

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

L. L.,¹ by his next friends)
RONALD LUNSFORD and)
TAMMY LUNSFORD,)
))
Plaintiffs)
))
v.)
))
TARKINGTON INDEPENDENT)
SCHOOL DISTRICT,)
))
Defendant)

CAUSE NO. 1:09-CV-754

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Mr. and Mrs. Lunsford as next friends of L.L. (“the student” or “the child”) and collectively termed Plaintiffs herein, by and through their attorneys, Martin J. Cirkiel from the law firm of Cirkiel & Associates, P.C., and Mike Zimmerman from the Zimmerman Law Firm, and bring this their *Original Complaint* alleging that the Tarkington Independent School District (hereinafter referred to “Tarkington ISD” or the “school district”) violated the various rights of L.L., as more specifically pled herein. Plaintiffs reserve the right to replead this *Original Complaint*, if new claims and issues arise upon further development of the facts, as permitted by law. In support thereof, Plaintiffs would respectfully show the following:

I. NATURE AND PURPOSE OF THIS ACTION

1. L.L. is a student with Asperger’s Syndrome which expresses itself in a heightened sensitivity

¹ . For the purposes of confidentiality, only initials identify minors in this pleading.

and susceptibility to overstimulation to loud noises, lights, strong tastes or textures. L.L. is also especially hypersensitive to physical contact. During the time-period contemplated by this cause he was a student at the Tarkington Independent School District. Over the course of many years he was a victim of bullying and harassment by other students. Even though he and his parents continuously complained to school district personnel about the bullying and harassment, and that such bullying and harassment was due to the fact L.L. had a disability, the school district continuously failed to address their concerns. In fact L.L. was beat up by other students and suffered, among other things, unwarranted physical pain, severe mental anguish and exacerbation of the symptoms of his disability due to the ongoing and relentless assaults by other students.

2. L.L. claims that the Tarkington ISD Defendant failed to implement the policies, procedures and practices required to keep him safe. Further, that the Tarkington ISD fostered a culture of discrimination based upon disability.
3. For these and other civil rights violations, L.L. asks this Court to remedy the concerns addressed in this *Original Complaint* and furthermore seeks damages to compensate him for his injuries. Plaintiffs bring this action pursuant to 42 U.S.C. §§1983, 1988; the 5th and the 14th Amendments to the United States Constitution and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794a (“Rehabilitation Act”), the Texas Human Resources Code (Tex. Hum. Res. Code §121.001 *et seq.*, the “THRC”) as well as other common law and statutory claims. Such remedial actions include but are not limited to certain compensatory services, costs, reimbursement of out-of-pocket expenses attorney fees and costs, as well as other forms equitable relief.

II. JURISDICTION

4. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C.A. §§ 1331 and 1343 because the matters in controversy arise under the Fifth and Fourteenth Amendments to the United States Constitution and the laws of the United States, those laws noted above.
5. Finally, this Court has jurisdiction to award attorneys fees and costs to the Plaintiffs pursuant to 42 U.S.C. § 2000d *et seq.*, the Rehabilitation Act, the Americans With Disabilities Act and the Texas Human Resources Code.

III. VENUE

6. Under 28 U.S.C. § 1391, venue is proper before this Court because the events and omissions giving rise to the Plaintiffs claims occurred in the Eastern District of Texas.

IV. CONDITIONS PRECEDENT AND ADMINISTRATIVE EXHAUSTION

7. Plaintiffs contend there is no need for administrative exhaustion in this cause, which may otherwise be required pursuant to IDEA, 20 U.S.C. §1415(1) and 19 T.A.C. §89.1185(p). Specifically, the relief requested herein is not such that an administrative hearing officer could provide, and as such, administrative exhaustion is not required. In addition and in the alternative, there is no requirement to seek administrative exhaustion if such an effort would be futile, as it would be in this cause. Plaintiffs state that all other conditions precedent to the filing of this lawsuit have occurred.

