

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SHAWN WITTE, A Minor,
by his next friend and
Parent, TERESA WITTE,
Plaintiff,
vs.
CLARK COUNTY SCHOOL DISTRICT,
ROBERT T. HENRY, individually,
and in his official capacity
as former Director of Program
Development, BEVERLY J.
MINNEAR, individually, and in
her official capacity as
Principal of Variety
School; WOODARD MACKE,
individually, and in his
official capacity as teacher
at Variety School,
Defendants.

CASE NO.:

COMPLAINT

JURY DEMAND

Plaintiff, by and through counsel, Sara V. Winter, Esq., Barbara E. Buckley, Esq., and Dan L. Wulz, Esq., of Clark County Legal Services Program, Inc., for his Complaint against Defendants, alleges and states as follows:

I. INTRODUCTION

This is a suit for damages arising out of practices of excessive corporal punishment and abuse on students with disabilities in Variety School, a completely segregated public school within the Clark County School District for children with disabilities. Such practices of physical pain and physical restraint are intentionally and deliberately inflicted on students with disabilities and are in violation of Plaintiff's constitutional right to be free from restraint and the infliction of pain while attending public school. By subjecting Plaintiff and other young children to excessive corporal punishment and abuse that is only imposed on children with disabilities, Defendants have also violated the fundamental nondiscrimination mandates of Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 794 (Section 504) and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA). Such practices are also a violation of NRS § 392.465, which prohibits corporal punishment upon students in public schools. Each of the Defendants had personal knowledge of the ongoing pattern and practice of abusive treatment Plaintiff received and each condoned and encouraged the practices.

II. JURISDICTION

1. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 42 U.S.C. § 12188(a)(1).
2. Supplemental jurisdiction of violations of state law exists under 28 U.S.C. § 1367.

III. VENUE

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) in that the claim arose in and Defendants and Plaintiff reside in this District.

IV. PARTIES

4. Plaintiff Shawn Witte is a 10 year old boy who has been diagnosed with Tourette Syndrome, asthma, attention deficient hyperactivity disorder and emotional problems. Plaintiff is entitled to receive full and equal access to the public educational programs and activities offered within the Clark County School District. He is a qualified individual with a disability within the meaning of all applicable statutes including Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans With Disabilities Act, 42 U.S.C. § 12131. He currently is, and at all relevant times has been, a resident of Clark County, Nevada.

5. Teresa Witte is the parent of and next friend to Plaintiff Shawn Witte. Parent is now, and at all relevant times, has been a resident of Clark County, Nevada.

6. Defendant Clark County School District (School District) is a political subdivision of the State of Nevada with the responsibility of providing school children full and equal access to the public educational programs and activities offered in its district in compliance with the requirements of state and federal law. Defendant School District's responsibilities include administering the state system of public education. Defendant School District receives Federal financial assistance and is a public entity as defined in Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131(1).

7. Defendant Robert T. Henry was the Director of Program Development in the School District at the time the incidents herein alleged occurred. Defendant Henry was responsible for ensuring that students with disabilities in the School District are treated in compliance with the requirements of state and federal laws. He is being sued in both his individual and official capacities.

8. Defendant Beverly J. Minnear is, and was at all times relevant to this action, the Principal of Variety School. Variety School is a completely segregated public school for children with disabilities. Her responsibilities are to ensure that all children attending Variety School are afforded equal access to a public education and to carry out the educational policies created by the Board of Trustees of the Clark County School District or mandated by state and federal law. She is being sued in both her individual and official capacities.

9. Defendant Woodard Macke is, and was at all times relevant to this action, a classroom teacher at Variety School. He is being sued in both his individual and official capacities.

10. Plaintiff is informed and believes and thereon alleges that each of the Defendants are responsible in some manner for the pattern and practice of events herein alleged, or are a necessary party for obtaining appropriate relief. In performing each of the acts alleged in this Complaint and in omitting to do

those acts that are alleged in this Complaint to have been legally required, each Defendant acted as a agent for each and all other Defendants. The injuries inflicted upon Plaintiff occurred because of the actions and omissions of each and all of the Defendants.

