

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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AMY OLIVERAS, HIRAM OLIVERAS, individually  
and as parents and on behalf of the minor A.O.;  
and A.O.,

Plaintiffs,

-against-

SARANAC LAKE CENTRAL SCHOOL DISTRICT;  
PATRICIA KENYON, in her individual and official  
capacity as Middle School Principal of the Saranac  
Lake Central School District; GERALD  
GOLDMAN, in his individual and official capacity  
as Superintendent of the Saranac Lake Central  
School District; SARANAC LAKE CENTRAL  
SCHOOL DISTRICT BOARD OF EDUCATION;  
DEBRA LENNON, in her individual and official  
capacity as President of the Saranac Lake Central  
School District; and JOHN DOE(S) and JANE  
DOE(S),

Defendants.

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**COMPLAINT**

Jury Trial Demanded

Case no. 8:11-CV-1110 (MAD/DRH)

Plaintiffs AMY OLIVERAS, HIRAM OLIVERAS, individually and as parents and on behalf of the minor A.O., and A.O., by and through their undersigned attorneys, for their Complaint against Defendants SARANAC LAKE CENTRAL SCHOOL DISTRICT, PATRICIA KENYON in her individual and official capacity as Middle School Principal of the Saranac Lake Central School District; GERALD GOLDMAN, in his individual and official capacity as Superintendent of the Saranac Lake Central School District; SARANAC LAKE CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION; DEBRA LENNON, in her individual and official capacity as President of the Saranac Lake Central School District; and JOHN DOE(S)

and JANE DOE(S), allege as follows:

**PRELIMINARY STATEMENT**

1. This is a Complaint under the Constitution of the United States; 42 U.S.C. § 1983; Title VI of the CIVIL RIGHTS ACT of 1964; the HUMAN RIGHTS LAW OF THE STATE OF NEW YORK, N.Y. EXEC. LAW §§ 290, *et seq.*; and common law to remedy violations of the rights of the Plaintiffs for injuries and harm caused by the Defendants in their individual and official capacities.

**JURISDICTION**

2. The Court may properly exercise jurisdiction over this action pursuant to the provisions of 28 U.S.C. §§ 1331 and 1367.

**VENUE**

3. Venue is proper in the Northern District of New York pursuant to the provisions of 28 U.S.C. § 1391.

**CONDITIONS PRECEDENT**

4. On or about September 17, 2010, a verified Notice of Claim was served upon the Defendants. At least thirty days have elapsed since service of such notice and payment thereof has been refused.

**PARTIES**

5. Plaintiff A.O. is a minor and a member of a protected class as she belongs to a racial minority. Plaintiffs AMY OLIVERAS and HIRAM OLIVERAS are her parents.

6. Plaintiffs each reside in Saranac Lake and the minor Plaintiff at all times relevant

hereto, attended school at the Defendant SARANAC LAKE CENTRAL SCHOOL DISTRICT.

7. Defendant SARANAC LAKE CENTRAL SCHOOL DISTRICT is a municipal corporation duly organized and existing under the laws of the State of New York and maintains a principal place of business in Saranac Lake, New York.

8. At all times relevant hereto, Defendant PATRICIA KENYON was the Principal of the Middle School in the Saranac Lake Central School District. She is sued in her individual and official capacity.

9. At all times relevant hereto, Defendant GERALD GOLDMAN was the Superintendent of the Saranac Lake Central School District. He is sued in his individual and official capacity.

10. Defendant SARANAC LAKE CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION is the duly elected Board of Education of the Saranac Lake Central School District.

11. At all times relevant hereto, Defendant DEBRA LENNON was the President of the Defendant SARANAC LAKE CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION. She is sued in her individual and official capacity.

12. Defendants John Doe(s) and Jane Doe(s) are individuals not yet known to the Plaintiff. Once their identities are ascertained, the names of those individuals will be substituted in place of the John Doe(s) and/or Jane Doe(s) designations.

### **FACTS**

13. During her attendance in school at the Saranac Lake Central School District, Plaintiff A.O. has been subjected to a learning environment hostile toward her on account of her race.

