

**IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA**

JOHN DOE	:	
	:	
Plaintiff,	:	CIVIL ACTION - LAW
	:	
v.	:	
	:	No. CV-2026-00283
	:	
WILLIAMSPORT AREA SCHOOL	:	
DISTRICT and ROGER FREED	:	
And MICHELLE PULIZZI and	:	Preliminary Objections
SEAN WALKER and	:	
JOHN DOES 1-10	:	
	:	
Defendants	:	

**OPINION ON PRELIMINARY OBJECTIONS OF
WILLIAMSPORT AREA SCHOOL DISTRICT FILED MAY 13, 2025**

This matter came before the Court on June 17, 2026, for oral argument on the Preliminary Objections to the Complaint filed on May 13, 2026, by Williamsport Area School District (hereinafter sometimes referred to as “Moving Defendant” or as “WASD”).

QUESTIONS PRESENTED:

1. WHETHER A DEMURRER SHOULD BE ENTERED AS TO ALL OF PLAINTIFF’S CLAIMS AGAINST WASD ON THE BASIS OF GOVERNMENTAL IMMUNITY.
2. WHETHER A DEMURRER SHOULD BE ENTERED AS TO ALL OF PLAINTIFF’S CLAIMS OF VICARIOUS LIABILITY AGAINST WASD.
3. WHETHER A DEMURRER SHOULD BE ENTERED AS TO ALL OF PLAINTIFF’S CLAIMS AGAINST WASD ON THE BASIS THAT THE ALLEGED SEXUAL ABUSE WAS NOT FORESEEABLE.
4. WHETHER A DEMURRER SHOULD BE ENTERED AS PLAINTIFF’S CLAIM AGAINST WASD FOR FAILURE TO WARN.
5. WHETHER A DEMURRER SHOULD BE ENTERED AS TO PLAINTIFF’S CLAIMS FOR NEGLIGENCE PER SE.
6. WHETHER PLAINTIFF’S CLAIMS FOR PUNITIVE DAMAGES SHOULD BE STRIKEN.
7. WHETHER THE COURT SHOULD STRIKE CLAIMED SCANDALOUS OR IMPERTINENT MATTER.

ANSWERS TO QUESTIONS PRESENTED:

1. A DEMURRER WILL NOT BE ENTERED AS TO PLAINTIFF'S NEGLIGENCE CLAIMS AGAINST WASD, ON THE BASIS OF GOVERNMENTAL IMMUNITY.
2. THE COURT WILL ENTER A DEMURRER AS TO ALL OF PLAINTIFF'S CLAIMS OF VICARIOUS LIABILITY AGAINST WASD.
3. THE COURT WILL NOT YET ENTER A DEMURRER AS TO ALL OF PLAINTIFF'S CLAIMS AGAINST WASD ON THE BASIS THAT THE ALLEGED SEXUAL ABUSE WAS NOT FORESEEABLE, BUT WILL DIRECT PLAINTIFF TO FILE AN AMENDED COMPLAINT.
4. A DEMURRER WILL NOT BE ENTERED AS PLAINTIFF'S CLAIM AGAINST WASD FOR FAILURE TO WARN, BUT PLAINTIFF WILL BE DIRECTED TO FILE AN AMENDED COMPLAINT.
5. PLAINTIFF'S CLAIM OF NEGLIGENCE PER SE WILL BE STRICKEN, WITHOUT PREJUDICE TO ASSERT STATUTORY VIOLATIONS AS A BASIS FOR A CLAIM OF NEGLIGENCE.
6. AT THIS EARLY STAGE OF THE LITIGATION, PLAINTIFF'S CLAIMS FOR PUNITIVE DAMAGES WILL NOT YET BE STRIKEN.
7. THE AMENDED COMPLAINT WILL NOT CONTAIN THE ALLEGATIONS SET FORTH IN THE COMPLAINT AT PARAGRAPHS 16 THROUGH 27, NOR ANY REFERENCE TO PULIZZI'S PLEA OF *NOLO CONTENDERE*.

