IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

EZEQUIEL GUTIERREZ, as Next Friend of LAREINA D. GUTIERREZ, a Minor,	)	
Plaintiffs,	)	
	)	**C.A. No. N14C-12-111 FWW**
v.	)	
ADVANCED STUDENT TRANSPORTATION, INC., a Delaware Corporation, APPOQUINIMINK SCHOOL DISTRICT,	)	
Defendants.	)	

Submitted: April 28, 2015
Decided: July 14, 2015

Upon Defendant's Motion to Dismiss
GRANTED.

OPINION AND ORDER

Gary S. Nitsche, Esquire and Samuel D. Pratcher, III, Esquire (argued), Weik, Nitsche, Dougherty & Galbraith, 305 N. Union St., Second Floor, P.O. Box 2324, Wilmington, Delaware, 19899; Attorneys for Plaintiffs.

Marc S. Casarino, Esquire and Agatha C. Mingos, Esquire (argued), White and Williams LLP, 824 N. Market St., Suite 902, Wilmington, Delaware 19801, Attorneys for Defendant, Appoquinimink School District.

WHARTON, J.

I. INTRODUCTION

This negligence action arises from an incident that took place on a school bus. Ezequiel Gutierrez, as next friend of Lariena D. Gutierrez, minor plaintiff, ("Plaintiff") alleges that she was assaulted by minor Defendant, Jaylynn Miller ("Minor Defendant"),[1] on September 17, 2013, on a bus operated by co-Defendant Advanced Student Transportation, Inc. ("Advanced"). The Appoquinimink School District ("Appoquinimink") is also a co-Defendant. Appoquinimink filed a Motion to Dismiss seeking dismissal of Count I of Plaintiff's Complaint which claims gross negligence by Appoquinimink. The Court applies Super. Ct. Civ. R. 12(b)(6) to Appoquinimink's Motion to Dismiss and finds that Plaintiff has not pleaded facts to overcome the sovereign immunity provided to Appoquinimink by the Delaware State Tort Claims Act ("DSTCA"). Therefore, Defendant's Motion to Dismiss is **GRANTED** and Count I of the Complaint is **DISMISSED**.

II. FACTUAL AND PROCEDURAL CONTEXT

Plaintiff's Complaint, filed on December 11, 2014, states that on or about September 17, 2013 Plaintiff, a minor, was a passenger on a school bus owned and/or leased by Appoquinimink.[2] The Complaint also states that, on that date, Plaintiff was attacked on the school bus by Minor Defendant and that Plaintiff

[1] The Court notes that Jaylynn Miller is not a named defendant in the caption of the Complaint; however, Plaintiff nonetheless asserts a claim against Jaylynn Miller in Count II of the Complaint for "Gross and/or Intentional Conduct." Because Plaintiff refers to Jaylynn Miller as "minor defendant" throughout the Complaint, the Court will refer to Jaylynn Miller as such.
[2] Compl., D.I. 1, at ¶5.

sustained serious and permanent injuries as a result of the alleged attack.[3] The Complaint provides that Minor Defendant was under the supervision of Appoquinimink at the time of the alleged attack.[4]

The Complaint also states that, prior to the alleged incident, Appoquinimink was

> aware that [Minor Defendant] had caused issues on Bus No. 14 with other students. [Minor Defendant's] prior conduct at the Appoquinimink School District and on Bus No. 14 in inappropriately touching students, causing interruptions in class and failing to properly be seated on Bus No. 14 were [sic] known to Defendants Appoquinimink School District…[5]

The Complaint provides that "Defendant Appoquinimink School District knew or should have known that the minor Plaintiff had been the object of threats and/or verbal attacks by the [M]inor [Defendant]"[6] and that Appoquinimink "knew or should have known about the previous incidents of inappropriate conduct of the [M]inor [Defendant] in failing to listen to the bus driver of Bus No. 14."[7] The Complaint states that Appoquinimink "took no steps to prevent this incident from occurring."[8]

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[3] *Id.* at ¶7.
[4] *Id.*
[5] *Id.* at ¶6.
[6] *Id.* at ¶9.
[7] *Id.* at ¶7.
[8] *Id.*

Additionally, in Count I of the Complaint, Plaintiff asserts that Appoquinimink failed in its duty to prevent bullying under 14 *Del. C.* §4112D[9] and that Appoquinimink was grossly, willfully and wantonly negligent "because the employment of [Advanced] constituted a heightened risk [sic] harm to the minor Plaintiff because of the pattern of behavior of the [M]inor [Defendant], which constituted extreme departure from the ordinary standard of care."[10] Specifically, the Complaint provides that

