

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

L.C., individually and on behalf of
G.C., a minor,

Case No. 8:18-cv-1066-T-23AAS

Plaintiff,

vs.

PINELLAS COUNTY SCHOOL BOARD,

Defendant.

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, L.C., individually and on behalf of G.C., a minor, by and through the undersigned counsel, and in accordance with the applicable Federal Rules of Civil Procedure, and hereby sues the defendant, PINELLAS COUNTY SCHOOL BOARD and alleges as follows:

PARTIES

1. The Plaintiff, L.C., is an individual *sur juris* who resides in Pinellas County, Florida, and who is the parent, mother, of G.C.
2. The Plaintiff, G.C. is a twelve (12) year old boy, who resided in Pinellas County, Florida and was a student within the Pinellas County Public School system at all times material to this action.
3. The Defendant, School Board of Pinellas County, Florida (herein after “BOARD” or “District”) is a corporate body and governmental agency duly empowered by the constitution and statutes of the state of Florida to administer, manage, and operate the Pinellas County Public Schools.
4. The BOARD receives local, state and federal funding for the education of children with disabilities. The BOARD meets the definition of a public entity under 42 U.S.C. § 12131.

*Disability Independence Group, Inc. * 2990 Southwest 35th Avenue * Miami, FL 33133*

JURISDICTION AND VENUE

5. Jurisdiction for this action also vests pursuant to 42 U.S.C. § 12131 for claims brought under the Americans with Disabilities Act of 1990; 29 U.S.C. § 794, for claims brought under Section 504 of the Rehabilitation Act of 1973 and 42 U.S.C. §§ 1983 & 1988 for violations of L.C. and G.C.'s civil rights; and the District Court's pendent jurisdiction over the state claims alleged, which arise out of the same operative facts and circumstances.
6. Venue for this action lies pursuant to 28 U.S.C. § 1391(b) in that the Board is located in the judicial Board and the cause of action accrued in the judicial Board.

GENERAL ALLEGATIONS

7. This action arises out of the gross neglect of the Board for failing to protect G.C. from a known sexual predator and the Board's efforts after the fact to push the student out of the public school system.
8. G.C. is a student with a disability as defined by Americans with Disabilities Act, Section 504 of the Rehabilitation Act and Pinellas County public schools.
9. G.C.'s disabilities impact one or more major life activities including but not limited to his ability to think, communicate, socialize and concentrate.
10. L.C. is the natural parent, mother, of G.C.
11. G.C. was a student of the Pinellas County public schools (PCPS).
12. G.C. is a student who has been identified by PCPS as having a disability and requiring Exceptional Student Educational (ESE) services.
13. G.C.'s disabilities make him particularly susceptible to peer pressure. He is easily influenced by other students and vulnerable to following other students in an effort to be liked and accepted. PCPS was aware of this disability at all times relevant.

14. Services and placement are determined through an Individualized Education Plan (IEP).

G.C. also has a behavior intervention plan (BIP) to address his problem behaviors.

BEFORE THE SEXUAL ASSAULT INCIDENT

15. On November 30, 2015, G.C. was unilaterally remove from his homeschool, Tarpon Springs Middle School in Tarpon Springs, Florida and transferred to the alternative school, Pinellas Secondary School (“alternative school”) located in Pinellas Park, Florida.

16. G.C. was improperly removed from his home school for known and identified problem behaviors. These behaviors were a clear manifestation of his disabilities.

17. When considering discipline, if behaviors are found to be a manifestation of a disability, the Board is required to review a student’s IEP and BIP before the student can be removed from his homeschool as a form of discipline. That did not happen in this case.

18. Rather than address the behavior through the IDEA process, the Board utilized discipline to remove the student from his home school.

19. The Board also intentionally failed to consider a known diagnosis. Had this diagnosis been considered, it would have been additional evidence that the problem behaviors were a manifestation of his disabilities.

20. Under Child Find and the IDEA, the Board had a duty to consider all known disabilities and provide the proper supports and services before a student is removed to a more restrictive setting. This did not happen in this case.

21. Had the Board complied with the IDEA, G.C. would never have been removed to the alternative school. Had G.C. not been in the alternative school he would never have been injured by a known sexual offender and none of the injuries that occurred thereafter would have occurred.

