

2. Pursuant to Superior Court Civil Rules 12(b)(6), Defendant Red Clay School District filed a motion to dismiss, invoking the sovereign immunity provisions of the Delaware State Tort Claims Act (“DSTCA”) and alleging that Plaintiffs failed to comply with the particularity mandates of Superior Court Civil Rule 9(b). Plaintiffs filed an opposition on April 24, 2013, and the Court heard oral argument on April 30, 2013.

3. On a 12(b)(6) motion to dismiss, the Court must accept every well-pleaded allegation as true and draw all reasonable inferences in the non-movant’s favor.¹ Well-pleaded allegations place the defendant on notice of the claim at issue.² The Court must deny the 12(b)(6) motion if “plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof.”³

4. To overcome the DSTCA’s immunity, Plaintiffs must allege (i) a ministerial act, (ii) bad faith, or (iii) gross negligence.⁴ A gross negligence claim must be alleged with specificity.⁵

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

² *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995).

³ *Spence*, 396 A.2d at 968.

⁴ *Smith v. Christina Sch. Dist.*, 2011 WL 5924393 at * 3 (Del. Super. Nov. 28, 2011) (Jurden, J.), citing *Stevenson v. Brandywine Sch. Dist., et al.*, 1999 WL 742932, at *2 (Del. Super. July 9, 1999) (Quillen, J.), citing *Sprout v. Ellenburg Capital Corp.*, 1997 WL 716901 (Del. Super. Aug. 16, 1997) (Graves, J.); 10 *Del. C.* § 4001.

⁵ See *Smith v. Silver Lake Elementary Sch.*, 2012 WL 2393722, at *2 (Del. Super. June 25, 2012) (Johnston, J.) (“It is not sufficient merely to make a ‘general statement of facts which admits of almost any proof to sustain it.’ A recitation of conclusory allegations is not sufficient to meet the particularity requirement when the plaintiff has not provided any facts supporting a claim of extreme departure from the standard of care.”).

5. Based on the record before it, the Court finds that Plaintiffs provided sufficient facts to overcome Defendant's 12(b)(6) challenge. In the interests of justice and at the Court's broad discretion, Plaintiffs are granted leave to amend their complaint.⁶ Plaintiffs' amended complaint should be sufficiently pled to overcome another potential 12(b)(6) challenge.⁷ Plaintiffs, therefore, have 15 days to file an amended complaint.

Therefore, Defendant Red Clay School District's Motion to Dismiss is **DENIED** without prejudice.

IT IS SO ORDERED.

/s/ Vivian L. Rapposelli
Vivian L. Rapposelli, Judge

⁶ Super. Ct. Civ. R. 15(a) (“[A] party may amend the party’s pleading only by leave of court [...]; and leave shall be freely given when justice so requires.”); *see also*, *Colbert v. Goodville Mutual Casualty Co.*, 2011 WL 441363, at *1 (Del. Super. Feb. 8, 2011) (Vaughn, P.J.) (“In the absence of substantial prejudice or legal insufficiency, the court must exercise its discretion in favor of granting leave to amend.”) (citing *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 263 (Del. 1993)).

⁷ *Colbert*, 2011 WL 441363, at *1 (Amendment must be denied “if the amendment would be futile because it would not survive a motion to dismiss under Rule 12(b)(6).”).