V. PARTIES

8. L.L. is a citizen of the State of Texas and resides with his mother and father, Ronald Lunsford and Tammy Lunsford at 230 CR 2246, Cleveland, Texas 77327, including the period when the incidents occurred that gives rise to this complaint. At all pertinent times

during the period in question, L.L. was a Tarkington Independent School District pupil and was a student with a disability, as contemplated by the Rehabilitation Act and the Americans With Disabilities Act.

9. Mr. and Mrs. Lunsford are citizens of the State of Texas and residents of Liberty County and bring forward this complaint accordingly, as his mother and father, natural guardians and next friends of their son, L.L.
10. Defendant Tarkington Independent School District is a school district organized under the laws of the State of Texas and at all times was responsible for the care, management and control of all public school business within its jurisdiction as to Plaintiff L.L., training of teachers at the school as to safety, abuse and neglect of minors, and supervision of students within the district, for on-campus and off-campus activities and for his course of study. They may be served through their Superintendent, John Kirchner, Tarkington Independent School District, 2770 FM 163, Cleveland, Texas 77327, though it is reasonably believed that their counsel of record is the Honorable Ms. Cynthia Buechler, Attorney, Buechler and Associates, P.C., 3660 Stoneridge Road, Suite D101, Austin, Texas 78746.

VI. STATE ACTION

11. Defendant Tarkington ISD was at all times and in all matters acting under color of state law when they permitted L.L. to be subjected to the wrongs and injuries hereinafter set forth. In addition, Defendant Tarkington ISD receives funds from the federal government, thus the school district is required to follow the requisites of Section 504 of the Rehabilitation Act of 1973.
12. Defendant Tarkington ISD is a policy-maker for itself. As such, Tarkington ISD acted

under color of law for the purposes of formulating the policies, practices, and procedures for the school during the events made the basis of this litigation.

VII. STATEMENT OF FACTS

13. L.L. is a 17-year-old teenager who lives with his mother, Tammy Lunsford, and father, Ronald Lunsford, in Cleveland, Texas. L.L. has been diagnosed with Asperger's Syndrome. The symptoms of Asperger's Syndrome in general include inability to act normally in social situations, difficulty in communicating with others, trouble with independent living and problems with social adjustment.
14. For L.L., Asperger's Syndrome also includes a heightened sensitivity and susceptibility to overstimulation to loud noises, lights, strong tastes or textures. He is especially hypersensitive to physical contact. His parents are not able to touch their son unless they tell L.L. first they will be contacting him.
15. From sixth grade (2003-2004) throughout 10th grade (2007-2008), L.L. repeatedly told his parents that he was being bullied. Students called L.L. names, stole L.L.'s possessions and threw things at L.L. while he attended Tarkington Middle School and Tarkington High School. His parents extensively complained to each respective principal and assistant principal, as well as the superintendent. In short, the school district has been made aware on numerous occasions that L.L. was a victim of bullying and harassment at school, so much so that he was not safe there. Furthermore, that the environment became so hostile that he was no longer able to receive a public education at the district.
16. L.L. was repeatedly tormented on school bus rides by students who would call him names and shove him out of his seat. Some of the derogatory names said repeatedly were "fat,"

“idiot,” or “retard.” On at least one occasion, L.L. sought help from the bus driver, Ms. Sandy Steele, who was the only bus driver during the time in question. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they provide a safe environment for L.L.

17. During his eighth-grade year (2005-2006), L.L.’s parents spoke with John Kirchner and Randy O’Brien. Kirchner was the middle school assistant principal at the time and later became the superintendent in July 2005; O’Brien was the middle school principal. L.L.’s parents spoke about bullying and harassment of L.L., including the history of students calling L.L. names, stealing his possessions, and throwing things at him. Kirchner noted he did not believe what occurred was bullying as he did not believe it was the same kids every time and did not look into any of the complaints. L.L.’s parents found Kirchner’s statements and lack of action seemed intimidating to them for bringing a complaint.
18. This meeting with Kirchner and O’Brien occurred two years since their first complaint to the district. L.L.’s parents still did not receive notice of the right to file a grievance, the name of the 504 coordinator of the campus, or a copy of procedural safeguards of Section 504 of the Rehabilitation Act of 1973.
19. Mid-May of 2006, L.L.’s parents sent a formal letter of complaint to Tarkington Middle School. To the knowledge of Plaintiffs, the school did not respond and provide a safe environment for L.L during this period.
20. At the end of the 2005-2006 school year, a group of boys called L.L. names and spat on him while he was running during athletics. L.L. tried to get them to stop and wound up in a physical altercation with one of them. L.L. was punished. To the knowledge of Plaintiffs,

