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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 IVAN ROMERO, JESSICA
11 JUAREZ, and S.R., a minor by and
12 through his guardian ad litem IVAN
13 ROMERO,

14 Plaintiff,

15 VS.

16 PASCO SCHOOL DISTRICT,
17 RATREE ALBERS,
18 NORA FLORES,
19 TIM SULLIVAN,
20 SAUNDRA HILL,
21 JOHN AND JANE DOES 1-30

22 Defendants.

23 NO.

24 **COMPLAINT FOR
25 DAMAGES**

26 **[JURY DEMANDED]**

27 Plaintiffs IVAN ROMERO, JESSICA JUAREZ, and S.R., a minor by and
28 through his guardian ad litem IVAN ROMERO (hereinafter "S.R.") allege as
29 follows:

30 **I. THE PARTIES**

31 1. Plaintiff IVAN ROMERO ("Romero") is a resident of Franklin County,
32 WA. He brings this action on his own behalf and as guardian ad litem for his minor
33 son, S.R.
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1 2. Plaintiff Jessica Juarez (“Juarez”) is the mother of S.R. and a resident of
2 Franklin County, WA. She brings this action on her own behalf.
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4 3. Defendant RATREE ALBERS ("Albers") is a former teacher employed
5 by the Pasco School District ("PSD"). All actions alleged herein by Albers were
6 taken under color of state law and in the course and scope of her employment with
7 PSD.
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9 4. Defendant Nora Flores ("Flores") is the principal of Robert Frost
10 Elementary School in the PSD. All actions alleged herein by Flores were taken
11 under color of state law and in the scope of her employment.
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13 5. Defendant TIM SULLIVAN ("Sullivan") is an administrator with PSD.
14 All actions alleged herein by Sullivan were taken under color of state law and in
15 the scope of his employment with PSD.
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17 6. Defendant SAUNDRA HILL ("Hill") is the former Superintendent at
18 PSD. All actions alleged herein by Hill were taken under color of state law and in
19 the scope of her employment with PSD.
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21 7. PSD is a public entity duly incorporated and operating under Washington
22 State law as a school district and receiving local, state, and federal funds. PSD is a
23 public entity subject to 18 U.S.C. 1983, Title II of the Americans with Disabilities
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1 Act of 1990, the requirements of the Rehabilitation Act of 1973, the requirements
2 of Washington State law requiring full and equal access to public facilities
3 pursuant to RCW 46.60, WAC 162-26, and to all other legal requirements referred
4 to in this Complaint.
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6
7 8. In enacting Title II of the Americans with Disabilities Act Congress
8 validly abrogated state sovereign immunity, and thus PSD may be sued pursuant to
9 Title II. *Hason v. Med. Bd. Of California*, 279 F.3d 1167, 1170 (9th Cir. 2002).
10 PSD has accepted Federal Rehabilitation Act funds and by accepting Federal
11 Rehabilitation Act funds, PSD waived its sovereign immunity under the Eleventh
12 Amendment to claims brought pursuant to § 504 of the Rehabilitation Act of 1973.
13 *Pugliese v. Dillenberg*, 346 F.3d 937 (9th Cir. 2003).
14
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16
17 9. The true names and capacities of defendants sued as DOES 1 through 30
18 are unknown to Plaintiffs and Plaintiffs pray leave to allege the true
19 names and capacities when they are ascertained.
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21 10. At all relevant times set forth herein, all Defendants acted in concert and
22 as the agent of one another.
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1 **II. VENUE AND JURISDICTION**

2 11. Jurisdiction is proper in this court because this litigation arises under
3 federal law, namely 18 U.S.C. 1983, Title II of the Americans with Disabilities
4 Act, and § 504 of the Rehabilitation Act of 1973.
5

6 12. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2) as the
7 events that are the subject of this litigation took place entirely in Pasco, WA, which
8 is located in the Eastern District of Washington.
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10 **III. GENERAL ALLEGATIONS**

11 **A. Background**

12 13. Defendant Albers was a special education teacher in the PSD at all times
13 relevant to this claim. She taught at Robert Frost Elementary School where S.R.
14 was a student in her class.
15

16 14. Albers subjected the students in her classroom to ongoing verbal,
17 psychological and physical abuse. The students were disabled and some were
18 nonverbal.
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20 15. At least as early as February 2014, employees and/or agents of PSD,
21 including but not limited to the named defendants, observed or had knowledge of
22 information that students in Albers's classroom were being subjected to an
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1 unhealthy and dangerous educational environment which included verbal,
2 psychological and physical abuse.

