Tripenfeldas or Mr. Smith's approval of a decision or policy made by someone else; or

- second, a custom of permitting hazing to occur on the boys swim team while not permitting it on the girls swim team with the hazing being persistent and widespread, so that it is the School Town of Munster's standard operating procedure. A persistent and widespread pattern may be a custom even if the School Town of Munster has not formally approved it, so long as Joseph Hunt proves that a policy-making official knew of the pattern and allowed it to continue.

INSTRUCTION NO. 26

Joseph Hunt's third claim is that the School Town of Munster was negligent in the manner in which it operated the male swim program at Munster High School. Specifically, Hunt claims that the defendant was negligent by its employees failing to properly supervise the team locker room, the pool deck area, and the common areas at the high school.

To prove the claim of negligence, Joseph Hunt must prove each of the following propositions by a preponderance of the evidence:

- (1) that the defendant owed him a duty;
- (2) the defendant breached that duty; and
- (3) Hunt suffered injury caused by the defendant's breach of that duty.

Indiana law imposes a duty on schools to exercise the level of care an ordinary, prudent person would exercise under the same or similar circumstances. This includes a duty to provide adequate supervision. Schools are not, however, intended to be insurers of the safety of their students, nor are they strictly liable for all injuries that might occur to them.

A defendant may be negligent by acting or by failing to act. A person is negligent if he or she does something a reasonably careful person would not do in the same situation, or fails to do something a reasonably careful person would do in the same situation. Reasonable care means being careful and using good judgment and common sense.

INSTRUCTION NO. 27

An employer is liable for the negligent act of its employee done within the scope of his employment, if the act is a responsible cause of injury to the plaintiff.

INSTRUCTION NO. 28

Defendants claim that Joseph Hunt's own negligence contributed to the physical and emotional injuries he claims to have suffered and that his negligence was a responsible cause of his claimed injuries. Negligence of this kind is "contributory negligence."

Defendant School Town of Munster has the burden of proving by the greater weight of the evidence that Joseph Hunt was contributorily negligent.

If you decide that Joseph Hunt's contributory negligence was a responsible cause of his claimed physical and/or emotional injuries, then he cannot recover damages even if the defendant was also negligent.

INSTRUCTION NO. 29

If you find that Joseph Hunt has proven any of his claims against any of the Defendants, then you must determine what amount of damages, if any, Hunt is entitled to recover. Hunt must prove his damages by a preponderance of the evidence.

If you find that Joseph Hunt has failed to prove all of the claims then you will not consider the question of damages.

INSTRUCTION NO. 30

You should not interpret the fact that I am giving instructions about damages as an indication that I believe Joseph Hunt should or should not win on his claim. It is your task to decide whether the defendants are liable. I am instructing you on damages so that you will have guidance in the event that you decide defendants are liable and that plaintiff is entitled to recover money damages from defendants.

INSTRUCTION NO. 31

If you find in favor of Joseph Hunt on his claim of discrimination under either Title IX or the Equal Protection Clause of the 14th Amendment, you must then determine the amount of money that will fairly compensate him for any injury that you find he sustained as a direct result of the actions of the defendants. These are called compensatory damages.

Plaintiff, Joseph Hunt, must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

In regard to the discrimination claims under Title IX or the Equal Protection Clause of the 14th Amendment, you should consider the following types of compensatory damages, and no others:

(1) The reasonable value of medical care and supplies that Joseph Hunt reasonably needed and actually received and will incur in the future as a direct result of the defendants' actions.

(2) The physical and emotional pain and suffering and loss of a normal life that Joseph Hunt has experienced. No evidence of the dollar value of physical or emotional pain and suffering or loss of a normal life has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain

and suffering. You are to determine an amount that will fairly compensate Mr. Hunt for the injuries he has sustained.

- (3) The aggravation of a preexisting injury or condition.

INSTRUCTION NO. 32

If you find for Joseph Hunt on his claim of discrimination under the Equal Protection Clause of the 14th Amendment, you may, but are not required to, assess punitive damages against the individual defendants. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to the defendants and others not to engage in similar conduct in the future.

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against one or more of the individual defendants. You may assess punitive damages only if you find that the conduct of one or more of the individual defendants was in reckless disregard of the plaintiff's rights. An action is in reckless disregard of plaintiff's rights if taken with knowledge that it may violate the law.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either party. In determining the amount of punitive damages, you should consider the following factors:

1. The reprehensibility of the defendant's conduct;
2. The impact of the defendant's conduct on the plaintiff;
3. The relationship between plaintiff and defendant;
4. The likelihood that the defendant would repeat the conduct if an award of punitive damages is not made;

5. The relationship of any award of punitive damages to the amount of actual harm the plaintiff suffered.

INSTRUCTION NO. 33

In regard to the claim of negligence, if you decide from the greater weight of the evidence that the School Town of Munster is liable to Joseph Hunt for its negligence, then you must decide the amount of money that will fairly compensate Mr. Hunt, and in doing so you may consider the following:

- (1) the nature and extent of the injuries, and the effect of the injuries on the plaintiff's ability to function as a whole person;
- (2) whether the injuries are temporary or permanent;
- (3) the physical pain and mental suffering the plaintiff has experienced, and will experience in the future, as a result of the injuries;
- (4) the reasonable value of necessary medical care, treatment, and services plaintiff incurred, and will incur in the future, as a result of the injuries; and
- (5) the aggravation of a previous injury or condition.

To recover for medical expenses, Joseph Hunt must prove that they were both reasonable and necessary.

To recover for pain and suffering, Joseph Hunt must prove the nature and extent of his pain, suffering, mental anguish, or emotional distress. He does not have to present evidence of the dollar value of these types of damages. The dollar value, if any, of these damages is left up to your good judgment.

The defendant is not excused from liability just because the Joseph Hunt had a prior mental or emotional condition that made him more likely to be injured. A

defendant can be found liable for the aggravation of a previous injury or condition, but not for the condition as it was.

INSTRUCTION NO. 34

Upon retiring to the jury room, you must select a presiding juror, known as the foreperson. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

INSTRUCTION NO. 35

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

INSTRUCTION NO. 36

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.