

1 RAHUL RAVIPUDI, ESQ., NV Bar No. 14750

2 *ravipudi@psblaw.com*

3 IAN SAMSON, ESQ., NV Bar No. 15089

4 *samson@psblaw.com*

5 ADAM ELLIS, ESQ., NV Bar No. 14514

6 *ellis@psblaw.com*

7 **PANISH SHEA & BOYLE LLP**

8 8816 Spanish Ridge Ave.

9 Las Vegas, Nevada 89148

10 Tel: (702) 560-5520

11 Fax: (702) 975-2515

12 KHALDOUN A. BAGHDADI, ESQ., CA Bar No. 190111

13 *kbaghdadi@walkuplawoffice.com*

14 VALERIE ROSE, ESQ., CA Bar No. 272566

15 *vrose@walkuplawoffice.com*

16 **WALKUP, MELODIA, KELLY & SCHOENBERGER**

17 650 California Street, 26th Floor

18 San Francisco, CA 94108-2615

19 Tel: 415.981-7210

20 Fax: 415-391-6965

21 (To be admitted *Pro Hac Vice*)

22 Attorneys for PLAINTIFFS

23 UNITED STATES DISTRICT COURT

24 DISTRICT OF NEVADA

25 K.H., a minor by and through his
26 Guardian Ad Litem UNIQUE BARNETT;
27 A.K., a minor by and through his
28 Guardian Ad Litem KARA KARR; and
K.G., a minor by and through her
Guardian Ad Litem MARIA GARCIA,

Plaintiffs,

v.

CLARK COUNTY SCHOOL DISTRICT,
SHANE BUTUYAN, ANA ESCAMILLA,
SONYA HOLDSWORTH, RENEE
MECHEM and DOES 1-50,

Defendants.

Case No.

COMPLAINT

[JURY DEMAND]

1 **INTRODUCTION**

2 Plaintiffs K.H., a minor by and through his Guardian Ad Litem Unique
3 Barnett, A.K., a minor by and through his Guardian Ad Litem Kara Karr, and
4 K.G., a minor by and through her Guardian Ad Litem Maria Garcia, allege as
5 follows:

6 **PARTIES**

7 1. Plaintiff K.H. is a minor and a resident of Clark County, Nevada.

8 2. Unique Barnett (“BARNETT”) is the mother of Plaintiff K.H. and a
9 resident of Clark County, Nevada. She brings this action on behalf of her minor son
10 K.H., as his guardian ad litem.

11 3. Plaintiff A.K. is a minor and a resident of Clark County, Nevada.

12 4. Kara Karr (“KARR”) is the mother of Plaintiff A.K. and a resident of
13 Clark County, Nevada. She brings this action on behalf of her minor son A.K., as
14 his guardian ad litem.

15 5. Plaintiff K.G. is a minor and a resident of Clark County, Nevada.

16 6. Maria Garcia (“GARCIA”) is the mother of Plaintiff A.K. and a resident
17 of Clark County, Nevada. She brings this action on behalf of her minor daughter
18 K.G., as his guardian ad litem

19 7. Defendant CLARK COUNTY SCHOOL DISTRICT (“CCSD”) is a
20 public entity duly incorporated and operating under Nevada law as a public school
21 district.

22 8. Defendant SHANE BUTUYAN (“BUTUYAN”) was at all times
23 relevant herein, employed by Defendant CCSD as a special education teacher at
24 Thiriot Elementary School (“TES”) in Las Vegas, Nevada. All actions by Defendant
25 BUTUYAN alleged herein were taken under color of state law and in the course and
26 scope of his employment with Defendant CCSD.

27 9. Defendant ANA ESCAMILLA (“ESCAMILLA”) was at all times
28

1 relevant herein, employed by Defendant CCSD as a special education aide at TES in
2 Las Vegas, Nevada. All actions by Defendant ESCAMILLA alleged herein were
3 taken under color of state law and in the course and scope of her employment with
4 Defendant CCSD.

5 10. Defendant SONYA HOLDSWORTH (“HOLDSWORTH”) was at all
6 times relevant herein, employed by Defendant CCSD as Principal of TES. All
7 actions by Defendant HOLDSWORTH alleged herein were taken under color of
8 state law and in the course and scope of her employment with Defendant CCSD.

9 11. Defendant RENEE MECHEM (“MECHEM”) was at all times relevant
10 herein, employed by Defendant CCSD as Assistant Principal of TES. All actions by
11 Defendant MECHEM alleged herein were taken under color of state law and in the
12 course and scope of her employment with Defendant CCSD.

13 12. On information and belief, HOLDSWORTH, MECHEM and other CCSD
14 administrators and employees were responsible for the training and supervision of
15 school district staff at TES and for ensuring compliance with state and federal laws.

16 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

17 13. This court has original jurisdiction over Plaintiff’s claims for relief
18 pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). This court has
19 supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. §
20 1367(a).

21 14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a
22 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in
23 Clark County, Nevada.

24 15. This case arose in Clark County, Nevada, and, pursuant to Rule 1-6 of
25 the Local Rules of the District of Nevada should be assigned to the Southern
26 Division of the District of Nevada.

27
28 ///

1 **MINOR K.H.'s SPECIAL NEEDS and CLASSROOM ASSIGNMENT**

2 16. At all times relevant to the allegations herein, K.H. was a special
3 education student at TES and entrusted to the care of Defendants.

4 17. K.H. was assigned to the special education classroom of BUTUYAN
5 and ESCAMILLA beginning on or about June, 2019.

6 18. K.H. was born in 2011 and was eight years old when he was assigned
7 to BUTUYAN and ESCAMILLA's special education classroom at TES in 2019.

8 19. K.H. has been diagnosed with Autism Spectrum Disorder and is
9 functionally nonverbal.

10 **MINOR A.K.'s SPECIAL NEEDS and CLASSROOM ASSIGNMENT**

11 20. At all times relevant to the allegations herein, A.K. was a special
12 education student at TES and entrusted to the care of Defendants.

13 21. A.K. was assigned to the special education classroom of BUTUYAN
14 and ESCAMILLA beginning on or about June, 2019.

15 22. A.K. was born in 2009 and was nine years old when he was assigned to
16 BUTUYAN and ESCAMILLA's special education classroom at TES in 2019.

17 23. A.K. has been diagnosed with Attention Deficit Disorder and Attention
18 Deficit Hyperactivity Disorder and is functionally nonverbal.

19 **MINOR K.G.'s SPECIAL NEEDS and CLASSROOM ASSIGNMENT**

20 24. At all times relevant to the allegations herein, K.G. was a special
21 education student at TES and entrusted to the care of Defendants.

22 25. K.G. was assigned to the special education classroom of BUTUYAN
23 and ESCAMILLA beginning on or about June, 2019.

24 26. K.G. was born in 2010 and was eight years old when she was assigned
25 to BUTUYAN and ESCAMILLA's special education classroom at TES in 2019.

26 27. K.G. has been diagnosed with septo optic dysplasia, hearing loss and
27 vision loss and is functionally nonverbal.
28

GENERAL FACTUAL ALLEGATIONS

1
2 28. For the 2019-20 school year, BUTUYAN and ESCAMILLA oversaw a
3 special education classroom at TES.

4 29. In early August, 2019, BARNETT observed Defendant ESCAMILLA
5 acting in an aggressive manner towards K.H.'s disabled classmates by yelling in
6 students' faces and displaying verbal aggression towards them. BARNETT reported
7 ESCAMILLA's misconduct to TES administrators including HOLDSWORTH and
8 MECHEM.

9 30. In response to her report, HOLDSWORTH and MECHEM promised to
10 investigate. On information and belief, HOLDSWORTH and MECHEM failed to
11 document or investigate the incidents, took no steps to intervene to stop the
12 ESCAMILLA's ongoing emotional abuse of disabled students, failed to discipline or
13 retrain ESCAMILLA to prevent future occurrences, and concealed the mistreatment
14 from the victims' parents.