DISCUSSION:

1. A DEMURRER WILL NOT BE ENTERED AS TO PLAINTIFF'S NEGLIGENCE CLAIMS AGAINST WASD, ON THE BASIS OF GOVERNMENTAL IMMUNITY.

The Test to Be Applied in Construing the Pa.R.C.P.

This Court is obligated to "liberally construe" the Rules of Civil Procedure "to secure the just, speedy and inexpensive determination of every action" and "may disregard any error or defect of procedure which does not affect the substantial rights of the parties" to that end. Pa.R.C.P. 126. In reviewing preliminary objections, "[a]ll well-pled facts in the complaint, and reasonable inferences arising from those facts, are accepted as true. However, unwarranted inferences, conclusions of law, argumentative allegations or expressions of opinion need not be accepted." *Richardson v. Wetzel*, 74 A.3d 353, 356 (Pa. Commw. Ct.

2013) (quoting *Wilson v. Marrow*, 917 A.2d 357, 361 n. 3 (Pa. Commw. Ct. 2007) (*emphasis added*); *Goehring v. Harleysville Mut. Cas. Co.*, 73 Pa. D.&C.2d 784, 788 (Beaver Cnty. 1976) (“...[A] motion to strike should be overruled unless a party can affirmatively show prejudice...”).

The purpose of pleadings is to place the opposing party on notice of the claims or defenses which they must meet, and to provide a summary of the material facts upon which those claims or defenses are based. *Yacoub v. Lehigh Valley Medical Associates*, 2002 PA.Super. 251, 805 A.2d 579, 589 (Pa.Super. 2002), citing *McClellan v. Health Maintenance Organization of Pennsylvania*, 413 Pa.Super. 128, 604 A.2d 1053 (Pa.Super. 1992). “The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” Pa.R.C.P. § 1019(a). And, “The purpose of this rule is to require the plaintiff to disclose the material facts sufficient to enable the adverse party to prepare the case.” *Bennett v. Beard*, 919 A.2d 365, 367 (Pa. Commw. Ct. 2007). Furthermore, “Pennsylvania is a fact-pleading jurisdiction; consequently, a pleading must not only apprise the opposing party of the asserted claim, ‘it must also formulate the issues by summarizing those facts essential to support the claim.’” *Wetzel*, 74 A.3d at 356–57 (quoting *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. Super. Ct. 1992). Finally, “the lower court has broad discretion in determining the amount of detail that must be averred since the standard of pleading set forth in Rule 1019(a) is incapable of precise measurement.” *United Refrigerator Co. v. Applebaum*, 189 A.2d 253, 255 (Pa. 1963).

The Test Applicable to Preliminary Objections In the Nature of a Demurrer.

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein*, 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus*, 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts. *Chappell v. Powell*, 303 A.3d 507, 511 (Pa.Super. 2023); *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust*, 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein*, *supra*.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.*, 436 Pa. 279, 259 A.2d 443

(1969); *Botwinick v. Credit Exchange, Inc.*, 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein*, *supra*; ****829** *London v. Kingsley*, 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker*, 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also*, *Schott v. Westinghouse Electric Corp.*, *supra*, 436 Pa. at 291, 259 A.2d at 449.

Mudd v. Hoffman Homes for Youth, Inc., 374 Pa.Super. 522, 524–25, 543 A.2d 1092, 1093–94 (1988) (quoting *County of Allegheny v. Commonwealth*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985)). Accord, *Ritz v. Ramsay*, 305 A.3d 1056, 1061 (Pa.Super. 2023).

