

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

DENISE LIGHTNING FIRE AND)
WAKIYAN PETA, on behalf of and)
as legal guardians of S [REDACTED])
C [REDACTED], a minor child, and AARON)
D. EIESLAND AND JAMES)
CERNEY, on behalf of and as)
Guardians Ad Litem of S [REDACTED])
C [REDACTED], a minor child)
)
Plaintiffs,)
v.)
)
THE UNITED STATES OF)
AMERICA,)

3:15-cv-03015-RAL

COMPLAINT

Defendant.

COME NOW the Plaintiffs, by and through their attorneys of record, and for their Complaint against the Defendant states and alleges as follows:

JURISDICTION

1.

The jurisdiction of these causes of action arise under the Federal Tort Claim Act, (28 U.S.C. Section 1346, *et seq.*)

2.

Plaintiffs S [REDACTED] C [REDACTED] and her legal guardians DENISE LIGHTNING FIRE AND WAKIYAN PETA were at all times material residents and citizens of Lantry, Dewey County, South Dakota.

3.

At all times relevant to these proceedings, Defendant, by and through the Department of the Interior, Bureau of Indian Education, a federal agency of the Defendant,

operated the Cheyenne-Eagle Butte School at Eagle Butte, South Dakota, hereinafter referred to as the "Eagle Butte School."

4.

As a result of the acts of negligence alleged S [REDACTED] C [REDACTED] suffered injuries, pain and suffering and serious emotional distress. An administrative claim dated the 9th day of September, 2014, was presented to the Bureau of Indian Affairs and the Superintendent of the Cheyenne River Sioux Tribe via Certified Mail, Return Receipt Requested, received and signed for on October 10, 2014, pursuant to 28 U.S.C. Section 2675.

5.

An Administrative claim dated 20th day of January, 2015 was presented to the Bureau of Indian Education and the Cheyenne-Eagle Butte School via Certified Mail, Return Receipt Requested, received and signed for on January 23, 2015, pursuant to 28 U.S.C Section 2675.

6.

On March 11, 2015, the Administrative claim was denied in a letter from Kara Pfister, Attorney for the United States Department of the Interior, writing for the Field Solicitor.

ALLEGATIONS

7.

On January 17, 2014, Plaintiff, S [REDACTED] C [REDACTED] [REDACTED] a fourteen (14) year old high school freshman, was participating in her regularly scheduled Home Economics class led by a teacher employed by Cheyenne-Eagle Butte School and was learning to

make stuffed fry bread.

8.

As S [REDACTED] was lowering her piece of fry bread dough into hot oil with a fork, water on the fork struck the hot oil and caused the hot grease to explode upwards out of the fryer striking her on her hand, wrist, neck and face. Another student was also hit with the boiling oil.

9.

When S [REDACTED] screamed in pain, the teacher came to her, took her to the sink and began running cold water on the burned areas of her skin and then notified the school office.

10.

Both S [REDACTED] and the other student who was struck by the hot oil were transported to the Eagle Butte Indian Health Services Facility.

11.

As a result of the hot oil hitting S [REDACTED], she suffered immediate injury and pain and has likewise suffered permanent injury, scarring, pain and suffering, loss of enjoyment of life, past and future disability, past and future medical bills and other associated expenses and damages.

12.

In connection with their operation of the Cheyenne Eagle Butte School, Defendant employed the services of a Superintendent of Schools, a High School Principal, certified teachers, other educators and staff.

13.

Defendant exercised control and supervision of these employees, and held them out and warranted them to the public, to the students of Cheyenne Eagle Butte School, and to the families and guardians of those students to be competent, careful and experienced in the instruction, training, supervision and protection of the students entrusted to their care.

14.

Defendant is directly and vicariously liable for the acts and omissions of the school and school staff in supplying proper equipment, selecting proper activities, ensuring proper instruction and exercising proper supervision of S [REDACTED] and the other students entrusted to their care.

15.

Defendant was and remains an entity engaged in the education, supervision and protection of Native American students who live within their area of service.

16.

Defendant controlled the operation, planning, management, supervision and training of the employees of Cheyenne Eagle Butte School District, and the Cheyenne Eagle Butte School of which S [REDACTED], was and continues to be a student, and is responsible for any liability and damages flowing from the carelessness and misconduct of its employees.

17.

The authority exercised by Defendant over the facility included, but was not limited to, human resources management, hiring, training, staffing, creation and implementation of all policy and procedures used by the facility, ensuring compliance with federal and state

educational program requirements, licensure, certification, and financial and accounting control through fiscal policies established for the Defendant facility.

18.

Defendant is responsible for all liability and damages that flow from the negligence of its employees and contractors within their scope of employment as well as any liability for its own independent negligence.

19.

Defendant, through Department of the Interior, Bureau of Indian Affairs and Bureau of Indian Education controlled the operation, planning, management, training and supervision of the facility and employees of the Cheyenne Eagle Butte School.

20.

Defendant was aware of the supervision and safety needs required in the education and protection of minor children in an educational setting and represented they could adequately meet those needs.

21.

Notwithstanding this knowledge, Defendant failed to provide for S [REDACTED] safety, and failed to provide sufficient skilled staff, services, and supplies to meet her needs.

22.

Defendant, by and through their subordinate agency, the Cheyenne Eagle Butte School, held their schools out to the public at large as being:

- a. skilled in the performance of educating, training, and providing a safe

learning environment for children;

- b. properly staffed, supervised, and equipped to meet the educational and safety needs of its students;
- c. complying on a continual basis with all rules, regulations, and standards established for high school instruction including, but not limited to, requirements of the Bureau of Indian Education Schools; and
- e. Capable of supplying adequately trained and supervised educators and competent staff as well as proper equipment to meet the needs of their students.

23.

A properly operated high school, operating under the same or similar conditions, would not have failed to provide the care listed in this Complaint.

24.

On the occasion that S [REDACTED] was injured, she was under the exclusive care, supervision, and protection of the agents and/or employees of the Defendant and the injuries complained of herein were proximately caused by the acts and omissions of the Defendant's agents and employees.

25.

As a result of the Defendant's negligence, S [REDACTED] suffered permanent and disfiguring injuries, pain and suffering in the past, which is reasonably likely to continue in

the future, past and future medical bills and other damages and costs.

WHEREFORE, the Plaintiffs pray for the award of the following damages against Defendant:

- A. For the physical pain, loss enjoyment of life, and mental and emotional suffering which S [REDACTED] sustained as a result of negligence while she was under the care and control of Defendant;
- B. For past and future medical expenses incurred;
- C. For past and future losses including out of pocket costs and expenses;
- D. For prejudgment interest, costs and attorney's fees as available under the law; and
- E. For such other and further relief as the Court deems just in the premises.

Dated this _____ day of September, 2015.

JOHNSON EIESLAND LAW OFFICES, P.C.

By: _____

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