> Defendant Appoquinimink School District was grossly, willfully and wantonly negligent and/or negligent in that it:
>
> (a) Failed to properly and reasonably supervise the minor Plaintiff, Lareina D. Gutierrez;
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> (b) Failed to provide the minor Plaintiff, Lareina D. Gutierrez, with an environment free of dangerous hazards;
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> (c) Hired incompetent and improperly trained and supervise [sic] staff;
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> (d) Failed to discharge their [sic] administerial duty to supervise the minor children;
>
> (e) Failed to discharge their [sic] administerial duty in selecting a bus company to transport the minor children;

[9] *Id.* at ¶10.
[10] *Id.* at ¶ 11.

(f) Knew or should have known of the actions of the [M]inor [Defendant] who refused to listen to the bus driver on prior occasions;

(g) Intentionally, recklessly and with bad faith allowed the minor Plaintiff, Lareina D. Gutierrez, to be physically attacked;

(h) Failed to otherwise exercise reasonable care as will be revealed through discovery."[11]

On March 9, 2015, Appoquinimink filed a Motion to Dismiss for failure to state a claim upon which relief can be granted. The parties appeared before the Court for oral argument on April 28, 2015.

III. THE PARTIES' CONTENTIONS

Appoquinimink asserts that the Complaint fails to state a claim upon which relief can be granted because: 1) there is no private cause of action under 14 *Del. C.* §4112D; 2) Plaintiff has not alleged that Appoquinimink had a special relationship with Plaintiff which gave rise to a duty of care and imposed liability on Appoquinimink for its alleged failure to act; and 3) Plaintiff has not pleaded facts to overcome the sovereign immunity provided to Appoquinimink by the DSTCA, including that Plaintiff failed to plead gross or wanton negligence with particularity as required by Super. Ct. Civ. R. 9(b).[12]

[11] *Id.* at ¶12.
[12] Def.'s Mot. to Dismiss, D.I. 13, at 1.

Specifically, in Appoquinimink's third argument, Appoquinimink asserts that the action the Complaint alleges is a claim for negligent hiring and/or supervision.[13] Appoquinimink argues that Plaintiff has not proffered facts that demonstrate that Appoquinimink's alleged negligent hiring and/or supervision was a ministerial act, was done in bad faith or was done with gross or wanton negligence.[14] Appoquinimink contends that, therefore, Plaintiff has not met its burden under the DSTCA which requires that Appoquinimink remain immune from suit.[15]

Appoquinimink contends that claims for negligent hiring and/or supervising allege discretionary rather than ministerial action by a school district, because "the supervision of students cannot be governed by a hard-and-fast set of rules."[16] Additionally, Appoquinimink argues that Plaintiff has failed to plead that Appoquinimink acted in bad faith in connection with the alleged negligent hiring and/or supervision because "allegations of bad faith against a District cannot be premised upon knowledge of a student's poor behavior."[17] Finally, Appoquinimink argues that Plaintiff's attempt to plead gross or wanton negligence falls short of the particularity requirements of Super. Ct. Civ. R. 9(b).[18]

[13] *Id.* at 3.
[14] *Id.*
[15] *Id.*
[16] *Id.* at 4.
[17] *Id.* at 5.
[18] *Id.* at 5-6.

Plaintiff conceded at oral argument that no private cause of action exists under 14 *Del. C.* §4112D. However, Plaintiff argues that it has properly pleaded that a special relationship existed between Appoquinimink and Plaintiff at the time of the alleged incident because the Complaint states that Defendant was traveling on a bus owned and/or leased by Appoquinimink.[19] Plaintiff also argues that it has sufficiently pleaded that Appoquinimink is not immune from suit because the Complaint alleges that Appoquinimink's negligent hiring and/or supervision were ministerial acts and that Appoquinimink acted with gross or wanton negligence.[20]

Plaintiff contends that the act of supervising students is ministerial in that the supervisor "has a legal duty to exercise due care to provide for the safety of students…[and]…does not have discretion to decide to exercise due care for the safety of students."[21] Plaintiff claims that "Appoquinimink knew of prior incidents involving [Minor Defendant] threatening and making verbal attacks towards [Plaintiff] and did nothing."[22] Plaintiff asserts that Appoquinimink's alleged inaction makes the nature of the claim ministerial rather than discretionary.[23]

