STANDING ROCK SIOUX TRIBAL COURT
STANDING ROCK SIOUX INDIAN RESERVATION

Jamie Murphy for Corina Murphy-Bernal (a minor),	)	**File #SOC 11-681**
plaintiff	)	**MEMORANDUM OPINION, ORDER FOR JUDGMENT AND JUDGMENT OF PARTIAL DISMISSAL, ORDER FOR AMENDMENT OF CAPTION AND ORDER FOR HEARING**
vs.	)	
Standing Rock High School,	)	
defendant	)	

This matter has been initiated by a pro se Statement of Claim, dated and filed November 29, 2011.

Three responsive appearances have been filed.

First, a Motion to Dismiss and Brief in Support of Motion to Dismiss has been filed on behalf of the Fort Yates Public School District by Rachel A. Bruner-Kaufman.

Second, the Standing Rock Community School Board has filed a Motion to Dismiss through counsel William Perry.

The motions are properly submitted in lieu of answers under Rule 12(b) of the Federal Rules of Civil Procedure, which have been adopted as rules of procedure in this Court under Rule 1 of the Rules of Court.

Third, William Severin has filed an Answer on behalf of the Standing Rock High School, which by subsequent correspondence has been identified as an answer on behalf of the Standing Rock Community School.

Rule 7 of the Rules of Court provides that, unless any party requests oral arguments, the Court may consider the motions on briefs. No party has requested oral arguments, the time for response has expired and the matter is ripe for decision. There has been no response filed by the plaintiff.

When matters outside the pleadings are submitted in support of the motions, under Rule 12(d) of the Federal Rules of Civil Procedure the "motion must be treated as one for summary judgment under Rule 56." Both defendants have submitted by attachment to their respective briefs foundational documentary materials. Rule 56(c) provides that the Court may consider not just affidavits, but also declarations made on personal knowledge. Under the provisions of Rule 11(b) of the Federal Rules of Civil Procedure, legal counsel, by subscription of the motions and briefs so verify. The plaintiff may object to the admissibility of the documents under Rule 56(c)(2), but has not, and these documents shall, therefore, be considered by the Court.

EXHIBIT 3

The issues as to the tribal entity, the Standing Rock Community School, are more straightforward, so we will turn first to its motion.

Standing Rock Community School

Indian nations enjoy absolute sovereign immunity, unless waived by the tribe or by act of Congress. Kiowa Tribe of Oklahoma v. Manufacturing Technologies., Inc. 523 US 751 (1998). That immunity has been affirmed, not waived, by the Tribe under the Standing Rock Sioux Tribe Code of Justice, §1-108:

> The Tribe shall be immune from suit, except to permit garnishment of Tribal employee wages in accordance with Title II, Section 2-211 of this Code.

Tribal agencies are entitled to sovereign immunity from suit, including tribally chartered schools. The Eight Circuit, which is controlling of federal law in North and South Dakota, so ruled in the case of Hagen v. Sisseton-Wahpeton Community College, 205 F3d 1040 (8th Cir., 2000):

> It is undisputed that an Indian tribe enjoys sovereign immunity. *See Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998). It is also undisputed that a tribe's sovereign immunity may extend to tribal agencies. *Dillon v. Yankton Sioux Tribe Housing Auth.*, 144 F.3d 581, 583 (8th Cir.1998).
>
> The College argues because it is chartered, funded, and controlled by the Tribe to provide education to tribal members on Indian land, it is a tribal agency. The College relies on *Dillon* and *Pink v. Modoc Indian Health Project*, 157 F.3d 1185 (9th Cir.1998), *cert. denied*, 528 U.S. 877, 120 S.Ct. 185, 145 L.Ed.2d 156 (1999). In *Dillon*, this court held that " 'a housing authority, established by a tribal council pursuant to its powers of self-government, is a tribal agency.' " 144 F.3d at 583 (quoting *Weeks Constr., Inc. v. Oglala Sioux Housing Auth.*, 797 F.2d 668, 670 (8th Cir.1986)); *cf. Duke v. Absentee Shawnee Tribe of Oklahoma Housing Auth.*, 199 F.3d 1123, 1125 (10th Cir.1999) ("housing authority's creation under state statute did not preclude characterization as a tribal organization"); *EEOC v. Fond du Lac Heavy Equip. & Constr. Co.*, 986 F.2d 246, 248 (8th Cir.1993) (age discrimination act did not apply to a construction company wholly-owned and chartered by a tribe). In *Pink*, the Ninth Circuit held that a nonprofit health corporation created and controlled by Indian tribes is entitled to tribal immunity, noting it "served as an arm of the sovereign tribes, acting as more than a mere business." 157 F.3d at 1188. Likewise, here the College serves as an arm of the tribe and not as a mere business and is thus entitled to tribal sovereign immunity.

