

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JENNIFER GARZA and C.G, by and through his
guardian ad litem JENNIFER GARZA,

Plaintiffs,

v.

Hon. Gordon J. Quist
Case No. 15-1128

LANSING SCHOOL DISTRICT, LESTER DUVALL,
CONNIE NICKSON, TRACEY KEYTON, MARTIN
ALWARDT, YVONNE CAAMAL CANUL, SHERYL BACON,
and EDNA ROBINSON,

Defendants.

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FIRST AMENDED COMPLAINT FOR DAMAGES AND JURY DEMAND

I. INTRODUCTION

Plaintiff Jennifer Garza brings this action on behalf of herself and as guardian ad litem for her son C.G., a minor.

II. DIVISION ASSIGNMENT

1. This case arose in the City of Lansing, Ingham County, MI. Pursuant to Local Rule 3.2, it should be assigned to the Southern Division of the United States District Court, Western District of Michigan.

III. PARTIES

2. Plaintiff Jennifer Garza is a resident of Ingham County, Michigan. She brings this action on her own behalf and as guardian ad litem for her son C.G.

3. Plaintiff C.G. is a minor and a resident of Ingham County, Michigan.

4. Lansing School District (“LSD”) is a public school district in the City of Lansing, Michigan.

5. LSD has the responsibility to provide C.G. with full and equal access to a public education in compliance with state and federal regulations, including those pertaining to use of force and restraint.

6. Defendant Lester Duvall (“Duvall”) was a tenured special education teacher employed by LSD. All actions by Duvall were taken under color of state law and in the course and scope of his employment with LSD. On information and belief, Duvall’s responsibilities included providing the structure and consistency that would enable a student with disabilities such as C.G. to access an appropriate education and

progress educationally, emotionally and behaviorally, free from the use of excessive force or corporal punishment.

7. Defendant Connie Nickson (“Nickson”) is the principal of Gardner Leadership, Law & Government Academy (“Gardner”), a K-8 school within the LSD. All actions by Nickson were taken under color of state law and in the course and scope of her employment with LSD.

8. Tracey Keyton (“Keyton”) is the assistant principal of Gardner. All actions by Keyton were taken under the color of state law and in the course and scope of her employment with LSD.

9. Martin Alwardt (“Alwardt”) is the Director of Special Education for LSD, Elementary & Preschool Programs. All actions by Alwardt were taken under color of state law and in the course and scope of his employment with LSD. On information and belief, Alwardt was responsible for ensuring that all special needs students receive appropriate public education, free from abuse, seclusion and use of corporal punishment.

10. Yvonne Caamal Canul (“Caamal Canul”) is the superintendent of LSD. All actions by Caamal Canul were taken under the color of state law and in the course and scope of her employment with LSD. Based on information and belief, Caamal Canul is responsible for the hiring, training and supervision of LSD’s staff. On information and belief, she was also responsible for ensuring compliance with state and federal laws pertaining to behavior interventions, supervision, and training.

11. Sheryl Bacon (“Bacon”) was the principal of Beekman Center, a school within LSD where Duvall worked before Duvall was transferred to Gardner. All actions by Bacon were taken under the color of state law and in the course and scope of her employment with LSD. On information and belief, Bacon was responsible for ensuring that all special needs students receive appropriate public education, free from abuse, seclusion and use of corporal punishment.

12. Edna Robinson (“Robinson”) is the Special Education Supervisor, Middle/High School Programs and the principal of Beekman after Bacon retired. All actions by Robinson were taken under color of state law and in the course and scope of her employment with LSD. On information and belief, Robinson was responsible for ensuring that all special needs students receive appropriate public education, free from abuse, seclusion and use of corporal punishment.

IV. FACTUAL ALLEGATIONS

13. Plaintiff C.G. was born on July 1, 2002.

14. C.G. was diagnosed with autism spectrum disorder and attention deficit disorder which qualified him for special education services.

15. C.G. attended Gardner during the 2014-2015 school year.

16. On or about October 7, 2014, Duvall was substituting for another teacher in C.G.’s classroom. C.G. went to a pencil sharpener, but his pencil got stuck. Duvall told C.G. to sit down, but C.G. went to another pencil sharpener instead. Duvall then approached C.G., grabbed him by the arm, dragged him to the classroom

door, and threw him on the floor and into a bookcase. Duvall's assault caused C.G. to hit his head on a trash can and his body on a bookshelf. Duvall threw C.G. so violently that the force of C.G.'s body hitting the bookshelf caused the bookshelf to break. The assault left C.G. crying in pain.