Plaintiff’s Negligence Claims May Be Subject to an Exception to Sovereign Immunity

WASD urges the Court to dismiss Plaintiff’s claims against Moving Defendant on the basis of the governmental immunity established by 42 Pa.C.S.A, Section 8541, as follows:

Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

The exceptions to governmental immunity are set forth at 42 Pa.C.S.A. Sections 8542, including an exception for sexual abuse at Section 8542(b)(9). Section 8542(a) provides as follows:

Liability imposed.--A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):

(1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under section 8541 (relating to governmental immunity generally) or section 8546 (relating to defense of official immunity); and

(2) **The injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b).** As used in this paragraph, “negligent acts” shall not include acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct. (emphasis added).

42 Pa.C.S.A. Section 8542(b)(9) provides for an exception for:

Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the local agency which constitute negligence.

42 Pa.C.S.A. Section 5551, titled “No limitation applicable” provide that:

A prosecution for the following offenses may be commenced at any time:

- (1) Murder.
- (2) Voluntary manslaughter.
- (3) Conspiracy to commit murder or solicitation to commit murder if a murder results from the conspiracy or solicitation.
- (4) Any felony alleged to have been perpetrated in connection with a murder of the first or second degree, as set forth in 18 Pa.C.S. § 2502(a) or (b) and (d) (relating to murder).
- (5) A violation of 75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury) or 3732 (relating to homicide by vehicle) if the accused was the driver of a vehicle involved in an accident resulting in the death of any person.
- (6) A violation of 18 Pa.C.S. § 2702(a)(1), (2), (4) or (7) (relating to aggravated assault) if the accused knew the victim was a law enforcement officer and the law enforcement officer was acting within the scope of the officer's duties.
- (7) An offense under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses), or a conspiracy or solicitation to commit an offense under any of the following provisions of 18 Pa.C.S. if the offense results from the conspiracy or solicitation, if the victim was under 18 years of age at the time of the offense:
Section 3011(b) (relating to trafficking in individuals).
Section 3012 (relating to involuntary servitude) as it relates to sexual servitude.
Section 3121 (relating to rape).
Section 3122.1 (relating to statutory sexual assault).
Section 3123 (relating to involuntary deviate sexual intercourse).
Section 3124.1 (relating to sexual assault).
Section 3124.2 (relating to institutional sexual assault).
Section 3125 (relating to aggravated indecent assault).
Section 4302 (relating to incest).

18 Pa.C.S.A. Section 3124.1 defines sexual assault as follows:

Except as provided in section 3121 (relating to rape) or 3123 relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

18 Pa.C.S.A. Section 3124.2(a.2) provides as follows:

Schools.--

- (1) Except as provided in sections 3121, 3122.1, 3123, 3124.1 and 3125, a person who is a volunteer or an employee of a school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school.
- (2) As used in this subsection, the following terms shall have the meanings given to them in this paragraph:

- (i) "Direct contact." Care, supervision, guidance or control.
- (ii) "Employee."
 - (A) Includes:
 - (I) A teacher, a supervisor, a supervising principal, a principal, an assistant principal, a vice principal, a director of vocational education, a dental hygienist, a visiting teacher, a home and school visitor, a school counselor, a child nutrition program specialist, a school librarian, a school secretary the selection of whom is on the basis of merit as determined by eligibility lists, a school nurse, a substitute teacher, a janitor, a cafeteria worker, a bus driver, a teacher aide and any other employee who has direct contact with school students.
 - (II) An independent contractor who has a contract with a school for the purpose of performing a service for the school, a coach, an athletic trainer, a coach hired as an independent contractor by the Pennsylvania Interscholastic Athletic Association or an athletic trainer hired as an independent contractor by the Pennsylvania Interscholastic Athletic Association.
 - (B) The term does not include:
 - (I) A student employed at the school.
 - (II) An independent contractor or any employee of an independent contractor who has no direct contact with school students.
- (iii) "School." A public or private school, intermediate unit or area vocational-technical school.
- (iv) "Volunteer." The term does not include a school student.

The Allegations in Paragraph 2 of the Complaint

At Paragraph 2 of the Complaint, Plaintiff alleges that:

Plaintiff was a student at Williamsport Area High School, when he was groomed and eventually repeatedly sexually assaulted by Roger Freed, one of his high school principals, and Michelle Pulizzi, one of his high school teachers, who were both agents, employees, and/or representatives of Defendant Williamsport Area School District at all times relevant.

