UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
LAFAYETTE DIVISION

T.Z., By and Through His Parent
and Legal Guardian, P.Z.,
Plaintiffs,

v. Case No. 4:22-cv-00016

TIPPECANOE SCHOOL CORPORATION,
GREATER LAFAYETTE AREA SPECIAL SERVICES,
DR. SCOTT HANBACK, In His Individual Capacity,
KELLY GABAUER, In her Individual Capacity,
LESLEY DAUSE, In her Individual Capacity,
MICHAEL GABAUER, In his Individual Capacity,
CLINTON WILSON, In his Individual Capacity,
JEFFREY TOLL, In his Individual Capacity,
COURTLON PETERS, In his Individual Capacity,
KELLY VANDERWAL, In her Individual Capacity,
ASHLEY ACHGILL, In her Individual Capacity,
MARRISSA PARKER, In her Individual Capacity,
JANE DOES 1-10; and JOHN DOES 1-10
Defendants.

COMPLAINT FOR DAMAGES

(Demand for Jury Trial)

Come now the Plaintiffs, and for their Complaint against the Defendants, state as follows:

PARTIES

1. Plaintiff T.Z. is a minor and the son of Plaintiff P.Z. P.Z. is also the legal guardian of T.Z. P.Z. shall sometimes be referred to as "Parent."

2. T.Z. is eleven (11) years old and has been diagnosed with disabilities, including anxiety disorder, unspecified trauma and stressor-related disorder, severe articulation disorder, and moderate expressive disorder. T.Z. is a "qualified individual with a disability" within the meaning of § 504 of the Rehabilitation Act, 29 USC § 705(20), the Americans with Disabilities Act ("ADA"), 42 USC §12131(2) and 28 CFR § 35.104.

3. At all relevant times, T.Z. attended public schools operated by Tippecanoe School Corporation ("the District").

4. Wea Elementary is a school ("the School") operated by the District.

5. The District is a public entity as defined by the ADA (43 USC § 12131(1) and 28 CFR § 35.104). The District has the responsibility to provide T.Z. with an education in compliance with federal Indiana law and regulations, including those pertaining to the use of seclusion. The District is the governmental body responsible for the operation of the District's schools, including the School, and is responsible for the training and supervision of all of its faculty and staff. The District is located in and carries out its functions in the State of Indiana.

6. Greater Lafayette Area Special Services ("GLASS") is a special education cooperative responsible for the direct provision of special education and related services to students within its participating school corporations, including the District.

7. Defendant Dr. Scott Hanback ("Hanback") is, and at all times relevant, was employed by the District and holds the position of Superintendent.

8. Hanback is responsible for all matters relating to the day-to-day operations of the District and ensuring that District employees comply with federal and Indiana laws and are properly trained.

9. Defendant Kelly Gabauer ("K. Gabauer") is, and at all times relevant, was employed by the District and holds the position of Director of Special Education.

10. Defendant Lesley Dause ("Dause") is, and at all times relevant, was the "GLASS Specialist" employed by the District and assigned to the School.

11. At all times relevant, Hanback, K. Gabauer, and Dause were responsible for overseeing the implementation of the District's Seclusion Plan and ensuring that it was

consistent with Indiana laws and federal laws and that it was followed by the District and its employees.

12. Hanback and K. Gabauer are on the advisory board for GLASS.

13. Defendant Michael Gabauer ("M. Gabauer") was an employee of the District and was the Principal at the School during T.Z.'s second and third grade years.

14. Defendant Clint Wilson ("Wilson), is and was an employee of the District and was the Principal at the School beginning with the 2020-2021 school year.

15. Defendant Jeffrey Toll ("Toll") was an employee of the District and held the position of assistant principal at the School during T.Z.'s first and second grade years.

16. Defendant Courtlon Peters ("Peters") was an employee of the District and held the position of assistant principal at the School during T.Z.'s third and fourth grade years.

17. Defendant Kelly Vanderwal ("Vanderwal"), at all times relevant, was an employee of the District and held the position of special education teacher in T.Z's self-contained classroom at the School.

18. Defendant Ashley Achgill ("Achgill") is, and at all times relevant, was an employee of the District. At all times relevant, she held the position of special education teacher's aide in T.Z.'s self-contained classroom at the School.

19. Defendant Marrissa Parker ("Parker") is, and at all times relevant, was an employee of the District and held the position of special education teacher's aide in T.Z.'s self-contained classroom at the School.

20. Vanderwal, M. Gabauer, Dause, Peters, and Wilson attended T.Z.'s Individual Education Program ("IEP") meetings and participated in the development of T.Z..'s IEP.

21. Hanback, K. Gabauer, and Dause were responsible for ensuring compliance with all Indiana laws and federal laws governing education for children with disabilities and overseeing that the IEPs met the requirements in the District's Seclusion Plan as well as Indiana laws and federal laws.

22. Hanback, K. Gabauer, Dause, M. Gabauer, Wilson, Toll, and Peters were responsible for ensuring that the special education staff followed the District's Seclusion Plan.

23. Upon information and belief, Hanback, GLASS, K. Gabauer, and Dause were also responsible for the seclusion training for the District's employees, which includes, but is not limited to, de-escalation techniques, redirection, and the proper and legal use of seclusion.