14. The incidents which give rise to the instant action occurred throughout the 2008 - 2009 school year, 2009 - 2010 school year, the summer of 2010, and the fall 2010.

15. To cite just one of many instances, on or about June 21, 2010, on the property of Saranac Lake Middle School, a backpack and bag belonging to Plaintiff A.O. (age 11 at that time) were ripped and destroyed, the words "fuck nigger" were written with deodorant on the cement near the backpack on school property. Despite being advised, the derogatory racial writings were not removed on school property by the school staff until June 29, 2010 (eight days later).

16. Upon information and belief, the appropriate school authorities were made aware throughout the past two years, and continuously advised of violence and bullying towards the minor and of the chronic harassment and violence towards A.O. which continues to date. The School officials and persons have not exercised a zero bullying, racial or harassment policy in favor of the victim and despite promises to do better, directed and arranged for the victim to be the partner at summer school with the student who had sexually harassed and bullied her by grabbing her breast and threatening to beat her up, and who was a suspect of the June 21<sup>st</sup> backpack incident. No suspension or other corrective action was taken against that student as a result of acts committed toward the victim the Plaintiff, A.O. despite them being reported.

17. In addition, on September 8, 2010 the same student pushed A.O. down several stairs at school, and despite the incident being reported to school officials, no corrective action was taken. A.O. has suffered extreme anxiety and is unable to utilize the bathroom facilities at school all day long due to extreme fear and distress. The parent Plaintiffs have also been subjected to distress and other damage as a result of the treatment of their daughter, and the unlawful inaction

of the Defendants herein.

18. Among other things, the Defendants created a hostile environment and were negligent, grossly negligent, reckless and/or deliberately indifferent in the following ways:

- A. failing to take appropriate action to protect one of its own students by ensuring the safety of the victim in taking corrective action through their own policies on bullying, racial discrimination, and harassment of one student by others and/or adopting new policies;
- B. failing to properly train and supervise its employees;
- C. promulgating a policy or custom which provides for and/or tolerates the commission of unconstitutional acts by its students and/or employees;
- D. failing to appropriately discipline students and or employees who have committed unlawful, illegal, or negligent acts done under color of law and within the scope of their authority as public employees, principal, superintendent, members of the School Board;
- E. failing to establish and act upon adequate policies, procedures and systems for reporting and investigating and correcting incidents of bullying, hate crimes, harassment so as to protect student victims of these acts by other students; and
- F. failing to take any and all appropriate steps to protect Plaintiff A.O., after having promised her that they would do so, all the time being aware that specific other named students posed a clear and present danger, continued to commit acts of violence, toward Plaintiff A.O..

19. Furthermore, the Defendants, respective servants, and/or employees were further negligent in allowing individuals to circumvent the appropriate protocol, policies and rules to protect A.O..

20. Upon information and belief, the Saranac Lake School District, the Defendant Superintendent, and Saranac Lake Central School District Board Members knew or should have known that students and or employees were violating laws of the United States and State of New York and knew or reasonably should have known that:

- A. Plaintiff A.O. was experiencing extreme emotional and mental anguish caused by the treatment of other students which has gone uncorrected by the school district;
- B. other students were not held accountable for violence and hate crimes perpetrated upon Plaintiff A.O.;
- C. students encouraged Plaintiff A.O. to commit suicide;
- D. students throughout the year 2009-2010 committed acts of harassment and racial crimes, bullying and taunting against Plaintiff A.O.;
- E. during summer school year 2010, Plaintiff A.O. was placed as a partner with one particular student who had victimized Plaintiff and the school was made well aware of the bullying, racial and sexual assaults against the victim by this student.
- F. on or about September 8, 2010, the same student pushed Plaintiff A.O. down the stairway in school, and upon information and belief once again, no action was taken by the school against this student.

G. upon information and belief, the Defendants were or should have been aware that one particular student known to the school as a primary student committing various illegal and intolerable acts against Plaintiff A.O. had a history of incorrigible behaviors and acts of violence.