22. The alternative school is a more restrictive placement.
23. Students with behavior problems at their homeschools, those who have been arrested or otherwise involved with the criminal justice system, are placed in the alternative school.
24. The alternative school's mission is to improve problem behaviors. The school's mission statement and philosophy are published as the following:

At Pinellas Secondary School (PSS), our focus is two-fold: both academic and behavioral. Our goals are to further the education of our students and to assist them with learning to identify and change behaviors that interfere with their academic and life goals. As a team, we are committed to helping students learn to replace undesirable behaviors with appropriate, self-esteem building behaviors. What sets us apart is how we accomplish these goals. At Pinellas Secondary School, our focus is on the positive, believing that whatever we water, grows.

We employ a Positive Behavior Plan which includes a focus on the positive in all that we do and a recognition and enforcement of our community boundaries. Our positive focus is achieved by teaching a variety of life and recovery skills aimed at developing positive, life-enhancing decision making. It means valuing the development of interpersonal and conflict resolution skills in addition to traditional academic learning. Our boundaries are established democratically and consistently implemented throughout the entire school community. As a staff, we recognize that we teach best by modeling what we believe, by living the changes and the change process that we hope to see in our students and in our world.

25. G.C. and his family were falsely told that the alternative school would provide additional supports necessary to address G.C.'s problem behaviors with the ultimate goal of returning to his home school. The family reasonably relied upon these representations when accepting the placement into the alternative school.
26. Once the family found out that G.C. should never have been removed to the alternative school, because the Board had not followed the IDEA, all efforts to reconsider the decision to move him, were ignored or denied.
27. G.C. began attending the alternative school on February 2, 2016.

28. Despite the mission of the alternative school and the promise to provide extra supports for G.C. to address his known problem behaviors, on his eleventh day in the alternative school, February 16, 2016, G.C. was placed in an “in school” suspension room for using profanity.
29. An in school suspension is a disciplinary measure that removes the student from classroom and punishes the student for a violation of the student code of conduct. An in-school suspension is punitive and imposed without regard to a student’s disability.
30. The Board again failed to comply with the IDEA before disciplining the student and placing him into the in school suspension room.
31. Suspension was not a valid intervention when the student exhibit a known problem behavior.
32. The Board failed to implement the IEP and BIP and instead disciplined G.C. with impunity and without consideration for his needs or rights under the IDEA.
33. Had the Board complied with the IDEA, G.C. would never have been removed to the in school suspension room. Had G.C. not been in the in school suspension room he would never have been injured by a known sexual offender and none of the injuries that occurred thereafter would have occurred.
34. The Board failed to comply with the IDEA twice before he came into contact with a known sexual offender. Had the Board complied with the IDEA, G.C. would not have been injured by a known sexual predator and none of the injuries he suffered thereafter would have been occurred.

SEXUAL ASSAULT INCIDENT

35. On February 16, 2016, G.C. was placed into a classroom with Z.W.M., a 17 year old who was also a known sexual offender. G.C. was 11 years old at the time.
36. G.C. was small for his age. He looked younger for his age. Z.W.M. was taller for his age and looked older for his age.
37. Before entering the alternative school in 2016, Z.W.M. had been arrested twice. On two separate occasions he raped and sexually assaulted other younger students while at school. The first occurred on a Pinellas County public school campus. The second occurred at a school in a neighboring county.
38. Z.W.M.'s sexual preference was younger children. Both prior victims were younger than Z.W.M. G.C. was the type of child that Z.W.M. preferred to abuse.
39. After his arrest for raping two other children on a school campus, Z.W.M. was sent out of state to a sexual offender program.
40. The Board settled its case with the first victim. Money damages were paid to the first victim.
41. Upon his release from the sexual offenders program, Z.W.M. attempted to return to school in Pinellas County.
42. Pinellas County denied Z.W.M.'s request to return to school in Pinellas County.
43. Z.W.M. appealed this decision.
44. There was a public school board meeting at which the principal for the alternative school spoke out publicly against allowing Z.W.M. to return.
45. Z.W.M. was allowed to return to school in Pinellas County.