Hagen, at 1043.

The Standing Rock Community School appends, as part of Attachment 2 to its brief, Resolution 569-06, dated November 3, 2006, by which the Standing Rock Sioux Tribal Council created the

Community School, as an entity of the Tribe, and of which this Court also takes judicial notice under Rule 201 of the Federal Rules of Evidence, which governs this Court under Rule 3 of the Rules of Court.

The school's sovereign immunity was explicitly affirmed, under The Joint Powers Agreement Between the Standing Rock Sioux Tribe & Fort Yates Public School District No. 4, §X, of which this Court also takes judicial notice:

> Each of the parties recognized [sic] the sovereignty of the other. In executing the Agreement, no party waivers [sic] any rights, including treaty rights, immunities, including sovereign immunities, or jurisdiction.

Thus, it is clear that the Standing Rock Community School has complete immunity from suit in the Tribal Court. This action shall, therefore, be dismissed, with prejudice, as against the Community School.

Fort Yates Public School District No. 4

As alluded to above, the issues as to the Fort Yates Public School District No. 4, an entity organized under the laws and sovereignty of the State of North Dakota, are more complex. We will consider these issues in the order addressed by counsel.

A. Failure to Sue Legal Entity and Failure to Join an Indispensable Party.

The District actually addresses three distinct issues, as the Court construes its Brief.

First, it seeks dismissal because "Standing Rock High School is not a legal entity." This is not an uncommon deficiency in an initial pleading and Rule 15 of the Federal Rules of Civil Procedure addresses it and provides for amendment of the name of the party by amendment relating back to the date of the original pleading, if:

> ...the party to be brought in by amendment:
> ...
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

The District clearly understands that it is an intended target of the complaint, as it has appeared, correctly identifying itself, and has brought this motion to dismiss. The Statement of Claim and caption shall be amended to correctly state the identity of the District, as the sole defendant.

Second, the District moves to dismiss on the grounds of failure to join an indispensable party under Rule 19 of the Federal Rules of Civil Procedure. The claim is that "the Grant School is an indispensable party."

By "Grant School," the Court assumes the District is referring to the Standing Rock Community School. Rule 19 does not require the joinder of the Standing Rock Community School, for the reason that this Court has no jurisdiction over the Community School, and Rule 19 provides that an indispensable party must be a party "whose joinder will not deprive the court of subject-matter jurisdiction...." Rule 19(a)(1).

Third, the District appears to contend that dismissal is required because "It is unclear from the complaint what claims the Plaintiff is bringing."

However, federal practice, which this Court follows, allows for "notice pleading," as defined by Rule 8:

> RULE 8. GENERAL RULES OF PLEADING
> (a) Claim for Relief. A pleading that states a claim for relief must contain:
> (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
> (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
> (3) a demand for the relief sought which may include relief in the alternative or different types of relief.

As to alleging jurisdiction, this is required in federal court because the federal courts are courts of limited defined jurisdiction, not courts of general jurisdiction like the state and tribal courts. Cf: North Dakota Rules of Civil Procedure, Rule 8, which omits this element, for this reason. Nonetheless, the Court- issued form upon which the Statement of Claim was stated, contains a concise allegation, pre-printed, of personal and subject matter jurisdiction.

As to the statement of the claim, it is stated as follows:

> Standing Rock High School was negligent by failing to provide Corina Murphy-Bernal with an academic environment free from physical harm and fear.

As to the statement of relief sought, it is stated as follows:

> That the result of said claim, the Plaintiff claims due and owing from the Defendant the sum of $50,000.00, plus costs and disbursements herein.

