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**ATTORNEYS FOR PLAINTIFF R.N.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

R.N., a minor, by and through her  
Guardian ad Litem NICOLE NEFF,

Plaintiff,

v.

TRAVIS UNIFIED SCHOOL  
DISTRICT, a public entity, SOLANO  
COUNTY OFFICE OF EDUCATION, a  
public entity, LILIA GUMAPAS, an  
individual, CHRISTOPHER MEARS, an  
individual, and DOES ONE through  
TEN, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES;  
DEMAND FOR JURY TRIAL**

1. Violation of Constitutional Rights, 42 U.S.C. § 1983
2. Violation of the Americans With Disabilities Act, 42 U.S.C. § 12101
3. Violation of the Rehabilitation Act of 1973, 29 U.S.C. § 794

COMES NOW Plaintiff R.N., a minor, by and through her Guardian ad Litem Nicole Neff (hereinafter “Plaintiff”), who alleges as follows:

**THE PARTIES**

1. To protect her privacy, the minor Plaintiff has been identified by her initials “R.N.”. At the commencement of this action, and at all relevant times hereto, minor Plaintiff R.N. was a resident of the City of Vacaville, County of Solano, in the State of California. Filed concurrently herewith is an *Application and Order for Appointment of Guardian Ad Litem* requesting that NICOLE NEFF (hereinafter “Ms.

1 Neff”) be appointed as R.N.’s *Guardian ad Litem* for the present action.

2       2.       At the time of the incidents giving rise to this action, Plaintiff R.N. was  
3 a special education student entrusted to the care of Defendants TRAVIS UNIFIED  
4 SCHOOL DISTRICT (“TUSD”) and SOLANO COUNTY OFFICE OF EDUCATION  
5 (“SCOE”) at Center Elementary School (“CES”).

6       3.       Defendant TUSD is a public entity within the meaning of California  
7 Government Code sections 811.2, 900 *et seq.*, and is duly incorporated and operating  
8 under California law as a school district.

9       4.       Defendant SCOE is a public entity within the meaning of California  
10 Government Code sections 811.2, 900 *et seq.* and is duly incorporated and operating  
11 under California law as a county office of education.

12       5.       Plaintiff alleges that Defendants TUSD, SCOE and/or DOES 1 through  
13 10 at all relevant times herein mentioned controlled, directed, managed, operated,  
14 and/or owned CES.

15       6.       At all relevant times, Defendant LILIA GUMAPAS (“GUMAPAS”) was  
16 employed as a paraeducator by TUSD and SCOE and assigned to a special education  
17 classroom on the CES campus. All actions alleged herein were taken by GUMAPAS  
18 under color of state law and in the course and scope of her employment with TUSD  
19 and SCOE.

20       7.       At all relevant times, Defendant CHRISTOPHER MEARS (“MEARS”)  
21 was employed as a special education teacher by TUSD and SCOE and assigned to a  
22 special education classroom on the CES campus. All actions alleged herein were  
23 taken by MEARS under color of state law and in the course and scope of his  
24 employment with TUSD and SCOE.

25       8.       Defendants TUSD and SCOE were responsible for providing training  
26 and support to District and school site personnel, including the training, supervision,  
27 and control of Defendants GUMAPAS and MEARS, to ensure compliance with legal  
28 requirements pertaining to special education and pupil services.

1           9.       Plaintiff alleges that at all relevant times, DOES 1 through 10 were the  
2 employees, agents, officers and/or directors of Defendants TUSD and SCOE and were  
3 acting within the course and scope of their employment with TUSD and SCOE or in  
4 an official capacity.

5           10.      The true names and capacities, whether individual, corporate,  
6 partnership, joint venture, or otherwise of Defendants DOES 1 through 10, inclusive,  
7 are presently unknown to Plaintiffs who therefore sue Defendants by such fictitious  
8 names. When the true names and capacities of DOES 1 through 10 are ascertained,  
9 Plaintiffs will seek leave to amend this complaint by inserting their true names and  
10 capacities herein.

11          11.      Plaintiffs allege that each of the named Defendants and each of the  
12 fictitiously named Defendants are legally responsible in some manner for the  
13 occurrences alleged herein, and that the injuries as alleged herein were proximately  
14 and legally caused by the acts and/or omissions of such Defendants.