V. FACTS

11. Plaintiff Shawn Witte attended Variety School, a completely segregated public school within the School District for children with disabilities. He attended Variety School from November 1995 until January 1998.

12. During the 1995-1996 academic school year, Plaintiff's classroom teacher was Diana Pederson.

13. During the 1996-97 academic school year and the 1997 - January 1998 academic school year, Plaintiff's classroom teacher was Tonda Buckner.

14. Throughout Plaintiff's time at Variety School, Plaintiff was the victim of abusive practices inflicted upon him, including, but not limited to those herein described, by different School District personnel all by and under the authority, direction or control of Defendant Minnear as Principal of Variety School, Defendant Henry as Director of Program Development and Defendant School District.

15. Throughout Plaintiff's time at Variety School, Plaintiff's classroom teachers would utilize Defendant Macke, or other School District personnel all by and under the authority, direction or control of Defendants Minnear, Henry and School District, to inflict abusive procedures on Plaintiff, including, but not limited to the actions herein described.

16. Plaintiff witnessed the actions herein described being perpetrated against the other children with disabilities in Variety School.

17. Plaintiff's parent was never consulted about, never consented to, and in fact protested, these actions herein described.

18. Beginning the winter of 1995, Plaintiff was forced to eat oatmeal, a food substance which Plaintiff was allergic to and Plaintiff's parent had informed his classroom teacher that Plaintiff was allergic to. This would cause Plaintiff to vomit. Defendant Macke and instructional assistant Michael Nelson, by and under the authority, direction or control of Defendant Macke, would forcibly feed Plaintiff his own vomit mixed in with the oatmeal. One of the individuals would forcibly hold Plaintiff's hands behind his back, while the other individual would forcibly feed the oatmeal mixed with Plaintiff's vomit to Plaintiff.

19. Plaintiff came home from school one day in the winter of 1995 with vomit and oatmeal all over his clothing. Plaintiff was also still sick from the above-described actions taken against him. Upon seeing this, Plaintiff's parent questioned Plaintiff about what happened at school. Plaintiff explained that he was sent to Defendant Macke's classroom where he was forcibly fed his own vomit and oatmeal.

20. The next day, after learning of the above-described actions, Plaintiff's parent contacted Defendant Minnear.

21. Defendant Minnear indicated she was familiar with the procedure of force feeding oatmeal to children and explained that it was a form of punishment used in her school. Plaintiff's parent informed Defendant Minnear not to use this form of punishment on her son.

22. After meeting with Defendant Minnear, Plaintiff's parent contacted Defendant Henry and informed him of the above-described procedure of force feeding children and explained she did not want that form of punishment used on her son. Defendant Henry promised to investigate the matter but he never followed up with Plaintiff's parent regarding the matter.

23. Subsequently, Plaintiff's parent informed Defendant Minnear that she did not want her son in Variety School any longer. However, Defendant Minnear informed Plaintiff's parent that Plaintiff was not ready to go to another school.

24. Defendant Macke and his instructional assistant Mike Nelson, by and under the authority, direction or control of Defendant Macke, continued using this form of punishment on Plaintiff.

25. On December 6, 1995, Plaintiff came home from school crying and gasping for air with severe red marks on his neck which resembled choking marks. Plaintiff's parent, upon seeing these marks, questioned the bus driver who explained that the marks did not happen on the bus. Plaintiff's parent also questioned Plaintiff who informed his mother that an instructional assistant by the name of Mike Nelson, by and under the authority, direction or control of Defendant Macke, approached him and choked him. This incident occurred in the multipurpose room of Variety School in an attempt to make Plaintiff run faster, but Plaintiff kept falling down. Plaintiff, because of a physical deformity in his feet and legs which curve inward, is unable to run fast.

26. Plaintiff's parent, upon seeing these marks took Plaintiff to the emergency room. The physician's diagnosis/impression reads "consistent [with] neck strangulation."