24. Vanderwal, Achgill, and Parker exercised direct and immediate control over T.Z. and were directly responsible for monitoring and reporting T.Z.'s behavior.

25. Hanback, K. Gabauer, Dause, M. Gabauer, Wilson, Toll, Peters, Vanderwal, Achgill, and Parker shall be referred to collectively as the "Individual Defendants." Upon information and belief, all of the Individual Defendants are residents of the State of Indiana.

26. The Individual Defendants' actions alleged herein were taken under color of law and in the course and scope of their employment with the District. The Individual Defendants are also being sued in their individual capacities to the extent that their acts or omissions were criminal, clearly outside the course and scope of their employment for the District, malicious, willful and wanton or calculated to benefit them personally.

27. Hanback, K. Gabauer, Dause, M. Gabauer, Wilson, Toll, Peters, and Vanderwal, are liable for themselves and the conduct of the Individual Defendants named herein because: 1) their acts and omissions were carried out within the course and scope of their employment with the District; 2) they had final authority to make decisions affecting T.Z.'s rights as alleged

herein; 3) the acts and omissions of these individually named defendants were carried out pursuant to and consistent with a policy, custom or practice of the District and/or GLASS, including a policy of inaction; 4) the District and GLASS acted with deliberate and intentional indifference or disregard for the rights, safety and wellbeing of T.Z.; and 5) the District and GLASS ratified the conduct of each of the Individual Defendants named herein.

28. Upon information and belief, each Individual Defendant named in this Complaint was at all times herein mentioned the agent, servant and employee of the other Defendants herein, and was at all such times acting within the course and scope of said agency and employment and with the consent and permission of each of the other Defendants, and each of the Defendants herein ratified each of the acts of each of the other Defendants.

29. JANE and JOHN DOES 1-10 are various individuals or entities who will be identified through discovery and were at all relevant times teachers, officials, and other agents of the District, GLASS, and/or their related entities or agents.

JURISDICTION & VENUE

30. The Plaintiffs bring this action against the District, GLASS, and the Individual Defendants in accordance with Indiana laws and federal law. Plaintiffs have served a tort notice in accordance with IC § 34-13-3-1, et. seq. and I.C. 34-13-3.5-1, et. seq. Ninety (90) days have elapsed before commencing this cause of action.

31. This action arises under the Fourth and Fourteenth Amendments to the United States Constitution, and other federal laws, including, but not limited to, the Americans with Disabilities Act, the Rehabilitation Act of 1973, and 42 U.S.C. § 1983, and accompanying federal regulations.

32. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. §1331(federal question jurisdiction) and §1343 (federal civil rights jurisdiction). This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 to hear all related Indiana law claims.

33. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because the parties resided in this judicial district at all times relevant, and the actions complained of took place within this judicial district.

34. Plaintiffs are not required to exhaust administrative remedies, and further administrative action would be unnecessary or futile because:

a.) Plaintiffs' claims do not relate to the provision of FAPE (free and appropriate education).

b.) Plaintiffs are seeking remedies that are not available under the IDEA, including damages for physical and emotional injuries.

c.) Exhaustion is not required for any claim sounding in a violation of civil rights disability discrimination or for claim asserted under the law.

d.) Exhaustion is not required when a District has adopted a policy or pursued a practice that is contrary to law.

e.) Injunctive and other relief available through a due process Complaint is unnecessary because T.Z. is now enrolled in a different school and is not being subjected to the seclusion and other treatment detailed in this Complaint.

f.) Exhaustion in this case would otherwise be futile.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS
T.Z.'S DISABILITIES

35. T.Z. is currently 11 years old. He was removed from his biological parents in 2016 because of neglect. While in the care of his biological parents, he witnessed and experienced multiple stressful and traumatic events.

36. T.Z. and his siblings were placed in foster care with P.Z. and her husband in 2016, and they adopted T.Z. in 2020. T.Z. has been diagnosed with multiple conditions, including

anxiety disorder, unspecified trauma and stressor-related disorder, severe articulation disorder, and moderate expressive disorder.

37. As a result of his conditions, T.Z. requires significant structure and cannot easily adapt to change or transitions. He clings to adults with whom he feels comfortable, and he is easily frustrated and overwhelmed. When confronted with change or a situation which frustrates him, he has tantrums or "meltdowns." His conditions have also caused him to exhibit aggression and disruptive behavior.

38. The District had knowledge of T.Z.'s disability.

39. In 2016, T.Z. was enrolled in kindergarten in a regular education classroom at Woodland Elementary School, a school within the District. Shortly after school began, school officials informed P.Z. that T.Z. would need to be placed in a self-contained classroom for students with behavioral disabilities because of his behavior at school, which included crying and following the teacher around the classroom.

40. P.Z. requested a one-on-one aide for T.Z., but District officials informed P.Z. that T.Z. did not qualify for a one-on-one aide and further informed her that placing him in the emotionally disturbed classroom at Dayton Elementary School was the least restrictive educational environment for him.

41. After T.Z's kindergarten year, T.Z. was transferred at the request of the District to the School to an emotional disability classroom. T.Z. remained at the School from 1st grade through September, 2020 of his 4th grade year.

