

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO**

FILED
1st JUDICIAL DISTRICT COURT
Santa Fe County
1/4/2019 1:55 PM
STEPHEN T. PACHECO
CLERK OF THE COURT
Tamara Snee

**DIANE GARRITY, ESQ., as Court-Appointed
Guardian Ad Litem for S.N.G., a minor,**

Plaintiff,

vs.

Case No.: D-0101-CV-2019-00____
D-101-CV-2019-00031

**THE GOVERNANCE BOARD OF
CARIÑOS CHARTER SCHOOL, and
VERNON JARAMILLO, individually,**

Case assigned to Wilson, Matthew Justin

Defendants.

**PLAINTIFF’S COMPLAINT FOR SEXUAL ASSAULT AND
CIVIL RIGHTS VIOLATIONS**

COMES NOW Plaintiff, Diane Garrity, Esq., in her capacity as Court-Appointed Guardian Ad Litem for S.N.G., a minor, by and through her attorneys, Linda G. Hemphill, Esq. and Leigh Messerer, Esq., The Hemphill Firm, P.C. and Linda Martinez-Palmer, Esq., Martinez-Palmer Law Firm, LLC, and for her Complaint for Sexual Assault and Civil Rights Violations against Defendants, states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Diane Garrity, Esq. (“Plaintiff” or “Garrity”) is and was at all times material hereto, a resident of Santa Fe County, New Mexico. On March 29, 2018, Plaintiff was appointed by the First Judicial District Court to act as Guardian ad Litem for S.N.G., a minor, and authorized to bring this lawsuit on her behalf.

2. S.N.G. is a minor child who was the victim of inappropriate, sexualized conduct and sexual assault by Defendant, Vernon Jaramillo (hereinafter “Jaramillo”) during the time that S.N.G. was a student at Cariños Charter School (“Cariños”) and Jaramillo was its Chancellor and CEO.

3. At all times material hereto, Cariños was a Charter School licensed by the State of New Mexico and was located in Espanola, Rio Arriba County, New Mexico. Cariños reportedly operated independently of the Espanola School District since June 30, 2016 and stated that its mission was to promote academic achievement through a dual language 50/50 Mode for grades K-8 “at risk” students in the Espanola Valley. Cariños was also considered to be a sanctuary school.

4. Pursuant to NMSA 1978, Section 22-8B-4 (P), Cariños is authorized to be sued through its governing body, Defendant, the Governance Board of Cariños Charter School (the “Governance Board”).

5. Upon information and belief, Jaramillo is and was at all times material hereto a resident of Rio Arriba County, New Mexico.

6. This Court has jurisdiction over the parties and subject matter.

7. Venue is appropriate in the First Judicial District Court, Santa Fe County, pursuant to NMSA 1978, Section 38-3-1 (F).

GENERAL ALLEGATIONS

8. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1-7, above, as though set forth in detail.

9. During his tenure as Chancellor and CEO of Cariños, Jaramillo’s employment responsibilities included implementing curricula, monitoring student achievement and activities, effectuating policies and procedures, and discharging his duties with appropriate care and diligence

for the students while avoiding conflict between his personal interests and those of the student body.

10. With respect to the matters alleged herein, Jaramillo was acting within the course and scope of his duties as an employee of Cariños, was a state actor, and acted under color of state law.

11. As Chancellor of Cariños, Jaramillo was also a person with final decision-making authority for the Cariños, along with the Governance Board.

12. S.N.G. is a minor who is presently 14 years old. S.N.G. attended Cariños for some of her elementary school years, then returned for 7th and 8th grades, until she was sexually assaulted by Jaramillo towards the beginning of her 8th grade year, in August, 2017.

13. Throughout the 2015-2016 school year, while S.N.G. was in the 7th grade, Jaramillo used his authority and position at the school, on almost a daily basis, to remove S.N.G. and other female students from class or other activities for the sole purpose of calling them to sit in his office, so that he could pursue an inappropriate relationship with S.N.G. or others. During this time, while S.N.G. was 12-years old, Jaramillo groomed S.N.G. with the intent to establish an intimate and sexual relationship with her.