15 31. On or about August 26, 2019, K.H.'s grandmother and a CCSD bus
16 driver observed ESCAMILLA grab K.H. roughly and drag him by his arm across the
17 campus while K.H. cried and ran trying to keep up with ESCAMILLA without
18 falling.

19 32. Upon receiving reports of the incident from eyewitnesses, K.H.'s
20 parents reported the misconduct to HOLDSWORTH and MECHEM who promised
21 to investigate the incident. On information and belief, HOLDSWORTH and
22 MECHEM failed to properly document or investigate the incident, failed to
23 intervene to stop the ESCAMILLA's ongoing physical and emotional abuse of
24 disabled students including K.H. and failed to discipline or retrain ESCAMILLA to
25 prevent future occurrences.

26 33. On information and belief, Defendants HOLDSWORTH and MECHEM
27 further failed to complete the required CCF-624 forms documenting ESCAMILLA's
28

1 use of physical restraints and prohibited aversive interventions, failed to take steps
2 to intervene to stop the abuse and failed to discipline and/or retrain ESCAMILLA to
3 prevent future mistreatment of K.H. and other disabled students.

4 34. Thereafter, on or about September, 2019, Child Protective Services
5 was notified that three Special Education Aides visiting BUTUYAN and
6 ESCAMILLA's classroom were concerned about possible mistreatment of students
7 in the class.

8 35. BARNETT was subsequently contacted by CPS who informed her they
9 were conducting an investigation into allegations that K.H. and other disabled
10 students in BUTUYAN and ESCAMILLA's classroom had been physically abused
11 by TES staff.

12 36. During the investigation, K.H. and other students in BUTUYAN and
13 ESCAMILLA's classroom reported to CPS and CCSD police ("CCSDPD") that
14 BUTUYAN repeatedly used a long wooden yard stick he called "*Palo Palo*"¹ to strike
15 them on their hands and bodies, to poke them in their sides and to strike their
16 desks and chairs.

17 37. BUTUYAN admitted to telling the students that the *Palo Palo* was a
18 "magic wand" that would convey powers upon them, but if they told their parents
19 about the *Palo Palo*, the students would "lose their powers."

20 38. The students confirmed to CPS and CCSDPD that ESCAMILLA was
21 present when BUTUYAN struck them with the stick but did nothing to protect
22 them, and that both BUTUYAN and ESCAMILLA told the students *Palo Palo* was
23 their secret and instructed them not tell their parents.

24 39. In addition to repeatedly striking students with the wooden yard stick,
25 the students also reported that BUTUYAN slammed his fists on their desks when
26 he was angry and struck their desks and chairs with the *Palo Palo* to get their
27

28 ¹ "Palo" is a Tagalog word meaning spanking or beating, derived from the Spanish word "Palo" meaning stick.

1 attention. The students reported that BUTUYAN also threatened them by stating
2 that if they did not pay attention they would “get the *Palo Palo*.”

3 40. K.H. and his classmates reported that BUTUYAN struck them with
4 the *Palo Palo* while ESCAMILLA was present in the room but that she said and did
5 nothing to protect them. K.H. told CPS and CCSDPD that BUTUYAN hit him on
6 his hands and body with the *Palo Palo* at least 100 times.

7 41. During his time in their classroom, BUTUYAN and ESCAMILLA
8 routinely subjected K.H., A.K., K.G., and other disabled students to physical,
9 emotional and verbal abuses. The mistreatment and abuse of the minor Plaintiffs
10 by BUTUYAN and ESCAMILLA was based upon and in response to their
11 disabilities.

12 42. To make matters worse, ESCAMILLA would routinely remove other
13 students from the class, leaving BUTUYAN alone with K.H., A.K., and K.G. for
14 hours. On information and belief, BUTUYAN physically, emotionally, and verbally
15 abused the minor Plaintiffs while he was alone with them.

16 43. After learning of the CPS investigation, BARNETT met with
17 MECHEM. MECHEM told BARNETT that the issue would be handled “in house”
18 and requested BARNETT refrain from speaking publicly about her son’s
19 mistreatment. BARNETT demanded MECHEM administratively transfer K.H. and
20 his sister to another CCSD elementary school. MECHEM told BARNETT she
21 lacked the power to do so, and that BARNETT would have to make any such
22 request to CCSD’s Child Find Department, a division of CCSD’s Student Services
23 Division.
24

25 44. BARNETT submitted a transfer request to CCSD.

26 45. CCSD approved the transfer of both K.H. and his sister to a different
27 CCSD elementary school.

28 46. On information and belief, prior to the complaints by K.H.’s family

1 made to TES administrators in August, 2019, CCSD was aware of other similar
2 complaints concerning BUTUYAN and/or ESCAMILLA’s mistreatment of disabled
3 students, but failed to document and investigate the reports as required, failed to
4 complete mandatory CCF-624 forms, failed to comply with their statutory obligation
5 to notify the Nevada Department of Education (“DOE”) of violations of students
6 rights and establish a Corrective Action Plan (CAP) to retrain BUTUYAN and/or
7 ESCAMILLA so that future violations would not occur and failed to discipline
8 BUTUYAN or ESCAMILLA to deter them from committing further abuse.

9 47. It was only after the CPS investigation was initiated that BUTUYAN
10 was removed from the TES classroom.

11 48. Neither CCSD nor CCSDPD informed KARR that A.K. had been
12 subjected to abuse or identified in CCSDPD’s investigation as a victim.

13 49. Neither CCSD nor CCSDPD informed GARCIA that K.G. had been
14 subjected to abuse or identified in CCSDPD’s investigation as a victim.

15 50. On information and belief, HOLDSWORTH, MECHEM and other
16 CCSD administrators and employees knew K.H., A.K., K.G., and other students in
17 BUTUYAN’s and ESCAMILLA’s class were being abused but they concealed this
18 information from BARNETT, KARR, GARCIA, and other parents and from the
19 DOE.

20 51. In addition to suffering direct abuse by BUTUYAN and/or
21 ESCAMILLA, students, including K.H., A.K., and K.G., were also forced to witness
22 the physical and emotional abuse of their classmates.

23 52. The use of aversive interventions is expressly prohibited by state law,
24 which provides that “[a] person employed by the board of trustees of a school district
25 or any other person shall not use any aversive intervention on a pupil with a
26 disability.” NRS 388.497. The term “aversive intervention” is defined broadly and
27 includes the use of corporal punishment as well as verbal and mental abuse where
28

1 those actions are used to punish or to eliminate, reduce or discourage maladaptive
2 behavior of a student with a disability. NRS 388.473. Aversive interventions, which
3 include physical or mechanical restraints on students with disabilities, are also
4 proscribed under District regulations. CCSD Regulation 5141.3.

5 53. State law mandates that school districts must provide training to staff
6 regarding the use of physical and mechanical restraints to ensure the safety of
7 pupils in their care. NRS 388.505. Any person who intentionally uses aversive
8 intervention on a pupil with a disability is subject to disciplinary action. NRS
9 388.506.

10 54. Any incident involving an “aversive intervention” must be reported to
11 the board of trustees of the school district not later than 24 hours after the incident
12 occurred, or as soon thereafter as it is discovered. NRS 388.508. The board of
13 trustees and school superintendent must then develop a Corrective Action Plan to
14 retrain involved staff “to ensure that within 30 calendar days appropriate action is
15 taken by the school and the board of trustees to prevent future violations.” Further,
16 any “aversive action” taken against a student with a disability must be entered into
17 the student’s cumulative record. NRS 388.513.

18 55. Pursuant to CCSD Regulation 5141.3 and NRS 388.501, if a physical
19 restraint or aversive intervention has been used on a student, it must be reported in
20 the pupil’s file no later than one working day after the fact. A report (form CCF-624)
21 must also be sent to the student’s Individualized Education Program (“IEP”) Team,
22 the student’s parent or guardian, and the Board of School Trustees/designee of the
23 school district. Pursuant to NRS 388.508 and 388.5295, in order to prevent future
24 violations by staff, the school district must report the details of each violation of a
25 student’s rights to the Department of Education (DOE) and develop and submit a
26 Corrective Action Plan (“CAP”) to the DOE *within 30 calendar days of the violation*.

