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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN DIEGO**

13 JORGE DAVID A., a minor, by  
14 and through his Guardian Ad  
15 Litem Jorge A.;

16 Plaintiffs,

17 v.

18 SOUTH BAY UNION SCHOOL  
19 DISTRICT; and DOES 1-50,

20 Defendants.

**Case No.37-2012-00095108-CU-PO-CTL**

**SECOND AMENDED COMPLAINT FOR  
DAMAGES**

(DAMAGES IN EXCESS OF \$25,000)

**Judge: Hon. Ronald S. Prager**

**Department: C-71**

**Trial Date: April 26, 2013**

21 COMES NOW Plaintiff, JORGE DAVID A., a minor, by and through  
22 his Guardian Ad Litem JORGE A., and for causes of action against  
23 the Defendant, and each of them, alleges:

24 **GENERAL ALLEGATIONS**

25 1. Plaintiff JORGE DAVID A., a minor, by and through his  
26 Guardian Ad Litem JORGE A., hereinafter referred to as the "minor  
27 Plaintiff JORGE DAVID A.," was at all relevant times herein, a  
28 resident of the City of Imperial Beach, County of San Diego, State  
of California.

1           2.    On April 11, 2012, JORGE A. was appointed Guardian Ad  
2 Litem for minor Plaintiff JORGE DAVID A., for the purpose of  
3 maintaining this action on his behalf.

4           3.    Minor Plaintiff JORGE DAVID A. has caused to be filed  
5 claims against Defendant SOUTH BAY UNION SCHOOL DISTRICT pursuant  
6 to Government Code Section 911.2. Prior to the filing of the  
7 original, First Amended and Second Amended Complaint, on or about  
8 November 22, 2011, minor Plaintiff JORGE DAVID A., by and through  
9 his parents JORGE and LAURA A., presented claims to the SOUTH BAY  
10 UNION SCHOOL DISTRICT. Minor Plaintiff JORGE DAVID A.'s claims  
11 were denied by letter on December 9, 2011. In addition, an amended  
12 claim and application to file late claim were filed on behalf of  
13 minor Plaintiff JORGE DAVID A. on February 14, 2012. Said amended  
14 claim was denied on April 1, 2012.

15           4.    On or about October 2, 2012 this Court signed an Order  
16 granting Plaintiff's Petition to relieve him of any claim filing  
17 responsibilities.

18           5.    The true and correct names and/or capacities of DOES 1-50  
19 are unknown and are being sued by said fictitious names. Minor  
20 Plaintiff JORGE DAVID A. will amend this Complaint to set forth  
21 their true names and/or capacities once same are ascertained.

22           6.    Minor Plaintiff JORGE DAVID A. alleges that each of the  
23 Defendants named herein as DOES 1-50, is in some way responsible  
24 for the events, occurrences and injuries set forth herein and are,

1 in some manner, responsible for the injuries and damages  
2 proximately and legally caused to minor Plaintiff JORGE DAVID A. as  
3 alleged herein.

4 7. Minor Plaintiff JORGE DAVID A. alleges that all  
5 Defendants at all relevant times were and are employees, agents,  
6 independent contractors, volunteers, servants, and/or principals of  
7 the other remaining Defendants and that all the acts or omissions  
8 herein alleged were done with the knowledge, consent or  
9 acquiescence of the remaining Defendants.  
10

11 8. At all relevant times, the employees, agents, volunteers,  
12 aides, and/or independent contractors of Defendants SOUTH BAY UNION  
13 SCHOOL DISTRICT and DOES 1-50 were acting within the course and  
14 scope of their employment.  
15

16 9. Defendant SOUTH BAY UNION SCHOOL DISTRICT at all times  
17 herein mentioned, was and is a public governmental entity that  
18 operates, owns, runs, exclusively controls, manages and supervises  
19 IMPERIAL BEACH ELEMENTARY SCHOOL, a public school within the  
20 district of Defendant SOUTH BAY UNION SCHOOL DISTRICT and is  
21 located at 650 Imperial Beach Blvd, Imperial Beach, California.  
22

23 10. Defendant employees, agents, independent contractors,  
24 volunteers and aides at all times herein mentioned, who were in the  
25 course and scope of their employment with Defendant at the time of  
26 the INCIDENT, include but are not limited to: Magdalena Castillo,  
27 Gloria Chavez, Ermelinda Magana, Donna Neahaus, Karen Mayor, Marni  
28