Plaintiff's Complaint alleges that Plaintiff was the victim of sexual assaults, and describes the incidents as conduct which may constitute sexual assault under Pennsylvania law. At this early stage of the litigation, Plaintiff's claims of negligence against WASD will not be dismissed on the basis of governmental immunity. See, *J.R. v. Greater Latrobe School District*, 688 F.Supp. 3rd 243, 264-265 (W.D. Pa. 2023).

Plaintiff Will Be Directed To File An Amended Complaint:

It appears to the Court that Plaintiff asserts very different fact withs regard to each of the Defendants. Nevertheless, Counts I and II and III and IV and V are labeled as being filed

against “All Defendants.” There does not appear to be any Count VII, yet there is a Count VIII. Although Count I is labeled as against “All Defendants,” the language at Paragraphs 123 through 132 is obviously directed at Defendant Williamsport Area School District (hereinafter “WASD”). The Court will direct the Plaintiff to file an Amended Complaint. Unless all the claims asserted against all the Defendants are identical (and they very obviously are not), the Plaintiff is directed to separately state each of the claims as against each of the Defendants, with sufficient material allegations of fact, in a concise and summary form.

2. THE COURT WILL ENTER A DEMURRER AS TO ALL OF PLAINTIFF’S CLAIMS OF VICARIOUS LIABILITY AGAINST WASD.

At Paragraph 6 of the Complaint, Plaintiff contends that WASD is vicariously liable for the acts of Freed, Pulizzi, and Walker. This claim must fail.

First, the waiver of governmental immunity set forth at 42 Pa.C.S.A. Section 8542(a), is expressly limited to claims where the “injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b).” It is the settled law of this Commonwealth that claims related to intentional acts are not subject to the waiver.

Orange Stones does not contend that its claims against the City for wrongful use of civil proceedings, abuse of process, and intentional interference with contractual relations survive the defense of governmental immunity. It is well-settled that where a plaintiff has averred willful misconduct on the part of local agency employees, section 8542(a)(2) of the Tort Claims Act, 42 Pa.C.S. § 8542(a)(2), bars recovery from the local agency because liability may be imposed on a local agency only for negligent acts. *City of Philadelphia v. Glim*, 149 Pa.Cmwlth. 491, 613 A.2d 613, 617 (1992); *City of Philadelphia v. Brown*, 152 Pa.Cmwlth. 343, 618 A.2d 1236, 1238–39 (1992). In addition, section 8550 of the Tort Claims Act, 42 Pa.C.S. § 8550, does not create an exception to section 8542(a)(2), and, as a result, a local agency may not be held liable for the willful misconduct of its employees. *Glim*, 613 A.2d at 617; *Brown*, 618 A.2d at 1238–39. In order to overcome the defense of governmental immunity, a plaintiff’s claims against a local agency must sound in negligence and must fall within one of the eight enumerated exceptions to local agency immunity set forth in section 8542(b) of the Tort Claims Act, 42 Pa.C.S. § 8542(b). *Glim*, 613 A.2d at 616–17.

Orange Stones Co v. City of Reading, 87 A.3d 1014, 1022 (Pa.Cmwlth. 2014).

Second, it has long been the law of this Commonwealth that an employer is not liable for the torts committed by its employees, unless the act was committed in the transaction of the master's business, and in furtherance or protection of the master's interest. *Doe 6 v. Pennsylvania State University*, 982 F.Supp. 2d 437, 441-444 (E.D. Pa. 2013). There are no allegations in the Complaint which suggest that WASD directed or condoned the acts alleged by Freed, Pulizzi, or Walker.

For the reasons discussed above, the Court will enter a demurrer to Plaintiff's claims against WASD, which are based upon vicarious liability.