Actually, this compares quite favorably with Form 11 of the Federal Rules of Civil Procedure, approved as sufficient in the United States District Courts:

FORM 11. COMPLAINT FOR NEGLIGENCE

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)
2. on *date*, at *place*, the defendant negligently drove a motor vehicle against the plaintiff.
3. As a result, the plaintiff was physically injured, lost wages or income, suffered physical and mental pain, and incurred medical expenses of $_____, plus costs.

The function of notice pleading is explained as follows at 61A Am. Jur. 2d, Pleading, §124:

> The primary function of notice pleading is to give the adverse party fair notice of the theory on which the claim is based. Thus, no matter how poorly a complaint is drafted, if it sufficiently raises possible theories of recovery, it should not be dismissed.
>
> Under the notice theory of pleading, a statement of claim is adequate if it gives sufficient or fair notice of events or transactions which produced the claim to enable the adverse party to understand its nature and basis and to file a responsive pleading.
>
> The policy behind notice pleading is to resolve controversies on the merits, after an opportunity for discovery, instead of resolving them based on the technicalities of pleading. Thus, any reasonable doubt concerning the sufficiency of a petition must be resolved in favor of finding that a cause of action has been stated.

The burden placed upon a non-lawyer proceeding pro se is even less stringent, as stated at 61A Am. Jur. 2d, Pleading, §105:

> The general policy of the Federal Rules of Civil Procedure favors adjudication on the merits, rather than technicalities of procedure and form, and is especially applicable in the case of a pro se complaint, since pro se complaints are generally held to less stringent standards than formal pleadings drafted by attorneys. Thus, a pro se complaint should be liberally construed, and should not be dismissed merely because it does not state with precision every element of the offense necessary for recovery, or the plaintiff failed to sign the pleading.

Actually, the plaintiff has appended a substantial amount of documentation which would normally not be required to be produced until discovery.

It also appears that counsel may have misconstrued the initial pleading as the District's brief states that "The only employees listed in the complaint are Don Two Bears, Carol Kidder, and Nancy Yells Eagle." Actually, the Statement of Claim alleges that the school, as an entity, did not provide a safe educational environment, not that any specific employee was negligent.

B. Tribal Court Lacks Jurisdiction Over Public School District

This issue raises a very complex set of issues, which the United States Supreme Court has not directly addressed, despite the District's citation of Nevada v. Hicks, 533 US 353 (2001). The District also cites two Turtle Mountain cases at the trial court level, both issued by lay judges, ruling that Hicks does not permit the assumption of jurisdiction by this Court for the reason that states and their employees are not subject to tribal jurisdiction.

This argument must be rejected for two reasons.

First, the decisions in those cases overlook critical language in the majority opinion in Hicks which is inconsistent with the logic and end result of both Turtle Mountain trial court opinions.

Judge DeLong specifically grounds his decision upon language from Hicks taken out of context. He quotes from Hicks, as follows:

> ...[t]he [Supreme] Court ... obviously did not have in mind States or state officers acting in their governmental capacity; it was referring to private individuals who voluntarily submitted themselves to tribal regulatory jurisdiction by arrangements that they (or their employers) entered into.

However, the context, including language before and after the language cited by Judge DeLong, reads as follows:

> ...as a fuller exposition of the passage from *Montana* makes clear:
>
> "To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." 450 U.S., at 565, 101 S.Ct. 1245.
>
> The Court (this is an opinion, bear in mind, not a statute) obviously did not have in mind States or state officers acting in their governmental capacity; it was referring to private individuals who voluntarily submitted themselves to tribal regulatory jurisdiction by the arrangements that they (or their employers) entered into. This is confirmed by the fact that all four of the cases in the immediately following citation involved private commercial actors. See *Confederated Tribes*, 447 U.S., at 152, 100 S.Ct. 2069 (nonmember purchasers of cigarettes from tribal outlet); *Williams v. Lee*, 358 U.S., at 217, 79 S.Ct. 269 (general store on the Navajo reservation); *Morris v. Hitchcock*, 194 U.S. 384, 24 S.Ct. 712, 48 L.Ed. 1030 (1904) (ranchers grazing livestock and horses on Indian lands "under contracts with individual members of said tribes"); *Buster v. Wright*, 135 F. 947, 950 (C.A.8 1905) (challenge to the "permit tax" charged by a tribe to nonmembers for "the privilege ... of trading within the borders").