1 Cavanaugh, Dawn Christopher, Gilbert Luna, Dawn Minutelli, and  
2 Russell Coronado.

3 11. At all times mentioned herein, including but not limited  
4 to June 2, 2011, the minor Plaintiff JORGE DAVID A., was a 12 year-  
5 old developmentally and physically disabled, special education  
6 student on the premises of, and under the supervision and exclusive  
7 control of Defendant SOUTH BAY UNION SCHOOL DISTRICT with their  
8 permission and consent.  
9

10 12. Defendant SOUTH BAY UNION SCHOOL DISTRICT, and their  
11 employees, agents, independent contractors, volunteers and aides  
12 once they undertook to provide education and supervision to minor  
13 Plaintiff JORGE DAVID A., owed a duty to minor Plaintiff JORGE  
14 DAVID A. to make the public school safe.  
15

16 13. At all relevant times herein, Defendant SOUTH BAY UNION  
17 SCHOOL DISTRICT and their employees, agents, independent  
18 contractors, volunteers and aides had a special relationship with  
19 minor Plaintiff JORGE DAVID A., a 12 year-old physically and  
20 developmentally disabled special education student, and were aware  
21 of his unique vulnerabilities, limitations, and disabilities, and  
22 owed him all of the duties and responsibilities commensurate with  
23 the law and that special relationship.  
24

25 14. On June 2, 2011, during regular school hours, employees,  
26 agents, independent contractors, volunteers, aides, and or other  
27 individuals under the exclusive control of the Defendant SOUTH BAY  
28

1 UNION SCHOOL DISTRICT, breached the duties and responsibilities  
2 commensurate with the law and that special relationship by failing,  
3 amongst other actions, to utilize ordinary care.

4 15. Violations of mandatory duties imposed by law and  
5 referenced under Government Code Section 815.6, and other statutes,  
6 codes, ordinances, and enactments including, but not limited to,  
7 the California Constitution, California Government and Education  
8 codes and the California Code of Regulations, furnish the basis for  
9 the conduct alleged and the relief sought.  
10

11 16. At all times herein relevant, Defendant SOUTH BAY UNION  
12 SCHOOL DISTRICT and its employees, agents, independent contractors,  
13 volunteers and aides and DOES 1-50, had specific accident and  
14 medical emergency procedures for staff to follow. The rules clearly  
15 indicate that staff members and/or employees, agents, independent  
16 contractors, and volunteers must call the school nurse, not leave  
17 the injured child/person and must not move the injured  
18 child/person. Additionally, the principal is required to call 911,  
19 even before notifying parents or guardians.  
20

21 17. At the time and place as stated herein, the un-witnessed  
22 accident of June 2, 2011 and the injuries stemming therefrom are of  
23 the type that would not occur without someone's negligence.  
24

25 18. The injuries and damages suffered by the minor Plaintiff  
26 JORGE DAVID A. were not due in any part, to any voluntary action or  
27 contribution by him.  
28

1 19. Minor Plaintiff JORGE DAVID A.'s claims for damages  
2 exceed the \$25,000 jurisdiction of the limited jurisdiction courts.

3 **I. FIRST CAUSE OF ACTION**

4 **Vicarious Liability of Public Employees - Government Code § 815.2**

5 20. Plaintiff re-alleges and incorporates paragraphs 1  
6 through 19 as if set forth fully herein.

7  
8 21. On June 2, 2011, minor Plaintiff JORGE DAVID A. was led  
9 to, taken to, and/or placed, on the school playground in an  
10 assisted standing device in an unsupervised area of IMPERIAL BEACH  
11 ELEMENTARY SCHOOL by employees, agents, independent contractors,  
12 aides and volunteers under the exclusive control of Defendant SOUTH  
13 BAY UNION SCHOOL DISTRICT.

14  
15 22. At all relevant times, this assisted standing device was  
16 under the exclusive control and possession of Defendant SOUTH BAY  
17 UNION SCHOOL DISTRICT and its employees, agents, independent  
18 contractors, volunteers and aides who provided, operated,  
19 controlled, improperly adjusted, secured, fitted, maintained,  
20 serviced, and repaired the device utilized by minor Plaintiff JORGE  
21 DAVID A. on June 2, 2011.