the school took no action against the perpetrators on that occasion nor did attempt to provide a safe environment for L.L.

21. On April 26, 2006, a student in the 10th grade named K.D. pushed Levi out of seat on the school bus. To the knowledge of Plaintiffs, the school bus driver or school officials took no action against the perpetrators on that occasion nor did the district provide a safe environment for L.L.
22. On April 27, 2006, some students on the school bus called him names, hit him, and would not let him sit down in any of the seats. To the knowledge of Plaintiffs, neither the school bus driver nor school officials took any action against the perpetrators nor did they provide a safe environment for L.L.
23. The following day, April 28, 2006, L.L.'s parents went to school with a list of students who tormented L.L. They met with four people: Superintendent Kirchner; Bus Driver Supervisor Georgia Yancy; Principal Randy O'Brien; and Tarkington High School Assistant Principal Darrell Shelton. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they provide a safe environment for L.L.
24. On another occasion, and while waiting for his bus, L.L. was pushed under a parked bus that was loading students. He was humiliated, requested help and learned that a teacher on bus duty observed the incident. To the knowledge of Plaintiffs, neither the teacher on bus duty nor the school took action in response to this assault or his complaint.
25. In ninth grade, L.L. was bullied again by the same students who had bullied him the previous year. His parents both talked to Tarkington High School Assistant Principal Jim Hair and also informed Superintendent Kirchner on October 6, 2006, via e-mail regarding this

incident. Kirchner merely responded with a thanks for letting him know about it. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they provide a safe environment for L.L.

26. On October 19, 2007, a student told assistant principal Jim Hair that L.L. was going to bring a gun to school. Hair called L.L. into the office and spoke to L.L.'s mother over the phone.
27. The next month, a student named B.G. threatened L.L. with a baseball bat.
28. On November 14, 2007, again a student accused L.L. of saying that he was going to bring a gun to school and of threatening to kill others. At 2:30 p.m., Shaw and Hair removed L.L. from class and began to interrogate him in Hair's and then Shaw's office. They stood over L.L. for about 45 minutes before calling his parents. Within about 30 minutes, L.L. broke down and told them he would just kill himself. They both repeatedly told L.L. that he was going to be expelled from Tarkington High School.
29. Hair finally called in the counselor Melinda Coogler, who then interrogated L.L. as to why he was going to bring a gun to school and why he wanted to kill himself. After some time, around 4:00 p.m., she called L.L.'s mother because he was threatening to kill himself.
30. L.L.'s mother called his father, and both parents arrived at the school shortly thereafter. They saw L.L. curled up in a ball in a corner where he was crying hysterically, rocking and pulling his hair out in a complete emotional break-down.
31. Shaw stated there would be no yelling in the office though he was the only person yelling. Then when L.L.'s father attempted to speak Shaw yelled at him. Shaw then told L.L.'s parents that L.L. was being expelled because he said he was going to kill himself.
32. After about 10 minutes, L.L. could not emotionally cope with the situation. He left the

meeting, and Shaw responded with an expletive and a statement that he was going to call the police.