15          12.      Plaintiffs allege that during the relevant times referenced herein, that  
16 each of the Defendants sued herein was the agent, servant, employee, joint venture,  
17 partner, division, owner, subsidiary, alias, assignee, and/or alter-ego of each of the  
18 remaining Defendants, and was acting within the purpose, scope, course, and  
19 authority of such agency, servitude, employment, joint venture, partnership, division,  
20 ownership, subsidiary, alias, assignment, alter-ego, and with the authority, consent,  
21 approval, and ratification of each remaining Defendant.

22          13.      Plaintiffs are informed and believe, and thereon allege, that each of the  
23 fictitiously named Defendants aided, assisted, approved, acknowledged, and/or  
24 ratified the wrongful acts committed by Defendants as alleged herein, and that  
25 Plaintiffs' damages, as alleged herein, were legally caused by such Defendants.

26          14.      At all relevant times set forth herein, all Defendants acted in concert  
27 and as the agents of one another.

**FACTS COMMON TO ALL COUNTS**

15. At the time of the incidents giving rise to this action, Plaintiff R.N. was an 11-year-old girl with autism, Smith Lemli Optiz Syndrome (“SLO”), dyspraxia, and intellectual disabilities. At the time of the relevant incidents, R.N. did not possess functional verbal language beyond a few phrases and, as a result of her disabilities, R.N. qualified for special education services and supports provided by TUSD and SCOE.

16. During the 2018/2019 school year, TUSD and SCOE assigned Plaintiff R.N. to a classroom with Defendant teacher MEARS and Defendant paraeducator GUMAPAS on the CES campus.

17. On information and belief, during the time period Plaintiff R.N. was assigned to MEARS’ classroom, R.N. was subjected to ongoing physical and psychological abuse by GUMAPAS as a form of punishment and in response to R.N.’s behaviors which were manifestations of her disability.

18. Plaintiffs are informed and believe and thereon allege that GUMAPAS’ abuse included, but was not limited to, the following instances: GUMAPAS grabbed R.N. by both ankles, dragged her, and dropped her legs to the floor. GUMAPAS grabbed R.N.’s shoulder and pushed her into a chair. GUMAPAS yelled at and kicked R.N. when R.N. failed to eat her food as instructed. GUMAPAS yelled at and physically forced R.N. to pick up food off the floor. Specifically, GUMAPAS grabbed R.N. by her jacket, pushed R.N. to the ground, dragged R.N. to pick up the food, and raised her voice to R.N. multiple times.

19. Plaintiffs are informed and believe and thereon allege that, during the above-listed incidents, MEARS was aware of GUMAPAS’ misconduct, but failed to take any meaningful action to intervene or halt the behavior and further failed to document or report it as required.

20. On information and belief, the full extent of all the abuse suffered by Plaintiff R.N. is not yet known. R.N. was physically and psychologically abused by

1 GUMAPAS at CES on occasions during the 2018/2019 school year when she was 11  
2 years old.

3 21. On the evening of November 14, 2018, Plaintiffs' parents NICOLE  
4 NEFF and CHRIS NEFF were informed by Ilah Feeney, Principal of Special  
5 Education at SCOE, that an unapproved hold had occurred by a staff member at  
6 school that day. Prior to this date, Plaintiffs neither suspected nor had any reason to  
7 suspect that R.N. had been subjected to abusive treatment at CES.

8 22. On January 25, 2018, SCOE issued a "Summary of Investigation  
9 Findings," which found that, "on four separate occasions on November 14, 2018,  
10 Paraeducator X raised her voice and physically forced [R.N.] to comply with her  
11 directions."

12 23. Plaintiffs are informed and believe and thereon allege that employees of  
13 TUSD and SCOE, including GUMAPAS, physically, psychologically, and emotionally  
14 abused R.N. on several occasions, including but not limited to on November 14, 2018.  
15 Plaintiffs are further informed and believe and thereon allege that MEARS'  
16 classroom was a hostile environment for R.N. based on her disability.