22  
23 23. On June 2, 2011, the employees, agents, independent  
24 contractors, volunteers and aides of Defendant SOUTH BAY UNION  
25 SCHOOL DISTRICT failed to utilize ordinary care in properly  
26 supervising, monitoring, protecting, and overseeing its pupils and  
27 students, allowing the assisted standing device to fall over, be  
28

1 pushed over, be knocked over, or be tipped over, causing minor  
2 Plaintiff JORGE DAVID A. to crash onto a hard outdoor concrete  
3 surface, striking his head and other parts of his body.

4         24. Such negligent conduct included, but was not limited to:  
5 failing to adequately supervise children, placing minor Plaintiff  
6 JORGE DAVID A. in harms way despite knowing that he was unable to  
7 defend, protect, and adequately care for himself; failing to follow  
8 proper and safe supervision protocol and procedure before the fall;  
9 failing to follow proper and safe protocol and procedure after the  
10 fall; failing to recognize the signs of serious injury to minor  
11 Plaintiff JORGE DAVID A.; failing to report the severity of minor  
12 Plaintiff JORGE DAVID A.'s injury to medical personnel; failing to  
13 see that minor Plaintiff JORGE DAVID A. received the necessary and  
14 appropriate attention, care and/or treatment.  
15  
16

17         25. In addition, minor Plaintiff JORGE DAVID A. alleges that  
18 on June 2, 2011, IMPERIAL BEACH ELEMENTARY SCHOOL was not properly  
19 staffed, and/or trained and included the presence of a substitute  
20 teacher who was not properly supervised, qualified, competent or  
21 trained in handling, supervising, and protecting physically and  
22 developmentally disabled students such as minor Plaintiff JORGE  
23 DAVID A..  
24

25         26. Defendant SOUTH BAY UNION SCHOOL DISTRICT, by and through  
26 its agents, servants, employees, aides, independent contractors,  
27 and volunteers, negligently failed to provide adequate supervision  
28

1 and training of its teachers, staff, employees, agents, independent  
2 contractors, and volunteers, to protect students, including minor  
3 Plaintiff JORGE DAVID A..

4 27. At the time and place stated, no one, including any  
5 employees, agents, independent contractors, and volunteers of  
6 Defendant SOUTH BAY UNION SCHOOL DISTRICT was near enough to minor  
7 Plaintiff JORGE DAVID A. to prevent the accident or observe minor  
8 Plaintiff JORGE DAVID A.'s skull or other parts of his body strike  
9 the hard outdoor concrete surface.  
10

11 28. At the time and place as stated herein, no one, including  
12 employees, agents, independent contractors, and volunteers of  
13 Defendant SOUTH BAY UNION SCHOOL DISTRICT, reported to any medical  
14 first aid responder, parent, nurse, or any other medical provider  
15 that minor Plaintiff JORGE DAVID A.'s head had come in contact with  
16 the hard outdoor concrete surface.  
17

18 29. Defendant SOUTH BAY UNION SCHOOL DISTRICT and its  
19 employees, agents, independent contractors, volunteers and aides by  
20 their conduct led medical first aid responders, parents, nurses,  
21 staff members, or other medical providers to believe that minor  
22 Plaintiff JORGE DAVID A. did not hit his head on the hard outdoor  
23 concrete surface, despite not knowing whether minor Plaintiff JORGE  
24 DAVID A. had or had not struck his head on the hard outdoor  
25 concrete surface. All of the above conduct caused further injuries  
26 and damages.  
27  
28

1           30. On June 2, 2011, the employees, agents, independent  
2 contractors, aides and volunteers of the Defendant SOUTH BAY UNION  
3 SCHOOL DISTRICT violated the law in the course and scope of their  
4 employment, causing Defendant to be vicariously liable under the  
5 above referenced California Government Code Section 815.2, and  
6 other statutes including but limited to California Education Code  
7 Section 44807 by failing to or negligently and carelessly  
8 organizing, promoting, sponsoring, holding pupils accountable for  
9 their actions, managing, monitoring, and supervising the  
10 playground/open area activities at IMPERIAL BEACH ELEMENTARY  
11 SCHOOL.  
12