27. Subsequently, Plaintiff's parent telephoned Defendant Henry and informed him that her son was badly choked at Variety School. Plaintiff's parent also informed Defendant Henry several times that she did not want her son in Variety School anymore because he kept getting hurt. Defendant Henry informed Plaintiff's parent that he would investigate the matter but he never followed up with Plaintiff's parent regarding the matter.

28. Plaintiff's parent, becoming suspicious of why her son was oftentimes coming home bruised and appeared so unhappy, went to Variety School unannounced. She went to Plaintiff's classroom and saw a student under a table who did not want to come out. She looked closer and noticed it was her son. Defendant Macke was forcibly pulling Plaintiff from under the table by the zipper of his jacket. Plaintiff did not want to come out from under the table because he did not want to be "taken down" by Defendant Macke.

29. Throughout the 1996-97 academic school year, Plaintiff was repeatedly the victim of a procedure known as a "take down", whereby Defendant Macke, or another staff person by and under the authority, direction or control of Defendant Macke, would force Plaintiff to a mat on the ground on his stomach and then restrain Plaintiff's arms and legs, by forcibly crossing them, behind his back. Defendant Macke, or another staff person by and under the authority, direction or control of Defendant Macke, would be on top of Plaintiff during this "take down" applying pressure to Plaintiff's buttocks or spine. Defendant Macke, or another staff person by and under the authority, direction or control of Defendant Macke, would not get up until Plaintiff cried or screamed. This was a very painful experience each and every time for Plaintiff to endure.

30. When Plaintiff's parent became aware of this procedure, she went to the school to inform Defendant Minnear that she did not want her son to be forced to the ground. Defendant Minnear informed Plaintiff's parent that her son was hard to handle and that such a procedure was necessary. Plaintiff's parent asked for it to stop, but to no avail.

31. This “take down” procedure was inflicted upon Plaintiff without proper justification and inflicted as punishment for his actions that were related to his disability. For example, the “take down” procedure would be inflicted upon Plaintiff if he “ticked”. Because of the nature of Plaintiff’s disabilities, his body often moves involuntarily, “ticks”, even though he is trying his best not to move.

32. Plaintiff was forced by his classroom teacher, Tonda Buckner, acting by and under the authority, direction or control of Defendants Minnear, Henry and School District, to sustain long durations of time on a treadmill set at a very high speed in an effort to tire him and prevent him from leaving his seat or the classroom. While using the treadmill, Plaintiff was forced to wear sand weights tied to his ankles. If Plaintiff fell down while on the treadmill, he would be forcibly picked up and made to continue on the treadmill. The inability to control movement or the impulse to move is a common characteristic of children with Plaintiff’s disabilities. Additionally, Plaintiff’s physical deformity of his legs makes it difficult for him to sustain long durations of running or running very fast.

33. While at Variety School, Plaintiff’s teacher Tonda Buckner, acting by and under the authority, direction or control of Defendants Minnear, Henry, and School District, would take away Plaintiff’s breakfast and/or lunch and Plaintiff would not be allowed to eat that entire school day. His meals would be thrown in the garbage, if for example, Plaintiff was unable to cut his food using the appropriate utensils. Plaintiff was unable to cut his food because of the nature of his disabilities.

34. On several occasions, Defendant Macke required Plaintiff to write many sentences saying “I will not tell my mom” and/or “I will not tick”. Defendant Macke would also threaten physical harm on Plaintiff if he ever told his mother what happened to him throughout his school day. “Ticks”, involuntary body movements, are a common characteristic of a person with Plaintiff’s disabilities.

35. While attending Variety School, School District personnel by and under the authority, direction or control of Defendants Minnear, Henry and School District, would squirt or splash Plaintiff in the face with water if he was not on task. In the summertime he would be squirted or splashed in the face with warm water, and in the wintertime he would be squirted or splashed in the face with cold water. Plaintiff’s inability to stay on task for long periods of time is a characteristic of Plaintiff’s disability and caused by his disability.

36. In January 1998, during swimming class, as Plaintiff was swimming on the bottom of the pool, the Variety School aquatics instructor, Robert Swift, acting by and under the authority, direction or control of Defendants Minnear, Henry and School District, pulled Plaintiff out of the pool by his neck and grabbed his cheeks and back of neck. These actions left bruises on the back of Plaintiff’s neck and face.