33. Already distraught and upset, L.L. continued on foot down the road. His parents coaxed him into his father's truck, but he jumped out of the moving truck down the road. His parents stayed up all night with him, and L.L. repeatedly said he did not say anything about a gun or killing people.
34. The next day, November 15, 2007, his mother and uncle went to the high school to ask why her son was being expelled. They arrived at 7:45a.m.; school started at 8:00a.m. and Shaw met with them at about 8:40 a.m. L.L.'s mother and uncle said Shaw again was loud and rude and totally unsympathetic to L.L.'s disability or position. They talked to Shaw about students pulling L.L.'s ears and tried to explain L.L.'s disability with hypersensitivity to physical contact. Sometimes other students would grab his ears which they knew would send him into an immediate panic. In regard to this and other issues of bullying, Shaw stated that boys will be boys. Shaw further commented that he could not be everywhere so he could not do anything. Regarding the expulsion, he recanted and stated that it was a cooling off period and L.L. would be allowed to make up the work. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they provide a safe environment for L.L.
35. The same day, L.L.'s sister asked another student at school if L.L. had actually stated he was going to bring a gun to school and kill everyone. The witness said L.L. did not say that or anything similar. The school has never provided any actual statement from a student that L.L. made such a comment.

36. On December 10, 2007, L.L. completed some psychological testing and received the results on December 26, 2007, that Dr. Betina Burden diagnosed L.L. with Asperger's Syndrome. On January 5, L.L.'s parents met with Dorothy McCriecht, a school counselor, and asked for L.L. to be put under a special education IEP. McCriecht immediately said that L.L. did not qualify.
37. Next, L.L.'s parents requested the school convene a Section 504 meeting, which was held on January 10th. L.L.'s parents shared medical documentation in support of L.L.'s Asperger's Syndrome diagnosis with the school. In addition, L.L.'s parents wanted to note that sometimes L.L. would react inappropriately socially, especially when bullied and harassed by other students. Further, his parents again wanted to staff to know that L.L. was being tormented by the other students, especially when touching and hitting his ears. L.L. would go often into a panic after being hit. They wanted the school to know that L.L. did not have a behavioral problem and that it was inappropriate for him to be punished for his reactions and the bullies to be left unpunished. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they provide a safe environment for L.L.
38. Next, the school officials crafted a Behavior Management Plan (BMP) to change L.L.'s behavior but continued in their failure to address the cause of L.L.'s emotional distress, to bullying and harassment by other students.
39. Two further episodes occurred in January 2008. In one episode, D.M. thumped L.L.'s ears, and L.L. and his parents spoke with Athletic Director Walter Fortune. In another episode, C.G. thumped L.L.'s ears in the hall, and L.L. told McCriecht. To the knowledge of

Plaintiffs, the school took no action against the perpetrators on those occasions nor did they provide a safe environment for L.L.

40. Two other episodes occurred in February 2008. The first incident involved a student named M.T. who on February 7, 2008, repeatedly said L.L. was pregnant. Another episode occurred on February 18, 2008, when a student thumped L.L.'s ears, and L.L.'s cousin K.L. intervened. L.L. told the counselor. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they provide a safe environment for L.L.
41. Some time during ninth grade, L.L.'s parents arranged for L.L. and his sister to drive to school to avoid bullying on the school bus.
42. In April 2008, L.L. continually sought out school officials (Principal Shaw and either of the two counselors, McCriecht or Coogler) regarding the fact he continued to be bullied and tormented by students pulling his ears, shoving him around and stealing his belongings. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they provide a safe environment for L.L.
43. On April 10, 2008, at 2:55 p.m., at the end of L.L.'s Spanish class, a student named C.S. grabbed both of L.L.'s ears. L.L. pushed C.S. away. C.S. punched L.L. in the face. L.L. attempted to defend himself. On that date L.L. went to the counselor's office where he was questioned. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they provide a safe environment for L.L. In fact, C.S. attacked L.L. again on May 13, 2008.
44. On April 11, 2008, L.L. was punished and separated from his Spanish class. He was

required to be in the counselor's office during that period of the day and three days later was forced to change his schedule to keep him from reconvening with that Spanish class.