14. Jaramillo made repeated statements to S.N.G. of a personal nature, telling her that she was pretty, that she was beautiful, that he loved her and that he dreamed about her at night, with the intent of creating a personal and inappropriate relationship with her. Jaramillo also frequently held and stroked S.N.G.'s hands.

15. Jaramillo also provided a cellular telephone to S.N.G. for the purpose of conditioning her and creating a personal and inappropriate relationship with her, under the guise

of attempting to help her and her mother, who is a single parent, because S.N.G.'s mother could not afford to buy S.N.G. a cell phone of her own.

16. Jaramillo used his position of authority to place S.N.G. in a position in which she felt she was not able to flee from his actions. Jaramillo knew that his actions were both inappropriate and in violation of law and Jaramillo's actions towards S.N.G. caused her to be away from her 7th grade classes, causing her to fall behind in school and to obtain bad grades.

17. At the beginning of the 2017-2018 school year, Jaramillo called S.N.G. into his office, behind closed doors, during school hours, and seized her, grabbing her buttocks, caressing her and kissing her on her lips, and made inappropriate remarks to her suggesting he wished to establish a romantic relationship with S.N.G. S.N.G. was 13-years old at the time of this sexual assault and was extremely traumatized by it.

18. The Governance Board knew or should have known that Jaramillo was a sexual predator, in that he had previously been sued in the United States District Court for the District of New Mexico for sexual harassment during his tenure as Superintendent of Espanola Public Schools. In that lawsuit, filed December 5, 2005, a 27-year old Human Resources Specialist contended that Jaramillo confronted her behind closed doors, asked her personal questions, told her to show him how much she appreciated him, and forcibly kissed her on the mouth.

19. During Jaramillo's tenure at Cariños, Jaramillo was also accused of sexual harassment by a 32-year old teacher in 2010. Jaramillo's conduct towards that teacher, who filed a Charge of Discrimination with the Equal Employment Opportunity Commission, included Jaramillo's grabbing her breasts, telling her he loved her, and removing his penis from his pants while imploring her to "taste" him, while she was pregnant. The teacher reported Jaramillo's actions to the Governance Board and contends that Board members coerced her to settle her claims

against Jaramillo in an unfavorable manner, because they knew she was the sole means of support for her disabled husband and young child.

20. In the weeks before Jaramillo's sexual assault of S.N.G., Jaramillo also sexually harassed another Cariños female staff member, calling her behind closed doors, grabbing her and kissing her. After the staff member reported Jaramillo's conduct to the Public Education Department ("PED") and the New Mexico Human Rights Bureau, she was terminated from her position in September, 2017.

21. After PED conducted an investigation into the allegations made by the staff member and S.N.G. in August, 2017, it issued a Notice of Contemplated Action, proposing to revoke Jaramillo's license as a school administrator. That proceeding is ongoing

22. Upon information and belief, the Governance Board failed to investigate Jaramillo's background before hiring him, failed to fully investigate his conduct towards staff, and failed to take appropriate corrective action against Jaramillo.

23. The Governance Board made a deliberate decision to allow and encourage Jaramillo to develop personal relationships with students and staff that were outside the boundaries of professional relationships, by failing to enact appropriate policies and procedures directing staff and students on how to report sexual harassment or in requiring training of staff and students in identifying sexual harassment and appropriate boundaries.

24. The Governance Board failed to develop, implement, and train school personnel with respect to establishing appropriate standards and boundaries regarding communications with students, including email, texting, social media and use of cell phones, and providing gifts to students.

25. The Governance Board failed to develop, implement and train school personnel with respect to establishing appropriate standards and boundaries regarding being alone with students and environments where there is a risk of sexual misconduct.

26. The actions of Jaramillo, as facilitated by the Governance Board, were positioned to allow him to take advantage of an inappropriate relationship with a minor, S.N.G., who could not, as a matter of law, consent to a sexual relationship with Jaramillo.