17 24. On information and belief, Plaintiffs allege that employees of TUSD and  
18 SCOE, while working in the course and scope of their employment, negligently and/or  
19 intentionally caused the injuries herein described.

20 25. On information and belief, TUSD and SCOE failed to ensure it had  
21 adequately hired, supervised, or trained staff in classroom management, discipline,  
22 and mandatory child abuse reporting responsibilities.

23 26. On information and belief, the employees of the TUSD and SCOE, while  
24 working in the course and scope of their employment, were deliberately indifferent to  
25 the injuries herein described.

26 27. On information and belief, the responsible administrators of TUSD and  
27 SCOE and supervising employees, including MEARS and DOES 1-10, knew of  
28 GUMAPAS' misconduct and failed to take any steps to prevent further injury to

1 students, including R.N.. Proper supervision would have prevented the injuries in  
2 question.

3 28. On information and belief, the conduct of the TUSD and SCOE  
4 employees violated the relevant portions of the federal law intend to protect R.N. and  
5 other similarly situated students. Compliance would have prevented and/or severely  
6 minimized R.N.'s injuries.

7 29. At the relevant times hereto, Plaintiff's behavior did not rise to the level  
8 of an emergency or pose a serious or imminent threat of harm to herself or others  
9 that would justify using physical force against her or restraining her.

10 30. On information and belief, Plaintiff alleges that Defendants TUSD and  
11 SCOE and DOES 1 through 10, compounded the injuries by concealing the abuse  
12 from R.N.'s parents and failing to comply with their mandatory duty to report  
13 suspected child abuse to law enforcement. Because R.N. is functionally non-verbal,  
14 she was unable to tell her parents that she was being abused, causing her further  
15 emotional distress.

16 31. Plaintiff R.N. suffered physical, behavioral, and psychological harm as a  
17 result of the abuse described herein.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Constitutional Rights, 42 U.S.C. § 1983)**

20 **[R.N. vs. GUMAPAS, MEARS and DOES 1 through 10]**

21 32. Plaintiff incorporates the allegations contained in the preceding  
22 paragraphs as though fully set forth herein:

23 33. Plaintiff alleges that Defendants GUMAPAS, MEARS, and DOES 1  
24 through 10, violated 42 U.S.C. § 1983 when they deprived her of her constitutional  
25 rights while acting under the color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640  
26 (1980).

27 34. Plaintiff has a constitutional right under the Fourth Amendment to the  
28 United States Constitution to be free from unreasonable seizures and to be secure in

1 her person and to maintain her bodily integrity against unreasonable assaults of her  
2 person. All public-school students have the right under the Fourth Amendment to be  
3 free from unreasonable searches and seizures. The unreasonable use of excessive  
4 force and corporal punishment of a student violates this right. *Doe v. Hawaii Dept. of*  
5 *Education*, 334 F.3d 906, 909 (9th Cir. 2003).

6 35. GUMAPAS violated Plaintiff's rights under the Fourth Amendment by  
7 using unjustified and unreasonable force against her.

8 36. GUMAPAS's conduct in touching R.N. with the intent to harm or effect  
9 violated the Fourth Amendment's prohibition of the use of excessive force against  
10 public school children. In *Preschooler II v. Clark County School Bd.*, 479 F.3d 1175,  
11 1180–82 (9th Cir. 2007), the Ninth Circuit confirmed that the Fourth Amendment  
12 applies specifically to excessive force cases in a school setting and concluded that the  
13 "beating, slapping, and slamming" of the child "violated the Fourth Amendment's  
14 prohibition of the use of excessive force against public school children."

15 37. In light of the clear constitutional prohibition on the use of excessive  
16 force against public school children and the heightened protections for disabled  
17 pupils, no reasonable person charged with the care of special education students  
18 would believe that the use of force employed by GUMAPAS was lawful.

19 **Supervisory Liability –DOES 1 through 10**

20 38. Although there is no pure respondeat superior liability under § 1983, a  
21 supervisor is liable for the acts of his subordinates "if the supervisor [] knew of the  
22 violations [of subordinates] and failed to act to prevent them." *Taylor v. List*, 880  
23 F.2d 1040, 1045 (9th Cir. 1989).

