

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
APR 28 2003
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CLERK

KIMBERLY R. LINDBERG, as Conservator for
TONI BACKLUND, a Minor,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIV. #03- 4097

COMPLAINT

COMES NOW THE PLAINTIFF, Kimberly R. Lindberg, as Conservator for Toni Backlund, a Minor, by and through her attorneys of record, and for her complaint and causes of action against the Defendant, does hereby state and allege as follows.

1.

This action arises under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680. The acts and/or omissions complained below occurred within the District of South Dakota, Southern Division. This Court is vested with jurisdiction of this action pursuant to 28 U.S.C. § 1346(b).

2.

The Plaintiff in this action, Kimberly R. Lindberg, has been appointed by Order of the Third Judicial Circuit Court, Moody County, South Dakota, as Conservator for Toni Backlund, a Minor. See Order Appointing Conservator (Exhibit A).

3.

The Defendant, the United States of America, owns and operates the Flandreau Indian School in Flandreau, South Dakota, which is located in the District of South Dakota, Southern Division. The Defendant, in operating the Flandreau Indian School, has a duty to use and exercise reasonable care with regard to the students who live at and attend the school. The Flandreau Indian School operated by the Defendant employs, among others, supervisors, counselors, resident assistants, and other personnel over which it exercises exclusive control and supervision, with the right to employ and discharge such employees.

4.

Irene Martin and Marvene Rockman were employed by the Flandreau Indian School and were, at all times relevant to this complaint, agents of the Defendant acting within the scope of their duties and employment with the school.

5.

Toni Backlund was a minor entrusted to the care of the Flandreau Indian School in Flandreau, South Dakota. The Defendant owed a duty of care to Toni Backlund to establish policies or procedures, adequately and properly hire, train and supervise personnel, and take all other reasonable steps to protect the safety and well-being of Toni and other students. The Defendant also owed a duty of care to Toni Backlund to refrain from negligent acts or omissions that may result in harm coming to her, and to reasonably protect her from injuries or damage caused by other students.

6.

Over the years, a tradition has developed and continued at the Flandreau Indian School whereby students will be ritually “hazed” or whipped and beaten by their fellow students on their birthday. The Defendant, through its employees and agents, had knowledge of this traditional birthday beating and hazing ritual. This type of conduct has routinely and regularly occurred with the knowledge of the Defendant and its employees and agents, who have failed to take adequate measures to stop it, curtail it, discourage it, or to otherwise protect the students that have been victimized by it. The Defendant thus knew, or in the exercise of due and reasonable care should have known, that its students, including Toni Backlund, would be assaulted and attacked by other students on their birthdays as part of the Flandreau Indian School’s traditional birthday beating and hazing ritual.

7.

Toni Backlund’s birthday is September 29, 1987. The Defendant knew that Toni Backlund’s birthday was September 29th of each year. The Defendant therefore knew, or in the exercise of due and reasonable care should have known, the precise date that Toni Backlund would be targeted for attack and assault by other students in accordance with the Flandreau Indian School’s traditional birthday beating and hazing ritual. However, the Defendant took no steps to protect her.

8.

After midnight, in the early hours of September 29, 2001, Toni Backlund was attacked and assaulted by a group of other students who entered her dormitory room to perform the Flandreau Indian School’s traditional birthday beating and hazing ritual upon her. She was beaten and whipped

with belts, and covered with substances such as shampoo and baby powder. She was then dragged from her room and thrown into a hot shower. The students then dragged her from the shower, turned the water to cold, beat and whipped her several more times, and forced her back into the shower. When she attempted to escape, she was restrained and continued to be beaten and whipped with belts. She was screaming for help during the entire episode. Eventually, she broke free and fled back to her room.

9.

Following this incident, Irene Martin, a supervisor at the school, instructed Marvene Rockman, a Resident Assistant, to stay by the bathroom and Toni Backlund's door to ensure that the incident would not be repeated that evening. According to Irene Martin's incident report, Marvene Rockman failed to comply with those instructions. As a result, a group of attackers soon gathered again outside of Toni Backlund's room that same night, entered her room, and whipped her with belts and beat her a second time.

10.

Later that day, Toni was again surrounded by a group of students who attacked her once again as part of the Flandreau Indian School's traditional birthday beating and hazing ritual.

11.

The attacks and assaults inflicted upon Toni Backlund were serious, substantial, and severe enough to have been reported to and investigated by the Moody County Sheriff's Office. According to the Sheriff's report, at least one of the attackers had a previous history of other incidents at the

school that were known to the Defendant. That student was expelled from the school as a result of this and other incidents.

12.

The Defendant, through its agents and employees, was negligent in one or more of the following respects:

- (a) Failing to properly enact safety procedures or protocols to prevent the Flandreau Indian School's traditional birthday beating and hazing ritual, despite having knowledge that students are traditionally attacked, assaulted, beaten, and whipped with belts on their birthdays, a practice that has been occurring routinely and continuously for perhaps as long as twenty years;
- (b) Failing to properly train and supervise its employees to prevent the Flandreau Indian School's traditional birthday beating and hazing ritual, despite having knowledge that students are traditionally attacked, assaulted, beaten, and whipped with belts on their birthdays, a practice that has been occurring routinely and continuously for perhaps as long as twenty years;
- (c) Failing to properly supervise its students and residents to prevent the Flandreau Indian School's traditional birthday beating and hazing ritual, despite having knowledge that students are traditionally attacked, assaulted, beaten, and whipped with belts on their birthdays, a practice that has been occurring routinely and continuously for perhaps as long as twenty years;
- (d) Failing to take adequate steps to protect its students, including Toni Backlund, from the Flandreau Indian School's traditional birthday beating and hazing ritual, despite having knowledge that students are traditionally attacked, assaulted, beaten, and whipped with belts on their birthdays, a practice that has been occurring routinely and continuously for perhaps as long as twenty years;
- (e) Failing to take adequate steps to protect Toni Backlund even when it knew that she had already been attacked once as a part of the Flandreau Indian School's traditional birthday beating and hazing ritual, and knew that she was in imminent danger of being attacked again, to the point where Irene Martin believed that a guard should be posted at her door to prevent another attack, and yet the employee or agent assigned to that duty negligently failed to adequately comply with those instructions; and

(f) Negligently hiring and retaining employees and other agents.

13.

As a direct and proximate result of one or more of the foregoing negligent acts or omissions of the Defendant, Toni Backlund suffered substantial damages, including physical injuries, pain and suffering, loss of enjoyment of life, medical expenses, and other damages, including humiliation and emotional distress manifested by physical symptoms.

14.

On July 8, 2002, the Plaintiff submitted an administrative claim based on these allegations to the United States Department of the Interior, which has authority over the Flandreau Indian School.

15.

On November 26, 2002, the claim was rejected by the United States Department of the Interior.

16.

The Plaintiff has exhausted her administrative remedies.

REQUEST FOR RELIEF


WHEREFORE, the Plaintiff respectfully prays for judgment against the Defendant as follows:

- (1) For Toni Backlund's compensatory, general and special damages in an amount deemed appropriate under the circumstances by the Court;
- (2) For costs, disbursements, prejudgment and postjudgment interest herein;

- (3) For attorneys' fees; and
- (4) For such other and further relief as the Court or jury deems just and proper under the circumstances.

Dated this 28th day of April, 2002.

**JOHNSON, HEIDPRIEM, MINER,
MARLOW & JANKLOW, L.L.P.**

BY 

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