46. It is unknown under what conditions, if any, Z.W.M. was allowed to return to school.
47. The Board was well aware of what crimes Z.W.M. had committed and what danger he posed to other students when he returned to school in 2016.
48. On February 16, 2016, Z.W.M. was in the in school suspension room. G.C. was placed in the same room with Z.W.M.
49. Nothing was done to keep Z.W.M. away from or communicating with G.C.
50. Z.W.M. began to communicate with G.C. in writing, verbally and nonverbally.
51. Z.W.M. lured G.C. off the school campus.
52. Once off the school campus, Z.W.M. lured G.C. into a wooded area, near the school, where Z.W.M. pulled his pants down and attempted to rape G.C.
53. G.C. faked a panic attack and as soon as he was alone and away from Z.W.M. for the first time, he immediately reported the attempted rape to a grown up, stranger, who had allowed G.C. to call his mother.
54. The police arrested Z.W.M. Z.W.M. confessed and plead guilty to kidnapping and lewd and lascivious conduct for the attempted rape of G.C.
55. G.C. is the third known victim of Z.W.M.
56. Z.W.M. has been sentenced to prison and is no longer being educated with younger students.
57. While Z.W.M. left the school campus with G.C., no employee attempted to stop him or G.C.
58. Earlier that same day, while walking in a hallway, G.C. got close to an exit door. In response, an employee physically grabbed G.C. and moved him away from the door by grabbing his pants and his underwear and by grabbing his person. G.C. was cornered in the

hallway until back up was called to assist the employee. G.C. was unable to move until assistance arrived. This incident was captured on video tape.

59. No employee attempted to physical restrain or otherwise block or prevent Z.W.M. or G.C. from leaving the in school suspension room or from leaving the school building or leaving the school campus.

AFTER THE INCIDENT OF SEXUAL ASSAULT

60. G.C. was out of school until he was allowed to return to his homeschool, Tarpon Middle School.
61. On February 25, 2016, G.C. returned to school at Tarpon Middle.
62. No additional services or supports were provided to G.C. when he returned to school.
63. His IEP and BIP plan were not reviewed and no counseling or other trauma based interventions were discussed or put into place.
64. G.C. did not feel safe in school.
65. G.C. was Baker Acted (In Florida, involuntarily commitment is also known as the Baker Act.) twice on April 14, 2016 and May 6, 2016.
66. When G.C. returned to school after each Baker Act, nothing was done to address his needs. No review or revisions of his IEP or BIP were made and no additional services, like counseling were offered.
67. The last week of the 2015-2016 school year, the Board placed G.C. into a self-contained special education program for students who had emotional and behavioral disabilities (EBD).

68. G.C. was again removed from his home school and this time was sent to Dunedin Highland Middle School.
69. G.C. has his mother were promised that the program at Dunedin would provide additional supports and services for G.C. and would create an environment so that G.C. could feel safe at school.
70. G.C. began at Dunedin Highland Middle School, in Dunedin, Florida, for the last week of the 2015-2016 school year. He attended three out of four days. On each day G.C. was in attendance, Dunedin staff called the family to pick G.C. up early. G.C. spent an hour or two in school then the school called and stated that G.C. needed to be picked up early.
71. Between February 2016 – June 2016, G.C. received little if any direct instruction in any of his academic classes and essential lost the entire year.

2016-2017 SCHOOL YEAR

72. G.C. returned to the EBD cluster program at Dunedin Highland Middle School for the 2016-17 school year.
73. It quickly became clear that the cluster program was not safe, secure or appropriate for G.C.
74. The cluster program combines multiple grades into each classroom. G.C. was being educated with older students. Students similar in age and demeanor to Z.W.M.
75. As a young and disabled student G.C. was vulnerable.
76. The other students knew G.C. was disabled and vulnerable and took advantage of his whenever the opportunity arose. This occurred most often when there was little to no supervision, like on the school bus and in the cluster classrooms.