17. As a result of the assault, C.G. suffered a concussion and sustained numerous large bruises all over his body, including a black eye.

18. Attached hereto as an Exhibit 1 are photographs of C.G. taken after the incident showing the extensive injuries that he suffered as a result of Duvall's assault.

19. As a result of the investigation of this attack by the Lansing Police Department, Duvall was charged on November 14, 2014 with 4th degree child abuse under M.C.I. §750.136b(7), a misdemeanor, punishable by imprisonment of up to one year.

20. Duvall was terminated by LSD in early 2015.

21. On June 1, 2015, Duvall pled guilty to one count of Disorderly Person and fined \$300.

22. The October 7, 2014 incident was not the only time Duvall had abused C.G. Other instances include, but are not limited to, Duvall forcefully taking C.G.'s journal, hitting him in the arm with it and slapping him on the head (this incident was never reported to Jennifer Garza); Duvall calling C.G. an "idiot"; and hitting C.G. on the arm with a closed fist (this was also never reported to Jennifer Garza).

23. As to the October 7, 2014 incident involving C.G., Jennifer Garza was told vaguely only that there was an “incident” involving Duvall and C.G. At no time did Keyton and Nickson reveal to her the force with which Duvall threw C.G. broke a bookshelf.

24. In an ongoing effort to conceal the extent of Duvall’s physical and verbal abuse of C.G., Nickson also instructed the school social worker not to share what happened with C.G.’s mother.

25. The October 7, 2014 incident of abuse of C.G. was not reported by LSD to Department of Human Services (“DHS”) or police until a week after it occurred.

26. Upon information and belief, Duvall’s physical assaults and incidents of verbal abuse inflicted on C.G. prior to October 7, 2014 were not reported to DHS by LSD.

27. In the 2013-2014 and 2014-2015 school year, Gardner Principal Connie Nickson received multiple complaints from school staff that Duvall was engaging in physical and verbal abuse of his students including pushing, forcing students to the ground and into chairs, kicking chairs out from under students, and other physical abuse.

28. Nickson told one LSD staff person that her job would be in jeopardy if she continued to report Duvall’s abuse.

29. Nickson failed to investigate these reports of abuse, failed to send them to LSD to investigate, and failed to inform DHS.

30. Throughout his tenure at LSD, Duvall routinely subjected the students in his classroom to severe physical, verbal and emotional/psychological abuse. Students were routinely subjected to Duvall's numerous unsanctioned, ineffective, unlawful and cruel methods. Witnessing the abuse suffered by C.G. and others created a hostile educational environment for all students.

31. In fact, for over a decade, staff, mental health professionals and parents notified LSD administrators and school officials that Duvall was physically, verbally and psychologically abusing his students and yet many of these incidents were never investigated, nor were they ever reported to DHS.

32. In November 2003, an intern reported in a written statement that Duvall was rough with students, including an incident where he slammed one into a table.

33. Also in November of 2003, an aide made a written statement that Duvall put a student into a seclusion room with the door closed and that he was belting the students to their chairs to keep them seated, yanking them out of their seats, force-feeding them, and slamming students into tables. The aide stated in her letter that Duvall "needs to be removed! He's a potential danger to students."

34. In April, 2005, multiple teachers reported an incident in which Duvall slapped a student. The teachers reported that they could not believe that Duvall would slap a student that hard in front of them.

35. On or about March 21, 2007, an aide in Duvall's classroom observed him get upset because a child was eating a piece of candy. It was reported that

Duvall pushed the child to the floor, grabbed his mouth and forced his mouth open. The side of the child's mouth and face were scratched by Duvall and the child was bleeding and "crying hard". The aide concluded the report by stating "I am really afraid for myself after seeing him attack (redacted) over a small piece of candy. The anger in his eyes is really bad."

36. Between 2010 and 2012, Community Mental Health Services documented five incidents of excessive force or inappropriate touching by Duvall, including forcing a student's head under water, and causing bruises and abrasions. One female student complained that Duvall had touched her breasts and private areas. In addition, Community Mental Health reported that Duvall was denying a student meals as punishment and that another student was observed sitting with her hands on her head, sullen and not talking, and having bald spots on her head from pulling her hair out.

37. In early 2010, another teacher reported to Principal Bacon on three to four occasions that Duvall was overly physical with students. When Bacon took no action, the teacher filed a written complaint in April, 2012, that she had observed Duvall "physically handling students in an aggressive manner", including grabbing a student, forcing him against the wall and going nose-to-nose with him; applying pressure to a student's jaw to stop her from making noise. She stated that Duvall was a "toxic presence" because of his mistreatment of students.