27. Jaramillo's actions, as described above, were committed with the authority granted to him as an employee of Cariños and Jaramillo would not have been in a position to harm S.N.G. and inflict injury upon her but for his position as an employee of the Cariños.

28. Cariños is liable for the acts and omissions of its employees, including Jaramillo, committed within the scope of such employee's duties.

29. Pursuant to NMSA 1978, §41-4-16, on or about October 26, 2017, S.N.G.'s attorneys submitted a timely Tort Claims Act notice addressed to Cariños, to Jaramillo as CEO of Cariños, to Cariños' Board Members, Linda Romero, Juanita Cata, and Leo Marquez, and to Bobby J. Gutierrez, as Superintendent of the Espanola Public Schools. The Tort Claims Act notified these individuals of Jaramillo's conduct towards S.N.G. and her intent to bring a lawsuit against Defendants.

30. The Governance Board is subject to suit by reason of the waiver of immunity contained in NMSA 1978, §41-4-6 and each and every other applicable provision of the New Mexico Tort Claims Act, NMSA 1978, §41-4-1 et seq., in that it severally or individually maintained and operated the buildings, classroom and properties at Cariños in a dangerous and unsafe condition and thereby created an unsafe condition existing on that property for its students, including S.N.G.

COUNT I
**SECTION 1983 FOR SUBSTANTIVE DUE PROCESS VIOLATIONS AGAINST
JARAMILLO, INDIVIDUALLY**

31. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1-30, above, as though set forth in detail.

32. S.N.G. has a fundamental interest in rights protected by the Fourteenth Amendment of the United States Constitution, including the right to bodily integrity, personal safety, privacy, and freedom from unlawful invasion and violation of her person, and the right to not be subjected to an unsafe environment to which she was vulnerable to physical and emotional injury.

33. Jaramillo violated S.N.G.'s constitutional rights when he perpetrated inappropriate conduct towards her, including sexual assault, as described above.

34. In the commission of the acts described above, Jaramillo acted knowingly, recklessly or with deliberate indifference and callous disregard of the rights of S.N.G. and Jaramillo's conduct constitutes conscience-shocking behavior, for which Jaramillo is liable pursuant to 42 U.S.C. Section 1983.

35. As a direct and proximate result of Jaramillo's violation of S.N.G.'s constitutional rights, S.N.G. has suffered and continues to suffer physical, psychological and emotional injuries.

COUNT II
**SECTION 1983 FOR EQUAL PROTECTION VIOLATIONS AGAINST
JARAMILLO, INDIVIDUALLY**

36. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1-35, above, as though set forth in detail.

37. S.N.G. has a constitutional right to be free from sexual harassment, sexual abuse, and sexual assault by a school employee pursuant to the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

38. Jaramillo violated S.N.G.'s constitutional rights to be free from sexual harassment, sexual abuse and sexual assault by a school employee.

39. In the commission of the acts described above, Jaramillo acted knowingly, recklessly or with deliberate indifference and callous disregard of the rights of S.N.G., and Jaramillo's conduct constitutes conscience-shocking behavior, for which Jaramillo is liable pursuant to 42 U.S.C. Section 1983.

40. As a direct and proximate result of Jaramillo's violation of S.N.G.'s constitutional rights, S.N.G. has suffered and continues to suffer physical, psychological and emotional injuries.

COUNT III
TORT OF BATTERY AGAINST JARAMILLO, INDIVIDUALLY

41. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1-40, above, as though set forth in detail.

42. The wrongful physical and sexually touching of S.N.G. by Jaramillo, as set forth above, is an offensive and harmful touching constituting the tort of battery.

43. As a direct and proximate result Jaramillo's battery of S.N.G., S.N.G. has suffered and continues to suffer physical, psychological and emotional injuries.

COUNT IV
**NEGLIGENT OPERATION OF THE PREMISES AGAINST THE
GOVERNANCE BOARD**

44. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1-43, above, as though set forth in detail.

