

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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

Plaintiffs,

v.

LANSING SCHOOL DISTRICT, LESTER DUVALL,
CONNIE NICKSON, TRACEY KEATON, MARTIN
ALWARDT, YVONNE CAAMAL CANUL, SHERYL
BACON, TROY SCOTT, EDNA ROBINSON and DOES 1-30,

Defendants.

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COMPLAINT FOR DAMAGES AND JURY DEMAND

¶
=====INTRODUCTION

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

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=====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.

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=====PARTIES

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=====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.

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

2. LANSING SCHOOL DISTRICT (“LSD”) is a public school district in the City of Lansing, Michigan.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. TROY SCOTT ("Scott") is the Human Resources Director of LSD. All actions by Scott were taken under the color of state law and in the course and scope of his employment with LSD. On information and belief, Scott was responsible for supervision, training and discipline of LSD employees.

11. 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.

12. The true names and capacities of defendants sued herein as DOES 1-30 are unknown to Plaintiffs at this time. Plaintiffs pray for leave to amend the complaint once their identities have been ascertained.

FACTUAL ALLEGATIONS

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

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

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

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.

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

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

Duvall was terminated by LSD in early 2015.

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

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).

Duvall has a history of abusing students at LSD. For over a decade, staff, mental health professionals and parents notified LSD administrators and school officials about Duvall physically, verbally and psychologically abusing his students.

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.

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.”

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.

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.”

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.

In early 2010, another teacher reported to the principal of Beekman Center Sheryl 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.

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 complaints about Duvall and the reports themselves.

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.”

In October of 2012, during her four days in Duvall’s classroom, a classroom assistant observed Duvall engage in a series 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.

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.

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.”

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.

Throughout his tenure at LSD, Duvall has 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.

LSD failed to act in an effective manner to protect these vulnerable children with special needs from Duvall, even after numerous reports from school staff and others about him abusing his students.

Jennifer Garza was told vaguely only that there was an “incident” involving Duvall and C.G. Keyton and Nickson never told her to that the force with which C.G. was thrown broke a bookshelf. Nickson also instructed the school social worker not to share what happened with C.G.’s mother.

The October 7, 2014 incident of abuse of C.G. was not reported by LSD to CPS or police until a week later.

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.

Bacon destroyed all the reports she received while she was a principal at Beekman Center, and on information and belief, never investigated any of the complaints.

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."

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.

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.

(Violation of Constitutional Rights, 42 U.S.C. § 1983; All Plaintiffs vs. Duvall, Nickson, Keyton, Alwardt, Robinson, Caamal Canul and Scott)

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

45. 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.

46. Nickson, Keyton, Alwardt, Robinson, Caamal Canul and Scott 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.

47. Defendants Duvall, Nickson, Keyton, Alwardt, Robinson, Caamal Canul and Scott violated Plaintiff Jennifer Garza and C.G.'s rights under the Due Process Clause to the Fourteenth Amendment to the United States Constitution by action including, but not limited to:

- a. Intentionally interfering with the parent-child relationship by concealing information regarding the physical and emotional trauma inflicted on C.G. by Duvall.
- b. Intentionally interfering with Plaintiff Jennifer Garza and C.G.'s right to provide and receive nurture, support, and comfort regarding highly traumatic events.

48. 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.

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



SECOND CLAIM FOR RELIEF

(Discrimination in Violation of the Americans With Disabilities Act; C.G. vs. LSD)

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

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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)

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

58. 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.

59. 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.

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.

☞—————**FOURTH CLAIM FOR RELIEF**

(Battery; Plaintiffs C.G. vs. Defendant Duvall)

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

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

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

☞—————**FIFTH CLAIM FOR RELIEF**

**(Violation of Mandatory Duty; All Plaintiffs vs. Nickson, Keyton, Alwardt,
Robinson, Caamal Canul and Scott)**

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

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, they 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.

Teachers, instructional aides, classified personnel and/or administrative officers of LSD were aware that children in Duvall's classroom were victims of abuse. However, none of these mandatory reporters employed by the District complied with their duty to report the abuse to DHS.

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.

Under the specific facts and circumstances known to Defendants prior to C.G.'s injuries, Defendants' failure to report amounted to gross negligence that was the proximate and most direct cause of C.G.'s injuries.

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

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—————**NINTH CLAIM FOR RELIEF**

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

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

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.

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.

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

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.

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, Scott 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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Attorneys for Plaintiffs

Dated: November 2, 2015

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JURY DEMAND

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

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