3. THE COURT WILL NOT YET ENTER A DEMURRER AS TO ALL OF PLAINTIFF'S CLAIMS AGAINST WASD ON THE BASIS THAT THE ALLEGED SEXUAL ABUSE WAS NOT FORESEEABLE, BUT WILL DIRECT PLAINTIFF TO FILE AN AMENDED COMPLAINT.

WASD seeks a demurrer to Plaintiff's claims of negligence based upon its contention that the claims sexual assaults were not reasonably foreseeable. Our Superior Court discussed the question of foreseeability in the matter of *Huddleston v. Infertility Center of America, Inc.*, 700 A.2d 453 (Pa.Super. 1997), as follows:

Our analysis is not at an end, however, for we must determine whether the harm suffered in this case was reasonably foreseeable. *See Griggs v. BIC Corp.*, 981 F.2d 1429, 1435 (3d Cir.1992) (foreseeability is an integral part of determination that duty exists under Pennsylvania negligence law). Although ICA attempts to frame the issue as whether it is foreseeable that a sperm-donor father would brutally *murder* his biological child, we perceive the actual issue to be whether it is reasonably foreseeable that *child abuse* could result in a surrogacy situation. "[I]n the context of duty, '[t]he concept of foreseeability means the likelihood of the occurrence of a *general* type of risk rather than the likelihood of the occurrence of the precise chain of events leading to the injury.'" " *Kleinknecht, supra*, 989 F.2d at 1369 (citation omitted) (emphasis added). "Although it is true that a defendant is not required to guard against every possible risk, he must take reasonable steps to guard against hazards which are generally foreseeable." *Kleinknecht, supra*, 989 F.2d at 1370 (citation omitted).

In this case, Appellant contends that the trial court erred in concluding, as a matter of law, that it is not foreseeable that a child born as a consequence of a surrogacy contract would be seriously injured by his sperm-donor father. We agree.

Huddleston v. Infertility Center of America, Inc., 700 A.2d 453, 460 (Pa.Super. 1997).

It may be that the question of foreseeability will become the basis for a future dispositive motion. At this early stage of the litigation, the Court is not prepared to conclude that, as a matter of law, the harm alleged by Plaintiff could not be foreseen.

4. A DEMURRER WILL NOT BE ENTERED AS PLAINTIFF'S CLAIM AGAINST WASD FOR FAILURE TO WARN, BUT PLAINTIFF WILL BE DIRECTED TO FILE AN AMENDED COMPLAINT.

The basis for Plaintiff's claim of failure to warn is unclear. As is true of other Counts in the Complaint, Count IV is directed against all Defendants. While there are some allegations in the Complaint to support the conclusion that Freed was aware of the threat to Plaintiff posed by Pulizzi's conduct, the Complaint does not contain sufficient allegations of material fact to support that same conclusion with regard to WASD. There are allegations set forth in Paragraph 153 which suggest that Plaintiff's failure to warn claim may be based in alleged violations of Pennsylvania's Child Protective Services Law, and the Education Discipline Act. There are not sufficient allegations of material fact upon which to base the conclusion that WADS knew or should have known of the alleged conduct by Freed and Pulizzi.

The problems with Plaintiff's failure to warn claim are three-fold. First, the Complaint does not contain sufficient allegations of material fact to support the conclusion that WASD should have foreseen the alleged conduct by Freed and Pulizzi. Second, the Court is unaware of any authority for the proposition that a violation of either the Pennsylvania's Child Protective Services Law or the Education Discipline Act constitutes actionable negligence. Third, while 42 Pa.C.S.A. Section 8542(b)(9), provides an exception to governmental immunity for sexual abuse, there is no such exception to immunity for an alleged failure to warn.

As to Plaintiff's claim of failure to warn, the Plaintiff will be directed to amend.

5. PLAINTIFF'S CLAIM OF NEGLIGENCE PER SE WILL BE STRICKEN, WITHOUT PREJUDICE TO ASSERT STATUTORY VIOLATIONS AS A BASIS FOR A CLAIM OF NEGLIGENCE.