13           31. Defendant SOUTH BAY UNION SCHOOL DISTRICT and its  
14 employees, agents, independent contractors, volunteers and aides  
15 and DOES 1-50, are vicariously liable for the acts and omissions of  
16 each and every one of their employees, agents, independent  
17 contractors, and volunteers that subjected minor Plaintiff JORGE  
18 DAVID A. to a clearly foreseeable risk of harm and likelihood of  
19 sustaining serious injuries.  
20

21           32. As a direct and proximate cause of the aforementioned  
22 unlawful and negligent conduct by Defendant SOUTH BAY UNION SCHOOL  
23 DISTRICT, and/or its employees, agents, independent contractors,  
24 aides and volunteers, minor Plaintiff JORGE DAVID A. suffered  
25 catastrophic and traumatic brain injuries from which he will never  
26 recover.  
27  
28

1           33. As a direct and proximate result of the above mentioned  
2 unlawful conduct and negligent acts and omissions of Defendant  
3 SOUTH BAY UNION SCHOOL DISTRICT and its employees, agents,  
4 independent contractors, volunteers and aides and DOES 1-50, minor  
5 Plaintiff JORGE DAVID A. was injured in his health, strength, and  
6 activity, sustaining injury to his body and shock and injury to his  
7 nervous system and person, all of which injuries have caused and  
8 continue to cause minor Plaintiff JORGE DAVID A. great mental,  
9 physical, emotional and nervous pain and suffering. These injuries  
10 have resulted in permanent disability to him. As a result, minor  
11 Plaintiff JORGE DAVID A. has suffered general damages.  
12

13           34. As a direct and proximate result of the above negligent  
14 acts and omissions of Defendant SOUTH BAY UNION SCHOOL DISTRICT and  
15 its employees, agents, independent contractors, volunteers and  
16 aides and DOES 1-50, minor Plaintiff JORGE DAVID A. was injured in  
17 his health, strength, and activity, sustaining shock and injury to  
18 his body and brain, all of which injuries have caused and continue  
19 to cause him physical, mental, and emotional damages in an amount  
20 which will be shown according to proof.  
21

22           35. As a further direct and proximate result of the above  
23 negligent acts and omissions of Defendant SOUTH BAY UNION SCHOOL  
24 DISTRICT and its employees, agents, independent contractors,  
25 volunteers and aides and DOES 1-50, minor Plaintiff JORGE DAVID A.,  
26 and/or his family, was required to and did employ physicians and  
27  
28

1 surgeons for medical examination, treatment, surgery, and care of  
2 these injuries, and did incur medical and incidental expenses and  
3 losses of an amount presently unknown to Plaintiff. Plaintiff  
4 therefore asks leave of Court either to amend this Complaint to  
5 show this amount of medical and incidental expenses, when  
6 ascertained, or to prove this amount at trial.  
7

8 36. As a further proximate result of the unlawful conduct and  
9 negligence of Defendant, and each of them, minor Plaintiff JORGE  
10 DAVID A. has incurred other expenses and will incur further  
11 medical, educational, incidental and transportation expenses for  
12 the care and treatment of the injuries to minor Plaintiff JORGE  
13 DAVID A.. Minor Plaintiff JORGE DAVID A. does not know at this time  
14 the exact amount of expenses that have been incurred and that will  
15 be incurred in the future. Minor Plaintiff JORGE DAVID A. therefore  
16 asks leave of Court either to amend this Complaint to show the  
17 amount of these expenses, when ascertained, or to prove this amount  
18 at trial.  
19

## 20 **II. SECOND CAUSE OF ACTION**

### 21 **Negligent Supervision - Government Code § 815.2**

22 37. Plaintiff re-alleges and incorporates paragraphs 1  
23 through 36 as if set forth fully herein.  
24

25 38. Defendant SOUTH BAY UNION SCHOOL DISTRICT and its  
26 employees, agents, independent contractors, volunteers and aides  
27 created and allowed a dangerous condition and foreseeable risk of  
28

1 harm to exist by leaving minor Plaintiff JORGE DAVID A. in an  
2 unsupervised area known to be used by children who were running,  
3 jumping, pushing, or otherwise playing, in close proximity to minor  
4 Plaintiff JORGE DAVID A., despite their knowing he was unable to  
5 defend, protect and adequately care for himself.  
6