24 39. Plaintiff alleges that supervisory defendants MEARS and DOES 1  
25 through 10 are individually liable under § 1983 because they knew of GUMAPAS's  
26 violations and failed to act to prevent them.

27 40. MEARS and DOES 1 through 10 are also individually liable under §  
28 1983 for failure to adequately train their subordinates, including GUMAPAS.

1           41. On information and belief, this failure to train staff how to  
2 appropriately respond to behavioral manifestations of student disabilities created an  
3 educational environment in which R.N. was routinely subjected to physical and  
4 emotional abuse.

5           42. MEARS and DOES 1 through 10 are responsible for appropriately  
6 training paraeducators, including defendant GUMAPAS, and other school personnel  
7 to provide required behavioral interventions and supports to children with  
8 disabilities. There is a clear constitutional duty implicated in the proper use of  
9 behavioral interventions and supports for nonverbal autistic students as the  
10 improper implementation of these measures could constitute an unconstitutional  
11 seizure in violation of the Fourth Amendment.

12           43. On information and belief, MEARS and DOES 1 through 10 had actual  
13 knowledge that GUMAPAS and other paraeducator employees confront this  
14 particular situation regarding control and discipline of disabled students on a regular  
15 basis.

16           44. On information and belief, MEARS and DOES 1 through 10 had actual  
17 knowledge that GUMAPAS and other paraeducator employees routinely react in a  
18 manner contrary to constitutional requirements. Despite this knowledge, MEARS  
19 and DOES 1 through 10 failed to provide adequate training to prevent violations of  
20 the constitutional rights of students. The inadequacy of this training caused the  
21 constitutional violation at issue. *See Merritt v. Cty. of Los Angeles*, 875 F.2d 765, 770  
22 (9th Cir. 1989).

23           45. On information and belief, Defendants MEARS and DOES 1 through  
24 10's response to knowledge of prior misconduct by GUMAPAS was so inadequate as  
25 to amount deliberate indifference to or tacit authorization of the constitutional  
26 violations.

27           46. On information and belief, Defendants MEARS and DOES 1 through 10  
28 abdicated their duty to report and discipline GUMAPAS when they first became

1 actually or constructively aware of her alleged abuses.

2 47. There is an affirmative causal link between this inaction and "blind eye"  
3 acquiescence and the particular constitutional injury suffered by Plaintiff. The  
4 failure to report and discipline earlier abuses committed by GUMAPAS created the  
5 environment that made her later abuses possible. MEARS and DOES 1 through 10's  
6 knowledge that constitutional violations were regularly occurring and corresponding  
7 failure to take affirmative action to prevent future abuses constitutes deliberate  
8 indifference. The failure to act facilitated the constitutional violations in this case as  
9 the practice of repeatedly failing to act despite knowledge of abuse normalizes  
10 recurrent constitutional deprivations and encourages future violations.

11 48. As set forth in this Complaint, Defendants' conduct was a substantial  
12 factor in causing Plaintiff's harm.

13 49. As a direct, proximate, and foreseeable result of Defendants' unlawful  
14 conduct, Plaintiff has suffered severe humiliation, mental anguish, emotional and  
15 physical distress, embarrassment, anger, loss of enjoyment of life, and has been  
16 injured in mind and body, the precise amount of which will be proven at trial.

17 50. As a direct, proximate, and foreseeable result of Defendants' unlawful  
18 conduct, Plaintiff has incurred special and general damages, the precise amount of  
19 which will be proven at trial.

20 51. As a direct, proximate, and foreseeable result of Defendants' conduct,  
21 Plaintiff was forced to retain an attorney in order to protect her rights. Accordingly,  
22 Plaintiff seeks reasonable attorney's fees and costs incurred in this litigation in an  
23 amount according to proof at trial as mandated under 42 U.S.C. § 1988(b).

24 **SECOND CAUSE OF ACTION**

25 **(Discrimination in Violation of the Americans With Disabilities Act,**

26 **U.S.C. § 12131)**

27 **[R.N. v. TUSD AND SCOE]**

28 52. Plaintiff incorporates the allegations contained in the preceding

1 paragraphs as though fully set forth herein.