21. Following Defendants' receipt of said Notice of Claim, Plaintiffs were subjected to retaliatory actions including but not limited to: being told, in sum and substance, to relocate and leave the Saranac Lake Central School District and with respect to the child, having her constantly taken out of class to intimidate and embarrass her in the presence of her fellow students.

22. The nature and full extent of said injuries to the Plaintiffs are unknown, but will reverberate throughout their entire lives and include:

- (a) physical harm in the form of headaches, tension, stomach aches, sleeplessness, and nervousness;
- (b) severe emotional distress, isolation, mental anxiety, worry, depression, and psychological trauma;
- (c) humiliation, indignity, and shame;
- (d) diminished advanced education and ultimately professional opportunities, wages, and income;
- (e) Plaintiffs have suffered harm and injury to her family and community relations amongst her peers;
- (f) Plaintiffs have been deprived of their human, civil, and constitutional rights in violation of the laws and constitutions of the United States and the State of New York.

- (g) Plaintiffs have been caused to incur legal fees and expenses and will incur additional legal fees and expenses in the future to protect Plaintiff's rights and interests from the wrongful and unlawful actions of the Defendants herein; and
- (h) Plaintiffs have been otherwise damaged.

**AS AND FOR A FIRST CLAIM  
FOR VIOLATIONS OF PLAINTIFFS'  
CONSTITUTIONAL RIGHTS (42 U.S.C. § 1983)**

23. Plaintiffs repeat and re-allege each and every allegation set forth in paragraph 1 through 22 of this Complaint. Defendants acted under color of law. Plaintiff is a member of a protected class.

24. Defendants' actions and/or omissions violate Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

25. As a direct and proximate result of Defendants' actions and/or omissions, Plaintiffs have suffered injury and harm and are entitled to compensation therefor.

**AS AND FOR A SECOND CLAIM  
FOR VIOLATIONS OF PLAINTIFF  
A.O.'S RIGHTS  
UNDER TITLE VI OF THE CIVIL RIGHTS  
ACT OF 1964**

26. Plaintiffs repeat and re-allege each and every allegation set forth in paragraph 1 through 25 of this Complaint.

27. Upon information and belief, Defendant Saranac Lake Central School District is a recipient of Federal funding which uses said funding to operate its programs and activities.

28. Plaintiff A.O. was denied the benefits of and subjected to discrimination on account of her race by the Defendant Saranac Lake Central School District.

29. Plaintiff has sustained damages by reason of the Defendant's wrongful actions and omissions and is entitled to compensation therefor.

**AS AND FOR A THIRD CLAIM  
FOR VIOLATIONS OF PLAINTIFF  
A.O.'S RIGHTS  
UNDER THE HUMAN RIGHTS LAW  
OF THE STATE OF NEW YORK**

30. Plaintiffs repeat and re-allege each and every allegation set forth in paragraph 1 through 29 of this Complaint.

31. Defendant Saranac Lake Central School District is an "education corporation" as defined by N.Y. EXEC. LAW § 290(3).

32. Defendants have violated Plaintiff's rights to be free from racial discrimination as guaranteed to the Plaintiff under the NYS Human Rights Law.

33. Plaintiff has sustained damages by reason of the Defendants' wrongful actions and omissions and is entitled to compensation therefor.

**AS AND FOR A FOURTH CLAIM  
FOR VIOLATIONS OF PLAINTIFFS'  
CONSTITUTIONAL RIGHTS (42 U.S.C. § 1983)**

34. Plaintiffs repeat and re-allege each and every allegation set forth in paragraph 1 through 33 of this Complaint.

35. Defendants have violated rights guaranteed to the Plaintiffs under the First Amendment to the United States Constitution in that Plaintiffs were retaliated against for

opposing discrimination and seeking redress of grievances.

36. As a direct and proximate result of Defendants' actions and/or omissions, Plaintiffs have suffered injury and harm and are entitled to compensation therefor.