45. The Governance Board had a duty to operate Cariños' school premises in a safe manner.

46. The Governance Board knew or should have been aware of a pattern of sexual misconduct by Jaramillo which occurred on school grounds, including Jaramillo's sexual harassment of school personnel, grooming of students, flirtations and kissing of staff and students, and related acts, including those alleged above.

47. The Governance Board failed to address and prevent the continuation of Jaramillo's pattern of sexual misconduct.

48. The Governance Board's failure to address the pattern of sexual misconduct by Jaramillo created an unfit condition on school premises for students at Cariños, particularly female students, including S.N.G.

49. As a direct and proximate result of the Governance Board's negligence, S.N.G. has suffered and continues to suffer physical, psychological and emotional injuries.

COUNT V
VIOLATION OF TITLE IX AGAINST THE GOVERNANCE BOARD

50. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1-49, above, as though set forth in detail.

51. Cariños was a recipient of federal funds.

52. The Governance Board had actual knowledge of the sexual misconduct perpetrated by Jaramillo or was deliberately indifferent to Jaramillo's sexual misconduct.

53. The Governance Board had the authority to institute corrective measures to prevent the continuation of the sexual misconduct perpetrated by Jaramillo, but failed to do so.

54. S.N.G. has a right, pursuant to Title IX, to be free from sexual misconduct.

55. The sexual misconduct of Jaramillo towards S.N.G. was severe and pervasive and created an abusive educational environment for S.N.G. and deprived S.N.G. of access to educational benefits or opportunities.

56. As a result of the Governance Board's failure to protect S.N.G.'s rights under Title IX, S.N.G. has suffered and continues to suffer physical, psychological and emotional injuries.

COUNT VI
**SECTION 1983 SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION
VIOLATIONS AGAINST THE GOVERNANCE BOARD**

57. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1-56, above, as though set forth in detail.

58. The Governance Board was aware of a pattern of sexual misconduct perpetrated by Jaramillo against female staff and students prior to and during Jaramillo's employment with Cariños.

59. The Governance Board was responsible for overseeing and regulating the course of instruction and operation of Cariños, and its duties include overseeing the employment of staff, including its CEO and Chancellor, Jaramillo.

60. The Governance Board was aware of Jaramillo's propensity for the behavior as described herein, was deliberately indifferent to it or tacitly approved of it as demonstrated by its acts and omissions set forth above, and failed to take appropriate remedial steps to prevent acts of sexual misconduct by Jaramillo, including his actions towards S.N.G.

61. As a result of the deliberate failures of the Governance Board's decision-making, S.N.G.'s constitutional rights were violated, for which S.N.G. has suffered and continues to suffer physical, psychological and emotional injuries.

COUNT VII
PUNITIVE DAMAGES

62. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1-61, above, as though set forth in detail.

63. The conduct of Defendants, particularly Jaramillo, was abusive, criminal, done with malice, and committed in reckless disregard of the rights of S.N.G., warranting the imposition of punitive damages as allowed by law.

WHEREFORE Plaintiff prays that the court enter judgment against Defendants on behalf of S.N.G., as follows:

- A. For compensatory damages suffered by S.N.G. in an amount to be determined at trial;
- B. For an award of punitive damages;
- C. For an award of pre-and post-judgment interest as allowed by law, and
- D. For a statutory award of reasonable attorneys' fees and costs as allowed by law; and
- E. For such other and further relief which the Court may deem just and proper.

Respectfully submitted,

THE HEMPHILL FIRM, P.C.

By: /s/Linda G. Hemphill
Linda G. Hemphill, Esq.
Leigh Messerer, Esq.
P.O. Box 33136
Santa Fe, New Mexico 87594
(505) 986-8515
linda@hemphillfirm.com
leigh@hemphillfirm.com

MARTINEZ-PALMER LAW FIRM, LLC

By: /s/Linda Martinez-Palmer
Linda Martinez-Palmer, Esq.
2011 Botolph Road, Suite 200
Santa Fe, New Mexico 87505
(505) 986.2830
lmartinezpalmerlaw@gmail.com

Attorneys for Plaintiff