37. In January 1998, Plaintiff came home from school with marks on his neck and face and again Plaintiff’s parent contacted Defendant Minnear regarding the situation. It was at this point that Plaintiff’s parent insisted that Plaintiff be removed from Variety School.

38. Other forms of punishment inflicted upon Plaintiff by Defendants, or someone by and under the authority, direction or control of Defendants Minnear, Henry, and School District, included being forced to stand in a corner of the room with his arms and hands behind his back for long durations of time; and, being forced to stay outside on the patio with no food or water for extended periods of time.

39. While Plaintiff attended Variety School, Defendant Minnear and Defendant Macke repeatedly threatened Plaintiff that if he told his mother or anyone about the abusive practices inflicted upon him including, but no limited to those herein described, that Plaintiff would never be allowed to go to a

different school, that he would go to jail for being a liar and/or that he would be taken away from his mother.

40. Plaintiff endured daily emotional abuse from Defendant Macke's degrading and humiliating remarks at him for his actions which were characteristics of his disabilities.

41. While Plaintiff attended Variety School, he was very unhappy and angry before going to school. He would cry before going to school and would plead with his mother not to make him go to school. He would also have nightmares and wet his bed.

42. Whenever Plaintiff's parent contacted Defendant Minnear regarding any of the above described abusive procedures, Plaintiff and/or Plaintiff's parent would be the victim of retaliation and/or threatened. For example, Defendant Minnear repeatedly threatened Plaintiff's parent that she was going to have her son taken away if she attempted to take Plaintiff out of Variety School.

43. The action of physically overpowering young children with disabilities in order to inflict the above described practices upon them has been followed and condoned by Defendants, and each of them, for several years, and are practices which are still pursued and condoned by Defendants and each of them.

44. The above described practices served no legitimate educational or other purposes, but instead were inflicted solely to punish and humiliate children with disabilities for their actions which are characteristic of their disabilities.

45. Defendants' sadistic and abusive punishment practices have made Plaintiff's parent fearful for her son's physical safety and emotional welfare. Plaintiff continues to display the effects of the dangerous physical and emotional mistreatment he has suffered in Variety School.

46. Plaintiff has been forced to withdraw from Variety School and he is now enrolled in another school within the School District.

47. Plaintiff is informed and believes, and therefore alleges, that the above described ongoing pattern and practice of punishment methods currently used, by definition, are not appropriate to achieve educational goals, and they instead result in lasting and irreparable damage to the child.

FIRST CAUSE OF ACTION
(VIOLATION OF CONSTITUTIONAL RIGHT TO SUBSTANTIVE DUE PROCESS)
42 U.S.C. § 1983

48. Plaintiff realleges paragraphs 1 through 47 as though fully set forth herein.

49. By their actions as described herein, the Defendants, under color of statute, ordinance, regulation, custom, or usage, subjected Plaintiff to the deprivation of rights, privileges, or immunities secured by the Constitution and laws. In particular, as a student in a public school, Plaintiff has a liberty interest in personal security and freedom from restraint and infliction of pain.

50. The practices described above, including, but not limited to, the force feeding of a food substance Plaintiff was allergic to mixed with his own vomit; the choking; the infliction of the "take down" procedure; the excessive use of a treadmill used in conjunction with ankle weights; the omission of meals; the required writing of sentences such as "I will not tick"; the squirting of water in Plaintiff's face; and, the other forms of abuse described above which were inflicted upon Plaintiff and other children with

disabilities, which are not inflicted upon children without disabilities, while attending a public school constitutes restraint and the infliction of pain in violation of Plaintiff's liberty interest.

51. Defendants inflicted such practices upon Plaintiff in an attempt to punish him for his actions such as, making a noise in the classroom, not being able to run fast enough, not being able to stay on task, not being able to cut his food. Plaintiff's actions, for which he was being punished, were all characteristics of his disabilities and occurred because of his disability.