As Lycoming County President Judge Eric R. Linhardt observed in his scholarly opinion in the matter of *Fausnaught v. UPMC Susquehanna*, 2020 WL 5875630 (Pa.Com. Pl. 2020), negligence pe se is a theory upon which a claim of negligence may

be based, but is not a separate cause of action. For that reason, it may not be pled separately. In the Amended Complaint, Plaintiff is free to allege violations of applicable law as a basis for a claim of negligence, but may not plead negligence per se as a separate cause of action.

6. AT THIS EARLY STAGE OF THE LITIGATION, PLAINTIFF'S CLAIMS FOR PUNITIVE DAMAGES WILL NOT YET BE STRIKEN, BUT PLAINTIFF WILL BE DIRECTED TO FILE AN AMENDED COMPLAINT WHICH SHALL ALLEGE MATERIAL FACTS IN SUPPORT OF PLAINTIFF'S CLAIM FOR PUNITIVE DAMAGES.

Each and every one of the Counts in the Complaint claim punitive damages. WASD asserts that the allegations in the Complaint:

fail to enumerate any specific conduct on the part of the District that was reckless, or that which constituted reckless indifference with conscious/deliberate disregard to the rights of Plaintiff. Plaintiff has likewise not plead any factual allegations that the District acted with the requisite intent or disregard in order to impose punitive damages.

WASD Brief, page 38.

The imposition of punitive damages in Pennsylvania civil litigation is rare. In the matter of *Jahanshahi v. Centura Development*, 2003 PA Super. 43, 816 A.2d 1179, 1188 (Pa.Super. 2003), the Court cited *Johnson v. Hyundai Motor America*, 689 A.2d 631 (Pa.Super. 1997), for the proposition that “a court may award punitive damages only if an actor's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.” Suggested Standard Civil Jury Instruction 8.00 provides that the jury may award punitive damages “if you find that the conduct of the defendant was outrageous.” The definition of “outrageous” tracks the language set forth above.

Ordinarily, the determination of whether a defendant's conduct rises to the level of “outrageous conduct” lies within the sound discretion of the trier of fact. *J.J. DeLuca Co., Inc., v. Toll Naval Associates*, 2012 PA Super. 222, 56 A.3d 402, 416 (Pa.Super. 2012).

Our Superior Court has observed as follows:

It is well settled law in Pennsylvania that the decision of whether to award punitive damages and the amount to be awarded are within the discretion of the fact finder. See *Focht v. Rabada*, 217 Pa.Super. 35, 268 A.2d 157 (1970); Restatement of Torts, § 908(2) (1939); See also *King v. Towns*, 102 Ga.App. 895, 118 S.E.2d 121 (1961); *Leimgruber v. Claridge Associates, Ltd.*, 73 N.J. 450, 456, 375 A.2d 652, 655 (1977). Although punitive damages are not a favorite of the law, *Cochetti v.*

Desmond, 572 F.2d 102 (3rd Cir.1978), they will only be reduced on appeal if the reviewing court determines that they are excessive under the facts of the individual case. *International Electronics Co. v. N.S.T. Metal Products Co.*, 370 Pa. 213, 88 A.2d 40 (1952).

Delahanty v. First Pennsylvania Bank, N.A., 318 Pa.Super. 90, 129, 464 A.2d 1243, 1263, (Pa.Super. 1983).

At this very early stage of the litigation, the Court will not dismiss Plaintiff's claim for punitive damages, but will require Plaintiff to file an Amended Complaint.

7. THE AMENDED COMPLAINT WILL NOT CONTAIN THE ALLEGATIONS SET FORTH IN THE COMPLAINT AT PARAGRAPHS 16 THROUGH 27, NOR ANY REFERENCE TO PULIZZI'S PLEA OF *NOLO CONTENDERE*.