Plaintiff also argues that gross negligence was properly pleaded.[24] Plaintiff asserts that Appoquinimink displayed an "I don't care attitude" when

[19] Pl.'s Resp., D.I. 18, at 6.
[20] *Id.* at 3.
[21] *Id.*
[22] *Id.* at 4.
[23] *Id.*
[24] *Id.*

Appoquinimink allowed Minor Defendant to "display a pattern of behavior of ignoring bus drivers and teachers at school and continued to inappropriately touch students and Appoquinimink took no steps to stop the inappropriate behavior."[25] Plaintiff contends that Appoquinimink's "failure to act arose to the level of gross negligence" and that the Complaint "specifically provides several allegations which demonstrate that Appoquinimink was grossly negligent."[26]

IV. STANDARD OF REVIEW

When reviewing a Motion to Dismiss pursuant to Super. Ct. Civ. R. 12(b)(6), the Court must determine whether the Plaintiff "may recover under any reasonably conceivable set of circumstances susceptible of proof."[27] The Court accepts as true all well-pleaded, non-conclusory allegations.[28] '"[W]ell-pleaded allegations' include specific allegations of fact and conclusions supported by specific allegations of fact."[29] The Court "need not blindly accept as true all allegations, nor must [the Court] draw all inferences from them in [plaintiff's] favor unless they are reasonable."[30]

[25] *Id.* at 5.
[26] *Id.*
[27] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).
[28] *Id.*
[29] *Malpiede v. Townson*, 780 A.2d 1075, 1082 n.16 (Del. 2001).
[30] *Grobow v. Perot*, 539 A.2d 180, 187 (Del. 1988).

V. DISCUSSION

Because Plaintiff concedes that no private cause of action exists under 14 *Del. C.* § 4112D, the Court's discussion is limited to Appoquinimink's other two arguments: whether Plaintiff has sufficiently pleaded that Appoquinimink owed a duty to Plaintiff at the time of the alleged incident and whether Plaintiff has sufficiently pleaded that the sovereign immunity granted to Appoquinimink by the DSTCA has been overcome.[31]

A. Plaintiff Has Pleaded that Appoquinimink Owed Plaintiff a Duty of Care When Plaintiff was in Appoquinimink's Custody.

Section 314A of the Restatement (Second) of Torts identifies that certain situations give rise to special relationships between parties which impose a duty to protect another. Specifically, "[o]ne who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other."[32] In the context of a school district's duty to students, the Delaware Supreme Court has limited the school district's duty to "situations requiring assistance where the [student] is in the custody of the defendant."[33] Therefore, to

[31] Had Plaintiff not conceded that no private cause of action exists under 14 *Del. C.* § 4112D, the case law is clear that no private cause of action exists under 14 *Del. C.* § 4112D. *See Gray v. Forwood Elementary Sch., et al.*, C.A. No. N12C-05-232 MJB, at 16-17 (Del. Super. Nov. 20, 2013)("[W]ithout further instruction from the General Assembly or the Delaware Department of Education, this Court finds that [14 *Del. C.* § 4112D] does not create a private cause of action.").
[32] Restatement (Second) of Torts § 314A(4) (1965).
[33] *Rogers v. Christiana School Dist.*, 73 A.3d 1, 11 (Del. 2013).

survive a motion to dismiss, Plaintiff must allege that Plaintiff was in the custody of Appoquinimink at the time of the alleged incident.

The Complaint states that "[o]n or about September 17, 2013, [Plaintiff]…was travelling [sic] on Bus No. 14 for Appoquinimink School District."[34] The Complaint also states that "[o]n the aforementioned date, [Plaintiff] was a business invitee on the bus owned and/or leased by [Advanced] and/or [Appoquinimink]"[35] and that "[a]t or about the same time and place as [Plaintiff] was lawfully on Bus No. 14, she was viciously attacked…by [Minor Defendant]."[36] Based upon the allegations set forth, the Court finds that Plaintiff has alleged that Plaintiff was in the custody of Appoquinimink at the time of the alleged incident such that Appoquinimink owed Plaintiff a duty of care.