52. As a direct and proximate result of the actions described above, Plaintiff sustained actual damages, including injuries to his person, pain, severe and grievous mental and emotional suffering, humiliation, shame, embarrassment, worry, fear, anguish, shock, nervousness, and anxiety in an amount to be ascertained according to proof at trial.

53. The actions of Defendants, as described above, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted upon Plaintiff. As a result of said intentional conduct, Plaintiff is entitled to punitive damages in an amount sufficient to punish Defendants and to deter others from like conduct.

54. The actions of Defendants as described above, including, but not limited to, corporal punishment and squirting water into young children's faces, are written policies at Variety School which were written and adopted by Defendant Minnear in 1992.

55. The actions taken, or not taken, in response to Defendant Macke's conduct, and Defendant Minnear's policies and practices by the other named Defendants amounted to the adoption of such practices, customs, or policies of teacher's and principal's conduct.

56. Defendant School District knew, or should have known, about the abusive practices with respect to Plaintiff and other students and former students as such are so well settled as to constitute a custom or usage in Variety School. Yet, Defendant School District failed to take affirmative actions to provide for the safety and well being of the young children.

57. In all of this, Defendants, and each of them, have, acting under the color of state law, deprived Plaintiff of rights, privileges, or immunities secured to him by the Constitution and laws of the United States in violation of 42 U.S.C. § 1983.

58. Plaintiff was forced to hire an attorney to represent him in this matter and Plaintiff should be awarded reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

SECOND CAUSE OF ACTION
(VIOLATION OF CONSTITUTIONAL RIGHT TO EQUAL PROTECTION)
42 U.S.C. § 1983

59. Plaintiff realleges paragraphs 1 through 58 as though fully set forth herein.

60. The actions of Defendants, as described above, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution in that such actions are not inflicted upon young children in the School District who do not have disabilities. In all of this, Defendants, and each of them, have, acting under the color of state law, deprived Plaintiff of rights, privileges, or immunities secured to him by the Constitution and laws of the United States in violation of 42 U.S.C. § 1983.

61. The practices described above, including, but not limited to, the force feeding of a food substance Plaintiff was allergic to mixed with his own vomit; the choking; the infliction of the “take down” procedure; the excessive use of a treadmill used in conjunction with ankle weights; the omission of meals; the required writing of sentences such as “I will not tick”; the squirting of water in Plaintiff’s face; and, the other forms of abuse described above which were inflicted upon Plaintiff and other children with disabilities, which are not inflicted upon children without disabilities, while attending a public school is a violation of equal protection.

62. As a direct and proximate result of the actions described above, Plaintiff sustained actual damages, including injuries to his person, pain, severe and grievous mental and emotional suffering, humiliation, shame, embarrassment, worry, fear, anguish, shock, nervousness, and anxiety in an amount to be ascertained according to proof at trial.

63. The actions of Defendants as described above were malicious, deliberate, intentional and embarked upon with the knowledge of or in conscious disregard of, the harm that would be inflicted upon Plaintiff. As a result of said intentional conduct, Plaintiff is entitled to punitive damages in an amount sufficient to punish Defendants and to deter others from like conduct.

64. Plaintiff was forced to hire an attorney to represent him in this matter and Plaintiff should be awarded reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.

THIRD CAUSE OF ACTION
(VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973)
29 U.S.C. §§ 794 et seq.

65. Plaintiff realleges paragraphs 1 through 64 as though fully set forth herein.

66. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and the regulations promulgated thereunder, 34 C.F.R. Part 104, prohibits discrimination against persons with disabilities. Section 504 prohibits the exclusion from the participation in, or being denied the benefits of, or being subjected to discrimination under any program or activity receiving Federal financial assistance.

67. The practices described above, including, but not limited to, the force feeding of a food substance Plaintiff was allergic to mixed with his own vomit; the choking; the infliction of the “take down” procedure; the excessive use of a treadmill used in conjunction with ankle weights; the omission of meals; the required writing of sentences such as “I will not tick”; the squirting of water in Plaintiff’s face; and, the other forms of abuse described above which were inflicted upon Plaintiff and other children with disabilities, which are not inflicted upon children without disabilities, while attending a public school violates the prohibition against discrimination solely on the basis of disability.