77. In addition, the other students would use curse words and say harassing things to G.C. both at school and on the bus ride to and from school. The other students would take G.C.'s cell phone and record vulgar and offensive videos and take vulgar pictures. The students would say that they wanted to, "fuck his mother and rape his sister" and other such vulgar statements.
78. These photos, videos and other incidents of such nature were reported to the principal and other school personnel but nothing was done to address or end the harassment.
79. G.C. was scared and anxious every time he went to school.
80. G.C. was in a constant state of fight or flight.
81. G.C. was picked up early from school almost every day and was calling home an average of ten times a day.
82. On September 28, 2016, G.C. was injured by the classroom aide, Mr. Lawrence, a staff member in the EBD cluster program, who flipped over a chair G.C. was sitting in.
83. On December 1, 2016, G.C. was left at the school by the bus driver (alone) without any parent or school administrator being advised of the same. G.C. was left at school for hours without supervision. G.C. was afraid.
84. On December 13, 2016, G.C.'s bus route was unilaterally changed without notice to the family. Instead of picking the student up curb to curb – which means at his front door - the route was changed to the location closest to the student's home. This left G.C. home alone with no transportation to school. G.C. was afraid.
85. Samples of harassing text messages were provided to the school on January 18, 2017.

86. On January 29, 2017, G.C. was suspended for being in the hallway. The only reason G.C. was in the hallway was because another student refused to open the classroom door and was taunting G.C. through the door. The other student did not get into trouble.
87. G.C.'s cell phone was smashed by another student.
88. The EBD cluster program was a complete failure. G.C.'s grades plummeted, his problem behaviors increased and his anxiety and fear of being at school also increased.
89. G.C. and his mother requested to move schools and/or programs, repeatedly. These requests were repeatedly denied.
90. After all efforts to work with the school to address G.C.'s needs and find a more appropriate placement for G.C. had failed, a Request for a Due Process Hearing under the IDEA and Section 504 of the Rehabilitation Act was filed on May 13, 2017, DOAH Case No 17-2755E.
91. The due process matter was settled on the eve of trial. The settlement allowed G.C. to be in a hybrid program for the 2017-2018 school year. The hybrid program was a combination of an in person teacher and a virtual school program. The allowed G.C. to catch up on his academics and work on his mental health in a safe and secure environment. The settlement agreement anticipated G.C.'s return to the public school for the 2018-2019 school year. G.C. received good grades and had done well academically.
92. Prior to the start of the 2018-2019 school year, the parties met to discuss G.C.'s reentry into the school building. Days before G.C. was scheduled to return to the school building, it became clear that G.C. would not be able to return to traditional school. G.C. has remained out of school to date. All efforts to obtain another hybrid program or otherwise address the needs of this student with the Board have failed.

93. The BOARD, as the operator and owner of Pinellas Secondary School, Tarpon Springs Middle School and Dunedin Highland Middle School had a duty to operate said schools with reasonable care and for the protection and safety of those students who were actively attending said institution on or about the date of the incidents at issue in this case.
94. The Plaintiff has complied with all the conditions precedent to maintaining this action, including statutory notice to the Defendant BOARD pursuant to Florida Statue section 768.28.
95. Plaintiff, by and through his mother, L.C., has engaged the law firms of Asnis, Srebnick and Kaufman and Langer Law, P.A. to represent G.C. and L.C. in this action and who are obligated to pay reasonable fees for their services and costs related thereto.

COUNT I

NEGLIENT SUPERVISION

96. Plaintiffs, L.C. and G.C. repeat and reallege the allegations in paragraphs 1 through 95 of the Complaint as if fully set forth herein.
97. Defendant, BOARD, had a legal duty to supervise G.C. while he was on the school campus.
98. Defendant, BOARD, breached such duty by failing to supervise G.C. in a manner that protected him from suffering sever bodily injury by a known sexual predator.
99. The three staff members present in the suspension room along with the school administration where the Defendant BOARD's agents, employees and/or teachers and were negligent in their duty to supervise the Plaintiff, G.C.
100. There was no plan, procedures, polices or safeguards in place to protect G.C. from a known sexual offender and predator.
101. G.C. was not Z.W.M.'s first victim on a school campus.

102. The Board knew of Z.W.M.'s predator status and prior sexual assaults and other criminal act and the BOARD knew G.C. was a potential victim and unsafe in and around Z.W.M.