2       53. Congress enacted the Americans with Disabilities Act (“ADA”) upon  
3 finding, among other things, that “society has tended to isolate and segregate  
4 individuals with disabilities” and that “individuals who have experienced  
5 discrimination on the basis of disability have often had no legal recourse to redress  
6 such discrimination.” 42 U.S.C. § 12101(a).

7       54. In response to these findings, Congress explicitly stated that the  
8 purpose of the ADA is to provide “a clear and comprehensive national mandate for  
9 the elimination of discrimination against individuals with disabilities.” 42 U.S.C. §  
10 12101(b)(1).

11       55. Effective January 26, 1992, Title II of the Americans with Disabilities  
12 Act of 1990, entitled Plaintiff to the protections of the "Public Services" provision.  
13 Title II, Subpart A prohibits discrimination by any "public entity," including any  
14 state or local government, as defined by 42 U.S.C. § 12131, § 201 of the ADA.

15       56. Pursuant to 42 U.S.C. § 12132, § 202 of Title II, “no qualified individual  
16 with a disability shall, by reason of such disability, be excluded from participation in  
17 or be denied the benefits of the services, programs, or activities of a public entity, or  
18 be subjected to discrimination by any such entity.”

19       57. At all times relevant to this action, Plaintiff was a qualified individual  
20 with a disability. Further, TUSD and SCOE is a public entity within the meaning of  
21 Title II of the ADA and provides a program, service, or activity to the general public.

22       58. TUSD and SCOE excluded Plaintiff from participation in and denied her  
23 the benefits of the benefits of the services, programs, or activities it provides by  
24 placing her in an environment where he was subjected to physical and emotional  
25 abuse by her instructor. Additionally, TUSD and SCOE failed in its responsibilities  
26 under Title II to provide its services, programs and activities on an equal basis to  
27 children with disabilities and free of hostility toward their disability.

28       59. Plaintiff alleges that GUMAPAS intentionally grabbed Plaintiff,

1 dragged her by her ankles and dropped her legs, grabbed her by her shoulder and  
2 pushed her into a chair, yell and kicked Plaintiff when she failed to eat her food as  
3 instructed, yelled at and physically forced her to pick up food off the floor, and raised  
4 her voice to Plaintiff multiple times in response to the manifestation of behaviors  
5 related to Plaintiff's disability. Non-disabled children were not subjected to similar  
6 acts of abuse.

7 60. Plaintiff further alleges that MEARS and DOES 1 through 10, knew of  
8 and were deliberately indifferent to abuse committed by GUMAPAS.

9 61. TUSD and SCOE are vicariously liable for GUMAPAS's discriminatory  
10 conduct. When a plaintiff brings a direct suit under the ADA, a public entity is liable  
11 in respondeat superior for the acts of its employees. *Duvall v. County of Kitsup*, 260  
12 F.3d 1124 (9th Cir. 2001).

13 62. Defendant's conduct as alleged herein was a substantial factor in  
14 causing Plaintiff's harm.

15 63. As a direct, proximate, and foreseeable result of TUSD and SCOE's  
16 failure to comply with their duty under Title II, Plaintiff has incurred special and  
17 general damages, the precise amount of which will be proven at trial.

18 64. As a direct, proximate, and foreseeable result of Defendant's conduct,  
19 Plaintiff was forced to retain an attorney in order to protect her rights. Accordingly,  
20 Plaintiff seeks reasonable attorneys' fees and costs incurred in this litigation in an  
21 amount according to proof at trial as mandated under 42 U.S.C. § 12205.

22 **THIRD CAUSE OF ACTION**

23 **(Discrimination in Violation of the Rehabilitation Act of 1973,**

24 **29 U.S.C. § 794)**

25 **[R.N. Against Defendants TUSD and SCOE]**

26 65. Plaintiff incorporates the allegations contained in the preceding  
27 paragraphs as though fully set forth herein.