27 56. On information and belief, Defendants HOLDSWORTH, MECHEM
28

1 and CCSD repeatedly failed to comply with state law and district policies regarding
2 the prompt documentation of the use and nature of aversive interventions. Further,
3 on information and belief, Defendants HOLDSWORTH, MECHEM and CCSD
4 repeatedly failed to report in a timely manner the use of aversive interventions by
5 BUTUYAN and/or ESCAMILLA to the parents of Plaintiffs K.H., A.K. and K.G. in
6 violation of NRS 388.501.

7 57. On information and belief, HOLDSWORTH, MECHEM and other
8 CCSD administrators and employees were aware of BUTUYAN's and/or
9 ESCAMILLA's physical and emotional abuse of disabled students at TES, including
10 K.H., A.K. and K.G., but failed to take action to intervene to protect the disabled
11 students in their care and/or to report the abuse to law enforcement, DOE, or to the
12 students' parents.

13 58. On information and belief, HOLDSWORTH, MECHEM and other
14 CCSD administrators and employees knew that BUTUYAN's and/or ESCAMILLA's
15 use of prohibited aversive interventions with disabled students including K.H., A.K.
16 and K.G. violated their rights, but they intentionally concealed known violations
17 from the DOE, failed to timely notify the DOE, failed to establish a CAP to re-train
18 or discipline BUTUYAN or ESCAMILLA to ensure future violations would not
19 reoccur and concealed violations from the parents of student victims.

20 59. On information and belief, BUTUYAN's and/or ESCAMILLA's abuse of
21 K.H., A.K., K.G. and other disabled students at TES was reported to administrators
22 and was open and obvious. HOLDSWORTH, MECHEM and other CCSD employees
23 were aware of the abuse of disabled students by BUTUYAN and/or ESCAMILLA
24 but concealed it from parents and the DOE, and did nothing to prevent BUTUYAN
25 and/or ESCAMILLA from continuing to abuse functionally non-verbal disabled
26 students.

27 60. ESCAMILLA's mistreatment of K.H. on August 26, 2019 took place on
28

1 the school campus at dismissal time, in front of other teachers, students, and CCSD
2 personnel and was reported to administrators by the eyewitness. At least a portion
3 of these actions were also recorded by CCSD's video surveillance cameras. Prior to
4 this incident, BARNETT had already reported ESCAMILLA's aggression and
5 mistreatment of disabled students to Defendants HOLDSWORTH and MECHEM.

6 **EFFECTS OF THE ABUSE ON THE MINOR PLAINTIFFS**

7 ***Effect of the Abuse on Minor Plaintiff K.H.***

8 61. On information and belief, K.H. routinely experienced physical and
9 emotional abuse by BUTUYAN and/or ESCAMILLA and their misconduct
10 exacerbated and escalated behaviors that manifested from K.H.'s disability.

11 62. ESCAMILLA would routinely remove other students from the class,
12 leaving BUTUYAN alone with K.H.. On information and belief, BUTUYAN
13 physically, emotionally, and verbally abused K.H. while he was alone with him.

14 63. During the time that K.H. was in BUTUYAN's and ESCAMILLA's
15 classroom, K.H. regressed in certain physical skills such as toileting and began to
16 exhibit new behaviors uncharacteristic of him prior to his assignment in the
17 classroom. Such behaviors include but are not limited to having frequent
18 nightmares, urinating on himself during the night, difficulty sleeping, crying often,
19 becoming increasingly quiet, emotional, sad and withdrawn and responding to
20 simple reprimands at home by crying hysterically.

21 64. K.H.'s parents became concerned about the changes in their son's
22 behavior and discussed their concern with HOLDSWORTH and MECHEM, but
23 because of his disabilities, K.H. was unable to verbally communicate the full extent
24 of the cause of his distress to his parents.

25 65. During the 2019/2020 school year while K.H. attended TES,
26 BARNETT noticed that K.H. would sometimes come home from school with marks
27 on his hand. Because HOLDSWORTH and MECHEM never provided BARNETT a
28

1 CCF-624 form documenting use of corporal punishment, mechanical restraint,
2 physical restraint or aversive interventions, BARNETT believed the marks must
3 have happened incidentally during play. Because of his disabilities, K.H. was
4 unable to verbally communicate to his parents what was happening to him and
5 BARNETT was unaware that K.H. was being routinely physically and emotionally
6 abused in school while he attended TES.

7 66. The full extent and duration of all of the abuse suffered by K.H. is
8 currently unknown because, as a result of his disabilities, he is unable to verbally
9 report all that occurred to him while he was in the care of Defendants.

10 67. Prior to his time in the classroom with Defendants BUTUYAN and
11 ESCAMILLA, K.H. had not experienced behavior issues at school. During the time
12 he was assigned to their classroom, BUTUYAN and ESCAMILLA regularly
13 documented K.H. as having behavior in the “red zone,” an indication that he was in
14 trouble. Because K.H.’s disability impacts his ability to verbally communicate,
15 when BARNETT asked K.H. why he was frequently being marked in the “red zone,”
16 K.H. was only able to verbalize that the teacher was “mean” to him.

17 68. Because CCSD intentionally concealed the abuse from K.H.’s family
18 during the school year, they have been devastated by the delay in learning that
19 BUTUYAN physically, emotionally, and verbally abused K.H., and regularly struck
20 K.H. with a large wooden yard stick.

21 69. Since leaving BUTUYAN and ESCAMILLA’s classroom at TES, K.H.
22 continues to experience extreme anxiety, stress and fear as a result of the
23 misconduct of the Defendants and by their failures to act.

24 70. The severe abuse of K.H. as herein alleged has and will continue to
25 cause permanent psychological harm.

26 71. On information and belief, K.H. will continue to require ongoing
27 psychological treatment to address the trauma he has experienced.
28

1 72. As a proximate result of the actions of BUTUYAN and ESCAMILLA,
2 K.H. has suffered unjustifiable physical pain and mental suffering.

3 73. At the relevant times hereto, K.H.'s behavior did not rise to the level of
4 an emergency or a serious or imminent threat of harm to himself or others which
5 would permit using emergency physical force against him or restraining his freedom
6 of movement.

7 74. BARNETT does not seek any services or remedies available under the
8 Individuals with Disabilities Education Act ("IDEA") for K.H.

9 ***Effect of the Abuse on Minor Plaintiff A.K.***

10 75. On information and belief, A.K. routinely experienced physical and
11 emotional abuse by BUTUYAN and/or ESCAMILLA and their misconduct
12 exacerbated and escalated behaviors that manifested from A.K.'s disability.

13 76. ESCAMILLA would routinely remove other students from the class,
14 leaving BUTUYAN alone with A.K.. On information and belief, BUTUYAN
15 physically, emotionally, and verbally abused A.K. while he was alone with him.

16 77. During the time that A.K. was in BUTUYAN's and ESCAMILLA's
17 classroom, he began exhibiting aggressive behaviors towards his younger brother
18 that he had never previously displayed. Such behaviors included but were not
19 limited to hitting his brother, grabbing his brother by the arm and clothing, and
20 squeezing his brother's face while screaming at him to "listen!". During his time in
21 the class A.K. also began to have frequent tantrums and outbursts of aggression
22 which he did not previously display. All of these behaviors were out of the ordinary
23 for A.K. and his parents became concerned, but they were unaware of the
24 misconduct of the Defendants which was concealed from them and, because of his
25 disabilities, A.K. was unable to verbally communicate the full extent of the cause of
26 his distress to his parents at the time it was occurring.

27 78. Because HOLDSWORTH and MECHEM never provided A.K.'s parents
28

1 with a CCF-624 form documenting the use of corporal punishment, mechanical
2 restraint, physical restraint or aversive interventions, A.K.'s parents were unaware
3 that their son was being physically and emotionally abused at school while he
4 attended TES.