103. As a direct and proximate cause of the negligent supervision, the Plaintiff suffered serve bodily injuries and emotional trauma.

104. The injuries were entirely preventable.

WHEREFORE, the Plaintiff, G.C., by and through his mother, L.C., sues Defendant, BOARD, for damages in excess of \$15,000 including pre-and post-judgment interest to the extent allowed by law, plus costs and interest, and demands a jury trial of all triable issues.

COUNT II

NEGLIENT SUPERVISION

105. Plaintiffs, L.C. and G.C. repeat and reallege the allegations in paragraphs 1 through 95 of the Complaint as if fully set forth herein.

106. Defendant, BOARD, had a legal duty to supervise G.C. while he was on the school campus.

107. Defendant, BOARD, breached such duty by failing to supervise G.C. in a manner that protected him from suffering bodily injury and harassment from his teachers and classmates.

108. G.C. was injured when his teacher flipped over a chair that G.C. was sitting in.

109. G.C. was also verbal harassed and physical attacked by other students while on campus.

His phone was broken, he was hit, teased, bullied, prevented from getting into his classroom and vulgar language was used to describe his sister and mother.

110. G.C. was left alone at the school campus by the bus driving and then left alone at home when the bus driver refused to pick G.C. up from his home.

111. When G.C. complained, his teachers, bus driver and other students, increased the degree

and intensity of the harassment.

112. School became a hostile environment.

113. G.C. and his family repeatedly made complaints, reached out to the school administration for assistance and asked for a change in placement.

114. The Board knew or should have known that there was a hostile environment created and that G.C. was suffering.

115. As a direct and proximate cause of the negligent supervision, the Plaintiff suffered bodily injuries and severe emotional trauma.

116. The injuries were entirely preventable.

WHEREFORE, the Plaintiff, G.C. by and through his mother, L.C. sues Defendant, BOARD, for damages in excess of \$15,000 including pre-and post-judgment interest to the extent allowed by law, plus costs and interest, and demands a jury trial of all triable issues.

COUNT III
NEGLIGENCE

117. Plaintiffs, L.C. and G.C. repeat and reallege the allegations in paragraphs 1 through 95 of the Complaint as if fully set forth herein.

118. At all times material, the BOARD owed a duty to G.C. to use reasonable care to ensure G.C.'s safety, care, health, and well-being while on a school campus.

119. At all times material, the BOARD was in *loco parentis* and was held to a standard of reasonable protection for the minor disabled child (Plaintiff) who was its student.

120. At all times material, the BOARD knew, or in the exercise of reasonable care should have known that Z.W.M., who was a sexual predator, was dangerous and a threat to the health, safety, and welfare of G.C. and other students requiring the school to have a safety plan

and proper supervision in place as well as having staff properly trained to ensure that the predator did not have access to or victimize other students while on a school campus.

121. At all times material, the BOARD owed G.C. a duty to ensure that Z.W.M., the sexual predator, did not have access to or contact with minor students like G.C. and that the staff working in and around the predator were properly trained to protect other students on the school campus.
122. At all times material, the BOARD had a duty to ensure that the appropriate safe guards and supervision were in place to protect students from Z.W.M., a known sexual predator.
123. G.C. was not Z.W.M.'s first victim.
124. At all times material, the BOARD had a duty to ensure that the staff working with and having contact with the sexual predator were trained to ensure G.C.'s safety on the school campus.
125. At all times material, the BOARD breached these duties in one or more of the following ways:
 - a. Failing to provide a safe environment for G.C. where he would be free from assault by a sexual predator;
 - b. Failing to disclose its awareness of fact that there was a sexual predator on campus with G.C.;
 - c. Failing to have policies and procedures in place to protect its students from known sexual predators;
 - d. Allowing G.C. and Z.W.M. to leave the in school suspension room unsupervised;
 - e. Failing to properly train the staff working with the sexual predator to ensure that he would not communicate with or otherwise have access to other students;
 - f. Failing to have policies in place that prohibit the sexual predator from having access to other students without proper adult supervision;

g. Failing to supervise Z.W.M.; and

h. Failing to provide the appropriate services, supports, interventions and/or training for staff interacting with G.C, a disabled student, vulnerable to be taken advantage by a sexual predator.