WASD contends that the allegations set forth in Paragraphs 16 through 27 of the Complaint constitute scandalous and impertinent matter. "To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action." *Common Cause/ Pennsylvania v. Commonwealth of Pennsylvania*, 710 A.2d 108, 115 (Pa.Cmwlth. 1998), citing *Department of Environmental Resources v. Peggs Run Coal Company*, 55 Pa.Cmwlth. 312, 423 A.2d 765 (Pa.Cmwlth. 1980).

It may be that Plaintiff intends to introduce evidence of the matters contained within those paragraphs, in order to cast WASD in a negative light. The School District will likely seek to exclude them. The Court will not predict the outcome of that evidentiary issue at this early stage. For now, it is sufficient to observe that proof of the matters alleged at Paragraphs 16 through 27 are certainly not required elements of proof by the Plaintiff. For that reason, those paragraphs will be excluded from the Amended Complaint.

With regard to the issue of Pulizzi's plea of *nolo contendere*, it has been the rule of this Commonwealth for over one hundred (100) years that pleas of *nolo contendere* are not generally admissible in a subsequent civil matter:

"A plea of *nolo contendere*, when accepted by the court, is, in its effect upon the case, equivalent to a plea of guilty. It is an implied confession of guilt only, and cannot be used against the defendant as an admission in any civil suit for the same act." Such was the statement of President Judge Rice, speaking for this court in *Commonwealth v. Ferguson*, 44 Pa.Super. 626, 628, the leading case in this Commonwealth. Sentence may be imposed upon such plea as well as upon a plea of guilty. *Ibid.* We have consistently followed that case ever since. See *Teslovich v. Fireman's Fund Ins. Co.*, 110 Pa.Super. 245, 168 A. 354, where the record of such

a plea in a prosecution for arson was held to have been properly excluded in an action of assumpsit on a policy of fire insurance covering the property destroyed by fire; *Com. v. Rousch*, 113 Pa.Super. 182, 172 A. 484; *Com. v. Smith*, 116 Pa.Super. 134, 177 A. 68; *Ferguson v. Reinhart*, 125 Pa.Super. 154, 159, 160, 190 A. 153; *Com. v. Smith*, 151 Pa.Super. 113, 130, 131, 30 A.2d 339.

Commonwealth ex rel. Warner v. Warner, 156 Pa.Super. 465, 466-467, 40 A.2d 886, 887 (PA.Super. 1945).

ORDER

AND NOW, this 7th day of July, 2026, it is hereby Ordered as follows:

1. The Preliminary Objections to the Complaint filed on May 13, 2026, by Williamsport Area School District are granted in part and denied in part. Plaintiff is directed to file an Amended Complaint within twenty (20) days of the date of filing of this Order.
2. Unless all the claims asserted against all the Defendants are identical, the Plaintiff shall separately state each of the claims as against each of the Defendants, with sufficient material allegations of fact, in a concise and summary form.
3. The Amended Complaint will delete the claim of vicarious liability against WASD.
4. The Amended Complaint will not include separate counts alleging negligence per se, but may allege violations of applicable law as a basis for a claim of negligence.
5. The Amended Complaint will either delete the claim of negligence against WASD, or will set forth sufficient material allegations of fact to support the conclusion that the alleged conduct by Freed and Pulizzi was foreseeable by WASD.
6. The Amended Complaint will either delete the claims of failure to warn and failure to rescue against WASD, or will set forth sufficient material allegations of fact to support the conclusion that the alleged conduct by Freed and Pulizzi was foreseeable by WASD, and that WASD has a legal duty to warn or rescue as a result.
7. The Amended Complaint will either delete the claim for punitive damages against WASD, or will set forth sufficient material allegations of fact to support the conclusion that the conduct of WASD was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of the Plaintiff.
8. The Amended Complaint will delete the allegations set forth in Paragraphs 16 through 27 of the original Complaint.

9. The balance of the Preliminary Objections are denied.

BY THE COURT:

William P. Carlucci, Judge

cc: Count Administrator
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