> **The concurrence concludes from this brief footnote discussion that we would invalidate express or implied cessions of regulatory authority over nonmembers contained in state-tribal cooperative agreements, including those pertaining to mutual law enforcement assistance, tax administration assistance, and child support and paternity matters. See *post,* at 2328. This is a great overreaching. The footnote does not assert that "a consensual relationship [between a tribe and a State] could never exist,"** *ibid.* (opinion of O'CONNOR, J.). It merely asserts that "other arrangements" in the passage from *Montana* does not include state officers' obtaining of an (unnecessary) tribal warrant. **Whether contractual relations between State and tribe can expressly or impliedly confer tribal regulatory jurisdiction over nonmembers-and whether such conferral can be effective to confer adjudicative jurisdiction as well-are questions that may arise in another case, but are not at issue here.**

Hicks, at 371-72, bold face emphasis added by this Court.

The language from Justice O'Connor's partial concurrence (joined by Justices Stevens and Breyer, read as follows:

> State governments may enter into consensual relationships with tribes, such as contracts for services or shared authority over public resources. Depending upon the nature of the agreement, such relationships could provide official consent to tribal regulatory jurisdiction.

Hicks, at 393.

So, Hicks does not say what two lay judges were apparently persauded it said. While the majority opinion certainly circumscribed its actual holding, especially when read together with the three justice concurrence it certainly suggests that state sovereigns might very well submit themselves to tribal court jurisdiction under Montana by their agreements or acts, just as may a private entity.

Furthermore, the second Turtle Mountain case was reversed on appeal, in a case argued at the University of North Dakota Law School, in an opinion rendered by the Turtle Mountain Tribal Court of Appeals, February 6, 2012, in a unanimous opinion issued by three attorney justices, including two UND professors of Indian law:

> For the reasons cited herein the Court holds that although the Tribal Court can exercise jurisdiction over the Belcourt School District #7 under Montana v. United States and its progeny the lower court should reexamine whether Erika Malataree has stated a cause of action.

Slip opinion, Davis v. Potira, et al., TMAC 10-012, and Malataree v. Belcourt School District #7, et al., TMAC10-016, pp. 1-2.

The Turtle Mountain Court of Appeals, following an analysis of Montana and its progeny, concluded:

> As this Court has already examined, however, the School District is not considered a state entity under North Dakota Supreme Court precedent. It is thus difficult for this Court to understand how the Hicks decision would exempt the District and its employees from tribal court civil jurisdiction when they do not seem to fall under the umbrella of "state entity or employee."

Slip opinion, at 10.

The Court assumes this is the appeal noted in footnote 3, at page 6 of the District's Brief. If so, it should have been brought to this Court's attention by the District.

Even the Turtle Mountain Appellate Court decision, however, overlooks another critical limitation on sovereign (or governmental) immunity: it binds only the courts of the sovereign asserting immunity, as noted by the United States Supreme Court:

> The doctrine of sovereign immunity is an amalgam of two quite different concepts, one applicable to suits in the sovereign's own courts and the other to suits in the courts of another sovereign.
>
> The immunity of a truly independent sovereign from suit in its own courts has been enjoyed as a matter of absolute right for centuries. Only the sovereign's own consent could qualify the absolute character of that immunity.
>
> The doctrine, as it developed at common law, had its origins in the feudal system. Describing those origins, Pollock and Maitland noted that no lord could be sued by a vassal in his own court, but each petty lord was subject to suit in the courts of a higher lord. Since the King was at the apex of the feudal pyramid, there was no higher court in which he could be sued. The King's immunity rested primarily on the structure of the feudal system and secondarily on a fiction that the King could do no wrong.
>
> We must, of course, reject the fiction. It was rejected by the colonists when they declared their independence from the Crown, and the record in this case discloses an actual wrong committed by Nevada. But the notion that immunity from suit is an attribute of sovereignty is reflected in our cases.
>
> Mr. Chief Justice Jay described sovereignty as the "right to govern"; that kind of right would necessarily encompass the right to determine what suits may be brought in the sovereign's own courts. Thus, Mr. Justice Holmes explained sovereign immunity as based "on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."