5 79. The full extent and duration of all of the abuse suffered by A.K. is
6 currently unknown because, as a result of his disabilities, he is unable to verbally
7 report all that occurred to him while he was in the care of Defendants.

8 80. Prior to his time in the classroom with Defendants BUTUYAN and
9 ESCAMILLA, A.K. enjoyed going to school, did well and did not exhibit behavior
10 issues.

11 81. Because CCSD intentionally concealed the abuse from A.K.'s family
12 during the school year, they have been devastated by the delay in learning that
13 BUTUYAN physically, emotionally, and verbally abused A.K., and regularly struck
14 A.K. with a large wooden yard stick.

15 82. Since leaving BUTUYAN and ESCAMILLA's classroom at TES, A.K.
16 continues to experience extreme anxiety, stress and fear as a result of the
17 misconduct of the Defendants and by their failures to act.

18 83. The severe abuse of A.K. as herein alleged, has and will continue to
19 cause permanent psychological harm.

20 84. On information and belief, A.K. will continue to require ongoing
21 psychological treatment to address the trauma he has experienced.

22 85. As a proximate result of the actions of BUTUYAN and/or
23 ESCAMILLA, A.K. has suffered unjustifiable physical pain and mental suffering.

24 86. At the relevant times hereto, A.K.'s behavior did not rise to the level of
25 an emergency or a serious or imminent threat of harm to himself or others which
26 would permit using emergency physical force against him or restraining his freedom
27 of movement.
28

1 87. KARR does not seek any services or remedies available under the
2 IDEA for A.K.

3 ***Effect of the Abuse on Minor Plaintiff K.G.***

4 88. On information and belief, K.G. routinely experienced physical and
5 emotional abuse by BUTUYAN and ESCAMILLA and their misconduct exacerbated
6 and escalated behaviors that manifested from K.G.'s disability.

7 89. ESCAMILLA would routinely remove other students from the class,
8 leaving BUTUYAN alone with K.G.. On information and belief, BUTUYAN
9 physically, emotionally, and verbally abused K.G. while he was alone with her.

10 90. Prior to the time that K.G. was in BUTUYAN's and ESCAMILLA's
11 classroom, K.G. loved going to school, would get up early each day excited to go to
12 school, and did not exhibit behavior issues at school.

13 91. During the time K.G. was in BUTUYAN's and ESCAMILLA's
14 classroom, she began protesting to her mother daily, telling her "no school" and
15 crying when her mother told her she had to go to school. K.G. also began routinely
16 coming home from school sad, quiet and withdrawn and would no longer want to
17 play with her brothers after school. Instead, K.G. would only want to go to her room
18 by herself and sleep. K.G. also significantly regressed in her language skills during
19 her time in the class. Whereas K.G. had previously used words or short phrases to
20 express her needs to her parents, she began only pointing to things without
21 speaking at all.

22 92. All of these behaviors were out of the ordinary for K.G. and her parents
23 became concerned, but they were unaware of the misconduct of the Defendants
24 which was concealed from them and, because of her disabilities, K.G. was unable to
25 verbally communicate the full extent of the cause of her distress to her parents at
26 the time it was occurring.

27 93. Because HOLDSWORTH and MECHEM never provided K.G.'s parents
28

1 with a CCF-624 form documenting the use of corporal punishment, mechanical
2 restraint, physical restraint or aversive interventions, K.G.'s parents were unaware
3 that their daughter was being physically and emotionally abused at school while
4 she attended TES.

5 94. The full extent and duration of all of the abuse suffered by K.G. is
6 currently unknown because, as a result of her disabilities, she is unable to verbally
7 report all that occurred to her while he was in the care of Defendants.

8 95. Because CCSD intentionally concealed the abuse from K.G.'s family
9 during the school year, they have been devastated by the delay in learning that
10 BUTUYAN physically, emotionally, and verbally abused K.G., and regularly struck
11 K.G. with a large wooden yard stick.

12 96. Since leaving BUTUYAN and ESCAMILLA's classroom at TES, K.G.
13 continues to experience extreme anxiety, stress and fear as a result of the
14 misconduct of the Defendants and by their failures to act.

15 97. The severe abuse of K.G. as herein alleged, has and will continue to
16 cause permanent psychological harm.

17 98. On information and belief, K.G. will continue to require ongoing
18 psychological treatment to address the trauma she has experienced.

19 99. As a proximate result of the actions of BUTUYAN and/or
20 ESCAMILLA, K.G. has suffered unjustifiable physical pain and mental suffering.

21 100. At the relevant times hereto, K.G.'s behavior did not rise to the level of
22 an emergency or a serious or imminent threat of harm to herself or others which
23 would permit using emergency physical force against her or restraining her freedom
24 of movement.

25 101. GARCIA does not seek any services or remedies available under the
26 IDEA for K.G.

27
28 ///

1 **CCSD’s RESPONSE TO REPORTS OF BUTUYAN’s and ESCAMILLA’s**
2 **MISTREATMENT OF DISABLED STUDENTS**

3 102. On information and belief, CCSD has the *de facto* policy and practice of
4 concealing, failing to document or report and intentionally under-reporting
5 incidents in which CCSD employees violate the rights of special education students.
6 Such incidents are often concealed from the DOE, the parents of student victims,
7 and the District Attorney (“DA”). On information and belief, this district-wide
8 policy and practice is longstanding, ongoing, and amounts to ratification of both the
9 perpetrators’ abuse and the efforts by administrators to conceal the severity and
10 frequency of the abuse from the DOE, parents and the DA. On information and
11 belief, CCSD does not investigate or discipline administrators involved in
12 concealing, failing to report and under-reporting incidents in which CCSD
13 employees violate the rights of disabled students. The effect of this policy and
14 practice, and the ratification of misconduct giving rise to violations of disabled
15 students’ rights, perpetuates, condones and allows further violations of disabled
16 students’ rights to continue without remedial measures to decrease or prevent
17 future violations.

18 103. On information and belief, after CCSD was on notice of BUTUYAN’s
19 and/or ESCAMILLA’s use of prohibited aversive interventions and corporal
20 punishment and their violations of disabled students’ rights. CCSD failed to
21 document the incidents on CCF-624 forms as required, failed to notify the parents of
22 victim students, failed to make the required violation of rights determinations,
23 failed to discipline or retrain BUTUYAN and ESCAMILLA, failed to notify the DOE
24 as required and failed to discipline TES administrators HOLDSWORTH, MECHEM
25 for their mishandling of the reported incidents.

26 104. On information and belief, HOLDSWORTH, MECHEM and other
27 District administrators and employees were aware of BUTUYAN’s and/or
28

1 ESCAMILLA's emotional and physical abuse and use of corporal punishment and
2 prohibited aversive interventions with K.H., A.K., K.G., and other disabled students
3 and knew that the rights of disabled students including K.H., A.K., K.G. and other
4 disabled students had been violated, but intentionally concealed the violations from
5 the DOE, failed to establish a Corrective Action Plan to re-train BUTUYAN or
6 ESCAMILLA and failed to discipline them to ensure future violations would not
7 occur.

8 **Allegations Specific to CCSD Policies and Practices**

9 105. On information and belief, CCSD had multiple "written" policies,
10 regulations, rules, and practices which contributed to the incidents giving rise to
11 the constitutional violations in this case. Multiple persistent and widespread
12 customs and practices of CCSD personnel also contributed. Some of the entrenched
13 customs and practices of CCSD at issue consist of employees' persistent failure to
14 follow written policies, regulations, rules, or laws, as well as employees who go
15 through the motions of complying with the letter of written policies, regulations,
16 rules, or laws while violating the substantive intent of the relevant directives.
17 These customs and practices were so widespread as to be the functional equivalent
18 of CCSD policy.