38. School officials failed to undertake any investigation into the teacher's

report of Duvall's abuse of students and instead misinterpreted the complaint as concerning Duvall's treatment of the complaining teacher. During the investigation, Bacon admitted that she had shredded all her notes concerning previous complaints about Duvall and the reports themselves.

39. The teacher who made the complaint referenced in the previous paragraph did not receive a report of the investigation. She had to file a Freedom of Information Act request in order to receive it. In response, she wrote to the investigator complaining that no investigation had been made into her complaints about Duvall's treatment of students. She concluded by stating, "In conclusion, my only motivation for making the original complaint/allegations was to protect students at the Beekman Center from mistreatment ... and I see no evidence this was addressed in the investigation. As a result, I am concerned that similar mistreatment continues to this day, and that the Lansing School District has allowed a teacher (Mr. Duvall) to remain in a position to continually mistreat vulnerable students, ignoring information brought to administrations attention."

40. In October of 2012, during her four days in Duvall's classroom, a classroom assistant observed Duvall engage in a series of abusive behaviors including throwing a drink carton at a student and yanking another out of the chair. On the fourth day, October 4, 2012, she and other witnesses observed Duvall grabbing a student's head and neck, shaking her head back and forth, and squeezing hard enough that her eyes bulged out. This incident was investigated internally and

it was determined that Duvall unlawfully used corporal punishment (the District characterized it as “blatant excessive use of force”.) Yet, he was suspended for just three days. Robinson or other LSD administrators and school personnel never notified the police, Adult Protective Services (Duvall taught the Young Adult Class, ages 21-26), or the guardian of the victim.

41. Also in October of 2012, an aide reported that Duvall refused to allow a student to use the bathroom and that the student defecated in his pants as a result.

42. Also in October, 2012, Community Mental Health asked the school not to place a student in Duvall’s classroom because he “has consistently demonstrated an inability to provide educational opportunities for individuals with [Autism Spectrum Disorder] based on evidence-based practice. Furthermore, there have been repeated instances and allegations of him using physical force, control tactics and verbal threats to elicit compliance from his students.” In closing, Community Mental Health staff stated, “We encourage administration to look closely at the appropriateness of Mr. Duvall providing care to any students.”

43. Upon information and belief, from 2004 to 2012, a para-pro witnessed Duvall physically and verbally abuse students, including observing him slapping and squeezing students grabbing students by the neck, dragging students around the room, squeezing students’ faces, and other physical abuse. This para-pro also received additional reports from teachers, students and other staff members about Duvall’s abuse. Although the abuse was timely reported to Bacon, they were not

investigated, nor were the incidents of abuse reported to DHS.

44. Bacon threatened the para-pro that if she kept reporting abuse, she would lose her job.

45. In February of 2014, an assistant reported seeing Duvall grab a student and throw her 10 feet into a corner of a bookcase. She stated that she has seen Duvall do this several times and that Duvall is "violent and has an anger issue." She also reported that he bragged about mishandling this student.

46. Despite numerous reports over the course of many years from teachers and staff that Duvall was abusing students, LSD failed to act in an effective manner to protect these vulnerable children with special needs from Duvall. Instead school officials permitted Duvall's abuse to continue and even intentionally destroyed records related to investigations and complaints of abuse. Nickson, Keyton, Bacon, Robinson, Alwardt, Caamal Canul, Robinson and other LSD administrators received reports from parents, classroom aides and assistants that documented multiple instances of abuse that was occurring on a daily basis at the hands of Duvall.

47. During the 2010-2011 school year, Robinson received reports from classroom aides and teachers that Duvall was abusing students. One aide requested that she be removed from the classroom because of the abuse. A teacher submitted a written complaint to Robinson in which she stated that "I am accusing Lester Duvall of physically intimidating students, being excessively rough with students in his care." Robinson took no action about the complaints and instead condoned and

acquiesced in the abuse.

48. Both Alwardt and Caamal Canul received numerous reports about Duvall's abuse of children including written complaints from Community Mental Health and from Mid-Michigan Guardianship Services, Inc. Community Mental Health stated they had "grave concerns" about the safety of Duvall's students. Neither Alwardt nor Caamal Canul took any action about the complaints and instead condoned and acquiesced in the abuse.

49. Bacon received complaints for years about Duvall from staff, parents and agencies, including Community Mental Health. She took no action and instead supported Duvall against these criticisms. When she retired in 2012, she destroyed all the reports she received while she was a principal at Beekman Center.