**AS AND FOR A FIFTH CLAIM  
FOR VIOLATIONS OF PLAINTIFF  
A.O.'S RIGHTS  
UNDER THE HUMAN RIGHTS LAW  
OF THE STATE OF NEW YORK**

37. Plaintiffs repeat and re-allege each and every allegation set forth in paragraph 1 through 36 of this Complaint.

38. Defendants have violated rights guaranteed to the Plaintiff under the NYS Human Rights Law in that Plaintiff was retaliated against for opposing discrimination on the basis of race.

39. As a direct and proximate result of Defendants' actions and/or omissions, Plaintiff has suffered injury and harm and are entitled to compensation therefor.

**AS AND FOR A SIXTH CLAIM  
FOR NEGLIGENCE**

40. Plaintiffs repeat and re-allege each and every allegation set forth in paragraph 1 through 39 of this Complaint.

41. Defendants owed Plaintiffs a duty to provide a safe learning environment free from racial discrimination, harassment and bullying for the Plaintiff A.O..

42. Defendants breached that duty as more fully set forth in Paragraphs 18 through 39 of this Complaint.

43. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered injury and harm and are entitled to compensation therefor.

**AS AND FOR A SEVENTH CLAIM  
FOR GROSS NEGLIGENCE**

44. Plaintiffs repeat and re-allege each and every allegation set forth in paragraph 1 through 43 of this Complaint.

45. Defendants' omissions were so wanton, reckless, and indifferent as to constitute gross negligence.

46. As a direct and proximate result of Defendants' gross negligence, Plaintiffs have suffered injury and harm and are entitled to compensation therefor.

**WHEREFORE**, Plaintiffs respectfully requests judgment against the Defendants as follows:

- (a) judgment awarding Plaintiffs compensatory damages in a sum no less than \$1,000,000.00;
- (b) judgment awarding Plaintiff punitive damages in a sum no less than \$5,000,000.00;
- (c) for each Cause of Action, granting the following injunctive relief:
  - 1. Restraining the Defendants from engaging in further discriminatory and/or retaliatory treatment;
  - 2. Require the Defendants to review and correct all unconstitutional, discriminatory and retaliatory treatment and conduct within the Saranac Lake Central School District;
  - 3. Provide equal opportunities, terms, and benefits to all students attending schools in the Saranac Lake Central School District;

4. Mandate training and educational programs for employees and students about discrimination and retaliation;

5. Require annual reports demonstrating efforts and success at compliance in providing a discrimination and retaliation-free education environment;

(d) attorneys' fees as provided by law;

(e) declaratory relief that the Defendants violated the Plaintiff's rights under the law;

(f) granting such other and further relief as the Court may deem just and proper.

#### JURY DEMAND

Plaintiffs demand a jury trial of all claims herein.

Dated: September 19, 2011  
at Rome, New York

s/A.J. Bosman

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A.J. Bosman, Attorney at Law

Office and Post Office Address:  
6599 Martin Street  
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Telephone: (315) 336-9130

The Children's Rights Initiative, Inc.  
Attorneys for Plaintiff A.O.

s/Theresa M. Girouard, Esq.  
Attorney for Plaintiffs Amy Oliveras and  
Hiram Oliveras  
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225 N. Washington Street  
Rome, New York 13440  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

AMY OLIVERAS, HIRAM OLIVERAS, and A.O., a minor

(b) County of Residence of First Listed Plaintiff Essex (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) A.J. Bosman, Esq. and Theresa M. Girouard, Esq.

DEFENDANTS

SARANAC LAKE CENTRAL SCHOOL DISTRICT, et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983
Brief description of cause: race discrimination in education

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 6,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

09/19/2011

A.J. Bosman

Digitally signed by: A.J. Bosman DN: CN = A.J. Bosman C = US O = Bosman Law Office Date: 2011.09.19 19:11:24 -0500

FOR OFFICE USE ONLY

RECEIPT # 1972820 AMOUNT \$350.00 APPLYING IFP -

JUDGED 'Agostino' MAG. JUDGE Homer 8:11-CV-1110 COMPLEX

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.