B. Plaintiff Has Not Pleaded Facts to Overcome the Sovereign Immunity Provided to Appoquinimink By the DSTCA.

The DSTCA extends sovereign immunity to school districts under 10 *Del. C.* § 4003 which provides, in relevant part, that

> [a]ny political subdivision of the State, including the various school districts, and their officers and employees shall be entitled to the same privileges and immunities as provided in this chapter for the State and its officers and employees…[37]

Specifically, the DSTCA provides for immunity from a claim or cause of action

[34] Compl. at ¶4.
[35] *Id.* at ¶5.
[36] *Id.* at ¶7.
[37] 10 *Del. C.* § 4003.

> ...against the State...or agency of the State...in any civil suit or proceeding at law or in equity, or before any administrative tribunal, where the following elements are present:
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> (1) The act or omission complained of arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations,...or any other official duty involving the exercise of discretion...;
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> (2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and
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> (3) The act or omission complained of was done without gross or wanton negligence;
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> ...[I]n any civil action or proceeding against the State...the plaintiff shall have the burden of proving the absence of 1 or more of the elements of immunity as set forth in this section.[38]

1. *The Complaint Fails to Plead that Appoquinimink's Alleged Negligent Hiring and/or Supervision is a Ministerial Action.*

The determination of whether an act is discretionary or ministerial is a question of law.[39] Ministerial acts are "those which a person performs in a prescribed manner without regard to his own judgment concerning the act to be done."[40] Discretionary acts, by contrast, are "those which require some determination or implementation which allows a choice of methods, or, differently

[38] 10 *Del. C.* § 4001.
[39] *Hughes ex rel. Hughes v. Christina Sch. Dist.*, 2008 WL 73710, at *3 (Del Super. Jan. 7, 2008).
[40] *Simms v. Christina Sch. Dist.*, 2004 WL 344015, at *8 (Del. Super. Jan. 30, 2004).

stated, those where there is no hard and fast rule as to a course of conduct."[41] Delaware courts interpreting the DSTCA have held that the decision to hire is a discretionary decision.[42] Additionally, the Court has held that the duty to supervise students is ministerial;[43] however, "the manner and particular methods of supervision are discretionary" functions.[44]

Plaintiff's claim that Appoquinimink negligently hired Advanced does not plead that Appoquinimink engaged in a ministerial act. The Complaint states that Appoquinimink "failed to discharge their [sic] administerial duty in selecting a bus company to transport the minor children."[45] However, the Complaint also states that "Appoquinimink School District had a duty to hire…proper people as a bus company for Appoquinimink School District…Appoquinimink School District breached this duty by hiring Advanced Student Transportation, Inc. to provide bus drivers for students of Appoquinimink School District."[46]

Although Plaintiff contends that Appoquinimink failed to discharge its ministerial duty to select a bus company to transport the children, the supporting

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[41] *Id.*
[42] *See id.* (finding that the decision to hire the alleged tortfeasor was discretionary); *Thomas v. Bd. of Educ. Of the Brandywine Sch. Dist.*, 759 F. Supp. 2d 477, 500 (D. Del. 2010)("Decisions about whether to hire a person, fire a person, or discipline a person are discretionary.").
[43] *Jester v. Seaford Sch. Dist.*, 1991 WL 269899, at *4 (Del. Super. Nov. 4, 1991); *Tews v. Cape Henlopen Sch. Dist.*, 2013 WL 1087580, at *4 (Del. Super. Feb. 14, 2014).
[44] *Sadler-Ievoli v. Sutton Bus & Truck Co., Inc.*, 2013 WL 3010719, at *2 (Del. Super. June 4, 2013); *See also Tews*, 2013 WL 1087580, at *4 (supervision is discretionary where "the manner in which teachers supervise a student …is dependent upon many factors.").
[45] Compl. at ¶ 12(e).
[46] *Id.* at ¶9.

facts that Plaintiff alleges indicate that Appoquinimink indeed hired a bus company, Advanced, to transport the children. Therefore, the Complaint alleges that Appoquinimink satisfied its duty to hire a bus company to transport the children. Moreover, because the essence of Plaintiff's claim appears to be that Appoquinimink should have hired a different bus company other than Advanced and decisions to hire are discretionary actions,[47] Plaintiff has failed to plead that Appoquinimink breached a ministerial duty.