> This explanation adequately supports the conclusion that no sovereign may be sued in its own courts without its consent, but it affords no support for a claim of immunity in another sovereign's courts. Such a claim necessarily implicates the power and authority of a second sovereign; its source must be found either in an agreement, express or implied, between the two sovereigns, or in the voluntary decision of the second to respect the dignity of the first as a matter of comity.

Nevada v. Hall, 440 US 410 (1979), at 414-16.

The issue raised by the District is whether, under Montana v. United States, 450 US 544 (1981), and its progeny, including Hicks, this Court may take jurisdiction.

As noted, Hicks does not foreclose the issue, but, on the contrary, intimates that states may be subject to suit in tribal courts. Montana provides that:

> Though *Oliphant* only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe. To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Montana, at 565-66.

In this case, the District, through its Board President, and the State of North Dakota, through its Governor, both executed a written contractual agreement, in the form of a Joint Powers Agreement. In this regard, it appears to be within Montana exception one. It is also noteworthy that, in §I,A, the Agreement also incorporated language nearly identical to that in exception two: "to promote and protect the health, education and general welfare of the members of the Tribe, and to administer such services that may contribute to the social and economic advancement of the Tribe and its members."

The issue of sovereignty is specifically addressed, at §X (bold emphasis, again, by this Court):

> Each of the parties recognized [sic] the sovereignty of the other. In executing the Agreement, no party waivers [sic] any rights, including treaty rights, immunities, including sovereign immunities, **or jurisdiction**. This Agreement **neither diminishes nor expands rights or protections afforded other persons or entities under tribal, state or federal law.**

Thus, there does not appear to be any "agreement, express or implied, between the two sovereigns," as required by the Hall case to extend state sovereign immunity to the tribal court, but there does appear to be a consensual relationship sufficient to satisfy Montana exception one and the allegation of "conduct [which] threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe," sufficient to satisfy Montana exception two.

As to comity, this Court extended comity to judgments of the courts of the State of North Dakota by court rule, "in accordance with generally accepted principles of comity, as enunciated in the case of Hilton v. Guyot, 159 U.S. 113 (1895)," by order of November 6, 2007, only to have it reversed by the Standing Rock Sioux Tribal Council by Resolution of November 26, 2007.

Thus, comity, which is a matter of public policy, may not be invoked to extend state immunities to this Court, either.

It would appear to this Court that, had the parties intended to extend their sovereign immunities each to the courts of the other, they could have and would have chosen other language.

Therefore, the motion to dismiss for lack of jurisdiction must also be denied.

C. Statute of Limitation Has Run

Section 2-101 of the Standing Rock Sioux Tribe Code of Justice provides that:

> All civil proceedings shall be commenced by filing a complaint with the clerk....

Section 2-501 provides:

> The Standing Rock Sioux Tribal Court shall have no jurisdiction over any action brought more than two years after the cause of action arose.

Aside from issues of potential tolling during the minority of a minor, it appears to the Court that this matter was commenced within the two year statute. The District's Brief states that the cause of action accrued November 30, 2009.

While the District contends the matter was filed December 5, 2011, the date of filing, as evidenced by the docketing Receipt, attached hereto, was November 29, 2011.

Therefore, the motion to dismiss based on the statute of limitation must also be denied.

D. Minor Cannot Sue Nor Can She Be Represented by a Non-Attorney Mother.

The Court has carefully reviewed both the federal and state precedents cited by the District. However, this Court finds more persuasive the Fifth Circuit case of Harris v. Apfel, 209 F3d 413 (5th Cir. 2000). In that case, the Court ruled that a minor could be represented in the Court of

Appeals by a parent, without the necessity of a lawyer, in a matter arising from a Social Security case.

The Court's reasoning, with which this Court concurs, reads as follows:

> In *Maldonado v. Apfel*, the district court concluded that non-attorney parents may appear *pro se* on behalf of their minor children in SSI cases. The court opined that the Second Circuit's general rule prohibiting non-attorney parents from representing their children in litigation is inapplicable in the context of appeals from administrative denials of SSI benefits because the reasons for the general rule do not apply to such appeals. First, in SSI cases, a minor child living in a low-income family usually cannot exercise the right to appeal except through a parent or guardian. Second, the minor's rights can be fully protected in SSI cases without legal counsel, as the reviewing court must examine the record to determine if "all of the relevant facts [were] sufficiently developed and considered." Third, SSI appeals are not subject to abuse because the proceeding only involves the appeal from the denial of monetary benefits and the review of an administrative record. Thus, the court concluded these proceedings "do not involve the subjective criteria and range of fact-finding that are characteristic of the ... cases that led to the rule discussed in *Wenger* and *Cheung*." Additionally, the statute requires payment to the parent or guardian, "the very person who seeks to sue." The court further factually distinguished SSI cases from the previous circuit decisions.
>
> ...
> We find persuasive the district court's analysis in *Maldonado*. We agree that the rights of minors in SSI appeals can be adequately protected without legal counsel-the proceedings essentially involve the review of an administrative record. We are persuaded that prohibiting non-attorney parents from proceeding *pro se* in appeals from administrative SSI decisions, on behalf of a minor child, would jeopardize seriously the child's statutory right to judicial review under § 405(g). We conclude that policy considerations, such as those articulated in *Maldonado*, compel our holding that a non-attorney parent be permitted to sustain a *pro se* action on behalf of a minor child in SSI appeals. Accordingly, Harris is properly before the court in her *pro se* appeal on behalf of Dominisha under § 405(g).

Harris, at 416-17.

Similar considerations were also addressed in this Judge's article on this Tribal Court, appearing in the University of North Dakota Law Review in 2007:

> The tribal courts evolved, in large part, as an imposition upon the tribes by the federal government. The role of the tribal chiefs and elders as conciliators of intra-tribal disputes has devolved upon and become a function of the modern tribal court, then, laying the mantle of conciliator upon the shoulders of the tribal judge.

> The Standing Rock Sioux Tribal Court is what I would call a "pro se friendly" court. Very few people on the reservation have the resources to hire a lawyer, nor are the matters before the court, at least in the civil docket, often substantial enough to justify it. But they are matters of importance to the litigants or they would not be in court.
>
> Therefore, the Tribal Court recognizes and licenses lay advocates, peers of the parties who have as little as twenty hours of legal training, to practice on an equal footing with our admitted lawyers. Even so, the substantial majority of litigants are without counsel and it is for the court to ensure the process is fair to everyone.

"A Baedeker to the Tribal Court," William P. Zuger, North Dakota Law Review, Vol. 83, No. 1, 2007, p. 62.

There is little difference, in point of fact, between the representation afforded by a concerned parent and a lay advocate. There is, on the other hand, a sound analogy between Social Security practice, in which non-lawyer advocates, albeit more sophisticated in their legal skills than tribal advocates, regularly appear and the tribal civil practice which commonly involves lay advocates.

This Court also takes notice that the State courts of both North and South Dakota are moving toward practices that accommodate unrepresented parties, for the reason that, as a practical matter, many people would lose their only means of recovery, otherwise. The point of having counsel is to protect the plaintiff, but granting the District's motion would do precisely the opposite by denying her the means to present her claim in Court.

This Court finds the Third Circuit analysis more persuasive and therefore, better precedent for this Court.

The motion to dismiss for lack of legal counsel is denied.

E. Failure to State a Claim
F. In the Alternative, Motion for a More Definite Statement

These involve the same issues and the Court, therefore, considers them together.

As noted, the Statement of Claim does meet the minimal standards of Federal Rules of Civil Procedure Form11.

The District cites the United States Supreme Court case of Ashcroft v. Iqbal, 556 US 662 (2007), for the proposition that the plaintiff has failed to state a claim upon which relief may be granted.

The Iqbal case was not a simple negligence case, but rather a complex Bivens action alleging claims of First and Fifth Amendment violations under Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971). It did not consider the sufficiency of negligence pleading under Form 11.

Nonetheless, the Statement of Claim is stated in the form of a legal, not a factual, allegation of negligence. While the Statement of Claim references attachments ("See attached documentation"), that documentation also does not appear, at least to the Court, to state any specific allegations of fact to support the cause of action.

Attached to the Statement of Claim is a memorandum reciting events, dated November 29, 2011.

It states, in the first full paragraph of the second page, that charges were not filed by the school and that the alleged assailants of the plaintiff were never held accountable by the school. However, it does not suggest how this could constitute negligence proximately resulting in the assault, having occurred after the assault.