45. On April 15, 2008, L.L.'s parents met with Shaw and Coogler at Tarkington High School. L.L.'s parents wished to address L.L.'s disability, the school's continued failure to address the bullying and harassment of their son, and their concerns about why L.L. was forced out of his Spanish class rather than the perpetrator being removed. They also wanted to know what was the school going to do about the ongoing bullying situation and expressed their desire that L.L. be able to attend school in a safe environment with no hostility of any kind or fear of being intimidated by other students, administrators or teachers. To the knowledge of Plaintiffs, the school took no action about these concerns on that occasion.
46. At the meeting on April 15, L.L.'s parents also gave Shaw and Coogler a letter to request an Admission, Review, and Dismissal ("ARD") meeting. To the knowledge of Plaintiffs, the school also took no action about the concerns in their letter on that occasion.
47. The bullying and tormenting of L.L. continued. On May 12, 2008, a group of students thumped L.L.'s ears. A math teacher, Susan Schleagel, overheard B.G. threaten L.L. in math class on the same day. To the knowledge of Plaintiffs, the school took no action against the perpetrators on that occasion nor did they take steps to make the environment safe for L.L.
48. The next morning on May 13, 2008, L.L. and his father went to the office to report the May 12 incident. The same morning, his mother emailed Athletic Director Fortune about her concerns. Within a brief period thereafter and during the athletic period, L.L. was again cornered and again attacked by a group of students, including some players on the varsity football team. At least five boys cornered him and the incident was filmed with at least one

cell phone. This attack was so severe that it sent Levi to the hospital and another student to jail. D.M., C.G., C.S., and B.G. were among the boys who cornered him, and they had each been reported and unpunished previously. To the knowledge of Plaintiffs, aside from only one student who caused injuries to L.L., the school took no action against the other participants in the bullying and harassment of L.L. on that occasion, as well.

49. Additionally, the school took no steps to make the environment safe for L.L. In fact, G.L. overheard Greg Campbell, the coach on duty, tell at least one student, J.K., to erase his video of the beating that occurred on May 12, 2008.
50. On May 19, 2008, L.L.'s parents delivered a letter to Shaw for L.L. to be tested for special education under the Individuals with Disabilities Education Act ("IDEA"). The meeting occurred on May 29, 2008, and the district rejected the request.
51. In mid-August of 2008, L.L. received a death threat over the phone.
52. On August 25, 2008, L.L.'s parents removed him from the Tarkington Independent School District and enrolled him into another high school with the Splendora Independent School District. Within a month, they purchased a truck to travel to Splendora for their son's education.
53. Mr. and Mrs. Lunsford were never told the name of the 504 coordinator at any of their son's campuses. They never received a copy of the school's grievance procedures. They did not receive a copy of the procedural safeguards of Section 504 of the Rehabilitation Act of 1973 until April 2009. Each time, L.L.'s parents brought a complaint, Kirchner was not responsive to them. Shaw also ignored their complaints and indicated that he could not watch the school or have knowledge of every event occurring in the school. The school did

not recognized a need for an evaluation in a timely manner. As well, L.L.'s parents perceived the district's actions, omissions, statements and mannerisms as intimidating each time they brought complaints to administrators or staff.

54. Additionally, school staff did not take notes about their complaints and, to L.L.'s parents' knowledge, did not keep records of the complaints. L.L.'s mother also found out from several teachers who had been at Tarkington High School for years that they never received any staff training on disability discrimination, bullying or harassment. There were no student assemblies or training on disability discrimination during the five years that L.L. and his sister attended Tarkington. The Tarkington website states that zero assaults occurred during the 2007-08 year, though B.G. assaulted L.L. that year on campus and was referred to the police. The district never acknowledged the problem or ceased the bullying of L.L. The district also never offered a transfer to L.L., one-to-one aide for L.L., counseling for L.L. or counseling for the perpetrators. In addition, the student handbook did not mention Section 504 or its procedural safeguards. Finally, the school's website did not mention Section 504, bullying or harassment.