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4 16. According to records provided by PSD, Albers had engaged in a pattern
5 of abuse against children in her class for an extended period of time. The abuse
6 included, but was not limited to, yelling at children, hitting children,
7 psychologically tormenting children, and pinning children in chairs.

8
9 17. At least as early as February 25, 2014, the PSD was aware that Albers
10 was abusing students. The situation was so serious that on February 25, 2014 PSD
11 administrators placed Albers on administrative leave.

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13 18. However, approximately 10 days later, PSD allowed Albers to return to
14 class. As a mandated reporter, PSD had a duty to report the abuse to law
15 enforcement or DSHS under RCW 26.44.030. However, there is no evidence that
16 such a report was made.

17
18 19. PSD and its' employees and/or agents had the obligation to protect the
19 children in her care. Instead they concealed the abuse from law enforcement and
20 parents, going so far as to ignore their statutory duty to report the abuse to
21 authorities under RCW 26.44.030.
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1 20. PSD's training of its employees was woefully inadequate. For instance,
2 PSD trained its staff to report suspected abuse internally rather than to authorities,
3 as required by RCW 26.44.030.
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5 21. PSD's supervision of the special education program was also inadequate.
6 After Albers had abused children in her care, but before she abused S.R., PSD
7 allowed Albers back into her classroom, where S.R. was a student, without any
8 additional training or professional counseling.
9

10 22. Policymakers of PSD, including but not limited to the individually
11 named defendants, were aware that Albers was physically, psychologically and
12 verbally abusive towards her special education students. Defendants failed to take
13 adequate steps to protect children, including S.R., from Albers. In fact, defendants
14 failed to comply with state law in their supervision of Albers.
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17 23. The failure by PSD and the individual defendants to take proper steps in
18 response to reports of abuse by Albers caused other employees to conclude that
19 there was no point in reporting future incidents of abuse. Some of the aides and
20 para-professionals in the classroom were afraid to report Albers's abusive conduct
21 as they were aware that Albers was close friends with Robert Frost Elementary
22 School Principal Norma Flores. Flores had not acted on complaints about Albers
23 that some of the aides and para-professionals in Albers classroom had made before.
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B. Allegations Specific To S.R.

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2 24. S.R. is a 9-year-old boy (2/27/2007) who has been medically diagnosed
3 with autism and ADHD.
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5 25. S.R. started off the 2013 school year as a first-grader in the individual
6 education program or "IEP program" at Captain Gray Elementary.
7

8 26. In September of 2013 Ms. Juarez, S.R.'s mother, attended a conference
9 with the principal of Captain Gray and Lisa Upton, the autism director. They told
10 Juarez they were transferring S.R. and 3 other students (along with a para-
11 educator) to Robert Frost Elementary School.
12

13 27. S.R. was placed in Albers's class. Shortly after the transfer, Juarez and
14 Romero noticed changes in S.R. S.R. had become more aggressive and combative
15 with them, a stark change from his normal demeanor.
16

17 28. After S.R. had been transferred to Albers's class, he would tell Juarez
18 almost every morning, "no school" and "no Ratre." Juarez noticed S.R. becoming
19 increasingly aggressive with her as well as his younger sister.
20

21 29. Notes from S.R.'s treatment provider documents the fact that Juarez was
22 reporting to Michelle Crawford, ARNP, that S.R.'s behavior had dramatically
23 changed. Juarez had also noted bruising on S.R.'s legs.
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1 30. Juarez also noted that there appeared to be a constant turnover of
2 teacher's aides in Albers's class.

3
4 31. Juarez became acquainted with a number of teacher's aides and para-
5 educators at PSD. "Diana" was a teacher's aide that had been transferred to
6 Captain Gray with S.R. Lorraina Lopez was a teacher's aide who had been an aide
7 for 2 months at Robert Frost and then was no longer at the school. "Felipe" was a
8 teacher's aide in Albers' class. Feliz Liudahl has been a para-educator with special
9 education students at Robert Frost since February of 2014. Ms. Liudahl worked in
10 Albers's class.
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13 32. Liudahl worked in Albers's class, which consisted of students from 7 to
14 9 years old. At 7, S.R. was the youngest student in the class.
15

16 33. Liudahl was aware of an early complaint about Albers coming from
17 another para-educator, Lorraina Lopez. Lopez was a substitute para-educator for
18 the class and had started in December 2013. According to Liudahl, as soon as
19 Lopez had made the initial report against Albers, Lopez was let go. "Felipe" had
20 taken Lopez's spot.
21