7 39. While on the playground during the lunch recess at  
8 IMPERIAL BEACH ELEMENTARY SCHOOL on June 2, 2011, minor Plaintiff  
9 JORGE DAVID A., was improperly secured into his assisted standing  
10 device by Defendant SOUTH BAY UNION SCHOOL DISTRICT and its  
11 employees, agents, independent contractors, volunteers and aides  
12 and was pushed over or knocked over or tipped over, causing minor  
13 Plaintiff JORGE DAVID A. to fall and hit his head and other parts  
14 of his body on a hard outdoor concrete surface.  
15

16 40. On June 2, 2011, the employees, agents, independent  
17 contractors, and volunteers of Defendant SOUTH BAY UNION SCHOOL  
18 DISTRICT and DOES 1-50, and each of them, negligently, carelessly,  
19 and recklessly organized, sponsored, managed, monitored, and  
20 supervised the playground/open area activities at IMPERIAL BEACH  
21 ELEMENTARY SCHOOL. Such negligent conduct included, but was not  
22 limited to: failing to adequately supervise children during the  
23 lunch recess, including minor Plaintiff JORGE DAVID A.; placing  
24 minor Plaintiff JORGE DAVID A. in harms way despite knowing that he  
25 was unable to defend, protect, and adequately care for himself;  
26 failing to follow proper and safe supervision protocol and  
27  
28

1 procedure before the fall; failing to follow proper and safe  
2 protocol and procedure after the fall; failing to recognize the  
3 signs of serious injury to minor Plaintiff JORGE DAVID A.; failing  
4 to report the severity of minor Plaintiff JORGE DAVID A.'s injury  
5 to medical personnel; failing to see that minor Plaintiff JORGE  
6 DAVID A. received the necessary and appropriate attention, care  
7 and/or treatment.  
8

9 41. Further conduct, actions and omissions of the employees,  
10 agents, independent contractors, aides and volunteers of Defendant  
11 SOUTH BAY UNION SCHOOL DISTRICT and DOES 1-50, and each of them,  
12 that give rise to liability include: negligent hiring of employees,  
13 agents, independent contractors, and volunteers, teachers, and  
14 substitute teachers; negligently failing to establish and/or  
15 enforce rules, regulations, protocols, standards and procedures  
16 determining conduct of students and pupils on the playground;  
17 negligently training agents and employees, agents, independent  
18 contractors, and volunteers in handling, supervising, and  
19 protecting physically and developmentally disabled special  
20 education students such as minor Plaintiff JORGE DAVID A.;  
21 negligently failing to adequately train agents, servants,  
22 employees, agents, independent contractors, and volunteers to  
23 recognize and timely address and treat symptoms of serious and  
24 life-threatening head injuries such as those that occur during  
25 playground/open area activities.  
26  
27  
28



1 deteriorate, striped, planned, approved, supervised, designed,  
2 modified, inspected, repaired, and exclusively controlled the  
3 dangerous, uneven, and unstable surface of the playground and/or  
4 outdoor play area. All of the foregoing resulted in a dangerous  
5 and hazardous condition to disabled students such as minor  
6 Plaintiff JORGE DAVID A. and created a reasonably foreseeable risk  
7 of harm, the kind that occurred to minor Plaintiff JORGE DAVID A..  
8

9 46. Defendant SOUTH BAY UNION SCHOOL DISTRICT and its  
10 employees, agents, independent contractors, volunteers and aides  
11 placed minor Plaintiff JORGE DAVID A. on the dangerous, uneven and  
12 unstable surface in his stander and left him alone, unable to  
13 protect himself, and without supervision, susceptible to tipping  
14 over, being knocked over, or being pushed over thereby further  
15 creating a dangerous condition on public property.  
16

17 47. Defendant SOUTH BAY UNION SCHOOL DISTRICT and its  
18 employees, agents, independent contractors, volunteers and aides  
19 allowed a dangerous condition to exist on its property in that it  
20 failed to provide safe playground and school ground areas, failed  
21 to adequately supervise the dangerous, uneven, and unstable area  
22 and failed to warn of said dangerous, defective and unsafe  
23 conditions despite the fact it knew or should have known of such  
24 conditions.  
25

26 48. The negligence and carelessness of Defendant SOUTH BAY  
27 UNION SCHOOL DISTRICT and its employees, agents, independent  
28

1 contractors, volunteers and aides created a reasonably foreseeable  
2 risk of the kind of injury incurred by plaintiff.