VIII. THE DEFENDANT DESTROYED EVIDENCE

55. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.
56. Tarkington Independent School District staff destroyed evidence of the assault lodged against L.L.

IX. CLAIMS FOR RELIEF PURSUANT TO THE REHABILITATION ACT OF 1973

57. Plaintiffs incorporate by reference all the above related paragraphs with the same force and

effect as if herein set forth.

58. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 and its implementing regulations require that each state that receives disbursements, including the state's political subdivisions such as local school districts, must ensure all students with disabilities are given appropriate and necessary accommodations, pursuant to federal law and rules. To the degree that a policy or practice hinders honest consideration of a disabled child's unique needs, and fails to accommodate that child's disability, it violates Section 504. As well, Section 504 requires districts to evaluate students who are suspected of needing special education or related services because of a disability.
59. Plaintiffs assert that Defendant Tarkington ISD has violated L.L.'s right pursuant to the Rehabilitation Act. Defendant's practices and/or proposed actions, set out in detail above, have, together and separately, contributed to violating his rights under Section 504, federal rules and regulations promulgated pursuantly thereto, and related state law. Defendant Tarkington ISD failed to provide L.L. a Free Appropriate Public Education ("FAPE") for students with disabilities as required under Section 504 of The Rehabilitation Act of 1973 in the following manner and particulars:
 - a. Hire, train or supervise staff in the implementation of requirements of "child abuse," pursuant to the Texas Family Code, Title 5, Chapter 261, Subchapter E [Protection Of The Child];
 - b. Hire, train or supervise staff in the implementation of requirements of "disability discrimination," pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794 and its implementing regulations at 34 C.F.R. Part

104;

- c. Hire, train or supervise staff to avoid using acts, omissions, statements or mannerisms which are intimidating toward a parent presenting a grievance to the school;
- d. Hire, train or supervise staff to increase their awareness of reasons to believe that a student has a disability and to assess the child for a disability, according to the child find requirement of Section 504;
- e. Provide training for students concerning disability discrimination, bullying and harassment;
- f. Provide mandated procedural safeguards and notice requirements to the family in a timely manner;
- g. Include an informative writing on Section 504 in the student handbook;
- h. Include an informative writing on Section 504 on the Internet page of Tarkington High School;
- i. Provide mandated notice to identify the Section 504 Coordinator of Tarkington ISD to the family;
- j. Provide mandated notice of the Tarkington ISD grievance procedure to the family;
- k. Provide a culture open to receiving a grievance;
- l. Provide a culture open to a constructive response to a grievance without negativity or defensive comments;
- m. Respond to grievances in a timely manner;
- n. Keep a written and/or electronic record of such grievances;

- o. Acknowledge the problem of bullying and harassment toward L.L. based upon his disability;
- p. Cease the students' bullying of L.L.;
- q. Provide counseling for L.L.;
- r. Offer a transfer to L.L.;
- s. Provide a one-to-one aide to L.L.;
- t. Provide counseling for the perpetrators;
- u. Implement the Tarkington ISD student handbook method of reporting harassment and investigating reported harassment as set out in the 2007-2008 student handbook;
- v. Take appropriate measures to prevent the bullying of L.L., which included developing a curriculum to address the bullying, holding assemblies for the student body with the message that bullying was not to be tolerated and disciplining his tormenters; and
- w. Generally accommodate L.L.'s disability, through education and services commensurate with his disability and his unique and individualized needs.

X. CONSTITUTIONAL AND CIVIL RIGHTS CLAIMS

- 60. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.
- 61. Defendants, acting under color of law and acting pursuant to customs and policies of the district, deprived L.L. of rights and privileges secured to him by the Fifth and Fourteenth Amendments to the United States Constitution and by other laws of the United States, by failing to follow and enforce its policies that were supposed to protect L.L. from harm and

be free from an unsafe environment for education, by tolerating violation of those policies, by failing to investigate incidents of omission of duties on the part of its employees toward L.L. and of injurious conduct on the part of its students, and by failure to take corrective action after becoming aware of injuries resulting from neglect toward a special education student.