Additionally, Plaintiff's failure to supervise claim is not well-pleaded. At oral argument, Plaintiff relied upon *Gray v. Forwood Elementary School*, C.A. No. N12C-05-232 MJB, for the proposition that pleading complete inaction by the school district despite its knowledge of Minor Defendant's prior bad behavior is sufficient to overcome Appoquinimink's Motion to Dismiss. In *Gray*, the Court addressed how allegations of inaction are treated:

> [t]he more vexing question is whether an omission—i.e., inaction—is always the product of judgment. If an official has knowledge of the situation, then the official must decide whether and how to act. Under such a situation, inaction would be discretionary and subject to a motion to dismiss under the [DSTCA]. If the official is aware of the situation and absconds from all responsibility, then no judgment has been made and immunity is lost.[48]

In *Gray*, the specific allegations made by the plaintiff were that:

[47] *See supra* note 41.
[48] *Gray*, N12C-05-232 MJB, at 19.

> On number [sic] occasions throughout the year, [the plaintiff's mother] complained to school officials that her children…were the target of bullying by other students at school and while on the school bus, and she begged school officials to protect her daughters and provide for their safety…. Despite these complaints and pleas for protection, defendants took no action.[49]

In denying the motion to dismiss, the Court found that it was "premature to pass judgment on whether the alleged inaction by the school officials was ministerial."[50] Therefore, the Court effectively held that Gray had proffered sufficient facts to support a claim that the alleged inaction by the school district was ministerial.

Here, the Complaint states that Appoquinimink "[f]ailed to discharge their [sic] administerial duty to supervise the minor children."[51] The Complaint provides that Appoquinimink "knew or should have known that the minor Plaintiff had been the object of threats and/or verbal attacks by the [M]inor [Defendant]"[52] and that Appoquinimink "knew or should have known about the previous incidents of inappropriate conduct of the [M]inor [Defendant] in failing to listen to the bus driver of Bus No. 14. Defendants took no steps to prevent this incident from occurring."[53] The Complaint identifies that Minor Defendant's alleged

[49] *Id.*
[50] *Id.*
[51] Compl. at ¶12(d).
[52] *Id.* at ¶9.
[53] *Id.* at ¶7.

inappropriate conduct was "inappropriately touching students, causing interruptions in class and failing to properly be seated on Bus No. 14."[54]

The Court finds that the case at bar is sufficiently different from the *Gray* case. In *Gray*, the plaintiff pleaded specific facts to support its contention that the defendant knew about prior incidents of bad conduct on the bus. Specifically, the plaintiff pleaded that the school district's knowledge was based upon complaints from the victim's mother to the school district regarding misconduct on the bus on various occasions. Here, Plaintiff's support for its allegation that Appoquinimink knew or should have known of Minor Defendant's prior bad conduct is not supported by facts. Plaintiff asserts that Minor Defendant acted out in the classroom, inappropriately touched other students and did not listen to the bus driver. But those assertions do not address how Appoquinimink allegedly knew or became aware of Minor Defendant's alleged bad behavior nor do they contain facts from which it would be reasonable for the Court to infer that Appoquinimink knew of Defendant's alleged bad behavior. The Court finds that Plaintiff's allegation that Appoquinimink abrogated its ministerial duty to supervise Plaintiff is not well-pleaded because Plaintiff's allegations are conclusory at best and lack factual support to substantiate them. Therefore, Plaintiff has not met its burden of proving

[54] *Id.* at ¶6.

the absence of discretionary conduct, as required to overcome Appoquinimink's immunity established by the DSTCA.

2. *The Complaint Fails to Plead that Appoquinimink Acted Without Good Faith.*

Good faith is "honesty of purpose and integrity of conduct."[55] Plaintiff's only allegation regarding lack of good faith by Appoquinimink states that "Appoquinimink was grossly, willfully and wantonly negligent and/or negligent in that it:…(g) [i]ntentionally, recklessly and with bad faith allowed the [Plaintiff] to be physically attacked."[56] However, Plaintiff offers no facts whatsoever to support the allegation. Additionally, at oral argument, Plaintiff acknowledged that the Complaint does not allege specific facts to show that Appoquinimink acted without good faith. Therefore, Plaintiff has failed to plead that Appoquinimink acted without honesty or purpose and integrity of conduct as required to overcome Appoquinimink's immunity established by the DSTCA.