126. As a further direct and proximate cause of the negligence of the BOARD, G.C. was subjected to a kidnapping and assault by a known sexual predator which caused G.C. to suffer physical injury and psychological injures and suffering, increased problem behaviors, anxiety and loss of trust and loss of the capacity for the enjoyment of life.

127. As a further direct and proximate cause of the negligence of the BOARD, G.C. has incurred medical and psychological expenses for the treatment of his injuries and will incur such expenses in the future.

WHEREFORE, the Plaintiff, G.C. by and through his mother L.C., sues defendant BOARD for damages in excess of \$15,000.00 including pre-and post judgment interest to the extend allowed by law, plus costs and interest, and demand a trial by jury for all triable issues.

COUNT IV

NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION

128. Plaintiffs, L.C. and G.C. repeat and reallege the allegations in paragraphs 1 through 95 of the Complaint as if fully set forth herein.

129. At all times material, the BOARD owed a duty to the public and specifically to G.C., a disabled minor, to employ qualified and competent staff to work within its schools, and specifically within its segregated and clustered programs, including the alternative school which houses both disabled students and students charged with and convicted of criminal offenses.

130. This duty is even greater in the context of a public school where parents have a trust and

faith in the leaders, a reliance on those who are chosen to lead, and the school acts in *loco parentis*.

131. The BOARD has an additional duty to protect students with disabilities and receives local, state and federal monies to do the same. This duty includes having the appropriate services, supports, interventions and trained staff in place to meet the unique needs of each disabled student, including G.C.
132. At all times material, the BOARD owed a duty to the public and Plaintiff, G.C., to make an appropriate investigation of its employees, servants, and/or agents who were in or would be placed in a position to come into contact with minor and disabled students of the BOARD.
133. At all times material, the BOARD owed a duty to Plaintiff, G.C. to terminate any and all employees, servants and/or agents that it knew or should have known had engaged or sought to engage gross neglectful conduct.
134. At all times material, the BOARD owed a duty to Plaintiff, G.C. to make an appropriate investigation of its programs to ensure that students with disabilities are safe from predators and receiving the appropriate services, supports, accommodations and interventions to ensure these students' safety on school campuses.
135. At all times material, the BOARD owed a duty to Plaintiff, G.C. to make an appropriate investigation of its employees, servants, and/or agents who were in or would be placed in a position to come into contact with minor and disabled students, and to ensure the disabled students' individual needs were being met and that they were kept safe from sexual predators.
136. At all times material, the BOARD breached its duty to Plaintiff, G.C. in the following

ways:

- a. failing to hire competent and qualified employees, servants, agents and/or agents without proclivities to engage in neglectful acts when in charge of its minor disabled students;
 - b. failing to hire competent and qualified employees, servants, and/or agents with knowledge and training needed to accurately identify neglect of disabled students, especially those vulnerable students placed in the alternative schools and act accordingly;
 - c. failing to train its employees, servants and/or agents of the unique individual needs of G.C. and his vulnerabilities;
 - d. failing to train its employees, servants and/or agents to identify and report when a member of the BOARD staff is engaging in neglectful acts while in charge of its minor disabled students;
 - e. failing to supervise the aides and paraprofessionals and other support staff in a manner to prevent the neglect of its minor disabled student G.C.;
 - f. failing to train its employees, servants and/or agents to report neglectful acts by other employees, servants, and/or agents;
 - g. failing to terminate or reassign those employees, servants, and/or agents who were allowed neglect to occur;
 - h. failing to terminate and/or provide remedial measures to ensure the safety of students once the Defendant BOARD, knew or should have known about the neglectful conduct;
 - i. failing to procure or develop policies and procedures to prohibit neglect by aides, paraprofessionals and other support staff and teachers;
137. As a direct and proximate result of the BOARD's negligence, G.C. suffered gross neglect at the alternative school and neglect and abuse at the Dunedin Highland Middle School that caused serious bodily injury to G.C. and emotional injury to G.C.
138. As a direct and proximate result of the negligence of the BOARD, G.C. was abused and neglected, causing him to suffer mental pain, anxiety, fear of attending school, increased

problem behaviors, and loss of faith and capacity for the enjoyment of life.