19 **CCSD's Practices Ratify Unconstitutional Use of Force**

20 **Against Disabled Students**

21 106. On information and belief, CCSD fosters a culture of concealment of
22 abuse of disabled students through the practices of each division of CCSD with a
23 responsibility to document, report, investigate, retrain, and discipline employees
24 who physically and emotionally abuse disabled students. The top down
25 concealment of abuse from the DOE and victims' parents is ratified by CCSD
26 through their failure to investigate, retrain or discipline employees and
27 administrators who are known to the District to have concealed abuse and
28

1 violations of disabled students' rights. On information and belief, the failure to
2 investigate, retrain or discipline administrators and employees who conceal abuse
3 of special needs students creates an environment that leads to the use of
4 unconstitutional force and seizure by CCSD employees against special needs
5 students, including K.H., A.K., K.G., and others.

6 107. CCSD's Office of Compliance and Management ("OCM") acts as the
7 Superintendent's designee to comply with the statutory requirement to report all
8 incidents where employee misconduct violates the rights of a special needs student
9 to the DOE and to establish a Corrective Action Plan ("CAP") to retrain the
10 offending employee(s) so future violations do not occur.

11 108. On information and belief, practices within OCM foster a culture of
12 deliberate indifference to the abuse of disabled students and lead directly to the
13 constitutional violations complained of in Plaintiffs' complaint. These practices
14 amount to ratification of the abuser's misconduct and of the administrators'
15 concealment of the misconduct from parents and the state DOE, allowing CCSD's
16 *de facto* policies to flourish.

17
18 109. On information and belief, BUTUYAN's and/or ESCAMILLA's
19 emotional and physical mistreatment of K.H., A.K., and K.G. violated their rights
20 and OCM was required to document, report and investigate each of the incidents
21 fully and completely but they failed to do so.

22
23 110. On information and belief, OCM's acquiescence in the pattern of
24 unconstitutional misconduct, including its failure to investigate credible reports of
25 violations of disabled students' rights and their failure to comply with the District's
26 statutory obligation to report all violations and retrain offending employees to
27 prevent future violations, constitutes ratification of the violations of the rights of
28 K.H., A.K., and K.G.

1 111. On information and belief, BUTUYAN and/or ESCAMILLA were
2 acting in accordance with the policy of allowing and, in effect, condoning and
3 encouraging the unconstitutional use of force on disabled students at the time they
4 abused K.H., A.K., K.G., and other students. The failure of OCM to establish a
5 CAP to retrain BUTUYAN or ESCAMILLA to prevent further abuse of students
6 ratified the misconduct and allowed additional abuse to occur.

7 112. On information and belief, HOLDSWORTH, MECHEM and OCM
8 employees were each acting pursuant to a district wide policy and practice that
9 ratified concealment of unconstitutional use of force by District staff on disabled
10 students. On information and belief, this policy was the moving force behind the
11 unconstitutional violations of K.H., A.K., and K.G.'s rights by BUTUYAN and/or
12 ESCAMILLA.

13 113. CCSD's Employee Management Relations Department ("EMR") is the
14 division of CCSD responsible to receive, track and respond to reports of employee
15 misconduct and to determine appropriate discipline. On information and belief,
16 CCSD has no policy requiring administrators who learn that a district employee
17 has physically mistreated a disabled student to report the incident to EMR.

18 114. On information and belief, CCSD has no policy that requires EMR to
19 report to OCM incidents it learns of where a CCSD employee has used corporal
20 punishment, employed a prohibited aversive intervention, or otherwise physically
21 mistreated a disabled student.

22 115. On information and belief, the failure of CCSD to have policies
23 requiring all incidents of physical abuse of disabled students by employees to be
24 reported to both EMR and OCM creates a practice where known abuse of disabled
25 students by staff is under-reported, known violations of disabled students' rights
26 are concealed from the DOE and offending employees are not retrained or
27 disciplined, all of which leads to continued abuse and violations.
28

1 116. On information and belief, CCSD Police Department (CCSDPD) has a
2 practice when investigating reports of abuse/neglect or battery of a disabled
3 student by a CCSD employee to conclude that no crime has been committed
4 without evidence of “malicious intent to hurt” the victim. Under Nevada criminal
5 statutes, neither the crime of battery nor abuse/neglect require the elements of
6 malice or “intent to hurt” for the crimes to have been committed. (NRS 200.481 and
7 200.508).

8 117. On information and belief, CCSDPD has a custom and practice of
9 failing to respond to, adequately investigate or refer cases of battery of special
10 needs students by staff for prosecution.

11 118. On information and belief, such CCSDPD practices result in under
12 reporting of incidents where CCSD employees commit abuse/neglect or battery
13 against special needs students.

14 **CCSD Policies Prevent Accurate Record Keeping and Appropriate**
15 **District Response**

16 119. On information and belief, CCSD does not track all reports of physical
17 and emotional abuse of special education students by CCSD staff and has no
18 centralized location where such information is maintained or shared among the
19 District’s divisions. This practice prevents analysis of the causes of such
20 misconduct, prevents patterns of abuse from being identified, prevents effective
21 discipline of employees that have been reported to have physically abused disabled
22 students and increases the likelihood that perpetrators will continue to abuse and
23 victimize vulnerable disabled students in the future.

24 120. CCSD Policy 1213 and Regulation 1213.1 require that complaints be
25 submitted, investigated, and resolved at the lowest levels in the “chain of
26 command,” and state that any concerns received by board members or the District’s
27 superintendent will not be considered, but instead will be passed on to appropriate
28

1 person lower in the command structure for handling. These policies, and the
2 manner in which they are implemented, create a decentralized system of obtaining,
3 investigating, and resolving complaints. As a result, the individuals at the “top” of
4 the system prevent themselves from hearing complaints, or knowing whether they
5 were properly dealt with, thereby allowing themselves to have “plausible
6 deniability” as to the breadth of problems within the system. Furthermore, by
7 insisting that complaints of abuse by teachers be handled by the principal of the
8 school, CCSD creates a clear conflict of interest, in which the person investigating
9 and responding to complaints has strong motivation to minimize or conceal
10 misconduct by teachers under their supervision, in order to make their own job
11 easier, by not losing staff to suspension or termination, and out of concern that the
12 situation might reflect negatively upon themselves, resulting in poor performance
13 evaluations and financial consequences.

14 **CCSD Regulations Prohibit Anonymous Reporting**

15 121. CCSD Regulation R-5152 prohibits employees of CCSD from making
16 reports to authorities regarding suspected child abuse without also informing
17 school administrators. On information and belief, policies such as these have a
18 chilling effect on the reporting of abusive conduct committed by employees because
19 by making a report, an employee places himself or herself at risk of retaliation and
20 peer backlash. The Nevada State Legislature itself recognized the importance of
21 the availability of the option of reporting anonymously, in its passage of the Safe
22 and Respectful Learning Environment legislation, when it stated: “The ability to
23 anonymously report information about dangerous, violent or unlawful activities, or
24 the threat of such activities [...] is critical in preventing, responding to and
25 recovering from such activities.” NRS 388.1454.
26

27 **CCSD’s Practices Discourage Reporting of Abuse by Employees**

28 122. On information and belief, CCSD supervisory personnel have a

1 permanent and well-settled custom and practice of discouraging employees from
2 reporting abuse of students by fellow employees. On information and belief, this
3 custom and practice is enforced by displaying antagonism toward employees when
4 they do report; by failing to act on the reports, thereby creating a sense of
5 hopelessness, helplessness and demoralization in the reporting employees; and by
6 tolerating the peer approbation displayed against employees who do report.

7 **CCSD Policies Threaten Legal Consequences for Employees Who Disclose**

8 **Abuse to Parents or Media**

9 123. CCSD Policy 1213 and CCSD Regulation 1213.1 require that any
10 disciplinary action regarding an employee, and any concerns or complaints made
11 about an employee be kept confidential. They also warn employees of the
12 possibility that they could expose themselves to litigation by speaking about
13 concerns. No parallel warning regarding the potential legal consequences of silence
14 or concealment are included. On information and belief, these policies, and the
15 manner in which they are implemented, discourage employees from reporting
16 abusive conduct of fellow employees against students, and explicitly make it the
17 policy of CCSD to conceal from parents of students those instances when their
18 children's teachers have engaged in abusive conduct toward students, even when
19 that conduct has been confirmed. In its communications with the public and with
20 individual parents, it is the policy of CCSD to venerate the privacy of abusive and
21 allegedly abusive employees above all other concerns, including its obligations for
22 the safety of its students, and its obligations as a public agency to provide
23 information regarding its function to members of the public and elected officials so
24 that proper oversight can be exercised.