28 66. Under § 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §

1 794 (“§ 504”), a qualified individual with a disability may not, solely by reason of  
2 his/her disability, be subjected to discrimination, excluded from participation in, or  
3 denied the benefits of, any program or activity receiving Federal financial assistance.  
4 29 U.S.C. § 794(a). As such § 504 prohibits not only “discrimination” against the  
5 disabled, but also “exclu[sion] from...participation in” and “deni[al] [of] the benefits  
6 of” state programs solely by reason of a disability. Under the § 504 regulations, when  
7 a handicapped individual is removed from a regular environment, the facility in  
8 which she is placed must still be “comparable” to that used by non-disabled students.  
9 34 C.F.R. § 104.34(c).

10 67. Plaintiff is informed and believes and thereon allege that TUSD and  
11 SCOE is and has been at all relevant times the recipient of Federal financial  
12 assistance, and that part of that financial assistance has been used to fund the  
13 operations, construction and/or maintenance of the specific public facilities described  
14 herein and the activities that take place therein.

15 68. Plaintiff alleges that by placing her in program for disabled students  
16 with a paraeducator who subjected her to physical and emotional abuse, TUSD and  
17 SCOE removed Plaintiff from the regular school environment solely by reason of her  
18 disability yet failed to provide her with a level of services “comparable” to the level of  
19 services provided to individuals who are not disabled because the paraeducator they  
20 placed her with subjected her to abuse. Plaintiff was therefore excluded from  
21 participation in and denied the benefits of the state program by reason of her  
22 disability.

23 69. Plaintiff alleges that non-disabled children who attend TUSD and SCOE  
24 are not subjected to similar acts of abuse and unconstitutional restraint. Because of  
25 this the educational environment in which Plaintiff was placed by reason of her  
26 disability is not comparable to those used by non-disabled students.

27 70. By its acts or omissions in denying equal access to educational services,  
28 TUSD and SCOE have violated the rights of Plaintiff under § 504 and the regulations

1 promulgated thereunder.

2 71. As set forth in this Complaint, GUMAPAS intentionally discriminated  
3 against Plaintiff on the basis of her disability by maltreating Plaintiff in response to  
4 behaviors that were manifestations of Plaintiff's disability.

5 72. On information and belief, MEARS and DOES 1 through 10, were aware  
6 of and deliberately indifferent to the abuse committed by GUMAPAS. They had  
7 actual knowledge of the abuse and knew that GUMAPAS was likely to continue  
8 abusing students similarly situated to Plaintiff but failed to act upon that knowledge.

9 73. TUSD and SCOE is vicariously liable for the actions or inactions of its  
10 employees under the principal of respondeat superior. *Bonner v. Lewis*, 857 F.2d 559,  
11 566 (9th Cir. 1988).

12 74. As a direct, proximate, and foreseeable result of TUSD and SCOE's  
13 failure to comply with their duty under § 504 and the regulations promulgated  
14 thereunder, Plaintiff has suffered damages, including special and general damages,  
15 the precise amount of which will be proven at trial.

16 75. As a direct, proximate, and foreseeable result of Defendant's conduct,  
17 Plaintiff was forced to retain an attorney in order to protect her rights. Accordingly,  
18 Plaintiff seeks reasonable attorney's fees and costs in an amount according to proof  
19 at trial as mandated under 29 U.S.C. § 794a(b).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against all Defendants and DOES  
22 1 through 10, and each of them, on all theories of action as follows:

23 1. For general damages within the jurisdiction of the Court according to  
24 proof;

25 2. For all special damages, including but not limited to medical and  
26 incidental expenses according to proof, property damage and loss of use;

27 3. For punitive damages against non-public entity Defendants, as  
28 permitted by law;

4. For costs of suit herein;
5. For attorney's fees, as permitted by law;
6. For prejudgment interest as permitted by law; and
7. For such other and further relief as the Court deems proper.

Dated: March 12, 2020

WALKUP, MELODIA, KELLY & SCHOENBERGER

By: /s/ Khaldoun A. Baghdadi

DOUGLAS S. SAELTZER

KHALDOUN A. BAGHDADI

VALERIE N. ROSE

Attorneys for PLAINTIFF R.N.

### DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: March 12, 2020

WALKUP, MELODIA, KELLY & SCHOENBERGER

By: /s/ Khaldoun A. Baghdadi

DOUGLAS S. SAELTZER

KHALDOUN A. BAGHDADI

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