42. While T.Z. attended the School, District and School employees engaged in a systematic and ongoing pattern of willfully subjecting T.Z. to various forms of neglect, social isolation, psychological, and physical abuse.

THE SECLUSION ROOM

43. T.Z.'s IEP included "Time-Out" ("TO").

44. Despite the fact that TO and "seclusion" are two separate terms with two separate meanings under Indiana law, School officials used the term "TO" to describe seclusion.

45. P.Z. understood the term "TO" to mean time out as a parent would use at home and as it is defined legally -- "a behavior reduction procedure in which access to reinforcement is withdrawn for a certain period of time."

46. In reality, however, TO as used by the District and School officials was a small, barren, unfurnished closet with no outside windows and a hard tile floor.

47. The closet or "seclusion room," contained one small window dividing the closet and the classroom, but School officials placed a closed curtain over the window. That closed curtain prevented a child in the seclusion room from seeing out and also prevented School employees from having "direct continuous visual and auditory monitoring" of the child.

48. T.Z. was regularly forced into and held in the seclusion room, often for extended periods, as someone held the door shut from the outside.

49. The District first began placing T.Z. in the seclusion room when he was just six years old and weighed less than 50 pounds.

50. Upon information and belief, T.Z. was secluded more than 100 times during his attendance at the School.

51. Defendants blatantly disregarded Indiana law and the District's Seclusion Plan that allows seclusion only when a student is "displaying behavior that presents an imminent risk of injury to the student or others" and "after a less restrictive procedure has been implemented without success."

52. Vanderwal, Achgill, and Parker regularly used the seclusion room for punishment and other improper purposes and regularly required T.Z. to enter the seclusion room when he was not a threat to himself or others.

53. Vanderwal, Achgill, and Parker confined T.Z. – alone – in the seclusion room whenever they became frustrated, impatient or angry with him. Instead of placing him in seclusion only when he posed an "imminent risk of injury" in accordance with the District's written policy, they often put T.Z. in the room on the flimsiest of pretexts, using reasons such as "rude language," "arguing," "not following directions," "talking out," etc.

54. For example, on February 4, 2020, T.Z. was put into the seclusion room for "not working."

55. On several occasions, T.Z. was put in the seclusion room for simply "crying."

56. On December 17, 2019, T.Z. was forced to stay in the seclusion room for 44 minutes for "being disrespectful and rude to teachers." On this date, "when he got out of timeout he refused to leave the timeout room so he was given a timeout again."

57. School documents show that on December 4, 2018, T.Z.'s time in the seclusion room ran from "1:20" to "?" The reason for this seclusion was "3W [3rd warning] talking out." On December 6, 2018, T.Z. was in the seclusion room for 40 minutes for "not following directions."

58. Defendants also blatantly disregarded Indiana law and the District's Seclusion Plan that allow seclusion for only a "short period of time" and require that seclusion be discontinued as soon as "student is no longer an imminent threat to others."

59. For example, on January 23, 2020, T.Z. was put in the seclusion room at 10:09 a.m. At 10:24, Vanderwaal noted that T.Z. was "walking around room." At 10:26, he "sat down against back wall." At 10:28, he "crawled over to corner, laid down on stomach." At 10:34, he was "poking at Ms. V's feet [from under the door] & another student's foot who was working w/ her then started clapping." He was then brought out of the seclusion room for a bathroom break at 10:37, just to be forced back into "timeout" until 10:52.

60. T.Z., who was crawling and laying in a corner, was not an imminent threat to others and should have been immediately released from the room. On this occasion, like many, many others, the initial reason he was placed in the room was also unjustified.

61. On several occasions, T.Z. was made to re-enter seclusion as punishment for events that happened earlier or even on a different day.

62. Vanderwal, Achgill, and Parker regularly provoked T.Z., demanded compliance with a timer, escalated the circumstances, and/or caused the behavior that prompted the seclusion to continue longer than necessary.

63. Several of T.Z.'s IEPs stated that T.Z.'s timeouts would be "for 5 minutes." These IEPs violated both the District's Seclusion Plan and Indiana law which provides, "Seclusion shall only be used as long as necessary and shall be discontinued when the student is no longer an imminent threat to others."

64. Nevertheless, the use of a timer, which was improper in itself, was never implemented consistently. T.Z. sat for the timer for various times and sometimes not at all. Almost all seclusions lasted well over 5 minutes. Some seclusions lasted nearly an hour.

65. The Defendants failed to use de-escalation techniques as required by both the District's Seclusion Plan and Indiana law.

66. T.Z. was rarely "debriefed" after incidents of seclusion as required by both the District's Seclusion Plan and Indiana law.

67. The District employees also violated the law and District policy that requires employees to have "direct continuous visual and auditory monitoring of the student" during the seclusion.

68. The District employees placed and closed a curtain over the only window to the seclusion room, thereby preventing them from having "direct continuous visual and auditory monitoring" of T.Z.

69. Upon information and belief, on one occasion, the District employees were not continuously visually and auditorily monitoring T.Z. when he pulled up recently laid tiles in the seclusion room and ate the glue underneath the tiles. The District employees were required to call poison control on that occasion.