3. *The Complaint Fails to Plead that Appoquinimink Acted with Gross or Wanton Negligence.*

The final way for Plaintiff to overcome sovereign immunity is to plead facts, with particularity, which demonstrate that Appoquinimink acted with gross or wanton negligence.[57] Gross negligence is "an extreme departure from the ordinary

[55] *Martin ex. rel. of Estate of Martin v. State*, 2001 WL 112100, at *7 (Del. Super. Jan. 17, 2001).
[56] Compl. at ¶12(g).
[57] 10 *Del. C.* § 4001(3).

standard of care."[58] Furthermore, wanton negligence is "conduct that is so unreasonable and dangerous that a person knows or should know that an imminent likelihood of harm can result. Wanton conduct is beyond gross negligence, and is evidenced by conscious indifference and an 'I don't care' attitude."[59] Pursuant to Super. Ct. Civ. R. 9(b), gross or wanton negligence must be pleaded with particularity.[60] Moreover, the Court has determined that

> [t]he particularity requirement of Rule 9(b) is not satisfied by merely stating the result or a conclusion of fact arising from circumstances not set forth in the Complaint. Indeed, as this Court has previously recognized, 'claims of negligence (and gross negligence) may not be conclusory and ***must be accompanied by some factual allegations to support them***.'[61]

The Complaint provides that Appoquinimink acted grossly or wantonly negligent "because the employment of [Advanced] constituted a heightened risk [sic] harm to the minor Plaintiff because of the pattern of behavior of the [M]inor [Defendant], which constituted extreme departure from the ordinary standard of care."[62] Additionally, the Complaint states that

> [t]he Defendant Appoquinimink School District was grossly, willfully and wantonly negligent and/or negligent in that it:

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[58] *Sadler-Ievoli*, 2013 WL 3010719 at *4 (citing *Brown v. Robb*, A.2d 949, 953 (Del. 1990)).
[59] *Id.* (quoting *Morris v. Blake*, A.2d 844, 847-48 (Del. Super. 1998)).
[60] Super. Ct. Civ. R. 9(b) provides that "[i]n all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity."
[61] *Tews*, 2013 WL 1087580 at *2 (emphasis in original)(internal citations omitted).
[62] Compl., at ¶11.

(a) Failed to properly and reasonably supervise the minor Plaintiff, Lareina D. Gutierrez;

(b) Failed to provide the minor Plaintiff, Lareina D. Gutierrez, with an environment free of dangerous hazards;

(c) Hired incompetent and improperly trained and supervise [sic] staff;

(d) Failed to discharge their [sic] administerial duty to supervise the minor children;

(e) Failed to discharge their [sic] administerial duty in selecting a bus company to transport the minor children;

(f) Knew or should have known of the actions of the [M]inor [Defendant] who refused to listen to the bus driver on prior occasions;

(g) Intentionally, recklessly and with bad faith allowed the minor Plaintiff, Lareina D. Gutierrez, to be physically attacked;

(h) Failed to otherwise exercise reasonable care as will be revealed through discovery.[63]

The Court finds that Plaintiff's allegations fail to meet the specificity required by Super. Ct. Civ. R. 9(b). Plaintiff's contentions are conclusory allegations and the Complaint is bereft of facts to support the allegations that Plaintiff's actions constituted "an extreme departure from the ordinary standard of

[63] *Id*. at ¶12.

care"[64] or that Plaintiff's conduct was "so unreasonable and dangerous that a person knows or should know that an imminent likelihood of harm can result."[65] Without such facts, allegations of gross negligence and wanton negligence are not well-pleaded. Therefore, Plaintiff has not pleaded that immunity is overcome by Appoquinimink's gross or wanton negligence.

Because the Court finds that Plaintiff has failed to plead that Appoquinimink's alleged actions or failures to act were ministerial, that Appoquinimink acted in bad faith or that Appoquinimink acted with gross or wanton negligence, Plaintiff has not met its burden to overcome Appoquinimink's entitlement to sovereign immunity as established in the DSTCA. Therefore, Plaintiff has failed to state a claim upon which relief can be granted as to Count I of the Complaint. Upon filing of the appropriate motion, the Court may entertain argument regarding filing an amended complaint.

VI. CONCLUSION

The Court finds that Plaintiff has failed to overcome the sovereign immunity provided to Appoquinimink under the DSTCA. Therefore, Defendant's Motion to Dismiss is **GRANTED** and Count I of the Complaint is **DISMISSED** without prejudice.

[64] *Sadler-Ievoli*, 2013 WL 3010719 at *4.
[65] *Id.*

IT IS SO ORDERED.

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/s/Ferris W. Wharton, Judge