50. Not only did the supervisory personnel at Gardner and LSD conceal the abuse, they actively misrepresented Duvall's teaching abilities, even stating in his evaluations that he was an "excellent teacher."

51. In addition to physically and emotionally abusing his students, Duvall used highly inappropriate restraint methods on students including C.G. On information and belief, C.G. was restrained by Duvall multiple times a week. Not one incident was reported to Jennifer Garza.

52. As a result of the abuse, C.G. became more physically and verbally aggressive at home and at school, and had an increase in anxiety and depressive symptoms, such as picking at his fingernails. Jennifer Garza did not understand what

was happening to her son, and the concealment of the abuse by the administrators and teachers caused her severe emotional distress when she finally discovered what has happened.

V. FIRST CLAIM FOR RELIEF
(Violation of Constitutional Rights, 42 U.S.C. § 1983; All Plaintiffs
vs. Bacon, Duvall, Nickson, Keyton, Alwardt, Robinson and
Caamal Canul

53. Plaintiffs refer to, and incorporate herein by reference, all the preceding paragraphs as though fully stated.

54. Defendant Duvall violated minor Plaintiff C.G.'s rights under the Fourth Amendment to the United States Constitution by actions, including, but not limited to, utilizing unjustified, unreasonable, and excessive force against him.

55. Bacon, Nickson, Keyton, Alwardt, Robinson, and Caamal Canul violated C.G.'s rights under the Fourth Amendment by their deliberate indifference to the risk that Duvall would inflict excessive force on his students, including C.G.

56. Duvall's conduct in subjecting C.G. to severe and brutal physical abuse violated C.G.'s rights under the due process clause of the Fourteenth Amendment.

57. As a proximate result of the violations alleged hereinabove, Plaintiffs have suffered damages as heretofore alleged.

VI. SECOND CLAIM FOR RELIEF
(Discrimination in Violation of the Americans with Disabilities Act; C.G. vs.
LSD)

58. Plaintiffs refer to, and incorporate herein by reference, all the preceding

paragraphs as though fully stated.

59. Effective January 26, 1992, Plaintiff C.G. was entitled to the protections of the "Public Services" provision of Title II of the Americans with Disabilities Act of 1990. Title II, Subpart A prohibits discrimination by any "public entity," including any state or local government, as defined by 42 USC § 12131, section 201 of the ADA.

60. Pursuant to 42 USC §12132, Section 202 of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity. Plaintiff C.G. was at all times relevant herein a qualified individual with a disability as therein defined.

61. LSD has failed in its responsibilities under Title II to provide its services, programs and activities in a full and equal manner to disabled persons as described hereinabove, including failing to ensure that educational services are provided on an equal basis to children with disabilities and free of hostility toward their disability.

62. LSD was under an obligation to refrain from creating and maintaining a deliberately hostile and intimidating work environment for C.G. based on his disability.

63. LSD has further failed in its responsibilities under Title II to provide its services, programs and activities in a full and equal manner to disabled persons as

described hereinabove by maintaining a severe and pervasive disability based hostile and intimidating environment for C.G.

64. As a result of LSD's failure to comply with its duty under Title II, Plaintiff C.G. has suffered damages including special and general damages according to proof.

VII. THIRD CLAIM FOR RELIEF
(Violation of § 504 of the Rehabilitation Act of 1973; Plaintiff C.G. vs. LSD)

65. Plaintiffs refer to, and incorporate herein by reference, all the preceding paragraphs as though fully stated.

66. Plaintiff C.G. is informed and believes and therefore alleges that LSD is and has been at all relevant times the recipient of federal financial assistance, and that part of that financial assistance has been used to fund the operations, construction and/or maintenance of the specific public facilities described herein and the activities that take place therein.

67. By their actions or inactions in denying equal access to educational services and by subjecting plaintiff C.G. to a hostile educational environment, defendant has violated his rights under § 504 of the Rehabilitation Act of 1973, 29 USC § 794, and the regulations promulgated thereunder.

68. As a result of LSD's failure to comply with its duty under § 504 of the Rehabilitation Act of 1973, 29 USC § 794, and the regulations promulgated thereunder, Plaintiff C.G. has suffered damages including special and general

damages according to proof.

VIII. FOURTH CLAIM FOR RELIEF
(Battery; Plaintiffs C.G. vs. Defendant Duvall)

69. Plaintiffs refer to, and incorporate herein by reference, all the preceding paragraphs as though fully stated.

70. The use of excessive force, as alleged herein, against C.G. by Defendant Duvall constituted a battery.

71. As a proximate result of Defendant Duvall's illegal battery, the minor Plaintiff suffered damages as alleged heretofore.