70. The Individual Defendants secluding T.Z. were not properly trained regarding seclusion as required by Indiana law and the District's policy.

71. Indiana law and the District's Seclusion Plan required District employees to document each and every seclusion, ensuring that each report included specified data, including, but not limited to: the duration of any seclusion, a description of any relevant events leading up to the incident, a description of any interventions used prior to the seclusion, a log of the

student's behavior during seclusion, a description of any injuries sustained, a description of the approach planned for dealing with the student's behavior in the future, a list of the school personnel who participated in the seclusion, whether each such individual was properly trained in seclusion, and the date and time at which the parent was notified of the seclusion.

72. Further, Indiana law and the District's policy required the School to notify T.Z.'s parents of the seclusion "verbally as soon as possible" and to send the parents a copy of the seclusion report required to be completed.

73. Indiana law also required the District to notify the Indiana Department of Education of the number of seclusions that took place within each school of the District.

74. The District employees did not properly document their many seclusions of T.Z. as required by law and by the District's own policy. In fact, the employees did not even report the bare minimum requirements, and they improperly and deceitfully referred to "seclusion" as "time out" in their minimal reporting.

75. Moreover, the District employees did not verbally notify nor did they send seclusion reports to T.Z.'s parents after the overwhelming majority of T.Z.'s seclusions.

76. The District also failed and refused to properly report their seclusions to the Indiana Department of Education. In 2018, the School reported zero seclusions to the Indiana Department of Education.

77. T.Z.'s parents only realized that T.Z. was being held in the seclusion room on or about September 11, 2020.

78. On or about September 11, 2020, T.Z. came home from school in urine-soaked pants. P.Z. could smell the urine on T.Z.'s pants. T.Z.'s parents then learned that District employees placed T.Z. in the seclusion room for "arguing" and because he "couldn't stop yelling

and crying." While T.Z. was in the room, he "began pushing on door and sticking fingers under door." After T.Z. was in the seclusion room for several minutes, he was removed from the room so that another student could be placed in the room. While the other student was in the seclusion room, that other student urinated. T.Z. was then forced back into the seclusion room despite the fact that District employees did not clean the other student's urine. The urine on T.Z.'s pants was that of the other student.

79. On that day, the School actually did send home a report to T.Z.'s parents. The report did not mention T.Z. being forced to sit in another child's urine but stated that T.Z. was placed in the "TO room."

80. On September 11, 2020, when P.Z. discovered what had happened earlier that day, she contacted the School and demanded answers. Vanderwal and Wilson insisted that the seclusion of T.Z. was appropriate. Wilson refused P.Z.'s request on this date (and many subsequent requests thereafter) to view the seclusion room.

81. On September 11, 2020, P.Z. insisted on meeting with School officials the following week.

82. When T.Z. returned to school on Monday, September 14, 2020, Vanderwal called Child Protective Services to report P.Z., alleging that T.Z. had a suspicious bruise on his face. Vanderwal insisted on sitting in on T.Z.'s interview with the CPS caseworker. The allegation was quickly determined by CPS to be "unsubstantiated." It is believed that T.Z. acquired the bruise playing tetherball or volleyball at a family barbecue over the weekend. CPS workers and sheriff's deputies were present at the family barbecue.

83. Vanderwal's report to CPS was retaliation against P.Z. for P.Z.'s September 11, 2020 complaints and objections regarding T.Z.'s treatment.

84. In a phone call between P.Z., Wilson, and Vanderwaal during the week of September 14, 2020, Vanderwaal and Wilson defended the seclusion of T.Z., and Wilson stated that the School could place T.Z. in seclusion if he was "disruptive." During the call, Wilson and Vanderwaal continued to refer to seclusion as TO.

85. P.Z. was forced to involve Indiana Disability Services. T.Z.'s parents expressed their concern, shock, and disbelief at the School's treatment of T.Z. and requested that the District remove T.Z. from the self-contained emotional disability classroom and return him to his school of legal settlement, Woodland Elementary.

86. T.Z. now attends Woodland Elementary. He is no longer in a self-contained emotional disability classroom.

87. T.Z.'s parents received the overwhelming majority of T.Z.'s seclusion reports only after they removed T.Z. from the School and a representative from Indiana Disability Services requested the reports on their behalf. Prior to receiving these reports, P.Z. was unaware that the District employees used the terms "time out" and "isolation" or "seclusion" interchangeably.

88. Many of the reports the District produced are illegible or incomplete. Upon information and belief, the District has yet to provide all of the accurate and complete seclusion forms for T.Z.

89. T.Z.'s parents filed a complaint against the District with the Indiana Department of Education in or about January 1, 2021. The investigation is still ongoing.

90. The District and the Individual Defendants' improper use of the seclusion room is a clear violation of the District's Seclusion Plan, Indiana law, and federal law.

OTHER DISCRIMINATION AND MISTREATMENT

91. In addition to illegally and maliciously secluding T.Z., the District employees otherwise discriminated against and deprived T.Z. because of his disability.

92. The District employees forbid T.Z. from attending recess with other students, participating in specials (music, gym, and art) unless he *earned* them, participating in extra-curricular activities, or participating in other fun activities, such as school movie night, because of his disability.