25
26 **CCSD's Practices Fail to Ensure Proper Training**

27 124. On information and belief, CCSD has a permanent and well-settled
28 custom and practice of failing to ensure that special education teachers and their

1 classroom assistants are properly qualified and trained to respond appropriately to
2 the behaviors of students with disabilities. On information and belief, current and
3 former employees of CCSD received little to no training regarding the appropriate
4 handling of behavioral issues related to disabilities.

5 125. On information and belief, CCSD has a permanent and well-settled
6 custom and practice of failing to report to the DOE known incidents of physical and
7 emotional abuse that have violated the rights of disabled students and failing to
8 establish required CAPs to retrain offending employees so that future violations do
9 not reoccur.

10 126. On information and belief, there is a long history of CCSD teachers
11 and other employees abusing disabled students who are unable to communicate
12 what is happening to them, but CCSD has failed to take steps to address the
13 problem, to improve the means to prevent abuse or to take steps to ensure that
14 CCSD employees who engage such abuse are retrained, disciplined and/or removed
15 from the District to ensure students' safety.

16
17 **FIRST CLAIM FOR RELIEF**

18 **Violation of Constitutional Rights, 42 U.S.C. § 1983**

19 **Plaintiffs vs. BUTUYAN, ESCAMILLA, HOLDSWORTH, MECHEM and**
20 **CCSD**

21 127. Plaintiffs refer to, and incorporate by reference, all of the preceding
22 paragraphs as though fully set forth herein.

23 128. Plaintiffs, and each of them, had a constitutional right under the
24 Fourth Amendment to the United States Constitution to be free from unreasonable
25 seizures and to be secure in his or her person and to maintain his or her bodily
26 integrity against unreasonable assaults on his or her person.

27 129. On information and belief, BUTUYAN and/or ESCAMILLA violated
28 the rights of Plaintiffs, and each of them, under the Fourth Amendment and
Fourteenth Amendment by using unjustified and unreasonable force against him

1 or her, and/or by failing to prevent it.

2 130. On information and belief, BUTUYAN's and/or ESCAMILLA's conduct
3 was objectively unreasonable under the circumstances and in light of the
4 educational objectives Plaintiffs were trying to achieve.

5 131. On information and belief, BUTUYAN's and/or ESCAMILLA's conduct
6 in physically seizing Plaintiffs unlawfully subjected them to excessive,
7 unreasonable, and unnecessary physical force.

8 132. On information and belief, HOLDSWORTH and MECHEM violated
9 the rights of Plaintiffs, and each of them, under the Fourth and Fourteenth
10 Amendments to the U.S. Constitution by actions, including but not limited to,
11 acting with deliberate indifference to the risk of harm to Plaintiffs from BUTUYAN
12 and/or ESCAMILLA.

13 133. On information and belief, Plaintiffs allege Defendant HOLDSWORTH
14 and MECHEM personally participated in the deprivation of their constitutional
15 rights by their failure to act in response to allegations of serious child abuse, and
16 their deliberate indifference to the fact that abuse was occurring.

17 134. On information and belief, HOLDSWORTH and MECHEM personally
18 participated in the deprivation of constitutional rights of Plaintiffs, and each of
19 them, by their failure to act in response to prior reports of ongoing abuse of
20 disabled students by BUTUYAN and/or ESCAMILLA.

21 135. On information and belief, the actions of BUTUYAN, ESCAMILLA,
22 HOLDSWORTH, MECHEM and other CCSD administrators and employees, as
23 described herein, were objectively unreasonable, willful and wanton, in light of the
24 facts and circumstances.

25 136. On information and belief, CCSD violated the rights of Plaintiffs, and
26 each of them, under the Fourth Amendment by its failure to maintain adequate
27 policies or conduct adequate training to prevent violations of the constitutional
28

1 rights of disabled students. On information and belief, CCSD had multiple
2 “written” policies, regulations, rules, and practices which contributed to the
3 occurrence of the incidents which gave rise to the constitutional violations in this
4 case. Multiple persistent and widespread customs and practices of CCSD gave rise
5 to the constitutional violations alleged herein. Violations such as the ones inflicted
6 on Plaintiffs were an obvious risk of the procedures adopted by CCSD and its
7 policymakers. CCSD’s acts and omissions constitute deliberate indifference.

8 137. On information and belief, CCSD also violated the rights of Plaintiffs,
9 and each of them, under the Fourth Amendment when it displayed deliberate
10 indifference to the demonstrated propensity of BUTUYAN and/or ESCAMILLA to
11 violate the constitutional rights of citizens in the manner that Plaintiffs’ rights
12 were violated.

13 138. On information and belief, as a proximate result of the violations
14 alleged hereinabove, Plaintiffs have suffered damages, including special and
15 general damages, according to proof.

16 **SECOND CLAIM FOR RELIEF**
17 **Discrimination in Violation of the Americans With Disabilities Act, 42**
18 **USC § 12101**
19 **Plaintiffs v. CCSD**

20 139. Plaintiffs refer to, and incorporate by reference, all of the preceding
21 paragraphs as though fully set forth herein.

22 140. Effective January 26, 1992, Title II of the Americans with Disabilities
23 Act of 1990 entitled K.H., A.K., and K.G. to the protections of the "Public Services"
24 provision. Title II, Subpart A prohibits discrimination by any "public entity,"
25 including any state or local government, as defined by 42 USC § 12131, section 201
26 of the ADA.

27 141. Pursuant to 42 USC §12132, Section 202 of Title II, no qualified
28 individual with a disability shall, by reason of such disability, be excluded from

1 participation in or be denied the benefits of the services, programs or activities of a
2 public entity, or be subjected to discrimination by any such entity. Plaintiffs were
3 at all times relevant herein qualified individuals with a disability as therein
4 defined.

5 142. On information and belief, by subjecting Plaintiffs to ongoing physical,
6 verbal and psychological abuse, Plaintiffs were denied the benefits of the services,
7 programs, or activities of a public entity on the basis of their disability. Non-
8 disabled students were not subjected to similar acts of abuse.

9 143. On information and belief, CCSO has failed in its responsibilities
10 under Title II to provide its services, programs and activities in a full and equal
11 manner to disabled persons as described hereinabove, including failing to ensure
12 that educational services are provided on an equal basis to children with
13 disabilities and free of hostility toward their disability.

14 144. On information and belief, CCSO has further failed in its
15 responsibilities under Title II to provide services, programs and activities in a full
16 and equal manner to disabled persons as described hereinabove by subjecting
17 Plaintiffs to a hostile educational environment.

18 145. On information and belief, BUTUYAN and/or ESCAMILLA engaged in
19 physical, emotional, and verbal abuse as herein alleged, which escalated the
20 severity and frequency of Plaintiffs' behaviors, and said Defendants were
21 deliberately indifferent to the risk that their actions would deprive Plaintiffs of
22 equal and meaningful access to education.

23 146. On information and belief, HOLDSWORTH, MECHEM and other
24 District employees were deliberately indifferent to complaints of abuse committed
25 by BUTUYAN and/or ESCAMILLA because the victims of their abuse, including
26 Plaintiffs, were persons with a disability. Furthermore, HOLDSWORTH and
27 MECHEM were informed by others that disabled students, including Plaintiffs,
28

1 were abused by BUTUYAN and/or ESCAMILLA but, on information and belief,
2 despite this knowledge HOLDSWORTH, MECHEM and other CCSD
3 administrators and employees did nothing to stop the ongoing abuse, and in fact
4 actively misled parents of students placed in BUTUYAN' class, including Plaintiffs'
5 parents, as to the competency of BUTUYAN and ESCAMILLA and as to Plaintiffs'
6 experiences in BUTUYAN's and ESCAMILLA's classroom.

