

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JOHN DOE, By and Through Guardian Ad Litem, YVONNE SUBIA,

Appellant,

v.

KANSAS CITY, MISSOURI SCHOOL DISTRICT,

Respondent.

DOCKET NUMBER WD73800

Date: April 17, 2012

Appeal from:
Jackson County Circuit Court
The Honorable Brian C. Wimes, Judge

Appellate Judges:
Division Four: Lisa White Hardwick, Chief Judge Presiding, Alok Ahuja, Judge and
Dale Youngs, Special Judge

Attorneys:
Amy K. Maloney, Anne W. Schiavone, Kirk D. Holman, and Matthew J. OLaughlin,
Kansas City, MO, for appellant.
Trina R. Leriche and Sara B. Anthony, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

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Appellant,

v.

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Before Division Four: Lisa White Hardwick, Chief Judge Presiding, Alok Ahuja,
Judge and Dale Youngs, Special Judge

John Doe, by and through his guardian ad litem, Yvonne Subia, appeals the dismissal of his petition for damages against the Kansas City, Missouri School District ("School District") for violating the Missouri Human Rights Act ("MHRA"), Chapter 213, RSMo 2000. On appeal, Doe contends he stated a claim under the MHRA because the School District's failure to protect him from sexual harassment and sexual assault by a fellow student constituted sex discrimination that deprived him of the full, free, and equal use and enjoyment of the School District's elementary school, a public accommodation.

REVERSED AND REMANDED.

Division Four holds:

(1) Doe sufficiently pled that his elementary school is a place of public accommodation under Section 213.010(15)(e) because he alleged that his

elementary school is a public facility that is owned, operated, or managed by a public school district, which is a subdivision of this state and a public corporation. That access to the school is subject to state law and the School District's restrictions does not defeat the public character of the school.

(2) The MHRA clearly prohibits sex discrimination in public accommodations. Contrary to the School District's claim, the plain language of Sections 213.010(5) and 213.030.1(1) does not limit a claim of sex discrimination or the Commission's jurisdiction over that claim to only such discrimination as occurs in "employment, disability, or familial status as it relates to housing."

(3) Based on the statute's plain language prohibiting indirectly denying another the benefits of a public accommodation and its broad remedial goal of ensuring that all persons within the state's jurisdiction have full and equal use and enjoyment of public accommodations without discrimination, Section 213.065.2 encompasses a claim against a school district for student-on-student sexual harassment in a public school. A school district's failure to take prompt and effective remedial action to address a student's sexually harassing and sexually assaulting another student has the potential to deny the aggrieved student the full and equal use and enjoyment of the public school.

(4) The standard for a public school district's liability for student-on-student sexual harassment under the MHRA should be the same as that for an employer's liability for co-worker sexual harassment under the MHRA: the school district can

be held liable if it knew or should have known of the harassment and failed to take prompt and effective remedial action.

(5) Construing Doe's petition liberally and according it all reasonable inferences deducible from the facts stated, Doe stated a cause of action under Section 213.065.2 for discrimination in a public accommodation based on student-on-student sexual harassment.

Opinion by: Lisa White Hardwick, Chief Judge

April 17, 2012

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