93. T.Z. was not allowed to eat lunch in the lunchroom with other students.

94. These prohibitions operated to further punish T.Z. for his disability and were not imposed upon non-disabled students.

GENERAL ALLEGATIONS

95. During his enrollment at the School, the Defendants neglected T.Z. and subjected him to various forms of physical, mental discriminatory abuse, either by acts and/or omissions.

96. Defendants established a pattern of discrimination against a person with disabilities through egregious forms of mistreatment and abuse.

97. Defendants treated T.Z.'s disabilities as a disciplinary matter and punished him for becoming upset and/or crying. There was no conflict de-escalation, positive reinforcement, or redirecting attempts reported or shown in T.Z.'s behavior reports as required by 513 IAC 1-2-3.

98. Instead of taking reasonable measures to address T.Z.'s behavior using appropriate scientifically proven interventions such as redirection, de-escalation and positive reinforcement, Defendants took out their frustration and anger on T.Z., making his condition worse.

99. Rather than using generally accepted interventions and proper protocols, Defendants preformed various cruel, gratuitous and sadistic acts of mistreatment, psychological and physical abuse of T.Z., including neglect, seclusion, isolation, and provocation.

100. The Defendants used the terms "time out" and "seclusion" interchangeably despite the fact that the two terms are separately defined under Indiana law. P.Z. was not told that her son was being forced into and held in a "seclusion room," but instead, the Defendants used the phrase "timeout" as it would be used at home. The District and GLASS were well aware of the School's ongoing practice of placing T.Z., a young disabled student, in a small barren closet with someone continuously holding the door shut while T.Z. was inside.

101. Hanback, K. Gabauer, Dause, M. Gabauer, Wilson, Toll, Peters, and Vanderwal ratified Vanderwal, Achgill, and Parker's use of the room, allowing it to become policy for T.Z. The District and GLASS permitted these seclusions that did not follow Indiana law or the District's Seclusion Plan to be used approximately over 100 times while T.Z. was present in the emotionally disturbed classroom, which amounted to a "custom" of authorizing constitutional violations.

102. The fact that the P.Z. agreed to the use of "time-outs" in T.Z.'s IEP to manage T.Z.'s problem behaviors did not excuse the Defendants' misrepresentations regarding and over-reliance on those techniques, where the behavior interventions were excessive and inappropriate and not disclosed to T.Z.'s parents. The interventions that the School applied were not reasonably calculated to manage T.Z.'s behavioral problems.

103. The Defendants dealt with T.Z.'s behavior in a variety of indifferent and cruel ways, including using excessive and unnecessary force, threats, and seclusion. Plaintiffs believe that T.Z.'s mental illness and behavior frustrated the Individual Defendants who worked with

him, which lead them to commit numerous horrendous violations of his dignity and basic human rights. The District had the obligation under Indiana law and the District's Seclusion Plan to de-brief each staff member involved in the seclusion of T.Z.to establish that the seclusion was done properly and the staff members were emotionally able to return to the classroom i.e.; not angry with the student or frustrated with the student. The Defendants failed and refused to use the required de-briefing methods.

104. T.Z. was forced to sit in the seclusion room for a timer to "earn" his way out of the seclusion room, violating I.C. 20-20-40-13, the District's own policy, Indiana law, as well as T.Z.'s constitutional rights.

105. The Defendants violated Indiana law and the District's seclusion policy, which clearly restricts the use of seclusion to short periods of time and state that seclusion shall be discontinued as soon as the imminent risk of injury to self or others has passed.

106. The District and GLASS established a practice and policy of improperly secluding T.Z. without consideration to any harmful consequences to T.Z.

107. The District and GLASS knew of and ratified the improper use of seclusion and mistreatment of T.Z.

108. Defendants' actions were not reasonable and were not taken in good faith.

109. Because of the District, GLASS, and the Individual Defendants' actions, T.Z. has displayed severe emotional and disturbing physical reactions. T.Z. has experienced nightmares and acted out at home. The Defendants' actions also worsened T.Z.'s attachment behaviors and anxiety.

COUNT I
VIOLATION OF SECTION 504 OF THE REHABILITATION ACT

110. Plaintiffs incorporate by reference their prior allegations as if fully set forth herein.

111. This claim is brought against the District pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq., as amended ("Section 504") and its implementing regulations, 34 C.F.R. § 104 et seq.

112. T.Z.'s medical condition substantially limits one or more major life activities, and he is an "individual with a disability" as defined by 29 U.S.C. § 705.

113. The District receives federal financial assistance.

114. The District operates a "program or activity" as defined by 29 U.S.C. § 794(b); namely, provision of educational services.

115. T.Z. is entitled to participate, along with nondisabled students, in nonacademic and extracurricular activities (e.g., lunch, recess, recreational activities) and services to the maximum extent appropriate to his needs.

116. The District discriminated against T.Z. because of his disability in violation of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 et seq.

117. T.Z. was expressly prohibited from engaging in activities, including extra-curricular activities and Friday movie nights, offered to non-disabled individuals, and forced to earn specials (music, art, P.E.) that non-disabled individuals were not required to earn.