IX. FIFTH CLAIM FOR RELIEF
(Violation of Mandatory Duty; All Plaintiffs vs. Nickson, Keyton, Alwardt, Robinson and Caamal Canul)

72. Plaintiffs refer to, and incorporate herein by reference, all the preceding paragraphs as though fully stated.

73. Plaintiff CG is a member of a protected class of children as defined by Michigan's Child Protection Law as all children under the age of 18. MCL 722.622(e).

74. Plaintiff CG is entitled to be protected from child abuse, which includes harm or threatened harm to a child's health or welfare by a teacher, a teacher's aide and any other person responsible for the child's health or welfare that occurs through negligent treatment or placing a child at an unreasonable risk to their health or welfare or failing to intervene when a person should have knowledge of the risk.

MCL 722.622(f).

75. Plaintiff CG and other LSD students have been subject to abuse at the hands of Duvall for many years which includes incidents of physical assaults, injury, maltreatment, inappropriate touching, verbal and psychological abuse, seclusion, deprivation of food and nutrition.

76. Teachers, instructional aides, classified personnel and administrative officers of the LSD are mandatory reporters as defined by the Michigan Child Protection Law, 1975 PA 238, MCL § 722.621. As such, school officials were under a mandatory duty to immediately verbally notify the Department of Human Services whenever, in their professional capacity or within the scope of their employment, they suspect or have actual knowledge of child abuse or neglect. The initial verbal notification must be followed by a written report to DHS within 72 hours. The reporter is also under a duty to report to the head of his/her organization (in this case, LSD superintendent, Caamal Canul), however, that does not absolve the mandatory reporter from notifying DHS as described above.

77. Teachers, instructional aides, classified personnel and/or administrative officers of LSD were aware for years as a result of multiple reports from teachers and aides that children in Duvall's classroom were victims of child abuse. However, none of these mandatory reporters employed by the District ever complied with their duty to report the abuse to DHS as required by the Child Protection Act.

78. LSD school officials concealed Duvall's history of abuse by

intentionally destroying complaints and investigation materials.

79. Plaintiffs were harmed by the failure to report the abuse in that C.G. was not able to receive, and Jennifer Garza not able to provide, appropriate and timely comfort, counseling, and treatment.

80. Governmental immunity does not apply to the claims asserted against Defendants under the Child Protection Act because under the specific facts and circumstances known to Defendants prior to C.G.'s injuries, Defendant's failure to report was intentional malicious and so reckless as to demonstrate a substantial lack of concern and indifference as to whether injury to CG would result.

81. Under these circumstances LSD officials and administrators could not have believed that they were acting reasonably and within the scope of their authority as the LSD is required to report incidents of non-accidental physical or mental injury.

82. LSD employees who have the responsibility to report the abuse and have failed to make reports of abuse as required by the Child Protection Law, and Defendant LSD is vicariously liable for such failures of their employees to report as required by law.

83. As a proximate result of Defendants' actions, Plaintiffs have incurred damages as alleged heretofore.

X. SIXTH CLAIM FOR RELIEF
(Violation of the Persons with Disabilities Civil Rights Act (Act 220 of 1976); Plaintiff C.G. vs. All Defendants)

84. Plaintiffs refer to, and incorporate herein by reference, all the preceding

paragraphs as though fully stated.

85. The Persons with Disabilities Civil Rights Act provides that the opportunity to obtain . . . educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right.

86. C.G., based on his disabilities, was deprived of advantages, privileges and services of his school. LSD and the individual defendants were aware of this discrimination.

87. The abuse by Duvall caused C.G. to experience severe psychological and physical trauma.

88. LSD and its officials, as well as school personnel, were aware of the abuse perpetrated by Duvall and did nothing to prevent it, and in fact actively concealed his illegal conduct which constitutes willful and affirmative misconduct.

89. As a proximate result of Defendants' negligent supervision of Defendant Duvall, C.G. has incurred damages as alleged heretofore.

PRAYER

WHEREFORE, Plaintiffs prays for judgment as follows:

- a. Compensatory damages to Plaintiffs for injury, emotional distress and for medical expenses, past and future;
- b. Punitive damages against Defendants Duvall, Nickson, Keyton, Alwardt, Caamal Canul, Bacon and Robinson;
- c. Attorney's fees and costs; and

- d. Such other and further relief as the court deems just and proper.

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Dated: January 12, 2016

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guardian ad litem JENNIFER GARZA,

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JURY DEMAND

Plaintiffs hereby demands that this matter be tried to a jury.

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Dated: January 12, 2016