In the fourth and fifth paragraphs of page 3, it is stated that the School was negligent in allowing the assailants to return to school after the assault, but again there is no allegation that would support any proximate cause. In addition, there is no statement as to why, particularly given that school attendance is compulsory, this constitutes negligence.

Nor is there any allegation that discipline of the alleged assailants is a District, rather than Standing Rock Community School, function. It is noted that the Joint Powers Agreement, §V, Administration, specifically provides that each party shall continue to employ its own Superintendent, responsible for the administration of "the entire programs for his/her school."

There is no question that a more definite statement of the claim is in order and, if insufficient to support the claim of negligence, dismissal. The question, then, is how to proceed, particularly in light of the pro se prosecution of the claim.

The Court turns to the respected procedural encyclopedia, Federal Practice & Procedure, by Wright, Miller, Kane and Marcus (3rd ed.), for guidance:

At section 1216, it is stated that:

> The pleader is entitled to considerable latitude regarding the mode of stating a claim for relief, provided the pleading gives reasonable notice of the claims that are being asserted. The basic aim of the federal rules as expressed in Rule 1 to secure the just, speedy, and inexpensive determination of every lawsuit is emphasized by the requirement in Rule 8(f) that the pleading be construed liberally. Of course, if the requisite allegations are not in the complaint and a motion to dismiss for failure to state a claim upon which relief may be granted is made under Rule 12(b)(6), the pleader should be given the opportunity to amend the complaint, if she can, to show the existence of the missing elements.

Given the pro se nature of the proceeding, the Court also finds particularly helpful the following, also from Wright and Miller, at §1529:

> It is appropriate to use a pretrial conference hearing to determine any preliminary motions that were made earlier but held in abeyance or that a party may wish to interpose. …For example, the type of clarification of the issues raised by the pleadings called for by a Rule 12(e) motion for a more definite statement best may be accomplished at the conference once the pleadings are closed.

Thus, it is the Court's determination that a hearing shall be set to determine what, if any, viable negligence claims may be brought against the District. Upon, rendition of this Memorandum Opinion and the opportunity for counsel to review it, the Clerk shall contact counsel for available dates for the hearing, which shall then be set.

The District need not file an Answer or any other responsive pleading pending resolution of the Motion for a More Definite Statement.

WHEREFORE,

1. JUDGMENT IS ORDERED AND ENTERED DISMISSING THE STANDING ROCK COMMUNITY SCHOOL, WITH PREJUDICE.

2. IT IS ORDERED THAT THE CAPTION OF THE ACTION SHALL HENCEFORTH IDENTIFY THE REMAINING REAL PARTY IN INTEREST, THE FORT YATES PUBLIC SCHOOL DISTRICT NO. 4, AS THE SOLE NAMED DEFENDANT.

3. THE MOTION OF THE FORT YATES PUBLIC SCHOOL DISTRICT NO. 4 TO DISMISS IS DENIED.

4. THE CLERK OF COURT SHALL SET THE MOTION OF THE FORT YATES PUBLIC SCHOOL DISTRICT NO. 4 FOR HEARING IN ACCORDANCE WITH THE INSTRUCTIONS OF THIS OPINION.

Dated this 7th day of March, 2012,

William P. Zuger
Chief Judge

Attest: Clerk of Court

I, Amanda Sue Clerk of Court of the Standing Rock Sioux Tribal Court, do hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears on file and of record in my said office.

Dated this 7th day of March, 2012

Amanda Sue
Clerk, Standing Rock Sioux Tribal Court

RECEIPT

Case No. SOC-11-681

Standing Rock Tribal Court

Fort Yates, North Dakota 58538

DATE 11/29/11

Received for SRCT for (Murphy-Brunn)
Name

Received from James Murphy
Name

Fine and Costs	☐	Civil Filing Fee	☑
Child Support	☐	Lawyer Filing Fee	☐
Restitution	☐	Copy Fee	☐
BackGround Check	☐	Name Change Fee	☐
Withdrawal Fee	☐	Divorce Fee	☐
Restraining Order Fee	☐	Publications	☐
		Other	☑

Forty and 00/100 DOLLARS

AMOUNT $ 40.00

Clerk of Court

Spiritual Claim

106045

White Copy — Remitter Canary Copy with Deposit Pink Copy with Court Records Golden Copy with Paperwork