62. Because Defendants were aware of injuries to L.L. prior to the incident made the basis of this cause of action, and because Defendants took no corrective action, they acted with conscious indifference to L.L.'s rights and the rights of other students similarly situated.
63. Defendants decision to not investigate the harassment of L.L. and to not discipline the bullies, and to repeatedly limit L.L.'s actions instead when L.L. had a diminished capacity to communicate with the bullies, was an ongoing target, and ultimately visited the emergency room after an attack, constituted actionable negligence and physical abuse in violation of clearly-established law and deprived L.L. of his right to life, liberty and bodily integrity guaranteed under the Fourteenth Amendment to the United States Constitution, for which Defendants are liable to L.L. under 42 U.S.C. § 1983 for compensatory monetary damages. The Constitutional violations set out in this Complaint proximately cause injuries and damages to L.L.

XI. UNCONSTITUTIONAL POLICIES, PROCEDURES AND PRACTICES

64. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.
65. The Defendants received multiple complaints and notices of misconduct in the discipline of bullies who attacked L.L. and the mistreatment of L.L. within the district. However, the

Superintendents, Principals, and Assistant Principals wholly failed to address and to investigate allegations of abuse resulting from misconduct in the discipline and mistreatment of these students.

66. The Principal constituted the final policy-maker for such matters at the School and set policy for the School even though his policies and decisions are reviewable by higher Tarkington ISD administrators. The Assistant Principal is a policy-maker for Tarkington ISD because he creates policies regarding special education teachers' in-class procedures for maintaining order of special education students in the classroom. No Tarkington ISD guidelines dictate the methods special education teachers or general education teachers must use to keep special education students safe from harassment and bullying, leaving such policies up to the authority of employees in the vicinity of the harassment and bullying. On the district's website, Tarkington ISD guidelines and policies are silent about bullying, harassment, and Section 504.
67. During the time-period that L.L. has attended schools in Tarkington ISD, the district has provided no staff training on disability discrimination, bullying or harassment. Nor have they provided any student assemblies or training on disability discrimination during the five years that L.L. and his sister attended Tarkington.
68. Staff at Tarkington ISD failed to follow through on reports of harassment from students, including L.L., which resulted in injury to L.L. The employees of Tarkington ISD failed to ensure that typical classroom environments for special education students would protect them from assault and abuse and that such events would be promptly reported.
69. The Principals and Assistant Principals in their official capacity did not take reports of

harassment of L.L. seriously and fostered improper practices, policies and procedures involving special education students, displaying a pattern of inappropriate and dangerous behavior and after they received reports.

70. The Defendant's actions and inactions offend and violate those canons of decency and fairness that express the notions of justice protected by the Fourteenth Amendment to the United States Constitution as well as a deprivation of L.L.'s right to bodily integrity guaranteed under the Fourteenth Amendment and are, thus, actionable under 42 U.S.C. § 1983.

XII. CLAIMS UNDER THE AMERICANS WITH DISABILITIES ACT

71. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.
72. The facts as previously described demonstrate violations of the Americans with Disabilities Act, 42 U.S.C. §12131, et seq ("ADA").
73. Due to his disability L.L. is a "qualified individual with a disability" as defined in 42 U.S.C. §12131(2) with his disability affecting a major life activity.
74. Tarkington Independent School District is a "public entity" as defined in 42 U.S.C. §12131(1), and receive federal financial assistance so as to be covered by the mandate of the ADA.
75. The Tarkington Independent School District constitutes a program and services for ADA purposes.
76. The Tarkington Independent School District failed and refused to reasonably accommodate L.L.'s disabilities and modify their services in violation of Title II of the ADA.

77. Such failures caused injuries to L.L.

XIII. VIOLATIONS OF THE TEXAS HUMAN RESOURCES CODE

78. Plaintiffs incorporate by reference all the above related paragraphs with the same force and effect as if herein set forth.