139. As a further direct and proximate cause of the negligence of the BOARD, G.C., has incurred past medical and psychological expenses for the treatment of his injuries and will incur such expense in the future.

WHEREFORE, Plaintiff, G.C. by and through his mother, L.C. sues defendant BOARD, for damages in excess of \$15,000.00 including pre-judgment and post judgment interest to the extent allowed by law, plus costs and interest, and demand a trial by jury for all triable issues.

COUNT V

42 U.S.C. SECTION 1983

140. Plaintiffs, L.C. and G.C. repeat and reallege the allegations in paragraphs 1 through 95 of the Complaint as if fully set forth herein.

141. This was not an isolated or otherwise random act of abuse against G.C.

142. G.C. was the third sexual abuse victim of Z.W.M.

143. The BOARD knew that Z.W.M. was a danger to other students. The BOARD also knew that Z.W.M. had a preference for younger students.

144. The BOARD acted with deliberate indifference to these known, predictable and foreseeable dangers.

145. Shockingly, the BOARD took no measures to ensure that Z.W.M. would not have access to younger students.

146. The BOARD took no measures to ensure that Z.W.M. could not leave the classroom, school building and school campus with another student.

147. The BOARD took no measures to train the employees working with Z.W.M. to ensure that he would not have access to or be alone with other students. Especially those students who

were younger and most vulnerable. Similar violations were caused by prior employees who lacked the proper training to monitor and supervise Z.W.M. The BOARD had a duty and breached that duty by failing to provide any training to employees to ensure that other students would not be victimized by Z.W.M.

148. The BOARD's failures are made worse by the reality that Z.W.M. was able to interact and have access to a disabled student, who is one of the most vulnerable students the BOARD is in charge of educating.

149. Prior experiences with Z.W.M. informed the BOARD's knowledge that G.C. has federally protected rights that were substantially likely to be harmed by Z.W.M.

150. Defendant, BOARD, subjected G.C., to violations of his right to personal security and bodily integrity and Equal Protection by:

- a. Failing to adequately protect G.C. from Z.W.M, a known sexual predator, who had previously victimized other students on school campuses;
- b. Failing to adequately train the staff working with G.C. and Z.W.M. to ensure that G.C.'s individualized needs were met to ensure his safety from abuse and/or neglect while on school campus;
- c. Failing to adequately supervise employees and/or agents of the BOARD, to ensure that disabled student's individual needs are being met and that those same students are not able to be abused and/or neglected;
- d. Failing to ensure that violations of the IDEA were addressed rather than ignored;
- e. Failing to prevent students with disabilities from being placed into the alternative school and alternative programs unnecessarily in violation of the IDEA;
- f. Manifesting deliberate indifference to the abuse and neglect of G.C.; and
- g. Manifesting a deliberate indifference to the retaliation that G.C. and his parents were subjected to for bring the abuse and neglect to the attention of the BOARD's employees.

151. Defendant, BOARD, has and/or had customs or policies of:

- a. Widespread practice of placing disabled students into the alternative school without complying with the IDEA;
- b. Widespread practice of placing disabled students into cluster programs without complying with eth IDEA;
- c. Widespread practice of keeping students in cluster programs in violation of the IDEA;
- d. Widespread practice of failing to ensure that Z.W.M. did not have access to or contact with other more vulnerable students while on a school campus;
- e. Widespread practice of failing to adequately train and supervise BOARD employees with regard to maintaining, preserving and protecting students with disabilities from violations of their right to personal security, bodily integrity and Equal Protection, as well as violations of the IDEA.

152. Defendant, BOARD's policies and practices constitute disparate treatment of and deliberate indifference towards disabled students.

153. As a direct and proximate result of the BOARD's unconstitutional customs and practices, G.C. was exposed to abuse and/or neglect which caused great bodily injury and psychological harm, anxiety, an increase in problem behaviors and trauma.

154. As a further direct and proximate cause of the BOARD's unconstitutional customs and policies, G.C. has incurred past medical and psychological expenses for the treatment of her injuries and will incur such expenses in the future.