118. The District ratified the policy of excluding T.Z. from activities offered to non-disabled peers.

119. Moreover, T.Z. was improperly secluded, and non-disabled individuals did not receive the same treatment.

120. The District knowingly and intentionally discriminated against T.Z. because of his disability.

121. Non-disabled persons receive the benefits or services for which T.Z. was otherwise qualified, but T.Z., solely because of his disability, was excluded from, denied participation in or denied the benefits by the District, was improperly secluded, and was otherwise subjected to discrimination by the District.

122. The District violated the regulations implementing Section 504 of the Rehabilitation Act.

COUNT II
VIOLATION OF AMERICANS WITH DISABILITIES ACT

123. Plaintiffs incorporate by reference their prior allegations as if fully set forth herein.

124. This claim is brought against the District pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, as amended, and its implementing regulations, 28 C.F.R. Part 35.

125. The District is a "public entity" as defined by 42 U.S.C. § 12131(1).

126. T.Z. is a "qualified individual with a disability" as defined by 42 U.S.C. § 12131(2).

127. Because of T.Z.'s disability, the District intentionally mistreated him and excluded him from participation in and denied him the benefits of the services, programs or activities of a public entity.

128. Because of his disability, the District intentionally subjected T.Z. to discrimination, ultimately forcing him to transfer schools.

129. The District's actions violate Title II of the Americans with Disabilities Act, as amended.

130. Vanderwal and the District also illegally retaliated against P.Z. in violation of the Americans with Disabilities Act, as amended, by lodging a CPS report in retaliation of P.Z.'s complaints regarding Vanderwal and the District's discrimination and mistreatment of T.Z.

COUNT III
42 U.S.C. § 1983- FOURTEENTH AMENDMENT
SUBSTANTIVE DUE PROCESS

131. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

132. This claim is brought against the Individual Defendants pursuant to 42 U.S.C. § 1983.

133. T.Z. has a fundamental liberty interest in his freedom of movement, bodily integrity and human dignity which is protected by the Fourteenth Amendment to the United States Constitution, and has the right to be free of unreasonable social isolation, physical discomfort, fear, humiliation, and physical confinement.

134. At all relevant times, the Individual Defendants acted under color of Indiana law.

135. The Individual Defendants' repeated intentional acts of inappropriate seclusion, isolation, and cruel mistreatment of T.Z,. deprived him of his liberty interests, and shock the conscience.

136. Vanderwal, Achgill, and Parker participated directly in depriving T.Z. of his due process rights.

137. Hanback, Wilson, M. Gabauer, Toll, Peters, K. Gabauer, and Gauge either participated directly in the alleged constitutional violations, had actual knowledge thereof and

failed to intervene, created a policy or custom under which the unconstitutional practices occurred, and/or allowed the continuance of such violations.

138. Hanback, Wilson, M. Gabauer, Toll, Peters, K. Gabauer, and Gauge were grossly negligent in supervising Vanderwal, Achgill, and Parker and/or exhibited deliberate indifference to T.Z.'s rights by failing to act in the face of knowledge that unconstitutional acts were occurring.

139. Hanback, Wilson, M. Gabauer, Toll, Peters, K. Gabauer, and Gauge either directed the conduct of Vanderwal, Achgill, and Parker, or, in the alternative, Vanderwal, Achgill, and Parker acted with the knowledge or consent of Hanback, Wilson, M. Gabauer, Toll, Peters, K. Gabauer, and Gauge, who condoned or acquiesced in unconstitutional Vanderwal, Achgill, and Parker's treatment of T.Z.

140. Defendants Vanderwal, Achgill, Parker, M. Gabauer, Wilson, Toll, Peters, Dause, and K. Gabauer personally made the decision to deprive T.Z. of participation in activities.

141. Defendants Vanderwal, Achgill, Parker, M. Gabauer, and Wilson personally reviewed T.Z.'s seclusion forms, and those Individual Defendants, along with Toll and Peters monitored T.Z.'s classroom.

142. Vanderwal, M. Gabauer, Dause, Peters, and Wilson attended case conferences where T.Z.'s "timeouts" were discussed.

143. Hanback, K. Gabauer, and Dause ratified the Distict and the Individual Defendants' violation of the Indiana laws, federal laws, and that District's policy governing education for children with disabilities and seclusion.

144. The Individual Defendants violated T.Z.'s clearly established constitutional and/or statutory rights of which they should reasonably have known.

COUNT IV
42 U.S.C. § 1983- FOURTEENTH AMENDMENT
SUBSTANTIVE DUE PROCESS

145. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

146. The District and GLASS adopted—and—implemented—an express policy of inappropriately secluding T.Z., excluding T.Z. from activities because of his disabilities, and otherwise discriminating against him because of his disabilities.

147. In the alternative of an express policy, the District and GLASS had a practice of inappropriately secluding T.Z. and denying him participation in activities.

148. The Defendants used seclusion to punish T.Z. as opposed to using it to protect him, other students, or school staff from physical injury.

149. The practice of the District and GLASS was so well-settled that it amounts to a policy which is unconstitutional. As a result of the District's and GLASS's unconstitutional practice, T.Z.'s clearly established constitutional rights were violated.