22 34. Liudahl also had knowledge that Albers was accused of hitting a boy on
23 his back with a closed fist. Liudahl was aware that the boy's mother was a single
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1 parent and did not speak English. Liudahl's impression was that the school
2 administration swept the assault of the boy under the rug
3

4 35. According to Liudahl, S.R. would often ask the same question numerous
5 times. Liudahl noticed that Albers would ignore S.R. Liudahl said S.R. would
6 frequently apologize to Albers and that Albers would continue to ignore him.
7

8 36. On Friday, April 4, 2014 Liudahl told Juarez that she was upset that
9 Albers ignored S.R. That same day, Juarez attempted to talk to Albers about her
10 ignoring S.R., but Albers just walked away.
11

12 37. Liudahl also witnessed times when S.R. wanted to get out of his chair.
13 Liudahl would see Albers sit directly behind Sid and push his chair into the table,
14 not letting him out of his chair. This is consistent with the bruising on S.R.'s legs.
15

16 38. On April 7, 2014 S.R. was not staying on task. Liudahl saw that S.R.
17 was in the "teacher's zone" when he should not have been. Albers stood up and
18 took S.R. to the bathroom. Felipe, the other para- educator in Albers's class, was
19 standing with Liudahl when they saw Albers get angry at S.R. and take him into
20 the bathroom. After Albers and S.R. entered the bathroom, both Felipe and
21 Liudahl noticed that the bathroom light was left off, as they could see light under
22 the bathroom door when the light was on. Liudahl saw that S.R. appeared "out of
23 it" when he exited the bathroom. Liudahl also noticed that S.R., who was normally
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1 boisterous and active, was withdrawn. Liudahl asked Albers about the incident
2 and Albers responded she was washing Sid's hands. Both Liudahl and Albers
3 were well aware that Sid was extremely afraid of the dark.
4

5 39. Juarez noticed that on April 7, 2014 when S.R. came home from school,
6 he was very quiet. On Tuesday, April 8, 2014, S.R. did not want to go back to
7 school. Juarez let S.R. stay home Tuesday through Thursday. On Friday, April 11
8 2014 Juarez took S.R. back to school. S.R. kept telling Juarez on the way to
9 school, "no Ratre."
10

11 40. When Juarez went to pick S.R. up at the end of the school day on Friday,
12 April 11 2014, Liudahl approached Juarez and told her she had put her phone
13 number in S.R.'s backpack, and asked Juarez to call her. Liudahl also told Juarez
14 she had consulted with her union representative to see if she could contact Juarez
15 and the union rep told her she could.
16

17 41. On April 11, 2014 Juarez filed a police report with the Pasco Police
18 Department about this incident.
19

20 42. On April 17, 2014 Juarez and Romero met with Tim Sullivan, an
21 administrator in the Pasco School District. Mr. Sullivan told Juarez and Romero
22 that the PSD had not received any reports from any personnel regarding Albers
23 abusing children. According to the records provided by the PSD, this statement
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1 was not true, as the PSD had knowledge of problems with Albers at least as early
2 as February of 2014.

3
4 43. As a result of the abuse by Albers, S.R. became afraid to go to school;
5 became hostile with his father and mother; became hostile with his sister; became
6 withdrawn; regressed in his ability to relate with others; regressed in his cognitive
7 ability; and suffered physical bruising. While the actions of Albers would have
8 been devastating to any child, all of the above injuries were even more devastating
9 to S.R. because of his special needs.
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12 **IV. CLAIMS FOR RELIEF**

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14 A. CLAIM ONE- Violation of tim

15 44. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
16 through 43, inclusive.

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18 45. A relationship existed between PSD and S.R. At the time of the abuse as
19 S.R. was a student in PSD.

20 46. There was a pattern of abuse that PSD was aware of between Albers and
21 PSD students.

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23 47. PSD willfully disregarded S.R. and other student's safety when they placed
24 Albers back into a classroom 10 days after she was suspended for similar
25 misconduct.
26

1 48. By having knowledge of Albers pattern of prior abuse, failure to report the
2 abuse to authorities, failure to correct her abusive behavior, PSD created an
3 opportunity for Albers to abuse S.R.
4

5 49. Albers violated minor Plaintiffs S.R.'s rights under the Fourth Amendment
6 to the United States Constitution by actions, including but not limited to utilizing
7 unjustified and unreasonable force against minor Plaintiff S.R.
8

9 50. PSD and its' agents and employees violated S.R.'s rights under the Fourth
10 Amendment to the United States Constitution by actions, including but not limited
11 to, acting with deliberate indifference to the risk of harm to minor Plaintiff S.R.
12 from Albers.
13