WHEREFORE, Plaintiff, G.C., by and through his mother, L.C. sues defendant BOARD for damages in excess of \$15,000.00 including prejudgment and post-judgment interest to extent allowed by law, plus attorneys' fees and costs and interest and demands a trial by jury for all triable issues.

COUNT VI

**VIOLATION OF TITLE II OF THE AMERICAN DISABILITIES ACT
AND SECTION 504 OF THE REHABILITATION ACT OF 1973**

29 U.S.C. § 794(a)

155. Plaintiffs, L.C. and G.C. repeat and reallege the allegations in paragraphs 1 through 95 of the Complaint as if fully set forth herein.

Plaintiff further alleges that the Board failed to educate him in the least restrictive environment and failed to provide the appropriate and necessary services and supports to ensure that G.C. received the benefit of and had equal access to his education in violation of Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131–12165 and Section 504 of the Rehabilitation Act, 34 C.F.R. §104.33(b)(2).

156. The Board is a public entity and recipient of federal financial assistance, and is therefore subject to Title II of the ADA and Section 504 of the Rehabilitation Act.

157. The ADA and Section 504 provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1)&(2).

158. The ADA requires that “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.” 42 U.S.C. § 12132.

159. The Board has discriminated against G.C. in violation of the ADA and Section 504 on the basis of his disabilities by intentionally placing him into the alternative school in violation of the IDEA and then again by placing him in the in school suspension room and then again

by refusing to change placement when it became clear that the cluster program was not providing G.C. with any meaningful education and was harming the student.

160. These decisions were done in bad faith and with gross misjudgment and the BOARD must be held accountable.

161. The cluster programs' failure to address the bullying complaints made by G.C. is additional support for the Plaintiffs claims that the BOARD acted in bad faith and with gross misjudgment. The BOARD would not do anything to acknowledge that the placement in the cluster program was a mistake including the investigation and acknowledgement of the bullying complaints. G.C. was left to suffer because the BOARD was determine to hold fast to their decision to move G.C. to a cluster program. Rather than address the individual needs of this student, the BOARD created a hostile environment for the student in hopes that he would leave, which is eventually what happened.

162. Repeatedly disciplining, removing and suspending G.C. for identified and known problem behaviors, resulted in an escalation of those behaviors, increased and harsher discipline, increased and lengthier removals from the classroom, his peers and educational environment, which lead to trauma, a dislike for learning, and a decrease in self-esteem and self-image.

163. The actions and omissions of the Board were done with deliberate indifference to the rights of G.C., and his parents, and as such, the Plaintiffs are entitled to damages for their injuries as a result of these discriminatory actions and policies.

WHEREFORE, G.C., by and through his mother L.C. respectfully requests this Court to declare the actions of the Defendants violate the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, issue a permanent injunction enjoining the Defendants from

discriminating against students with disabilities and awarding Plaintiffs' attorneys' fees, costs and expenses incurred in this matter and for such further relief as the court deems just and equitable.

COUNT VII

FLORIDA EDUCATIONAL EQUITY ACT

164. Plaintiffs, L.C. and G.C. repeat and reallege the allegations in paragraphs 1 through 95 of the Complaint as if fully set forth herein.

165. The Florida Educational Equity Act (FEEA) prohibits discrimination against students in the Florida public school system on the basis of disability. s. 1000.05, F.S.

166. No person shall be excluded from participation in, be denied benefits of or be subjected to discrimination under any public education program or activity.

167. The discriminatory and retaliatory acts and omissions by the BOARD because of his disability resulted in the exclusion from participation in, benefits of the public school program.

168. As a result of the BOARD's actions, the Plaintiff, G.C., suffered damages.

WHEREFORE, G.C. by and through his mother L.C., demands judgment against the Defendant, BOARD, for damages, together with their attorney's fees and costs, and such further relief as the court deems just and equitable.

DEMAND FOR JURY TRIAL

L.C., individually and on behalf of G.C., hereby demands a trial by jury on all issues so triable.

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Dated this 7th day of January, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 7, 2019, I electronically filed the foregoing with the Clerk of the Court by using the e-filing Portal system which will send notice of electronic filing to all parties and counsel of record in the herewith service list, or in some other authorized manner for those counsel or parties who are not authorized to receive notices electronically.

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