COUNT V
42 U.S.C. § 1983- EQUAL PROTECTION

150. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

151. The Individual Defendants intentionally discriminated against T.Z. because of his disability.

152. Pursuant to policy or practice, the District and GLASS subjected T.Z. to multiple instances of discrimination (primarily in the form of improper seclusion) because of his disability.

153. Nondisabled students were not subjected to the same treatment as T.Z. The Individual Defendants did not treat students without disabilities the same way they treated T.Z., and the District's and GLASS's policy or practice does not apply to students without disabilities.

154. Defendants, acting under color of Indiana law, deprived T.Z. of equal protection under the law and discriminated against him because of his disability. Defendants' actions violated the equal protection clause of the Fourteenth Amendment.

COUNT VI
42 U.S.C. § 1983 - UNREASONABLE SEIZURE

155. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

156. The Fourth Amendment to the United States Constitution guarantees T.Z. the right to attend public school without being subjected to unjustified intrusions on his personal security or unreasonable force and seizure of his person. These are clearly established rights of which a reasonable person is aware.

157. Vanderwal, Achgill, and Parker restrained T.Z.'s freedom of movement or deprived him of his liberty without his consent.

158. Vanderwal, Achgill, and Parker's acts of restricting his freedom of movement and confining him to the seclusion room when doing so was not reasonably necessary to prevent physical harm to T.Z. and constitutes false imprisonment under Indiana law.

159. Vanderwal, Achgill, and Parker used unjustified and unreasonable force in dealing with T.Z., a minor with a disability. In doing so, they violated the Fourth Amendment's prohibition against unreasonable seizures.

160. Vanderwal, Achgill, and Parker, acting under the color of law, violated T.Z.'s Fourth Amendment rights by secluding him in circumstances and under conditions that were a

violation of state, federal and constitutional law, as well as the District's Seclusion Plan. The seizures were excessive and extreme in light of T.Z.'s age and disability and carried out with a malicious intent and/or a reckless disregard for T.Z.'s rights, safety and well-being.

161. T.Z. was left in seclusion for extended periods of time. Given his age and disability, it was reasonably foreseeable that T.Z. would sustain physical and emotional injuries in such circumstances.

162. The Individual Defendants knew that Vanderwal, Achgill, and Parker were not properly trained or, in the alternative, following their training, regarding seclusion, and knew that the aversive interventions were being carried out in violation of state and federal law and in violation of T.Z.'s constitutional and statutory rights. Yet, these Individual Defendants took no action. This failure to act constitutes a deliberate or callous indifference to T.Z.'s rights, safety and well-being and results from a policy, custom or practice, which served to ratify the wrongful conduct.

163. As a direct and proximate result of these violations, T.Z. has suffered harm.

COUNT VII
42 U.S.C. § 1983 - UNREASONABLE SEIZURE

164. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

165. The District and GLASS adopted—and implemented—an express policy of forcing T.Z. into the seclusion room when doing so was not reasonably necessary to prevent physical harm.

166. In the alternative, the District's and GLASS'S practice of placing T.Z. in the seclusion room when doing so was not reasonably necessary to prevent physical harm was so well-settled that it amounted to a policy which is unconstitutional.

167. As a result of the District's and GLASS's practice, T.Z.'s clearly established constitutional right to be free from unreasonable seizure was violated.

168. As a direct and proximate result of the Defendants' actions, T.Z. has sustained damages.

COUNT VIII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

169. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

170. Vanderwal, Achgill, and Parker forced T.Z., a little boy, to sit in another child's urine in a barren closet while the door was held shut because T.Z. couldn't stop "crying" over homework. He returned home from school with his pants soaked with the other student's urine.

171. On another occasion, T.Z. was held in the seclusion room for 44 minutes "for talking and being disrespectful." On this occasion, T.Z. took off his socks and shirt, and the clothing was taken from him. He was held an additional 20 minutes in the seclusion room without his clothing.

172. Vanderwal, Achgill, and Parker's actions shock the conscience of any reasonable person.

173. Vanderwal, Achgill, and Parker otherwise secluded and mistreated T.Z. in cruel, tortuous ways.

174. The Defendants' conduct was extreme and outrageous and goes beyond the bounds of decency in a civilized community.

175. The remaining Individual Defendants, and thus the District and GLASS, knew of the outrageous behavior and ratified it.

176. As a direct and proximate result of the conduct, T.Z. has suffered severe emotional distress and mental anguish.

COUNT IX – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

177. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

178. Defendants acted in a wanton, outrageous, and careless manner that was indifferent to the rights of T.Z.

179. As a result, T.Z. has suffered severe emotional trauma and distress.

COUNT X
BATTERY

180. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

181. Vanderwal, Achgill, and Parker made harmful and/or offensive contact with T.Z. and acted with the intent to bring about the harmful and/or offensive conduct.

182. The District, GLASS, and the remaining Individual Defendant were at all times responsible for ensuring that any person employing an aversive intervention on T.Z. followed the seclusion training and the District's Seclusion Plan.

183. At all times, the Defendants knew that Vanderwal, Achgill, and Parker were not following their seclusion training or the District's Seclusion Plan. Yet, Defendants took no action to protect T.Z.'s rights, safety and well-being and, through their inaction, condoned and ratified such wrongful conduct.