7 147. On information and belief, the deliberate indifference by employees of
8 CCSD gives rise to respondeat superior liability of CCSD.

9 148. As a direct and proximate result of CCSD's failure to comply with their
10 duty under Title II, Plaintiffs have suffered damages as described herein.

11 **THIRD CLAIM FOR RELIEF**
12 **Violation of the Rehabilitation Act of 1973, 29 U.S.C. § 794**
13 **Plaintiffs vs. CCSD**

14 149. Plaintiffs incorporate and reallege by reference all the foregoing
15 paragraphs as if they were fully set forth herein.

16 150. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C.
17 794 ("Section 504"), and the regulations promulgated thereunder prohibit
18 discrimination against persons with disabilities. Section 504 prohibits the
19 exclusion from the participation in, or being denied the benefits of, or being
20 subjected to discrimination under, any program or activity receiving Federal
21 financial assistance.

22 151. Plaintiffs are informed and believe and thereon allege that CCSD is
23 and has been at all relevant times the recipient of federal financial assistance, and
24 that part of that financial assistance has been used to fund the operations,
25 construction and/or maintenance of the specific public facilities described herein
26 and the activities that take place therein.

27 152. On information and belief, by subjecting Plaintiffs to ongoing physical,
28 verbal and psychological abuse, Plaintiffs were denied the benefit of their

1 attendance at CCSD and subjected to discrimination. Non-disabled children were
2 not subjected to similar acts of abuse.

3 153. On information and belief, by its actions or inactions in denying equal
4 access to educational services and by subjecting Plaintiffs to a hostile educational
5 environment, CCSD has violated their rights under § 504 of the Rehabilitation Act
6 of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder.

7 154. On information and belief, BUTUYAN and/or ESCAMILLA engaged in
8 physical, emotional, and verbal abuse as herein alleged, and said Defendants were
9 deliberately indifferent to the risk that their actions would deprive Plaintiffs of
10 equal and meaningful access to education.

11 155. On information and belief, CCSD is vicariously liable for the actions or
12 inactions of its employees. HOLDSWORTH, MECHEM and other CCSD
13 administrators and employees were deliberately indifferent to the abuse committed
14 by BUTUYAN and/or ESCAMILLA. They had actual knowledge of the ongoing
15 abuse and knew that BUTUYAN and/or ESCAMILLA were likely to continue
16 abusing students including Plaintiffs, but failed to act upon that knowledge.

17 156. On information and belief, this deliberate indifference by employees of
18 CCSD gives rise to respondeat superior liability of CCSD.

19 157. As a direct and proximate result of CCSD's failure to comply with their
20 duty under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and the
21 regulations promulgated thereunder, Plaintiffs have suffered damages as described
22 herein.
23

24 **FOURTH CLAIM FOR RELIEF**

25 **Battery**

26 **Plaintiffs vs. Defendants BUTUYAN, ESCAMILLA and CCSD**

27 158. Plaintiffs incorporate and reallege by reference all the foregoing
28 paragraphs, as if they were fully set forth herein.

1 159. On information and belief, the use of force employed by BUTUYAN
2 and/or ESCAMILLA against Plaintiffs, and each of them, as alleged herein was
3 unnecessary to carry out any reasonable purpose and/or exceeded the force
4 reasonably necessary under the circumstances.

5 160. On information and belief, the use of force, as alleged herein, by
6 BUTUYAN and/or ESCAMILLA against Plaintiffs, and each of them, constituted a
7 battery.

8 161. On information and belief, the actions of BUTUYAN and/or
9 ESCAMILLA as alleged herein all occurred in or around the classroom and on the
10 public school campus of TES, to which BUTUYAN and ESCAMILLA were assigned
11 by CCSD to work, and during regular workday hours while they were charged with
12 the care and supervision of Plaintiffs.

13 162. On information and belief, the actions of BUTUYAN and/or
14 ESCAMILLA as alleged herein were committed in the course and scope of the tasks
15 assigned to them by CCSD.

16 163. On information and belief, all of the actions of BUTUYAN and/or
17 ESCAMILLA as alleged herein were reasonably foreseeable to CCSD considering
18 the nature and scope of their employment with CCSD, in that it was foreseeable
19 that in the course and scope of carrying out their duties BUTUYAN and
20 ESCAMILLA would have to exercise control over Plaintiffs and other students in
21 the class.

22 164. On information and belief, the actions of BUTUYAN and/or
23 ESCAMILLA as alleged herein were also reasonably foreseeable to CCSD because
24 BUTUYAN and ESCAMILLA were permitted to continue in their duties after their
25 propensity for committing such acts of battery became known to their supervisors
26 at CCSD.

27
28 ///

1 165. CCSD is vicariously liable for BUTUYAN's and/or ESCAMILLA's acts
2 of battery pursuant to Nev. Rev. Stat. §41.745(1).

3 166. On information and belief, as a proximate result of BUTUYAN's and/or
4 ESCAMILLA's battery, Plaintiffs have suffered damages as alleged herein.

5 **FIFTH CLAIM FOR RELIEF**

6 **Criminal Violations Motivated by Characteristics of Victim, NRS 41.690**
7 **Plaintiffs vs. Defendant BUTUYAN and ESCAMILLA**

8 167. Plaintiffs incorporate and reallege by reference all the foregoing
9 paragraphs, as if they were fully set forth herein.

10 168. On information and belief, the use of force, as alleged herein, by
11 BUTUYAN and/or ESCAMILLA against Plaintiffs, and each of them, constituted
12 willful violations of NRS §§ 200.400 (battery) and 200.508 (abuse/neglect).

13 169. On information and belief, BUTUYAN's and/or ESCAMILLA's willful
14 violations of these provisions as they relate to Plaintiffs were motivated by the
15 actual or perceived disabilities of said Plaintiffs.

16 170. As a direct and proximate result, Plaintiffs have suffered damages as
17 alleged herein.

18 **SIXTH CLAIM FOR RELIEF**

19 **Intentional Infliction of Emotional Distress**

20 **Plaintiffs vs.**

21 **Defendants BUTUYAN, ESCAMILLA, HOLDSWORTH, MECHEM and**
22 **CCSD**

23 171. Plaintiffs incorporate and reallege by reference all the foregoing
24 paragraphs, as if they were fully set forth herein.

25 172. On information and belief, in subjecting Plaintiffs to physical, verbal
26 and psychological abuse as alleged herein, BUTUYAN and/or ESCAMILLA
27 engaged in extreme and outrageous conduct beyond the bounds tolerated in a
28 decent society. In particular, BUTUYAN and ESCAMILLA were adults and the
teacher and classroom aide of Plaintiffs, who were young children with disabilities.

1 As a result, BUTUYAN and ESCAMILLA were in a position of authority.
2 Plaintiffs were particularly vulnerable because of their ages, disabilities and their
3 inability to functionally communicate to their parents what was being done to them
4 at school. BUTUYAN and ESCAMILLA knew Plaintiffs were particularly
5 vulnerable and knew their abuse of Plaintiffs would likely result in harm due to
6 their disabilities.

7 173. On information and belief, in committing the violent acts alleged
8 herein, BUTUYAN and/or ESCAMILLA acted with the intent to cause Plaintiffs,
9 and each of them, extreme emotional distress, or at a minimum, acted with a
10 reckless disregard as to whether such actions would cause such extreme emotional
11 distress.

12 174. On information and belief, HOLDSWORTH and MECHEM were
13 aware, along with other District employees, that disabled students, including
14 Plaintiffs, were being abused. HOLDSWORTH and MECHEM had actual
15 knowledge of violent acts committed against Plaintiffs by BUTUYAN and/or
16 ESCAMILLA, but failed to document, investigate, report to the DOE, or establish a
17 CAP to retrain or to discipline either BUTUYAN or ESCAMILLA so future abuse
18 would not reoccur and actively concealed the abuse from the both the DOE and
19 Plaintiffs' parents and the parents of other minor victims. Such misconduct by
20 school district administrators charged with the care of disabled students is
21 outrageous.