68. Defendants, and each of them, have violated Plaintiff’s rights under Section 504 and the regulations promulgated thereunder by denying Plaintiff the benefits of receiving full and equal access to the public education programs and activities offered within the School District.

69. As a direct and proximate result of Defendants’ violation of Section 504, Plaintiff has suffered and continues to suffer injuries to his person, pain, humiliation, anxiety, mental anguish, emotional distress, and damage to his reputation and personal relations in an amount to be ascertained according to proof at trial.

70. Plaintiff was forced to hire an attorney to represent him in this matter and Plaintiff should be awarded reasonable attorneys’ fees and costs.

FOURTH CAUSE OF ACTION
(VIOLATION OF THE AMERICANS WITH DISABILITIES ACT)
42 U.S.C. §§ 12101 et seq.

71. Plaintiff realleges paragraphs 1 through 70 as though fully set forth herein.

72. Title II of the ADA, 42 U.S.C. § 12131 et seq. and the regulations promulgated thereunder, 28 C.F.R. Part 35, governing state and local governmental entities, protects persons from discrimination on the basis of disability by public entities. The ADA prohibits the exclusion from participation in, or being denied the benefits of the services, programs, or activities of the public entity, or being subjected to discrimination by such entity.

73. The practices described above, including, but not limited to, the force feeding of a food substance Plaintiff was allergic to mixed with his own vomit; the choking; the infliction of the “take down” procedure; the excessive use of a treadmill used in conjunction with ankle weights; the omission of meals; the required writing of sentences such as “I will not tick”; the squirting of water in Plaintiff’s face; and, the other forms of abuse described above which were inflicted upon Plaintiff and other children with disabilities, which are not inflicted upon children without disabilities, while attending a public school violates the prohibition against discrimination solely on the basis of disability.

74. Defendants, and each of them, have violated Plaintiff’s rights under the ADA and the regulations promulgated thereunder by denying Plaintiff the benefits of the services, programs, and activities to which he is otherwise entitled to from the School District.

75. As a direct and proximate result of Defendants’ violation of the ADA, Plaintiff has suffered and continues to suffer injuries to his person, pain, humiliation, anxiety, mental anguish, emotional distress and damage to his reputation and personal relations in an amount to be ascertained according to proof at trial.

76. Plaintiff was forced to hire an attorney to represent him in this matter and Plaintiff should be awarded reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 12133.

FIFTH CAUSE OF ACTION
(VIOLATION OF STATE LAW PROHIBITING CORPORAL PUNISHMENT)
NRS § 392.465

77. Plaintiff realleges paragraphs 1 through 76 as though fully set forth herein.

78. Corporal punishment is defined in state law as the “intentional infliction of physical pain upon or the physical restraint of a pupil for disciplinary purposes.” NRS § 392.465(3).

79. Pursuant to NRS § 392.465(1), corporal punishment is prohibited upon a pupil in any public school.

80. The practices described above, including, but not limited to, the force feeding of a food substance Plaintiff was allergic to mixed with his own vomit; the choking; the infliction of the “take down” procedure; the excessive use of a treadmill used in conjunction with ankle weights; the omission of meals; the required writing of sentences such as “I will not tick”; the squirting of water in Plaintiff’s face; and, the other forms of abuse described above which were inflicted upon Plaintiff and other children with

disabilities, which are not inflicted upon children without disabilities, while attending a public school constitutes physical pain and physical restraint upon him.

81. Defendants inflicted such practices upon Plaintiff in an attempt to discipline him or punish him for his actions such as, making a noise in the classroom, not being able to run fast enough, not being able to stay on task, not being able to cut his food. Plaintiff's actions for which he was being punished were all characteristics of his disabilities.

82. As a direct and proximate result of the actions as described above, Plaintiff sustained actual damages including injuries to his person, pain, severe, and grievous mental and emotional suffering, humiliation, shame, embarrassment, worry, fear, anguish, shock, nervousness, and anxiety in an amount to be ascertained according to proof at trial.