184. As a direct and proximate result of Defendants' actions, T.Z. has suffered damages.

COUNT XI
ASSAULT

185. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

186. Vanderwal, Achgill, and Parker committed acts that were designed and intended to cause T.Z. to fear or apprehend immediate harmful and/or offensive contact.

187. Vanderwal, Achgill, and Parker intended to create in T.Z. an immediate fear or apprehension of harmful or offensive conduct, and T.Z. felt such fear and apprehension.

188. The District, GLASS, and the remaining Individual Defendants were at all times responsible for ensuring that any person employing an aversive intervention on T.Z. followed their training and the District's Seclusion Plan. At all times, Defendants knew that Vanderwal, Achgill, and Parker were not following their training and the District's Seclusion Plan. Yet, Defendants took no action to protect T.Z.'s rights, safety and well-being and through their inaction, condoned and ratified such wrongful conduct.

189. As a direct and proximate result of Defendants' conduct, T.Z. has suffered damages.

COUNT XII
NEGLIGENCE

190. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

191. The Defendants had a duty to protect T.Z. from foreseeable danger and refrain from punishing him for disability-related behavior.

192. Further, the District, GLASS, Hanback, K. Gabauer, Dause, M. Gabauer, Wilson, Toll, and Peters had a duty to ensure School employees were properly trained and complying with Indiana law and the District's Seclusion Plan.

193. In addition, the nature of the relationship between the Defendants and T.Z. as well as T.Z.'s disability, gave rise to a parens patriae relationship, which imposed on Defendants a heightened duty of care.

194. The Defendants negligently or with gross indifference breached their duties by their acts and omissions alleged herein.

195. The District and GLASS are vicariously liability for the Individual Defendants' negligent acts.

196. As a direct and proximate result of the Defendants' conduct, T.Z. has suffered severe emotional distress and mental anguish.

COUNT XIII
FALSE IMPRISONMENT

197. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

198. Defendants Vanderwal, Achgill, and Parker unlawfully restrained T.Z.'s freedom and locomotion and deprived him of liberty without his consent and without legal process.

199. The District, GLASS, and the remaining Individual Defendants were at all times responsible for ensuring that any person employing an aversive intervention on T.Z. followed their training and the District's Seclusion Plan. At all times, Defendants knew that Vanderwal, Achgill, and Parker were not following their training and the District's Seclusion Plan. Yet, Defendants took no action to protect T.Z.'s rights, safety and well-being and through their inaction, condoned and ratified such wrongful conduct.

200. As a direct and proximate result of Defendants' conduct, T.Z. has suffered injuries and losses.

COUNT XIV
MONELL CLAIM

201. Plaintiffs incorporate by reference their previous allegations as if fully set forth herein.

202. The District had a formal plan regarding use of seclusions. The District's Seclusion Plan lacked the minimum requirements under Indiana law which contributed to the denial of T.Z.'s unconstitutional rights.

203. Although the District had an established plan in place, the District delegated to the Individual Defendants the authority to make policy decisions concerning the use of seclusions on T.Z. that went far beyond the scope of the law.

204. District officials failed to supervise the Individual Defendants by delegating to them the authority to make policy regarding the use of seclusion on T.Z. in the self-contained ED classroom.

205. The District did not enforce its Seclusion Plan or the District's approved training and, by not doing so, the District delegated final policymaking authority to the Individual Defendants regarding use of the seclusion room.

206. The District knew of the inappropriate and improper seclusion of T.Z. and ratified the inappropriate and improper conduct of the Individual Defendants.

207. The practice of placing T.Z. in the seclusion room when doing so was not reasonably necessary to prevent physical harm was so well-settled that it became a custom of the District of which the District was aware.

208. The District knew that T.Z. was being harmed as result and took no action to intervene or stop the inappropriate conduct.

209. GLASS was responsible for the direct provision of special education and related services to students within its participating school corporations, including the District.

210. GLASS did not enforce the District's Seclusion Plan or the District's approved training and, by not doing so, GLASS delegated final policymaking authority to the Individual Defendants regarding use of the seclusion room.

211. GLASS knew of the inappropriate and improper seclusion of T.Z. and ratified the inappropriate and improper conduct of the Individual Defendants.

212. Defendants acted with malicious intent or with a callous indifference to T.Z.'s rights, safety and well-being.

213. As a direct and proximate result of this conduct, T.Z. has suffered injuries and losses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment against the Defendants including, but not limited to:

a. Compensatory damages, including, but not limited to, damages for past and future emotional and mental anguish and medical, counseling, and related costs, all in an amount to be proved at trial;

b. Punitive damages in an amount to be proved at trial;

c. Costs incurred in pursuing this action, including reasonable attorney fees and the fees of Plaintiffs' experts, if any;

d. This Court retaining jurisdiction of this action to ensure full compliance by Defendants with the Court's judgment and decree; and

e. All such other relief to which Plaintiffs may be entitled and which may be just and proper in the premises.

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Telephone: (812) 425-9211

By: */s/ Erin Bauer* .
Erin Bauer, No. 27733-82

JURY DEMAND

Plaintiffs demand trial by jury on all counts of this Complaint.

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By: */s/ Erin Bauer* .
Erin Bauer, No. 27733-82