22 175. On information and belief, HOLDSWORTH, MECHEM and other
23 CCSD administrators and employees took advantage of Plaintiffs' disabilities by
24 attempting to cover up the abuse, knowing full well Plaintiffs would be unable to
25 functionally communicate to their parents that they were routinely subjected to
26 physical, verbal and psychological abuse by teachers. Because Defendants
27 concealed the abuse from Plaintiffs' parents, Plaintiffs' families were unable to
28

1 timely and appropriately respond to the abuse of their children at the time they
2 were being abused.

3 176. Defendants' conduct in this regard was outrageous and Defendants'
4 acted either with the intent to inflict emotional distress or, at a minimum, acted
5 with a reckless disregard as to whether such actions would cause such extreme
6 emotional distress.

7 177. CCSD is liable for injuries proximately caused by the acts or omissions
8 of its employees acting within the scope of their employments. See NRS 41.031,
9 NRS 41.038.

10 178. As a direct and proximate result of each Defendants' intentional acts,
11 Plaintiffs have incurred damages as alleged herein.

12 **SEVENTH CLAIM FOR RELIEF**

13 **Negligence**

14 **Plaintiffs vs.**

15 **Defendants BUTUYAN, ESCAMILLA, HOLDSWORTH, MECHEM and CCSD**

16 179. Plaintiffs incorporate and reallege by reference all the foregoing
17 paragraphs, as if they were fully set forth herein.

18 180. Defendants, and each of them, owed a duty to exercise reasonable care
19 in their interactions with Plaintiffs.

20 181. A special relationship existed between each of Defendants and
21 Plaintiffs, which arose from the mandatory character of school attendance and the
22 comprehensive control over students exercised by school personnel. CCSD owed a
23 duty to exercise reasonable care to prevent harm to Plaintiffs at the hands of
24 anyone, including BUTUYAN and ESCAMILLA, negligently or intentionally.

25 182. Furthermore, on information and belief, upon learning that
26 BUTUYAN and/or ESCAMILLA had been suspected of using excessive force and
27 physically mistreating disabled students, the duty to exercise reasonable care to
28 prevent further harm to Plaintiffs included a duty to disclose the suspected abuse
to Plaintiffs' parents.

1 183. Teachers, instructional aides, and administrative officers of the CCSD
2 are mandatory reporters as defined by NRS 432B.220. As such, they were under a
3 mandatory duty to report to a law enforcement agency or to an agency which
4 provides child welfare services whenever any of them, in his or her professional or
5 occupational capacity, knew or had reasonable cause to believe that had a child had
6 been the victim of child abuse or neglect. A mandatory reporter is required to
7 report suspected child abuse as soon as reasonably practicable, but not later than
8 24 hours after the person knows or has reasonable cause to believe that the child
9 has been abused or neglected.

10 184. On information and belief, Defendants, and each of them, breached
11 their duty to exercise reasonable care when interacting with Plaintiffs by
12 physically and emotionally abusing said them, thereby engaging in child abuse; by
13 failing to prevent harms to said Plaintiffs; by failing to train CCSD staff that they
14 are mandatory reporters under state law and/or that they were required to report
15 suspected child abuse immediately to the police as required by Nevada law; and/or
16 by failing to inform Plaintiffs' parents of the suspected child abuse when
17 Defendants first learned of it.

18 185. On information and belief, Defendants and each of them breached
19 their duty to exercise reasonable care when interacting with Plaintiffs by
20 physically and emotionally abusing said them and/or by failing to prevent the use
21 of a prohibited "Aversive Intervention" as defined in NRS 388.473, including but
22 not limited to the deprivation of necessities needed to sustain the health of
23 Plaintiffs. Defendants BUTUYAN's and/or ESCAMILLA's abuse of Plaintiffs, and
24 each of them, was known or should have been known to HOLDSWORTH,
25 MECHEM and other CCSD administrators and employees.

26 186. As a direct and proximate result of Defendants' negligence, Plaintiffs
27 have suffered damages as alleged herein.
28

EIGHTH CAUSE OF ACTION

Negligent Supervision

Plaintiffs vs.

Defendants HOLDSWORTH, MECHEM and CCSD

1
2
3
4 187. Plaintiffs incorporate and reallege by reference all the foregoing
5 paragraphs, as if they were fully set forth herein.

6 188. As school personnel, HOLDSWORTH, MECHEM and/or other CCSD
7 supervisory employees owed students under their supervision, including Plaintiffs,
8 a protective duty of care, which includes overseeing the educational environment
9 and the performance of BUTUYAN and ESCAMILLA and taking reasonable
10 measures to guard Plaintiffs against abuse from foreseeable sources, including
11 BUTUYAN and ESCAMILLA.

12 189. On information and belief, BUTUYAN and/or ESCAMILLA were unfit
13 to perform the work for which they were hired to do.

14 190. On information and belief, HOLDSWORTH, MECHEM and/or other
15 CCSD supervisory employees knew or should have known that BUTUYAN and/or
16 ESCAMILLA were abusing students at school either by personally observing the
17 abuse or by reports received from other school employees.

18
19 191. On information and belief, HOLDSWORTH, MECHEM and/or other
20 CCSD supervisory employees' negligence in supervising and retaining BUTUYAN
21 and ESCAMILLA was a substantial factor in causing harm to Plaintiffs.

22 192. CCSD is liable for injuries proximately caused by the acts or omissions
23 of its employees acting within the scope of their employments. See NRS 41.031,
24 NRS 41.038.

25 193. As a direct and proximate result of Defendants' negligent supervision
26 of BUTUYAN and ESCAMILLA, Plaintiffs have incurred damages as alleged
27 herein.
28

NINTH CAUSE OF ACTION

**Enhanced Damages for Injury or Loss Suffered by a
Vulnerable Person, NRS 41.1395
Plaintiffs vs. Defendants BUTUYAN and ESCAMILLA**

1
2
3
4 194. Plaintiffs incorporate and reallege by reference all the foregoing
5 paragraphs, as if they were fully set forth herein.

6 195. At all times relevant to this action, each Plaintiff was a vulnerable
7 person as that term is defined by NRS 41.1395.

8 196. In committing the violent acts alleged herein, BUTUYAN and/or
9 ESCAMILLA acted with recklessness, oppression, fraud and/or malice as that term
10 is defined by NRS 41.1395.

11 197. Accordingly, Plaintiffs, and each of them, are entitled to double
12 damages and attorneys' fees and costs against BUTUYAN and/or ESCAMILLA
13 under NRS 41.1395.

JURY DEMAND

14
15 Plaintiffs hereby demand that this matter be tried by a jury.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Compensatory damages to each Plaintiff for pain, suffering, injury, emotional distress and for medical expenses, past and future;
2. Punitive damages against Defendants BUTUYAN, ESCAMILLA, HOLDSWORTH and MECHEM as authorized under NRS 41.690;
3. Double Damages against each Defendant causing Plaintiffs' harms under NRS 41.1395;
4. Attorneys' fees and costs as authorized under 42 U.S.C. § 1983, 42 U.S.C. § 1210, 29 U.S.C. § 794, and NRS 41.690 and 41.1395;
5. Prejudgment interest and post judgment interest as allowed by law; and
6. Such other and further relief as the court deems just and proper.

Dated: February 9, 2021

PANISH SHEA & BOYLE LLP

By: /s/ Rahul Ravipudi
RAHUL RAVIPUDI
IAN SAMSON
ADAM ELLIS
Attorneys for Plaintiffs

To be admitted pro hac vice:

KHALDOUN A. BAGHDADI, SBN 190111
VALERIE N. ROSE, SBN 272566
WALKUP, MELODIA, KELLY & SCHOENBERGER
650 California Street, 26th Floor
San Francisco, CA 94108-265
Tel: 415-981-7210