83. The actions of Defendants, as described above, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted upon Plaintiff. As a result of said intentional conduct, Plaintiff is entitled to punitive damages in an amount sufficient to punish Defendants and to deter others from like conduct.

84. In all of this, Defendants have violated NRS § 392.465 by intentionally inflicting physical pain and physical restraint upon Plaintiff for punishment or disciplinary purposes.

85. Plaintiff was forced to hire an attorney to represent him in this matter and Plaintiff should be awarded reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION
(ASSAULT)

86. Plaintiff realleges paragraphs 1 through 85 as though fully set forth herein.

87. The practices described above, including, but not limited to, the force feeding of a food substance Plaintiff was allergic to mixed with his own vomit; the choking; the infliction of the "take down" procedure; the excessive use of a treadmill used in conjunction with ankle weights; the omission of meals; the required writing of sentences such as "I will not tick"; the squirting of water in Plaintiff's face; and, the other forms of abuse described above which were inflicted upon Plaintiff and other children with disabilities, which are not inflicted upon children without disabilities, while attending a public school caused reasonable apprehension by Plaintiff of an immediate or offensive contact with Plaintiff's person.

88. As a direct and proximate result of Defendants actions, as described above, Plaintiff sustained actual damages including injuries to his person, pain, severe, and grievous mental and emotional suffering, humiliation, shame, embarrassment, worry, fear, anguish, shock, nervousness and anxiety in an amount to be ascertained according to proof at trial.

89. The actions of Defendants, as described above, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or conscious disregard of, the harm that would be inflicted upon Plaintiff. As a result of said intentional conduct, Plaintiff is entitled to punitive damages in an amount sufficient to punish Defendants and to deter others from like conduct.

90. Plaintiff was forced to hire an attorney to represent him in this matter and Plaintiff should be awarded reasonable attorneys' fees and costs.

SEVENTH CAUSE OF ACTION
(BATTERY)

91. Plaintiff realleges paragraphs 1 through 90 as though fully set forth herein.

92. The practices described above, including, but not limited to, the force feeding of a food substance Plaintiff was allergic to mixed with his own vomit; the choking; the infliction of the “take down” procedure; the excessive use of the treadmill used in conjunction with ankle weights; the omission of meals; the required writing of sentences such as “I will not tick”; the squirting of water in Plaintiff’s face; and, the other forms of abuse described above which were inflicted upon Plaintiff and other children with disabilities, which are not inflicted upon children without disabilities, while attending a public school constitutes harmful and offensive contact with Plaintiff’s person.

93. As a direct and proximate result of the actions as described above, Plaintiff sustained actual damages including injuries to his person, pain, severe, and grievous mental and emotional suffering, humiliation, shame, embarrassment, worry, fear, anguish, shock, nervousness, and anxiety in an amount to be ascertained according to proof at trial.

94. The actions of Defendants, as described above, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or conscious disregard of, the harm that would be inflicted upon Plaintiff. As a result of said intentional conduct, Plaintiff is entitled to punitive damages in an amount sufficient to punish Defendants and to deter others from like conduct.

95. Plaintiff was forced to hire an attorney to represent him in this matter and Plaintiff should be awarded reasonable attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For actual and compensatory damages in an amount to be ascertained according to proof;
2. For punitive damages in an amount sufficient to punish Defendants and deter others from like conduct;
3. Prejudgment interest;
4. Attorneys’ fees and costs; and,
5. Such other and further relief as this Court deems just and proper.

DATED this 2nd day of March, 1998.

CLARK COUNTY LEGAL SERVICES PROGRAM, INC.

By_SARA V. WINTER, ESQ.
Nevada Bar Number 6174
701 East Bridger Avenue, Suite 100

Las Vegas, Nevada 89101
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff demands trial by jury in this action.

DATED this 2nd day of March, 1998.
CLARK COUNTY LEGAL SERVICES PROGRAM, INC.

By_SARA V. WINTER, ESQ.
Nevada Bar Number 6174
BARBARA E. BUCKLEY
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