79. Chapter 121 of the Texas Human Resources Code provides that a person may seek a civil remedy in a court of competent jurisdiction (*see* Tex. Hum Res. Code §121.003) if he has been denied access to a facility or a program in this state supported, in whole or in part, by public funds and if an entity has failed to make reasonable accommodations in its policies, practices, and procedures as to the complainant. *See* Tex. Hum Res. Code § 121.004.

80. When Tarkington ISD effectively and constructively denied L.L.'s right to access the school in the same manner as non-disabled persons, his rights pursuant to the Human Resource Code were violated thereby.

XIV. DAMAGES

81. As a direct and proximate result of the Defendants' conduct, L.L. has suffered the following injuries and damages, which he is entitled to recover herein within the jurisdictional limits of this court:

- a. Medical and mental health expenses in the past and future;
- b. Physical pain and mental anguish in the past and future;
- c. Physical impairment in the past, and
- d. Various out-of-pocket expenses incurred but for the acts and omissions of the Defendant school district.

XV. ATTORNEY FEES

82. Plaintiffs incorporate by reference all the above related paragraphs, as if fully set forth.
83. It was necessary for Plaintiffs to hire the undersigned attorneys to file this lawsuit. Upon judgment, Plaintiffs are entitled to an award of attorney fees and costs under 42 U.S.C. §1988(b), 29 U.S.C. § 794a, 42 U.S.C. § 2000d *et seq.*, as well as pursuant to the ADA and the Texas Human Resources Code.

XVI. DEMAND FOR JURY TRIAL

84. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a jury trial for all issues in this matter.

PRAYER

85. **WHEREFORE, PREMISES CONSIDERED**, Plaintiffs pray for judgment against Defendant and request an order including but not limited to the following relief:
- a. A judgment in favor of L.L., by his next friends Mr. and Mrs. Lunsford, as supported by a finding that Defendant did not correctly accommodate L.L.'s disability, during the periods claimed, in total or in part;
 - b. A judgment in favor of L.L. that Defendant did not keep him safe from harm, during the periods claimed, in total or in part;
 - c. A judgment in favor of L.L. that he was abused based upon his disability, during the periods claimed, in total or in part;
 - d. A judgment in favor of L.L. that when L.L. displayed hypersensitivity tendencies, inappropriate behaviors, and received repeated punishment, the district had reason to believe he had a disability and were obligated to assess him for special education per the child find requirement of Section 504 of the Rehabilitation Act of 1973;

- e. A judgment in favor of L.L. that the school grossly mismanaged his educational plan, during the periods claimed, in total or in part;
- f. A judgment in favor of L.L., by his next friends Mr. and Mrs. Lunsford, in an amount sufficient to fully compensate them for the elements of damage enumerated above;
- g. An order directing Defendant to train and supervise Tarkington ISD staff in bullying prevention;
- h. An order directing Defendant to train and supervise Tarkington ISD staff in disability accommodations and discrimination;
- i. An order directing Defendant to take any and all other specific actions required by Section 504 of the Rehabilitation Act of 1973;
- j. An order directing Defendant to pay or reimburse L.L., by his next friends Mr. and Mrs. Lunsford, for all costs of his care, including, but not limited to, therapeutic costs and other out-of-pocket medical and transportation costs for treatment;
- k. An order directing the Defendant to reimburse L.L., by his next friends Mr. and Mrs. Lunsford, for the cost of the new vehicle to transport him to his new school and the mileage to and from his home to the new school daily;
- l. An order declaring Plaintiff as prevailing party so that Defendant would be required to pay or reimburse L.L., by his next friends Mr. and Mrs. Lunsford, for all costs of preparation and trial of this cause of action, including, but not limited to, filing fees, costs of representation, advocate fees, attorney fees, and expert witness fees, incurred by them up to and through trial, and for its appeal if required, pursuant to

42 U.S.C. §1988; together with pre- and post-judgment interest, and court costs expended herein; and

- m. Such other relief as the Court may deem just and proper in law or in equity.

Respectfully submitted,

Cirkiel & Associates, P.C.

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