3 49. The conditions described above existed for a period of  
4 time and were of such a nature that Defendant SOUTH BAY UNION  
5 SCHOOL DISTRICT and its employees, agents, independent contractors,  
6 volunteers and aides in the exercise of due care, knew or should  
7 have discovered the condition and its dangerous character in  
8 adequate time before the incident alleged to have taken measure to  
9 protect against the dangerous condition.  
10

11 50. As a direct and proximate result of the aforementioned  
12 dangerous condition of public property created by Defendant SOUTH  
13 BAY UNION SCHOOL DISTRICT and its employees, agents, independent  
14 contractors, volunteers and aides minor Plaintiff JORGE DAVID A.  
15 sustained severe and permanent injuries as outlined herein.  
16

17 **III. FOURTH CAUSE OF ACTION**

18 **Failure to follow Mandatory Duties established by law - Government**

19 **Code § 815.6**

20 51. Plaintiff re-alleges and incorporates paragraphs 1 through  
21 50 as if set forth fully herein.  
22

23 52. The conduct of Defendant SOUTH BAY UNION SCHOOL DISTRICT  
24 and its employees, agents, independent contractors, volunteers and  
25 aides are governed by numerous statutes, ordinances, rules,  
26 regulations, and other legal provisions. These statutes,  
27 ordinances, regulations, and other legal provisions were enacted  
28

1 for the purpose of protecting students against the risk of injury  
2 sustained by Plaintiff and establish mandatory duties on the part  
3 of SOUTH BAY UNION SCHOOL DISTRICT.

4 53. On June 2, 2011 Defendant SOUTH BAY UNION SCHOOL DISTRICT  
5 and its employees, agents, independent contractors, volunteers and  
6 aides failed to follow and breached the mandatory duties these  
7 statutes, ordinances, rules, regulations and other legal provisions  
8 mandated, including but not limited to those articulated in  
9 California Education Code Section 44807 by means of California  
10 Government Code Section 815.2, California Code of Regulations,  
11 Title 5, Sections 5530, 5531, 5551, and 5552, California Education  
12 Code Section 56060, and California Education Code Section 41401,  
13 while Plaintiff was under their supervision, custody and control of  
14 Defendant. Plaintiff will amend this Second Amended Complaint to  
15 add additional statutes, ordinances, rules, regulations and other  
16 legal provisions when they are ascertained after discovery is  
17 completed or prior to trial.

18 54. The negligence and carelessness of Defendant SOUTH BAY  
19 UNION SCHOOL DISTRICT and its employees, agents, independent  
20 contractors, volunteers and aides created a reasonably foreseeable  
21 risk of the kind of injury incurred by plaintiff.

22 55. As a direct and proximate result of the aforementioned  
23 failure to fulfill these legal duties and as a proximate cause of  
24 such conduct, Plaintiff JORGE DAVID A. sustained severe and  
25

1 permanent injuries and damages as outlined above and herein.

2 56. As a direct and proximate result of the aforementioned  
3 failure to fulfill these legal duties minor Plaintiff JORGE DAVID  
4 A. sustained severe and permanent injuries as outlined herein.

5 **WHEREFORE**, minor Plaintiffs JORGE DAVID A., by and through his  
6 Guardian Ad Litem JORGE A., prays for judgment against Defendant  
7 SOUTH BAY UNION SCHOOL DISTRICT and DOES 1-50 on each and all  
8 causes of action as follows:  
9

- 10 1. General or Non-Economic damages according to proof;
- 11 2. Special or Economic damages according to proof;
- 12 3. Costs of suit herein incurred; and
- 13 4. For such other and further relief, including but not  
14 limited to interest and/or attorneys fees as permitted by law,  
15 as this Court may deem just and proper.  
16

17  
18 Dated: October 31, 2012

19  
20 \_\_\_\_\_  
21 Marc D. Adelman,  
22 Attorney for Plaintiff  
23  
24  
25  
26  
27  
28