14 51. PSD and its' agents and employees violated Plaintiffs Jessica and Ivan
15 Romero's rights under the Due Process Clause to the Fourteenth Amendment to
16 the United States Constitution by actions, including but not limited to:
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18 a. Intentionally interfering with the parent child relationship by concealing
19 information regarding the physical and emotional trauma inflicted on S.R. by
20 Albers.
21

22 b. Intentionally interfering with S.R. and Plaintiffs Jessica and Ivan
23 Romero's right to provide and receive nurture, support and comfort regarding
24 highly traumatic events.
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1 52. As a proximate result of the violations alleged in paragraphs 27 - 124,
2 Plaintiffs have suffered damages as heretofore alleged.
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5 B. CLAIM TWO- Violation of § 504 of the Rehabilitation Act of 1973

6 53. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
7 through 52, inclusive.
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9 54. Plaintiffs are informed and believe and therefore allege that PSD is and has
10 been at all relevant times the recipient of federal financial assistance, and that part
11 of that financial assistance has been used to fund the operations, construction
12 and/or maintenance of the specific public facilities described herein and the
13 activities that take place therein.
14

15 55. S.R. is handicapped under the meaning of Section 504 of the Rehabilitation
16 Act as S.R has been diagnosed with autism.
17

18 56. At the time of the abuse in this case, S.R. was a special education in the
19 PSD who as qualified to receive special education benefits and/or services from the
20 PSD.
21

22 57. S.R. was denied his benefits and/or services from the PSD based on his
23 handicap by Albers physical and mental abuse of S.R. using knowledge of S.R.'s
24 handicap as a tool to abuse him.
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1 58. By their actions or inactions in denying equal access to educational services
2 and by subjecting S.R. to a hostile educational environment, defendant has violated
3 S.R.'s rights under § 504 of the Rehabilitation Act of 1973, 29 USC § 794, and the
4 regulations promulgated thereunder.
5

6 58. As a result of PSD's failure to comply with its duty under § 504 of the
7 Rehabilitation Act of 1973, 29 USC § 794, and the regulations promulgated
8 thereunder, minor Plaintiff S.R. has suffered damages including special and
9 general damages according to proof.
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13 C. CLAIM THREE- Violation of the Americans With Disabilities Act

14 59. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 58, inclusive.
16

17 60. S.R. is a qualified individual with a disability under the meaning of the
18 Americans with Disabilities Act as S.R has been diagnosed with autism and
19 ADHD.
20

21 61. At the time of the abuse in this case, S.R. was entitled to education
22 programs, services, and activities in the PSD as S.R. was a student in the PSD.
23

24 62. S.R. was excluded from participation in and/or denied the benefits of PSD's
25 education programs, services, and activities as he was physically and mentally
26

1 abused by Albers while at school causing him to lose education time in the
2 classroom and further causing him to miss school entirely.

3
4 63. S.R. was excluded from participation in and/or denied the benefits of PSD's
5 education programs, services, and activities based on his disability by Albers's
6 physical and mental abuse of S.R. using knowledge of S.R.'s handicap as a tool to
7 abuse him.
8

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

15 65. Pursuant to 42 USC §12132, Section 202 of Title II, no qualified individual
16 with a disability shall, by reason of such disability, be excluded from participation
17 in or be denied the benefits of the services, programs or activities of a public entity,
18 or be subjected to discrimination by any such entity. Minor Plaintiff S.R. at all
19 times relevant herein, was a qualified individual with a disability as therein
20 defined.
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23 66. PSD failed in its responsibilities under Title II to provide its services,
24 programs and activities in a full and equal manner to disabled persons as described
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26

1 hereinabove, including failing to ensure that educational services are provided on
2 an equal basis to children with disabilities and free of hostility toward their
3 disability.
4

5 67. PSD has further failed in its responsibilities under Title II to provide its
6 services, programs and activities in a full and equal manner to disabled persons as
7 described hereinabove by subjecting minor Plaintiff S.R. to a hostile educational
8 environment.
9

10 68. As a result of PSD's failure to comply with its duty under Title II, minor
11 Plaintiff S.R. has suffered damages including special and general damages
12 according to proof.
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16 **V. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs respectfully prays for judgement as follows:

18 69. Compensatory damages to Plaintiffs for injury, emotional distress and for
19 medical expenses;
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21 70. Punitive damages;

22 71. Attorney's fees and costs;

23 72. Such other further relief to which Plaintiffs may be entitled as a matter of law
24 or equity, or which the Court determines to be just and proper.
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VI. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs hereby demand a jury trial on all issues so triable.

DATED this 10th day of August, 2016.

Respectfully submitted,

“s/Scott W. Johnson”
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